



LPRO: LEGISLATIVE POLICY AND RESEARCH OFFICE

DIRECT DEMOCRACY IN OREGON

BACKGROUND BRIEF

The Oregon Constitution provides voters with three methods to directly change Oregon Revised Statutes (ORS) and the Oregon Constitution: the initiative, referendum, and referral. In 1902, 91 percent of voters approved an amendment to the Oregon Constitution to allow for the initiative and referendum processes. Oregon is one of 24 states that have some form of an initiative process to place policy questions on the ballot.¹ This background brief describes each method and their associated processes and procedures and recent legislation affecting the initiative and referendum processes.

THE INITIATIVE

The initiative process gives direct legislative power to the voters to enact new laws, change existing laws, or amend the Oregon Constitution. As of November 2020, the people have passed 129 of the 369 initiative measures placed on the ballot since 1902.² Notable initiatives include the:

- Equal Suffrage Amendment in 1912 giving women the right to vote;
- creation and expansion of the Oregon Scenic Waterways System in 1970 and 1988;
- creation of the Oregon Lottery in 1984;
- limiting of property taxes and moving school funding from local to state control in 1990;
- Death with Dignity Act in 1994;
- vote-by-mail system in 1998; and
- legalized recreational marijuana system in 2014.³

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¹ National Conference of State Legislatures, *Initiative and Referendum Processes*, <https://www.ncsl.org/research/elections-and-campaigns/initiative-and-referendum-processes.aspx> (last visited October 22, 2020).

² Oregon Blue Book, *Initiative, Referendum and Recall Introduction*, <https://sos.oregon.gov/blue-book/Pages/state/elections/history-introduction.aspx> (last visited September 18, 2020) and Secretary of State, *Current Election*, <https://sos.oregon.gov/voting/Pages/current-election.aspx> (last visited November 5, 2020).

³ Oregon Blue Book, *Initiative, Referendum and Recall*, <https://sos.oregon.gov/blue-book/Documents/elections/initiative.pdf> (last visited October 26, 2020).

All initiatives begin as an idea from one or more citizens. Any person may be a chief petitioner of an initiative petition and act as the primary sponsor. An initiative may have up to three chief petitioners.

The process begins with the collection of 1,000 sponsorship signatures by the chief petitioner(s) and the submission of the idea to the Secretary of State's office for verification of signatures. If the prospective petition contains the appropriate signatures, it is forwarded to the Attorney General for drafting of the ballot title.

In addition, the Secretary of State's office seeks public input and then determines whether the text of the prospective initiative complies with constitutional requirements. All initiative petitions must contain a single subject or closely related subject, include the full text, and be legislative rather than administrative in nature. For constitutional initiative petitions, multiple subjects that are not closely related must be voted on separately, and proposals must amend rather than revise the constitution.⁴

Once a ballot title and summary have been finalized, the Secretary of State notifies the chief petitioner(s) in writing that they may begin circulating signature sheets to collect signatures from registered voters. The Elections Division provides chief petitioners the official templates used to prepare cover and signature sheets for circulation.

The chief petitioner(s) must monitor the collection of signatures and their submission to the Secretary of State. All signatures must be submitted no later than four months prior to the date of the next regularly scheduled General Election (the first Tuesday after the first Monday of November in even-numbered years).

Article IV, Section 1 of the Oregon Constitution establishes the number of signatures that must be gathered for a statutory or constitutional initiative to qualify for the ballot. The number of signatures required is a percentage of the number of votes cast for Governor during the most recent gubernatorial election – six percent for statutory amendments and eight percent for constitutional amendments. For 2020 and 2022 initiative petitions, chief petitioners are required to gather 112,020 valid signatures for a statutory initiative and 149,360 valid signatures for a constitutional initiative.⁵

In 2020, supporters of a proposed initiative altering Oregon's redistricting process sued the Secretary of State over the constitutional signature requirements during the pandemic. A U.S. District Court judge ruled that state officials could either put the measure on the ballot or drop the signature threshold to 58,789 (the required number for 2018 referendum petitions) and extend the deadline. The decision was appealed, and the U.S. Supreme Court stayed the district court's decision pending disposition of the appeal in the U.S. Court of Appeals for the Ninth Circuit. In September 2020, the Appeals Court sent the issue back to the district court for further proceedings on

⁴ Oregon Constitution, Article IV, sect. 1 and Article XVII. Oregon Administrative Rule 165-014-0028.

⁵ Secretary of State, *State Initiative and Referendum Manual*, page 5 (March 2020), available online at <http://sos.oregon.gov/elections/Documents/stateIR.pdf> (last visited on October 22, 2020).

whether accommodations should be made to initiative campaigns if the pandemic continues in future election cycles.⁶

THE REFERENDUM

The referendum process allows voters the opportunity to reject legislation adopted by the Legislative Assembly. The only legislation exempt from the referendum process are those that have been vetoed by the Governor and those with an emergency clause, which become effective upon signature of the Governor because the Legislative Assembly has declared them necessary for the immediate preservation of the public peace, health, or safety and the support of state government and its existing institutions.

As of November 2020, the people have passed 23 of the 65 referenda placed on the ballot since 1902.⁷ Laws affirmed by referendum include:

- the "Workmen's Compensation Act" of 1913;
- the "Burke Bill" in 1944 requiring wines with more than 14 percent alcohol to be sold only by Oregon Liquor Control Commission stores and agencies;
- a 1972 cigarette tax increase (cigarette tax measures were also referred but not affirmed in 1926, 1942, 1947, 1952, and 1956); and
- two tax measures in a January 2010 special election that proposed tax increases on corporations, households making \$250,000 or more, and individuals making \$125,000 or more to fund currently budgeted services.⁸

Any person may become a chief petitioner of a referendum petition and act as the sponsor. To qualify for the next regularly scheduled General Election, chief petitioners must receive written approval from the Secretary of State to circulate the text of the legislation to be referred among registered voters. Chief petitioners must then obtain the necessary number of valid signatures and submit them to the Secretary of State no later than 90 days after the Legislative Assembly adjourns. If an Act is successfully referred to the ballot, it is not effective. The Act remains on hold until the voters determine whether to support or reject the action of the Legislative Assembly.

The Constitution sets the number of signatures required to qualify a referendum to the ballot at four percent of the number of votes cast during the most recent gubernatorial election. To place a referendum on the November 2022 General Election ballot, chief petitioners are required to gather 74,680 valid signatures.⁹

⁶ New York Times, *Supreme Court Won't Ease Oregon's Referendum Rules During the Pandemic* (August 11, 2020) <https://www.nytimes.com/2020/08/11/us/supreme-court-oregon-gerrymandering.html>, and Oregon Public Broadcasting, *Oregon redistricting measure blocked from November ballot by appeals court decision*, <https://www.opb.org/article/2020/09/02/oregon-redistricting-measure-2020-court-ruling/> (last visited October 26, 2020).

⁷ Oregon Blue Book, *Initiative, Referendum and Recall Introduction*, <https://sos.oregon.gov/blue-book/Pages/state/elections/history-introduction.aspx> (last visited September 18, 2020).

⁸ Oregon Blue Book, *Initiative, Referendum and Recall*, <https://sos.oregon.gov/blue-book/Documents/elections/initiative.pdf> (last visited October 26, 2020).

⁹ Secretary of State, *State Initiative and Referendum Manual*, page 5 (March 2020), available online at <http://sos.oregon.gov/elections/Documents/stateIR.pdf> (last visited on October 22, 2020).

THE REFERRAL

A referral is a resolution by a governing body to place a question on the ballot for its electors to decide. Referrals may be prepared by a state, county, city, or district governing body. At the state level, the referral process gives voters the opportunity to decide on constitutional or statutory changes proposed by the Legislative Assembly. Both houses of the legislature must vote to refer the measure, and the referral cannot be vetoed by the Governor. Any change to the Oregon Constitution passed by the Legislative Assembly requires a referral to voters.

As of November 2020, the Legislative Assembly has referred 436 measures to the people, of which 259 have passed.¹⁰ Examples of recently approved referrals include:

- the 2010 constitutional amendment to require the legislature to meet annually and set limits on the length of legislative sessions (Measure 71);
- the 2012 constitutional amendment granting the Governor constitutional authority to declare a “catastrophic disaster” (Measure 77);
- a 2016 constitutional amendment devoting 1.5 percent of state lottery net proceeds to veterans’ services (Measure 96);
- a 2018 constitutional amendment to remove the restriction that affordable housing projects funded by municipal bonds be government-owned (Measure 102); and
- two measures in 2020: a constitutional amendment to allow laws limiting political campaign contributions and expenditures (Measure 107) and a measure to increase cigarette and cigar taxes and establish a tax on e-cigarettes and nicotine vaping devices (Measure 108).¹¹

The chief petitioners of a legislative referral are the members of the Legislative Assembly. When the Legislative Assembly refers a measure to voters, it may exercise its authority to either write the ballot title and summary or provide an alternative process for drafting the ballot title and summary and establish the explanatory statement and joint argument in support committees. This is accomplished through the passage of a legislative measure specifying the content or process.

If the Legislative Assembly does not adopt such a measure, referrals have ballot titles drafted and certified by the Attorney General. One Senator and two Representatives are appointed to a joint committee to draft the argument in support of the measure to appear in the voters’ pamphlet. The committee’s argument in support is not subject to legal challenge.

¹⁰ Oregon Blue Book, *Initiative, Referendum and Recall Introduction*, <https://sos.oregon.gov/blue-book/Pages/state/elections/history-introduction.aspx> (last visited September 18, 2020) and Secretary of State, *Current Election*, <https://sos.oregon.gov/voting/Pages/current-election.aspx> (last visited November 5, 2020).

¹¹ Oregon Blue Book, *Initiative, Referendum and Recall*, <https://sos.oregon.gov/blue-book/Documents/elections/initiative.pdf> (last visited October 26, 2020) and Secretary of State, *Online Voters’ Guide, 2020 General Election*, <http://oregonvotes.gov/voters-guide/english/votersguide.html> (last visited November 5, 2020).

BALLOT TITLES

A chief petitioner for referendum or initiative measures must file prospective petitions with the Secretary of State, who then sends the prospective petitions to the Attorney General to draft the ballot title. The ballot title of any state initiative or referred measure contains a subject matter caption of not more than 15 words; statements of no more than 25 words each describing the result if the measure is approved or rejected; and a concise and impartial statement of not more than 125 words summarizing the measure and its major effect.¹²

The Attorney General creates a draft ballot title for each measure, which is then made available for written public comment. If no comments are received on a draft title, the Attorney General may certify the title. If public comments are received, however, the Attorney General may choose whether to incorporate the comments or not. If a voter has submitted comments on a draft title but is dissatisfied with the Attorney General's title after the public comment period, the voter may petition the Supreme Court for review.

COMMITTEE STATEMENTS

Once a measure has been submitted to the Secretary of State for signature verification, an explanatory statement committee is formed to draft an impartial, simple, and easy-to-understand statement of 500 words or less to explain the measure in the voters' pamphlet. The explanatory statement committee is composed of two members appointed by the chief petitioners, two members appointed by the Secretary of State who are opponents of the measure, and one member selected by the other four members. For a legislative referral, the proponents are one Senator appointed by the President of the Senate and one Representative appointed by the Speaker of the House.¹³

Each measure is also analyzed by the Financial Estimate Committee composed of the Secretary of State, the Director of the Department of Administrative Services, the Director of the Department of Revenue, the State Treasurer, and a local government representative. The committee is charged with estimating the change in government expenditures, revenue, or indebtedness the measure would require if enacted. The committee also has the option of drafting an impartial 500-word statement explaining the financial impact of the measure. The financial estimate is printed on the ballot and in the voters' pamphlet; the statement is published in the voters' pamphlet.¹⁴

The Secretary of State holds a hearing for both the explanatory statement and financial estimate or statement. The respective committee then considers any suggestions and may file a revised statement or estimate.¹⁵ Any person dissatisfied with an explanatory

¹² [ORS 250.035 \(2019\)](#).

¹³ [ORS 251.185 -- 251.245 \(2019\)](#).

¹⁴ [ORS 250.125 – 250.135 \(2019\)](#).

¹⁵ [ORS 251.215](#) and [ORS 250.127 \(2019\)](#).

statement for which suggestions were offered at the hearing may petition the Supreme Court seeking a different statement.¹⁶ Any person who does not feel that the financial estimate committee followed the required procedures may petition the Supreme Court, but a petition is not allowed on the contents of the estimate or statement or whether an estimate or statement should be prepared.¹⁷

CITIZENS' INITIATIVE REVIEW COMMISSION

In 2011, the Legislative Assembly established the Citizens' Initiative Review Commission, which became a semi-independent state agency in 2013. The commission is composed of 11 members: three members who have served in a prior capacity as an impartial fifth member of an explanatory statement committee, four members who have served in a prior capacity as moderators of a citizen panel, and four electors who have served on a prior citizen panel.¹⁸

The commission provides oversight for the Citizens' Initiative Review program, which publicly evaluates ballot measures to provide voters with easy access to clear, useful, and trustworthy information at election time.¹⁹ The commission selects measures for review and brings together volunteer panels of Oregonians to evaluate those measures with the help of two trained moderators. Panels are composed of 18 to 24 members who reflect the demographics of voters in the state, including location, political party affiliation, age, and voting record. In forming citizen panels, the commission may also consider race, gender, and other criteria.²⁰

Panels meet for five consecutive days, hold public hearings on their ballot measure, and equally hear from proponents and opponents. Panels may draft several statements regarding each measure, including a statement in support; a statement in opposition; an impartial statement of key findings; and a statement of additional policy considerations. These statements are included in the statewide voters' pamphlet.

The commission is solely dependent on charitable foundations and donations from individuals; it may not receive moneys or assistance from political committees, for-profit corporate treasuries, or union treasuries. No statewide review took place in 2018 or 2020 due to a lack of funding.²¹

RACIAL AND ETHNIC IMPACT STATEMENTS

Upon request from a member of the Legislative Assembly from each major political party, the Oregon Criminal Justice Commission (CJC) must prepare a racial and ethnic

¹⁶ [ORS 251.235 \(2019\)](#).

¹⁷ [ORS 250.131 \(2019\)](#).

¹⁸ [ORS 250.137 \(2019\)](#).

¹⁹ Legislative Fiscal Office, *Review of Semi-Independent Agency Reports* (2018).

²⁰ [ORS 250.139 \(2019\)](#).

²¹ Healthy Democracy, *CIR in Oregon*, <https://healthydemocracy.org/cir/or/> (last visited October 22, 2020).

impact statement for a state measure that is related to crime and likely to have an effect on the criminal justice system. The statement must:

- describe the effects of the state measure on the racial and ethnic composition of the criminal offender population;
- include an estimate of how the proposed measure would change the racial and ethnic composition of those likely to be convicted of a criminal offense;
- include an estimate of the average length of incarceration that each racial and ethnic composition group receives as a sentence, if applicable;
- include a statement of the methodologies and assumptions used in preparing the estimate;
- include an estimate of the racial and ethnic composition of the crime victims who may be affected by the proposed measure; and
- be impartial, simple, and understandable.²²

The Secretary of State must hold a hearing on the draft racial and ethnic impact statement to receive suggestions for changes to the statement or to receive other information. The CJC may consider any comments or information and revise the statement before submitting it to the Secretary of State for certification at least 90 days before the election. In 2020, the CJC received a request for and issued a racial and ethnic impact statement on [Measure 110](#).²³

RECENT LEGISLATION

[Senate Bill 116 \(2019\)](#) created a legislative committee to prepare ballot titles and explanatory statements for any 2019 measure referred to the ballot. It also set an election date of January 21, 2020 for any provision of Enrolled House Bill 3427 (Student Success Act) referred to the ballot.

[Senate Bill 761 \(2019\)](#) required electors to personally print or request a copy of an electronic signature sheet and to certify they received the electronic signature sheet in compliance with that requirement. The measure required the template for an electronic signature sheet to include the final measure summary, ballot title, and correct copy of the measure to be initiated or referred.

[House Bill 3348 \(2019\)](#) required that, if the financial estimate committee determines that a measure will have a financial effect in excess of \$100,000, and the measure does not include a dedicated the funding source, the committee must include a statement indicating that the measure spends money without identifying a funding source.

[Senate Bill 1510 \(2018\)](#) modified various election law provisions, including requiring that the final certified ballot title be included on initiative petitions and capping the number of signatures that may be included on a prospective initiative petition to initiate a state measure at 2,000.

²² [ORS 137.685 \(2019\)](#).

²³ Secretary of State, *Measure 110, Racial and Ethnic Impact Statement*, <http://www.oregonvotes.gov/voters-guide/english/votersguide.html#Racial/Ethnic%20Impact> (last visited October 20, 2020).

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