

“Let the People Decide” — Initiative and Referendum in Wisconsin

State of Wisconsin
Legislative Reference Bureau
Informational Bulletin 95-5, October 1995

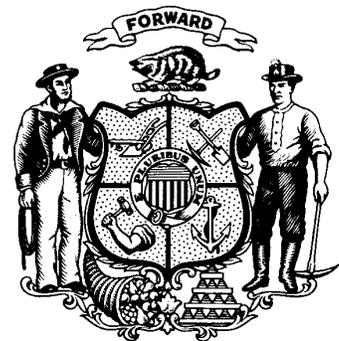


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“LET THE PEOPLE DECIDE” — INITIATIVE AND REFERENDUM IN WISCONSIN

SUMMARY

This bulletin summarizes Wisconsin laws relating to initiative and referendum, outlines the history and debate regarding direct democracy, and examines experiences in other states. It updates the LRB September 1991 report and incorporates changes made by the 1993-94 Wisconsin Legislature relating to this topic of recurring interest.

Unlike many states, Wisconsin does not have a statewide initiative process, but residents of cities and villages in Wisconsin are empowered to initiate legislation by petition. In addition, statewide and local referenda are required in numerous circumstances, and the state legislature or local governing bodies may, at their discretion, submit questions to the voters in the form of binding or advisory referenda.

I. INTRODUCTION TO DIRECT DEMOCRACY

In the United States, all levels of government – federal, state and local – are organized on the concept of representative democracy whereby the people elect legislators to enact laws on their behalf. Some states and localities supplement representative lawmaking with various direct or participatory methods under which the electors are allowed to propose and/or vote on certain types of legislation.

This bulletin summarizes Wisconsin laws relating to initiative and referendum, outlines the history and debate regarding direct democracy, and examines experiences in other states.

Initiative. The initiative is a procedure that enables private individuals to propose and enact a law by filing petitions. The initiative process may be “direct” or “indirect”. A **direct initiative** is automatically placed directly on the ballot if enough valid signatures are obtained by popular petition. This permits the voters to bypass the legislative body completely and avoid the threat of an executive veto.

Some jurisdictions have an **indirect initiative** procedure under which electors propose, via petition, that a legislative body pass a desired law without amendment. If the legislative body fails to enact the measure within a prescribed time period, the question appears on a referendum ballot for the voters to decide the issue. Wisconsin law provides for indirect initiatives in cities and villages.

Referendum. Generally, “referendum” refers to the opportunity given electors to vote on whether a measure should be enacted. In Wisconsin, for example, the referendum is used to ratify constitutional amendments; approve specific government actions, such as construction bonding; or provide advisory assistance to legislative bodies.

Referendum may also take the form of the “petition referendum” or “protest referendum”, whereby electors are allowed to challenge a law already enacted by a legislative body. Using petitions, citizens can force a previously passed law onto the ballot where they may accept or reject it. In effect, the referendum, allows voters to repeal a law by giving them a veto over legislative action. Wisconsin briefly had a protest referendum law for cities and counties (created by Chapter 513, Laws of 1911, and repealed by Chapter 385, Laws of 1915). Except for municipal charter ordinances, state law currently does not provide for this type of referendum, but legislation to authorize the procedure has been introduced a number of times.

In addition to the referenda described, legislative bodies may use the referendum to assist them in lawmaking. In a **binding referendum**, also known as a “contingent referendum”, a legislative body asks the voters to determine whether the law will take effect. Legislatures may also ascertain public opinion in an **advisory referendum**. Through an advisory ballot question, the voters register their feelings about a subject, but the legislature is not obligated to abide by the outcome.

II. THE HISTORY OF INITIATIVE AND REFERENDUM

Direct democracy, in which the people make the laws that govern them, has ancient roots. Forms of initiative and referendum existed in the assemblies of Athens and other Greek city-states and in the *plebiscitum* (the “people’s decree”) of the Roman Republic, in which the commoners could vote to enact or repeal certain laws over the opposition of the senate. “Plebiscites”, a term synonymous with referenda, were used in some cities in medieval Europe, although voting rights were confined to small, elite, wealthy electorates.

Examples of national referenda in recent centuries include the popular consultations held in France in the late 1700s to demonstrate support for wars of conquest and governmental changes; a series of electoral affirmations of Piedmontese sovereignty over the Italian peninsula in the 1860s, and plebiscites conducted by the League of Nations after World War I to settle boundary disputes.

The referendum has been most widely employed in Switzerland and the United States. Starting in the 13th century, some Swiss cantons (states) regularly made decisions by popular assent in citizen assemblies, called *Landsgemeinden*. As the population grew and such full assemblies became impractical, the referendum was adopted as a way to continue the tradition of direct democracy. Switzerland has the petition referendum, whereby a law passed by the national legislature may be challenged and approved or rejected by the people if sufficient signatures are gathered, and it uses the initiative process to amend the constitution and enact statutes.

Like Switzerland, the United States has a national tradition of citizen participation. The early New England town meeting was based on the concept of shared decision-making and consensus. As was the case in Switzerland, when the population of the American colonies became too large for face-to-face meetings, initiative and referendum were adopted.

The first known referendum in the colonies was held in Massachusetts Bay Colony in 1640. In 1715, electors in Massachusetts were granted a form of local initiative when the colonial General Court (the legislature) enacted a law requiring the executive officers of the towns to include on the town meeting agenda any item requested by petition of 10 or more eligible voters. In effect, this allowed citizens to propose laws that would be considered at the town meeting.

The first statewide referendum after independence occurred in 1778. The Massachusetts Legislature adopted a constitution and submitted it to the voters for ratification. It was rejected, but a revised draft was approved via referendum in 1780. It has since become standard practice for state constitutions and amendments thereto to be approved by the voters.

A surge of interest in direct democracy in the United States was a result of the populist and progressive movements of the late 1800s and early 1900s. As a political entity, the Populists were a loose alliance, composed primarily of agriculturally oriented groups disenchanted with low farm commodity prices and hard economic times. They believed that state governments had been captured by wealthy special interests, such as bankers and land speculators. They were particularly suspicious of the railroad companies that controlled a virtual monopoly on bulk transportation. A major theme of the Populists was to reform government by using direct democracy procedures to bypass unresponsive legislatures.

Like the Populists, the Progressives were concerned with what they perceived as rampant government corruption caused by monied interests. They, too, asserted the right of the people to share in the making of the laws. They believed that the will of the people is the only legitimate foundation of any government.

Largely due to these concerns, 19 states, led by South Dakota, adopted the initiative procedure between 1898 and 1918. Almost all of the newer states west of the Mississippi embraced the initiative and referendum, although some of the more established eastern states joined the movement. Periodically there have been unsuccessful attempts to establish the initiative and referendum on a national scale. One proposal, introduced by Robert M. La Follette when he represented Wisconsin in the U.S. Senate, would have allowed the public to petition for a national advisory referendum on the question of whether the country should participate in World War I. The most recent national initiative proposal, sponsored in the 1970s by U.S. Senator James Abourezk from South Dakota, would have allowed national initiatives on most subjects with the exception of those related to national defense matters. Initiatives have become more common since the publicity surrounding California's 1978 Proposition 13 tax-cutting measure showed the power and utility of this lawmaking device.

While there are a number of legitimate concerns over the misuse of direct democracy, a quotation from Governor Francis McGovern's message to the 1911 Wisconsin Legislature illustrates the potential virtue of direct democracy:

The great task of the time is how to make and keep the government really representative of the people. The initiative and referendum have been proposed as effective means for accomplishing this result. . . [T]hey . . . have a common object and embody really but one idea, - that of placing the people in actual control of public affairs.

III. INITIATIVE AND REFERENDUM IN WISCONSIN

Wisconsin does not have any statewide initiative process that would allow electors to propose new state laws or constitutional amendments by petition and vote on them in a referendum election. However, residents of Wisconsin cities and villages do have the indirect initiative at their disposal to propose enactment of local ordinances. In addition, statewide and local referenda are required in numerous circumstances, and the state legislature or local governing bodies may, at their discretion, submit questions to the voters in the form of binding or advisory referenda.

A. Initiating City and Village Charter Ordinances, Ordinances and Resolutions

Under Section 9.20, Wisconsin Statutes, electors in Wisconsin cities and villages may petition the city common council or village board of trustees to pass without change a proposed ordinance or resolution the voters have proposed. (The text of s. 9.20 is reprinted in Appendix A of this bulletin.) In addition, s. 66.01 (6) permits electors to initiate the enactment, amendment or repeal of city or village charter ordinances, using the indirect initiative procedures provided in s. 9.20. If the council or board fails to enact a petition-initiated proposal without change within 30 days, the question automatically appears on a referendum ballot for the people to decide. Although s. 9.20 is titled "Direct Legislation", the fact that the proposal must first receive municipal legislative action places this mechanism in the indirect initiative category because supporters of a proposal cannot move the measure directly from the petition phase to the ballot.

The evolution of local initiative in Wisconsin occurred over almost eight decades. The power to initiate ordinances and resolutions was granted to city residents by Chapter 513, Laws of 1911. Charter ordinance initiatives in cities and villages were authorized by Chapter 198, Laws of 1925. 1989 Wisconsin Act 273 gave electors in Wisconsin villages the initiative, effective May 1990. (Counties were originally included in the 1911 initiative law, but, after various changes, the provisions for county direct legislation were subsequently repealed by Chapter 177, Laws of 1943.)

Petition Requirements. The initiative process begins with the submission of petitions containing a specified number of valid signatures from qualified electors (legal residents of voting age). At minimum, the number of signatures must equal at least 15% of the votes cast

for governor in the municipality at the last gubernatorial election, and all the signatures must be collected within 60 days prior to filing the petitions with the city or village clerk.

1989 Wisconsin Act 192 established a uniform petition form for all referenda, including city and village initiatives. Section 8.40, Wisconsin Statutes, requires that the word "PETITION" must appear in boldface print at the top of each separate signature sheet. Those signing the petition must indicate their municipality of residence for voting purposes, their street address, and the date on which they signed.

An affidavit containing the signature and address of the person who circulated the petition must appear at the bottom of each petition page. It must state that:

- 1) the petition circulator personally obtained each of the signatures;
- 2) the circulator knows that each person who signed is a qualified elector of the applicable municipality;
- 3) each signer did so with full knowledge of the content and purpose of the petition;
- 4) the circulator knows that each signer indicated the correct residence address;
- 5) each signer signed on the date indicated;
- 6) the circulator actually resides in the municipality in which he or she circulated the petition; and
- 7) the circulator is aware that the penalties for submitting a petition with a false affidavit, as prescribed under Sections 12.13 (3) (a) and 946.32 (1), Wisconsin Statutes, include a fine of up to \$10,000 and imprisonment not to exceed five years, or both.

Although it is not required by statute, the State Elections Board recommends that the complete text of the proposal (or a summary of it) be printed on or attached to each petition page. The board has prepared a sample petition that may be used in city and village initiative efforts, and it is reprinted in Appendix B of this bulletin.

Initiative Timetable. If enough signatures are gathered in the 60-day period, the petitions are filed with the municipal clerk. Within 15 days after receipt of the petitions, the clerk rules on their sufficiency, including verifying that the correct number of signatures has been obtained and whether the proposal is properly worded. An individual must be designated in writing as the person to be notified if there are problems with the petitions.

The State Elections Board has prescribed rules regarding the standards by which election officials and governing bodies must judge the validity of petitions (Chapter El Bd 2 of the Wisconsin Administrative Code). Clerks must list any insufficiencies they find in a signed and dated certificate attached to the petition, and the designated individual is notified and given 10 days to correct the problem. When everything is in order, the clerk immediately forwards the proposal and the verified petitions to the municipal legislative body.

The city council or village board has 30 days from receipt of the petition to either pass the proposal in unaltered form or put it to a referendum vote at the next spring or general election,

if the election is scheduled more than six weeks after the expiration of the 30-day period. If the next election is scheduled in less than six weeks, the referendum must be delayed until the following spring or general election, unless the council or board agrees by a three-fourths vote of the entire elected membership of the body to order a special election for the purpose of voting on the proposal. (No more than one such special election may be held in any six-month period.)

Voting on the Referendum. It is not necessary that the full wording of the proposed ordinance or resolution be printed on the ballot. If it is not, it must be replaced by a concise printed statement of the nature of the proposal. The wording of the ballot question must permit the voter to clearly indicate approval or rejection by a straightforward “yes” or “no” vote. (These rules also apply to statewide or countywide referenda.) If the majority of those voting in the referendum favor the ordinance or resolution, it takes effect on the date of its publication, which must occur within 10 days after the election.

Repeals or Amendments to an Initiative. City or village legislation adopted via initiative cannot be vetoed by the mayor or village president, and the legislative body cannot repeal or amend the law within two years of its adoption. Initiated laws may, however, be repealed or amended anytime by another initiative action.

Limitations on Use of Municipal Initiatives. A series of decisions by the Wisconsin Supreme Court have dealt with “Direct Legislation”, Wisconsin’s statutory term for the indirect initiative. In particular, *Landt v. Wisconsin Dells*, 30 Wis. 2d 470 (1966); *Heider v. Wauwatosa*, 37 Wis. 2d 466 (1967); and *State ex rel. Althouse v. Madison*, 79 Wis. 2d 97 (1977) have set limits on the use of this procedure. The court has ruled that:

- 1) Voters may exercise only such legislative powers as are conferred upon the city council or village board by the Wisconsin Constitution or state statutes.
- 2) Direct legislation must relate to new legislation. It cannot be designed to amend or repeal existing legislation that has been properly enacted by a city council or village board. (This is not an ironclad prohibition because the Supreme Court has not specifically addressed the question of incidental partial repeal or amendment that occurs in the process of creating affirmative legislation on a new subject.)
- 3) Direct legislation cannot be used to require the city council or village board to pass legislation that clearly conflicts with a prior ordinance and would thereby constitute implied recision.
- 4) Direct legislation is restricted to legislative-type actions (e.g., ordinances and resolutions) and is not applicable to executive, administrative or judicial activities.
- 5) If it does not enact a direct legislation proposal, the municipal board must put the question to a vote, even if it feels the measure is invalid or likely to be declared unconstitutional.

Recent Example of Indirect Initiative. Although not frequently used in Wisconsin cities and villages, the indirect initiative is becoming more common as citizens become aware of the

usefulness of the procedure. A recent example was the charter ordinance initiative relating to public works projects that was placed on the April 1992 referendum ballot in Madison using the petition process. The proposed ordinance provided that all future major construction projects estimated to cost over \$500,000 and located in city parks near navigable waterways must first receive referendum approval. This ordinance was a reaction to a plan, approved by the city council, to construct a public swimming pool in Olin-Turville Park adjacent to Lake Monona. Opponents, who had been unsuccessful in their efforts to persuade the council to cancel the project or submit it to a referendum vote, conducted the petition drive that resulted in the passage of a charter ordinance by a 34,395-to-21,599 vote. While an initiative cannot be used to repeal already existing legislation, the charter ordinance will control future Madison construction. The referendum had its desired effect, however. Since public support for the pool seemed to be clearly lacking, based on the substantial margin by which the charter ordinance was enacted, the city council subsequently chose to cancel construction of the previously approved pool.

B. Referendum on Charter Ordinances

Wisconsin voters may use the referendum to require that charter ordinances already passed be put to a vote of the people for their approval or rejection. City councils or village boards in Wisconsin may enact, amend or repeal by ordinance the city or village charter, but such ordinances do not take effect until 60 days after passage and publication. Section 66.01 (5), Wisconsin Statutes, provides that, within that 60-day period, if a petition signed by a number of voters equal to not less than 7% of the votes cast in the city or village for governor in the last election is filed demanding that the charter ordinance be submitted to a referendum, the election must be held. If a majority of those voting in the referendum reject it, the ordinance is nullified.

C. Other Local Actions Initiated By Referendum

Wisconsin electors may initiate other specific local legislative actions by referendum elections. The following are some examples:

Change of County Seat. Article XIII, Section 8, of the Wisconsin Constitution, states that no county seat may be moved unless a majority of those voting in a countywide referendum favor its removal to a specified point. Section 59.11, Wisconsin Statutes, prescribes a referendum procedure similar to local initiative. If electors propose the relocation by submitting petitions signed by two-fifths of the legal voters of the county, the county board must submit the question to the voters in a general election. In 1976, electors in Burnett County petitioned to relocate the county seat from the Village of Grantsburg to the Town of Meenon, a point closer to the county's geographic and population center. A court dispute over the results of the referendum prompted a new petition in 1982. In a referendum held that year, electors approved moving the county seat by a vote of 4,374 to 3,261.

Elected County Executive. Section 59.031 (1) (b), Wisconsin Statutes, permits counties having a population of less than 500,000 to use the s. 9.20 initiative procedure to create or abol-

ish the elected office of county executive. In April 1970, the voters of Outagamie County became the first to create an elected county executive through the referendum process.

Incorporation of Cities and Villages. Sections 66.013 through 66.018, Wisconsin Statutes, permit persons who are both electors and landholders of the territory in question to initiate the incorporation of new cities or villages. After various procedural requirements are met, all electors residing within the area of the proposed new city or village must vote on the matter. The most recent example of incorporation occurred in February 1988, when part of the Town of Oakdale in Monroe County voted to become the Village of Oakdale.

Annexation by Referendum. Wisconsin residents of an unincorporated area seeking annexation to an adjacent city or village may file a petition with the city or village clerk containing signatures of the area's voters equal to at least 20% of the number of votes cast for governor in that area in the last election. The signatures must include landholders who own an aggregate minimum of 50% of the real property involved, either in total land area or assessed value. Within 60 days of the filing of the petition, the city council or village board has the option of either accepting or rejecting the proposed annexation or taking no action. If it specifically rejects the proposal, it dies. If the proposal is accepted or the body fails to act, a referendum is held. Annexation requires 1) that a majority of the residents of the territory voting in a referendum approve it and 2) that an annexation ordinance be enacted by the council or board.

D. Binding Referenda

There are numerous situations in Wisconsin in which referendum votes are required by the constitution or statutes before proposals may take effect. In addition, legislative bodies may pass legislation contingent upon approval in a referendum.

Constitutional Amendments. One of the best-known uses of the referendum is the state-wide ratification of amendments to the Wisconsin Constitution. As provided by Article IV, Section 1, of that document, a proposal to amend the constitution must first be passed in identical form by two consecutive sessions of the legislature (known as "first consideration" and "second consideration"). It must then be ratified by a majority of electors voting in a subsequent referendum. Since the adoption of the Wisconsin Constitution in 1848, the electorate has approved 135 out of 186 proposals to amend the constitution. The most recent example was the approval in April 1993, by a vote of 623,987 to 435,180, of an amendment to limit the scope of legal gambling in the state to the forms then permitted by the constitution. This amendment had the effect of precluding the legislature from authorizing either state-operated or privately run casino-type gambling.

Mandatory Binding Referenda – Local Government. In a number of situations, state statutes require local units of government to hold referenda to ratify actions initiated by the governing body. Most familiar are the two related to school district finances. Section 67.05 (6a) provides that bonding proposals for school districts, including borrowing to finance school building construction, must be submitted to a referendum if the project cost exceeds

specified amounts or if the bonding will cause aggregate indebtedness to exceed either \$1 million or a level specified in a statutory formula. 1993 Wisconsin Act 16 created school district revenue caps, but Section 121.91 (3) of the statutes provides that a school district may exceed the revenue limit upon approval by district voters in a referendum.

Optional Contingent Referenda – State Statutes and Local Ordinances. The state legislature or any local legislative body may choose to pass a law that will not take effect unless ratified by the electors in a referendum. The Wisconsin Legislature has used the contingent referendum 11 times since statehood, with the voters approving seven proposals, including the 1904 establishment of a presidential primary election, the 1957 institution of daylight saving time, and the 1980 authorization of the creation of public inland lake protection and rehabilitation districts.

E. Advisory Referenda

Both the state legislature and local government legislative bodies may choose to submit questions to the electorate in referendum elections. While useful in determining the opinion of the electorate on a certain public policy topic, the results of an advisory referendum are not legally binding on the legislative body. Since 1948, the Wisconsin Legislature has opted to submit 20 advisory referenda to the voters. The most recent examples were five questions, appearing on the April 1993 ballot, when the legislature attempted to gauge public feeling about the present status and future expansion of gambling opportunities in the state. The results indicated that the voters were generally satisfied with the amount and type of gambling already available in the state and that they did not support state or privately operated casino-style gambling.

F. Referendum Procedures

Notice and Explanatory Statement. Prior to every referendum, Section 10.01 (c) of the statutes requires that the county or municipal clerk publish at least one notice about the election in the appropriate newspapers. The notice must include: the date of the referendum, the entire text of the question and the proposed enactment, if any, and an explanatory statement that describes, in plain language, the effect of the proposed law if enacted. The explanatory statement is prepared by the chief legal officer of the jurisdiction.

Campaign Financing and Registration Rules. Political groups that support or oppose any statewide or local referendum are required to comply with the registration and campaign finance laws contained in Chapter 11, Wisconsin Statutes, if they make or accept contributions, incur obligations or make disbursements in a calendar year that aggregate more than \$25. A political group is defined as any person other than an individual and any combination of two or more persons, permanent or temporary that makes or accepts contributions or makes disbursements for the purpose of influencing the outcome of any referendum, whether or not all of the activities of the group are exclusively political in nature.

Before receiving or spending money totaling more than \$25, political groups concerned with a statewide referendum must register with the State Elections Board and groups working on a local referendum must register with the clerk of the most populous jurisdiction in which a particular referendum is being conducted. The statement of registration must include the name and address of the group, the name and address of the campaign treasurer and other principal officers, the name and address of the group's financial institution, the number of the campaign account, and the nature of any referendum which is being supported or opposed. Political groups may not accept anonymous contributions larger than \$10 and must file periodic reports with the registration agency.

False Representations Affecting a Referendum. Section 12.05, Wisconsin Statutes, makes it illegal for any person to knowingly make or publish, or cause to be made or published, a false representation pertaining to a referendum which is intended to affect the voting at an election.

G. Attempts to Institute Statewide Initiative and Referendum

Since introduction of 1907 Senate Joint Resolution 17, which passed the senate but failed in the assembly, over 40 measures have been considered by the Wisconsin Legislature proposing to alter the constitution so as to permit the use of statewide initiatives to amend the constitution or enact state statutes. The one that came closest to passing was a proposal to institute initiatives for the enactment of constitutional amendments and state statutes, which appeared on the November 1914 ballot but was rejected by a vote of 150,215 to 68,435. The most recent comprehensive initiative proposal was 1989 Assembly Joint Resolution 45, which failed in the assembly. 1989 AJR-45 included the following features:

Revenues. Any initiative requiring the expenditure of tax dollars must provide the means for raising the funds necessary to cover the spending.

Professional drafting assistance. The authors of an initiative must consult with a legislator who will forward the petition for professional redrafting and correction. In the case of statewide constitutional or statutory initiatives, the proposal would be put in proper form by Legislative Reference Bureau drafting attorneys.

Petition signature certification. The signatures must be verified by election officials, using at least a 5% random sampling.

Geographic balance. The number of petition signatures must equal at least 10% of the votes cast for governor in the most recent election. However, the maximum number of signatures allowed from the most populous county for statewide initiatives, or the largest municipality for countywide initiatives, must not exceed that unit's proportion of the total population.

Paid professional signature gathering prohibited. Any petition signatures collected by paid circulators would be invalid, as would those gathered by governmental agencies. (This

is designed to hinder the practice of “cash and carry” or “checkbook” democracy, whereby for-profit firms are hired to circulate petitions.)

Campaign finance restrictions. Contributions to referendum campaigns from any single source could not exceed the limit established for individual contributions to a state senate candidate. All contributions must be reported to the applicable elections officials.

Public hearing and amendments. Within 30 days prior to the start of a petition drive, a committee of the relevant legislative body must hold a public hearing on the proposal. If the committee recommends changes and the sponsors accept them within five days, the proposal is amended.

Voter information pamphlet. An information pamphlet explaining the details of the proposal must be prepared by elections officials and made available by the date of the public hearing for distribution to the general public. The pamphlet must include a descriptive statement of about 100 words, the full text of the measure, and a balanced summary of the arguments for and against the proposal.

Wording of the ballot. If one measure deals with multiple issues or if more than one measure on the same subject appears on the same ballot, electors must be able to clearly vote separately for each with a “yes” or “no” vote. In the case of a conflict between competing initiatives, the one receiving the most votes will take effect.

Amendments. Constitutional amendment initiatives must be approved twice by the voters in elections at least one year apart. Any change to an initiated law within five years of its adoption would require another referendum, which could be placed on the ballot either by citizen petition or by the legislative body.

IV. THE INITIATIVE IN OTHER STATES

Twenty-four states have some form of statewide initiative and referendum procedure that may be used for either the amending of state constitutions or the enactment of state statutes (Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming). In addition, another 12 states allow initiatives at the local government level. The number of petition signatures required varies by state, and in some cases the signatures must meet geographic distribution requirements to ensure that support for a proposal is not confined to certain localities. Some states provide for the indirect initiative, in which the state legislature is first given an opportunity to pass the measure.

Selected Examples. In 1904, Oregon became the first state to put initiatives on a ballot. Since then, some examples of laws enacted via initiative include: establishing old age pen-

sions (Arizona, 1914); establishing a worker's compensation system (Oregon, 1924); instituting a unicameral legislature (Nebraska, 1934); banning the busing of public school students to achieve racial balance (Colorado, 1974); enacting a mandatory can and bottle deposit law (Michigan, 1976); drastically reducing local property taxes and limiting the rate of increase to 2.5% annually (Massachusetts, 1980); requiring that local tax increases be approved by referendum (Missouri, 1980); restricting the increase of state income taxes to rate of inflation (Maine, 1982); prohibiting the use of public funds to pay for abortions unless necessary to save the life of the mother (Colorado, 1984); exempting the value of automobile trade-ins from the sales tax (Washington, 1984); adopting English as the official state language (Arizona, Florida, Colorado, 1988); term limits for state lawmakers and congressional representatives (Oregon, 1992); and allowing terminally ill persons to legally obtain medication to assist suicide (Oregon, 1994).

California. Since the passage in June 1978 of Proposition 13, which drastically slashed local property taxes and strictly limited future tax increases to 1% per year until a house is sold, California has become known as the leader in the use of the initiative and referendum. Other noteworthy initiatives passed in the state in recent years include:

- Proposition 8 (1981). Known as the "Victim's Bill of Rights", it required criminals to make restitution to victims, relaxed the rules of evidence regarding the admissibility of testimony about prior felony convictions, stiffened prison terms for repeat offenders, banned the diminished capacity defense, restricted plea bargaining, and gave victims the right to speak at sentencing and probation hearings.
- Proposition 63 (1986). Declared English the official language of the state, prohibited the use of other languages on election ballots, and required that state and local government authorities use only English in carrying out duties that do not involve public health, safety or law enforcement.
- Proposition 65 (1986). Prohibited the release of detectable amounts of toxic chemicals into any source of drinking water and required makers and sellers of such toxins to give the public a "clear and reasonable warning" of possible exposure. Citizens are authorized to sue a company that violates the law and, if successful, they may recover bounties equal to 25% of the civil penalties collected.
- Proposition 103 (1988). Cut automobile insurance premiums by 20%, required discounts for safe driving records, and imposed a freeze on insurance rates for one year.
- Proposition 140 (1990). Imposed strict term limits on state legislators and cut funding for legislative staff and operating expenses. It restricted members of the assembly to three 2-year terms in office and members of the senate to two 4-year terms.
- Proposition 187 (1994). Denies illegal aliens access to all public services such as welfare and education, except for emergency health and safety assistance. (The constitutionality of this law is currently being challenged in federal court.)

Sponsors of initiatives in California must first submit the text of the proposed law to the attorney general along with a filing fee. The attorney general prepares a title and summary and, if the measure is likely to have an effect on public finances, a legislative analyst prepares

a fiscal impact statement that is appended to the summary. Petition circulators are allowed 150 days to obtain the required number of signatures — 5% of the total number of votes cast in the last gubernatorial election (8% for constitutional amendments). County clerks verify, through a random sampling procedure, that sufficient signatures have been gathered. If enough signatures are certified, the initiative is placed on the ballot for the next statewide election occurring at least 131 days later, although the governor may call for a special election. To avoid confusion of proposition numbers from year to year, California uses a sequential numbering system that starts over every 20 years with a “Proposition 1”.

V. ARGUMENTS AND ISSUES

While some praise the initiative as a valuable enhancement to democracy, critics point to a number of troubling issues regarding the use of citizen lawmaking.

A. Arguments Favoring Initiative

Proponents claim that the initiative allows more public participation in the democratic process and may help to reduce apathy and alienation among voters by showing that their voice and vote do count. The process is supplemental to, rather than a replacement for, representative democracy. It can serve as a safety valve when a legislative body is perceived to be unresponsive to the public’s concerns. On the other hand, it may encourage the legislature to resolve issues more quickly to preclude possible initiatives. In any case, supporters assert that initiative encourages informed debate, enhances interest and involvement in public affairs, and promotes voter turnout. In their view, popular common sense will offer wiser public policy choices, and citizens will give better support to laws that they directly enact.

B. Arguments Opposing Initiative

Representative lawmaking depends on a system of checks and balances, including public hearings, the opportunity to amend bills, and possible gubernatorial veto. Opponents contend that initiatives, which are usually exempt from these procedural safeguards, may be poorly drafted and result in faulty, ineffective or unworkable laws. They claim that minorities who are entitled to certain protections in the usual legislative process may suffer from prejudicial initiatives.

Some opponents argue that initiative can weaken representative government. They claim that it permits legislators to sidestep controversial issues by leaving the tough choices to the people. Another interesting development, which first became common in California, is that incumbent legislators may bypass the legislative process by sponsoring ballot initiatives themselves. This strategy is usually used by members of the minority party.

Opponents decry the power of special interest groups to get narrow issues on the ballot to the detriment of sound public policy. Concerns are raised about the influence of money in

initiative campaigns. Experience seems to indicate that big money can be especially effective in defeating an initiative by funding extensive advertising, some of it intentionally designed to confuse the public. It has been generally found that if voters do not fully understand the implications of a ballot question, they tend to vote against it. In addition, groups opposed to an initiative will sometimes qualify competing initiatives for the same ballot to confuse the voters and dilute the support for a particular proposal.

VI. APPENDICES

Appendix A. Text of Section 9.20, Wisconsin Statutes

9.20 Direct legislation. (1) A number of electors equal to at least 15% of the votes cast for governor at the last general election in their city or village may sign and file a petition with the city or village clerk requesting that an attached proposed ordinance or resolution, without alteration, either be adopted by the common council or village board or be referred to a vote of the electors. The individual filing the petition on behalf of the electors shall designate in writing an individual to be notified of any insufficiency or improper form under sub. (3).

(2) The preparation and form of the direct legislation petition shall be governed by s. 8.40.

(2m) After the petition has been offered for filing, no name may be erased or removed. No signature may be considered valid or counted unless the date is less than 60 days before the date offered for filing.

(3) Within 15 days after the petition is filed, the clerk shall determine by careful examination whether the petition is sufficient and whether the proposed ordinance or resolution is in proper form. The clerk shall state his or her findings in a signed and dated certificate attached to the petition. If the petition is found to be insufficient or the proposed ordinance or resolution is not in proper form, the certificate shall give the particulars, stating the insufficiency or improper form. The petition may be amended to correct any insufficiency or the proposed ordinance or resolution may be put in proper form within 10 days following the affixing of the original certificate and notification of the individual designated under sub. (1). When the original or amended petition is found to be sufficient and the original or amended ordinance or resolution is in proper form, the clerk shall so state on the attached certificate and forward it to the common council or village board immediately.

(4) The common council or village board shall, without alteration, either pass the ordinance or resolution within 30 days following the date of the clerk's final certificate, or submit it to the electors at the next spring or general election, if the election is more than 6 weeks after the date of the council's or board's action on the petition or the expiration of the 30-day period, whichever first occurs. If

there are 6 weeks or less before the election, the ordinance or resolution shall be voted on at the next election thereafter. The council or board by a three-fourths vote of the members-elect may order a special election for the purpose of voting on the ordinance or resolution at any time prior to the next election, but not more than one special election for direct legislation may be ordered in any 6-month period.

(5) The clerk shall cause notice of the ordinance or resolution that is being submitted to a vote to be given as provided in s. 10.06 (3) (f).

(6) The ordinance or resolution need not be printed in its entirety on the ballot, but a concise statement of its nature shall be printed together with a question permitting the elector to indicate approval or disapproval of its adoption.

(7) If a majority vote in favor of adoption, the proposed ordinance or resolution shall take effect upon publication under sub. (5). Publication shall be made within 10 days after the election.

(8) City ordinances or resolutions adopted under this section shall not be subject to the veto power of the mayor and city or village ordinances or resolutions adopted under this section shall not be repealed or amended within 2 years of adoption except by a vote of the electors. The common council or village board may submit a proposition to repeal or amend the ordinance or resolution at any election.

History: 1977 c. 102; 1983 a. 484; 1989 a. 192, 273.

This section implements legislative powers reserved by the people. Subject to certain conditions, common council has no authority to make initial judgment of the constitutionality or validity of proposed direct legislation. State ex rel. Althouse v. Madison, 79 W (2d) 97, 255 NW (2d) 449.

Proposal that is administrative, rather than legislative in character, is not proper subject of initiative proceedings. State ex rel. Becker v. Common Council, 101 W (2d) 680, 305 NW (2d) 178 (Ct. App. 1981).

City clerk has mandatory duty to forward to common council a sufficient petition and ordinance in proper form. State ex rel. North v. Goetz, 116 W (2d) 239, 342 NW (2d) 747 (Ct. App. 1983).

The power of initiative does not extend to legislative decisions which have already been made by the legislative body. Schaefer v. Potosi Village Board, 177 W (2d) 287, 501 NW (2d) 901 (Ct. App. 1993).

Appendix B. PETITION FOR DIRECT LEGISLATION

This official petition form may be reproduced locally or ordered from the State Elections Board, 132 East Wilson Street, 3rd Floor, Post Office Box 2973, Madison, Wisconsin 53701-2973; telephone (608) 266-8005.

PETITION FOR DIRECT LEGISLATION

I, the undersigned, a qualified elector of the city of _____, request that the attached proposed (ordinance or resolution) either be adopted by the common council, or referred to a vote of the electors without alteration pursuant to the provisions of § 9.20, Wis. Stats.

THE NAME OF THE CITY OF RESIDENCE MUST ALWAYS BE GIVEN. POST OFFICE ADDRESS ALONE IS NOT SUFFICIENT.			
SIGNATURES OF ELECTORS	STREET & NUMBER, OR RURAL ROUTE & P.O. BOX	CITY OF RESIDENCE	DATE OF SIGNING
1.			19
2.			19
3.			19
4.			19
5.			19
6.			19
7.			19
8.			19
9.			19
10.			19

Affidavit of Circulator

STATE OF WISCONSIN

ss.

(county of notarization) County

I, _____, being duly sworn, state:

(name of circulator)

I reside at _____
(circulator's residence including street, number, and city)

I personally circulated this petition for direct legislation and personally obtained each of the signatures on this petition. I know that the signers are electors of the city listed above. I know that each person signed the petition with full knowledge of its content on the date indicated opposite his or her name. I know their respective residences given. I reside within the city listed above. I intend to support this petition. I am aware that falsifying this affidavit is punishable under §§ 12.13 (3)(a), 946.32 (1)(a), Wis. Stats.

Subscribed and sworn to before me this _____ day of _____, 19 _____.

(signature of circulator)

(signature of person authorized to administer oaths)

My commission expires _____, or is permanent

**NOTARY SEAL
 NOT REQUIRED**

Notary Public , or _____
(official title, if not a notary)