



Amending the Wisconsin Constitution

A primary requirement for a territory to be admitted into the United States of America as a “state” is that the territory must have adopted a constitution. In 1848, the people of Wisconsin adopted their constitution, and the state was admitted to the union later that year.

NATURE OF A CONSTITUTION

The constitution is the “organic” law of the state because it organizes the government and establishes the great principles upon which a state or nation is founded. A constitution, like the foundation of a house, determines the basic shape, but not the details, of that which stands upon it.

A constitution differs from other laws of the state because it creates more general, timeless mandates and restrictions than do statutes, and the legislature cannot change it without the people’s approval. Unlike statutes, the constitution broadly sets the duties of the legislature, the governor, and the courts and limits their powers. The constitution binds all parts of the government and protects the rights of the people.

DIFFERENCES BETWEEN STATE AND FEDERAL CONSTITUTIONS

Because the United States was conceived as a federation of independent states, the method of amending the U.S. Constitution requires that three-fourths of the states ratify any amendment proposed by Congress. State legislatures, not the people, vote on the

ratification of U.S. constitutional amendments.

The U.S. Constitution represents the states granting limited powers to the federal government, while state constitutions represent the limit of powers that the people have granted to their state governments.

Unlike the federal Constitution, no part of the Wisconsin Constitution is exempt from amendments. States may amend their constitutions to suit their needs, but the supremacy clause of the U.S. Constitution provides that if federal law conflicts with state law, including the state constitution, the state law has no effect.

THE AMENDMENT PROCESS

The Wisconsin Constitution establishes the exclusive procedure for amending the constitution. Only the people can amend the constitution, either by convention or by voting on proposed amendments, passed by two different legislatures. The Wisconsin Constitution does not permit ballot initiatives to amend the constitution.

The legislature can initiate a constitutional amendment by passing a joint resolution that has originated in either house, with a majority vote of members in both houses. The legislature must record the vote in its journals. This is referred to as “first consideration.”

If the proposal passes, the secretary of state publishes it for three months in the official state newspaper before the next general election for choosing a legislature.

The next legislature can consider and debate the amendment but cannot change the amendment. This is called “second consideration.” If the next legislature amends the proposal, it reverts to first consideration and the process starts over. On second consideration, the resolution must contain a complete and precise statement of the question that will appear on the ballot.

If the second legislature agrees to the proposal by a majority vote in each house, the secretary of state will then forward the proposal to the election officials of each county, who place the proposed amendment on the ballot at a general election.

The ballot question must fairly state the effect of the proposed amendment, but if more than one amendment is proposed, the ballot must allow the people to vote on each amendment separately. Closely related amendments with a single purpose may be submitted as a single ballot question. If the electorate approves the proposal (by a simple majority), the Government Accountability Board certifies that the people have approved and ratified it and the amendment becomes part of the constitution.

The Ballot Question and Its Effect

For the constitutional amendment approved by the people in 2008, the ballot question appeared as follows:

Partial Veto. Shall section 10 (1) (c) of article V of the constitution be amended to prohibit the governor, in exercising his or her partial veto authority, from creating a new sentence by combining parts of two or more sentences of the enrolled bill?

As a result of the election, the constitution was amended by inserting the underlined language:

Article V, Section 10 (1) (c) In approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of the enrolled bill, and may not create a new sentence by combining parts of 2 or more sentences of the enrolled bill.

The people of Wisconsin amended the constitution 142 times in the first 160 years of statehood. Some of the notable amendments were the granting of home rule to cities and allowing gambling in the state. The most recent amendment to the constitution limits the governor's line-item veto power. It prohibits vetoes that would make a new sentence out of parts of two or more sentences. The 2005 and 2007 legislatures proposed this amendment and the voters approved it in 2008.

Since statehood began, the people have rejected many proposed amendments at the ballot box. Some of the defeated proposals

were later proposed and passed. For example, the concept of home rule for cities was defeated in 1914, but the legislature proposed it again and the people approved it in 1924.

Number of Ballot Questions Proposing Constitutional Amendments in Wisconsin

1849–1888	20
1889–1928	42
1929–1968	45
1969–2008	<u>67</u>
Total	174

The governor has no formal role in passing constitutional amendments, although he or she may use the "bully pulpit" to make public statements about whether a particular amendment should pass.

The amendment process usually takes about three years, but it has been done in nine months. The process may seem lengthy and difficult, but it protects the rights of the minority. The difficult nature of the amendment process has a side effect of making the Wisconsin Supreme Court's interpretation of the existing constitution even more important.

Although the constitution sets the basic rules for the amendment process, the legislature has supplied more detailed procedural requirements in the statutes and in its joint rules. For example, the statutes contain the requirement that upon second consideration, the resolution must contain the exact language that will appear on the ballot. And the joint rules require that the full text of the proposal be printed in the session laws. All pending proposals are also printed in the Wisconsin Statutes. Official opinions of the attorney general have offered guidance, for example, by

describing how the secretary of state should publish the proposal.

JUDICIAL REVIEW

The Wisconsin Supreme Court has supplied clarification for the amendment process. The court has invalidated three proposed constitutional amendments for procedural reasons. In 1909, the legislature failed to place the text of a proposed amendment in its journals, making it impossible to know exactly what the legislature had passed. In 1919, the legislature did not vote on the proposed amendment, but forwarded it to the secretary of state to have it placed on the ballot. And in 1953, the secretary of state did not follow the prescribed procedure for giving notice to the electorate that a constitutional amendment would be on the ballot. In making these decisions, the court strictly applied the language in the constitution relating to amendments.

CONVENTION

Like the U.S. Constitution, the Wisconsin Constitution contains an unused (to date) provision for authorizing a constitutional convention. In Wisconsin, a constitutional convention could be called if the legislature passes a resolution proposing a convention, which the people would vote for or against. A convention could modify all or part of the existing constitution.

The provisions for amending the Wisconsin Constitution were included in the original draft of the document in 1848 and have never been amended.

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Governing Wisconsin: "Amending the Wisconsin Constitution"

Study Questions

1	What are the two methods by which the Wisconsin Constitution can be amended?	
2	How does a constitution differ from statutes?	
3	List ways that the legislature and others have given more detail to the amendment process than is spelled out in the Wisconsin Constitution. What is the theme of these additional requirements?	
4	See the box on "Number of Ballot Questions." What has been the trend in the number of amendments proposed on the ballot in the past 160 years?	
5	If the governor had a formal role in the constitutional amendment process, what would it likely be?	
6	Is the amendment process too difficult? What are the pros and cons of having a difficult process?	

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Study Questions in the Cognitive Domain

1	What are the two methods by which the Wisconsin Constitution can be amended?	The Wisconsin Constitution can be amended by a convention authorized by the people or by a ballot proposal that has passed two legislatures.	Cognition
2	How does a constitution differ from statutes?	A constitution sets the basic organization of the government and spells out rights of the people, which the government cannot limit. The Wisconsin Constitution can be amended only by the people.	Comprehension
3	List ways that the legislature and others have given more detail to the amendment process than is spelled out in the Wisconsin Constitution. What is the theme of these additional requirements?	1. The ballot question must be included in the resolution. 2. The text of the proposal must be printed in the session laws. 3. The attorney general has given guidelines for the publication process. All of these additional details are designed to give voters better notice of the proposal.	Application
4	See the box on "Number of Ballot Questions." What has been the trend in the number of amendments proposed on the ballot in the past 160 years?	The number of amendments proposed has greatly increased from the early days of statehood to the most recent 40 years.	Analysis
5	If the governor had a formal role in the constitutional amendment process, what would it likely be?	The governor could have the exclusive right to propose amendments to the legislature, or could have veto power over proposals passed by the legislature.	Synthesis
6	Is the amendment process too difficult? What are the pros and cons of having a difficult process?	Although the amendment process has many steps involving many participants, and is time consuming, it protects the rights of minorities and ensures that constitutional amendments will be well-considered.	Evaluation