

ASSEMBLY JOINT RESOLUTION NO. 1—COMMITTEE ON ELECTIONS,
PROCEDURES, ETHICS, AND CONSTITUTIONAL AMENDMENTS

FEBRUARY 17, 2009

Referred to Committee on Elections, Procedures, Ethics,
and Constitutional Amendments

SUMMARY—Proposes to amend the Nevada Constitution to revise
the provisions governing a petition for a state
initiative or referendum. (BDR C-710)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

ASSEMBLY JOINT RESOLUTION—Proposing to amend the
Nevada Constitution to revise the provisions governing a
petition for a state initiative or a referendum.

Legislative Counsel's Digest:

Pursuant to Section 2 of Article 19 of the Nevada Constitution, the people of the State of Nevada have reserved to themselves the power to propose statutes, amendments to statutes and amendments to the Nevada Constitution by initiative petition. If the petition meets certain criteria, it is placed on the general election ballot where the people of the State of Nevada are then given the right to vote to enact or reject such proposals. In 2006, however, a portion of this provision of the Nevada Constitution was held unconstitutional by the U.S. Court of Appeals for the Ninth Circuit. *ACLU of Nev. v. Lomax*, 471 F.3d 1010 (9th Cir. 2006). The Ninth Circuit Court found that the requirement that an initiative petition contain a certain number of signatures gathered from 75 percent of the counties in this State in order to qualify for the ballot (the "13 Counties Rule") violated the equal protection principle of "one man, one vote" by diluting the votes of residents of densely populated counties and was not narrowly tailored. *Id.* at 1013. Thus, the Ninth Circuit Court held that Section 2 of Article 19 of the Nevada Constitution violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *Id.* The Court further indicated that if a certain number of voters were required from state legislative districts rather than counties, it would alleviate the equal protection concerns.

This resolution proposes to amend Article 19 of the Nevada Constitution to remove the unconstitutional provisions and instead require that an initiative petition be signed by a number of the registered voters from each petition district in this State which equals 10 percent of the number of voters who voted at the last preceding general election in the petition district. This resolution further provides



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that the number of registered voters required to file an initiative or referendum petition must be determined at the time the copy of the petition is filed with the Secretary of State.

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That Section 1 of Article 19 of the Nevada Constitution be amended to read as follows:

Section 1. 1. A person who intends to circulate a petition that a statute or resolution or part thereof enacted by the legislature be submitted to a vote of the people, before circulating the petition for signatures, shall file a copy thereof with the secretary of state. He shall file the copy not earlier than August 1 of the year before the year in which the election will be held.

2. Whenever a number of registered voters of this state equal to 10 percent ~~for more~~ of the number of voters who voted at the last preceding general election shall express their wish by filing with the secretary of state, not less than 120 days before the next general election, a petition in the form provided for in Section 3 of this Article that any statute or resolution or any part thereof enacted by the legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted upon shall submit the question of approval or disapproval of such statute or resolution or any part thereof to a vote of the voters at the next succeeding election at which such question may be voted upon by the registered voters of the entire State. *The number of registered voters required to file the petition must be determined at the time the copy of the petition is filed with the secretary of state pursuant to this Section.* The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest.

3. If a majority of the voters voting upon the proposal submitted at such election votes approval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall stand as the law of the state and shall not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people. If a majority of such voters votes disapproval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall be void and of no effect.



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1 And be it further

2 RESOLVED, That Section 2 of Article 19 of the Nevada
3 Constitution be amended to read as follows:

4 Sec. 2. 1. Notwithstanding the provisions of Section 1
5 of Article 4 of this Constitution, but subject to the limitations
6 of Section 6 of this Article, the people reserve to themselves
7 the power to propose, by initiative petition, statutes and
8 amendments to statutes and amendments to this Constitution,
9 and to enact or reject them at the polls.

10 2. An initiative petition shall be in the form required by
11 Section 3 of this Article and shall be proposed by a number of
12 registered voters *from each petition district in this State*
13 equal to 10 percent ~~for more~~ of the number of voters who
14 voted at the last preceding general election in ~~not less than~~
15 ~~75 percent of the counties in the State, but the total number of~~
16 ~~registered voters signing the initiative petition shall be equal~~
17 ~~to 10 percent or more of the voters who voted in the entire~~
18 ~~State at the last preceding general election.]~~ *the petition*
19 *district. Petition districts must be established by the*
20 *Legislature. The number of registered voters required to file*
21 *the initiative petition must be determined at the time the*
22 *copy of the initiative petition is filed with the Secretary of*
23 *State pursuant to this Section.*

24 3. If the initiative petition proposes a statute or an
25 amendment to a statute, the person who intends to circulate it
26 shall file a copy with the Secretary of State before beginning
27 circulation and not earlier than January 1 of the year
28 preceding the year in which a regular session of the
29 Legislature is held. After its circulation, it shall be filed with
30 the Secretary of State not less than 30 days prior to any
31 regular session of the Legislature. The circulation of the
32 petition shall cease on the day the petition is filed with the
33 Secretary of State or such other date as may be prescribed for
34 the verification of the number of signatures affixed to the
35 petition, whichever is earliest. The Secretary of State shall
36 transmit such petition to the Legislature as soon as the
37 Legislature convenes and organizes. The petition shall take
38 precedence over all other measures except appropriation bills,
39 and the statute or amendment to a statute proposed thereby
40 shall be enacted or rejected by the Legislature without change
41 or amendment within 40 days. If the proposed statute or
42 amendment to a statute is enacted by the Legislature and
43 approved by the Governor in the same manner as other
44 statutes are enacted, such statute or amendment to a statute
45 shall become law, but shall be subject to referendum petition



as provided in Section 1 of this Article. If the statute or amendment to a statute is rejected by the Legislature, or if no action is taken thereon within 40 days, the Secretary of State shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election. If a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the Supreme Court. An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the Legislature within 3 years from the date it takes effect. If a majority of such voters votes disapproval of such statute or amendment to a statute, no further action shall be taken on such petition. If the Legislature rejects such proposed statute or amendment, the Governor may recommend to the Legislature and the Legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the Governor, the question of approval or disapproval of each measure shall be submitted by the Secretary of State to a vote of the voters at the next succeeding general election. If the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law. If at the session of the Legislature to which an initiative petition proposing an amendment to a statute is presented which the Legislature rejects or upon which it takes no action, the Legislature amends the statute which the petition proposes to amend in a respect which does not conflict in substance with the proposed amendment, the Secretary of State in submitting the statute to the voters for approval or disapproval of the proposed amendment shall include the amendment made by the Legislature.

4. If the initiative petition proposes an amendment to the Constitution, the person who intends to circulate it shall file a copy with the Secretary of State before beginning circulation and not earlier than September 1 of the year before the year in which the election is to be held. After its circulation it shall be filed with the Secretary of State not less than 90 days before any regular general election at which the question of approval or disapproval of such amendment may be voted upon by the voters of the entire State. The circulation of the petition shall cease on the day the petition is filed with the



1 Secretary of State or such other date as may be prescribed for
2 the verification of the number of signatures affixed to the
3 petition, whichever is earliest. The Secretary of State shall
4 cause to be published in a newspaper of general circulation,
5 on three separate occasions, in each county in the State,
6 together with any explanatory matter which shall be placed
7 upon the ballot, the entire text of the proposed amendment. If
8 a majority of the voters voting on such question at such
9 election votes disapproval of such amendment, no further
10 action shall be taken on the petition. If a majority of such
11 voters votes approval of such amendment, the Secretary of
12 State shall publish and resubmit the question of approval or
13 disapproval to a vote of the voters at the next succeeding
14 general election in the same manner as such question was
15 originally submitted. If a majority of such voters votes
16 disapproval of such amendment, no further action shall be
17 taken on such petition. If a majority of such voters votes
18 approval of such amendment, it shall, unless precluded by
19 subsection 5 or 6, become a part of this Constitution upon
20 completion of the canvass of votes by the Supreme Court.

21 5. If two or more measures which affect the same
22 section of a statute or of the Constitution are finally approved
23 pursuant to this Section, or an amendment to the Constitution
24 is finally so approved and an amendment proposed by the
25 Legislature is ratified which affect the same section, by the
26 voters at the same election:

27 (a) If all can be given effect without contradiction in
28 substance, each shall be given effect.

29 (b) If one or more contradict in substance the other or
30 others, the measure which received the largest favorable vote,
31 and any other approved measure compatible with it, shall be
32 given effect. If the one or more measures that contradict in
33 substance the other or others receive the same number of
34 favorable votes, none of the measures that contradict another
35 shall be given effect.

36 6. If, at the same election as the first approval of a
37 constitutional amendment pursuant to this Section, another
38 amendment is finally approved pursuant to this Section, or an
39 amendment proposed by the Legislature is ratified, which
40 affects the same section of the Constitution but is compatible
41 with the amendment given first approval, the Secretary of
42 State shall publish and resubmit at the next general election
43 the amendment given first approval as a further amendment
44 to the section as amended by the amendment given final
45 approval or ratified. If the amendment finally approved or



1 ratified contradicts in substance the amendment given first
2 approval, the Secretary of State shall not submit the
3 amendment given first approval to the voters again.

