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CONSTITUTIONAL AMENDMENT AND REVISION

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TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| A. Proposal of amendments to the state constitution. | 2 |
| 1. By the legislature | 2 |
| 2. By popular initiative | 6 |
| 3. By a constitutional convention. | 9 |
| B. Ratification of amendments to the state constitution | 13 |
| 1.. When proposed by the legislature | 13. |
| 2.. When proposed by popular initiative | 15. |
| 3.. When proposed by a convention | 17. |
| C.. Relative frequency with which constitutions are amended .. | 19. |
| <u>Appendices:.</u> | |
| A. Provisions for proposing amendments to state constitutions | 21 |
| B. Procedures by which legislatures may propose amendments | 23 |
| C. Provisions for proposing amendments by initiative | 25 |
| D. Provisions for calling constitutional conventions | 27 |
| E. Requirements as to time of popular election on amendments | 29 |
| F. Requirements as to notice and publication of information concerning proposed amendments | 31 |
| G. Requirements as to form of ballots and number of amendments to be voted on | 34 |
| H.. Provisions on vote required for ratification of amendments | 37 |
| I.. Frequency of amendments to state constitutions. | 39. |
| Selected Bibliography | 41 |

CONSTITUTIONAL AMENDMENT AND REVISION

The course of constitutional development in the United States has brought an easing of the conditions for amending and revising the fundamental laws of the several states. A majority of the thirteen original state constitutions made no provision for their amendment. Delaware and South Carolina authorized amendments to their constitutions as well as general revision, but such procedures were not widely adopted by other states until about 1835.¹

At the beginning of the present century amendments to state constitutions could be proposed by the legislature or by conventions called for that purpose. A third method, the popular initiative, was first adopted in 1902 by Oregon, and is now employed in thirteen states. Currently a majority of the states--28-- recognize two of these three amendment procedures, as shown in Appendix A. Ten states provide in their constitutions for but one of the three methods, while the remaining ten, all western or midwestern states,² allow the use of all three.

Constitutional conventions have been the usual means of framing a general revision of the organic law of the state, as well as drafting specific amendments. Several states have also experimented with commissions, extra-constitutional bodies appointed by the governor or by the legislature

¹Rohlfing, Charles C., "Amendment and Revision of State Constitutions," The Annals of the American Academy of Political and Social Science, September, 1935, p. 180.

²Arizona, California, Colorado, Michigan, Missouri, Nebraska, Nevada, Ohio, Oklahoma, and Oregon.

to suggest changes in the constitution.³ The recommendations of such commissions have been placed before the legislature for approval, and if approved, acquire the same status as legislative proposals for the amendment of the constitution.

The following analysis of the procedures by which state constitutions may be amended or revised is based in large measure upon the thoroughgoing manual prepared for the Missouri constitutional convention of 1943.⁴ Data summarized in the manual of the recent New Jersey convention⁵ as well as the tabulated materials presented in The Book of the States, 1948-49 have also been used. Details of constitutional provisions concerning the proposal and ratification of amendments in each of the states are presented in the appended tables.

A. Proposal of amendments to the state constitution.

1. By the legislature. By far the most frequently employed method of proposing constitutional amendments is by vote of the legislature. Of all the states only one--New Hampshire--fails to make provision for initiation of amendments by the state assembly, as Appendix A reveals. All but a few state constitutions explicitly empower both upper and lower houses of the

³Among the state which have utilized the commission to draft and recommend constitutional changes are California, Maine, Michigan, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Rohlfing, op. cit., p. 183. See also Walker, Harvey, Law Making in the United States, pp. 76-78.

⁴Steinbicker, P. G., and Faust, M. L., Manual on the Amending Procedure and the Initiative and Referendum for the Missouri Constitutional Convention of 1943.

⁵George, J.J., Amendment and Revision of State Constitutions (May, 1947).

legislature to propose amendments, usually at any legislative session.⁶ Exceptions, shown in Appendix B, are Connecticut, where only the lower house, and Vermont, where only the upper house, may initiate measures to amend the constitution. Such measures may not be introduced during special sessions in Arkansas, Florida,⁷ Georgia, Kentucky, New Mexico, and Texas. In Louisiana, proposals to amend the constitution may be introduced before the legislature only during the first thirty days of its session.

Restraints are seldom placed upon the consideration of amendments by the law-making body. Tennessee and Vermont are alone in limiting the legislature to proposing amendments only at periodic intervals: every six years in Tennessee, every ten years in Vermont. The Pennsylvania constitution contains a far less rigid requirement, to the effect that no particular amendment may be considered more often than every five years, while Indiana provides that the legislature may propose no amendment while amendments previously approved at one legislative session are awaiting the vote of another, or adoption by popular ballot.

Alabama is the only state to place any absolute limit on the subject matter of proposed amendments, providing that no amendment may be considered which would replace population as the basis for representation in the legis-

⁶Six states--Minnesota, Mississippi, Missouri, North Carolina, Rhode Island, and Texas--do not specify the branch of the legislature authorized to introduce amendments.

⁷Unless the legislature determines there exists "an emergency requiring an early decision by the electors," in which case an amendment may be proposed by vote of three-fourths of all members elected to each house, to be submitted to the people at a special election.

lature.⁸ Procedural limitations are occasionally encountered, such as the requirements in Maryland and Missouri that separate subjects be treated in separate amendments, and not lumped together. Arkansas, Colorado, Illinois, Kansas, Kentucky, and Montana limit the number of proposed amendments which may be submitted for popular approval at any one time. (See Appendix G.)

Aside from specifying the vote required for approval, state constitutions typically leave to the discretion of the legislature the methods it will use in considering amendments proposed before it. Five states,⁹ however, provide that such measures be given three separate readings on three separate days in each house while all but a few states¹⁰ require that the votes on each proposed amendment be recorded in each house, along with the amendment as finally voted upon. In Massachusetts, following introduction of an amendment to the constitution, either house may vote to call a joint session for consideration of the measure, such joint session to continue until final action has been taken by the legislature on all proposed amendments then pending. An unusual provision of the New York constitution is that before being considered by the legislature, any proposed amendment must be submitted to the attorney-general for his opinion on its effect on other articles of the

⁸Section 284. This restriction is placed upon amendments however proposed, not solely on those initiated by the legislature. It seems doubtful if this or other absolute prohibitions against constitutional change would be considered binding upon the people and their representatives. New Mexico bars the legislature from proposing amendments affecting its power to initiate amendments, but such amendments--and any amendments--may be proposed by conventions.

⁹Alabama, Louisiana, Mississippi, Tennessee, and West Virginia.

¹⁰Including Maine, Minnesota, North Carolina, and Wisconsin.

constitution.¹¹ The recently adopted constitution of New Jersey provides that a public hearing must be held upon an amendment before the legislature votes upon the measure.

State constitutions are well divided on the question of the size of the legislative vote necessary to approve proposed amendments. Nineteen states require an affirmative vote of two-thirds of the total membership of each house, while a majority of members suffices in eighteen other states. (See Appendix B.) An in-between requirement of three-fifths of the members elected to each house is to be found in the constitutions of seven states,¹² while Nebraska applies a similar ratio to her unicameral legislature. Minnesota requires the vote of a "majority of both houses," and Mississippi a "two-third vote in each house." By implication it would seem that the affirmative vote stipulated by these two states would be based on the number of legislators present, rather than the more stringent base of the total membership of each house.¹³

Following approval by one session of the legislature, in most states amendments are then put before the people for ratification. A dozen state constitutions, however, provide that amendments adopted by one session of the legislature must be approved by the following session before submission

¹¹As noted below, in California the attorney-general must prepare a title and summary of amendments proposed by popular initiative and in Massachusetts he must approve their form and certify they do not pertain to subjects excluded by the constitution.

¹²Including Florida, where, as noted above in footnote 7, the legislature may propose an amendment by three-fourths vote, if it deems an emergency to exist.

¹³Steinbicker and Faust, op. cit., p. 9.

to the people.¹⁴ In one of these states--New Jersey--a second passage (by a simple majority of the membership) is required only if the legislature originally passed the bill by a majority vote smaller than two-thirds. Vermont increases the likelihood of proposed amendments receiving legislative approval by reducing the required vote from two-thirds of the membership of the upper house (for original passage) to a majority of both houses on the second consideration. Conversely, Connecticut and Tennessee make the second passage a higher hurdle by requiring a two-thirds vote (against a simple majority vote for first passage).

The constitutions of three states--Alabama, Delaware, and Georgia--explicitly exclude amendments proposed by their legislatures from the veto power of the governor. Since most constitutions require amendments to be submitted to the vote of the people upon passage by the legislature, it would seem that the governor is excluded from the amendment procedure and would not have authority to exercise a veto, even in the absence of a provision explicitly forbidding it. This would not apply to Delaware, it should be noted, since in this state amendments approved by two consecutive general assemblies become effective without submission to the people.

2. By popular initiative. Thirteen states, most of them in the west and midwest,¹⁵ provide that amendments to their constitutions may also be

¹⁴Connecticut, Indiana, Iowa, Massachusetts, Nevada, New Jersey, New York, Pennsylvania, Rhode Island, Tennessee, Vermont, and Wisconsin. In Delaware amendments become effective upon passage by two consecutive legislative sessions, with no requirement of a popular referendum.

¹⁵Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, and Oregon. Eight additional states--Idaho, Maine, Indiana, Montana, New Mexico, South Dakota, Utah, and Washington--limit the use of the initiative to the proposal of laws, and do not permit constitutional amendments to be originated in this manner.

proposed by popular initiative. As the first step toward consideration of a proposed amendment, signatures must be obtained upon a petition, the number usually being set by the constitution as a percentage of qualified voters (ranging from 8 to 15 per cent, as shown in Appendix C). Massachusetts and North Dakota, however, set the required minimum number of signatures at 25,000 and 20,000, respectively.

A few of the states employing the initiative place certain restrictions upon its exercise in the proposal of amendments. The most widespread limitation is found in the Massachusetts constitution, which bars any initiative proposition relating to "religion . . . , the appointment, qualification, tenure, removal, recall or compensation of judges; . . . the reversal of a judicial decision; . . . the powers, creation, or abolition of courts; . . . a particular town . . . or other political division . . . of the Commonwealth; or that makes a specific appropriation of money"

The Massachusetts constitution further excludes from consideration in initiative petitions measures "inconsistent with any one of the following rights of the individual . . . : The right to receive compensation for private property appropriated to public use; the right to access to and protection in Courts of Justice; the right of trial by jury; protection from unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceful assembly." (Article XLVIII, II-2.)

The only other substantive restriction on the scope of amendments proposed by the initiative is found in Ohio, where the constitution forbids use of the initiative to authorize property classification for tax purposes. (Article II-1e.)

The attorneys-general of two states examine initiated amendments before they are voted upon. In Massachusetts the attorney-general must cer-

tify that a proposed amendment does not include prohibited subjects (see immediately above), that it is not substantially similar to any other amendment submitted to the electorate within the preceding three years, and that it is in proper form. The California attorney-general merely prepares the title and official summary of the proposed measure.

The constitutions of Nebraska and Oklahoma limit the frequency with which amendments may be initiated. In Nebraska no measure may be submitted to the voters more often than once in three years. The same provision applies in Oklahoma, unless 25 per cent of the qualified voters petition for reconsideration of the proposition. (The usual requirement in this state is that 15 per cent of the qualified voters sign the petition.)

After official certification that the required number of voters have petitioned for an amendment, the measure usually is presented to the people for ratification. However, in two states the constitution provides that the initiated amendment be submitted to the legislature, as indicated in Appendix C. In Nevada the legislature must act upon such proposed amendments within forty days. If it approves the measure and it is signed by the governor it becomes part of the fundamental law, but is subject to popular referendum. If the bill is rejected or if the legislature fails to act within forty days, the amendment is to be voted on at the next general election. With the approval of the governor, the legislature may propose an amendment as an alternative to one it rejects. In such case both measures are submitted to the electorate, and the one receiving the largest majority vote is declared operative. In Massachusetts amendments initiated by the people are considered at a joint session of the legislature, the language of the measure being modified only by vote of three-fourths of the General Court. If it receives the affirmative vote of at least one-fourth of the membership of the legislature, it

is referred to the next legislative session, where a similar vote is required to send it on to the voters of the state.

3. By a constitutional convention. Two-thirds of the state constitutions make explicit provision for conventions to propose constitutional amendments or revisions. However, as Appendix I reveals, of the twelve states which do not provide for the calling of conventions,¹⁶ all but one (North Dakota) have actually had two or more constitutional conventions. It has been suggested that the right to provide for the calling of a convention inherently belongs to the legislature even if the constitution is silent on the subject,¹⁷ a conclusion which is supported by a decision of the supreme court of Rhode Island.¹⁸

The voters of eight states are given the opportunity at regular intervals to decide if a convention to amend the constitution shall be convened. In Maryland, Missouri, New York, Ohio, and Oklahoma, the constitution provides for a popular vote every twenty years, while referenda must be held every sixteen years in Michigan and every ten years in Iowa. The people of New Hampshire, whose constitution provides no means of proposing amendments other than by conventions, vote on convening one at seven year intervals. Both Maryland and New Hampshire forbid calling of conventions more frequently than every twenty and seven years, respectively.

¹⁶Arkansas, Connecticut, Indiana, Louisiana, Massachusetts, Mississippi, New Jersey, North Dakota, Pennsylvania, Rhode Island, Texas, and Vermont.

¹⁷Steinbicker and Faust, op. cit., p. 9

¹⁸The court, in an opinion requested by the governor, held that the general assembly, "unless prohibited elsewhere in the constitution, has the constitutional power to pass a law providing for the calling and holding of a convention to revise the existing constitution or to frame a new one."
In re the Constitutional Convention (1935) 55 R. I. 56.

Each of the thirty-six states specifically providing for constitutional conventions also authorizes the legislature to initiate the call for the convention. As shown in Appendix D, in most of these states the legislature must pass initiating bills by greater-than-majority votes: two-thirds of the members of each house must approve in twenty states, while three-fifths of Nebraska's single chamber must vote affirmatively. A simple majority of the members elected to both upper and lower houses is required in Alabama, Kentucky, Virginia, West Virginia, and Wisconsin. Kentucky alone provides that two successive legislative sessions must approve the measure. In the ten states which make no explicit provision for the size of the legislative vote needed to convoke a convention,¹⁹ it is presumed that the number of votes required in the case of other bills would suffice. In every state but Maryland and New Hampshire (noted immediately above), the legislature may initiate a proposal to call a constitutional convention any time it sees fit.

All but two of the states which provide for the proposing of a convention by the legislature require that after passage by both houses the measure must be submitted to a popular vote. (In Georgia and Maine approval of the voters is not a prerequisite to calling a convention.²⁰) Twenty-one states prescribe that the question of calling a convention be voted upon at the next general election.²¹ The West Virginia constitution states that the

¹⁹Arizona, Iowa, Maryland, Michigan, Missouri, New Hampshire, New York, Oklahoma, Oregon, and Tennessee.

²⁰Such approval is obtained as the first step in the procedure laid down by the Maryland and New Hampshire constitutions, which, as stated above, permit the holding of a convention only at set intervals when demanded by a majority of the voters.

²¹California, Colorado, Delaware, Florida, Idaho, Illinois, Kansas, Kentucky, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, South Carolina, South Dakota, Utah, Washington, Wisconsin, Wyoming.

popular election must be held at least three months after passage of the measure by the legislature, but does not specify whether the election must be a special one, or if the balloting may be done at a general election.

Requirements of prior notice and publication concerning such elections are made only in the constitutions of Florida, Kentucky, and New Hampshire. Missouri and Ohio are the only states to prescribe that the question be submitted on a separate ballot without party designations. Aside from these few provisions, in establishing the voting procedures for referenda on the holding of conventions the legislatures are not bound by specific constitutional directions.²²

There is no general practice concerning constitutional requirements for the election of delegates to the convention, once the calling of the convention has been approved. The constitutions of twenty-two states provide that at its next session after a favorable referendum vote the legislature shall enact the laws necessary to holding the convention.²³ Twenty-three states, designated in Appendix D, specify the number of convention delegates and a few states define their qualifications, usually relating such provisions to those covering membership in one or both houses of the legislature. More commonly the constitutions provide that the convention shall be its own judge of the qualification and election of its members. Only Missouri and Ohio prescribe the method of nomination of delegates, while thirteen provide for

²²Steinbicker and Faust, op. cit., p. 10.

²³California, Colorado, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Maryland, Minnesota, Montana, Nebraska, Nevada, New Mexico, Ohio, South Carolina, South Dakota, Utah, Virginia, Washington, and Wisconsin.

the manner of their election.²⁴ But five state constitutions set the time of this election.

Constitutional provisions concerning the organization of the convention are still less frequent. As shown in Appendix D, thirteen constitutions set the time or place of the convention, while Illinois, Montana, and Tennessee merely provide that the legislature shall specify these details. Delaware, Michigan, and Missouri define a majority as a quorum. Michigan, Missouri, and New York are the only three states to prescribe the compensation to be received by delegates. The revised Missouri constitution uniquely provides that the facilities of the chambers and quarters of the legislature be made available for the convention.²⁵ Such detailed provisions occur most frequently in the constitutions of Michigan, Missouri, and New York, since in these three states the convention is organized without action by the legislature, following popular approval of the calling of the convention.

In addition to considering particular amendments, conventions are the source of more thorough-going constitutional revisions, some of which have been so extensive that they must be considered new constitutions. Thus the Missouri convention of 1943 so completely reworked the existing document that the constitution adopted in 1945 is reported to have this composition: 30 per cent of the sections and subdivisions new, 38 per cent readopted with change in substance, 32 per cent readopted without change in substance.²⁶

²⁴California, Colorado, Delaware, Illinois, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New York, Ohio, and South Dakota.

²⁵Article XII, Section 3(b).

²⁶General Assembly of the State of Missouri, Committee on Legislative Research, The Constitution of the State of Missouri with Annotations and Index, 1945, p. 4. Thirty-five per cent of the sections in the constitution of 1875 were deleted.

The constitutional convention of New Jersey which met last year also revised the previous constitution in large part.

B. Ratification of amendments to the state constitution.

1. When proposed by the legislature. Following the adoption of an amendment by the legislature, every state but Delaware requires a popular vote upon the measure. The usual requirement is that this referendum shall be held at the next general election. However ten states, indicated in Appendix E, explicitly leave the setting of the time of election to the legislature, while Indiana, North Dakota, and Vermont achieve the same result by their silence on this detail of the ratification procedure. The Mississippi constitution requires that at least three months elapse before passage of an amendment by the legislature before taking the popular vote.

All but five of the forty-seven states authorizing the legislature to propose amendments make provision for the publication of information concerning such measures before their submission to the electorate. Typically, notices of the election must be advertised in newspapers in each county or district for a stated period before balloting takes place, as detailed in Appendix F. The New Mexico constitution includes the unique provision that such advertisements be placed in both English and Spanish language newspapers.²⁷

One-fourth of the state constitutions include some provision as to the form of the ballot or the number of amendments which may be considered at a single election. The most common requirement is that the ballot must

²⁷ Before its amendment in 1944, the Maryland constitution contained the proviso that notice of the referendum must be published in three Baltimore newspapers, one of which must be printed in German.

be so arranged that each amendment submitted can be voted upon separately. The maximum number of propositions is set at three in Arkansas, Kansas, and Montana. Colorado allows as many as six proposed amendments upon the referendum ballot, while Kentucky permits no more than two at any one election. Eight states, identified in Appendix G, provide that the legislature shall prescribe the form of the ballot which will be submitted to the electorate; four others contain no provisions on this subject.

Each of the forty-eight constitutions but that of New Hampshire--which does not provide for the initiation of amendments by its senate or house of representatives--and that of Delaware--which does not require popular approval of such measures--establishes the size of the vote necessary to ratify amendments which have been proposed by the legislature. The vote required for adoption of an amendment is set at a majority in each case, except for Rhode Island, where three-fifths of the ballots cast on the amending proposition must be affirmative if it is to become part of the constitution.

The definition of what constitutes a "majority" vote is critical in determining the ease or difficulty with which the constitution may be amended. As indicated in Appendix H, thirty-five states provide that the minimum vote must be a majority of ballots cast on the amendment.²⁸ (The same result is achieved in Connecticut by requiring the affirmative vote of a majority of qualified voters attending town meetings called to consider constitutional

²⁸Including Idaho and Indiana, whose constitutions require that proposed amendments must be approved by "a majority . . . of voters." Supreme courts of both states have held this to mean a majority of those voting for or against the amendment. (Green v. State Bd. of Canvassers /1896/ 5 Idaho, 130, 47 Pac. 259; In re Todd /1935/ 208 Indiana 168.)

amendments.) Nine other states,²⁹ however, demand a majority of all qualified voters participating in the election, whether or not they vote on the amendment, if the amendment is to become part of the constitution.

2. When proposed by popular initiative. All thirteen state constitutions which provide that amendments may be proposed by means of the popular initiative require such amendments to be ratified by the general electorate. The single possible exception to this requirement may occur in Nevada, where the constitution states that an amendment petition signed by 10 per cent of the qualified voters must be transmitted to the next session of the legislature. If the legislature takes affirmative action on the measure within forty days, it is adopted.³⁰ If the legislature rejects the bill or fails to act within forty days, it is then submitted to the people at the next general election.

Eight of these states set the time for balloting at the next general election or at a special election, as shown in Appendix E. To ensure an opportunity for public discussion of the proposed amendments, several constitutions set a minimum period which must elapse after initiative petitions are filed with the secretary of state. This period is four months in Arizona, Arkansas, Colorado, Nebraska, North Dakota (120 days), and Oregon; it is 130 days in California; 90 days in Ohio.

²⁹Arkansas, Illinois, Minnesota, Mississippi, North Carolina, Oklahoma, Tennessee, Texas, and Wyoming.

³⁰It may be noted that approval by a majority of the members of the Nevada legislature would put into effect an amendment proposed by as few as 10 per cent of the electorate and upon which the general electorate had no opportunity to vote. Such measures, as in the case of other laws passed by the legislature, are, however, subject to a popular referendum if so petitioned by 10 per cent of the qualified voters. (Article XIX, Section 1.)

Each of the states employing the initiative requires publication of notices of a forthcoming election upon proposed amendments. In most cases, as revealed in Appendix F, the requirements are identical with those concerning amendments proposed by the legislature, discussed above. However, California, North Dakota, and Ohio provide that arguments on the amendments, pro and con, be prepared and mailed to the voters at the state's expense. In Michigan, copies of proposed amendments must be posted in every registration and polling place prior to the election.

But six constitutions specify the form which the ballot must take. (See Appendix G.) Arizona requires that the title and number of each measure must be printed, together with the words yes or no. The words yes or no must also appear on ballots in Ohio. In Arkansas the ballot must contain the exact title submitted by the petitioners. The Michigan constitution states that the proposition must be printed on a separate ballot; in Nebraska this ballot must be non-partisan, containing only the title and proper descriptive words, without indication of endorsement by any party. North Dakota provides that each amendment must be identified by the title under which it was submitted on the petition.

All states of this group, but one, require for ratification the approval of a majority of those voting upon each amendment. The single exception is Oklahoma, where the requirement is more difficult to fulfill, being set at a majority voting in the election at which the amendments are submitted to the electorate.³¹ A minimum is placed upon the size of the majority vote required for adoption in Massachusetts and Nebraska. In the former state

³¹As noted in Appendix E voting takes place at a general election, unless the governor or legislature calls a special election.

the number of affirmative votes must constitute at least 30 per cent of the total ballots cast at the general election: the minimum percentage is 35 in the latter state.

A few states, including Massachusetts, Nebraska and Nevada, provide for the possibility of two mutually contradictory amendments being approved.³² In such cases only that one receiving the greater number of votes becomes effective.

3. When proposed by a convention. Sixteen of the thirty-six constitutions which establish the convention as a means of originating amendments contain no provision requiring popular ratification of such amendments. (See Appendix E.) In five others, the convention itself is expressly authorized to provide for popular elections to vote upon amendments or revisions which it proposes.³³ Referenda on such constitutional changes must be held at a special election in California; at the next general election in Georgia; at either general or special elections in Arizona, Michigan,³⁴ and Oklahoma. (The legislature may set a special election in the latter state.) The ten remaining constitutions in this group of states make no mention of the time of election.³⁵

³²As noted above on page 8, this situation may arise in Nevada if the legislature proposes an alternative to an amendment initiated by petition and rejected by either house.

³³Colorado, Illinois, Missouri, Montana, and New York.

³⁴Election must be held on the first Monday in April following adjournment of the convention, unless this occurs within ninety days of said date. In the latter case the amendments are submitted at the next general election.

³⁵As noted below, half of this group--Idaho, New Mexico, Washington, West Virginia, and Wyoming--provide for popular ratification of new constitutions, but not for approval by the electorate of specific amendments.

The convention may submit its proposals to the electorate as a unit--the procedure followed in the recent constitutional revisions in Missouri and Georgia--or as a group of amendments, as was the case in the New York revision of 1938. Under the former method the voters accept or reject the revision in toto; under the latter they may accept particular amendments and reject others.

Only three constitutions include provisions for the publication of notice or information concerning the holding of elections to ratify convention-initiated amendments--those of California, Michigan, and New York. In each case the convention is empowered to prescribe the means by which the electorate is to be informed of the referendum.

The same three states, together with Missouri, also give the convention explicit authority to prescribe the form of the ballot which will be submitted to the electorate. New Hampshire (which provides no means of changing its constitution other than the convention) states that a popular vote be taken in town meetings upon amendments proposed by the convention.

Among the constitutions which provide for popular ratification of amendments originating in conventions, thirteen (noted in Appendix H) require the affirmative vote of a majority of the ballots cast on the amendment, or of a majority of the votes at a special election. New Hampshire's requirement is more stringent: two-thirds of the electors voting on the amendment must approve it before it becomes part of the constitution. No provision is made for approval by the electorate of individual amendments in Idaho, New Mexico, Washington, West Virginia, and Wyoming, but in each of these states any new constitution framed by the convention must be "adopted" or "ratified" by the people.

C. Relative frequency with which constitutions are amended.

An examination of the records of the states indicates clearly that their relative use of amendment procedures has varied greatly, more than do the procedures themselves. At one extreme is Tennessee, the only state whose constitution has never been amended. At the other is California, which has adopted 306 amendments, and Louisiana, with 254. (Louisiana has added amendments to her 27-year old constitution at an average rate of nineteen per biennium, while, as Appendix I shows, California's average is nine amendments every two years.)

A comparison of Appendices A and I reveals no direct relationship between the number of procedures for originating amendments provided by the state constitution and the frequency of amendments. Thus Louisiana's oft-changed constitution establishes but one method of proposing amendments--by legislative action--while Tennessee's organic law authorizes two procedures, neither ever used successfully. Of the ten states which make provision for all three methods of initiative amendments,³⁶ but one--California--has a rate of amendment appreciably above the average for all of the constitutions now in effect.³⁷

No single procedural requirement can be identified as the means of reducing the number of amendments to a state's constitution, or of encouraging timely changes in the organic law. However, certain provisions, jointly employed, have acted to discourage the initiation or adoption of amendments. The Tennessee constitution is surrounded by the following barriers, which have prevented the adoption of a single amendment; limiting consideration of

³⁶Listed above in footnote 2.

³⁷The average is approximately $1\frac{1}{2}$ amendments per biennium.

amendments to one year in six; requiring passage of amendments by two legislative sessions (by a two-thirds vote upon second passage); providing that a majority of all voters at a general election approve the measure and not just a majority of votes cast on the amendment.

While Tennessee represents an absolute in this aspect of American constitutional experience, other states whose constitutions are conspicuously difficult to modify have adopted one or more of the same methods. In such states, it appears that "it has been necessary to resort to what is no less than judicial 'amendment of the constitution' in order to secure the ratification and adoption of what are very often necessary and desirable constitutional amendments."³⁸

The record of Louisiana, at the opposite extreme, demonstrates that adoption of procedures used in other states with relatively infrequent amendments does not in itself guarantee the stability of the constitution. Given a constitution which embraces many details of administration and of statutory law, the electorate may come to regard amendments as referenda on laws of but limited scope--which is what they have often been in Louisiana.³⁹ While the amending procedure in such a case may be made more difficult, the fundamental cause of wholesale amendments appears to lie in the nature of the constitution itself and a basic remedy would seem to require the redrafting of the constitution in a form sufficiently elastic to cover the changing needs of a stable government.⁴⁰

³⁸The Book of the States, 1943-44, p. 109.

³⁹Owen, Kimbrough, "The Need for Constitutional Revision in Louisiana," Louisiana Law Review, November, 1947, pp. 47 et seq.

⁴⁰"It cannot be stressed too strongly, however, that as long as a constitution is replete with detail an easy amending process is an unavoidable evil. The effect of restricting the amending process for a document of this kind would be to saddle the state with procedures that are out of date almost upon adoption. Only with a constitution restricted to fundamental policy and structure can a sensible amending clause be seriously considered." Ibid. pp. 66-67.

APPENDIX A

PROVISIONS FOR PROPOSING AMENDMENTS TO STATE CONSTITUTIONS

| State | By Vote of Legislature | By Convention | By Popular Initiative | Citation |
|----------------|---------------------------|------------------|--------------------------|--------------------|
| Alabama | x | x | | XVIII-284,286 |
| Arizona | x | x | x | XXI-1, 2; IV-1(2) |
| Arkansas | x | | x | XIX-22; V-1 |
| California | x | x | x | XVIII-1, 2; IV-1 |
| Colorado | x | x | x | XIX-1, 2; V-1 |
| Connecticut | x | | | XI |
| Delaware | x | x | | XVI-1, 2 |
| Florida | x | x | | XVII-1, 2 |
| Georgia | x | x | | XIII-1 |
| Idaho | x | x | | XX-1, 3; III-1 |
| Illinois | x | x | | XIV-1, 2 |
| Indiana | x | | | XVI-1 |
| Iowa | x | x | | X-1, 3 |
| Kansas | x | x | | XIV-1, 2 |
| Kentucky | x | x | | Sec. 256-58 |
| Louisiana | x | | | XXI-1 |
| Maine | x | x | | X-2; IV-Part 3 |
| Maryland | x | x | | XIV-1, 2 |
| Massachusetts | x | | x | XLVIII-1, 5 |
| Michigan | x | x | x | XVII-1, 2, 4 |
| Minnesota | x | x | | XIV-1, 2 |
| Mississippi | x | | | XV |
| Missouri | x | x | x | XII-1; III-49, 53 |
| Montana | x | x | | XIX-9 |
| Nebraska | x | x | x | XVI-1, 2; III-2, 4 |
| Nevada | x | x | x | XVI-1, 2; XIX-1, 3 |
| New Hampshire | | x | | Part II, 99-100 |
| New Jersey | x | | | IX |
| New Mexico | x | x | | XIX-1, 2 |
| New York | x | x | | XIV-1, 2 |
| North Carolina | x | x | | XIII-1, 2 |
| North Dakota | x | | x | Sec. 202 |
| Ohio | x | x | x | XVI-1, 2; II-1a |
| Oklahoma | x | x | x | XXIV-1, 2; V-1, 3 |
| Oregon | x | x | x | XVII-1; IV-1 |
| Pennsylvania | x | | | XVIII-1 |

PROVISIONS FOR PROPOSING AMENDMENTS TO STATE CONSTITUTIONS--
(Continued)

| State | By Vote of Legislature | By Convention | By Popular Initiative | Citation Citation |
|----------------|---------------------------|------------------|--------------------------|----------------------|
| Rhode Island | x | | | XIII |
| South Carolina | x | x | | XVI-1, 3 |
| South Dakota | x | x | | XXIII-1, 2 |
| Tennessee | x | x | | XI-3 |
| Texas | x | | | XVII-1 |
| Utah | x | x | | XXIII-1, 2 |
| Vermont | x | | | Ch. II-68 |
| Virginia | x | x | | XV-196, 197 |
| Washington | x | x | | XXIII-1, 2 |
| West Virginia | x | x | | XIV-1, 2 |
| Wisconsin | x | x | | XII-1, 2 |
| Wyoming | x | x | | XX-1, 3 |

Source: The Book of the States, 1948-49, pp. 84-90.

PROCEDURES BY WHICH LEGISLATURES MAY PROPOSE AMENDMENTS

| State | Introduction of Measure | Procedural Requirements | Legislative Vote Required ^a |
|----------------------------|---|---|--|
| Alabama | Either house; any session | 3 separate readings | 3/5 of members |
| Arizona | Either house; any session | | Majority of members |
| Arkansas | Either house; reg. session | | Majority of members |
| California | Either house; any session | | 2/3 of members |
| Colorado | Either house; any session | | 2/3 of members |
| Connecticut | Lower house; any session | Approval by 2 consecutive legislatures | 2/3 of members ^b |
| Delaware | Either house; any session | | 2/3 of members |
| Florida | Either house; reg. session ^c | | 3/5 of members ^c |
| Georgia | Either house; reg. session | | 2/3 of members |
| Idaho | Either house; any session | | 2/3 of members |
| Illinois | Either house; any session | | 2/3 of members |
| Indiana | Either house; any session ^d | Approval by 2 consecutive legislatures | Majority of members |
| Iowa | Either house; any session | Approval by 2 consecutive legislatures | Majority of members |
| Kansas | Either house; any session | | 2/3 of members |
| Kentucky | Either house; reg. session ^e | | 3/5 of members |
| Louisiana | Either house; any session ^f | 3 separate readings | 2/3 of members |
| Maine | Either house; any session | | 2/3 of members |
| Maryland | Either house; any session | Each amendment in separate bill | 3/5 of members |
| Massachusetts | Either house; any session | Approval by 2 consecutive legislatures | Majority of members ^g |
| Michigan | Either house; any session | | 2/3 of members |
| Minnesota | No provision | | Majority vote |
| Mississippi | No provision | 3 separate readings | 2/3 vote |
| Missouri | Any session | Each amendment in separate bill | Majority of members |
| Montana | Either house; any session | | 2/3 of members |
| Nebraska | Any session | | 3/5 of members |
| Nevada | Either house; any session | Approval by 2 consecutive legislatures | Majority of members |
| New Hampshire ^h | | | |
| New Jersey | Either house; any session | Public hearing required ⁱ | 3/5 of members ⁱ |
| New Mexico | Either house; reg. session ^j | | Majority of members |
| New York | Either house; any session | Approval by 2 consecutive legislatures ^k | Majority of members |
| North Carolina | No provision | | 3/5 of members |
| North Dakota | Either house; any session | | Majority of members |
| Ohio | Either house; any session | | 3/5 of members |

| State | Introduction of Measure | Procedural Requirements | Legislative Vote Required ^a |
|----------------|--|---|--|
| Oklahoma | Either house; any session | | Majority of members |
| Oregon | Either house; any session | | Majority of members |
| Pennsylvania | Either house; any session ¹ | Approval by 2 consecutive legislatures | Majority of members |
| Rhode Island | No provision | Approval by 2 consecutive legislatures | Majority of members |
| South Carolina | Either house; any session | | 2/3 of members |
| South Dakota | Either house; any session | | Majority of members |
| Tennessee | Either house; any session ^m | 3 separate readings; approval by 2 consecutive legislatures | First passage: majority; Second: 2/3 |
| Texas | Regular session | | 2/3 of members |
| Utah | Either house; any session | | 2/3 of members |
| Vermont | Upper house; any session ⁿ | Approval by 2 consecutive legislatures | Majority of members ^o |
| Virginia | Either house; any session | | Majority of members |
| Washington | Either house; any session | | 2/3 of members |
| West Virginia | Either house; any session | 3 separate readings | 2/3 of members |
| Wisconsin | Either house; any session | Approval by 2 consecutive legislatures | Majority of members |
| Wyoming | Either house; any session | | 2/3 of members |

- a Of members of each house, except in unicameral Nebraska.
b On second passage. Majority vote in House suffices for original proposal.
c At any session legislature may propose amendment by 3/4 vote, if it deems there is an emergency.
d No amendments may be proposed while previously approved amendments are awaiting approval of voters or second passage by legislature.
e No amendment can embrace more than one subject.
f Amendments may be introduced only during first 30 days of legislative session.
g Both houses vote together in joint session.
h Only state which does not provide for proposal of amendments by the legislature.
i If approved by majority vote smaller than 2/3, shall be referred to next legislative session and if again passed by majority vote shall be submitted to people for approval.

- j No amendment can alter method of amending constitution by legislative action. (This can be accomplished only by constitutional convention.)
k Before adoption by legislature, proposed amendment must be referred to the attorney-general for opinion on effect on other constitutional provisions.
l Any particular amendment may be submitted only once in 5 years.
m Legislature may propose amendments only once in 6 years.
n Legislature may propose amendments every 10 years.
o Proposed amendments on first passage must be approved by 2/3 of members of upper house and by majority of lower house. Subsequent passage requires majority vote in both houses.

Sources: Steinbicker, P. G., and Faust, M. L., Manual on the Amending Procedure and the Initiative and Referendum; The Book of the States, 1948-49, pp. 84-90; various state constitutions.

PROVISIONS FOR PROPOSING AMENDMENTS BY INITIATIVE

| State | Limitations | Time Limit on Filing | Number of Signature Required ^a | Submission to Legislature |
|---------------|-------------|-------------------------------|---|---------------------------|
| Arizona | None | Four months before election | 15% of voters | Not required |
| Arkansas | None | Four months before election | 10% of voters ^b | Not required |
| California | (c) | 130 days before election | 8% of voters | Not required |
| Colorado | None | Four months before election | 8% of voters ^d | Not required |
| Massachusetts | (c,e) | (f) | 25,000 | Required ^g |
| Michigan | None | Four months before election | 10% of voters | Not required |
| Missouri | (h) | Four months before election | 8% of voters ⁱ | Not required |
| Nebraska | (j) | Four months before election | 10% of voters ^k | Not required |
| Nevada | None | 30 days before legis. session | 10% of voters ^l | Required ^m |
| North Dakota | None | 90 days before election | 20,000 | Not required |
| Ohio | (n) | None | 10% of voters | Not required |
| Oklahoma | (o) | At discretion of legislature | 15% of voters ^p | Not required |
| Oregon | None | Four months before election | 8% of voters ^l | Not required |

a Unless otherwise noted, of all qualified voters casting votes for all candidates for governor at last preceding election.

b Provided petitions bearing at least half of required signatures are filed from at least 15 counties.

c Form of amendment must be approved by attorney general.

d Of those voting for secretary of state at last election.

e Constitution prohibits initiative measures proposing to change provisions dealing with religion, judges, judicial decisions, operations of particular local governments, or measures which would make specific appropriations of public funds.

f Must be filed with first 10 signatures not earlier than first Wednesday in September prior to opening of legislative session; remainder of signatures must be filed by first Wednesday of following December.

g Vote of $\frac{1}{4}$ of members of 2 consecutive legislatures required. As in Nevada, legislature may propose substitute amendment.

h Each measure shall contain no more than one amended and revised article.

i In each of $\frac{2}{3}$ of congressional districts.

j Same measure may be submitted no oftener than once in three years.

k Provided signers also include 5% of electors from at least $\frac{2}{5}$ of counties.

l For justice of supreme court at last general election.

- m Must be voted upon without change by legislature within 40 days. If approved, the amendment is ratified, subject to referendum vote; if rejected, or if no action is taken by legislature, the measure is submitted to the people at the next general election.
- n Initiative may not be used to authorize property classification for tax purposes.
- o Any measure previously rejected by the people cannot be reconsidered for three years unless petitioned for by 25% of the legal voters.
- p Of legal voters casting votes at last election for state office receiving highest number of votes cast.

Sources: Steinbicker, P. G., and Faust, M. L., Manual on the Amending Procedure and the Initiative and Referendum; various state constitutions.

PROVISIONS FOR CALLING OF CONSTITUTIONAL CONVENTIONS

| State | Popular Vote on Convention Required Periodically | Legislature may Initiate Call for Convention ^a | Approval by Majority of Voters Required | Constitution Provides: | |
|----------------|---|---|--|--|------------------------------------|
| | | | | Number and Qualifications of Delegates | Time and Place of Convention |
| Alabama | | By majority vote | x | | |
| Arizona | | (b) | x | | |
| California | | By 2/3 vote | x | x | (c) |
| Colorado | | By 2/3 vote | x | x | (c) |
| Delaware | | By 2/3 vote | x | x | x |
| Florida | | By 2/3 vote | x | x | (c) |
| Georgia | | By 2/3 vote | | | |
| Idaho | | By 2/3 vote | x | (d) | |
| Illinois | | By 2/3 vote | x | x | (e) |
| Iowa | Every 10 years | (b) | x | | |
| Kansas | | By 2/3 vote | x | | |
| Kentucky | | By majority vote ^f | x | x | x |
| Maine | | By 2/3 vote | | | |
| Maryland | Every 20 years | Only every 20 years ^b | | (d) | |
| Michigan | Every 16 years | (b) | x | (d) | x |
| Minnesota | | By 2/3 vote | x | x | (c) |
| Missouri | Every 20 years | (b) | x | x | x |
| Montana | | By 2/3 vote | x | x | (e) |
| Nebraska | | By 3/5 vote | x | (d) | (c) |
| Nevada | | By 2/3 vote | x | (d) | (c) |
| New Hampshire | Every 7 years | Only every 7 years ^b | | (d) | |
| New Mexico | | By 2/3 vote | x | (d) | |
| New York | Every 20 years | (b) | x | (d) | x |
| North Carolina | | By 2/3 vote | x | | |

PROVISIONS FOR CALLING OF CONSTITUTIONAL CONVENTIONS--(Continued)

| State | Popular Vote on Convention Required Periodically | Legislative may Initiate Call for Convention ^a | Approval by Majority of Voters Required | Constitution Provides: | |
|----------------|---|---|--|--|------------------------------------|
| | | | | Number and Qualifications of Delegates | Time and Place of Convention |
| Ohio | Every 20 years | By 2/3 vote | x | (d) | (c) |
| Oklahoma | Every 20 years | (b) | x | | |
| Oregon | | (b) | x | | |
| South Carolina | | By 2/3 vote | x | (d) | |
| South Dakota | | By 2/3 vote | x | (d) | (c) |
| Tennessee | | (b) | x | | (e) |
| Utah | | By 2/3 vote | x | (d) | |
| Virginia | | By majority vote | x | | |
| Washington | | By 2/3 vote | x | (d) | |
| West Virginia | | By majority vote | x | | |
| Wisconsin | | By majority vote | x | | |
| Wyoming | | By 2/3 vote | x | (d) | |

^a Required vote is based on membership of each house, unless otherwise indicated.

^b Constitution does not specify vote required: presumably majority defined for other bills.

^c Specifies time but not place.

^d Specifies number but not qualifications.

^e Provides that legislature shall specify.

^f Must be approved by 2 consecutive legislative sessions.

Sources: Constitutions of the various states.

REQUIREMENTS AS TO TIME OF POPULAR ELECTION ON AMENDMENTS

| State | Amendments Proposed By: | | |
|---------------|--|---|--|
| | Legislature | Convention | Initiative |
| Alabama | Next general, or spec. election ^a | No requirement of popular vote | |
| Arizona | Next general election ^b | At general or special election | Next general election ^b |
| Arkansas | Next general election | | Next general election |
| California | When legislature prescribes | At special election | Next general, or spec. election ^c |
| Colorado | Next general election | At election set by convention | 4 months after filing petition |
| Connecticut | At special town meetings | | |
| Delaware | No requirement of popular vote | No requirement of popular vote | |
| Florida | Next general, or spec. election | No requirement of popular vote | |
| Georgia | Next general election | Next general election | |
| Idaho | Next general election | No time specified | |
| Illinois | Next election for legislature | At election set by convention | |
| Indiana | No time specified | | |
| Iowa | When legislature prescribes | No requirement of popular vote | |
| Kansas | Next election of representatives | No requirement of popular vote | |
| Kentucky | Next general election | No requirement of popular vote | |
| Louisiana | When legislature prescribes | | |
| Maine | Next September town meetings | No requirement of popular vote | |
| Maryland | Next general election | No time specified | |
| Massachusetts | Next state election | | Next state election |
| Michigan | Next spring or fall election | First Monday in following April | Next regular election |
| Minnesota | Any general election | No requirement of popular vote ^d | |
| Mississippi | 3 months after legis. approval | | |
| Missouri | Next general, or spec. election ^c | At election set by convention | Next general, or spec. election ^c |
| Montana | Next general election | At election set by convention | |
| Nebraska | Next election of legislature | No time specified | 4 months after filing petition |
| Nevada | When legislature prescribes | No requirement of popular vote | Next general election ^e |
| New Hampshire | | No time specified | |
| New Jersey | Next general election | | |
| New Mexico | Next general, or spec. election ^f | No time specified | |
| New York | When legislature prescribes | At election set by convention | |

| State | Amendments Proposed By: | | |
|----------------|------------------------------------|----------------------------------|----------------------------------|
| | Legislature | Convention | Initiative |
| North Carolina | Next general election | No requirement of popular vote | |
| North Dakota | No time specified | | 120 days after filing petition |
| Ohio | At general election ^b | No time specified | 90 days after filing petition |
| Oklahoma | Next general election ^b | At general election ^b | Next state election ^b |
| Oregon | Next general election ^b | No requirement of popular vote | 4 months after filing petition |
| Pennsylvania | When legislature prescribes | | |
| Rhode Island | Next April town meetings | | |
| South Carolina | Next general election | No requirement of popular vote | |
| South Dakota | Next general election | No requirement of popular vote | |
| Tennessee | When legislature prescribes | No requirement of popular vote | |
| Texas | When legislature prescribes | | |
| Utah | Next general election | No time specified | |
| Vermont | No time specified | | |
| Virginia | When legislature prescribes | No requirement of popular vote | |
| Washington | Next general election | No time specified | |
| West Virginia | Next general election | No time specified | |
| Wisconsin | When legislature prescribes | No requirement of popular vote | |
| Wyoming | Next general election | No time specified | |

a Special election must be held within 3 months of adjournment of session initiating amendments.

b Unless legislature calls special election for this purpose.

c Governor may call special election.

d Provided this date falls at least 90 days after adjournment of convention. If not, at next general election.

e If legislature adopts amendment within 40 days after transmission by secretary of state, no vote necessary.

If legislature fails to approve, secretary of state submits to voters at next general election.

f Special election may be held no earlier than 6 months after adjournment of legislature.

Sources: Steinbicker, P. G., and Faust, M. L., Manual on the Amending Procedure and the Initiative and Referendum; various state constitutions.

APPENDIX F

REQUIREMENTS AS TO NOTICE AND PUBLICATION OF INFORMATION CONCERNING PROPOSED AMENDMENTS^a

| State | For Amendments Proposed By Legislature | For Amendments Proposed By Initiative |
|-----------------------------|--|---|
| Alabama..... | Publication in each county for at least 8 weeks before election | |
| Arizona..... | Publication in newspapers in each county for at least 90 days before election | Same as when proposed by legislature |
| Arkansas..... | Publication in newspapers in each county for 6 months before election | As prescribed by legislature |
| California ^a ... | As legislature prescribes. | Amendment and arguments pro and con to be mailed to each elector ^b |
| Colorado..... | Publication in newspapers in each county for 4 weeks before election | Same as when proposed by legislature |
| Connecticut,.. | Presentation by town clerks at meetings held for that purpose | |
| Delaware..... | Publication in at least 3 newspapers in each county 3 months before general election ^c | |
| Florida..... | Publication in 1 newspaper in each county for 3 months before election. | |
| Georgia..... | Publication in newspapers in each congressional district for 2 months before election ^d | |
| Idaho..... | Publication for 6 consecutive weeks in newspapers in each county | |
| Illinois..... | Publication at least 3 months before election | |
| Indiana..... | No provision for publication | |
| Iowa..... | As legislature prescribes | |
| Kansas..... | Publication in newspapers in each county for 3 months before election. | |
| Kentucky..... | Publication at least 90 days before election | |
| Louisiana..... | Publication twice in newspapers in each parish 30-60 days before election | |
| Maine..... | Selectmen and assessors to notify voters in manner prescribed by legislature | |
| Maryland..... | Publication in 2 newspapers in each county once a week for 4 weeks before election ^e | |
| Massachusetts. | Amendments and copies of legislative committee reports sent to each registered voter ^f | Same as when proposed by legislature. |
| Michigan ^a | As legislature prescribes | Copy of amendment to be posted in every registration and polling place ^g |

REQUIREMENTS AS TO NOTICE AND PUBLICATION OF INFORMATION CONCERNING PROPOSED AMENDMENTS^a--
(Continued)

| State | For Amendments Proposed By Legislature | For Amendments Proposed By Initiative |
|-----------------------------|--|--|
| Minnesota..... | Publication with laws passed at same session | |
| Mississippi.... | Notice to be given by secretary of state at least 3 months before election | |
| Missouri..... | Publication weekly in 2 newspapers in each county up to 15-30 days before election ^h | Same as when proposed by legislature |
| Montana..... | Publication in newspapers in each county for 3 months before election | |
| Nebraska..... | Publication weekly in newspapers in each county for 4 weeks before election | Same as when proposed by legislature |
| Nevada..... | As legislature prescribes | No provision for publication |
| New Jersey.... | Publication in newspapers in each county at least 3 months before election | |
| New Mexico.... | Publication weekly in newspapers in each county for 4 weeks, up to within 2 weeks of election ⁱ | |
| New York ^a | As legislature prescribes | |
| North Carolina | As legislature prescribes | |
| North Dakota.. | No provision for publication | Amendment and arguments pro and con to be mailed to voter ^j |
| Ohio..... | Publication weekly in newspapers in each county for 5 weeks before election | Copy of amendment and explanations to be mailed to voters ^k |
| Oklahoma..... | No provision for publication | As legislature prescribes |
| Oregon..... | No provision for publication | As general laws prescribe |
| Pennsylvania.. | Publication in newspapers in each county 3 months before election | |
| Rhode Island.. | Presentation by clerks at next town meetings | |
| South Carolina | No provision for publication | |
| South Dakota.. | Publication for 12 weeks before election in such manner as legislature prescribes | |
| Tennessee..... | As legislature prescribes | |
| Texas..... | Publication weekly in newspapers in each county for 4 weeks | |
| Utah..... | Publication in newspapers in each county for 2 months before election | |
| Vermont..... | As legislature prescribes | |
| Virginia..... | As legislature prescribes | |
| Washington.... | Publication weekly in each county for at least 3 months before election | |

REQUIREMENTS AS TO NOTICE AND PUBLICATION OF INFORMATION CONCERNING PROPOSED AMENDMENTS^a
(Continued)

| State | For Amendments Proposed By Legislature | For Amendments Proposed by Initiative |
|----------------|---|---------------------------------------|
| West Virginia. | Publication in newspapers in each county at least 3 months before election | |
| Wisconsin..... | As legislature prescribes | |
| Wyoming..... | Publication in newspapers in each county for at least 12 weeks before election | |

- a Three states--California, Michigan, and New York--include requirements for publication of amendments proposed by convention. All three give the convention authority to prescribe the form which such notice shall take.
- b Unless otherwise provided by law.
- c Amendments are ratified by 2/3 vote of two consecutive legislatures, with no requirement of popular vote. Provision for publication of proposed amendment apparently is intended to give electorate opportunity to influence adoption or rejection of the amendment through their selection of members of the legislature.
- d If an amendment directly affects 1 or more subdivision of the state, it must also be advertised in such area.
- e Notice must be placed in 3 Baltimore newspapers.
- f Notification also includes statement on vote of legislature, description of the amendment (as it will appear on the ballot), and arguments pro and con.
- g Together with existing provisions of constitution which would be altered or abrogated by adoption of amendment.
- h If possible, newspapers in each county are to be of "different political faith." If there is but 1 paper, publication shall be for 4 consecutive weeks.
- i In both English and Spanish, in counties where newspapers in both languages are published.
- j Arguments may be submitted for inclusion in this official notice by citizens or organizations, upon subscribing their names and addresses and paying \$2 per page of argument.
- k Arguments, to be prepared by secretary of state, shall not exceed 300 words.

Source: Steinbicker, P. G., and Faust, M. L., Manual on the Amending Procedure and the Initiative and Referendum; various state constitutions.

REQUIREMENTS AS TO FORM OF BALLOT AND NUMBER OF AMENDMENTS TO BE VOTED ON^a

| State | For Amendments Proposed By Legislature | For Amendments Proposed By Initiative |
|-----------------------------|---|---|
| Alabama..... | Substance of amendment must be clearly stated. Words <u>yes</u> and <u>no</u> to be printed beneath amendment. | |
| Arizona..... | If more than 1 amendment, must be submitted so each can be voted on separately. | Title and number of measure must be printed together with words <u>yes</u> or <u>no</u> . |
| Arkansas..... | Maximum of 3 at any election. If more than 1, must be submitted so each can be voted on separately. | Must contain exact title as submitted by petitioners. |
| California ^a ... | If more than 1, must be submitted so each can be voted on separately. | No provision. |
| Colorado..... | Maximum of 6 at any election. If more than 1, must be submitted so each can be voted on separately. | No provision. |
| Connecticut... | No provision. | |
| Delaware..... | Popular ratification not required. | |
| Florida..... | If more than 1, must be submitted so each can be voted on separately. | |
| Georgia..... | If more than 1, must be submitted so each can be voted on separately. | |
| Idaho..... | If more than 1, must be submitted so each can be voted on separately. | |
| Illinois..... | Only 1 may be submitted by same legislative session, and amendments to same article only once in 4 years. | |
| Indiana..... | If more than 1, must be submitted so each can be voted on separately. | |
| Iowa..... | If more than 1, must be submitted so each can be voted on separately. | |
| Kansas..... | Maximum of 3 at any election. If more than 1, must be submitted so each can be voted on separately. | |
| Kentucky..... | Maximum of 2 at any election. If more than 1, must be submitted so each can be voted on separately. | |
| Louisiana..... | If more than 1, must be submitted so each can be voted on separately. | |
| Maine..... | No provision. | |

REQUIREMENTS AS TO FORM OF BALLOT AND NUMBER OF AMENDMENTS TO BE VOTED ON^a--
(Continued)

| State | For Amendments Proposed By Legislature | For Amendments Proposed By Initiative |
|-----------------------------|--|---|
| Maryland..... | Form to be prescribed by legislature. | |
| Massachusetts. | Description of amendment to be framed by attorney-general. Ballot shall show vote of legislature on measure. | Same as if proposed by legislature. |
| Michigan ^a | As legislature prescribes. | To be printed in full on separate ballot. |
| Minnesota..... | If more than 1, must be submitted so each can be voted on separately. | |
| Mississippi ^a .. | If more than 1, must be submitted so each can be voted on separately. | |
| Missouri..... | On separate ballot without party designation. | Same as if proposed by legislature. |
| Montana..... | Maximum of 3 at any election. If more than 1, must be submitted so each can be voted on separately. | |
| Nebraska..... | If more than 1, must be submitted so each can be voted on separately. Special ballot. | Non-partisan ballot, containing only title or proper descriptive words. |
| Nevada..... | As legislature prescribes. | No provision. |
| New Jersey.... | If more than 1, must be submitted so each can be voted on separately. | |
| New Mexico.... | If more than 1, must be submitted so each can be voted on separately. | |
| New York ^a | As legislature prescribes. | |
| North Carolina | As legislature prescribes. | |
| North Dakota.. | No provision. | Each amendment to be described by ballot title. |
| Ohio..... | If more than 1, must be submitted so each can be voted on separately. | Ballots printed so as to permit <u>yes</u> or <u>no</u> vote on each measure. |
| Oklahoma..... | If more than 1, must be submitted so each can be voted on separately. | As legislature prescribes. |
| Oregon..... | If more than 1, must be submitted so each can be voted on separately. | As general laws provide. |
| Pennsylvania.. | If more than 1, must be submitted so each can be voted on separately. | |
| Rhode Island.. | Balloting in town and ward meetings. | |
| South Carolina | If more than 1, must be submitted so each can be voted on separately. ^b | |

REQUIREMENTS AS TO FORM OF BALLOT AND NUMBER OF AMENDMENTS TO BE VOTED ON^a
(Continued)

| State | For Amendments Proposed By Legislature | For Amendments Proposed By Initiative |
|----------------|---|---------------------------------------|
| South Dakota.. | If more than 1, must be submitted so each can be voted on separately. | |
| Tennessee..... | No provision. | |
| Texas..... | If more than 1, must be submitted so each can be voted on separately. | |
| Utah..... | If more than 1, must be submitted so each can be voted on separately. | |
| Vermont..... | As legislature prescribes. | |
| Virginia..... | As legislature prescribes. | |
| Washington.... | If more than 1, must be submitted so each can be voted on separately. | |
| West Virginia. | If more than 1, must be submitted so each can be voted on separately. | |
| Wisconsin..... | As legislature prescribes. | |
| Wyoming..... | If more than 1, must be submitted so each can be voted on separately. | |

- ^a Five states refer to the balloting procedure to be used in voting upon amendments proposed by constitutional conventions. California, Michigan, Missouri, and New York leave to the convention itself authority to prescribe the form of the ballot, while New Hampshire (which provides no other means of amending its constitution than the convention) requires that a popular vote be taken in town meetings.
- ^b Also requires approval of next general assembly.

Sources: Steinbicker, P. G., and Faust, M. L., Manual on the Amending Procedure and the Initiative and Referendum; various state constitutions.

PROVISIONS ON VOTE REQUIRED FOR RATIFICATION OF AMENDMENTS

| State | When Proposed By Legislature | When Proposed By Convention | When Proposed By Initiative |
|---------------|---|--|---|
| Alabama | Majority voting on amendment | No requirement of popular vote | |
| Arizona | Majority voting on amendment | Majority voting on amendment | Majority voting on amendment |
| Arkansas | Majority voting at election | | Majority voting on amendment |
| California | Majority voting on amendment | Majority voting at election ^e | Majority voting on amendment |
| Colorado | Majority voting on amendment | Majority voting at election ^e | Majority voting on amendment |
| Connecticut | Majority voters at town meeting | | |
| Delaware | No requirement of popular vote | No requirement of popular vote | |
| Florida | Majority voting on amendment | No requirement of popular vote | |
| Georgia | Majority voting on amendment ^a | Majority voting on amendment | |
| Idaho | Majority voting on amendment ^b | (f) | |
| Illinois | Majority voting at election | Majority voting at election ^e | |
| Indiana | Majority voting on amendment ^b | | |
| Iowa | Majority voting on amendment | No requirement of popular vote | |
| Kansas | Majority voting on amendment | No requirement of popular vote | |
| Kentucky | Majority voting on amendment | No requirement of popular vote | |
| Louisiana | Majority voting on amendment | | |
| Maine | Majority voting on amendment | No requirement of popular vote | |
| Maryland | Majority voting on amendment | Majority voting on amendment | |
| Massachusetts | Majority voting on amendment | | Majority voting on amendment ^g |
| Michigan | Majority voting on amendment | Majority voting on amendment | Majority voting on amendment |
| Minnesota | Majority voting at election | No requirement of popular vote | |
| Mississippi | Majority voting at election | | |
| Missouri | Majority voting on amendment | Majority voting on amendment | Majority voting on amendment |
| Montana | Majority voting on amendment | Majority voting at election ^e | |
| Nebraska | Majority voting on amendment | Majority voting on amendment | Majority voting on amendment ^h |
| Nevada | Majority voting on amendment | No requirement of popular vote | Majority voting on amendment |
| New Hampshire | (c) | 2/3 of votes cast on amendment | |
| New Jersey | Majority voting on amendment | | |
| New Mexico | Majority voting on amendment | (f) | |
| New York | Majority voting on amendment | Majority voting on amendment | |

PROVISIONS ON VOTE REQUIRED FOR RATIFICATION OF AMENDMENTS--(Continued)

| State | When Proposed By Legislature | When Proposed By Convention | When Proposed By Initiative |
|----------------|---|--------------------------------|------------------------------|
| North Carolina | Majority voting at election | No requirement of popular vote | |
| North Dakota | Majority voting on amendment | | Majority voting on amendment |
| Ohio | Majority voting on amendment | Majority voting on amendment | Majority voting on amendment |
| Oklahoma | Majority voting at election | Majority voting on amendment | Majority voting at election |
| Oregon | Majority voting on amendment | No requirement of popular vote | Majority voting on amendment |
| Pennsylvania | Majority voting on amendment | | |
| Rhode Island | 3/5 of votes cast on amendment | | |
| South Carolina | Majority voting on amendment ^d | No requirement of popular vote | |
| South Dakota | Majority voting on amendment | No requirement of popular vote | |
| Tennessee | Majority voting at election | No requirement of popular vote | |
| Texas | Majority voting at election | | |
| Utah | Majority voting on amendment | Majority voting at election | |
| Vermont | Majority voting on amendment | | |
| Virginia | Majority voting on amendment | No requirement of popular vote | |
| Washington | Majority voting on amendment | (f) | |
| West Virginia | Majority voting on amendment | (f) | |
| Wisconsin | Majority voting on amendment | No requirement of popular vote | |
| Wyoming | Majority voting at election | (f) | |

- a If amendment affects only one or more subdivisions of the state, it must receive both majority in state as whole as well in subdivisions affected.
- b Constitution provides proposed amendments must be approved by "a majority of...electors", interpreted by the state supreme court to mean a majority of those voting for or against the amendment. (Green v. St. Bd. of Canvassers, 5 Idaho 130, 47 Pac. 259; In re Todd, 208 Indiana 168).
- c New Hampshire is only state which does not provide for proposal of amendments by the legislature.
- d If approved by such majority, re-submitted to legislature for final approval by majority vote of each house.
- e At special election called for purpose of voting on amendment.
- f Provided that any new constitution framed by convention must be "adopted" or "ratified", but makes no provision for ratification of amendments.
- g Providing such majority constitutes at least 30% of total ballots cast in election.
- h Providing such majority constitutes at least 35% of total ballots cast in election.

Sources: Steinbicker, P. G., and Faust, M. L., Manual on the Amending Procedure and the Initiative and Referendum; various state constitutions.

APPENDIX I

FREQUENCY OF AMENDMENTS TO STATE CONSTITUTIONS

| State | Number of Constitutional Conventions | Age of Present Constitution | Number of Times Amended | Average Amendments Per Biennium ^a |
|----------------|--|-----------------------------------|-------------------------------|--|
| Alabama | 6 | 47 years | 59 | 2½ |
| Arizona | 1 | 36 years | 27 | 1½ |
| Arkansas | 6 | 74 years | 53 | 1½ |
| California | 2 | 69 years | 306 | 9 |
| Colorado | 1 | 72 years | 44 | 1 |
| Connecticut | 2 | 130 years | 41 | (b) |
| Delaware | 5 | 51 years | 15 | (b) |
| Florida | 5 | 61 years | 74 | 2½ |
| Georgia | 13 | 3 years | 1 | -- |
| Idaho | 1 | 58 years | 51 | 2 |
| Illinois | 5 | 78 years | 7 | (b) |
| Indiana | 2 | 97 years | 16 | (b) |
| Iowa | 3 | 91 years | 17 | (b) |
| Kansas | 4 | 87 years | 37 | 1 |
| Kentucky | 6 | 57 years | 8 | (b) |
| Louisiana | 10 | 27 years | 254 | 19 |
| Maine | 1 | 128 years | 62 | 1 |
| Maryland | 4 | 81 years | 49 | 1 |
| Massachusetts | 5 | 168 years | 76 | 1 |
| Michigan | 5 | 39 years | 41 | 2 |
| Minnesota | 1 | 90 years | 65 | 1½ |
| Mississippi | 7 | 58 years | 32 | 1 |
| Missouri | 6 | 3 years | none | -- |
| Montana | 1 | 59 years | 22 | 1 |
| Nebraska | 4 | 73 years | 60 | 1½ |
| Nevada | 2 | 84 years | 34 | 1 |
| New Hampshire | 16 | 164 years | 92 | 1 |
| New Jersey | 3 | 1 year | none | -- |
| New Mexico | 1 | 36 years | 29 | 1½ |
| New York | 8 | 54 years | 113 | 4 |
| North Carolina | 6 | 72 years | 27 | 1 |
| North Dakota | 1 | 59 years | 44 | 1½ |
| Ohio | 4 | 97 years | 67 | 1½ |
| Oklahoma | 1 | 41 years | 54 | 2½ |
| Oregon | 1 | 89 years | 109 | 2½ |
| Pennsylvania | 5 | 74 years | 40 | 1 |

FREQUENCY OF AMENDMENTS TO STATE CONSTITUTIONS--(Continued)

| State | Number of Constitutional Conventions | Age of Present Constitution | Number of Times Amended | Average Amendments Per Biennium ^a |
|----------------|--|-----------------------------------|-------------------------------|--|
| Rhode Island | 5 | 105 years | 22 | (b) |
| South Carolina | 7 | 53 years | 184 | 7 |
| South Dakota | 1 | 59 years | 46 | 1½ |
| Tennessee | 3 | 75 years | none | -- |
| Texas | 5 | 72 years | 95 | 2½ |
| Utah | 1 | 52 years | 25 | 1 |
| Vermont | 11 | 155 years | 40 | (b) |
| Virginia | 9 | 46 years | 87 | 4 |
| Washington | 1 | 59 years | 19 | (b) |
| West Virginia | 2 | 76 years | 24 | (b) |
| Wisconsin | 1 | 100 years | 51 | 1 |
| Wyoming | 1 | 58 years | 13 | (b) |

a To closest integer, above 3; to nearest half for numbers between 1 and 3.
b Less than 1.

Source: The Book of the States, 1948-49, pp. 84-90.

SELECTED BIBLIOGRAPHY ON AMENDMENT AND
REVISION OF STATE CONSTITUTIONS

Library^a

- Chute, Charlton F., "How to Get a New Constitution," National Municipal Review, Vol. XXXVI, No. 3 (March, 1947), pp. 124-30. LRB
- Council of State Governments, The Book of the States, 1948-49, pp. 79-91. LRB
- George, John J., Amendment and Revision of State Constitutions, Monograph No. 35 of the Governor's Committee on Preparatory Research for the New Jersey Constitutional Convention, May, 1947. LRB
- Graves, W. Brooke, American State Government, 3rd ed., 1946, pp. 63-74. LRB
- Louisiana State Univ., Constitution Revision Projet. Constitutional Problems, No. 3: The Amending Process, March, 1947. LRB
- _____, Constitutional Problems, No. 52: The Amending Process: Limitations on the Number of Constitutional Amendments Proposed, October, 1947. LRB
- McHenry, D. E., Constitutional Revision, Univ. of California, Bureau of Public Administration, Legislative Problems No. 13, December, 1934. UH
- Owen, Kimbrough, "The Need for Constitutional Revision in Louisiana," Louisiana Law Review, Vol. VIII (November, 1947), pp. 1-104. LRB
- Pollock, James K., The Initiative and Referendum in Michigan, Univ. of Michigan, Bureau of Government, 1940. UH
- Rohlfing, Charles C., "Amendment and Revision of State Constitutions," The Annals of the American Academy of Political and Social Science, Vol. 181, (September, 1935), pp. 180-87. UH

a LRB indicates materials are available in library of the Legislative Reference Bureau; UH in library of the University of Hawaii.

Library^a

- Steinbicker, P. G., and Faust, M. L., Manual on the Amending Procedure and the Initiative and Referendum for the Missouri Constitutional Convention of 1943, September, 1943. LRB
- Tennessee, Univ. of, Bureau of Public Administration, Papers on Constitutional Revision, Vol. I, April, 1947' LRB
- Tennessee, Report of Constitutional Revision Commission, November, 1946. LRB
- Vermont, Report of the Commission on Proposals of Amendment to the Constitution of Vermont, 1940. LRB
- Walker, Harvey, Law Making in the United States, New York: The Ronald Press, 1934. UH

^a LRB indicates materials are available in library of the Legislative Reference Bureau; UH in library of the University of Hawaii.