Stricken language would be deleted from and underlined language would be added to the Arkansas Constitution.

State of Arkansas *As Engrossed: H2/27/19 H3/5/19 H3/19/19*
92nd General Assembly
Regular Session, 2019 HJR 1023

By: Representative Eubanks
By: Senators K. Ingram, *M. Johnson*

HOUSE JOINT RESOLUTION

AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING THE REQUIREMENTS GOVERNING CIRCULATION, SUBMISSION, AND CHALLENGES TO THE SUFFICIENCY OF INITIATED MEASURES AND REFERENDA PROPOSED UNDER ARKANSAS CONSTITUTION, ARTICLE 5, § 1, AND CONSTITUTIONAL AMENDMENTS PROPOSED BY THE GENERAL ASSEMBLY.

Subtitle

TO AMEND THE ARKANSAS CONSTITUTION CONCERNING THE REQUIREMENTS GOVERNING CIRCULATION, SUBMISSION, AND CHALLENGES TO THE SUFFICIENCY OF INITIATIVES AND CONSTITUTIONAL AMENDMENTS PROPOSED BY THE GENERAL ASSEMBLY.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-SECOND GENERAL ASSEMBLY OF THE STATE OF ARKANSAS, AND BY THE SENATE, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

THAT the following is proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the state for approval or rejection at the next general election for Representatives and Senators, if a majority of the electors voting thereon at the election adopt the amendment, the amendment shall become a part of the Constitution of the State of Arkansas, to wit:

SECTION 1. GENERAL SUBJECT. Each provision of this proposed constitutional amendment is germane to the general subject of the requirements governing circulation, submission, and challenges to the sufficiency of initiated measures and referenda proposed under Arkansas Constitution, Article 5, § 1, and constitutional amendments proposed by the General Assembly.

SECTION 2. The subsection of Arkansas Constitution, Article 5, § 1, titled "Initiative", is amended to read as follows:

Initiative. (a) The first power reserved by the people is the initiative. Eight ~~per cent~~ percent (8%) of the legal voters may propose any law and ten ~~per cent~~ percent (10%) may propose a constitutional amendment by initiative petition and every such petition shall include the full text of the measure so proposed. Initiative petitions for ~~state-wide~~ statewide measures shall be filed with the Secretary of State ~~not less~~ no later than ~~four months before~~ March 1 of the year of the election at which they are to be voted upon; provided, that at least thirty (30) days before the aforementioned filing, the proposed statewide measure shall have been published once, at the expense of the petitioners, in some paper of general circulation.

(b)(1) The General Assembly shall enact laws establishing a process for the approval of the sufficiency of the title of a proposed statewide initiated measure prior to the circulation of initiative petitions.

(2) The title of a proposed statewide initiated measure shall not be submitted for approval more than two and one-half (2 1/2) years nor less than one (1) year before the general election at which the initiated measure would be voted upon.

(3) Signatures on an initiative petition circulated prior to the approval of the title under this subdivision (b) are invalid.

SECTION 3. The subsection of Arkansas Constitution, Article 5, § 1, titled "Referendum", is amended to read as follows:

Referendum. (a) The second power reserved by the people is the referendum, and any number not less than six ~~per cent~~ percent (6%) of the legal voters may, by petition, order the referendum against any general Act, or any item of an appropriation bill, or measure passed by the General

Assembly, but the filing of a referendum petition against one (1) or more items, sections or parts of any such act or measure shall not delay the remainder from becoming operative. Such petition shall be filed with the Secretary of State not later than ninety (90) days after the final adjournment of the session at which such Act was passed, except when a recess or adjournment shall be taken temporarily for a longer period than ninety (90) days, in which case such petition shall be filed not later than ninety (90) days after such recess or temporary adjournment. Any measure referred to the people by referendum petition shall remain in abeyance until such vote is taken. The total number of votes cast for the office of Governor in the last preceding general election shall be the basis upon which the number of signatures of legal voters upon ~~state-wide~~ statewide initiative and referendum petitions shall be computed.

(b)(1) The General Assembly shall enact laws establishing a process for the approval of the sufficiency of the title of a proposed statewide referendum before the circulation of referendum petitions.

(2) Signatures on a referendum petition circulated prior to the approval of the title under subdivision (b)(1) of this subsection are invalid.

(c)(1) ~~Upon~~ Except as provided in subdivision (c)(2) of this subsection, upon all statewide initiative or referendum petitions provided for in any of the ~~sections~~ subsections of this ~~article~~ section, it shall be necessary to file from at least fifteen (15) of the counties of the State, petitions bearing the signature of not less than one-half (1/2) of the designated percentage of the electors of such county.

(2)(A) For a constitutional amendment proposed under this section, it shall be necessary to file petitions bearing the signature of not less than one-half (1/2) of the designated percentage of the electors of at least one-fourth (1/4) of the counties in each congressional district.

(B) In calculating the number of counties representing one-fourth (1/4) of the counties within a congressional district, the number shall be rounded up to the nearest whole number.

SECTION 4. The subsection of Arkansas Constitution, Article 5, § 1, titled "Definition", is amended to read as follows:

Definition. (a) ~~The~~ Except as provided in subdivision (b) of this

subsection, the word "measure" as used herein includes any bill, law, resolution, ordinance, charter, constitutional amendment or legislative proposal or enactment of any character.

(b) The word "measure" does not include the following, which shall not be proposed and submitted to the people under this section:

(1) A constitutional amendment whose enforcement or purview is restricted to one (1) or more counties or municipalities, either explicitly or by implication; or

(2) A constitutional amendment which, either explicitly or by implication:

(A) Specifically bestows power, privileges, or authority upon:

(i) A specific individual; or

(ii) A private business entity, including without limitation a private corporation; or

(B) Creates a business or nonprofit monopoly for a county, municipality, business entity, or private corporation.

(c) Subdivision (b) of this subsection:

(1) Shall supersede a subsequent amendment to this Constitution that violates the provisions of subdivision (b) of this subsection; and

(2) Does not prohibit the proposal or submission of an amendment to a provision of this Constitution existing prior to January 1, 2019.

SECTION 5. The subsection of Arkansas Constitution, Article 5, § 1, titled "Majority", is amended to read as follows:

~~Majority~~ Approval of measures. (a) ~~Any~~ Except as provided in subdivision (b) of this subsection, a measure submitted to the people as herein provided shall take effect and become a law when approved by a majority of the votes cast upon ~~such~~ the measure, and not otherwise, and shall not be required to receive a majority of the electors voting at such election. Such ~~measures~~ a measure shall be operative on and after the thirtieth day after the election at which ~~it~~ the measure is approved, unless otherwise specified in the ~~Act~~ measure.

(b) A proposed constitutional amendment submitted to the people as herein provided shall take effect and become a law when approved by at least sixty percent (60%) of the votes cast statewide upon the proposed

constitutional amendment, and not otherwise, and shall not be required to receive a majority of the votes cast at such election. Such a proposed constitutional amendment shall be operative on and after the thirtieth day after the election at which the proposed constitutional amendment is approved, unless otherwise specified in the proposed constitutional amendment.

(c) This section shall not be construed to deprive any member of the General Assembly of the right to introduce any measure, but no measure shall be submitted to the people by the General Assembly, except a proposed constitutional amendment or amendments as provided for in this Constitution.

SECTION 6. The subsection of Arkansas Constitution, Article 5, § 1, titled "Conflicting Measures", is amended to read as follows:

Conflicting Measures. (a) ~~If~~ Except as provided in subdivisions (b) and (c) of this subsection, if conflicting measures initiated or referred to the people ~~shall be~~ are approved by a majority of the votes severally cast for and against the same at the same election, the one receiving the highest number of affirmative votes shall become law.

(b) If conflicting proposed constitutional amendments initiated or referred to the people are approved by at least sixty percent (60%) of the votes severally cast statewide for and against the same at the same election, the proposed constitutional amendment receiving the highest number of affirmative votes shall become law.

(c) If proposed constitutional amendments are initiated or referred to the people, one (1) or more proposed constitutional amendments are approved by at least sixty percent (60%) of the votes severally cast statewide for and against the same, and one (1) or more proposed constitutional amendments are approved by a majority of the votes cast upon the proposed constitutional amendment statewide but by less than sixty percent (60%) of the votes, the proposed constitutional amendment receiving the highest number of affirmative votes shall become law.

SECTION 7. The subsection of Arkansas Constitution, Article 5, § 1, titled "Title", is amended to read as follows:

Title. (a) At the time of filing petitions the exact title to be used on the ballot shall by the petitioners be submitted with the petition, and on

~~state-wide~~ statewide measures, shall be submitted to the State Board of Election Commissioners, ~~who~~ which shall certify such title to the Secretary of State, to be placed upon the ballot; on county and municipal measures such title shall be submitted to the county election board and shall by said board be placed upon the ballot in such county or municipal election.

(b) The title shall:

(1) Be intelligible, brief, honest, and impartial;

(2) Not be misleading or confusing; and

(3) Summarize the text of the measure.

SECTION 8. The subsection of Arkansas Constitution, Article 5, § 1, titled "Verification", is amended to read as follows:

Verification. (a) Only legal votes shall be counted upon petitions. Petitions may be circulated and presented in parts, but each part of any petition shall have attached thereto the affidavit of the person circulating the same, that all signatures thereon were made on paper and in the presence of the affiant, and that to the best of the affiant's knowledge and belief each signature is genuine, and that the person signing is a legal voter and no other affidavit or verification shall be required to establish the genuineness of such signatures.

(b)(1) An initiative petition shall not be circulated before the date of the general election preceding the general election at which the proposed measure is to be voted upon.

(2) Any signatures obtained on an initiative petition in violation of subdivision (b)(1) of this subsection are invalid.

(c) Signatures may only be collected on paper copies of petitions.

SECTION 9. The subsection of Arkansas Constitution, Article 5, § 1, titled "Sufficiency", is amended to read as follows:

Sufficiency. (a) The sufficiency of all ~~state-wide~~ statewide petitions shall be decided in the first instance by the Secretary of State, subject to review by the Supreme Court of the State, which shall have original and exclusive jurisdiction over all such causes. The sufficiency of all local petitions shall be decided in the first instance by the county clerk or the city clerk as the case may be, subject to review by the ~~chancery~~ circuit court.

(b)(1) Except as provided in subdivision (b)(2) of this subsection, a challenge to a proposed statewide initiated measure or statewide referendum, including without limitation a challenge to the sufficiency of the text of a proposed statewide initiated measure or the title of a proposed statewide initiated measure or statewide referendum to be used on the ballot, shall be filed no later than thirty (30) days after the approval of the title of the proposed statewide initiated measure or statewide referendum prior to the circulation of petitions in the manner prescribed by law.

(2) A challenge to the sufficiency of signatures on a statewide petition or the forms on which signatures were gathered for a statewide petition shall be filed no later than thirty (30) days after the determination of the sufficiency of the petition for inclusion of the proposed statewide initiated measure or statewide referendum on the ballot.

SECTION 10. The subsection of Arkansas Constitution, Article 5, § 1, titled "Amendment of Petition", is amended to read as follows:

Amendment of Petition.

(a)(1) If the Secretary of State, county clerk or city clerk, as the case may be, shall decide any petition to be insufficient, he or she shall without delay notify the sponsors of such petition, and permit at least thirty (30) days from the date of such notification, in the instance of a ~~state-wide~~ statewide petition, or ten (10) days in the instance of a municipal or county petition, for correction or amendment.

(2) For a ~~state-wide~~ statewide petition, correction or amendment of an insufficient petition shall be permitted only if the petition contains valid signatures of legal voters equal to:

(A) At least seventy-five percent (75%) of the number of ~~state-wide~~ statewide signatures of legal voters required; ~~and~~

(B) ~~At~~ Except as provided in subdivision (a)(2)(C) of this subsection, at least seventy-five percent (75%) of the required number of signatures of legal voters from each of at least fifteen (15) counties of the state~~.~~; and

(C) For a constitutional amendment proposed under this section, at least seventy-five percent (75%) of the required number of signatures of legal voters from each of at least one-fourth (1/4) of the counties in each congressional district as required under this section.

(b)(1) Signatures for the correction or amendment of an insufficient petition shall not be collected while the Secretary of State, county clerk, or city clerk, as the case may be, is determining the sufficiency of the petition.

(2) A signature collected for the purpose of correction or amendment of an insufficient petition before a petition has been deemed insufficient and eligible for correction or amendment is not valid for the purposes of correction or amendment of an insufficient petition.

~~(b)~~(c) In the event of legal proceedings to prevent giving legal effect to any petition upon any grounds, the burden of proof shall be upon the person or persons attacking the validity of the petition.

SECTION 11. The subsection of Arkansas Constitution, Article 5, § 1, titled "Unwarranted Restrictions Prohibited", is amended to read as follows:

Unwarranted Restrictions Prohibited. (a) No law shall be passed to ~~prohibit any person or persons from giving or receiving compensation for circulating petitions, nor to~~ prohibit the circulation of petitions~~, nor in any manner interfering~~ or to interfere in any manner with the freedom of the people in procuring petitions~~;~~.

(b) ~~but laws~~ Laws shall be enacted prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions.

(c) The General Assembly may enact laws necessary for the implementation of this section, including without limitation laws concerning the:

(1) Submission of measures to the electors of this state;

(2) Regulation of individuals involved in the process of the submission and circulation of petitions under this section, including without limitation individuals who:

(A) Submit the title of a measure for approval prior to the circulation of petitions;

(B) Sponsor a measure for approval and compensate individuals to canvas for petition signatures;

(C) Canvass for petition signatures; or

(D) Receive any type of compensation to canvass for petition signatures, including without limitation laws prohibiting

compensating canvassers for petition signatures; and

(3) Regulation of organizations that compensate canvassers for petition signatures or otherwise provide services to the sponsor of a petition.

SECTION 12. Arkansas Constitution, Article 5, § 1, is amended to add additional subsections to read as follows:

Extension of Time. If a deadline under this section occurs on a Saturday, Sunday, or legal holiday, the deadline shall be the next day which is not a Saturday, Sunday, or legal holiday.

Organization of Section 1 of Article 5 of this Constitution. Each titled portion of this Section 1 of Article 5 of this Constitution is a subsection of Section 1 of Article 5 of this Constitution.

SECTION 13. Arkansas Constitution, Article 19, § 22, is amended to read as follows:

§ 22. Constitutional amendments.

(a) Either branch of the General Assembly, at a regular session thereof, may propose amendments to this Constitution; and if the same be agreed to by a majority of all members elected to each house, such proposed amendments shall be entered on the journals with the yeas and nays, and published in at least one (1) newspaper in each county, where a newspaper is published, for six (6) months immediately preceding the next general election for Senators and Representatives, at which time the same shall be submitted to the electors of the State, for approval or rejection; and if a majority of the electors voting at such election adopt such amendments, the same shall become a part of this Constitution. But no more than three (3) amendments shall be proposed or submitted at the same time. They shall be so submitted as to enable the electors to vote on each amendment separately.

(b)(1) The sufficiency of a proposed amendment under this section shall be decided by the Supreme Court, which shall have original and exclusive jurisdiction over all such causes.

(2) A challenge to a proposed amendment, including without limitation a challenge to the sufficiency of the text of a proposed amendment or the title of the proposed amendment to be used on the ballot, shall be filed not later than ninety (90) days after the final adjournment of the

regular session at which the proposed amendment is adopted by the General Assembly for submission to the electors of the state for approval or rejection, except when a recess or adjournment of a regular session shall be taken temporarily for a longer period than ninety (90) days, in which case the challenge shall be filed not later than ninety (90) days after the recess or temporary adjournment.

(3)(A) If a proposed amendment is challenged, the challenge shall be a preference cause and shall be tried at once.

(B) The failure of the Supreme Court to decide prior to the election as to the sufficiency of any proposed amendment shall not prevent the question from being placed upon the ballot at the election named in such proposed amendment, nor militate against the validity of such proposed amendment, if it shall have been approved by a vote of the people.

(c)(1) The General Assembly shall not propose under this section:

(A) A constitutional amendment whose enforcement or purview is restricted to one (1) or more counties or municipalities, either explicitly or by implication; or

(B) A constitutional amendment which, either explicitly or by implication:

(i) Specifically bestows power, privileges, or authority upon:

(a) A specific individual; or

(b) A private business entity, including without limitation a private corporation; or

(ii) Creates a business or nonprofit monopoly for a county, municipality, business entity, or private corporation.

(2) Subdivision (c)(1) of this section:

(A) Shall supersede a subsequent amendment to this Constitution that violates the provisions of subdivision (c)(1) of this section; and

(B) Does not prohibit the proposal or submission of an amendment to a provision of this Constitution existing prior to January 1, 2019.

SECTION 14. Arkansas Constitution, Amendment 70, § 2, is amended to read as follows:

§ 2. Additional Constitutional amendments authorized.

(a) In addition to the three (3) amendments to ~~the~~ this Constitution allowed pursuant to Article 19, § 22, either branch of the General Assembly at a regular session thereof may propose an amendment to ~~the~~ this Constitution to change the salaries for the offices of Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer of State, Commissioner of State Lands, and Auditor of State and for members of the General Assembly. ~~If the same be agreed to by a majority of all members elected to each house, such proposed amendment shall be entered on the journals with the yeas and nays, and published in at least one newspaper in each county, where a newspaper is published, for six months immediately preceding the next general election for Senators and Representatives, at which time the same shall be submitted to the electors of the State for approval or rejection. If a majority of the electors voting at such election adopt the amendment the same shall become a part of this Constitution.~~

(b) Only one (1) amendment to ~~the~~ this Constitution may be referred pursuant to this section.

(c) An amendment proposed under the authority of this section shall comply with the requirements of Article 19, § 22, of this Constitution.

SECTION 15. EFFECTIVE DATE. This amendment shall be effective on and after January 1, 2021.

SECTION 16. BALLOT TITLE AND POPULAR NAME. When this proposed amendment is submitted to the electors of this state on the general election ballot:

(1) The title of this joint resolution shall be the ballot title; and

(2) The popular name shall be "An Amendment to the Arkansas Constitution Concerning the Requirements Governing Circulation, Submission, and Challenges to the Sufficiency of Initiated Measures and Referenda Proposed Under Arkansas Constitution, Article 5, § 1, and Constitutional Amendments Proposed by the General Assembly"."

/s/Eubanks