



Ohio Legislative Service Commission

Resolution Analysis

Emily E. Wendel

Sub. H.J.R. 4

131st General Assembly
(As Passed by the House)

Reps. R. Smith and Curtin, Brown, Buchy, Derickson, Green, McColley, Amstutz, Anielski, Blessing, Boose, Burkley, Butler, Conditt, Dever, Dovilla, Ginter, Grossman, Hackett, Hagan, Hall, Hayes, Henne, Hill, Huffman, T. Johnson, Koehler, Kraus, Landis, Maag, Manning, McClain, Perales, Reineke, Retherford, Rezabek, Ryan, Schaffer, Scherer, Schuring, Sears, Slaby, Sprague, Terhar, Thompson, Rosenberger

RESOLUTION SUMMARY

- Prohibits the electors from using an initiative petition to propose a constitutional amendment that would grant a monopoly or other type of special commercial economic interest.
- Requires the electors to follow a two-step constitutional amendment process to create an exception to that prohibition and then institute a constitutional monopoly.
- Specifies that if, at the election at which the anti-monopoly proposal appears on the ballot, the electors approve an initiated constitutional amendment that creates a monopoly, the entire amendment that creates the monopoly must not take effect.
- Provides that if, at a later election, the electors approve a constitutional amendment that creates a monopoly and that was proposed by an initiated petition certified by the Attorney General and the Ohio Ballot Board prior to the effective date of the prohibition against monopolies, then that entire amendment must not take effect.
- Gives the Ohio Supreme Court original, exclusive jurisdiction in any action that relates to the two provisions described immediately above.
- Exempts the current provisions of the Ohio Constitution from the prohibition against constitutional monopolies.
- Requires petitioners who support an initiated law or constitutional amendment to submit an initial petition and a summary of the proposal to the Attorney General for a determination of whether the summary is fair and truthful.

- Requires the Attorney General, in the case of a proposed constitutional amendment, also to determine whether the proposal would violate the prohibition against monopolies.
- Requires an initiative petition to contain only one proposed law or constitutional amendment, so as to enable the electors to vote on each proposal separately, and requires the Ohio Ballot Board to determine whether that requirement is met.

CONTENT AND OPERATION

The joint resolution proposes an amendment to the Ohio Constitution to appear on the ballot at the November 3, 2015, general election.

Monopolies

The proposal prohibits the electors from proposing a constitutional amendment by initiative petition that would grant or create a monopoly or a special interest, privilege, benefit, right, or license of a commercial economic nature to any person, partnership, association, corporation, organization, or other nonpublic entity, or any combination of those, however organized, that is not available to other similarly situated persons, partnerships, associations, corporations, organizations, or other nonpublic entities at the time the initiated amendment is scheduled to become effective.

Under the resolution, a two-step process is required to create an exception to the prohibition against creating a constitutional monopoly. First, the petitioners must propose a constitutional amendment that would repeal or suspend the anti-monopoly prohibition or create an exception to it. That proposal must contain no other provision. Then, if the electors vote to adopt the first amendment, the petitioners must propose a second constitutional amendment at a subsequent election that creates the monopoly.

The proposal specifies that if, at the election at which the anti-monopoly amendment appears on the ballot, the electors approve another constitutional amendment that violates or is inconsistent with the prohibition against constitutional monopolies, then the entire proposed amendment creating a monopoly must not take effect (see **COMMENT**).¹ And if, at a later election, the electors approve a constitutional amendment that violates or is inconsistent with the prohibition against constitutional monopolies and that was proposed by an initiative petition certified by the Attorney General and the Ohio Ballot Board prior to the effective date of the prohibition against monopolies, then the entire proposed amendment creating a monopoly must not take

¹ Art. II, Sec. 1e(B).

effect. The resolution gives the Ohio Supreme Court original, exclusive jurisdiction in any action that relates to the provisions described in this paragraph.

Under the resolution, the prohibition against constitutional monopolies does not apply to any current provision of the Ohio Constitution.²

Attorney General review of initiative petitions

Fairness and truthfulness review

The resolution requires petitioners who seek to initiate a law or a constitutional amendment to submit an initial petition to the Attorney General that includes the proposed law or amendment and a summary of it. The petitioners must submit that initial petition in the manner and with the requisite number of signatures prescribed by law. The Attorney General then must examine the summary to determine whether it is a fair and truthful statement of the proposal. A petitioner who is aggrieved by the Attorney General's determination may challenge it in the Ohio Supreme Court, which has exclusive, original jurisdiction over such a challenge.³ The Revised Code currently requires petitioners to follow this process; under the proposal, the requirement becomes part of the Constitution.⁴

Anti-monopoly review

The resolution specifies that an initiative petition proposing a constitutional amendment is not valid if the Attorney General determines as part of the review described above that the proposed amendment would create a monopoly or would violate the two-step process to create an exception to the anti-monopoly prohibition. A proposed amendment that fails the Attorney General's review must not be submitted to the electors. If a petitioner is aggrieved by the Attorney General's determination, the petitioner may challenge it in the Ohio Supreme Court.⁵

Ballot Board review of initiative petitions

The resolution also requires an initiative petition to contain only one proposed law or constitutional amendment, so as to enable the electors to vote on each proposal separately. Under the resolution, the Ohio Ballot Board must determine whether an

² Schedule.

³ Art. II, Secs. 1a(B) and 1b(A).

⁴ R.C. 3519.01(A), not in the resolution.

⁵ Art. II, Secs. 1a(B) and 1e(B)(3).



initial petition submitted for review meets that requirement.⁶ This process currently exists in the Revised Code, but would be added to the Constitution under the proposal.⁷

COMMENT

The Ohio Constitution specifies that if conflicting proposed amendments are approved at the same election, the amendment receiving the highest number of affirmative votes must be the amendment to the Constitution.⁸ But, the resolution states that if such a conflict occurs in November, the amendment proposed by the resolution entirely supersedes an amendment that contains a monopoly. A reviewing court might not enforce this language in the resolution because it was not part of the Constitution at the time the amendments were adopted.

It is not clear how a court might resolve an apparent conflict between the amendment proposed by the resolution and an amendment that creates a monopoly. In deciding whether and to what extent the two amendments conflict, the court might find that parts of one or both amendments must take effect, while other parts must not. In that case, practical issues could result from the enforcement of only a portion of a constitutional amendment.

HISTORY

| ACTION | DATE |
|---|----------|
| Introduced | 06-16-15 |
| Reported, H. Gov't Accountability & Oversight | 06-24-15 |
| Passed House (81-12) | 06-24-15 |

HJR0004-PH-131.docx/emr

⁶ Art. II, Secs. 1a(C) and 1b(B).

⁷ R.C. 3505.62(A) and 3519.01(A), not in the resolution.

⁸ Art. II, Sec. 1b.

