



March 25, 2019

Voters Will Decide Sales Tax Issue Arkansas Legislature Changes Ballot Process

Arkansas legislators have settled one of the three constitutional amendments they expect to refer to voters in [2020](#).

Earlier this month, legislators in the House and Senate voted to refer a half-cent sales tax to voters to pay for state and local road and bridge construction. [HJR1018](#) is seen as continuing an existing half-cent sales tax voters approved in [2012](#) for road construction projects and is part of Gov. Asa Hutchinson's larger construction funding [plan](#).

With this joint proposal settled, the House and Senate expect to refer one additional measure each to voters. The Arkansas Constitution allows the General Assembly to refer up to three constitutional measures.

Senate Proposal

The Senate State Agencies & Governmental Affairs Committee has selected [SJR15](#) for [consideration](#) by the full Senate. (Watch the final committee discussion [here](#)).

Named "The Arkansas Term Limits Amendment," the proposed legislative amendment would remove a life-time limit on how long state representatives and senators can serve. Currently, state law says legislators can serve 16 years and then no more.

[SJR15](#), proposed by [Sen. Alan Clark](#), would allow legislators to serve 12 years and then run for office again after a four-year absence. [SJR15](#) now goes to the full Senate for a vote. (The House must also vote in favor of putting the proposal on the 2020 ballot.)

The ballot title, which was voted out of committee on March 20, is named the same as a citizen-initiated proposal that would lower the number of years legislators can serve in office. Supporters of that measure mentioned their concern about the identically-named proposals during the Senate committee meeting, but legislators took no action to change the name of the legislative proposal.

The full Senate is [expected](#) to consider the proposal [this afternoon](#).

House Proposal

On the House side, none of the 28 proposals filed by representatives have been specifically referred out of committee for a full vote. However, legislators have said in media interviews they expect an amendment changing the state's ballot issue process may make its way to the ballot.

The Arkansas Constitution allows legislators to refer up to three amendments at a time to voters. Citizens also have the right under the constitution to gather voter signatures to put a measure on the Arkansas ballot.

Changes to the Citizen Initiative Process

A new law that took effect March 8 has already changed the citizen initiative process in Arkansas.

For many years, the Attorney General was responsible for certifying ballot titles submitted by the public. The AG's approval was required before ballot issue groups could collect voter signatures required to qualify for the ballot.

That step has been eliminated with the passage of [Act 376](#), which says ballot issue groups must now file their ballot title with the Secretary of State's Office. The group can then gather voter signatures.

Unlike the Attorney General, the Secretary of State won't be certifying ballot titles. That responsibility now falls with the [Arkansas Board of Election Commissioners](#), which will review the ballot title only after voter signatures are submitted to the Secretary of State for verification.

Ballot issue groups have until July 2020 to turn in their signatures to the Secretary of State's Office for review.

Unanswered Questions

Act 376 says if a ballot title and popular name is not misleading or designed in a way that a "FOR" or "AGAINST" are confusing, then the title shall be certified for the ballot. But the process the Board of Election Commissioners will follow next year to certify submitted measures has yet to be determined.

Daniel Shults, director of the Arkansas Board of Election Commissioners, said the board typically receives a staff recommendation on whatever comes before them and they vote. The wording of a ballot issue would have to be "truly problematic" for it to "be knocked off by this board," he said.

How the law will affect competing proposals already certified by the Attorney General is unknown. Two proposals were certified before the passage of Act 376:

- [Oct. 26, 2018 - An Amendment to Establish the Arkansas Citizens' Redistricting Commission](#)
- [Feb. 27, 2019 - An Amendment to Create a Citizens Redistricting Commission for Decennial Redistricting of Arkansas Congressional and State Legislative Districts](#)

David Couch, sponsor of the 2018 proposal, said he didn't think Act 376 would affect his amendment because he submitted it before the new law took effect. He said he would submit it to the Secretary of State's Office just in case.

Regardless of the process followed, Couch said he expected his proposal to end up at the Supreme Court as a result of any challenges from opponents. Darby Kuykendall, sponsor of the other amendment, could not be reached for comment.

Skipping over the Attorney General will make his job easier in circulating ballot titles, Couch said, but he didn't think the Board of Election Commissioners should be in charge of certifying ballot titles. The Attorney General's involvement protected the public from bad ballot titles, he said.

Earlier this month, Couch submitted another proposed amendment to the Attorney General's Office. The amendment would reduce the number of constitutional amendments the legislature could refer to the ballot, from three at a time to one.

Attorney General Leslie Rutledge notified Couch on March 13 that she no longer had authority to review and certify ballot titles.

Voters Must Correctly Fill Out All Information on Petitions

Act 376 will have another affect on ballot issue groups - it opens up voter signatures on petitions to more scrutiny.

The new law prohibits anyone but the voter from filling out the date they signed the petition. If a voter skips over the date next to their name, the canvasser can no longer write in the date.

The new law also removed discretion the Secretary of State's office had for validating voter signatures. Previously, state law specifically said a voter's signature could not be disqualified because the voter left blank their name, date of birth, hometown or other identifying information if their signature was present. That section of state law was deleted under Act 376.

While this detail may seem "in the weeds" for some people, lawsuits challenging proposed amendments frequently succeed or fail on the imperfections discovered on petitions.

Voters will need to be more diligent when signing a petition for a statewide constitutional amendment if they want their signature to count toward the amendment being placed on the ballot.

Keeping Track of Circulating Ballot Proposals

Looking Forward

Potential Ballot Issues from the Public

Under the old system, the Attorney General would issue opinions certifying or rejecting ballot titles. These opinions, and all other opinions, were regularly emailed out to the public and posted on the AG's website and included the name of the person submitting the proposal.

Act 376 did not establish a public notification process for the Secretary of State to follow. However, the Secretary of State's Office has since posted on its [website](#) a copy of the petition and ballot title filed for a proposed amendment to change Arkansas' legislative term limits after the new law was passed.

The backers of [Issue 3 on the 2018 ballot](#) have filed with the Secretary of State to start collecting signatures for another try at the ballot in 2020. (Issue 3 was struck from the ballot and votes were not counted). The group's new proposal, filed March 14, is also named the [Arkansas Term Limits Amendment](#).

This proposal has the same name as the Senate-proposed amendment making its way through the process at the Capitol, but would have a much different outcome if it is passed by voters.

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