

## Initiative Petitions Make Their Way Toward November 2010 Ballot

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Across the nation, the use of ballot initiatives has steadily increased over the past twenty years as a means of making new law. Developed in the early 20<sup>th</sup> century as a way to combat special-interest control and influence over government, the initiative petition process encourages citizen participation in lawmaking. Massachusetts in 1918 amended its constitution to add Article 48, becoming the fifth state to adopt the initiative petition process.

Today, ballot initiatives have evolved into a lawmaking approach beneficial to both grassroots and special-interest groups. As such, they play an important role in our legislative arena. Often, those frustrated by the legislative process will use the initiative process as a way to help leverage negotiations with the Legislature to a pass a bill that satisfies their needs.

### **Procedure**

Several steps are required in Massachusetts to bring an initiative petition before the Legislature and, if not enacted there, to place it on the ballot. There are also important substantive constitutional requirements with which the proposed law must comply. First, the sponsor of an initiative petition must submit the proposed law to the Attorney General in proper form with the signatures of ten registered voters by the first Wednesday in August in the first year of the two-year legislative session. The Attorney General must then certify that the petitions comply with state constitutional requirements regarding form and substance.

An initiative petition passes constitutional muster only if several criteria have been met. In Massachusetts, the proposed law will receive certification only where: (1) it takes the proper form of a law; (2) it is not substantially similar to an initiative petition certified in the prior two biennial elections; (3) the subject matter of the initiative petition are related or mutually dependent; and (4) the petition does not contain any subject matter excluded under Article 48.

If an initiative petition meets the constitutional requirements, the Attorney General must certify and file it with the Secretary of State between the first Wednesday in September and the first Wednesday in November. The Attorney General must also attach concise summaries of the proposed law for the voting public. The Secretary of State then provides forms for voter signature collection. The sponsor has until the first Wednesday in December to collect a number of signatures equal to 3% of the number of votes cast for governor at the preceding biennial state election. Not more than one-quarter of signatures may come from any one county.

If enough signatures are collected and submitted by the deadline, the Secretary of State then sends the proposed measure to the Legislature upon commencement of formal sessions in January. The

Legislature has until the first Wednesday in May to enact the law. For purposes of initiative petitions, the word “enact” means that the measure must be signed by the governor or otherwise receive final passage into law by the May deadline. The initiative petition follows the ordinary course of a bill and is assigned to a committee and given a public hearing. However, the Legislature can only provide technical amendments; it cannot substantively change the petition language. The Legislature can then approve it, disapprove it or take no action. It may also, by a 2/3 vote, provide a legislative substitute and submit it to the people *in addition to* the original initiative petition as an alternative to it.

If the proposed law is not enacted by the May deadline, then the sponsor must once again collect more signatures in order to get the measure on the ballot in November. The sponsor must collect an additional number of voter signatures equal to ½ of 1% of the number of votes cast for governor at the preceding biennial state election. The signatures must be submitted by the first Wednesday in July. If successful, the measure will be placed on the ballot for popular vote.

## **2010 Petitions**

Among the thirty initiative petitions submitted to the Attorney General in August 2009, five are now currently pending before the legislature. Of the other twenty-five measures submitted, five were *not certified* because they failed to meet constitutional requirements of form and substance, while twenty measures did not receive the required number of voters’ signatures (or otherwise were not circulated for signatures, since petitioners often file multiple versions of the same question) to move forward in the process.

With the approval of the Secretary of State in December, the five valid initiative petitions with the required number of signatures (66,593) were transmitted to the state legislature in January. The measures were then considered “introduced and pending,” and given a bill number. Following the typical legislative process, the initiative petitions were assigned to a committee, and must each receive a public hearing followed by committee recommendations.

If the Legislature fails to enact the initiative petitions before Wednesday, May 5<sup>th</sup>, then petitioners will have their second opportunity to collect the requisite number of voters’ signatures (11,099) by Wednesday, July 7<sup>th</sup>. At this point, there is no way for any party to prevent the question from appearing on the November ballot.

At present it appears that as many as four of the five initiative petitions now before the Legislature may go before voters in November. The fifth petition, HB 4457, likely will not advance further, since the Legislature has separately taken action this year that appears to satisfy the backers of the initiative petition.

The five valid initiative petitions now before the Massachusetts Legislature, including HB 4457, are as described below.

## **AN ACT TO REPEAL THE SALES TAX ON ALCOHOL HB 4454**

This petition seeks to repeal the sales tax on alcoholic beverages and alcohol. The law would take effect on January 1, 2011. The Joint Committee on Revenue recently sent the bill to study. If it remains in study through May 5<sup>th</sup>, the petition will be deemed “not enacted” and the backers will have the opportunity to gather more signatures in order to place it on the November ballot.

## **AN ACT RELATIVE TO COMPREHENSIVE PERMITS AND REGIONAL PLANNING HB 4455**

This proposed law would repeal an existing state law that allows a qualified organization wishing to build government-subsidized housing to apply for a single comprehensive permit from a city or town’s zoning board of appeals, instead of separate permits from each local agency or official having jurisdiction over any aspect of the proposed housing. The repeal would take effect on January 1, 2011, but would not stop or otherwise affect any proposed housing that had already received both a comprehensive permit and a building permit for at least one unit. This measure was referred to the Joint Committee on Housing and is currently sitting in committee. A public hearing has not yet been scheduled.

## **AN ACT FOR A LAW KNOWN AS THE 3% SALES TAX RELIEF ACT HB 4456**

This measure seeks to reduce the state sales and use tax rates from 6.5% to 3% as of January 1, 2011. The proposed law provides that if the 3% rates would not produce enough revenues to satisfy any lawful pledge of sales and use tax revenues in connection with any bond, note, or other contractual obligation, then the rates would instead be reduced to the lowest level allowed by law. The Joint Committee on Revenue recently sent the bill to study. If it remains in study through May 5<sup>th</sup>, the petition will be deemed “not enacted” and the backers will have the opportunity to gather more signatures in order to place it on the November ballot.

## **INITIATIVE PETITION TO LIMIT CARBON DIOXIDE EMISSIONS FROM RENEWABLE AND ALTERNATIVE ENERGY SOURCES HB 4458**

This proposed law would require waste-to-energy and biomass renewable energy sources relying on combustion or pyrolysis (decomposition caused by heat) to emit no more than 250 pounds of carbon dioxide per megawatt hour in order to be considered “renewable energy generating sources,” “Class I renewable energy generating sources,” “Class II renewable energy generating sources,” “alternative energy developments,” or “alternative energy properties” under state laws concerning renewable and alternative energy programs. The proposed measure would prohibit retail electricity suppliers from satisfying minimum percentage kilowatt-hour sales requirements through the use of waste-to-energy and biomass renewable energy sources that rely on combustion or pyrolysis if such energy sources

emit more than 250 pounds of carbon dioxide per megawatt hour. Additionally, under current state law, the state Department of Energy Resources is responsible for administering programs related to alternative energy development and alternative energy properties. The proposed law would exclude from these programs waste-to-energy and biomass energy sources that rely on combustion or pyrolyzation if such energy sources emit more than 250 pounds of carbon dioxide per megawatt hour. The Joint Committee on Telecommunications, Utilities and Energy heard the bill in February and it currently sits in committee.

**AN ACT TO INCREASE QUALITY AND PARENTAL CHOICE IN PUBLIC EDUCATION  
BY EXPANDING ENROLLMENT IN HIGH-QUALITY CHARTER PUBLIC SCHOOLS  
HB 4457**

This proposed law would remove certain limits on the number of charter schools, their funding, and enrollment. It would also require approval of certain qualified applications for charter schools to be located in districts where average student performance is lowest. The measure makes several other changes in the law that are favorable to the development of charter schools and student access. HB 4457 is currently sitting in the Joint Committee on Education. This question will not be moving forward as the Legislature passed a bill in January that satisfied the proponents.