

HOUSE JOINT RESOLUTION NO. 27

(By Delegates Overington, Armstead, Rowan,
Duke, Sumner, Walters, Andes, J. Miller
and Lane)

Introduced January 18, 2011; referred to the
Committee on Constitutional Revision then the
Judiciary.]

Proposing an amendment to the Constitution of the State of West
Virginia, amending section one, article VI thereof; amending
section two, article XIV thereof; and further amending said
Constitution by adding a new article, designated article XV,
all relating to the legislative powers held by the people of
the state and the Legislature; the power of the registered
voters and the power of the Legislature to propose amendments
to this Constitution; and the reservation by and to the people
and registered voters of this state the powers of initiative,
referendum, and recall at all levels of government in this
state; numbering and designating such proposed amendment; and
providing a summarized statement of the purpose of such
proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of
the members elected to each house agreeing thereto:*

That the question of ratification or rejection of an amendment
to the Constitution of the State of West Virginia be submitted to

1 the voters of the state at the next general election to be held in
2 the year 2012, which proposed amendment is that section one,
3 article VI thereof, be amended; that section two, article XIV
4 thereof, be amended; and that said Constitution be further amended
5 by adding thereto a new article, designated article XV, all to read
6 as follows:

7 **ARTICLE VI. THE LEGISLATURE.**

8 **§1. Legislative powers held by people and by Legislature.**

9 Except for the initiative and referendum powers reserved by
10 and to the people of West Virginia in article fifteen of this
11 Constitution, the legislative power shall be vested in a Senate and
12 House of Delegates. The style of their acts shall be, "Be it
13 enacted by the Legislature of West Virginia."

14 **ARTICLE XIV. AMENDMENTS -- HOW MADE.**

15 **§2. How amendments are made.**

16 Any amendment to the Constitution of the State may be
17 proposed: (1) By registered voters through the initiative
18 procedure set forth in article fifteen of this Constitution; or (2)
19 by a member or members of the Legislature through the legislative
20 procedure hereinafter set forth in this paragraph. An amendment to
21 this Constitution may be proposed in either house of the
22 Legislature at any regular or extraordinary session thereof; and if
23 the same, being read on three several days in each house, be agreed

1 to on its third reading, by two thirds of the members elected
2 thereto, the proposed amendment, with the yeas and nays thereon,
3 shall be entered on the journals, and it shall be the duty of the
4 Legislature to provide by law for submitting the same to the voters
5 of the state for ratification or rejection, at a special election,
6 or at the next primary election or next general election
7 thereafter, and cause the same to be published, at least three
8 months before such election in some newspaper in every county in
9 which a newspaper is printed. If a majority of the qualified
10 voters, voting on the question at the polls held pursuant to such
11 law, ratify the proposed amendment, it shall be in force from the
12 time of such ratification, as part of the Constitution of the
13 State. If two or more amendments be submitted at the same time,
14 the vote on the ratification or rejection shall be taken on each
15 separately, but an amendment may relate to a single subject or to
16 related subject matters and may amend or modify as many articles
17 and as many sections of the Constitution as may be necessary and
18 appropriate in order to accomplish the objectives of the amendment.
19 Whenever one or more amendments are submitted at a special
20 election, ~~no other question, issue or matter shall~~ questions,
21 issues matters may be voted upon at such special election, and the
22 cost of such special election throughout the state shall be paid
23 out of the State Treasury.

24 **ARTICLE XV. INITIATIVE, REFERENDUM, AND RECALL.**

1 **§1. Initiative and referendum; definitions, scope, limitations.**

2 The people of West Virginia reserve to themselves the powers
3 of initiative and referendum. Subject to the restrictions set
4 forth in this section, the power of initiative is the power of
5 registered voters, through the use of a petition procedure
6 established in this section, and governed by general law not in
7 conflict therewith, to propose statutes and amendments to this
8 Constitution and, at a regularly scheduled general or primary
9 election held less than two years after the filing of a proper
10 petition, to enact or reject said voter-proposed statutes and
11 amendments by a simple majority of the votes cast on the issue.
12 The power of the voters to propose, and to enact or to reject, laws
13 is not subject to the veto power of the Governor or of any other
14 individual.

15 Subject to the restrictions set forth in this section, the
16 power of referendum is the power of registered voters, through the
17 use of a petition procedure established in this section, and
18 governed by general law not in conflict therewith, to propose the
19 rejection of statutes, or specific portions thereof, newly enacted
20 by the Legislature, and, at a regularly scheduled general or
21 primary election held less than two years after the filing of a
22 proper petition, to approve or reject said statutes, or specific
23 portions thereof, by a simple majority of the votes cast on the
24 issue.

1 The initiative and referendum powers reserved by and to the
2 people pursuant to this section are further reserved to the
3 registered voters of each municipality, county, or other election
4 district as to all local, special, municipal, and county
5 ordinances, charter provisions, rules, and other legislation of
6 every character in or for said municipality, county, or other
7 district if said ordinances, charter provisions, rules, and other
8 legislation are ordained or enacted, or capable of being ordained
9 or enacted, by the election council of a municipal corporation, by
10 a county commission, by an elected board of a school district, or
11 by any other elected public body, as the case may be.

12 The Legislature shall, by general law in accordance with this
13 section, provide for initiative and referendum at each level of
14 government in West Virginia. The Legislature shall further provide
15 that a petition for initiative or referendum must be signed by
16 registered voters residing in the district over which the elected
17 public body in question has jurisdiction.

18 The Legislature shall further provide that, to initiate an
19 initiative election pursuant to this section, a petition for
20 initiative, including all copies thereof, must contain the
21 signatures of a number of the registered voters residing in said
22 district equal to at least ten percent of all of the votes cast for
23 the office of Governor in said district in the most recent
24 quadrennial general election preceding the filing of said petition.

1 The Legislature shall further provide that, in addition to meeting
2 the aforementioned requirements, to initiate a statewide initiative
3 election pursuant to this section, a petition for initiative,
4 including all copies thereof, must, in each county of two thirds of
5 the counties in this state, contain the signatures of a number of
6 the registered voters residing in said county equal to at least ten
7 percent of all of the votes cast for the office of Governor in said
8 county in the most recent quadrennial election preceding the filing
9 of said petition.

10 The power of initiative described in this section may not be
11 exercised to propose or to enact legislation which the applicable
12 elected public body itself could not propose or enact; nor may the
13 power of initiative be exercised in an attempt to name or to
14 identify a particular individual to have or to hold any office,
15 position, or term or condition of employment or to authorize a
16 private firm or corporation to perform any function or to have any
17 power or duty nor may the power of initiative be exercised in an
18 attempt to amend this article. No more than five statewide
19 initiative measures shall be voted upon at the same election. The
20 Legislature shall, by general law, establish objective procedures
21 to govern which statewide initiative measures will be voted upon at
22 a particular election in the unlikely event that six or more such
23 measures would otherwise qualify to be voted upon at a particular
24 election: *Provided*, That nothing in this section requires that the

1 Legislature mandate special elections under such circumstances.

2 The Legislature shall further provide that, to initiate a
3 referendum election pursuant to this section, a petition for
4 referendum, including all copies thereof, must contain the
5 signatures of a number of the registered voters residing in said
6 district equal to at least ten percent of all of the votes cast for
7 the office of Governor in said district in the most recent
8 quadrennial general election preceding the filing of said petition.

9 In addition to the above requirements, the Legislature shall
10 further provide that, to initiate a statewide referendum election
11 pursuant to this section, a petition for referendum, including all
12 copies thereof, must, in each county of two thirds of the counties
13 of this state, contain the signatures of a number of the registered
14 voters residing in said county equal to at least ten percent of all
15 of the votes cast for the office of Governor in said county in the
16 most recent quadrennial election preceding the filing of said
17 petition.

18 The Legislature shall further provide that, to be valid, said
19 referendum petition must be filed with the proper official within
20 a certain period, not less than ninety days in length, after the
21 date the statute, ordinance, or other legislation the rejection of
22 which the circulators of the referendum petition are seeking was
23 enacted or ordained. The Legislature shall further provide that
24 within a certain period, not more than thirty days in length, after

1 the filing of a referendum petition with the proper official, said
2 official shall certify said petition if it has been prepared,
3 circulated, signed, and filed in compliance with applicable law.
4 If the petition is so certified, the statute, ordinance or other
5 legislation, or part thereof, the rejection of which is being
6 sought, shall be immediately suspended until it has been approved
7 or rejected at a referendum election, unless said legislation was
8 enacted, with a recorded vote reflecting the yeas and nays, by at
9 least two thirds of the members voting on the issue in each
10 legislative body the approval of which was required for passage.
11 If a referendum petition is filed against part of a statute or
12 other legislation, the remainder may not be delayed from going into
13 effect.

14 Notwithstanding any other provision of this section to the
15 contrary, the power of referendum may not be exercised in an
16 attempt to reject those portions of an act or ordinance which
17 appropriate public funds or call an election.

18 A statute or any other legislation, or portion thereof,
19 proposed through the filing of a proper initiative petition, or
20 suspended through the filing of a proper referendum petition, takes
21 effect on the date that it is approved by the voters unless the
22 approved measure provides otherwise. If the provisions of two or
23 more measures approved by the voters at the same election are in
24 conflict, the provisions of the measure receiving the highest

1 number of affirmative votes prevails unless one measure is by law
2 subordinate to the other. If an amendment to this Constitution and
3 a statute are both approved by the voters at the same election,
4 said amendment prevails in any case of conflict.

5 The Legislature may amend or repeal any statute approved at an
6 initiative election or referendum election. Any amendment to this
7 Constitution approved at an initiative election may only be amended
8 or repealed in the manner set forth in this section or in the
9 manner set forth in article XIV of this Constitution.

10 The Legislature shall further provide for procedures relating
11 to the preparation, circulation and filing of initiative petitions
12 and referendum petitions, to the verification of signatures
13 thereon, to the certification of such petitions, and to the conduct
14 of initiative elections and referendum elections. The Legislature
15 shall provide that proposed statutes set forth in initiative
16 petitions comply with the requirements of Section 30, article VI of
17 this Constitution. The Legislature shall, with such exceptions as
18 it may deem prudent, enact legislation to encourage holding
19 initiative elections and referendum elections on regularly
20 scheduled election days and to discourage holding special
21 initiative elections and special referendum elections. The
22 Legislature may enact legislation to allow initiative elections and
23 referendum elections involving municipalities to be held in
24 conjunction with regularly scheduled elections involving state and

1 county officials.

2 The Legislature shall, by general law, provide for the
3 disclosure of contributions and expenditures relating to initiative
4 elections and referendum elections and may enact other provisions
5 to guarantee the integrity of initiative elections and referendum
6 elections.

7 The authority granted to the Legislature in this section may
8 not be construed in any way as a restriction on the right of the
9 people of West Virginia to petition their government.

10 This section may not be construed to preempt or to repeal
11 existing or future provisions of municipal charters which reserve
12 to municipal voters additional initiative and referendum powers.

13 This section is to be liberally construed to ensure that the
14 power of the people of West Virginia to propose, and to accept or
15 reject, laws is not undermined by a system of overly complicated
16 procedures.

17 **§2. Recall; definitions, scope, limitations.**

18 Notwithstanding the provisions of Section VI, article four of
19 this Constitution, the people of West Virginia reserve the power of
20 recall. Subject to the restrictions set forth in this section, the
21 power of recall is the power of registered voters, through the use
22 of a petition procedure established in this section, and governed
23 by general law not in conflict therewith, to propose the removal of
24 any individual occupying any elective public office in West

1 Virginia at any governmental level in West Virginia, and, at a
2 regularly scheduled general or primary election held less than two
3 years after the filing of a proper petition, to remove said
4 individual from said office by a simple majority of the votes cast
5 on the issue.

6 Subject to the provisions of this paragraph, any individual
7 who is so recalled is ineligible to be elected or appointed to
8 serve any unexpired portion of his or her term of office in that
9 position or in a functionally equivalent elective public office in
10 the same electoral district, or in another electoral district
11 covering exactly the same territory, during said unexpired term of
12 the office: *Provided*, That the period of such ineligibility during
13 an unexpired term of office shall not exceed four years. The
14 vacancy in the office theretofore held by the recalled official
15 shall be filled expeditiously in the manner provided by law for
16 filling a vacancy arising from a resignation from that office.

17 The Legislature shall, by general law in accordance with this
18 section, provide for the recall of all public officials occupying
19 elective offices. The Legislature shall further provide that, to
20 initiate a recall election pursuant to this section, a petition,
21 including all copies thereof, to recall a public official occupying
22 an elective office must contain the signatures of a number of the
23 registered voters residing in the electoral district in and for
24 which said official was elected, or appointed, equal to twenty

1 percent of the votes cast for the candidate who received the
2 highest number of votes for said office in the election at which
3 said public official, if elected, was elected, or if said public
4 official was appointed, in the election at which said public
5 official's immediate elected predecessor was elected.

6 No individual occupying an elective public office may be
7 subjected to a recall election held less than one year before the
8 end of his or her regular legislatively established term of office.
9 Nor may any such individual be subjected to more than one recall
10 election during a particular term of office which he or she has
11 served without interruption.

12 The Legislature shall further provide for procedures relating
13 to the preparation, circulation, and filing of recall petitions, to
14 the verification of signatures thereon, to the certification of
15 such petitions, to the conduct of recall elections, and to the
16 status, prior to a recall election, of a public official whose
17 recall is sought. With respect to most public offices, the
18 Legislature shall enact legislation to encourage holding recall
19 elections on regularly scheduled election days and to discourage
20 holding special recall elections. The Legislature may enact
21 legislation to allow recall elections involving municipal officials
22 to be held in conjunction with regularly scheduled elections
23 involving state and county officials.

24 The Legislature may, but is not required to, provide by

1 general law that a petition for recall set forth the reason or
2 reasons that recall is sought and may further provide for the
3 ability of the public official whose recall is sought to set forth,
4 in a similar fashion, justification for his or her conduct in
5 office. In any event, the sufficiency or accuracy of any such
6 statement of reasons or justification shall, for the purposes of
7 the recall election, be deemed to be a political, rather than a
8 judicial, question.

9 The Legislature shall, by general law, provide for the
10 disclosure of contributions and expenditures relating to recall
11 elections and may enact other provisions designed to guarantee the
12 integrity of recall elections.

13 The authority granted to the Legislature in this section may
14 not be construed in any way as a restriction on the right of the
15 people of West Virginia to petition their government.

16 This section may not be construed to preempt or to repeal
17 existing or future provisions of municipal charters which reserve
18 to municipal voters additional recall powers. Nor may this section
19 be construed to authorize an individual to be subjected to a recall
20 election during the term of office which that individual began
21 serving prior to the date upon which this section was ratified.

22 This section is to be liberally construed to ensure that the
23 power of the people of West Virginia to recall their elective
24 public officials is not undermined by a system of overly

1 complicated procedures.

2 *Resolved further,* That in accordance with the provisions of
3 article eleven, chapter three of the Code of West Virginia, one
4 thousand nine hundred thirty-one, as amended, such proposed
5 amendment is hereby numbered "Amendment No. 1" and designated as
6 the "Initiative, Referendum, and Recall Amendment" and the purpose
7 of the proposed amendment is summarized as follows: "To amend the
8 State Constitution to enable the people of the State of West
9 Virginia to reserve to themselves the powers of initiative,
10 referendum, and recall, to enable the people to propose laws and
11 Constitutional amendments, to attempt to reject statutes enacted by
12 legislative bodies, and to recall elected officials, all through
13 the circulation and filing of petitions and through elections held
14 thereon."

NOTE: The purpose of this resolution is to amend the State Constitution to give the people the powers of initiative, referendum and recall.

Strike-throughs indicate language that would be stricken from the present Constitution, and underscoring indicates new language that would be added.