

SENATE JOINT RESOLUTION NO. 7

(By Senator Sypolt)

[Introduced January 18, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

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 amending said
Constitution by adding thereto a new article, designated
article XV, all relating to the legislative powers held by the
people of the state and the Legislature; power of the
registered voters and power of the Legislature to propose
amendments to this Constitution; 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 amended by adding
5 thereto a new article, designated article XV, all to read as
6 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
24 to on its third reading, by two thirds of the members elected

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

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

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

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

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

24 The initiative and referendum powers reserved by and to the
25 people pursuant to this section are further reserved to the

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

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

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

1 including all copies thereof, must, in each county of two thirds of
2 the counties in this state, contain the signatures of a number of
3 the registered voters residing in said county equal to at least ten
4 percent of all of the votes cast for the office of Governor in said
5 county in the most recent quadrennial election preceding the filing
6 of said petition.

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

24 The Legislature shall further provide that, to initiate a
25 referendum election pursuant to this section, a petition for

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

15 The Legislature shall further provide that, to be valid, said
16 referendum petition must be filed with the proper official within
17 a certain period, not less than ninety days in length, after the
18 date the statute, ordinance, or other legislation the rejection of
19 which the circulators of the referendum petition are seeking was
20 enacted or ordained. The Legislature shall further provide that
21 within a certain period, not more than thirty days in length, after
22 the filing of a referendum petition with the proper official, said
23 official shall certify said petition if it has been prepared,
24 circulated, signed, and filed in compliance with applicable law.
25 If the petition is so certified, the statute, ordinance or other

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

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

14 A statute or any other legislation, or portion thereof,
15 proposed through the filing of a proper initiative petition, or
16 suspended through the filing of a proper referendum petition, takes
17 effect on the date that it is approved by the voters unless the
18 approved measure provides otherwise. If the provisions of two or
19 more measures approved by the voters at the same election are in
20 conflict, the provisions of the measure receiving the highest
21 number of affirmative votes prevails unless one measure is by law
22 subordinate to the other. If an amendment to this Constitution and
23 a statute are both approved by the voters at the same election,
24 said amendment prevails in any case of conflict.

25 The Legislature may amend or repeal any statute approved at an

1 initiative election or referendum election. Any amendment to this
2 Constitution approved at an initiative election may only be amended
3 or repealed in the manner set forth in this section or in the
4 manner set forth in article XIV of this Constitution.

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

21 The Legislature shall, by general law, provide for the
22 disclosure of contributions and expenditures relating to initiative
23 elections and referendum elections and may enact other provisions
24 to guarantee the integrity of initiative elections and referendum
25 elections.

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

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

7 This section is to be liberally construed to ensure that the
8 power of the people of West Virginia to propose, and to accept or
9 reject, laws is not undermined by a system of overly complicated
10 procedures.

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

12 Notwithstanding the provisions of section VI, article four of
13 this Constitution, the people of West Virginia reserve the power of
14 recall. Subject to the restrictions set forth in this section, the
15 power of recall is the power of registered voters, through the use
16 of a petition procedure established in this section, and governed
17 by general law not in conflict therewith, to propose the removal of
18 any individual occupying any elective public office in West
19 Virginia at any governmental level in West Virginia, and, at a
20 regularly scheduled general or primary election held less than two
21 years after the filing of a proper petition, to remove said
22 individual from said office by a simple majority of the votes cast
23 on the issue.

24 Subject to the provisions of this paragraph, any individual
25 who is so recalled is ineligible to be elected or appointed to

1 serve any unexpired portion of his or her term of office in that
2 position or in a functionally equivalent elective public office in
3 the same electoral district, or in another electoral district
4 covering exactly the same territory, during said unexpired term of
5 the office: *Provided*, That the period of such ineligibility during
6 an unexpired term of office shall not exceed four years. The
7 vacancy in the office theretofore held by the recalled official
8 shall be filled expeditiously in the manner provided by law for
9 filling a vacancy arising from a resignation from that office.

10 The Legislature shall, by general law in accordance with this
11 section, provide for the recall of all public officials occupying
12 elective offices. The Legislature shall further provide that, to
13 initiate a recall election pursuant to this section, a petition,
14 including all copies thereof, to recall a public official occupying
15 an elective office must contain the signatures of a number of the
16 registered voters residing in the electoral district in and for
17 which said official was elected, or appointed, equal to twenty
18 percent of the votes cast for the candidate who received the
19 highest number of votes for said office in the election at which
20 said public official, if elected, was elected, or if said public
21 official was appointed, in the election at which said public
22 official's immediate elected predecessor was elected.

23 No individual occupying an elective public office may be
24 subjected to a recall election held less than one year before the
25 end of his or her regular legislatively established term of office.

1 Nor may any such individual be subjected to more than one recall
2 election during a particular term of office which he or she has
3 served without interruption.

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

16 The Legislature may, but is not required to, provide by
17 general law that a petition for recall set forth the reason or
18 reasons that recall is sought and may further provide for the
19 ability of the public official whose recall is sought to set forth,
20 in a similar fashion, justification for his or her conduct in
21 office. In any event, the sufficiency or accuracy of any such
22 statement of reasons or justification shall, for the purposes of
23 the recall election, be deemed to be a political, rather than a
24 judicial, question.

25 The Legislature shall, by general law, provide for the

1 disclosure of contributions and expenditures relating to recall
2 elections and may enact other provisions designed to guarantee the
3 integrity of recall elections.

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

7 This section may not be construed to preempt or to repeal
8 existing or future provisions of municipal charters which reserve
9 to municipal voters additional recall powers. Nor may this section
10 be construed to authorize an individual to be subjected to a recall
11 election during the term of office which that individual began
12 serving prior to the date upon which this section was ratified.

13 This section is to be liberally construed to ensure that the
14 power of the people of West Virginia to recall their elective
15 public officials is not undermined by a system of overly
16 complicated procedures.

17 *Resolved further,* That in accordance with the provisions of
18 article eleven, chapter three of the Code of West Virginia, 1931,
19 as amended, such proposed amendment is hereby numbered "Amendment
20 No. 1" and designated as the "Initiative, Referendum and Recall
21 Amendment" and the purpose of the proposed amendment is summarized
22 as follows: "To amend the State Constitution to enable the people
23 of the State of West Virginia to reserve to themselves the powers
24 of initiative, referendum and recall, to enable the people to
25 propose laws and Constitutional amendments, to attempt to reject

1 statutes enacted by legislative bodies and to recall elected
2 officials, all through the circulation and filing of petitions and
3 through elections held thereon."

NOTE: The purpose of this resolution 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.

Article XV is new; therefore, strike-throughs and underscoring have been omitted.