

History of Initiative and Referendum in North Dakota

Vote of the People

Since the adoption of the North Dakota Constitution on October 1, 1889, four types of questions have been submitted to the electorate for approval or rejection:

1. Amendments to the Constitution as proposed by the legislative assembly or as proposed by the people through a petition procedure.
2. Statutory proposals initiated by the people through a petition procedure.
3. Acts of the Legislative Assembly referred to the electorate by a petition procedure.
4. A proposed new constitution, with 4 alternate propositions to certain sections, submitted by a constitutional convention. (April 28, 1972)

Amending the Constitution

The original North Dakota Constitution provided for submission of amendments to the people after approval of two consecutive sessions of the legislative assembly. A majority vote of the legislators was required. In 1918, the Constitution was amended to require a majority vote in only one legislative session before submission of the amendment to the people.

On the crest of the "Progressive Party" reform movement, North Dakota changed its Constitution in 1914 to provide for an amendment through a petition procedure by the people. The petitions proposing an amendment were to be filed with the Secretary of State at least 6 months before the election. Those petitions carried the signatures of at least 25 percent of the legal voters in at least one-half of the counties of the state. If the people approved the amendment, it was then referred to the Legislative Assembly for consideration. If the Legislative Assembly adopted the amendment, it became a part of the Constitution. If the Legislative Assembly did not approve, the measure returned to the ballot for another test at the polls. If approved again by the people, it became a part of the Constitution.

The cumbersome procedure met its fate at the polls in 1918 when the people approved a new initiative procedure calling for petitions with 20,000 signatures to be filed 120 days before the election. Approval by a majority of the voters made the measure a part of the Constitution. The Legislative Assembly was no longer involved in the initiative process.

On 4 occasions, the Legislative Assembly has submitted proposed amendments to the people for an increase in the required number of signatures to initiate constitutional amendments:

- On March 15, 1932, the people voted 104,953 to 51,459 against increasing the number of signatures from 20,000 to 40,000.
- On June 30, 1942, a proposed increase from 20,000 to 30,000 signatures was defeated by 69,904 to 52,275.
- On November 4, 1958, the people defeated by a vote of 127,290 to 47,814 a proposal to change from 20,000 signatures to an amount of signatures equal to 10% of the vote cast for governor at the last general election.
- On November 7, 1978, the people approved by a vote of 102,182 to 75,413 a proposal that required a petition to carry signatures equal to 4% of the population based on the last federal census.

1971 – 1972 Constitutional Convention

On April 28, 1972, when the people voted on the proposed new constitution, they approved by a vote of 76,585 to 71,062 the alternate proposition to increase the number of signatures required for initiating constitutional amendments. The increase would have changed from the 20,000 signatures to a number of signatures equal to 4% of the state's population, or around 25,000 signatures. The increase did not occur because none of the 4 alternate propositions on the ballot took effect if the proposed constitution was defeated, and it was.

Initiating and Referring Laws

Even though the “initiative” and “referendum” are different types of political action, they have been treated as companion procedures since their original adoption in 1914.

The 1914 amendment to the Constitution called for petitions proposing new laws to be signed by at least 10% of the legal voters in a majority of counties, then submitted to the Secretary of State at least 30 days before the Legislative Assembly convened. When the legislative session met, the Secretary of State would then present the measure for its consideration. The Legislative Assembly had the option of adopting the measure, submitting it to the people for a vote, rejecting it, or offering a counter proposal. If the Legislative Assembly failed to act or rejected the proposal, the measure went on the ballot at the next election. If the Legislative Assembly offered a counter proposal, it and the original measure appeared together on the ballot; the measure receiving the highest number of votes won.

The power of “referendum” was included in the 1914 constitutional amendment. Acts or parts of the acts of the Legislative Assembly would be referred when a petition was signed by 10% of voters from a majority of counties. Petitions were filed within 90 days of adjournment of a Legislative Assembly. A referendum could also be held if a majority of legislators decided to submit legislation to a vote of the people. Measures pertaining to preservation of the public peace, health or safety that passed both houses by a two-thirds majority could not be referred.

Mired down in cumbersome and unworkable machinery, reformers proposed an amendment on November 5, 1918, which greatly simplified both the initiative and referendum process. This amendment eliminated the Legislative Assembly from the process and simply required petitions signed by 10,000 qualified electors to be filed no later than 90 days before an election. The referendum was changed to require 7,000 signatures to place the measure on the next election ballot or 30,000 signatures to force a special election.

Date	Description	For	Against
October 1, 1889	Article XV established requirements for future amendments to the North Dakota Constitution.	27,441	8,107
November 3, 1914	Signatures of 10% of legal voters in majority of counties to initiate or refer measures	48,783	19,964
November 5, 1918	10,000 signatures to initiate 7,000 signatures to refer	47,447	32,598
(The Legislative Assembly has on numerous occasions asked the voters to make the provisions of the initiative and referendum more stringent.)			
March 15, 1932	30,000 signatures to initiate, 25,000 signatures to refer	50,967	105,581
June 24, 1936	20,000 signatures to initiate/or refer	41,500	127,511
June 25, 1940	15,000 signatures to initiate/or refer	61,573	64,636
June 30, 1942	20,000 signatures to initiate, 30,000 signatures to refer, 40,000 signatures to force special election - referring emergency measures	53,925	70,927
November 4, 1958	10% of votes cast for governor to initiate, 7% of votes cast for governor to refer	47,814	127,290
November 8, 1966	3% of population to initiate, 2% of the population to refer	69,116	84,131

In addition to the increases proposed by the Legislative Assembly, the Constitutional Convention of 1971-72 submitted to the people the question of increasing the required signatures for the initiative and the referral to an amount of signatures equal to 2% of the population, or around 12,500 signatures. This proposal was approved by a vote of 76,585 to 71,062 but did not become effective because the proposed constitution itself was defeated.

On November 7, 1978, the people approved by a vote of 102,182 to 75,413 a proposal to amend the Constitution to initiate or refer laws by petition. The petitions required signatures equal to 2% of the population based on the last federal decennial census to refer and initiate statutory changes and 4% to initiate constitutional change.

Special Elections for Measures

The first special election involving referred measures occurred June 26, 1919, after the Non-Partisan League successfully passed legislation creating the Industrial Commission, the Bank of North Dakota, and the State Mill and Elevator. Voters approved the NPL programs.

The second special election, called because of recall petitions filed against the NPL Governor, Attorney General, and the Commissioner of Agriculture and Labor, meant the defeat of 9 different measures – some designed to hobble the NPL program. The program was sustained but the 3 primary NPL architects were turned out of the office as a result of the recall election of October 28, 1921. This was the first recall of state officials in the United States.

In 1933, the Legislative Assembly adopted the sales tax to tide the state's waning finances through the tough Depression era. However, the proposal was referred and another special election was required on September 22 of that year. The measure was defeated 41,241 to 113,807. There were actually 7 measures for voter consideration at this special election.

In 1935, the Legislative Assembly passed another sales tax measure and it was referred. On July 15 (Special Election) the measure was adopted by a vote of 75,166 to 65,890.

At a July 11, 1939, special election, voters considered 4 measures; one would have established a 2% income tax on businesses and professions. The measure was defeated 36,117 to 168,976.

The 1963 Legislative Assembly's tax program was referred and submitted to a vote of the people on July 17. The program, presented as several measures, was defeated by margins of 5 to 1.

In 1965, the Legislative Assembly passed another tax program. It was referred, and on September 21 was defeated by a vote of 37,886 to 99,269.

In 1971, a special election brought before voters the referred measure that appropriated funds for the operation of the Department of Accounts and Purchases. Voters upheld the appropriation on a 61,342 to 39,076 vote.

On April 28, 1972, voters considered a proposed new constitution and 4 alternate propositions submitted by the 1971-72 Constitutional Convention. The new constitution was defeated and as a result made votes on the 4 alternate propositions ineffective.

In 1973, the legislative apportionment plan was referred and a constitutional amendment requiring single-member senate and house districts initiated. Both measures considered in a special election on December 4 were defeated. The apportionment plan lost by a vote of 44,363 to 50,729 and the initiated constitutional amendment by a vote of 43,178 to 53,831.

In 1987, the people voted on 2 measures. The first dealt with the effective date of measures dealing with appropriations. The second provided for increases in state income tax with mandatory withholding. Both measures were approved on March 18, 1987.

On December 5, 1989, the people considered 8 measures. The first, a proposed constitutional amendment, dealt with the reorganization of state government. The other measures referred 1989 legislation, including an increase in motor fuel tax, an increase in state sales tax, an increase in state income tax, use of seatbelts, use of electronic video gaming devices, a retirement plan for legislators, and health care education in the schools. All measures were defeated by the voters.

Summary of Initiative and Referendum Activity in North Dakota

Since statehood in 1889 through the end of the 2022 election cycle, approximately 518 measures have been placed on the ballot for consideration by North Dakota's voters. These have included constitutional measures resulting from legislative action, initiated constitutional measures, initiated statutory measures, and referred measures.

While the greatest single majority (244 of 518) of measures voted upon have been those resulting from legislative action or the Constitutional Convention, over half (274, or 52 percent, of 518) of all measures voted upon represent initiated or referred measures that have required petitions to be circulated and signatures gathered. Of those, 145 have been initiated statutory measures and 53 have been initiated constitutional measures. Actions of the Legislative Assembly have been referred to the voters of North Dakota 76 times. The 518 measures that have been considered by North Dakota voters include the 4 alternate propositions from the 1972 special election to approve a new constitution.

It is also important to note that the power to initiate and refer laws was not adopted in North Dakota until 1914. Since 1914, 488 measures have been placed on the ballot for consideration by North Dakota's voters. This demonstrates that 55 percent (274 of 490) of all ballot measures voted upon since the adoption of the initiative and referendum process in 1914 represent ballot measures that have required petitions to be circulated and signatures gathered. These statistics strengthen the percentage of measures that have gained ballot access in North Dakota through the initiative and referendum process versus through legislative action.

These statistics support the fact that North Dakota's initiative and referendum laws generally have not created overwhelming hurdles or obstacles to the initiative process. Rather, the statistics demonstrate the citizens of North Dakota have taken advantage of the initiative and referendum process more than the state's Legislative Assembly has taken advantage of its authority to propose constitutional change through the ballot box.