



FAQ



FAQ on Initiatives and Referendums in Oregon

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Frequently Asked Questions:

Initiative and Referendum in Oregon

Who makes the law? In a representative democracy like the United States, citizens choose representatives to serve in the legislative branch of government and give those representatives the power to create, amend, or abolish the law.¹ Further, in a federalist system, two distinct groups of representatives make laws at the federal level and at the state or provincial level, respectively. Thus, in Oregon and in every other state, the people select who will represent them in the United States Congress—which has the power to create federal law—and in the state legislative assembly—which has the power to create state law.²

In Oregon, however, the people also have the power to create law, apart from selecting representatives for Congress and the Oregon Legislature. Indeed, most residents of Oregon can probably recall a time when they were asked to add their name to a list of voters in support of a proposed ballot measure. Signing a ballot petition is just one manifestation of the “Oregon System” of direct democracy, characterized by the initiative and referendum processes. This FAQ introduces the Oregon System, answers some basic questions about initiatives and referendums in Oregon, and provides some important context for city officials. The FAQ is not intended to be comprehensive or a substitute for legal advice. LOC members with further questions about initiative and referendum are encouraged to contact their city attorney or the Elections Division of the Oregon Secretary of State’s office.

1. What is an Initiative?

Initiative is the process by which registered voters can place on the ballot any issue that amends the Oregon Constitution, the Oregon Revised Statutes, a local charter or local ordinances. Essentially, initiative allows the people to create new law apart from the Legislature or a local governing body.

2. What is a Referendum?

Referendum is the process by which registered voters can attempt to reject a nonemergency act of the Legislature, or a local ordinance, by placing the act or ordinance on the ballot for approval or rejection. A referendum on a statewide bill may only be filed once a bill becomes an act. An

¹ In common law systems like England and the United States, the courts also have the power to create law through judicial precedent. Common lawmaking is beyond the scope of this FAQ. For more information on the common law tradition in America, please see Lawrence M. Friedman, *A HISTORY OF AMERICAN LAW* (3d ed 2005). A recent example of common lawmaking in Oregon is *Smith v. Providence Health & Services*, 361 Or 456 (2017), in which the Oregon Supreme Court recognized a new type of injury in medical malpractice cases.

² The United States Congress is a bicameral legislative body, divided between the Senate and the House of Representatives. Except for Nebraska, which has a unicameral, nonpartisan legislature, all state legislatures are bicameral.

“act” is a bill that has been passed by both houses of the Legislature and has either been signed into law by the governor, or the deadline for the governor to veto the bill has passed. A referendum for a local charter amendment or ordinance must comply with the procedures outlined in the local charter or code, and may vary between municipalities.

3. What is a Referral?

Referral is the process by which the Legislature or a local governing body places an act on the ballot for approval or rejection by the voters. The Legislature is required to refer any bill that amends the Oregon Constitution.

4. What Gives Oregon Voters the Right to Initiative and Referendum?

Article IV of the Oregon Constitution guarantees the voters of Oregon the right to initiative and referendum. Article IV, section 1(2)(a), states that “[t]he people reserve to themselves the initiative power, which is to propose laws and amendments to the Constitution and enact or reject them at an election independently of the Legislative Assembly.” Article IV, section 1(3)(a) states that “[t]he people reserve to themselves the referendum power, which is to approve or reject at an election any Act, or part thereof, of the Legislative Assembly that does not become effective earlier than 90 days after the end of the session at which the Act is passed.” Finally, Article IV, section 1(5) reserves initiative and referendum powers over all local, special and municipal legislation to local voters.

5. What Laws Govern Initiative and Referendum?

Apart from Article IV of the Oregon Constitution, chapter 250 of the Oregon Revised Statutes contains statewide laws governing initiative and referendum. In addition, local initiative and referendum may be governed by local charter or code.

6. Can a Referendum be Held on Any Act or Ordinance?

No. Only nonemergency bills and ordinances are subject to referendum.³ Nonemergency bills passed by the Legislature become effective on January 1 of the year following the passage of the bill. Nonemergency ordinances become effective according to the specifications of the local charter. Typically, a nonemergency ordinance becomes effective 30 days after it is passed by a city council.⁴

³ Article IV, section 1(3)(a) states that the people reserve the referendum power over any act of the Legislative Assembly “that does not become effective earlier than 90 days after the end of the session at which the Act is passed.” In other words, referendum only applies to nonemergency acts.

⁴ Note that the Oregon Constitution and the Oregon Revised Statutes place limits on the use of emergency acts and ordinances. For example, local governments may not use an emergency ordinance when authorizing revenue bonds under ORS 287A.150, declaring a blighted area and the need for an urban renewal agency, approving or substantially changing an urban renewal plan, or passing an ordinance that raises taxes or other revenue.

7. Are the Statewide and Local Initiative and Referendum Processes the Same?

No. Although the processes for statewide and local initiatives and referendums are similar, they are not quite identical. The following two questions address those processes in more detail.

8. How does the Statewide Initiative and Referendum Process Work?

- The statewide initiative process begins when a chief petitioner files a prospective petition with the Elections Division of the Oregon Secretary of State's Office. Once the prospective petition is approved, the chief petitioner must gather sponsorship signatures; 1,000 are required to begin the ballot title drafting process.
- After the Elections Division certifies that at least 1,000 sponsorship signatures have been gathered, the Oregon attorney general will draft a ballot title. Under state law, ballot titles must contain a caption of 15 words, a statement of 25 words describing the result if the petition is passed, a statement of 25 words describing the result if the petition is rejected, and a summary of 125 words describing the major effect of the petition. After considering comments on the draft ballot title, the attorney general will issue a certified ballot title. Any registered voter who submitted timely written comments on the draft ballot title may petition the Oregon Supreme Court to review the certified ballot title. The court may modify the ballot title, refer it to the attorney general for modification or approve the ballot title.
- Once the ballot title is finalized, the chief petitioner may begin to collect signatures to place the petition on the ballot. The chief petitioner must submit those signatures to the Elections Division for verification. Once the Elections Division verifies that enough valid signatures were collected, the petition will be qualified for the ballot and assigned a measure number. The number of signatures required to place an initiative on the ballot is a percentage of the number of votes cast for the governor at the most recent election where a governor was elected to a full term: constitutional amendments require a number of signatures that equal eight percent of the votes cast for governor, and new statutes require a number of signatures that equals six percent of the votes cast for governor.
- Once the petition is qualified for the ballot and assigned a measure number, the new measure will appear on the ballot at the next general election, held in November of every even-numbered year.
- The referendum process—by which the voters may place an act of the legislature on the ballot for approval or rejection—is very similar to the initiative process. The chief petitioner may only file a referendum petition once a bill becomes an act, usually after the governor signs the bill into law. The Elections Division will certify the prospective referendum petition and the attorney general will draft a ballot title. Once the ballot title is approved, the chief petitioner must gather enough signatures to place the referendum petition on the ballot. Four percent of the number of voters for governor in the last election are required to place a referendum petition on the ballot.

9. How Does the Local Initiative and Referendum Process Work?

The local initiative and referendum process is very similar to the state initiative and referendum process, except the local elections official is responsible for certifying that a petition complies with state and local law, the district attorney or city attorney is responsible for drafting the ballot title, and the circuit court has jurisdiction to hear ballot title appeals. For city initiative measures, the city elections official must file the initiated measure with the city's governing body at its next meeting after the petition has qualified to the ballot. The city governing body may adopt the initiative, reject it or take no action. The city governing body will then file the measure with the county elections official, along with [SEL 802](#), the Notice of Measure Election, after which the measure will go on the ballot.

10. Are There Any More Resources About the Statewide and Local Initiative and Referendum Processes?

Yes. The Elections Division of the Oregon Secretary of State's office has published two separate manuals on statewide and local initiatives and referendums.

- The State Initiative and Referendum Manual is available here:
<http://sos.oregon.gov/elections/Documents/stateIR.pdf>.
- The County, City, and District Initiative and Referendum Manual is available here:
<http://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf>
- Interested parties can contact the Elections Division in the following ways:

Public Service Building Suite 126
255 Capitol St. NE
Salem OR 97310
503-986-1518
Toll free 1-866-673-VOTE (1-866-673-8683)
Fax 503-373-7414
TTY 800-735-2900
elections.sos@oregon.gov
- Finally, the Elections Division publishes forms for use in the initiative and referendum process. Those forms are available on the following webpage:
<http://sos.oregon.gov/elections/Pages/electionforms.aspx>

12. Has Oregon Always had Initiative and Referendum?

No. The initiative and referendum processes were created as part of a wave of populist reforms in early 20th-century Oregon.

In 1892, James Sullivan published a book titled *Direct Legislation by the Citizenship Through the Initiative and Referendum*. In his treatise, Sullivan drew on Switzerland's positive experience with initiative and referendum to argue for direct legislation in the United States. The

arguments advanced in Sullivan's book greatly influenced William Simon U'Ren, a populist politician and political theorist in Oregon.

In 1897, U'Ren won a seat in the Oregon House of Representatives as a member of the People's Party. The People's Party advocated for a variety of changes to Oregon law, including initiative and referendum, home rule for Oregon cities, and a voter registration system. Once in the House, U'Ren fought to push through the initiative and referendum amendments to the Oregon Constitution.

After moving through two legislative sessions, Oregon voters resoundingly approved the new initiative and referendum amendment in 1902, marking the first amendment to the Oregon Constitution since 1859.⁵ In 1906, the voters approved another amendment that reserved initiative and referendum over local matters to local voters. The initiative and referendum provisions were subsequently amended in 1954 and 1968, and are now contained in Article IV, section 1, of the Oregon Constitution.

⁵ See OREGON BLUE BOOK at 363-64 (2017-2018 ed).