

State Constitutions and Constitutional Revision, 2000-2001

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The number of states engaged in amending and revising their constitutions in 2000-2001 was the lowest in 30 years. Legislative and constitutional initiatives were the only methods used to amend state constitutions during the biennium, and three states accounted for almost half of the proposed amendments. While some constitutional trends continued from the 1990s, there were also notable differences.

Introduction

In 2000-2001, as the 20th century ended and the 21st century began, the level of state constitutional activity continued to decline. The number of states engaged in amending and revising their constitutions was the lowest in 30 years. The use of the constitutional initiative remained relatively high, however, following usage records set in the 1990s. But there were differences from the past. The number of amendments to state Bills of Rights was the lowest in 30 years and none concerned criminal justice, which generally dominated the rights agenda in the 1990s. This development may represent a shift in public priorities or simply a temporary saturation factor, at least with respect to crime victims' rights. Another change was the failure to adopt any amendments that severely limit the capacity of state and local governments to levy taxes. As states grapple with revenue shortfalls, fiscal restrictions may no longer be viable. Also, legislative term limits and congressional term limits may have reached their nadir, unable to leap the hurdles of unconstitutionality and the absence of the constitutional initiative in 32 states. Another development of the biennium was the first national conference on state constitutions in several years. Sponsored by the Center for State Constitutional Studies with a grant from the Ford Foundation, it led to a new project to prepare a model state constitution. No comparable effort has been made since the revision of the National Municipal League's Model State Constitution, which was last revised in 1968.

General Overview: Use of Authorized Methods

As Table A shows, the number of constitutional changes in 2000-2001 by all methods was considerably lower than in the preceding biennia of the 1990s. The average in the 1990s was 245 proposals per biennium and 176 adoptions. In contrast, there were only 212 proposals and 154 adoptions in 2000-2001. The approval rate of over 70 percent was the same in both periods. Of particular interest is the fact that constitutional changes were proposed in only 40 states, the lowest number in 30 years. An indication of the low

levels of activity in most states was the fact that only three states – Alabama, Oregon and Texas – accounted for almost half of the proposals (96 of 212).

The only methods used to change constitutions in 2000-2001 were the legislative and the constitutional initiative. No constitutional convention of the traditional kind has been held since 1986, when the Rhode Island constitutional convention convened. The constitutional commission in Table A refers to the Florida Constitution Revision Commission, the only one empowered to propose amendments directly to the electorate. As required by the Florida constitution, two commissions were established in the 1990s, but none was authorized in 2000-2001.

(For information on the legislative initiative, constitutional initiative and convention methods, see Tables A, 1.2, 1.3, 1.4, and 1.6. For more information on the use of initiatives, see also M. Dane Waters' essay on state initiatives and referenda and the table titled "State Initiatives and Referenda, 2000 and 2001" in Chapter 6 and Rich Jones and Alan Rosenthal's essay on state legislatures in Chapter 3).

Legislative Proposal

The most common method for initiating constitutional amendments is proposal by the legislature, a method that is available in all the states. In every state but Delaware, the legislature refers the proposals to the voters for adoption. In 2000-2001, state legislatures referred 85 percent of the proposed amendments (180 of 212) and 91.5 percent of those adopted (141 of 154). The approval rate was 78.3 percent, which was similar to the average rate of approval during the 1990s. (See Table A.)

Constitutional Initiative

The constitutional initiative, the only other method used for amendments in 2000-2001, allows citizens to propose amendments by direct or indirect petition to the electorate. The constitutional initiative is authorized in 18 states, all but two of which (Massachusetts and Mississippi) have the direct initiative. The power of the initiative was exercised in only 10 of these states

CONSTITUTIONS

Table A
STATE CONSTITUTIONAL CHANGES BY METHOD OF INITIATION: 1994-95, 1996-97, 1998-99 and 2000-01

Method of installation	Number of states involved				Total proposals				Total adopted				Percentage adopted			
	1994-95	1996-97	1998-99	2000-01	1994-95	1996-97	1998-99	2000-01	1994-95	1996-97	1998-99	2000-01	1994-95	1996-97	1998-99	2000-01
All methods	43	42	46	40	233	233	296	212	168	178	229 (b)	154	70.3 (a)	76.3 (a)	77.2 (a)(b)	72.0 (a)
Legislative proposal	41	42	46	38	202	193	266	180	158	159	210 (b)	141	76.2 (a)	82.4 (a)	78.8 (a)(b)	78.0 (a)
Constitutional initiative	13	12	12	10	31	40	21	32	10	19	11	13	32.2	47.5	52.4	40.0 (a)
Constitutional convention	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Constitutional commission	...	...	1	...	...	...	9	...	...	...	8	...	...	...	88.9	...

Source: Janice May, University of Texas at Austin, March 2002.

Key:

... — Not applicable.

(a) — In calculating these percentages, the amendments adopted in Delaware (where

proposals are not submitted to the voters) are excluded.

(b) — One Alabama amendment is excluded from adoptions because the election results are in dispute.

during the biennium. This was the lowest number of states since 1990-1991. However, the number proposed (32) compares favorably with the average of 31 per biennium during the 1990s, as does the number passed (13 compared to an average of 14 per biennium during the 1990s.) The figures for 2000-2001 and the 1990s are large compared to those of previous years. More constitutional initiative measures were introduced and adopted in the 1990s than in any other decade since the method was authorized in 1902. The record of the most recent biennium suggests that the constitutional initiative is likely to retain its popularity in the future, even though it was used in fewer states than usual.

Also noteworthy is the fact that in Arizona and California, the courts removed initiative measures from the ballot, and in Oregon, the courts prohibited canvassing of the vote. The courts have also reined in the exercise of the initiative in other recent years and may be expected to do so in the future as high levels of initiative use continue.

(See Tables A, 1.3 and 1.6 for more on constitutional initiatives.)

Constitutional Convention

The constitutional convention is the traditional method for replacing or extensively revising a state constitution, but none has been held since 1986, except for a “convention” in Louisiana in 1992, where the legislature designated itself as a convention for a special session devoted exclusively to finance. To facilitate calling a convention, 14 states require a periodic vote on the question of a convention call. (See Table 1.4). Eight states mandate a vote on the question every 20 years; one state, every 16 years; four states, every 10 years; and one state, every nine years. In recent years these calls have been turned down regularly. Among the defeats was a referendum in New York in 1997. In 2000-2001, Iowa voters rejected the 20-year call.

In Rhode Island, however, the voters approved a non-binding referendum referred by Gov. Lincoln Almond to call a convention limited to one subject. Arising from a dispute over legislative powers of appointment, the convention was to “establish” that Rhode Island, in common with other states and the United States, “consists of separate and co-equal legislative, executive and judicial branches.” The controversy over separation of powers is historically one of long-standing in the state, where the legislature dominates. A 1999 advisory opinion of the Rhode Island Supreme Court added fuel to the fire by supporting legislative powers (*In Re Advisory Opinion, 732 A2d 55 [R.I. 1999]*). To date, no convention has been called.

The most promise of a convention happening in the near future comes from Alabama, where efforts for constitutional reform were well underway in the 1990s. Alabama Citizens for Constitutional Reform, a 1000-member citizens group, has been actively pushing for a convention. Gov. Don Siegelman has declared his strong support of a convention, and two Republican candidates for governor have pledged support for constitutional reform. Colleges and universities are holding courses on the Alabama constitution. In a special session in 2001, the state legislature referred a constitutional amendment to the voters to clarify that convention proposals must be ratified by the people.

(See Table 1.4 for more information on constitutional conventions.)

Constitutional Commissions

Constitutional commissions have played an important role in state constitutional change over the years. With the exception of Florida, they are advisory bodies established to assist the legislature or the governor through study and recommendations and may make preparations for a convention. Only in Florida is the commission independent and able to submit proposi-

tions directly to the electorate.

In 2000-2001 there was only one commission, the Utah Constitutional Revision Commission. This is the only permanent commission, having acquired that status in 1977. In the 1990s, there were commissions in seven states: New York, Florida, New Mexico, Nebraska, Utah, Oklahoma and Arkansas. That number was far lower than the peak reached in the 1960s, when 51 commissions were in place.

The 1997-1998 Florida Constitution Revision Commission was the most successful of the commissions during the 1990s. Described as a “mini-convention,” it reached out to the public by a variety of means. Its proposals revised all the articles and made some major substantive changes. The voters approved eight of the nine separate amendments. The Florida Commission originated with the 1968 Florida constitution, which requires a commission to be created every 20 years with an exception for the first one. In 1988, a second commission limited to budget and taxation topics was also established on a periodic basis – every 10 years after the first organization in 1992.

In 2000-2001, the Utah commission presented its annual reports to the legislature as required. Its major accomplishment was voter approval of its recommendations for revision of the local-government article in the 2000 election.

(See Table 1.5 for more information on constitutional commissions.)

Substantive Changes

No new constitution was on the ballot in 2000-2001,

as has been true since 1982, when a new constitution was ratified in Georgia. There was also no extensive revision comparable to the Florida experience in 1997-1998. However, there were proposals in Nebraska and New York to render the constitutions gender-neutral, which would affect the entire documents. The New York proposal was successful, but the proposed Nebraska amendment failed. Revision of the Arkansas constitution’s judicial article and the local-government article of Utah’s constitution were approved. In Arizona and Texas, editorial revision applicable to several articles and sections was accomplished.

An unusual development concerned civil rights. The number of amendments proposed to the state Bills of Rights was the lowest in 30 years. The absence of proposals on criminal justice was also significant. In the 1990s, measures on crime-related rights outnumbered other rights-related measures, and their purposes were frequently to reduce rights of persons accused of crime, increase the state’s role and add victims’ rights. Another difference from the 1990s was the lack of interest in legislative term limits, which were only on the Nebraska ballot. Congressional term limits disappeared altogether.

On the other hand, major changes were made to the articles concerning all three branches of government. In Arkansas, the judicial article was revised to provide for nonpartisan elections. In Nebraska, the joint-ticket method of selecting the governor and lieutenant governor was approved. In Kentucky, voters approved annual legislative sessions, and in Arizona, an independent citizens reapportionment commission was established.

Table B
SUBSTANTIVE CHANGES IN STATE CONSTITUTIONS: PROPOSED AND ADOPTED 1994-95, 1996-97, 1998-99 and 2000-01

Subject matter	Total proposed				Total adopted				Percentage adopted			
	1994-95	1996-97	1998-99	2000-01	1994-95	1996-97	1998-99	2000-01	1994-95	1996-97	1998-99	2000-01
Proposals of statewide applicability	199 (a)	194 (a)	250 (a)	162 (a)	141 (b)	146 (b)	188 (b)	114 (b)	68.8 (a)	75.2 (a)	74.8 (a)	70.3 (a)(e)
Bill of Rights	26	22	34	4	19	17	31	1	73	77.2	91.1	25.0
Suffrage & elections	9	13	7	6	6	12	7	4	66.6	92.3	100	66.6
Legislative branch	30	27	40	37	23	12	29	27	76.6	44.4	72.5	72.9
Executive branch	16	15	17	9	12	10	10	7	75	66.6	58.8	77.7
Judicial branch	22	15 (a)	19	7 (a)	19	17	16	8	77.2	93.3	84.2	100.0
Local government	9	7	15	9	7	5	10	6	77.7	71.4	66.6	66.6
Finance & taxation	49	41	61	38	30	31	46	25	61.2	75.6	75.4	65.5
State & local debt	5	9	6	5	2	8	4	5	40	88.8	66.6	100.0
State functions	17	21	24	24	11	17	14	17	52.9	80.9	58.3	70.8
Amendment & revision	6	4	3	3	4	3	3	0	66.6	75	100	0
General revision proposals	0	0	1	0	0	0	1	0	0	0	100	0
Miscellaneous proposals	10	20	23 (c)	20 (c)	8	14	17 (c)	14	80	70	77.2	70.0
Local amendments	34	39	46	50	27	32	41 (d)	40	79.4	82	91.1 (d)	80.0

Source: Janice May, University of Texas at Austin, March 2002.

Key:
(a) — Excludes Delaware where proposals are not submitted to voters.
(b) — Includes Delaware.

(c) — Includes amendments that contain substantial editorial revision.
(d) — Excludes one Alabama amendment in a legal dispute at the time.
(e) — Excludes one Oregon amendment not canvassed by court order.

CONSTITUTIONS

A rare event in local government was the approval in New Mexico of a proposal to allow Bernalillo County, in which Albuquerque is located, to become an urban county with full powers of self government and to merge with Albuquerque to form a new entity.

Among various policy amendments, voters in California and Michigan turned down school vouchers. Voters in Colorado and Nebraska approved measures legalizing marijuana for medical use, and in Nebraska and Nevada, measures passed defining marriage as a union between a man and a woman. The Nevada measure requires a second popular vote to become final. Both measures were on ballots of other states in the previous decade.

Table B offers an overview of constitutional change by articles common to the design of state constitutions. Local amendments that apply to only one political subdivision are excluded, unless they are of general interest. Alabama is the source of virtually all local amendments because of its unique constitutional requirements.

Typically, the finance article attracts the most amendments. This was true in 2000-2001 (38 amendments proposed and 25 adopted). In addition, many provisions of other articles, particularly the legislative articles, include fiscal subjects. It seems clear that raising and spending money are dominant concerns in state constitutional change. Like the finance article, the legislative article is also a frequent target of change. The lowest number of amendments were proposed to the amendment and revision articles, with three proposals and no adoptions. The Bill of Rights articles were next, with four proposals and one adoption. The highest rate of approval of ballot measures (100 percent) was of amendments to the articles on the judicial branch and on public debt. The overall approval rate of all amendments of statewide applicability was 70 percent, which is close to that of the average per biennium during the 1990s.

Bill of Rights, Suffrage and Elections

In 2000-2001, only four amendments were proposed to the state Bill of Rights articles and only one was adopted. These were the lowest numbers in 30 years. By contrast, in 1998-1999, 34 propositions were on the ballot and 31 were adopted, the most of any biennium in 30 years. The decade of the 1990s as a whole also set a similar record of proposals and adoptions compared to the 1980s and 1970s.

The absence of measures on criminal justice, which have been so common in the past, was also significant. In 1998-1999, proposed amendments concerning crime-related rights outnumbered the other rights pro-

posals. In 2000-2001, few amendments located in other articles bore on criminal justice. In Massachusetts, voters approved limiting the right of incarcerated felons to vote; in New Jersey, the legislature was authorized to disclose the identity of sex offenders. Also of relevance was an Oregon measure that required conviction of a crime before civil forfeiture proceedings. All of the above were approved.

One of the four measures relating to state Bill of Rights articles in 2000-2001 concerned free speech in Oregon, where another attempt to limit the scope of free-speech protection was defeated. The measure would have permitted regulation of the location of sexually oriented businesses through zoning. A second Oregon measure, also defeated, would have restricted the right to a jury trial by authorizing the legislature to limit the amount of damages that can be awarded in civil suits, which had previously been left for the jury to determine.

There were several measures on the ballots in 2000 and 2001 related to gender and marriage. Propositions adopted in Nebraska and Nevada defining marriage as a union between a man and a woman were representative of recent concerns about gay marriages. The Nevada amendment is not final until approved in a second election. In Alabama, a provision that prohibited interracial marriages was repealed. In Arizona and Wyoming, voters approved changes to remove the language "able-bodied males" from sections of the constitutions regarding the composition of the state militia. Among other provisions concerning rights were a right-to-work measure in Oklahoma and the right to hunt and fish in Virginia, both of which passed.

In 2000-2001, six propositions and four adoptions concerned changes to the suffrage and elections articles. This was only slightly lower than the average per biennium in the 1990s (8 proposals and 7 adoptions). These numbers do not include six of seven measures addressed to the constitutional initiative that sought to amend other articles but will be considered here as proposals related to elections.

The suffrage measures included the Massachusetts ballot proposal to limit the right of incarcerated felons to vote. Massachusetts is one of the only three states that allow felons to retain the right to vote while in jail or prison. Felons will no longer be able to vote for members of Congress or a selected list of state officers. Local offices were not mentioned. Maine voters rejected for the second time (the first in 1996) a measure to strike language prohibiting persons under guardianship for mental illness from voting. Although not a substantive change, Arizona voters and the Delaware legislature agreed to delete offensive language, e.g. "idiots,"

from the suffrage article. In Utah and Arizona, certain inoperative suffrage provisions were removed. A Wyoming measure was approved to reduce the number of military offices that are limited to qualified electors. A Texas amendment was passed to cancel uncontested elections to fill a legislative vacancy when there is only one declared candidate.

Seven measures applied to the use of initiatives and referenda. Only one of them extended the use of those methods. In South Dakota, the constitution was amended to allow local initiatives “to provide for the cooperation and organization of local government.” Voters in Oregon approved a measure to lengthen the period during which the secretary of state must verify signatures on state initiative and referendum petitions. In Nebraska, an editorial revision and definition of the power of the initiative were adopted. All other proposals failed, including an Oregon proposition that embraced an all-out attempt to prevent making it “harder” to use the initiative, unless the changes were initiated through the initiative process itself. The amendment also would have repealed all such measures adopted during the previous two years. The “harder to use” proposal would have forbidden another proposed Oregon amendment, which would have increased the percentage of votes necessary to propose an initiative measure. Two proposals were designed to make it difficult or impossible to regulate wildlife through initiatives. An Arizona measure would have required a two-thirds vote to adopt any initiative pertaining to wildlife. In Alaska, a proposed amendment would have prohibited all initiatives permitting, regulating or prohibiting the taking of wildlife.

The Three Branches

Amendments to the articles on the legislative, executive and judicial branches of government accounted for 53 of the statewide proposals and 42 of the amendments adopted in 2000 and 2001, or about one-third in each case. In 1998-1999, these numbers were much higher (76 proposed and 55 adopted), although the proportion of measures on the ballot relating to these articles compared to the total number of proposals of statewide applicability was about the same (30 percent). Overall, the average number of amendments proposed to these articles per biennium during the 1990s was high (67 proposals and 48 adoptions).

The Legislative Branch

The legislative article has always been the target of more proposals than the articles relating to the other two branches. One reason is that many policies – particularly fiscal policies – require legislative authority.

Another reason is that the initiative and referendum provisions reduce legislative authority. The number of proposals in 2000-2001 (37) matched the average number of proposals per biennium during the 1990s. The number adopted was somewhat higher in 2000-2001 (27 compared to 25). The approval rate of 73 percent was about the same.

There were very few proposals affecting the basic structure and procedures of state legislatures in 2000-2001. The most noteworthy was a voter-approved change in Kentucky from biennial regular sessions to annual sessions. A 30-day session was added to the odd-numbered year, not to extend beyond March 30, in addition to the session during the even-numbered year. Approval of revenue and appropriation bills during the new session requires a three-fifths vote. The Kentucky legislature had been meeting in the odd-numbered years only for organization sessions preceding the regular session.

There was only one legislative term limit proposal on the ballot in 2000-2001. In Nebraska, where two earlier term limits measures were declared unconstitutional by the state courts, a measure passed that prohibits any legislator from serving for four years after the expiration of two consecutive legislative terms. No congressional term limits were proposed as amendments during the biennium. Even though the U.S. Supreme Court ruled in 1995 that limiting congressional terms was beyond the power of state legislatures, many attempts to get around the decision were made in the 1990s. Presumably, proponents have given up insofar as state constitutional amendments are concerned, at least for the time being.

Not surprisingly, since 2000 was a federal census year, five amendments concerning apportionment were on the ballot during the biennium, the largest number for a single legislative issue. All of them passed. Two of the five amendments were designed to speed up the reapportionment process. A Massachusetts amendment did so by requiring reapportionment plans to become effective two years earlier than before, and a Colorado amendment required an earlier start to the process. In Hawaii and Pennsylvania, where only the Senate was affected, changes were made with respect to staggered terms. The Hawaii amendment also included editorial changes.

Of particular interest was an Arizona initiative that established a five-member, independent reapportionment commission to undertake the task of redistricting, rather than having the legislature do it. To encourage independence, members are nominated by the Commission on Appellate Court Appointments.

CONSTITUTIONS

To promote bipartisanship, four appointments are made by legislative leaders of the major parties, one each by the presiding officer of each house and one by the minority leader of each house. The other four members select the fifth member, who must not be a member of a party already represented on the commission. The five members then choose a chairman. The commission draws districts for the state legislative districts and congressional districts. Guidelines for redistricting include equally populated districts (required by law) and compact and contiguous districts. The League of Women Voters, Common Cause and the Arizona attorney general were among the amendment's sponsors. (See Ronald Weber's essay in Chapter 6 for more information on apportionment and redistricting.)

Several other amendments on the ballot concerned legislators and legislative powers. North Dakota voters approved new legislative authority to fill legislative vacancies, replacing the governor's power to call elections for that purpose. Once again, Oregon voters rejected a proposal to give to the legislature power to review administrative rules. A Nebraska amendment passed that will force legislators to resign when elected to another state or local office, except as provided by law. A Georgia amendment now requires the removal of legislators convicted of a felony. Voters rejected an attempt by the California legislature to rejoin the state retirement and pension system, from which legislators had been excluded by the adoption of the term limits amendment in 1990 (Proposition 140).

The Executive Branch

Fewer propositions were on the ballot in 2000-2001 to amend executive articles than during the average biennium of the past decade (nine proposed and seven adopted for a 78 percent approval rate, compared to 14.4 proposed and 10.6 approved for a 73 percent adoption rate). The only major substantive change was the approval in Nebraska of the joint-ticket method for selecting the governor and lieutenant governor. Gubernatorial candidates who win their parties' primaries are to select running mates for lieutenant governor in the general election. Voters will cast one vote for the two officers.

Executive officers and agencies were the subject of several amendments. North Dakota voters approved temporary two-year terms in 2004 for four elective executive officers (attorney general, secretary of state, agricultural commissioner and tax commissioner), so that in 2006, their four-year terms will begin in the off-presidential election year. North Dakota voters rejected

a call to abolish the office of state treasurer. Kentucky voters, on the other hand, eliminated the elective Railroad Commission. The Delaware legislature adopted a change in the residence requirement for the secretary of state. The officer must become a bona fide resident of the state six months after appointment, although the governor can grant an extension. Missouri voters rejected a change concerning compensation of statewide elected officials. Had it passed, the amendment would have prohibited compensation that exceeded certain proposals by the Citizens Commission on Compensation, and it would have ended the commission's authority over mileage and expenses.

Another proposition was obviously inspired by Florida's election problems in the 2000 presidential election. Texas voters approved a provision that requires the governor to call a special legislative session for the sole purpose of appointing presidential electors if the governor believes the state might otherwise lose its presidential electoral votes.

In Hawaii, an amendment was rejected that would have required the Hawaii Tax Review Commission to be appointed every ten years instead of every five years. In Georgia, three amendments passed that authorize the legislature to provide compensation to public employees who become permanently disabled or die in the line of duty. Law enforcement officers, firemen, highway personnel and public school teachers and administrators were all specifically mentioned.

The Judicial Branch

The number of amendments proposed to the judicial articles in 2000-2001 was less than half the number proposed during the average biennium of the 1990s (eight compared to 16) and the number of amendments adopted was not as high (eight compared to 13). However, the approval rate was 100 percent, compared to 84 percent during the previous decade.

A major development occurred in Arkansas, where the voters approved a substantial revision of the judicial article based on reforms that failed in previous efforts at state constitutional revision. One of the Arkansas provisions replaced the partisan election of judges with nonpartisan elections. New courts were established in three states: West Virginia, where the legislature was authorized to establish family courts for the first time; Washington, where new temporary judges (judges pro tempore) were created; and Delaware, where the position of senior judge was established, as was a new court officer, chief register in chancery.

A change was approved in the jurisdiction of the

Indiana Supreme Court. The amendment retains the provision that death-penalty sentences are appealed directly to the high court, but it deletes direct appeal of life-imprisonment sentences and imprisonment for more than 50 years.

Three provisions pertaining to judicial compensation, retirement and qualifications were adopted. In Nebraska, compensation changes will go into effect at the beginning of the full term of all judges. In Pennsylvania, the date of retirement is on December 31 of the year the judge reaches 70. In Georgia, an individual must have practiced law in the state for seven years instead of five years in order to qualify for the office of state-court judge.

In Texas, an amendment was approved to provide impetus for a new system of collecting court fees. Under the amendment, criminal- and civil-court fees can be invalidated if new procedures for collecting the fees are not observed.

Local Governments

The number of amendments proposed to local-government articles in 2000-2001 (nine) and the number of amendments adopted (six) were close to the average numbers proposed and adopted per biennium during the 1990s, as was the approval rate of 66.6 percent. Several local-government measures proposed to amend other articles will be considered in the following discussion.

The major development was the approval by the New Mexico electorate of an amendment to allow Bernalillo County, in which Albuquerque is located, to become an urban county with full powers of self-government and also to allow the county and city to merge into one entity. This kind of substantial local governmental reorganization is rare in recent state constitutional history. Bernalillo County is not required to merge with the city, but it is an option. Local voter approval is required through one election to establish the urban county and a second election to allow the merger. The proposition is self-executing; no legislative action is necessary. On the negative side to local-government reform, New Hampshire voters turned down a municipal home-rule provision.

A second important development was the substantial revision of the Utah constitution's local-government provisions approved by the voters in 2000.

Two amendments concerned state-local government relationships. In Michigan, a proposed amendment supported by the Michigan Municipal League would have required a two-thirds majority of the legislature to enact laws that "intervene or increase the scope of intervention" in local governments, except for

school districts. Described as "Let Local Votes Count," it was defeated. However, Oregon voters approved the retention of laws requiring the state to pay local costs of state mandates.

Two changes concerning county officers were defeated. New Mexico voters refused to repeal term limits for county officers, and Colorado voters declined to change the election of county surveyors to optional appointment. A proposed Oregon amendment was also defeated, which would have altered requirements for forming new counties by reducing the minimum area and population standards.

In other action, the Alabama constitution was amended to provide for the election of boards of education in larger municipalities (exceeding 125,000 people), subject to voter approval. An attempt to require voter participation in the growth plans of local governments was defeated in Colorado. The amendment would have required voters to vote on "growth area maps," among other provisions. And in Louisiana, an amendment allowing parishes to give donations for economic development was rejected.

Finance

Although numerous constitutional amendments to the finance articles were proposed and adopted in 2000-2001, the numbers were lower than those for the average two-year period during the 1990s, when an average of 53 proposals and 34 adoptions were recorded, compared to 38 proposals and 25 adoptions in 2000-2001. The approval rates were somewhat comparable, with an average of 64 percent for the 1990s and 66 percent in 2000-2001. The numbers are somewhat different for the public-debt articles. The average in the 1990s was six proposed with four adoptions; in 2000-2001, five amendments were proposed and all were adopted. Approval rates were high – 90 and 100 percent respectively.

A significant shift from the 1990s was the failure to adopt measures that severely restrict the collection of taxes and fees. Voters were faced with such propositions in three states, but unlike in the past, none were adopted. The most novel of these was a Colorado measure, which might be called "the son of TABOR" (the Tax Payers Bill of Rights, adopted in 1992). It would have cut a family's property, income, vehicle and utility taxes by \$25 the first year, \$50 the second and so on, until the tax was eliminated or the services financed by the taxes were funded by other means. Taxes could be increased upon voter approval. It was estimated that by 2003, state and local governments would have lost \$1.3 billion. An Oregon ballot measure would have mandated a popular vote on taxes and fees before they could be

CONSTITUTIONS

enacted, with some exceptions. It also would have required a refund of certain past collections. In California, a somewhat less drastic measure would have defined regulatory fees used to redress certain health, environmental and other problems as taxes. Designating the fees as taxes would make it more difficult to impose them. For example, state taxes generally require a two-thirds vote of the state legislature, rather than a majority vote for fees. Opponents called the proposition the "Polluter Protection Act." Also of interest was a measure removed from the ballot by the Arizona Supreme Court. It would have prohibited state and local income taxes. The Arizona state income tax provides about 40 percent of state-government revenues. The proposal also included a "voluntary federal income elimination pledge" to be filed with the secretary of state, if desired, by candidates for federal office, including candidates for president.

As was true of past decades, the property tax was the target of most tax measures. A total of 14 propositions appeared on the ballot in 10 states. A common approach was to provide exemptions from the tax, ranging from cemeteries (Arizona) to green coffee and raw cocoa (Texas). Another approach was to freeze or otherwise reduce the valuation or assessment of property for tax purposes. A third method was to classify property to allow it to be taxed differently from other types of property. All but two measures were adopted (Georgia and Kentucky), both of which used the classification method. Oklahoma was the only state to propose an increase in the property tax, which was rejected. It would have allowed the more populated counties (over 500,000) to increase the property tax to support county health departments. South Carolina was the only state with a proposed amendment to allow counties to replace by local vote all or a portion of the property tax with the sales or use tax on motor vehicles. The amendment passed.

A few ballot measures concerned taxes other than the property tax. In South Dakota, voters terminated the inheritance tax. Alabama voters approved an increase in the state corporate-income tax rate (from 5 percent to 6.5 percent) and changed the tax base from net income to taxable income. Louisiana voters refused to exchange exemptions from the sales tax, including exemptions for food, for changes in the income tax. Only one of two measures dedicating taxes to a specific purpose passed. New Jersey voters approved dedication of the petroleum product gross-receipts tax and a percentage of the sales tax for the transportation system, but Oregon voters declined to use fuel taxes and vehicle fees for highway policing.

A measure passed in Oregon to authorize by the

constitution "revenue rebates" to taxpayers. When revenue from the General Revenue Fund exceeds estimated revenues, the "excess" is returned to taxpayers. The rebates were previously authorized by statute.

Only one ballot measure in 2000-2001 sought to limit overall state spending. A measure rejected in Oregon would have limited state spending to 15 percent of state personal income during the preceding two years.

Many state constitutional amendments on the ballot during the biennium authorized the issuance of new or additional bonds. In Texas alone, five bond proposals were on the ballot and all passed. Among them was one that will assist the "colonias" (underdeveloped rural areas along the Texas-Mexico border) and another authorized bonds for a new "Mobility Fund" supported by the governor to improve highways and roads. The use of bonds for highways in Texas was a departure from the traditional pay-as-you-go policy. Bonds were approved in Ohio to protect the environment and in Arkansas to promote development projects. In Idaho, a bond bank was created to buy municipal bonds and to make loans for municipal projects. In Oregon and Texas, changes in existing bonds for veterans programs were approved.

In California, two propositions would have changed the percentage of votes necessary to approve school bonds. A proposal reducing the percentage from two-thirds to a majority failed, but a measure reducing it to 55 percent passed. Its passage was regarded as the first retreat from Proposition 13, the property-tax reduction initiative of 1978.

At least nine new constitutional funds were established by constitutional amendment during the biennium. Montana, Oklahoma and Utah used Tobacco Litigation Settlement moneys for funds. In Utah, the tobacco money was one of several funds deposited in a new Permanent State Trust Fund. Purposes of funds in other states included assisting municipal governments with capital projects (Alabama), health care and education (South Dakota) and highways (Texas). A budget reserve fund was created in Missouri, and a lottery proceeds fund was created in Virginia.

With respect to administration of funds, Alaska voters refused to adopt a constitutional amendment to require the Alaska Permanent Fund to be managed by a public corporation, preferring to leave this to the statutes. In Washington, a proposal was approved to allow the legislature to exercise its discretion in the investment of funds held in trust for persons with developmental disabilities, but the same discretion was not approved for state funds under the state investment board's authority.

Functions, Amendments and Revision

Twenty-four ballot propositions in 2000-2001 concerned articles on governmental functions or policies, one less than the average per biennium during the 1990s. But the 17 adoptions were more than the 1990s average of 14 per biennium. The 2000-2001 adoption rate of 71 percent also surpassed the 59 percent rate of the 1990s.

Propositions concerning education accounted for more than half of the policy measures. The two school-voucher amendments were of particular interest, one in California and the other in Michigan. Both were defeated by wide margins (approximately 70 percent opposed). This was the second voucher initiative defeated in California. Under the measure, students could have received a voucher worth \$4,000 to use toward tuition at religious as well as other private schools. The proposed amendment also addressed public education by requiring the level of spending per pupil to be raised to the national average. The Michigan counterpart would have deleted the current constitutional language that prohibits “indirect support” of children attending private schools. The amount of the voucher was to be determined by calculations based on one-half of the state average of per pupil revenues. Two other provisions included a guaranteed level of spending for schools and testing of public school teachers and teachers in private schools that redeem vouchers. As in California, children attending religious schools would be eligible for vouchers.

In two states, voters approved funding increases for public schools. In Colorado, total state funding is to increase at least by the rate of inflation plus 1 percent for the next 10 years. In Oregon, a measure passed requiring the legislature to allot enough money to meet public education “quality goals” that it has established and to provide certain grants to poor districts. Oregon voters rejected a measure that would have based teacher pay on “student learning” and would have eliminated automatic pay raises and seniority in determining teacher retention. Other public-school proposals pertained mostly to school taxes and school lands.

Three propositions directed at higher education passed. Two dealt with higher-education boards. In North Dakota, a provision regarding the membership of the State Board of Higher Education was revised to allow two members with degrees from the same institution to serve on the board, instead of one. In Alabama, extensive modification of the Board of Trustees of Auburn University was proposed, including a change in term and membership. In Hawaii, where the University of Hawaii is self-governing, an amendment stated that the legislature is to determine what is

an internal matter under the control of the university and what is a statewide matter over which the legislature has authority.

During the biennium, Arizona voters approved a significant amendment to the corporations article by altering the membership and term of office of the Corporation Commission, an important administrative agency that regulates utilities. The number of members was increased from three to five, and the term of office was extended from one six-year term to two consecutive four-year terms. A second amendment, which failed, would have reduced the powers of the Corporation Commission by deregulating local telephone rates in localities where competition was present.

Other business and economic amendments included a proposition adopted in Oklahoma to allow wineries to sell directly to retail package stores and restaurants. Nevada voters refused to make an exception to the constitutional prohibition of gifts and loans to corporations to allow investment of state money to stimulate economic development. Louisiana voters rejected an amendment to restructure the Department of Economic Development as a quasi-public corporation. In Kansas, voters accepted an amendment to allow state retirement and pension plans to hold stock in banking institutions.

Several propositions concerned conservation and hunting and fishing. In Arizona, voters defeated a measure that permitted the designation of 3 percent of state trust lands for conservation. Supported by Gov. Jane Hull, it was described as the cornerstone of a growth-management plan called “Growing Smarter.” North Dakota and Virginia voters approved protection of hunting and fishing. The North Dakota amendment referred to “the state heritage that should be forever preserved and managed for the public good.” The Virginia amendment was added to the conservation article. Wildlife management was the subject of amendments in Arizona and Alaska. Both were defeated.

Articles on the amendment and revision of state constitutions are typically among those attracting few amendments. Averages for the preceding decade were three proposals and two adoptions per biennium. In 2000-2001, there were three proposals and no adoptions. An Alaskan measure was an attempt to clarify the difference between an amendment, which the legislature may propose, and a revision, which only a constitutional convention is authorized to make. In contrast to a revision, an amendment would be limited to one subject, although the subject could affect more than one constitutional provision. The proposal also would have prohibited the courts from altering the language of an amendment or revision. (There was some criticism that the courts had deleted certain words from

CONSTITUTIONS

amendments.) A Nebraska proposal would have required two separate votes by the electorate to amend the constitution. No other state has this requirement for amendments referred by the legislature. In Arizona, the proposed change was to require constitutional initiatives concerning wildlife to be adopted by a two-thirds vote rather a simple majority, the present requirement. These proposals, none of which was adopted, could have made a difference in the states involved, particularly in Nebraska.

Two Oregon amendments mentioned previously would have made changes in the amendment process as it pertains to the initiative. However, both of them failed. One would have made it more difficult to qualify an initiative for proposed amendments; the other was an attempt to preserve the initiative process by prohibiting efforts to make it harder for citizens to use.

Although in 2000-2001 there was no general revision of state constitutions (defined as a new or extensively revised constitution), voters in Nebraska and New York had the opportunity to vote on revising the entire constitution to make it gender-neutral. The measure passed in New York but was defeated in Nebraska. A proposal that passed in Arizona revised five articles and seven sections to modernize language dealing with suffrage and other topics and to remove inoperative provisions. The revision included a change in the definition of the militia, exchanging the words "able-bodied male citizens" with "capable citizens," much to the consternation of some voters who thought it might even repeal the right to bear arms. In Texas, a second successful effort was made to eliminate obsolete, archaic and redundant provisions of the lengthy charter. Over 30 sections were affected. Voters approved a more ambitious revision in 1999. The revision of the Utah local-government article spilled over to other sections and articles and constituted a reasonably extensive revision, which was mostly editorial but was also substantive. More limited editorial changes were made in single articles such as the local-government article in Colorado and the initiative provision in Nebraska.

Miscellaneous

Most state charters contain a miscellaneous or general-provisions article for propositions that apply to more than one article or do not fit elsewhere. As already noted, there were several editorial revisions that either extended to the entire constitution or affected a number of sections and articles. These do not qualify as "general revisions." For convenience, they will be counted under the "miscellaneous" articles in Table B.

Excluding editorial and gender revisions, the num-

ber of amendments to the miscellaneous articles compares favorably with activity in the preceding biennia. The average per biennium in the 1990s was 18 proposals and 13 adoptions; the numbers in 2000-2001 were 20 and 14, respectively.

The largest single group of measures pertained to lotteries and other forms of gaming. Of seven proposals, all but one passed. The lone dissenting vote was in Arkansas, where the electorate defeated a proposal for a state-operated lottery to be run by the Casino Public Corporation. In contrast, South Carolina voters approved an amendment to allow a state lottery by rewriting the article that had banned it. Net revenues from the state lottery, the only one permitted by the amendment, are to be deposited in a special account to be spent only on education. Additionally, bingo is not defined as a lottery when it is operated by charitable, religious or fraternal organizations.

In South Dakota, the electorate showed its support for lotteries by turning down a proposal to abolish the video lottery. In Virginia, which has a lottery, the voters approved reserving all the net proceeds for education. In Missouri, a minor change applied to the eligibility of a member of a group to participate in the management of bingo games.

A California gaming proposal generated considerable controversy but was adopted. It allows Indian tribes to run casinos, provided the necessary compacts are approved. (Compacts negotiated by the governor with the tribes and approved by the legislature were in place before the 2000 election.) Permission to engage in casino operations was a much sought after goal of tribes, but it met with resistance. One argument was that it would turn California into "Nevada West." Voters also approved a second California amendment that allows various charitable groups to conduct raffles as a funding mechanism.

There were a variety of other propositions on the 2000-2001 ballots in addition to those already mentioned. An amendment in Florida, which passed, directed the legislature, the governor and the cabinet to develop a high-speed transportation system. In California, private engineers won the right to participate in public-works projects, primarily highway construction. A commission to provide quality home care for the elderly and disabled was approved in Oregon. In Texas, active and retired schoolteachers and retired school administrators may now serve for pay on local government boards. Also in Texas, homestead laws applying to manufactured homes passed. Oklahoma voters adopted a right-to-work law. And in Oregon, two political amendments were defeated: one prohibiting payroll deductions for political purposes without

specific authorization and another using public resources for political purposes.

Notes

The premier source of information on state constitutions is the Center for State Constitutional Studies at Rutgers University in Camden, New Jersey. An interdisciplinary institute, it seeks to initiate, sponsor and conduct research and educational programs on American state constitutions and on subnational constitutions of federal systems of other nations. In May 2000, the center sponsored a national conference on "The State of the State Constitution," with the support of a major grant from the Ford Foundation. Arising from the conference is a new project, "State Constitutions for the 21st Century," also supported by the Ford Foundation. Its major purpose is to provide guidelines for the revision of state constitutions to enable them to provide the framework for effective and responsive state government in the new century. Experts on various state constitutional subjects have been enlisted to prepare model articles for a model constitution, on the order of the now outdated Model State Constitution prepared by the National Municipal League in the 20th century. See the center's Website at <http://www-camlaw.rutgers.edu/statecon/> for more details and for information about the center's various publications.

For more information on state constitutions in addition to the sources listed below, see: the annual issues on state constitutions of the *Rutgers Law Journal*, the *Temple Law Review* and the *Albany Law Review*; and the National Association of Attorneys General's *State Constitutional Law Bulletin* (available at <http://www.naag.org/publications/Bulletin.cfm>). For more comprehensive bibliographies on state constitutions and constitutional law, see *The Book of the States, 1994-1995*, pp. 15-18 and the 2000 edition of the annual issue on state constitutions in the *Rutgers Law Journal*.

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