



SEN. ROGER J. KATZ, SENATE CHAIR  
REP. ANNE-MARIE MASTRACCIO, HOUSE CHAIR

MEMBERS:

SEN. NATHAN L. LIBBY  
SEN. PAUL T. DAVIS, SR.  
SEN. BILL DIAMOND  
SEN. GEOFFREY M. GRATWICK  
SEN. THOMAS B. SAVIELLO  
REP. JEFFREY K. PIERCE  
REP. JENNIFER L. DECHANT  
REP. MATTHEW A. HARRINGTON  
REP. DEANE RYKERSON  
REP. PAULA G. SUTTON

**MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE**

**MEETING SUMMARY  
January 26, 2018**

**CALL TO ORDER**

The Chair, Rep. Mastraccio, called the Government Oversight Committee to order at 9:05 a.m. in the Burton Cross Building.

**ATTENDANCE**

Senators: Sen. Gratwick  
Joining the meeting in progress: Sen. Davis and Sen. Libby  
Absent: Sen. Katz, Sen. Diamond and Sen. Saviello

Representatives: Rep. Mastraccio, Rep. Pierce, Rep. DeChant, Rep. Harrington,  
Rep. Rykerson and Rep. Sutton

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA  
Kari Hojara, Analyst, OPEGA  
Ariel Ricci, Analyst, OPEGA  
Etta Connors, Adm. Secretary, OPEGA/GOC Clerk

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

The members of the Government Oversight Committee introduced themselves.

**SUMMARY OF THE JANUARY 12, 2018 GOC MEETING**

The Summary of the January 12, 2018 meeting was accepted as written.

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## NEW BUSINESS

- **OPEGA's Proposed Project Direction for the Review of Maine Citizen-Initiatives Process**

Director Ashcroft summarized the Proposed Project Direction for the Review of Maine Citizen-Initiatives Process. (A copy of the Project Direction is attached to the Meeting Summary.)

Rep. Pierce said the citizen initiative process came about because legislators were perceived as being controlled by special interests and the GOC is looking at the Citizen Initiative Process because now people perceive that special interests are using the process to control the Legislature.

Sen. Gratwick asked if one could review the constitutionality of signature gathering and the paying of money. His understanding is that it is unconstitutional to restrict in any way money that is paid to signature gatherers. Director Ashcroft could not recall if it was in the constitution or was a statutory piece, but it is not allowed to pay an individual for his/her signature but there is no limitation of payment to the circulators, the people who are gathering the signatures. Sen. Gratwick asked if there was any current law that could impact the payment to circulators, or any US law that prevents you from restricting the amount of money you pay circulators. Director Ashcroft did not think there was. Sen. Gratwick said if the Legislature wished to restrict payment it would require a statute or constitutional amendment. The Director agreed. He asked if other states had restrictions on how much signature gatherers can be paid. She said OPEGA has not yet done any research on what others states are doing with their initiative processes.

Rep. Sutton was interested in understanding how decisions get made, and who makes them, on whether a citizen initiated bill is referred to a committee and whether a public hearing is held.

Director Ashcroft said once the initiative qualifies for the ballot it gets turned into an LD like any bill, and works its way through the process. Rep. Sutton said she never attended, or recalled there being, a public hearing on the minimum wage or Medicaid expansion. Rep. Mastraccio recalled the public hearings regarding the bills being held in the 126<sup>th</sup> Legislature. Director Ashcroft said OPEGA's understanding is that it is the committee's choice of whether or not to hold a public hearing on a bill that has been referred to it. The committee does not have to hold a public hearing on any bill, but it is the tradition in Maine to hold a public hearing on bills that come before committees.

Rep. Sutton said it was her recollection that the Legislature had a public hearing when it was a regular bill but not for when it was a referendum. She would like more information and clarity on that and on who determines whether it goes to a committee or not.

Rep. Mastraccio said if Rep. Sutton is asking about specific referendum instances that happened in 2017 that would be easy to find out online. She thinks the representative's concerns will be captured in OPEGA's review.

Sen. Libby said if you go back twenty years on all the referendums where organizations have brought the required number of signatures, some of those initiatives have had a public hearing and some have not. It is his understanding that it is the Presiding Officers, through the chairs of that committee, who make that decision.

Rep. Sutton said that is what she needs clarification on. Where is it stated that the Presiding Officers have that authority. Sen. Libby believed the authority is in the Legislature's Joint Rules.

Rep. Mastraccio asked if when OPEGA was doing their research on the citizen initiative process if they will be looking at the various initiatives and how they come through the system. Director Ashcroft suggested circling back to this issue when the GOC gets to the proposed questions portion of the Project Direction to make sure where it would be captured.

Rep. Rykerson asked for the differences between the direct initiative and the people's veto. Director Ashcroft said the direct initiative is a lot more involved because it is actually seeking to establish new law and most of what OPEGA has lined out in the Project Direction is related to the direct initiative. The people's veto is looking to delete or get rid of a law that the Legislature has passed. Constitutionally both initiatives are allowed and are considered citizen initiative processes.

Sen. Libby said there is another, more common, scenario for the path an initiative takes through the Legislature. The more common scenario is the Legislature takes the bill before them and indefinitely postpones it, whether there is a public hearing on not. The Legislature kills that bill and that allows the referendum election to proceed. The Legislature says they are not going to take action and are going to let the people decide. That is the more common route for initiatives. Director Ashcroft acknowledged that OPEGA had missed describing that scenario in the Project Direction statement.

Rep. Sutton asked if the Governor has the right to veto a referendum that passes at the polls. Director Ashcroft said from what OPEGA has reviewed to date the Governor does not have any right to veto something that has passed at the polls. If it is a bill that the Legislature chose to enact without change, the Governor can veto that. If the veto is overridden, the law still becomes enacted. If the veto is not overridden, then the measure goes to the polls to be voted on.

Rep. Sutton clarified that the Governor has no authority to veto something that has been passed at the polls. Director Ashcroft said that was correct. Rep. Sutton said she had done some research, but it was not clear to her where it says the Governor does not have that authority. Director Ashcroft said Section 19 of Article IV says "the veto power of the Governor shall not extend to any measure approved by vote of the people and any measure initiated by the people and passed by the Legislature without change if vetoed by the Governor and the veto is sustained shall be referred to the people at the next election."

Sen. Gratwick said it appears that the party out of power wants to have initiatives to try to re-address some of the problems they see. He asked if there was any data or any breakdown on that information. Director Ashcroft did not know. OPEGA is going to be proposing looking at trends, activity and characteristics of what has occurred with the initiatives over time. Some of those breakdowns might go to Sen. Gratwick's question, but she had not planned for OPEGA to be parsing out what political party was behind any particular initiative. Sen. Gratwick said in the larger context it seemed to him the citizen initiatives are trying to fill in a blank where a group of citizens feel they have not been adequately acknowledged. Rep. Mastraccio thinks Sen. Gratwick's question will get sufficiently covered in the proposed scope questions.

Sen. Libby asked if it would be too much trouble for OPEGA to go back to the beginning, noting that OPEGA was suggesting reviewing the last ten years. Director Ashcroft said OPEGA did look at the fact that there were sixty-nine direct initiatives and what might be involved in terms of having to go back and look at the legislative history for each. That seemed resource intensive so OPEGA picked ten years as more doable and also a time frame that would be within the memory of folks who are currently here in the Legislature. OPEGA is open to going back more years if that is the pleasure of the Committee.

Rep. Pierce suggested starting the review at the year 1999-2000 because in looking at OPEGA's chart in the Project Direction statement that is when you see the big spikes in the number of citizen initiatives on the ballots.

Rep. Rykerson asked in which of the five proposed questions would OPEGA be analyzing the amount of money spent on the referendums and whether the GOC could get a spreadsheet going back to 2000 of how much money was spent on the initiatives that both passed and did not. Director Ashcroft said OPEGA is expecting to cover that as a break out under question 1.

Rep. Mastraccio said if the GOC asked OPEGA to review back to 2000 how much more time did the Director anticipate it taking. She thought it might be more valid to go back further if we are going to be making assumptions and conclusions that will be used to inform any legislation that is done in the future. Director

Ashcroft said if the Committee wants to go back farther then she suggested going back twenty years, to 1998, and that would capture some of the up and down periods in the initiative activity. Rep. Mastraccio also thought the increasing amount of money spent will be an interesting statistic to look at.

Rep. Sutton said she was interested in the funding and is hoping the GOC is going to get a breakdown on in-state versus out-of-state. Director Ashcroft said OPEGA is planning on captioning that as well.

Sen. Libby said he can pose a question to the Law Library and they gather the data to answer his question and asked if OPEGA had the ability to coordinate with the Law Library. Director Ashcroft said OPEGA receives a lot of information from the Law Library and appreciates that they are always helpful.

Rep. Mastraccio asked how long the Maine Ethics Commission has been in existence because she was interested in knowing at what point there was a record of money spent on initiatives. Director Ashcroft said OPEGA asked the Maine Ethics Commission how far back their records went, but she did not have that information with her and could not recall. If OPEGA cannot get back to the twenty years, they will get as far back as they can.

Director Ashcroft noted that the years in question 3 changed from ten to twenty. She also noted there was interest in using a 20 year period for some of the trends and breakdowns under question 1 that the GOC has an interest in looking at.

Sen. Gratwick thought it would be helpful to have a review of the Maine Statutes, Maine Constitution, US Constitution, etc. in regards to the major issues around financing, i.e. money from in-state versus out-of-state, where it comes from and then how that money is used. He has general, but not specific, knowledge of what they do so he would be interested in having that as background. Director Ashcroft said OPEGA is intending to analyze funding information under question 1 along with a number of other things they think would be of interest to the Committee. She wondered if a separate question should be added for funding so that the GOC is clear and comfortable it will be looked at or whether the Committee was okay with her promise that OPEGA does intend to do that work under question 1. Sen. Gratwick said the Director's promise was good enough for him.

Director Ashcroft said Rep. Pierce has proposed adding a scope question to those OPEGA had suggested.

Rep. Pierce said there was an area that was unclear to him and he proposed adding the following question to the Project Direction: Does the practice of using the referendum process to raise revenues or appropriate taxpayer dollars violate the Maine Constitution?

Director Ashcroft asked Rep. Pierce if what he wanted to know was whether there are any prohibitions in the constitution that would keep citizens from proposing an initiative that would raise additional state revenues or would direct how taxes should be spent. Rep. Pierce said yes and gave the example of raising revenues with a 3% tax on citizens making over \$200,000. That is a direct tax proposed by the citizens' initiative and he asked if that was constitutional for them to propose taxing their neighbors. Another example is appropriating tax dollars through the Medicaid expansion that was part of a citizen initiative. He did not know if there was a prohibition or if there is a gray area there. Director Ashcroft said from OPEGA's perspective she thinks they can already answer that, but for a definitive answer, she thinks it would be a question for the Attorney General's Office. OPEGA does not see anything in the Constitution that puts any limitations whatsoever on what the subject matter might be for a citizen initiative. She thinks the answer to Rep. Pierce's question, as far as OPEGA knows at this time, is no. As she mentioned when talking about the process, there was a provision added to the constitution that allowed for a delay in effective date for items that needed funding beyond what was appropriated. It seems to imagine that citizens might put forward things that require money and if they have not provided for a revenue source in that same initiative, then the Legislature is expected to come up with the funding. Rep. Pierce said he did read that, but he did not see where it said appropriate a tax and that is the

3% surcharge on people earning over \$200,000 that was proposed in the last referendum question. It does not say anything about initiating a tax. Director Ashcroft said there is nothing that limits what the citizen might propose so it would seem taxes and revenues are within the realm.

Rep. Mastraccio said the Committee can send a letter to the Attorney General's Office asking for a response to Rep. Pierce's question because the GOC is looking at the referendum process. Director Ashcroft will send a request to the Attorney General's Office.

Rep. Sutton had concerns about advising petitioners of certain things. She read the mechanism by which the Revisor's Office and Secretary of State work with the petitioner. They are not obligated to take any advice, they are simply advised that it may be unconstitutional and one area she has seen issues with is regarding how the question appears on the ballot. She understands that the Secretary of State does hold a public comment period taking input on how the question is specifically laid out but, in the end, it is the Secretary's final decision of how that question reads. In the case of the minimum wage referendum last year, it was a complex question and she would like to have the process of how the established ballot question is looked at and have OPEGA recommend an alternative. As she saw it, the minimum wage question should have been at least three different questions – (a) do you want to raise the minimum wage; (b) do you want to eliminate the tip credit and (c) do you want to do indexing. The Secretary of State is supposed to advise the petitioners, but since they are not obligated to take the Secretary's advice, it does seem to lead to a lot of problems and she was not sure that was anything OPEGA could find a way to improve on in their recommendations.

Rep. Mastraccio said OPEGA is the independent group that is conducting the review process. The GOC will receive their report and will review it. She feels OPEGA will investigate the entire process and make recommendations if they think there are places where there needs to be changes. She said all the Committee is doing now is looking at the scope and she believes Rep. Sutton's question is going to be encompassed in the scope. OPEGA will be looking at the whole process, and Rep. Sutton's concern may be a piece that they will recommend changes to. Rep. Sutton noted that she was just pointing that matter out. Director Ashcroft said OPEGA will take note of Rep. Sutton's concern. If any other members have concerns that are specific things that they have noted as process problems, please send her an email. She will not make any promises about what OPEGA may or may not do with that, but the Office is always open to that input.

**Motion:** That the Government Oversight Committee approves OPEGA's Recommendation for Project Direction for the Citizen Initiative Process Review with amendment to change OPEGA reviewing the last ten years in initiatives in proposed Question #3 to twenty years. (Motion by Rep. Pierce, second by Sen. Gratwick. Motion passed 12-0.) (Sen. Katz, Sen. Diamond and Sen. Saviello voted on the motion in the allowed time frame in accordance with the GOC's Rules.)

## UNFINISHED BUSINESS

- **Continued Discussion and Annual Approval of the Classifications and Review Schedule for Tax Expenditures as Required by 3 MRSA § 998-3**

Director Ashcroft reported that OPEGA does not have further input from either the Taxation Committee or Maine Revenue Services with regard to the questions OPEGA sent them that would allow her to update the GOC in any way toward the next step of getting approval on the tax expenditure reviews classifications and schedule. This item will be carried over to the next meeting and hopefully will have the information needed by that time.

- **Briefing on OPEGA Follow-Up on Recommendations in the Children's Licensing and Investigation Services Report**

Director Ashcroft said OPEGA continues to follow-up on recommendations they have reported to see whether action has been taken on them. Under OPEGA's process for follow-up, they continue to track

recommendations for a two year period after the report has been issued unless the GOC or OPEGA determines they need to follow-up for a longer period than that.

OPEGA's specific follow-up on the Children's Licensing and Investigation Services Report will end in March 2019. OPEGA has been in contact with DHHS and they have provided a status update for all of the recommendations that were made in the Report. DHHS has also provided documentary evidence of the actions that they have completed. Director Ashcroft said based on this OPEGA considers four of the five recommendations made in the Report to be complete and implemented and, therefore, do not require any further follow-up. She said OPEGA appreciates DHHS being diligent about following through on the planned actions that they had committed to when the Report was released.

Director Ashcroft said Recommendation 3 in the Children's Licensing and Investigation Services Report is to evaluate a replacement system for MACWIS, which is the electronic system DHHS is using for documenting their investigations. MACWIS is clunky and not user friendly for folks having to do the work. OPEGA's observation was that they should evaluate a replacement for that system. DHHS is in the process of doing that but they do not have an expected completion date. Director Ashcroft noted that considering new systems always requires a lot of effort to line out exactly what is needed in a new system and resource availability can be an issue. OPEGA will continue to monitor through March 2019 to see what DHHS makes for progress on Recommendation 3. In the meantime, DHHS did let OPEGA know they are of the opinion, and OPEGA would agree, that even though the system is clunky and not very user friendly it does not in any way, shape or form represent a danger to the safety and welfare of children. DHHS is managing to do the work that they need to do with the system they have.

Sen. Gratwick asked if Maine has a children's ombudsman that helps to bring issues into focus. Director Ashcroft said OPEGA worked with an ombudsman in the past on a couple of reviews. She did not know what the current status is of the children's ombudsman position in Maine because OPEGA has not had occasion to reach out to an ombudsman for a while now.

Director Ashcroft said OPEGA is also continuing with follow-up on other report recommendations and will be requesting information from DHHS on the status of actions taken on OPEGA's recommendations in the Riverview Psychiatric Center Report. OPEGA is still following up on the most recent review of the Office of Information Technology. She knows that there were some things done in the past legislative session and OPEGA has not had an opportunity to understand what all of the specifics of that were yet. The GOC is still waiting for some input from the Veterans and Legal Affairs Committee on the State Lottery Report with regard to recommendations made in the Report and their thoughts about whether statutory changes would be helpful. Director Ashcroft will be following up with the Analyst for that Committee. OPEGA is also monitoring the implementation of recommendations from the New Markets Capital Investment review, as well as the Pine Tree Development Zones review. A lot of that work is being done in the Legislature so OPEGA is assisting wherever requested to move those recommendations forward if that is the pleasure of the Legislature. Rep. Mastraccio noted that Director Ashcroft has been working with the LCRED Committee on those issues.

## **REPORT FROM DIRECTOR**

### **Status of Projects in Progress**

Director Ashcroft said the statuses of projects in progress have not changed from the last meeting with the exception of completing the preliminary research on the **Maine Citizen-Initiatives Process Review** which will now be moving into fieldwork.

## **NEXT GOC MEETING**

Director Ashcroft said the next meeting is scheduled for February 9, 2018 and she had talked with Rep. Mastraccio about the need to have a meeting on that date. Rep. Mastraccio said the Chairs will make a decision on the next meeting date in a timely manner and will let Committee members know.

## **ADJOURNMENT**

The Chair, Rep. Mastraccio, adjourned the Government Oversight Committee meeting at 10:21 a.m. on the motion of Sen. Davis, second by Rep. Harrington, unanimous.

## **OPEGA Recommendation for Project Direction**

### **Citizen Initiative Process**

#### **Background**

The Government Oversight Committee added a review of the Citizen Initiative Process to OPEGA's Work Plan on November 9, 2017 following consideration of a GOC member's request for a review and OPEGA's case study research on the York County Casino Referendum. The GOC directed that OPEGA submit a recommendation on project direction in January 2018. OPEGA's preliminary research phase on this project has included:

- reviewing information gathered during the case study research;
- reviewing provisions in the Maine Constitution relevant to citizen initiatives and the related legislative history;
- reviewing relevant statute for citizen initiatives;
- interviewing directors and staff of the Legislature's Office of the Revisor of Statutes, Office of Fiscal and Program Review and Office of Policy and Legal Analysis;
- reviewing information provided by the Secretary of State's Office, Office of the Attorney General and the Maine Commission on Governmental Ethics and Election Practices regarding responsibilities, processes and records maintained by their offices;
- analyzing historical activity for direct initiatives and people's vetoes that have qualified for the ballot; and
- reviewing briefs and reports produced by the National Conference of State Legislatures on the subject of citizen initiatives.

#### **Summary of Preliminary Research**

##### **The Citizen Initiatives Process in Maine Constitution and Statute**

The Maine Constitution provides for citizen initiatives in Article IV, Part One, Section 1 and Article IV, Part Three, Sections 16-22. Maine statute sets out additional process details for citizen initiatives in Title 21-A Chapter 11 and Title 21 Chapter 13 establishes requirements for Political Action Committees and Ballot Question Committees involved in financing initiatives.

##### **Origins of Maine's Citizen Initiative Process**

The populist movement in the 1890s and the progressive era in the early 1900s created the impetus for the adoption of the initiative and referendum (veto) process in a number of states. At that time, state legislatures were perceived as controlled by special interests, particularly railroads, banks and land speculators. This led to some states adopting direct democracy devices to bypass legislatures perceived as being unresponsive to ordinary citizens. The first state to adopt the initiative process was South Dakota in 1898.



In Maine, the proposal for a direct initiative and people's veto process originally came before the Legislature in 1903 and was referred to the next Legislature. The proposed Constitutional amendment was debated in 1905, but did not receive the required two-thirds vote in the House to be put to a vote of the people. The House and Senate records suggest that the issue had been advanced by petitions from labor unions, granges and the Civic League.

The proposal was again considered by the Legislature in 1907, when both the majority and minority reports of the Judiciary Committee recommended "ought to pass." The House debate indicated that, although there was some initial opposition to the proposal within the Legislature, opposition had disappeared and both major political parties favored the proposal in their election platforms.

The amendments to the Maine Constitution to implement the direct initiative and people's veto were passed by the House and Senate in March 1907, passed by popular vote in September 1908 and took effect in January 1909. The Constitutional amendments included two components to amend Article IV:

- Part One, Section 1 - whereas it previously noted that the legislative power is vested in two branches (the House and the Senate), the amendment added an exception that *"the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature"* and reserve the power to reject at the polls any actions passed by the Legislature. This amended language appears to reflect the original intent for citizen initiatives.
- Part Three, Sections 16-22 established the detail of the power and the process for the people's veto and direct initiative.

#### Evolution of the Citizen Initiative Process

Since enactment in 1909, two substantial Constitutional amendments have been made:

- The number of signatures required to petition for a direct initiative or people's veto was increased. The original enactment required 10,000 signatures to invoke the people's veto and 12,000 signatures to invoke the direct initiative. In 1947, this was amended and increased for the people's veto to 10% of the total vote for governor cast in the last gubernatorial election. It was noted in the floor debate that, since enactment, women had been granted the right to vote, which substantially increased the number of eligible voters. In 1951, a similar amendment was made for the direct initiative.
- The implementation of citizen-initiated legislation was delayed if no funding was available. In 1951, the Constitution was amended to delay implementation of directly initiated legislation that entailed expenditure in excess of available and unappropriated state funds for 45 days after the convening of the next regular session, unless the measure provided a mechanism to raise adequate revenue.

There were a number of further amendments to these provisions in the Maine Constitution in subsequent years, the most recent in 2006. These amendments were largely related to process and implementation details, including requirements for signature gathering.

The Legislature has also made changes to the citizen initiative process through amendments to statute. Numerous amendments to Title 21-A Chapter 11 have been enacted over the years with 14 amendments made since 2001. These most recent amendments included:

- a requirement that the petition circulator take an oath before a notary that the circulator personally witnessed the signatures and that the notary sign a certification of the oath in the presence of the circulator;
- a requirement that circulators be Maine residents and that the names of paid circulators be reported to the Secretary of State;
- a requirement that entities receiving compensation for organizing, supervising or managing the circulation of petitions are registered with the Secretary of State; and
- creation of a fiscal impact statement that must be printed on the petition being circulated for signatures.

Maine is not the only state regularly amending its direct initiative and people's veto processes. In December 2001, the National Conference of State Legislatures assembled a task force to review the growing use of these direct democracy avenues around the country. The task force adopted 34 recommendations for states considering adopting the processes or seeking to improve existing processes. A number of the recommendations were either already in place or have since been implemented in Maine, while others have not been implemented. For example, the task force recommended that to achieve geographical representation, states should require signatures be gathered from more than one area of the state. This has been the subject of some debate in Maine and would require an amendment to the Maine Constitution to implement. LD 31, currently before the 128<sup>th</sup> Legislature, is the most recent effort to require some geographical representation. This resolution proposes an amendment to the Maine Constitution to require direct initiative petition signatures to come from each congressional district.

## **Process Overview**

The Constitution and related statutes contain deadlines and requirements for both people's vetoes and direct initiatives. For both types of initiatives, the Secretary of State's Office (SOS) has the primary role in working with citizens and ensuring compliance with the requirements established for getting an initiative onto the ballot for a popular vote. The process starts when a registered Maine voter submits to the SOS a written application for circulating a direct initiative or people's veto petition.

The process for a direct initiative is more involved than that for a people's veto as it is seeking to establish new law. As described in the attachment, several State offices provide input to the SOS during the process to help ensure the proposed law conforms to drafting conventions and to provide information that will be included on the circulated petitions.

The Legislature's Office of the Revisor of Statutes (ROS) does a limited review of the language for the proposed law provided by the applicant. ROS checks the proposed law for conformance to the essential aspects of drafting conventions including: correct allocation and integration with existing statute, bill title and headnotes that objectively reflect the content, conformity to the statutory numbering system, and no inclusion of intent or testimonial statements that create legal requirements. ROS may recommend revisions and offer observation on other issues with the language to the SOS. ROS also provides the SOS a concise, objective summary describing the

content of the proposed law. The SOS may also seek input on the language from the Attorney General's Office (AG). The SOS then sends the draft legislation with any questions or comments from ROS and the AG to the applicant for acceptance or further changes.

Once the language has been accepted by the applicant, the SOS obtains a fiscal note from the Legislature's Office of Fiscal and Program Review (OFPR). OFPR's fiscal note is intended to reflect the fully implemented cost of the proposed measure as described in the accepted language. Preparing this analysis can require a more detailed understanding of how the measure might be implemented than what is reflected in the accepted language. In these cases, OFPR works with affected agencies to get any further details that might be available and/or makes educated assumptions in order to estimate the fiscal impact of the initiative.

If the initiative ultimately gathers enough valid signatures to qualify for the ballot, the SOS sends the qualifying language to ROS, which produces in bill form the exact language received from the SOS. The Constitution provides that "the measure thus proposed, unless enacted **without change...** shall be submitted to the electors together with any amended form, substitute, or recommendation." Consequently, unlike the process for other bills, ROS does not review the bill language at this point for adherence to drafting conventions, even though the language may differ from what ROS initially reviewed.

Once the initiative is printed as a bill, it may be handled in various ways by the Legislature with the rules of legislative procedure being the same as for any other bill. It may be dealt with on the floor without reference to committee, or may be referred to a committee for review. A committee that receives the bills may hold a public hearing and one or more work sessions before reporting out recommendations on the initiated bill. Unlike other bills, however, final action by the Legislature on the bill is governed by the initiative provisions of the Constitution which specify the available options.

Under the Constitution, the Legislature may enact the initiated bill without change. If the enacted bill is signed by the Governor, or the Governor's veto is overridden, the bill becomes law in the same manner as any other enactment. However, if a Governor's veto is sustained by the Legislature, the bill is placed on the ballot at the next general election. The initiated bill is also placed on the ballot at the next general election if the Legislature chooses **not** to enact the bill without change.

The Constitution allows for the Legislature to pass an amended form, substitute, or recommendation for the initiated bill as a competing measure. If a competing measure is passed, then both the initiated bill and the competing measure will be put on the ballot in such a manner that voters can choose between the measures or reject both. If neither the initiated bill nor the competing measure receives a majority of the votes cast, the one receiving the most votes is submitted again at the next statewide election as long as it receives more than one-third of the votes given for and against both. The next statewide election is held not less than 60 days after the first vote.

Once an initiated bill becomes law, either by legislative enactment without change or by approval of the voters, it has the same legal status as other law and may subsequently be amended in the normal course. Initiated bills approved by the voters take effect 30 days after the Governor announces the result of the vote unless there is a later date specified in the bill. The Governor must announce the result within 10 days after the vote has been determined. However, if the initiated bill

entails expenditure exceeding the amount of available and unappropriated state funds, and does not provide for raising adequate new revenues, it will remain inoperative until 45 days after the next convening of the Legislature in regular session.

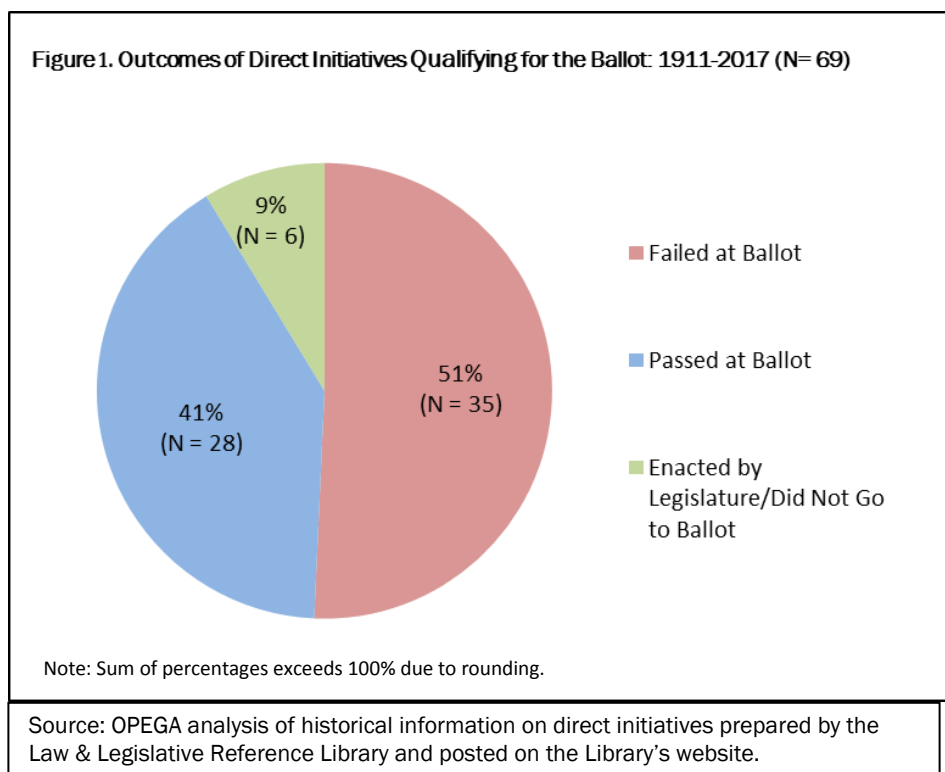
The Maine Commission on Governmental Ethics and Election Practices (Ethics Commission) also plays a role in the citizen initiative process. The Ethics Commission administers the State’s campaign finance laws and conducts associated investigations. Political Action Committees (PACs) and Ballot Question Committees (BQCs) that receive contributions or make expenditures for the purpose of initiating or influencing a ballot question must register with the Ethics Commission. PACs and BQCs are required to file campaign finance reports, which are reviewed by Ethics Commission staff for completeness and compliance with election law. The Ethics Commission conducts investigations and assesses penalties for non-conforming campaign finance reports in accordance with statute.

### Summary of Citizen Initiative Activity

#### Direct Initiatives

Sixty-nine direct initiatives have qualified for the ballot since 1911. As illustrated in Figure 1, 35 of the initiatives (51%) failed at the ballot and 28 (41%) passed. Six of the initiatives were enacted by the Legislature and never went to the ballot.

The Legislature placed competing measures on the ballot for four of the directive initiatives, one each in 1947, 1985, 1996, and 2003. None of the competing measures ultimately prevailed, while two of the challenged initiated measures became law.<sup>1</sup> Table 1 provides a breakdown of the 69 direct initiatives and their final outcomes by time period.

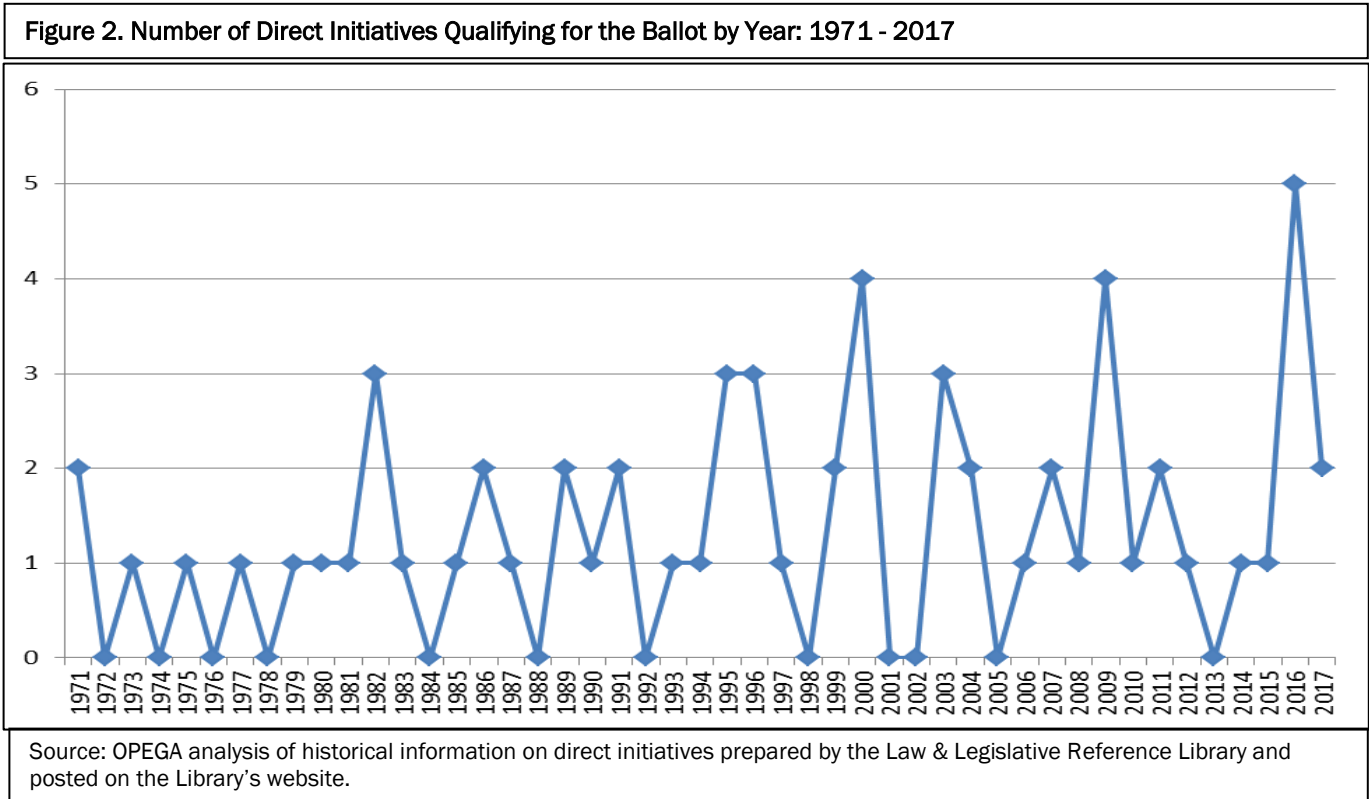


<sup>1</sup> In two of the four instances where competing measures were on the ballot, there was a second popular vote taken as prescribed by the Constitution to decide the final outcome when neither the initiated bill or competing measure receives a majority of the votes cast. In 1996, the competing measure won the most votes in the first election and those votes totaled more than one-third of all the votes cast for either measure. Accordingly it was carried over to a second election but ultimately failed to pass. In 2003, the initiated measure won the most votes in the first election and met the one-third of votes cast requirement. It was subsequently approved by voters in the second election.

Time Period	Total Initiatives	Enacted by Legislature before Ballot		Failed at Ballot		Passed at Ballot		% Became Law
		#	%	#	%	#	%	
1911-1970	7	0	0%	5	71%	2	29%	29%
1971-1999	32	4	13%	13	41%	15	47%	59%
2000-2017	30	2	7%	17	57%	11	37%	43%
<b>Total</b>	<b>69</b>	<b>6</b>	<b>9%</b>	<b>35</b>	<b>51%</b>	<b>28</b>	<b>41%</b>	<b>49%</b>

Source: OPEGA analysis of historical information on direct initiatives prepared by the Law & Legislative Reference Library and posted on the Library's website.

As reflected in the table and in Figure 2, there has been a noticeable increase in direct initiative activity since 1971. In the first 59 years (1911-1970), there were seven direct initiatives that qualified for the ballot. None of them were enacted by the Legislature and the vast majority failed at the ballot. In the next 28 years (1971-1999), 32 initiatives qualified for the ballot. The Legislature enacted four and 15 passed at the polls for a total of 19 (59%) that ultimately became law. In the last 17 years (2000-2017), 30 initiatives qualified for the ballot with 57% of them failing at the polls. Two were enacted by the Legislature and 11 passed at the ballot for a total of 13 (43%) that became law.



Direct initiatives qualifying for the ballot have most regularly dealt with the topics of taxes (n=14), election laws (n=7), and gambling (n=9). All nine of the gambling focused initiatives were put forth in the 2000-2017 time period.

## People's Vetoes

There have been 30 people's veto attempts that have gone to the ballot since the process was enacted in 1909. Twenty-two of these attempts were in the first 56 years (1909-1965) and eight of them occurred in the 44 years between 1973 and 2017. No attempts were made from 1966 to 1972. Of the total 30 attempts, 57% have been successful at vetoing the challenged law that had been enacted by the Legislature.

## **OPEGA Recommendation on Project Direction**

OPEGA recommends continuing this review of the Citizen Initiatives Process encompassing both People's Veto and Direct Initiatives with a focus on the following questions:

1. What are the trends in activity and characteristics for People's Veto and Direct Initiative efforts over time?
2. What has been the geographic distribution for signatures collected on People's Vetoes and Direct Initiatives that qualified for the ballot?
3. To what extent have Direct Initiatives that qualified for the ballot in the last ten years dealt with matters that had previously been before the Legislature?
4. What opportunities exist to improve the efficiency, effectiveness and economical use of resources in the People's Veto and Direct Initiative processes?
5. What opportunities exist to improve transparency and accountability in People's Veto and Direct Initiative efforts?

## **Overview of Secretary of State's Role in the Initiative Process** *Prepared by the Office of the Secretary of State, January 2018*

The Secretary of State's Office, through the Elections Division of the Bureau of Corporations, Elections and Commissions, reviews all petitions for direct initiatives and people's veto referenda, filed pursuant to the Maine Constitution, Article IV, part third, sections 17-20, and 21-A M.R.S. §§ 901-906.

### **Application Process for Citizen's Initiative**

To commence the process for a citizen's initiative petition, a voter must submit a written application to the Department of the Secretary of State. The application must contain the names, addresses and signatures of 5 registered voters, in addition to the applicant. The application must include the full text of the proposed law and a summary. The voter submitting the application shall sign the application in the presence of the Secretary of State or designee or in the presence of a notary public. An application is deemed complete if it contains all the required elements, including verification that all of the voters signing it are registered.

Upon receipt of a completed application, the Secretary of State, with assistance from the Revisor of Statutes, reviews the proposed law and within 15 business days must either reject the application or provide a revised draft of the initiated legislation to the applicants. The Secretary of State provides the draft legislation (in both electronic and hard copy) to the Revisor with a letter requesting assistance, including the applicable deadline for providing a revised draft.

In addition to providing a redraft of the legislation, the Revisor's Office also delivers a letter to the Secretary of State explaining the changes that were made to the legislation in order to bring the legislation into conformance with the drafting conventions established for the Maine Revised Statutes. If there are questions or issues that Revisor's office encountered during the redrafting that still need to be resolved, those will be flagged in the letter as well. The Revisor also proposes a title to be used for the initiative.

The Secretary of State, with assistance from the Attorney General's office to the extent time permits, also reviews the legislation for potential drafting issues. These issues are addressed with the Revisor's Office before the redraft is provided to the applicants and identified in the letter that is sent to the applicants with the revised legislation. The Secretary also reviews the proposed summary to ensure that it objectively describes the content of a proposed initiative. This letter references all the changes made by the Revisor's office as well as any questions that were raised by the Revisor, Attorney General or Secretary of State. The letter also includes instructions to the applicants informing them they can either accept the legislation as provided or submit additional changes to the legislation. The applicants' response to the Secretary of State must be in writing.

If the applicants choose to make additional edits to the legislation, the requested changes are submitted to the Revisor's Office for another review. For a second (or subsequent review), the Secretary of State has 10 business days to provide a new draft of the legislation. The

applicants must give written consent to the final language of the proposed law to the Secretary of State before the petition form is prepared by the Secretary of State.

**Note:** the Secretary of State, the Attorney General and the Revisor have no control over the content of the legislation – we can only suggest technical changes to bring it into conformance with the drafting conventions. Thus, a citizen initiative may have significant constitutional or other defects, which may be pointed out to the applicants, but it is the applicant’s decision whether to address them.

### **Fiscal Impact Statement**

When the applicants submit written acceptance of the legislation, the Secretary of State must then obtain an estimate of the fiscal impact from the Office of Fiscal and Program Review (OFPR). Pursuant to Title 1, section 353, the Office of Fiscal and Program Review is required to prepare an estimate of the fiscal impact on state revenues, appropriations and allocations. The fiscal impact estimate must summarize the aggregate impact that the initiative will have on the General Fund, the Highway Fund, Other Special Revenue Funds and the amounts distributed by the State to local units of government. OFPR has 15 business days to provide the fiscal statement to the Secretary of State.

### **Issuing Petition Form for Circulation**

The Secretary of State is responsible for drafting a petition form that contains all items required by the statute, which include the full text of the legislation, the fiscal impact statement, the summary of the legislation, the date of issuance, the initiative title, instructions to signers, circulators and registrars, a block for the circulator to include the circulator’s name and a unique number for each petition, as well as blocks for the Circulator’s Oath and Registrar’s Certification. Petition forms are prepared on ledger (11 by 17 inch) paper and contain as many pages as necessary to print the legislation. In recent years petitions have ranged from one double-sided page to as many as 12 pages.

As soon as the petition form is prepared, the Secretary of State contacts the applicants (usually by telephone) to arrange a meeting to issue the petition. The meeting must be in person and must include the lead applicant for the petition (or designee). The applicants are able to bring additional people to this meeting if desired. At this meeting, the Secretary of State staff reviews the petition form and all applicable laws relating to the circulation of a petition. Pursuant to Title 21-A, §903-A, the Secretary of State has prepared instructions regarding all laws and rules related to petition circulation and also provides the applicable sections of the Maine Constitution and Title 21-A. All documents are provided to the applicants in hard copy as well as electronically.

Once the petition is provided to the applicants, they may duplicate or print the petition forms and begin circulating. The Secretary of State also posts information on the petition on its web site. This information includes proponent contact information, date of issuance, full text of the legislation and registration information for any petition organization that is involved.



## **Petition Organization Registration Requirement**

If the applicants for an initiative petition hire or intend to hire a private company or other type of business entity to organize, supervise, or manage the petition drive, that “petition organization” is required to file a registration form with the Secretary of State prior to organizing, supervising or managing the circulation of petitions. This requirement is set forth in Title 21-A, § 903-C, sub-§1. “Petition organization” is defined in this statute as “a business entity that receives compensation for organizing, supervising or managing the circulation of petitions for a direct initiative or a people’s veto referendum.” An organization must register if it is being hired by someone else to perform those services.

The registration application must include the name and signature of a designated agent for the “petition organization” as well as contact information for the organization (including name, street address or post office box, telephone number and email address), plus a list of all individuals hired by the petition organization to assist in circulating petitions or in organizing, supervising or managing the circulation of petitions. This list must be updated and resubmitted when petitions are filed with the Secretary of State.

The Secretary of State posts all registrations on its web site along with other information relating to each petition approved for circulation.

## **Certification of Submitted Petitions**

In order to qualify for the ballot, a petition for a direct initiative must be submitted to the Secretary of State by the deadlines established by the Maine Constitution. The filing deadlines are determined as follows: **First Regular Session:** By 5:00 p.m. on or before the 50th day after the convening of the Legislature. The first regular session convenes on the first Wednesday of December following the General Election. **Second Regular Session:** By 5:00 p.m. on or before the 25th day after the convening of the Legislature. The second regular session convenes on the first Wednesday after the first Tuesday in January in the even-numbered year following the General Election. Pursuant to the Maine Constitution, Article IV, Part Third, Section 18(2), petitioners are currently required to submit a minimum of 61,123 signatures (10% of the total votes cast for Governor at the last gubernatorial election preceding the filing of the petition).

Once filed, by statute, the Secretary of State has only 30 days in which to complete a review and issue a determination whether the petition has enough valid signatures to qualify for the ballot. (This deadline pertains even if several initiative petitions are filed at the same time, as occurred in 2016.) The Division of Elections has prepared written instructions to guide all staff involved in the review process, in an effort to assure consistency. We instruct staff to bring certain issues to their supervisor for a decision for that same reason. These written instructions explain the codes that are used to reflect the different reasons for invalidating signatures.

The process of reviewing petitions to determine whether the minimum statutory and constitutional requirements are met is a multi-step process. Initially, the staff organizes the petition forms by town, counts them into lots of 50 and files them in labeled folders with 50

petitions in each folder. After the petitions are counted and placed in folders, each petition is numbered. These preliminary steps are essential to facilitating the entire review process.

The next step in the process typically involves a comprehensive review to determine if any voters signed more than one petition form for the petition drive. First, staff enter into an Access database all of the names of individuals certified as registered voters by local registrars, along with the petition number and line number on which each voter's name appears. Print-outs, generated from this database, list the names of individual signors by town, and in alphabetical order by last name, with the petition and line number. Staff review these print-outs and highlight potential duplicate names. Teams of two staff people then pull the numbered petitions from the boxes and compare the signatures to see if the same voter has signed more than once. Staff check the Central Voter Registration System ("CVR") as necessary to ensure that a potential duplicate is not actually two separate voters with the same name. When staff confirm that one signature is a duplicate, that signature is marked "DUP" on the petition and invalidated.

After duplicate signatures are identified and marked, staff begin the process of "certifying" each petition, which is the term used for the Secretary of State's review, described in more detail below. The certification is logged in the lower right corner of the petition form, using green ink, to distinguish it from the notations by local registrars, who are instructed to record the results of their review of registered voter status in the lower left corner of the petitions using red ink.

The certification process entails checking the following aspects of the petition to ensure that all requirements set forth in Article IV, part third, section 20 of the Maine Constitution are met:

a) petition form - Staff check to be sure that each petition is in the approved printed form, that all pages of the text of the proposed legislation are included in each petition, and that pages are not missing, damaged or altered in a manner inconsistent with the approved form.

b) circulator's residency and registered voter status - Each circulator has to be a Maine resident and a registered voter in the municipality listed by the circulator as his or her residence. At the beginning of a petition drive, petitioners are provided with a "certification of registration" form for each circulator to sign and take to his or her local registrar to confirm the circulator's voter registration status. Petitioners are asked to file these forms, along with attached copies of each circulator's voter registration card. If the circulator forms are turned in without voter registration cards, or if staff find petitions signed by circulators for whom a circulator form was not received, then staff search the CVR to try to find the circulator. Occasionally, additional information must be requested from a municipality. If, based on review of the above described information, the earliest date of registration for a circulator was after the petition was approved for circulation, then additional steps are undertaken to attempt to verify that the individual was a bona fide Maine resident.

c) circulator's oath - Staff check to make sure that an original signature of a circulator appears in the circulator's oath section of the petition form, and that a properly commissioned Maine notary (or licensed Maine attorney) signed and dated the oath *after* the date of all the

signatures of voters appearing on the petition. Any voter signatures dated after the date of the circulator's oath are invalidated. If the circulator's signature cannot be deciphered, staff may look to the printed name to help identify that it is that of a qualified circulator (i.e., a Maine resident and registered voter as determined in our review described above). Office policy is not to routinely check circulator's signatures, however, since there are often several hundred circulators involved in a single petition drive. Staff will check if an irregularity is encountered, such as a circulator's signature that appears to be the same as the signature of the notary on the same petition form, or, as in one prior petition case where we had a circulator whose signature resembled a hastily drawn sine wave.

d) notary status - Staff verify that each notary who signed a petition as having administered the oath to the circulator has a valid notary commission. This is accomplished by first checking the notary's name against the database of commissioned notaries. If a notary has the same last name as the circulator, staff check to make sure that the notary and circulator are not related. If the notary's name does not appear in the notary database, staff check to see if the person is a licensed attorney.

e) notary signature - When performing a notarization (in this case, administering an oath), "a notary public must sign by producing that notary public's official signature by hand in the same form as indicated on the notary public's commission." As staff review and certify each petition, each notary's signature is examined. If the staff identifies inconsistencies in a notary's signature, they are instructed to bring those to the attention of a supervisor for review so that a consistent determination on the validity of the notarization can be made. If the notary signature appears generally consistent with the official signature on file, then the notarization is determined to be valid.

f) registrar's certification - Staff review the date and time stamp on each petition to make sure that it was filed with the registrar by the deadline pursuant to the Maine Constitution, Art. IV, pt. 3, § 20. Staff compare the registrar's annotations on each signature line to the total numbers marked in the registrar's certification statement in the bottom left corner of the petition form to assure a correct count of registered and unregistered voter names on the petition; and make sure the registrar's certification is properly signed and dated, and includes the name of the municipality. If this review raises questions, the local registrar may be contacted for clarification.

g) signatures of voters - Staff review all of the signatures on each petition to verify the registrar's count of registered voters, to check for any indications that someone other than the voter may have signed the voter's name, and to make sure the voter signed the petition during the period approved for circulation.

h) alterations - Any alterations to names or dates that staff observed on the petition forms are carefully reviewed to determine if the alterations were material to the substantive requirements for a petition. If so, those signatures are invalidated. We occasionally receive copies of petitions from local registrars, pursuant to Title 21-A § 902-A, which are compared to the petitions filed with our office to check for possible alterations.

Staff record the determinations regarding the statutory and constitutional requirements described above in the Secretary of State's certification block in the lower right corner of each petition. As soon as the staff finishes certifying a box of petitions in this manner, other staff begin entering the results into an Access database (referred to as the "Certification Database"). Staff proofread the data entry work carefully once it is complete. The database is able to print reports by petition number, with the total numbers of signatures found valid or invalid and, if invalid, for what reason, as well as generating reports sorted by notary and by circulator. The summary information in these reports is then used to prepare the Secretary's determination of validity of the petition. The determination of validity utilizes the same basic template and incorporates the same standard codes for invalidating signatures.

Title 21-A, § 905(2) provides for a 10-day challenge period during which any voter named in the application under section 901, or any person who has validly signed the petitions, if the petitions are determined to be invalid, or any other voter, if these petitions are determined to be valid, may appeal the decision of the Secretary of State by commencing an action in the Superior Court, pursuant to Rule 80C of the Maine Rules of Civil Procedure. If no challenge is commenced, the initiative is transmitted to the Clerk of the House of Representatives so that the Maine Legislature may consider the matter. If the initiated bill is not passed without change, the Governor must issue a proclamation referring the issue to the voters.

### **Drafting Ballot Question**

The Secretary of State drafts ballot questions for any citizen initiative that is not enacted by the Legislature in the session to which it is presented. No later than 10 business days after the Legislature adjourns sine die, the Secretary of State prepares a draft ballot question and gives public notice of the proposed ballot question by posting it on the Secretary of State's publicly accessible website. After a 30-day public comment period, the Secretary of State has 10 days to review the comments and write the final ballot question.