

## Evaluation of SS3-HCS-HJR 43

Passed by the Missouri Senate on April 27, 2023

The Senate version of HJR 43 is their contribution to IP Reform or Ratification Reform, and as such it is a bitter-sweet fruit with good and bad elements. Since it was changed, it will have to go back to the House for their approval of the changes, or for the House to request a conference with the Senate to work out the difference.

There were several changes, to be detailed in a list below, but these are the good and bad points about the finished product.

### The Good:

- Like the House version, the Senate version avoided some bad policy that would have doomed it with voters – particularly, it does not make it harder for citizens to put something on the ballot.
- Unlike the House version, it raises the bar for ratification in an equitable way, using the Concurrent Majority principle that gives more voice to rural Missourians without making the amendment process so hard that the People can't rein in government "independent of the General Assembly," as it says in Article III, Section 49. (The House version, with the straight 60% requirement would have allowed urban areas a "veto" on amendments with only a 40% vote.) However, this good news is greatly diminished by the first "bad news" item, below.
- Like the House version, a new constitutional citizenship requirement for voting on constitutional amendments is included.

### The Bad:

- The single worst element in the Senate version may doom it so that the good provisions never make it into the Constitution. Particularly, **it does not apply the same ratification threshold to citizen proposed amendments as it does amendments proposed by legislators.** The advantage given to legislator proposed amendments will be viewed as an arrogant move by "elite politicians." The campaign optics will be terrible. The House had the good sense to keep the ratification standards the same for amendments proposed by either the citizens through petitions or the legislature. *They should change it back in the conference committee.*
- The Senate version makes it **harder for the legislature to simply propose an amendment** for ratification by the voters by requiring a 57% vote of both the House and Senate. Section 27(a). This results in a shift of power away from the legislative branch toward the administrative and, especially, the judiciary. This higher threshold for passing an HJR or SJR was thought to be needed to counteract the negative publicity from the different threshold for ratification will bring, but that will ring hollow on the campaign trail. *This should be eliminated in the conference committee.*
- The Senate version provides a **second path for ratification** by allowing a 57% vote to bypass the Concurrent Majority requirement. Section 51.2(2)(b). This shifts power back to the urban areas by significantly diminishing the usefulness of the Concurrent Majority element. *This should be removed in conference, so there is only one path to ratification, one that uses the Concurrent Majority principle.*

- The finished product used congressional districts, instead of state House districts for concurrent majority. That significantly diminishes the rural position, and that is of particular concern in light of the clear fact that a high turnout of rural voters will be necessary for HJR 43 to be approved for the Constitution and rural voters will simply not be as excited about using congressional districts.  
*Congressional districts should be changed to state House districts in Section 51.*

#### **Conferencable Differences Between House and Senate Versions Without Exceeding the Differences**

- The fact that the House version applied the same ratification standard to both petition proposed and legislatively proposed amendments.
- The higher (57%) threshold for the legislature to put amendments on the ballot.
- The second path for ratification.

#### **Changes That Require a Vote to Exceed the Differences**

- Changing from congressional districts to state House districts may require a vote to exceed the differences.

## HJR 43 as Passed by the Senate on 04-27-2023

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(In context in Article III)

Super-majority vote required for legislature to put a constitutional amendment question on the ballot. -- Remove in Conference.

Section 27(a). Notwithstanding section 27 of this article or section 2(a) of article XII of this constitution to the contrary, no bill proposing an amendment to this constitution shall be finally passed unless a vote by yeas and nays be taken and at least fifty-seven percent of the members serving in each house be recorded as voting favorably.

Section 49. *Reservation of power to enact and reject laws.* — The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.

Section 50. *Initiative petitions — signatures required* — Initiative petitions proposing amendments to the constitution shall be signed by eight percent of the legal voters in each of two-thirds of the congressional districts in the state, and petitions proposing laws shall be signed by five percent of such voters. Every such petition shall be filed with the secretary of state not less than six months before the election and shall contain an enacting clause and the full text of the measure. Legal voters in each congressional district shall have the opportunity to review and comment upon all initiative petitions proposing an amendment to this constitution following the filing of the petition with the secretary of state and not less than fifteen days before the measure appears on the ballot. Such review and comment process shall be administered by the secretary of state in a public forum. Petitions for constitutional amendments shall not contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith, and the enacting clause thereof shall be "Be it resolved by the people of the state of Missouri that the Constitution be amended:". Petitions for laws shall contain not more than one subject which shall be expressed clearly in the title, and the enacting clause thereof shall be "Be it enacted by the people of the state of Missouri:". For purposes of this article, only citizens of the United States of America, who are eighteen years of age or older, who are residents of the State of Missouri and who are properly registered to vote in the State of Missouri shall be considered legal voters.

Citizenship requirement for voting on ballot measures.

Section 51. *Appropriations by initiative — effective date of initiated laws — conflicting laws concurrently adopted.* —

The changes in this section has two problems: (1) The increased threshold does not apply to legislatively proposed amendment. That will become a major campaign argument by opponents. (2) The 2nd path to ratification (57%) makes it easier for an amendment to be adopted with primarily urban support.

1. The initiative shall not be used:

(1) For the appropriation of money other than of new revenues created and provided for thereby [.] ; or

(2) For any other purpose prohibited by this constitution. [~~Except as provided in this constitution;~~]

2. (1) Any measure [proposed] **proposing** laws shall take effect when approved by a majority of the votes cast thereon.

Because this is in the context of citizen initiatives, the following doesn't apply to amendments proposed by the legislature or convention. -- Change in conference.

(2) Notwithstanding section 2(b) of article XII of this constitution to the contrary, any measure **proposing an amendment to this constitution** shall take effect when approved either:

Concurrent Majority Ratification

(a) By a majority of the votes cast thereon statewide by legal voters and also a majority of votes cast thereon in each of more than half of the congressional districts by legal voters; or

(b) By at least fifty-seven percent of the votes cast thereon statewide.

2nd "or" Path to ratification makes success more likely.

(3) When conflicting measures are approved at the same election the one receiving the largest affirmative vote shall prevail.

This 57% could come from just the urban areas of the state -- concurrent majority not required if the vote is at least 57%. -- Remove in conference.

3. The general assembly shall ensure that legal voters who are disabled, including but not limited to those voters who are hearing impaired, speech impaired, or visually impaired, can review, comment on, sign, decline to sign, or vote on ballot measures.

Section 52(a). *Referendum — exceptions — procedure.* — A referendum may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools) either by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state, or by the general assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.

Section 52(b). *Veto power — elections — effective date.* — The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people shall be had at the general state elections, except when the general assembly shall order a special election. Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise. This section shall not be construed to deprive any member of the general assembly of the right to introduce any measure.

Section 53. *Basis for computation of signatures required.* — The total vote for governor at the general election last preceding the filing of any initiative or referendum petition shall be used to determine the number of legal voters necessary to sign the petition. In submitting the same to the people the secretary of state and all other officers shall be governed by general laws.

It was wise to apply this to "substantive" changes, but we will be at the mercy of the courts to decide what is substantive.

Section 54. 1. Notwithstanding section 27 of this article to the contrary, until five years following the effective date of any law approved by the people through the initiative petition process, the general assembly shall not pass any law amending or repealing the substantive law of such measure unless, by a vote of yeas and nays, at least fifty-seven percent of the members serving in each house be recorded as voting favorably.

2. The provisions of subsection 1 of this section shall not apply in the case of a law amending or repealing substantive law of a measure approved by the people through the initiative petition process if the general assembly orders a referendum pursuant to section 52(a) of this article. Any such law may be approved by the general assembly as is otherwise permitted by this constitution.

3. In the event that a court of competent jurisdiction issues a final judgment that declares a law approved by the people through the initiative petition process unconstitutional or otherwise invalid, in whole or in part, or that otherwise renders the law inoperable and of no force and effect of law, in whole or in part, the provisions of subsection 1 of this section shall not apply and the general assembly may amend or repeal such measure in a manner that is otherwise consistent with this constitution.

4. If any initiative petition proposing a constitutional amendment that is approved by the people is found by a court of competent jurisdiction to be unconstitutional or otherwise invalid, in whole or in part, the remaining provisions of the amendment shall also be invalid.

5. Subsections 1, 2, and 3 of this section shall not apply to any constitutional amendment adopted through the initiative petition process.

### **Summary Statement for the Ballot (Limited to 50 words.)**

"Shall the Missouri Constitution be amended to:

- Allow only U.S. citizens to vote on initiatives;
- Restrict legislative power to undo laws approved by voters; and
- Pass initiatives by a majority of voters in a majority of congressional districts and a majority of votes cast statewide or by a fifty-seven percent majority statewide?"

### **Current Article III Sections**

III Section 49. Reservation of power to enact and reject laws. — The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.

III Section 50. Initiative petitions — signatures required — form and procedure. — Initiative petitions proposing amendments to the constitution shall be signed by eight percent of the legal voters in each of two-thirds of the congressional districts in the state, and petitions proposing laws shall be signed by five percent of such voters. Every such petition shall be filed with the secretary of state not less than six months before the election and shall contain an enacting clause and the full text of the measure. Petitions for constitutional amendments shall not contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith, and the enacting clause thereof shall be "Be it resolved by the people of the state of Missouri that the Constitution be amended:". Petitions for laws shall contain not more than one subject which shall be expressed clearly in the title, and the enacting clause thereof shall be "Be it enacted by the people of the state of Missouri:".

III Section 51. Appropriations by initiative — effective date of initiated laws — conflicting laws concurrently adopted. — The initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby, or for any other purpose prohibited by this constitution. Except as provided in this constitution, any measure proposed shall take effect when approved by a majority of the votes cast thereon. When conflicting measures are approved at the same election the one receiving the largest affirmative vote shall prevail.

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