

Illinois' Proposed Constitutional Convention

*A Context for the 2008 Constitutional
Convention Call*

by the

Illinois Business Roundtable



The Illinois Business RoundTable

February 2008

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About the Illinois Business Roundtable

Formed in 1989, the Illinois Business Roundtable (IBRT) is a voluntary, non-profit, non-partisan association of 55 senior executives from Illinois' leading businesses that makes recommendations and takes action on critical public policy issues facing the state. Dedicated to unifying, strengthening, and advancing employer voices, the IBRT is focused on promoting a positive business environment that will enhance economic growth and job creation. IBRT applies the knowledge, creativity and leadership resources of its members to address complex problems impacting both the current and future economic, educational and social vitality of Illinois. Working with other statewide and regional business associations, the IBRT provides an important voice to issues impacting tax and fiscal policy, education, the environment, civil justice reform, and economic growth.

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Executive Summary

Illinois is governed under the constitution ratified by Illinois voters that went into effect in 1970, one hundred years after approval of the previous state constitution. This new constitution was drafted to be a working document, allowing voters and elected leaders to make amendments if and when it was deemed necessary. It also provides its citizens the opportunity to reevaluate the state's governing framework every twenty years. The last time Illinois voters had the opportunity to vote on the changes to 1970 Constitution was in 1988, a year before the Illinois Business Roundtable (IBRT) was established.

Since then, the state, country and world have changed dramatically, impacted by expanding global markets, developing technologies, and shifting demographics. Illinois is a different state today than it was in 1988, and vastly different than when the constitution was ratified in 1970. Given that, does the framework provided by our current constitution still work?

In order to answer that question, the IBRT in December 2006 charged its Civil Justice Task Force to undertake a broader review of Illinois' 38 year old constitution. In the course of this review, members of the task force spoke with former delegates to the 1970 Convention, sought counsel from judges who have interpreted the constitution, and studied past conventions as well as the 1988 ballot question.

Upon completion of this review, the Civil Justice Task Force developed the following analysis that examines the process of amending the constitution; the effectiveness of this process; and how it compares with the change processes in other states. Because a constitutional convention cannot be limited to specific issues, we will briefly touch on some - but certainly not all - of the issues that might arise under a convention call.

After completing this review on behalf of the state's business community, the Illinois Business Roundtable makes the following recommendation:

The IBRT recommends that voters reject the call for a constitutional convention in November 2008.

We advise against a constitutional convention for the following reasons:

- Despite concern with the current functional capability of state government, many of today's issues are neither cause for nor remedied by constitutional change. Illinois' current constitutional framework is adequate, open, and not hostile to resolving the serious issues that confront the state today.
- A constitutional convention is called pursuant to legislation passed by the General Assembly and signed by the governor. Convention delegates are elected from current senate districts. It is illogical to presume that the politics of a convention will materially differ from the polarizing politics afflicting our current state government. It is legitimate to question how a convention would mold consensus

on tough issues that have eluded legislative resolution and whether an additional venue for addressing these issues would resolve or exacerbate current tensions.

- Other constitutional revision mechanisms exist to address specific issues or concerns related to state government that don't involve the complex and expensive process of a constitutional convention. The General Assembly can recommend amendments to the constitution for voter approval that are specific and targeted. While this legislative amendment mechanism has been underutilized, it is not the hurdle in Illinois that it is in many other states.

The Illinois Business Roundtable looks forward to engaging in serious dialogue and discussion on these and related provisions as voters consider the full implications of a constitutional convention as we approach the November 2008 election.

Changing Illinois' Constitution

The 1970 Illinois Constitution provides three mechanisms for revising it. These change mechanisms are the constitutional convention, amendments proposed by the General Assembly, and the citizen initiative.

This analysis, while not intended to be exhaustive, will examine each mechanism in the context of how these mechanisms have changed over time, as well as the times and the issues that prompted these changes. It will examine how these mechanisms have been used in Illinois. Finally, it will examine the constitutional change mechanisms in other states.

It is our hope that this analysis will provide insight into the current framework of Illinois' 1970 constitution to enhance the dialogue on the ballot question of whether a constitutional convention is needed for Illinois.

Illinois voters last voted on a constitutional convention ballot initiative in 1988 when the General Assembly submitted the measure to ballot. As called for in our current constitution, this was 20 years after the 1968 call that led to the 1970 Constitution.

The 1988 ballot initiative failed to receive the needed votes by a 3 to 1 margin. For those supporting the constitutional convention, the numbers were even tougher: more voters chose not to even vote on the question (1,069,939) than the total votes garnered to support it (900,109). The current ballot initiative is now looming because twenty years have elapsed since the 1988 ballot call.

Illinois' Constitutions: 1818 - Today

Ever since Illinois became a state, each constitution that has governed us has had a constitutional change mechanism through a constitutional convention. With each succeeding document, the framework has evolved. Below are the provisions for the constitutional convention from each of Illinois' four constitutions, which detail how this mechanism was, and is now, engaged.

1818 Illinois Constitution CONSTITUTIONAL CONVENTION PROVISION Illinois Constitution Article 7 Section 1

Whenever two-thirds of the General Assembly shall think it necessary to alter or amend this constitution, they shall recommend to the electors at the next election of members to the General Assembly, to vote for or against a convention; and if it shall appear that a majority of all citizens of the state voting for representatives, have voted for a convention, the General Assembly shall at their next session call a convention, to consist of as many members as there may be in the last General Assembly; to be chosen in the same manner at the same place and by the same electors that choose the General Assembly; and which convention shall meet within three months after said election for the purpose of revising, altering or amending this constitution. 1

1848 Illinois Constitution CONSTITUTIONAL CONVENTION PROVISION Illinois Constitution Article 12 Section 1

Whenever two-thirds of all the members elected to each branch of the General Assembly shall think it necessary to alter or amend this constitution, they shall recommend to the electors at the next election of members of the General Assembly to vote for or against a convention; and if it shall appear that a majority of all the electors of the state voting for representatives have voted for a convention, the General Assembly shall, at their next session call a convention to consist of as many members as the House of Representatives at the time of making said call, to be chosen in the same manner, at the same place, and by the same electors in the districts that chose the members of the House of Representatives, and which convention shall meet within three months after the said election for the purpose of revising, altering or amending this constitution. 2

1870 Illinois Constitution
CONSTITUTIONAL CONVENTION PROVISION
Illinois Constitution Article 12 Section 1

Whenever two-thirds of the members of each house of the General Assembly shall, by a vote entered upon the journals thereof, concur that a convention is necessary to revise, alter or amend the constitution, the question shall be submitted to the electors at the next General Election. If a majority voting at the election vote for a convention, the General Assembly shall, at the next session, provide for a convention, to consist of double the number of members of the Senate, to be elected in the same manner, at the same places, and in the same districts. The General Assembly shall, in the act calling the convention, designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the expenses necessarily incurred by the convention in the performance of its duties. Before proceeding, the members shall take an oath to support the Constitution of the United States and of the State of Illinois, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as that of members of the Senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the General Assembly. Said convention shall meet within three months after such election, and prepare such revision, alteration or amendments of the constitution as shall be deemed necessary, which shall be submitted to the electors for the ratification or rejection, at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved, by a majority of the electors voting at the election, no such revision, alterations or amendments shall take effect. 3

1970 Illinois Constitution
CONSTITUTIONAL CONVENTION PROVISION
Illinois Constitution Article 14 Section 1

- (a) Whenever three-fifths of the members elected to each house of the General Assembly so direct, the question of whether a constitutional convention should be called shall be submitted to the electors at the general election next occurring at least six months after such legislative direction.*
- (b) If the question of whether a convention should be called is not submitted during any 20 year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission.*
- (c) The vote on whether to call a convention shall be on a separate ballot. A convention shall be called if approved by three-fifths of those voting on the question or a majority of those voting in the election.*

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- (d) *The General Assembly, at the session following approval by the electors, by law shall provide for the convention and the election of two delegates from each legislative district; designate the time and place of the convention's first meeting which shall be within three months after the election of delegates; fix and provide for the pay of delegates and officers; and provide for expenses necessarily incurred by the convention.*
- (e) *To be eligible to be a delegate a person must meet the same eligibility requirements as a member of the General Assembly. Vacancies shall be filled as provided by law.*
- (f) *The convention shall prepare such revision of or amendments to the Constitution as it deems necessary. Any proposed revision or amendments approved by a majority of the delegates elected shall be submitted to the electors in such manner as the convention determines, at an election designated or called by the convention occurring not less than two nor more than six months after the convention's adjournment. Any revision or amendments proposed by the convention shall be published with explanations, as the convention provides, at least one month preceding the election.*
- (g) *The vote on the proposed revision or amendments shall be on a separate ballot. Any proposed revision or amendments shall become effective, as the convention provides, if approved by a majority of those voting on the question. 4*

Illinois' Previous Constitutional Conventions

Illinois' government has operated under four constitutions: our original constitution was adopted in 1818 when Illinois became a state. Illinois rewrote its original constitution in 1848, and then again in 1870 and in 1970. All four constitutions have had a convention option for altering the constitution.

There have been six constitutional conventions in Illinois called under these provisions, four of which resulted in new state constitutions. The first was called under an Act of Congress in 1818 and resulted in the original constitution. The second convention was called in 1846 and resulted in the Constitution of 1848. The third convention was called in 1860, with the proposed changes rejected by Illinois voters in 1862. The fourth convention was called in 1868 and resulted in the Constitution of 1870. The fifth convention was called in 1918, but the revisions were rejected by popular vote in 1922. The sixth and last call, was approved in 1968, and resulted in Illinois' current Constitution of 1970.

In addition to these six successful constitutional convention calls, there have been five calls approved by the legislature, but rejected by popular vote. These occurred in 1824, 1842, 1856, 1934, and 1988. There have been a number of convention calls that did not pass the legislature.

The Constitution of 1818

The Constitutional Convention of 1818 was called under an Act of Congress in April 1818. The Constitution of 1818 took just over three weeks to draft, with 33 delegates convening on August 3, 1818, and adjourning August 26, 1818. It was not submitted for popular vote, but was made operative on December 3, 1818, by admission of Illinois into the Union. The only option for amending the original constitution was by calling for a convention.

The Congressional Enabling Act expressly declared that “any constitution adopted should not be repugnant to the Northwest Ordinance of 1787 ⁵. Article VI of the Northwest Ordinance read as follows: “There shall neither be slavery nor involuntary servitude in the said territory...” To slave interests in Illinois, this section contravened the original guarantee of property rights provided in 1784 when Virginia ceded the territory to the United States.

With over one-third (12) of the 33 delegates having immigrated to the Illinois Territory from southern states, this clearly put the slavery issue in front of the convention. Thirteen of the delegates had owned or hired slaves at some point in their lives ⁶. Thus, Illinois' original constitution reflected a tenuous balance between what Congress required for statehood and what the convention delegates felt was needed to reflect their own interests and the interests of the people here. On the one hand, the 1818 Constitution forbade expansion of slavery in the state; yet on the other hand it allowed “persons bound

to labor in any other state to be hired to labor in this state” and recognized existing contracts or indentures binding persons to service.

This language caused significant turbulence in the state’s earliest years. Only five years later, the General Assembly, controlled by pro-slavery interests, placed a convention call on the ballot to more fully recognize the principle of slavery. With extraordinary opposition leadership by Governor Edward Coles, voters rejected the convention call in 1824 by a vote of 6,640 to 4,972 and the pro-slavery faction was defeated ⁷. Even though the 1840 census documented only 331 slaves out of a total state population of 476,183, slavery continued to be a major issue at both the 1848 and 1862 Constitutional Conventions.

In 1842, with the state strapped by a failed banking system and struggling with debt from internal improvement and railroad bonds, a call was placed on the ballot by the General Assembly to amend the constitution. Adding impetus to the call was the tenfold increase in population since the 1818 Constitution, with foreign immigration dramatically increasing, particularly in Northern Illinois. While the call received 37,476 for a convention to 23,282 votes against it, it failed to receive the majority of votes cast for representatives by 4,203 votes ⁸. However, from this public dialogue, increased public awareness of the problems with the original constitution resulted in a successful call being approved overwhelmingly in 1846. The 1846 call received 55 percent of the overall vote for representatives and 75 percent of the vote on the call itself ⁹.

The Constitution of 1848

From the call in 1846, delegates were assembled on June 7, 1847, and adjourned August 31, 1847. The product of the convention was submitted to voters for approval at a special election in 1848 and ratified by a majority of almost four to one.

The 1848 Constitution expanded the powers of the executive branch and broadened the state’s ability to amend the constitution. While carrying forward the provisions related to assembling a convention contained in the 1818 Constitution, the new constitution allowed the General Assembly, by a two-thirds vote of both chambers in the first session followed by a majority vote in the next session, to put a constitutional amendment on the ballot ¹⁰. While this was a cumbersome and ineffective process, it established an alternative constitutional change mechanism. This will be discussed in greater detail at a later point.

In response to the state banking failures of 1831 and 1842 and the internal improvement debt that amassed between 1837 and 1841, the new constitution severely limited the ability of the state to incur debt and forbade the state to create a new state bank or revive the charter of the previous bank ¹¹. The 1848 Constitution also formally organized the judicial branch of government, recognizing the system of circuit courts, county courts, and justices of the peace that had been created by the General Assembly. The constitution established voting by ballot as opposed to voice vote. It removed from the legislature the power to appoint judges and expand the number of judges on the Supreme Court, instead allowing for popular election of three Supreme Court judges, each with nine year terms ¹². This was done in response to extraordinary partisan manipulation by

the legislature (led by Stephen Douglas) in expanding, and then stacking the Supreme Court in 1841. Douglas' party was fearful that the Whig court majority would revoke the rights of aliens to vote. Alien voters were a large Democratic party voting block. The 1848 Constitution also explicitly restricted the right to vote to all white male citizens over 21 who had resided in Illinois for at least one year ¹³.

The convention submitted two articles (Articles 14 & 15) for separate vote from the constitution itself. These were approved, but by smaller margins than the constitution as a whole. This set the precedent (equal separate submission) which was followed by 1862, 1870, and 1970 conventions of putting controversial issues with broad public interest to an up or down vote, separate from the constitution itself. Article 14 directed the General Assembly to pass a law prohibiting "free persons of color from immigrating to and settling this state and to effectually prevent owners of slaves from bringing them into Illinois for the purpose of setting them free." Article 15 allowed the state to levy a tax to retire debt from its previous banking and internal improvement debacles ¹⁴.

In 1856 the legislature placed a convention call on the ballot due to the perceived inflexibilities of the 1848 Constitution (particularly in the legislative amendment process reserved to the General Assembly), but the call failed to garner much debate and was rejected by popular vote ¹⁵.

The Constitutional Convention of 1861

The convention of 1861 was called to correct two defects in the 1848 Constitution. The first was of concern to elected state officers: their salaries were fixed in the constitution. As duties were expanded, salaries could not follow. The second defect was that the General Assembly was spending more time passing private and special laws (granting divorces, changing court venue, changing peoples' names, granting immunity, summoning juries, etc.) than public laws ¹⁶.

While the revision proposal submitted for voter approval successfully addressed both of these issues (notably, the 1870 Constitution used the language from the 1862 proposal for these two changes ¹⁷), the convention was plagued by a number of other issues. The delegates were decidedly partisan and viewed their role as superior to that of the legislature. They sought to enact Congressional Reapportionment and assume powers other than those of framing a new constitution. At the same time, delegates were not viewed as pro-Union enough and the proposal advanced by the convention was known as the "Copperhead Constitution." As a result, the 1862 proposal was rejected by voters by a margin of 24,515 votes ¹⁸. Interestingly, three proposals separately submitted that prohibited African-American immigration into Illinois and barred their right to vote and to hold office met voter approval ¹⁹. These proposals, however, did not take effect because of the defeat of the constitution.

The Constitution of 1870

Illinois voters approved a convention call at the general election in November, 1868. Delegates were elected in November 1869 and convened in December 1869. In addition to the two primary reasons for convening the 1862 convention (lifting state salaries and curbing private legislation), other reasons for the call were to restructure the state's judiciary, increase the number of legislators, and repeal the two mill tax from the 1848 constitution 20.

The constitutional convention section that emerged under the 1870 Constitution was very similar to those of previous constitutions, but for the specific requirement that any proposed change be explicitly approved by the voters. This was deemed necessary because the practice of submitting proposed constitutional changes to popular vote was openly questioned at the 1861 convention. The new provisions required that within six months of the convention's end, changes were to be submitted to voters for approval. To be approved, changes needed to receive both a majority of the votes cast not only on the changes, but also a majority of the total votes cast in the election.

New also to the voter approval process was the decision to submit the new constitution for vote during a special election so that it would not be rejected by the unintentional negative votes of those voters who had no interest in voting on the constitution. In a special election, only those who had an interest in voting on the constitution would vote. With relatively few people voting, the voters of Illinois approved the constitution by a large majority, with 134,277 voting for it and only 35,443 voting against 21.

Following the precedent of 1848, the 1870 Constitution was submitted to the voters in two parts: first, the overall changes deemed agreeable by all parties; and second, those changes dealing with controversial issues of public interest were submitted separately. In total, eight independent propositions were voted on separately. All passed, with the separate submission calling for minority representation in the legislature receiving the narrowest margin of favorable votes, 99,022 to 70,080 22.

“There were two main factors in the overwhelming approval of the new (1870) constitution. The first was the great public dissatisfaction with the performance of state government, linked with the widespread belief that changes in the state constitution would effect material improvements in this performance. Second, the constitution written by the convention was a bipartisan document which did not arouse opposition of any major segment of government or public opinion.” 23.

The Constitutional Convention of 1920

In 1917 the General Assembly approved a resolution for a constitutional convention to be called. With strong support from the Governor and numerous civic groups, this resolution appeared on the ballot in 1918 and was approved by voters by a vote of 562,012 for the convention to 162,206 against, with 251,327 not voting 24. According to the pre-ballot issue discussion prepared by the Legislative Reference Bureau at the time, the biggest single issue was property tax assessment, rate, and classification. “Under the

present general property tax provisions of our constitution much property, and particularly intangible personal property, escapes, and will continue to escape taxation. Better tax systems have lately been developed but cannot be put into operation under our present Constitution.”²⁵

In addition to advancing an income tax, other issues to be considered included a citizen initiative to amend the Constitution, woman suffrage, Cook County representation in the General Assembly, the creation of “home rule for Cook County and Chicago, and the elimination of cumulative voting for members of the Illinois House. A new constitution that addressed most of the issues above was submitted for approval at a special election in December 1922.

The convention proposal failed miserably, receiving just 185,298 votes for a convention and 921,398 against.²⁶ Among the many reasons attributed for the defeat was the failure to allow referendum and initiative; the overtly partisan organization of the convention; the lengthy period of time that had lapsed between the call and the submission of the proposal; the mistrust between Chicago and downstate regarding reapportionment of legislative and judicial districts; and the decision to submit the proposal as a whole rather than submitting separately controversial proposals²⁷.

In 1934, both houses of the General Assembly submitted another constitutional convention call to the ballot. The primary reasons attributed for the call included the failure of the courts, federal and state, to require legislative reapportionment; the increasing failure of the state’s property tax-based revenue system to adequately fund state government; and the repeated failure to amend the constitution through the General Assembly option. Notwithstanding the gravity and validity of each of these issues, this call failed, receiving just 23.4 percent of the total vote. Fully 56.5 percent of the voters in Illinois simply chose not to vote on this question.

With the election of Governor Stevenson in 1948, a renewed effort was made to call for another constitutional convention. This effort fell short in the legislature, largely because the Republicans had thrown their support to a constitutional amendment that made the amending process easier. This amendment (the Gateway Amendment) removed the requirement that a legislatively initiated change receive BOTH the two thirds majority of those voting on the question AND majority vote of those voting in the election. Under their alternative, either majority would be adequate to approve the change.

The success of this amendment at the polls in 1950 greatly diminished the need for a convention call to change the constitution because it increased the effectiveness of the legislative change mechanism. Had this new dual vote threshold been in effect originally, nine of the fourteen amendments submitted between 1891 and 1950 would have been adopted. Between 1952 and 1966 six of fifteen amendments were approved. Of these six amendments, the two most significant were a 1954 measure to reapportion the Legislature and a 1962 measure to apportion the Supreme Court²⁸. The court has not been reapportioned since

However, as time passed, the effectiveness of the new amendment process diminished. An evaluation of the amendatory process between 1952 and 1966 by Thomas Kitsos that showed only one amendment had been approved since 1954. His study concluded that “the piecemeal approach to constitutional revision is a long and arduous process 29.”

The Constitutional Convention of 1970

“I believe I do not exaggerate in saying that no state constitutional convention in the 20th century was held under more turbulent and politically adverse conditions.”³⁰

- Sam Witwer, 1970 Constitutional Convention President,

Prior to the launch of the campaign to call a constitutional convention in 1968, a great deal of thought and planning went into building the consensus that a convention was needed. By 1968, the case for a convention had been made. The 1870 Constitution reflected a state that no longer existed. It was too rigid and virtually un-amendable. It was a document to be “lived around”, not “lived under” 31. A new state charter was needed to take Illinois out of the horse and buggy era and into the space age 32.

It was recognized that anything short of a convention was inadequate to address some of the most vexing issues confronting Illinois. The State’s revenue and finance articles were particularly limiting, reflecting the measures of wealth from the agrarian era 33. Illinois’ cities had grown immensely, but their ability to respond to their needs was severely limited 34. The very structure of the executive, legislative, and judicial branches also merited review. For those who had repeatedly fought---but largely failed---to change the old constitution, making the new constitution more change friendly was a high priority.

These issues were largely addressed by the framers of the 1970 Constitution. Home rule, a concept initially advanced during the 1922 convention, granted vastly expanded powers of self government to municipalities with population greater than 25,000 and counties with an elected chief executive officer (Cook).

The revenue and finance articles were re-written to specifically authorize the state to impose an income tax and established an eight to five business to individual income tax rate ratio. Similarly, property tax classification was specifically authorized for counties over one million in population, limiting the highest rate to no more than 2-1/2 times the lowest. The Article also abolished the personal property tax and allowed homestead exemptions, exemptions of food and medicine from the sales tax. The ability for the state to issue bonds and short term debt was increased by reducing the legislative approval threshold from two-thirds to three-fifths and by eliminating the requirement for public referendum on debt in excess of \$250,000.

The Governor was granted broader powers to change legislative proposals through the amendatory veto and the line-item veto for appropriation measures. The election cycle for the executive branch was moved away from the presidential election cycles. Because of difficulties reapportioning the legislature, a new process for redistricting the legislature

was devised. The issues of whether to retain cumulative voting process for the legislature was put to direct vote through separate submission. In the Judicial Article, a Judicial Inquiry Board was created and the issue of whether judges should be appointed rather than elected was put to direct vote through separate submission.

Finally, the constitutional change process was vastly liberalized. A constitutional convention could be placed on the ballot by a three-fifths vote of the General Assembly instead of a two-thirds vote...and at a minimum of every twenty years. Similarly legislative vote requirements for amendments proposed by the General Assembly were lowered to three-fifths. Finally, a citizen initiative directed at structural and procedural issues involving the legislature was embraced.

In addition to these issues, a number of other issues were advanced. Even by today's standards, our constitution has a fairly broad bill of rights, guaranteeing freedom from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of an employer or in the sale or rental of property.

To enhance trust in the elections process, an autonomous State Board of Elections was created in Article III. For the first time in our state's constitutional history, an environmental (Article XI) was adopted.

The Education Article of the 1870 constitution was re-written. While the funding portion of the education article (Article X) sparked great debate during the convention (and since passage) ³⁵, often overlooked were the constitutional changes that abolished the elected office of state superintendent and created an autonomous state board of education.

Although Illinois ultimately ratified its new constitution in 1970 with a relatively comfortable vote of about two to one, the debate leading up to the December 15, 1970 vote was far from peaceful and nowhere near unanimous ³⁶. Indeed, the separate votes that were submitted for independent approval on provisions to lower the voting age, reduce the size of the General Assembly, the election vs. appointment of judges, and to abolish the death penalty were all defeated.

Constitutional Convention Provisions in Other States

A number of states have similar provisions for an automatic convention call trigger in their constitutions and the period of time for the call varies. For example, Florida, Maryland, Missouri, Montana, New York, Ohio, and Oklahoma each require a twenty year review. Iowa, New Hampshire, and Rhode Island require a ten year review. Michigan calls for this review every sixteen years.

In Oklahoma and North Carolina, a constitutional convention call by the legislature is prohibited without a prior vote of the people supporting the call. In North Carolina's case, the legislature can only then approve a call by a two-thirds majority vote.

These periodic calls generate an extraordinarily important and necessary dialogue on the framework of government. However, as we have seen through our own experience in Illinois, these calls in and of themselves, do not necessarily lead to conventions or new constitutions. While amendments and revisions have occurred in states with this type of provision, it is typically alternative procedures that have been utilized to make constitutional change.

Changing the Constitution through the Legislative Amendment

Illinois currently has two alternatives to a constitutional convention that can be utilized for more targeted constitutional changes. The first of these alternatives is the Legislative Amendment process where constitutional amendments can be advanced to the voters by a vote of both houses of the General Assembly. Below is the language of our constitutions on this method of change:

1848 Illinois Constitution CONSTITUTIONAL AMENDMENT BY GENERAL ASSEMBLY Illinois Constitution Article 12, Section 2

Any amendment or amendments to this constitution may be proposed in either branch of the General Assembly, and if the same shall be agreed to by two thirds of all the members elect in each of the two Houses, such proposed amendment or amendments shall be referred to the next regular session of the General Assembly, and shall be published at least three months previous to the time of holding the next election for members of the House of Representatives, and if, (at the next regular session of the General Assembly after said election) a majority of all the members elect in each branch of the General Assembly shall agree to said amendment or amendments, then it shall be their duty to submit the same to the people at the next general election for their adoption or rejection in such manner as may be prescribed by law, and if a majority of all the electors voting at such election for members of the House of Representatives shall vote for such amendment or amendments, the same shall become a part of the constitution. But the General Assembly shall not have power to propose an amendment or amendments to more than one article of the constitution at the same session. 37

1870 Illinois Constitution CONSTITUTIONAL AMENDMENT BY GENERAL ASSEMBLY Illinois Constitution Article 12, Section 2

Amendments to this Constitution may be proposed in either House of the General Assembly, and if the same shall be voted for by two-thirds of all members elected to each of the two houses, such proposed amendments, together with the yeas and nays of each house thereon, shall be entered in full on their respective journals, and said amendments shall be submitted to the electors of the General Assembly, in such manner as may be prescribed by law. The proposed amendments shall be published in full at least three months preceding the election, and if a majority of the electors voting at said election shall vote for the proposed amendments, they shall become a part of this Constitution. But the General Assembly shall have no power to propose amendments to more than one article of the Constitution at the same session, nor to the same article more often than once in four years. 38

1970 Illinois Constitution
CONSTITUTIONAL AMENDMENT BY GENERAL ASSEMBLY
Illinois Constitution Article 14, Section 2

- (a) *Amendments to this Constitution may be initiated in either house of the General Assembly. Amendments shall be read in full on three different days in each house and reproduced before the vote is taken on final passage. Amendments approved by the vote of three-fifths of the members elected to each house shall be submitted to the electors at the general election next occurring at least six months after such legislative approval, unless withdrawn by a vote of a majority of the members elected to each house.*
- (b) *Amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors. The vote on the proposed amendment or amendments shall be on a separate ballot. A proposed amendment shall become effective as the amendment provides if approved by either three-fifths of those voting on the question or a majority of those voting in the election.*
- (c) *The General Assembly shall not submit proposed amendments to more than three Articles of the Constitution at any one election. No amendment shall be proposed or submitted under this Section from the time a Convention is called until after the electors have voted on the revision or amendments, if any, proposed by such Convention.* ³⁹

The Constitution of 1848 introduced the legislative amendment method of constitutional change to Illinois. While the language governing the change process was extraordinarily cumbersome, the value of this option was diminished even further by the limitation of change to no more than one article in a legislative session.

“One of the declared aims of the 1869-70 convention had been to make alterations of the Illinois Constitution easier...” ⁴⁰ The 1870 Constitution streamlined the General Assembly initiative and simply required a two-thirds vote of each chamber to move the amendment to ballot. The 1870 Constitution maintained the limitation of amendment to only one article in a legislative session. To approve an amendment, the 1870 Constitution required a majority of the electors voting in the election to vote for the amendment. This was not viewed as too restrictive at the time because ballots printed by each party included the constitutional question and the vote was counted as the party determined unless the voter scratched it out. Indeed, the first five amendments proposed to the constitution between 1878 and 1890 carried, with the average number of non-votes less than 25 percent.

However, voting procedures changed in 1891, when the state moved to the secret ballot. Those not voting on the question were once again counted as voting against the proposal.

The impact of this change was immediate. The average number of non-votes on the next three amendments neared 80 percent. Only two amendments were adopted between 1892 and 1950 ⁴¹.

In 1950, the Gateway Amendment was adopted. With this amendment to the 1870 Constitution, new constitutional change could be approved by a two-thirds favorable majority of those voting on the amendment itself. The new amendment also increased the number of constitutional articles the General Assembly could submit to public vote from one to three.

When the General Assembly placed the Gateway Amendment before the voters in 1950, it directed that the amendment be submitted to vote on a separate blue ballot that advised the voter that failure to vote on this proposal amounted to a negative vote. The Gateway Amendment passed on a vote of 2,512,323 for; 735,963 against; 483,392 not voting ⁴².

In a retrospective by Sam Witwer, the President of the 1970 Constitutional Convention, stated: “Over the many long years leading up to the convention, our people were frustrated at every turn in their efforts to amend or revise the 1870 Constitution. For over fifty years, no proposed amendment to the constitution surmounted the highly restrictive standards of passage imposed by the 1870 draftsmen. Repeated attempts to adopt Gateway Amendments foundered. Then after succeeding by a mammoth effort in adopting the first "successful" Gateway Amendment in 1950, the state was forced to try for fifteen additional years, largely unsuccessfully, to find a way out of its constitutional straightjacket ⁴³.”

As president of the Sixth Constitutional Convention, Mr. Witwer was in a position to dramatically enhance the legislative amendment process in the new constitution. The Constitution of 1970 reduced the General Assembly threshold for moving an amendment to public vote from two-thirds to three-fifths. It also lowered the voter approval threshold from two-thirds of those voting on the question to three-fifths.

Illinois’ Experience with the General Assembly Initiative

The Illinois General Assembly has been fairly conservative in utilizing its constitutional change provision. Since the new constitution was adopted in 1970, the General Assembly has advanced sixteen proposed amendments to voters. Nine amendments have been adopted, while seven amendments have failed to receive the necessary majorities.

- 1974 Proposal to limit the Governor’s amendatory veto power to changes in matters of form and correction of technical errors. FAILED
- 1978 Proposal to eliminate the requirement in Article 9 Subsection 5(c) that the General Assembly abolish all remaining taxation on personal property. FAILED

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- 1978 Proposal to exempt Veterans' Organizations from property tax. FAILED
- 1980 Article 9 Section 8 to reduce time allowed for redemption of some kinds of real property sold for nonpayment of taxes. ADOPTED
- 1982 Article 1 Section 9 to expand the class of suspects be denied bail. ADOPTED
- 1984 Proposal to exempt Veterans' Organizations from property tax. FAILED
- 1986 Proposal to exempt veterans' organizations from property tax and reimburse local governments for lost revenues. FAILED
- 1986 Article 1 Section 9 to further expand the class of suspects who can be denied bail. ADOPTED
- 1988 Proposal to change redemption period for real property sold for non-payment of taxes. (However, a nearly identical proposal in 1990 passed). FAILED
- 1988 Article 3 Section 1 to lower the minimum voter age to 18 and to reduce the minimum residency requirement for voting to 30 days. ADOPTED
- 1990 Article 9 Section 8 to subdivide the kinds of real property having a shorter period of time for redemption from taxes into two groups. ADOPTED
- 1992 Added to Article 1 a new Section 8.1 on rights of crime victims. ADOPTED
- 1992 Proposal to require "equality of educational opportunity" and make the state pay the preponderant financial responsibility for financing public schools. FAILED
- 1994 Amended Article 1 Section 8 to remove the requirement of face to face confrontation in criminal trials between witnesses and defendants. ADOPTED
- 1994 Amended Article 4 Section 10 to change the intended legislative adjournment date from June 30 to May 31. ADOPTED
- 1998 Amended Article 6 Section 15 to strengthen the process for discipline of judges charged with misconduct. ADOPTED

From the experience above, it is fair to say this mechanism for constitutional change has been utilized with limited success, particularly when the substance of the amendments adopted is weighed against the body of the constitution. Ten of the fourteen proposals put before the public in the last 37 years have dealt with arcane issues of relative political ease, yet limited substance.

Of far greater substance were four issues, three of which failed to receive the required three-fifths majority vote in the general election, and the fourth was approved.

- The first attempt to amend the 1970 Constitution sought to limit the Governor's amendatory veto power. It was on the ballot in 1974. At the time, the amendatory veto power was a novel expansion of executive power in the 1970 Constitution that needed clarification. The measure failed, receiving 1,302,313 votes in support (49.5 percent) and 1,329,719 votes in opposition. In defeating this proposal, voters refused to limit the amendatory veto power to technical correction. The broad exercise of this power by some governors, however, has exacerbated tensions between the legislative and executive branches ever since.
- The second attempt to amend the constitution sought to remove the 1970 Constitutional requirement that the personal property tax on corporations be eliminated. It was put on the ballot in 1978. The measure failed, receiving 952,416 votes in support (56.4 percent) and 733,845 votes in opposition. In defeating this proposal, the original directive of the new constitution that the personal property tax be abolished was upheld and the legislature in the following year passed the corporate personal property replacement income tax.
- The third attempt to amend the constitution sought to clarify the state's responsibility to fund public education. It proposed to raise the state's funding threshold from a "primary" responsibility to a "preponderant" responsibility. It was put on the ballot in 1992. A 1973 Supreme Court decision held that the constitution did not require the state to provide at least half the school funding. This measure failed, receiving 1,882,569 votes in support (57 percent) and 1,417,520 votes in opposition. In defeating this initiative the voters upheld the legislative power to fund schools. In yet another Supreme Court decision in 1996, the legislative funding prerogatives were again upheld.
- The fourth and only successful attempt to amend the 1970 Constitution reduced the voting age and the residency requirement to conform with the United States Constitution. This measure was originally submitted separately for approval by the 1970 Constitutional Convention and failed to receive the needed votes. Following the adoption of Amendment 26 to the United States Constitution in 1971, this measure was subsequently submitted for vote and received 2,086,744 votes in support (64 percent) and 1,162,258 votes in opposition.

Legislative Amendment Provisions in Other State Constitutions

Most states have a legislative amendment mechanism built into their constitutions. Each state varies in the thresholds required for both moving the amendment to the voters, and required public vote for approval. For example:

- Arizona, Minnesota, and Missouri require a simple majority vote from the legislature to submit the amendment to vote and then a simple majority of those voting to approve the change.
- California requires a two-thirds vote from the legislature...and then a simple majority vote from the people to make the change.
- Connecticut and Delaware require a simple majority vote from the legislature, but requires that votes take place in each of two successive legislative sessions before the change can go to the public. With a simple majority, voters can approve the change.

Illinois' legislative approval threshold of three-fifths of the members elected to the General Assembly for submitting the question to public vote puts Illinois in the middle of the pack nationally. Similarly, the voter approval threshold of three-fifths of those voting on the question or simple majority of those voting in the election is in line with other states. While the effectiveness of the General Assembly initiative to advance substantive issues to the ballot has been limited in Illinois, in relation to other states, the framework for doing so by our constitution is not.

Changing the Constitution through the Citizen Initiative

The third means of amending Illinois' constitution is by citizen initiative. The 1970 Constitution initiated this constitution change mechanism. It is limited to the legislative article only, and has only been utilized once.

CITIZEN INITIATIVE FOR LEGISLATIVE ARTICLE Illinois 1970 Constitution Article 14, Section 3

Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the Secretary of State at least six months before that general election. The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.

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Illinois' Experience with Citizen Initiatives and Referendum

The 1870 Constitution called for referendum requiring public approval of laws that dealt with expanded banking in Illinois. It also required that debts in excess of \$250,000 be submitted to public vote and approved. These referendum requirements could prohibit an act from becoming effective. It is, in effect, a popular veto of a legislative action.

An initiative, however, puts questions of public policy before the elected officeholders. In 1901, Illinois enacted its "Public Policy Law" that required "proper election officials to submit a question of public policy before the voters if 10 percent of the registered voters of the state petitioned for the question. A number of public policy questions were put before the voters in this manner, the results of which were "advisory".⁴⁵

The genesis of the current citizen initiative can be found in a constitutional amendment proposed in 1911 and again in 1913. The measure was directed to enactment of laws through the citizen initiative and limited to the legislative article. It required 8 percent of the electors of the state to petition for the proposal, which then had to be considered by the General Assembly. The proposal further empowered the people, with 5 percent of the

electors signing the petition, to prohibit a law from becoming effective without public approval. This measure received big majorities in the State Senate both times, but failed to receive approval in the House. Leading up to the 1920 Constitutional Convention, there was considerable discussion about this particular vehicle for change. ⁴⁶

At the 1970 Convention a proposal to allow the citizen initiative without limit was defeated ⁴⁷. The Convention did however embrace the concept as a way to change structural and procedural subjects contained in the legislative article of the constitution. This citizen amendment process has been utilized only once. In 1980, there was an initiative to reduce the size of the House of Representatives by eliminating multi-member districts and cumulative voting. It passed with nearly 69 percent of the vote (well in excess of the three-fifths requirement) by a vote of 2,112,224 for to 962,325 against. Against the threshold of total votes cast, it received only 43 percent of the total votes (4,868,623).

A 1976 Illinois Supreme Court decision said that for an initiative to meet the terms of this section, a proposed amendment must meet both structural and procedural changes. In so doing, it barred a group of proposed amendments from the ballot to tighten the dual office holding restriction in the legislative article. The 1980 cutback amendment met both thresholds first by reducing the size of the House and second by eliminating cumulative voting.

Other key cases below have been cited by the Legislative Research Unit that further interpret this section of the constitution: ⁴⁸

- In 1982, the Illinois Supreme Court blocked an initiative that would have allowed citizens to enact laws through an initiative process (similar to Washington state).
- In 1990, the Illinois Supreme Court blocked an initiative that would have required a three-fifths vote of the legislature to enact any tax increases, citing intent by the convention that “substantive” issues be dealt with through statute, rather than the constitution.
- In 1994, on a 4-3 decision, the Illinois Supreme Court ruled that an initiative limiting terms of legislators to no more than eight years did not address both structural and procedural changes. The dissent however, stated that the change was non-substantive and the previous 1976 ruling was too limiting.

While it was clear from the efforts of the delegates at the 1970 Constitutional Convention that they wanted broader constitutional change mechanisms in the new constitution, it appears the delegates sought to strike a balance between those delegates who felt a wide-open initiative process would be good for Illinois and those who did not feel the constitution should be so easy to amend. A middle ground was struck by limiting this section to the legislative article alone. The rationale for this limitation: of the three branches of government, the convention gave the legislature - and only the legislature -

the specific ability to amend the constitution. There was apparent concern, however, that the legislature would be reluctant to change itself.

Given that this section has only successfully been utilized once since 1970, and given the court cases cited above, this section has very limited application for constitutional change.

Citizen Initiatives and Referendum in Other States

In other states that have provisions for citizen initiatives in their constitutions, their provisions are generally broader than Illinois'. Thresholds for authorizing a ballot vote and approving the initiatives vary.

- Arizona requires signatures equal to 15 percent of the votes cast in the most recent gubernatorial election, Mississippi requires 12 percent, Michigan, Montana, and South Dakota require 10 percent, California and Oregon, like Illinois, requires signatures of 8 percent.
- Florida requires signatures of 8 percent of the votes cast in the most recent presidential election.
- North Dakota requires signatures equal to 4 percent of the resident population.

While Illinois limits this initiative to the Legislative Article of the constitution, Mississippi prohibits citizen initiatives from amending its Bill of Rights, state retirement systems and right to work provisions, or the initiative process itself.

2008 Constitutional Convention Issues

In June 2007, the Illinois House narrowly adopted (48Y-47N-2P) a non-binding resolution urging “the support of the electorate on the question of whether a Constitutional Convention should be called.”⁴⁹ While House Speaker Madigan supported the resolution, the roll call itself was not driven by party vote or geography.

Three key points in the resolution were cited as supporting a call for the convention. They are as follows:

- Education: Illinois has an “unacceptably large and increasing funding disparity between school districts.” Illinois’ “minimum per student foundation level of support is inadequate.” Illinois ranks 49th among the states in the portion of school funding provided by the State”.
- Government: The people of Illinois deserve and demand good and honest government.”
- Revenue: Illinois’ present method of assessing property is “antiquated and inequitable, resulting in unnecessary and significant hardship to homeowners.”

The resolution further states that the legislature has been unable to “achieve results on these and other worthwhile issues” and suggests a constitutional convention is a “practical avenue for addressing these matters and providing overdue reforms to our laws.”

Few would suggest that these issues are not important or that they have been fully addressed by the legislature. The legislature cannot, however, be condemned for not trying. Roughly 6,000 pieces of legislation were introduced in the House and Senate in 2007, with literally hundreds of bills dealing with the issues enumerated above. During the current biennium, eleven constitutional amendments have been introduced in the Senate and thirty in the House.

The failure of the legislature to resolve these issues is not attributable to a defect in our constitution. There is nothing in our constitution that prohibits or impedes the legislature from bringing adequate, equitable, or even excessive funding to our schools. Similarly, there is nothing in our constitution that limits or impedes the legislature from passing laws to discourage or punish the abuse of power and public trust for personal gain by elected officials. Given the abundance of bills and constitutional amendments proposed in every legislative session to address these issues, one can only conclude that the legislature neither feels constrained nor in actuality is constrained by our current constitution.

For those who embrace a convention call “as a practical way” to resolve tough issues, Illinois’ history with constitutional change suggests that solutions to long term critical

policy issues that are elusive in the legislative setting are no less elusive at a constitutional convention.

Most recently, this is best illustrated by an excellent analysis of the extensive school funding debate at the 1970 Constitutional Convention written by Thomas and John Wilson for *Illinois Issues* magazine in March of 1992. Their analysis shows:

- **On the question of equitable funding:** Delegates debated and rejected specific language that “no local governmental unit or school district may levy taxes or appropriate funds for the purposes of such educational operation except to the extent of 10% of the amount received by that district from the General Assembly in that year.”
- **On the question of state and local funding ratios:** Delegates debated and rejected specific language that “funds obtained through local taxation by or for a school district or municipality for a free school purpose shall not exceed 50% of the total funds for such purpose.”
- **On the question of property taxes for schools:** Delegates debated and rejected specific language “to provide substantially all funds for the financing of the free public schools from revenues other than real property taxes.”

The article concludes: “The convention’s debates on education were full of confusing turns and contradictory aims: the delegates generally desired more equality of educational opportunities, but they generally rejected any specific measure which could achieve it.”⁵⁰

That momentous discussions on such issues as education funding have continued in the legislative arena since 1970 is not a failing of our constitution. Rather, many delegates both hoped and expected that these discussions would continue in the legislative venue. The framework provided by the 1970 Constitution they crafted allows for the vast spectrum of potential legislative resolution.

Constitutional Convention Recommendation

Given the extraordinarily broad range of issues embedded in each article of the Illinois Constitution, and given that the constitutional call cannot limit the scope of review, we believe that a convention option is best reserved for a time when no other viable change options exist and consensus has emerged on both the scope and subject of change. This has been the case with every other successful convention call in Illinois. It is not the case today.

- The 1848 Constitutional Convention clarified where Illinois stood on slavery, restructured Illinois' judiciary, and came to terms with the consequences of Illinois' failed state banking and internal improvement debt. There was no reform mechanism available other than the convention.
- The 1860 Constitutional Convention sought to raise the legislative branch from the mire of private legislation (granting divorces, changing court venue, changing peoples' names, granting immunity, summoning juries, etc.) and to remove executive salaries from the constitution. The process for amending the constitution by the General Assembly was not viable.
- The 1870 Constitutional Convention addressed the abuse of private legislation and restructured Illinois' Judiciary, and changed the composition of the House by creating multi-member districts elected through cumulative voting. The process for amending the constitution by the General Assembly was not viable.
- The 1918 Constitutional Convention sought to address the issues of the state's property tax structure, woman suffrage, and introduced relatively new concepts of the citizen initiative and home rule. Changes in ballot procedures in 1891 hamstrung the process for amending the constitution by the General Assembly.
- The 1970 Constitutional Convention brought the current constitution, particularly the state's banking and revenue structure, into the 20th Century. It enacted a citizen initiative to amend the constitution, allowed home rule for communities larger than 25,000 in population, and proposed merit selection of judges and elimination of multi-member legislative districts for public vote. The substantial need for change driven by the age of the 1870 Constitution made amendment by General Assembly inadequate.

The sheer gravity of the issues addressed by these previous conventions creates a very high threshold for the calling of a convention. For those issues today that require constitutional change, the legislative amendment process offers focus for both debate and resolution.

The IBRT agrees with a threshold principle that has been applied in past convention considerations:

“The convention method of amending a constitution is cumbersome and expensive. It is not calculated to enable immediate constitutional changes no matter how urgent such changes may be...the convention method should not be resorted to unless a rather thorough revision of the constitution is deemed necessary, in which event the assembling of a body for that purpose is highly desirable.” 51

In the context of Illinois’ unique history with constitutions and constitutional change, the current call fails to meet the threshold for a constitutional convention in 2008 and an adequate mechanism for specific revision exists. The IBRT urges voters to reject the call.

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