
Coates' Canons Blog: 2011 General Assembly, Act 3 Coming Up: Constitutional Amendments

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The 2011 General Assembly completed its second session last week, the contentious redistricting and veto-override session, and has scheduled its third session of the year for September 12th. At the top of the list of approved topics for the fall session are constitutional amendments. Let's look at what it takes to pass a constitutional amendment and at the proposals currently on the table.

What is the process for amending the constitution?

There are two ways to amend the state constitution, both requiring voter approval as the final step.

The first method is through a constitutional convention, but that has not happened since 1875. It's an arduous process. Two-thirds of the members of each house of the legislature have to call for a convention and then the voters have to agree in a statewide referendum. If all that happens the convention is convened and is limited to the subjects set out in the act calling the convention. The number of delegates is the same as the number of House members, 120, and they are elected from the same districts. A new constitution or any amendments approved by the convention are subject to a referendum.

The second, easier and more common method of amendment is initiation by the General Assembly. A constitutional amendment may be proposed and put on the ballot by vote of three-fifths of the membership of each house. There is no opportunity for a gubernatorial veto, which makes sense because a three-fifths vote would override a veto anyway.

How often does the constitution get amended?

North Carolina currently is operating under the Constitution of 1971. In the 40 years since the constitution was adopted there have been 30 amendments approved and seven rejected by the voters. The latest amendment was in 2010 to prohibit convicted felons from becoming sheriff. Before that the three most recent were in 2004. One addressed the handling of civil penalties and another changed magistrates' terms. The third was the amendment to Article V, Section 14 for project development financing, a proposition that had been rejected twice before when identified as tax increment bonds. In fact, one of those previous versions was the last constitutional amendment to be rejected by the voters, in 1993. Amendments are on a winning streak, the last eight amendments having been accepted by the voters. The most amendments on the ballot in one year was five in 1977.

What kind of amendments might be taken up this year?

Thus far 22 constitutional amendments have been introduced this session and all would be eligible for debate in September. The rules for session also seem to allow the introduction of new constitutional amendments at that time, so more could be on the way. Three amendments have already passed the House: House Bill 8, limiting the use of eminent domain; House Bill 61, putting term limits on legislative leaders; and House Bill 823, restructuring the State Board of Education.

A likely headliner for September is an amendment to prohibit same-sex marriages, two versions of which have already been introduced. The perennial effort to change the manner of selecting judges, already the subject of several proposed amendments this session, might get attention again. There are two proposals to take redistricting out of the hands of the legislature and give it to an independent commission. And there are various proposals for term limits, restrictions on budget growth and new taxes, open meetings, English as the official state language, and so on.

Here is a list the constitutional amendments that have been introduced to date. The brief summaries do not do justice to the complexity of some of the proposals, and all are subject to drastic change once the action starts in September. The list:

- **House Bill 8 (Limit use of eminent domain)** ? One of three amendments to have already passed the House, H8 would declare that eminent domain (condemnation) may be used only to take property for a public use and that compensation would be determined by a jury. As originally introduced the amendment was identical to Senate Bill 37 (see below), but in its present form H8 does not specially declare that taking property for economic development is not a public use.
- **House Bill 61 (Speaker, president pro tem limits)** ? Another amendment that already has passed the House. It would bar anyone from serving as speaker of the House or as president pro tem of the Senate for more than two sessions.
- **House Bill 99 (Judicial vacancy terms)** ? Judges appointed to vacancies on the Supreme Court or Court of Appeals would get to serve at least two full years before standing for election.
- **House Bill 158 (Legislative term limits)** ? Legislators would be limited to four consecutive terms in the same house.
- **House Bill 188 (Budget growth restricted)** ? The legislature would be prohibited from appropriating more in a fiscal year's budget than the previous year's expenditure plus an increase based on a specified fiscal growth formula.
- **House Bill 325 (Judicial selection)** ? Appellate judges appointed to fill vacancies would serve at least two years before being subject to election and then would face only a retention election.
- **House Bill 475 (English as official language)** ? A declaration that English is the official language of the state.
- **House Bill 777 (No same-sex marriage)** ? A declaration that the state may recognize only marriage between a man and woman.
- **House Bill 783 (Redistricting commission)** ? Congressional and legislative redistricting would be taken away from the General Assembly and given to a commission whose members would be appointed by the governor, chief justice, speaker, president pro tem and the minority party's legislative leaders.
- **House Bill 784 (Three-fifths vote to levy tax)** ? A three-fifths vote of the membership of each house would be required to levy a new tax or increase an existing tax.
- **House Bill 800 (Secret ballot for union vote)** ? A declaration that voting on union representation must be by secret ballot.
- **House Bill 823 (State Board of Education)** ? One of three amendments to have passed the House, H823 would add the Superintendent of Public Instruction to the State Board of Education, reduce the governor's appointments from eleven to eight, add four legislative appointments, and reduce terms from eight to six years. The amendment would also specify that the superintendent would make all state-level administrative and supervisory appointments.
- **House Bill 913 (State savings account)** ? The legislature would have to appropriate a specified percentage of the state budget to a state savings account each year, and could spend money from the account only to offset budget shortfalls or for capital projects.
- **Senate Bill 37 (Limit use of eminent domain)** ? Like H8 above, S37 would declare that private property may be taken only for a public use and that compensation would be determined by a jury. Unlike the House bill, this version of the constitutional amendment declares that public use does not include taking property for economic development.
- **Senate Bill 67 (Open meetings and public records)** ? This bill would establish a constitutional right of public access to governmental meetings and records and would require a two-thirds vote of both houses of the legislature for exceptions.

Back in March, Frayda Bluestein wrote a blog post offering additional insight into this particular proposal (“Self-Executing Constitutional Provisions”).

- **Senate Bill 106 (No same-sex marriage)** ? Although the wording is slightly different, this amendment has the same effect as H777.
- **Senate Bill 134 (Appointment of magistrates)** ? The chief district judge rather than the senior resident superior court judge would appoint magistrates.
- **Senate Bill 140 (Legislative leader terms, gubernatorial ticket)** ? The amendment would prohibit anyone from serving as speaker or president pro tem for more than three consecutive sessions, and provide for the governor and lieutenant governor to be elected as a team.
- **Senate Bill 398 (Charitable trusts)** ? Declaration that the constitutional prohibition against perpetuities does not apply to charitable trusts.
- **Senate Bill 458 (Judicial selection)** ? The governor would fill appellate and superior court vacancies by appointing one of two people nominated by a commission; at the next election the person appointed would run against the other nominee; and subsequent elections would be only retention elections.
- **Senate Bill 591 (Redistricting commission)** ? Like H783 this bill would turn redistricting over to a commission. The proposed amendment specifies the various political, racial, gender and geographic balances required for the commission but leaves the details of its appointment to legislation.
- **Senate Bill 641 (State Board of Education)** ? Half a dozen legislative appointments would be added to the State Board of Education, the governor’s appointments reduced, and the UNC and community college presidents added.

Links

- www.ncleg.net/Sessions/2011/Bills/House/PDF/H938v3.pdf
- www.ncleg.net/Legislation/constitution/article13.html
- www.ncleg.net/Sessions/2011/Bills/House/PDF/H8v3.pdf
- www.ncleg.net/Sessions/2011/Bills/House/PDF/H61v2.pdf
- www.ncleg.net/Sessions/2011/Bills/House/PDF/H823v3.pdf
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