



Ohio Legislative Service Commission

Resolution Analysis

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Sub. H.J.R. 4*

131st General Assembly
(As Reported by S. Rules & Reference)

Reps. R. Smith and Curtin, Brown, Buchy, Derickson, Green, McColley, Amstutz, Anielski, Blessing, Boose, Burkley, Butler, Conditt, Dever, Dovilla, Ginter, Grossman, Hackett, Hagan, Hall, Hayes, Henne, Hill, Huffman, T. Johnson, Koehler, Kraus, Landis, Maag, Manning, McClain, Perales, Reineke, Retherford, Rezabek, Ryan, Schaffer, Scherer, Schuring, Sears, Slaby, Sprague, Terhar, Thompson, Rosenberger

RESOLUTION SUMMARY

- Proposes an amendment to the Ohio Constitution to appear on the ballot at the November 3, 2015, general election.
- Prohibits the electors from using an initiative petition to propose a constitutional amendment that would grant or create a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person, nonpublic entity, or group of persons or nonpublic entities, or any combination thereof, however organized, that is not available to other similarly situated persons or nonpublic entities.
- Requires the Ohio Ballot Board, if the Board believes that a proposed constitutional amendment would conflict with that prohibition, to prescribe two separate ballot questions for the proposal.
- Requires the first ballot question to ask whether the petitioner shall be authorized to violate the prohibition against monopolies, and requires the second question to describe the amendment.
- Requires the electors to approve or affirm both ballot questions in order for the proposed constitutional amendment to take effect.

* This analysis was prepared before the report of the Senate Rules and Reference Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Specifies that if, at the election at which the anti-monopoly proposal appears on the ballot, the electors approve an initiated constitutional amendment that creates a monopoly, oligopoly or cartel for the sale, distribution, or other use of any federal Schedule 1 controlled substance, the entire amendment that creates the monopoly must not take effect (see **COMMENT**).
- Provides that if, at a later election, the electors approve a constitutional amendment that creates a monopoly and that was proposed by an initiative petition that was not subject to the Ohio Ballot Board procedure described above, then that entire amendment must not take effect.
- Gives the Ohio Supreme Court original, exclusive jurisdiction in any action that relates to the provisions described above.
- Exempts the current provisions of the Ohio Constitution from the prohibition against constitutional monopolies.

COMMENT

The Ohio Constitution specifies that if conflicting proposed amendments are approved at the same election, the amendment receiving the highest number of affirmative votes must be the amendment to the Constitution.¹ But, the resolution states that if such a conflict occurs in November, the amendment proposed by the resolution entirely supersedes an amendment that contains a monopoly. A reviewing court might not enforce this language in the resolution because it was not part of the Constitution at the time the amendments were adopted.

It is not clear how a court might resolve an apparent conflict between the amendment proposed by the resolution and an amendment that creates a monopoly. In deciding whether and to what extent the two amendments conflict, the court might find that parts of one or both amendments must take effect, while other parts must not. In that case, practical issues could result from the enforcement of only a portion of a constitutional amendment.

¹ Art. II, Sec. 1b.

HISTORY

ACTION	DATE
Introduced	06-16-15
Reported, H. Gov't Accountability & Oversight	06-24-15
Passed House (81-12)	06-24-15
Reported, S. Rules & Reference	---

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