



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

June 18, 2019

Senator Michael Dembrow
900 Court Street NE S407
Salem OR 97301

Re: Ability to repeal legislatively enacted laws through initiative process

Dear Senator Dembrow:

Section 135 of the B-engrossed House Bill 2020 (2019) contains an emergency clause. As we note in an opinion dated June 4, 2019, that has subsequently been made publicly available,¹ one effect of this emergency clause is that HB 2020-B is not capable of being referred to the ballot and will instead take effect immediately upon the Governor's signature. As a follow-up to our earlier opinion, you asked whether the people could repeal the entirety of HB 2020-B through a single initiative petition. The answer is yes.

As explained in our June 4, 2019, opinion, Article IV, section 1 (3)(a), of the Oregon Constitution, limits the people's referendum power to Acts passed by the Legislative Assembly that "[do] not become effective earlier than 90 days after the end of the session at which the Act is passed." As a consequence, the people do not have the right to refer an Act that is passed with an emergency clause.

By contrast, Article IV, section 1 (2)(a), of the Oregon Constitution, grants the people "the initiative power, which is to propose laws and amendments to the Constitution and enact or reject them at an election independently of the Legislative Assembly." This means that the people have the right to enact, amend or repeal any law or provision of the Constitution by initiative petition if the initiative receives a majority of the votes cast. The people's right to amend or repeal existing law by initiative is in no way limited by whether the existing law was passed with an emergency clause.

The only relevant limit to the people's initiative power is set forth in Article IV, section 1 (2)(d), of the Oregon Constitution, which states:

(d) An initiative petition shall include the full text of the proposed law or amendment to the Constitution. A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith.

The single-subject requirement for laws enacted by initiative petitions² is similarly worded to the single-subject requirement for legislatively enacted statutes that is set forth in Article IV, section

¹Op. Leg. Counsel LC 4512 (June 4, 2019), <https://olis.leg.state.or.us/liz/2019R1/Downloads/CommitteeMeetingDocument/204054>.

² In contrast to laws proposed by initiative petition, amendments to the Oregon Constitution proposed by initiative petition must comply with the "separate-vote" requirement. See *Armatta v. Kitzhaber*, 327 Or. 250, 261 (1998) ("Accordingly, we conclude that the separate-vote requirement applies to constitutional amendments proposed by initiative, as well as those proposed by the legislature."). As HB 2020-B is a law and not a constitutional amendment, the separate-vote requirement is not applicable to your question.

20, of the Oregon Constitution.³ It is now “well-settled” law that the single-subject requirement for laws enacted by the Legislative Assembly and the single-subject requirement for laws enacted by initiative petition have the same meaning.⁴

Importantly, courts typically construe the single-subject requirements liberally to uphold legislation,⁵ and the “court’s one-subject decisions demonstrate that an enactment that embraces only one subject does not violate the one-subject provisions of Article IV merely by including a wide range of connected matters intended to accomplish the goal of that single subject.”⁶ Rather, a court will examine the body of the law to determine whether it contains a “unifying principle logically connecting all provisions in the [law],”⁷ such that “all matters treated [within the law] fall under some *one general idea*” and are “connected with or related to each other[.]”⁸

Due to courts’ interpretation of the single-subject requirements, numerous bills before the Legislative Assembly contain provisions covering a “wide range of connected matters.” With respect to HB 2020-B, the only single-subject requirement is that all aspects of the bill fall within the single subject of “greenhouse gas emissions” that is set forth in the title of the bill. Similarly, if HB 2020-B is enacted into law, any attempt by the people to repeal all or part of the bill’s provisions by initiative petition will necessarily comply with the single-subject requirement as the contents of the initiative petition would also all fall within the single subject of “greenhouse gas emissions.”

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Very truly yours,

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³ Article IV, section 20, of the Oregon Constitution, states, in relevant part “Every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title.”

⁴ *Armatta*, 327 Or. at 272 (“We now turn to the case law interpreting the single-subject requirement of Article IV, section 1 (2)(d), which is well-settled for our purposes here. In *OEA v. Phillips*, 302 Or. 87, 100 (1986), for example, this court concluded that the single-subject requirement in Article IV, section 1 (2)(d), is the same as the single-subject requirement for legislation contained in Article IV, section 20.”).

⁵ See *Phillips*, 302 Or. at 96.

⁶ *State ex rel. Caleb v. Beesley*, 326 Or. 83, 91 (1997).

⁷ *Beesley*, 326 Or. at 91.

⁸ *McIntire v. Forbes*, 322 Or. 426, 442 (1996), quoting *Eastman v. Jennings-McRae Logging Co.*, 69 Or. 1, 11 (1914).