

Legal Sufficiency Review of Ballot Initiatives Frequently Asked Questions

What is included in the Attorney General's legal sufficiency review?

The Attorney General's legal sufficiency review includes assessing whether "the petition complies with statutory and constitutional requirements governing submission of the proposed issue to the electors, the substantive legality of the proposed issue if approved by the voters, and whether the proposed issue constitutes an appropriation" and "whether the proposed issue could cause a regulatory taking under Montana law or otherwise will likely cause significant material harm to one or more business interests in Montana." § 13-27-312(8), (9) (as amended by House Bill 651 (2021)).

How long does the Attorney General have to conduct the legal sufficiency review?

Pursuant to Mont. Code Ann. §13-27-312(10), the Attorney General has 30 days after receipt of the proposed issue from the Secretary of State to conduct a legal sufficiency review.

Can the Attorney General withhold a proposed ballot measure based on substantive legal issues?

Yes. Montana law clearly states that the legal sufficiency review includes "the substantive legality of the proposed issue if approved by the voters." Mont. Code Ann. §13-27-312(8). If the Attorney General determines that the proposed ballot issue is not legally sufficient, the Secretary of State may not deliver a sample petition form unless the attorney general's opinion is overruled pursuant to 13-27-316. § 13-27-312(10)(c).