
HOUSE BILL 1732

State of Washington

57th Legislature

2001 Regular Session

By Representatives Ogden, Romero, Rockefeller, Ruderman, Edwards and Kagi

Read first time 02/01/2001. Referred to Committee on State Government.

1 AN ACT Relating to review of proposed initiative measures; and
2 adding new sections to chapter 29.79 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** After a proposed initiative measure to the
5 people or a proposed initiative measure to the legislature is filed
6 with the secretary of state, but not less than ninety days before the
7 election at which the proposed measure will appear on the ballot, the
8 secretary of state may request an opinion as to the constitutionality
9 of the proposed measure, by transmitting the request in writing to the
10 attorney general. Upon receipt of such a request, the attorney general
11 shall transmit it in writing to the ballot measure review committee
12 created in section 2 of this act without expressing an opinion on the
13 merits of the question presented.

14 NEW SECTION. **Sec. 2.** The ballot measure review committee is
15 created, to be appointed by the attorney general, and consisting of
16 three regular members and not more than two alternate members. Each
17 regular and alternate member must meet at least one of the following
18 qualifications: (1) Prior service as a justice of the supreme court,

1 a judge of the court of appeals, or a judge of the superior court; (2)
2 current or recent service as a professor or teacher of constitutional
3 law at an accredited law school; or (3) admission to practice in the
4 courts of this state for at least ten years, with demonstrated
5 experience analyzing constitutional law issues. The committee is a
6 class three group for purposes of member compensation and expense
7 reimbursement under chapter 43.03 RCW. Expenses and compensation for
8 committee members will be paid through the attorney general's office.

9 NEW SECTION. **Sec. 3.** (1) When the attorney general transmits to
10 the ballot measure review committee a request for an opinion concerning
11 the constitutionality of a proposed initiative measure, the three
12 regular members of the committee will constitute a review committee to
13 research and prepare a response to the request. If one or more regular
14 members is unable to serve, or is disqualified from reviewing a
15 particular measure, one or more alternate members may serve instead.
16 A member is disqualified if he or she: (a) Has a substantial, personal
17 economic interest in the enactment or rejection of a measure; (b) has
18 participated, or is currently participating, as an advocate for or
19 against a measure on its merits, either directly or as an attorney; or
20 (c) has participated, or is currently participating as an advocate for
21 or against a similar ballot measure or similar legislation introduced
22 in the legislature, either directly or as an attorney. The review
23 committee shall conduct such research and inquiries as it deems
24 appropriate, may solicit and consider briefs or arguments submitted on
25 the questions presented, may conduct one or more public hearings to
26 collect information to assist in the preparation of an answer, and may
27 meet from time to time to deliberate in preparing its conclusions. The
28 attorney general's office shall not take any position on the questions
29 before the committee, but may provide the committee with background
30 information at the committee's request.

31 (2) In responding to a request, the committee may consider whether
32 a measure is, on its face, consistent with the Constitution of the
33 state of Washington and with the Constitution, laws, and treaties of
34 the United States, taking into account the case precedents and other
35 materials available. The committee is not required to comment on
36 constitutional issues that are not apparent on the face of the measure,
37 or that would arise only in unusual circumstances, or that would affect
38 only a small category of potential applications of the measure.

1 (3) When a proposed measure is the subject of an opinion request
2 made under section 1 of this act, the committee shall prepare a written
3 report in response to the request, to be transmitted to the secretary
4 of state not less than sixty days before the proposed measure will
5 appear on the ballot. The report must include a summary containing not
6 more than one hundred words. If a majority of the committee reviewing
7 a measure has reached a firm conclusion that the proposed measure, or
8 some substantial portion of it, would be held unconstitutional if
9 enacted, the report must be headed with a summary so stating.
10 Otherwise, the committee may summarize its findings in another
11 appropriate manner, such as by stating that the committee believes the
12 proposed measure would withstand constitutional challenge, or that the
13 committee could not reach a firm conclusion as to the constitutionality
14 of the proposed measure. In addition to the summary, the committee may
15 include in the report such additional analysis as it deems appropriate.
16 The committee's report must be signed by those who prepared it, and may
17 include concurring and dissenting remarks by members of the review
18 committee.

19 (4) Each report prepared under this section must be transmitted
20 immediately to the secretary of state and to the attorney general. The
21 report and its conclusions constitute the opinion of the committee, and
22 not the opinion of the attorney general, on the questions presented.

23 NEW SECTION. **Sec. 4.** The deliberations of the ballot measure
24 review committee conducted under section 3 of this act are exempt from
25 the Open Public Meetings Act, chapter 42.30 RCW.

26 NEW SECTION. **Sec. 5.** If the ballot measure review committee has
27 provided a report on a proposed ballot measure under section 3 of this
28 act, and if the measure qualifies for placement on the ballot, the
29 secretary of state shall publish the summary of the report in the
30 voters' pamphlet prepared for the election at which the people will
31 vote on the proposed measure. The summary must appear immediately
32 below or adjacent to the explanatory statement on the measure, but must
33 not be a part of the explanatory statement. The summary must be
34 accompanied by the statement: "This summary was prepared by the state
35 Ballot Measure Review Committee and does not represent the finding of
36 a court or the opinion of the attorney general."

1 NEW SECTION. **Sec. 6.** (1) If the ballot measure review committee
2 publishes a report in which a majority of the committee finds that a
3 proposed initiative measure would likely be held unconstitutional, a
4 person dissatisfied with the report may seek direct review in the state
5 supreme court by petition filed within five days, excluding Saturdays,
6 Sundays, and legal holidays, after the report is transmitted to the
7 secretary of state. A copy of the petition must be served on the
8 secretary of state. If the petitioner is some person other than the
9 sponsor of the proposed initiative, a copy of the petition must also be
10 served on the sponsor.

11 (2) The supreme court shall forthwith consider whether the report
12 compared by the committee is fair and reasonable in light of applicable
13 existing law. After conducting such proceedings as it may deem
14 appropriate, the court may (a) dismiss the petition, (b) grant the
15 petition and enjoin the inclusion of the summary of the report in the
16 voters' pamphlet, or (c) direct that the summary be modified as
17 directed by the court. The supreme court's review of a report and
18 resulting decision may not be construed or cited in other cases as a
19 decision on the constitutionality of the proposed initiative measure,
20 nor does the conduct of judicial review under this section preclude any
21 court from subsequently considering the constitutionality of the same
22 or a similar measure in a case or controversy arising after the
23 enactment of the legislation.

24 (3) Except as set forth in this section, the reports of the ballot
25 measure review committee are not subject to judicial review.

26 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act are not
27 intended to provide a person with a basis for seeking to have a
28 proposed ballot measure excluded from the ballot based on an argument
29 that such a measure would, if enacted, be unconstitutional.

30 NEW SECTION. **Sec. 8.** The attorney general may adopt rules to
31 implement sections 1 through 7 of this act.

32 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act are added
33 to chapter 29.79 RCW.

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