

# HOUSE BILL REPORT

## SHB 1129

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### As Passed House:

March 14, 2003

**Title:** An act relating to information from public officials on the impact of ballot propositions.

**Brief Description:** Allowing public officials to provide information on the impact of ballot propositions.

**Sponsors:** By House Committee on State Government (originally sponsored by Representatives Sommers, Haigh, Armstrong, McDermott, Benson, Wallace, Veloria, Hunt, Kenney, Schual-Berke, Fromhold, Wood, Rockefeller, Cody and O'Brien).

### Brief History:

#### Committee Activity:

State Government: 2/4/03, 2/27/03 [DPS].

#### Floor Activity:

Passed House: 3/14/03, 92-4.

### Brief Summary of Substitute Bill

- Allows local officials to make an objective and fair presentation of facts on the impact a ballot proposition may have on the office or agency if such activities are part of the normal and regular conduct of the office or agency.
- Allows state officials to use public facilities to prepare and deliver objective and neutral communications that provide explanatory information on the impact any ballot proposition may have on a matter that falls within their responsibilities.

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## HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

**Staff:** Katie Blinn (786-7114).

### Background:

Local public officials and employees must comply with the ethics laws contained in RCW 42.17.130, which are enforced by the Public Disclosure Commission (PDC). State public officials and employees must comply with the ethics laws contained in RCW 42.52.180, which are enforced by the Legislative Ethics Board for the legislative branch and by the Executive Ethics Board for the executive branch.

Both statutes prohibit public officials and employees from using, authorizing the use of, or acquiescing in the use of public facilities to assist a candidate or ballot proposition campaign. Facilities include stationery, postage, machines, equipment, employees, vehicles, office space, publications, and clientele lists. Exceptions to the rule include:

- Action taken at an open public meeting by members of an elected legislative body to express a collective decision, to actually vote on a motion, proposal or ordinance, or to support or oppose a ballot proposition. Notice of the meeting must include the title and number of the ballot proposition, and members of the public and the legislative body must be allowed equal opportunity to express opposing views;
- a statement by an elected official supporting or opposing a ballot proposition made at an open press conference or made in response to an inquiry; and
- activities that are part of the "normal and regular conduct" of the office or agency.

In statute, state officials are afforded an additional exception of de minimis use of public facilities incidental to the preparation or delivery of self-initiated communications of their views on those ballot propositions that foreseeably may affect a matter that falls within their responsibilities. However, the Legislative Ethics Board has ruled that the "normal and regular conduct" of the Legislature does not include providing unsolicited information or views on initiatives to the people or referendum measures. The only permissible self-initiated comments on ballot measures considered part of the "normal and regular conduct" exception are measures that have gone through the Legislature, which are initiatives to the Legislature, alternative legislative measures, and referendum bills.

On the other hand, the PDC has adopted a rule that does allow local officials to make an objective and fair presentation of facts relevant to a ballot proposition if such action is part of the normal and regular conduct of the office or agency. The information from the local government cannot advocate how to vote on the measure.

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### **Summary of Substitute Bill:**

For state officials and employees, a new exception to the ethics law is created allowing them to use public facilities to prepare and deliver objective and neutral self-initiated communications consisting of explanatory information on the impact of any ballot proposition that foreseeably may affect a matter that falls within their responsibilities. The exception applies to all ballot measures, not just those that go through the Legislature. The use of public facilities is not limited to de minimis use, but is limited to

communicating information, rather than views. The portions of existing law allowing de minimis use of public facilities for expressing views are removed to more accurately reflect interpretations of the law by the Legislative Ethics Board.

For local officials and employees, the ethics exception currently provided in the PDC rule is provided in statute. It allows local officials to make an objective and fair presentation of facts relevant to the impact a ballot proposition may have on the office or agency if such activities are part of the normal and regular conduct of the office or agency.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The bill is an attempt to address the impact that initiatives and referenda have on local governments. Initiatives such as I-695 have a profound impact on counties. The challenge is, how does the affected government body get information out to the public? The recent ballot measures have cut revenues without a corresponding cut in expenses. The counties want to better inform the public about the impact of ballot measures. Counties are concerned about the broad scope of the bill and agree with the amendment suggested by the PDC. Counties cannot use any money to participate in a ballot measure campaign. Significant policy decisions are being made by initiative. Part-time elected officials especially need to use office staff to prepare and comment on the impacts of ballot propositions.

**Testimony Against:** The current scope of the bill is too broad because it leaves open the possibility of misuse of public facilities to promote or oppose a ballot measure. There is currently no language to limit the number or nature of communications, or to prevent a marketing campaign. The PDC suggests an amendment that would allow for the use of public facilities to prepare and distribute an objective and fair presentation of facts if such activity is part of the normal and regular conduct of the agency or office. Public agencies are not required to report how much is spent on a particular ballot proposition. The bill does not provide a bright line between campaigning and the official duties of the office. Current law allows local officials to provide the information intended to be provided in the bill. The City of Seattle supports the amendment suggested by the PDC. Under the PDC rule, sending information to residents of the jurisdiction on the impact of a ballot proposition is okay as long as it occurs in the normal or customary method of communicating with the public, with residents.

**Testified:** (In support) Duke Schaub, Associated General Contractors; and Jim Justin, Association of Washington Cities.

(In support with concerns) Bill Vogler, Washington State Association of Counties.

(Opposed) Doug Ellis, Public Disclosure Commission; and Polly Grow, Seattle Ethics And Elections Commission.