

HOUSE BILL REPORT

SB 5373

As Reported by House Committee On:

State Government

Title: An act relating to actions on the validity of ballot measures.

Brief Description: Regulating actions on the validity of ballot measures.

Sponsors: Senators Roach, Fairley, Horn, Stevens and Winsley; by request of Secretary of State.

Brief History:

Committee Activity:

State Government: 3/27/03 [DPA].

Brief Summary of Bill

(As Amended by House Committee)

- Prescribes procedures for civil suits challenging the validity of initiatives, referendums, and other ballot measures.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass as amended. 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: Anne Warwick (786-7291).

Background:

Initiative & Referenda

The Washington Constitution (Constitution) establishes the initiative and referendum processes. Initiatives and referenda become law if approved by a majority of the votes cast in a given election. The Washington Supreme Court (Supreme Court) has ruled that the initiative process cannot be used to amend the Constitution. The referendum process may be ordered on any law passed by the Legislature, except those necessary for the immediate preservation of the public peace, health and safety, or for the support of state government and its existing public institutions.

Secretary of State

The Secretary of State (Secretary) may refuse to file any initiative or referendum petition based on the following grounds:

- 1) The petition is not in the form required;
- 2) The petition clearly lacks sufficient signatures; or
- 3) The time within which the petition may be filed has expired.

If none of the grounds for refusal exists, the Secretary must file the petition.

The time for submitting initiative or referendum petitions to the Secretary is as follows:

- referendum - not more than 90 days after adjournment of session in which the Legislature passed the act;
- initiative to the people - not less than four months before date of election; and
- initiative to the Legislature - not less than 10 days before the commencement of session.

If the Secretary refuses to file an initiative or referendum petition, the persons submitting the petition may, within 10 days of the refusal, seek a writ of mandamus in Thurston County Superior Court (Superior Court). The writ application takes precedence over other cases and matters. If the Superior Court determines that the petition is legal, the Secretary must file it as the date of submission for the filing. A decision of the Superior Court granting a writ of mandamus is final.

A decision of the Superior Court refusing a writ of mandamus may be reviewed by the Supreme Court within five days after the Superior Court decision. The review is considered an emergency matter. If the Supreme Court determines that the petition has the correct form, requisite number of signatures, and was filed on time, it issues a mandate directing the Secretary to file the petition. If no appeal is taken from the refusal of the Secretary to file a petition within the prescribed time, or if the Secretary is not required to file the petition by mandate, the Secretary destroys the petition.

Attorney General

The Attorney General (AG) formulates the ballot title and a summary of the measure within five days after receipt of an initiative or referendum. The AG transmits the serial number for the measure, complete ballot title, and summary to the Secretary.

Within five days after the filing of the ballot title in the Secretary's office, any person dissatisfied with the ballot title or summary may appeal to Superior Court, setting forth the measure, ballot title or summary, and their objections. A copy of the petition on appeal, with a notice that an appeal has been taken, is served on the Secretary, the AG, and the person or persons proposing the measure, if another person initiates the appeal. The Superior Court examines the proposed measure, the ballot title or summary, and the objections to the ballot title or summary, hears arguments, and within five days renders its decision and files a certified copy of the ballot title and summary to the Secretary. The appeal is heard without cost to either party.

Courts

The Supreme Court may review the substance of a proposed initiative to determine whether it exceeds the scope of the initiative power described in the Constitution. Currently, the Supreme Court will review a proposed initiative to determine if it is beyond the scope of the initiative power. Such pre-election review is limited to deciding whether the initiative is authorized by the constitutional provision granting initiative power, and does not extend to ruling on the constitutional validity of the measure. The proposed initiative must be legislative in nature and within the authority of the jurisdiction passing the measure. A proposed referenda is limited in scope to acts by a governmental body, which are legislative in nature.

Summary of Amended Bill:

Civil suits seeking a ruling on the validity of a ballot measure before the certification of the election, may only be taken when:

- A court of competent jurisdiction is determining whether the ballot measure is beyond the scope of the initiative or referendum power; or
- Otherwise beyond the scope of authority for placing measures on the ballot.

Based upon sound prudential concerns, the court may decline to hear the action before certification of the election.

No action may be brought to the court during the "election period." The "election period" starts after the fifth day after the deadline for signature filing, and ends with the certification of the election. This bill does not apply to an appeal of the language or content of the ballot title, summary, or explanatory statement, or the procedure to appeal the decision to reject a petition by the Secretary.

Amended Bill Compared to Original Bill:

Includes the term "reject" in order to include referendum ballot measures. Clarifies that the "election period" ends upon certification of the election in which the measure was voted upon.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: Establishes an "election period" in which a civil procedure challenging the validity of a ballot measure must not interrupt. This clarification will allow the election cycle to continue in a manner necessary to conduct an election.

Testimony Against: None.

Testified: Senator Roach, prime sponsor; and Dean Logan, Office of the Secretary of State.