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SENATE BILL 5637

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State of Washington                      58th Legislature                      2003 Regular Session

By Senators Kohl-Welles, Schmidt, Kastama, Fairley and Jacobsen

Read first time 02/03/2003.      Referred to Committee on Government Operations & Elections.

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 one hundred twenty days  
7 before the election at which the proposed measure will appear on the  
8 ballot, the secretary of state may request an opinion as to the  
9 constitutionality of the proposed measure, by transmitting the request  
10 in writing to the attorney general. Upon receipt of such a request,  
11 the attorney general shall transmit it in writing to the ballot measure  
12 review committee created in section 2 of this act without expressing an  
13 opinion on the 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,

1 or that would arise only in unusual circumstances, or that would affect  
2 only a small category of potential applications of the measure.

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

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

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

28 NEW SECTION. **Sec. 5.** If the ballot measure review committee has  
29 provided a report on a proposed ballot measure under section 3 of this  
30 act, and if the measure qualifies for placement on the ballot, the  
31 secretary of state shall publish the summary of the report in the  
32 voters' pamphlet prepared for the election at which the people will  
33 vote on the proposed measure. The summary must appear immediately  
34 below or adjacent to the explanatory statement on the measure, but must  
35 not be a part of the explanatory statement. The summary must be

1 accompanied by the statement: "This summary was prepared by the state  
2 Ballot Measure Review Committee and does not represent the finding of  
3 a court or the opinion of the attorney general."

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

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

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

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

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

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

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