

SENATE BILL REPORT

SB 5297

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 17, 2011
Ways & Means, February 25, 2011

Title: An act relating to signature gathering.

Brief Description: Concerning signature gathering.

Sponsors: Senators Nelson, Conway, Harper, Chase, White, Kohl-Welles, Kline, Keiser, Prentice and Shin.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 2/10/11, 2/17/11 [DPS-WM, DNP].
Ways & Means: 2/22/11, 2/25/11 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5297 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Chase and Nelson.

Minority Report: Do not pass.

Signed by Senators Swecker, Ranking Minority Member; Benton and Roach.

Staff: Sharon Swanson (786-7447)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5297 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Brown, Conway, Fraser, Kastama, Keiser, Kohl-Welles, Pridemore, Regala, Rockefeller and Tom.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Hatfield, Hewitt, Holmquist Newbry, Honeyford and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senator Pflug.

Staff: Steve Jones (786-7440)

Background: Initiative and Referendum. The Legislature adopted processes for initiative and referendum in 1912. The law as enacted allows:

- initiatives to the people, where, if petitions are certified to have a sufficient number of signatures by registered voters, the issue is submitted for a vote of the people at the next state general election;
- initiatives to the Legislature, where, if petitions are certified to have a sufficient number of signatures by registered voters, the issue is submitted to the Legislature at its next regular session;
- referendum Measures, where laws recently passed by the Legislature are placed on the ballot after certification of petitions signed by registered voters; and
- referendum bills, where voters adopt laws proposed by the Legislature.

Under the state Constitution, initiative petitions require signatures from 8 percent of the total number of votes cast for the Office of the Governor at the last regular gubernatorial election; referendum petitions require 4 percent.

Initiative and Referendum Petition Filing Fee. The sponsor of an initiative or referendum must file a copy of the proposed language in its entirety with the Secretary of State along with a \$5 filing fee and sworn affidavit, all within the applicable filing deadline.

Signature Gathering. Signature gatherers may circulate signature petition sheets for the initiative or referendum once it is given an approved ballot title and summary. However, the petition needs to include the full text of the measure, as well as a declaration by the signature gatherer on each petition page. The petition sheets must be filed with the Secretary of State and are subject to filing deadlines. If enough signatures are validated, a certification containing the measure's serial number and title is sent to each county for placement on the state general election ballot.

There are constitutional free-speech considerations pertaining to initiative and referendum processes that have been addressed in the courts. For example, petition circulation is a protected form of political speech held by the United States Supreme Court. However, the court has also held that elections, including initiatives and referenda, may be regulated for the purposes of ensuring that they are fair and honest.

The boundaries of First Amendment protection were further defined in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), where the court held that states may exercise discretion in protecting the integrity of the initiative and referendum process. The court developed a few general rules regarding the signature gathering process:

- States may not require that signature-gatherers be registered voters since this would prevent non-registered voters from political process participation, and there are less burdensome methods of meeting the states' interests in administrative efficiency, fraud detection, and providing voters with information on the process.
- Requiring signature-gatherers to wear identification that displays the signature gatherer's name is impermissible since this may discourage political process participation.

The court previously set the standard of review for First Amendment rights as they relate to petition circulation and signature gathering. For purposes of determining whether a state election regulation violates an individual's First Amendment right, the court:

- weighs the character and magnitude of the burden the state's regulation imposes on those rights against the interests the state contends justify the burden; and
- considers the extent to which the state's concerns make the burden necessary.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Second Substitute): Initiative and Referendum Petition Filing Fee. The filing fee for initiatives and referenda is to be set by the Secretary of State.

Signature Gathering. Signature gatherers are prohibited from being within 15 feet of entrances and exits of stand-alone or retail stores, unless authorized by the property owner. Petitions must expressly include a place for petitioners to sign and print their names and addresses, including the city and county in which they are registered to vote. Additionally, a paid signature gatherer must provide the name of the signature gathering business that employs the paid signature gatherer. Petition gatherers are also expressly required to sign the declaration on the front of each petition sheet, including their address. This signature constitutes a legal oath on the part of the petition gatherer, and petition sheets are checked to verify these signatures.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): All provisions relating to the registration of signature gathering businesses are removed. The filing fee for an initiative or referendum is not specified in statute; it is to be set by the Secretary of State by administrative rule.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended First Substitute as Passed Committee): The requirement that unsigned petitions and petitions submitted by unregistered signature gathering businesses are subject to a full signature check by the Office of the Secretary of State is removed. Any business that fails to register and submit petitions will be subject to a fine of not less than \$500 per petition page submitted. Signature gatherers are required to sign a declaration on the front side of the petition prior to submitting the petition to the Secretary of State. Signature gatherers are prohibited from being within 15 feet of entrances and exits of stand-alone or retail stores, unless authorized by the property owner.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2012.

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee (Government Operations, Tribal Relations & Elections): PRO: This bill will create transparency in the initiative process. Abuse and fraud in the initiative process have continued to occur. There are still those that believe that we need no changes to prevent fraud or that fraud must occur on a massive scale before we can do anything to tighten the laws around the initiative process. This bill is not unconstitutional. If you require the information about signature gatherers to be released after the signature gathering process is complete there is no chilling effect. Nineteen of the 24 states that have the initiative process have a registration process. Requiring signature gathers to sign the back of a petition works and helps find bad actors. The people who collect the signatures of voters need to respect the rights of private property owners. Private property owners have the right to have "time, place, and manner" limitations on their property. There are some very aggressive individuals who gather signatures and they accost customers at businesses. Adding amendatory language to clarify the rights of private property owners would be helpful. Abuse of the ballot measure process is increasing. We need to guard against further increases in fraud and abuse. Disclosure requirements do not prevent anyone from speaking. This bill will not chill political speech. This bill is a tool to be used to fix cracks in the system, not gaping cracks. This bill will help cut down on the filing of frivolous petitions. Paid signature gathering is big business.

CON: This bill will totally shut down the initiative process. The Secretary of State does not support the major components of this bill. This bill is a solution in search of a problem. Be sure to budget for the cost of defending the lawsuits that are to come. This bill will chill political speech and will cause citizens to have their signatures thrown out through no fault of their own. This bill is an attempt to shut down the initiative process. The definition of a signature gathering business in this bill will not capture unions and the most recent fraud case came from an SEIU member. This bill will make it difficult for people to participate in their own government process. People want to compare Washington to Oregon; and because Oregon passed similar legislation – that means Washington needs to do so?

OTHER: This bill is unnecessary. If the Public Records Act worked properly this bill would not be necessary. The filing fee amount is too high. Mandatory fines of \$10,000 is too much.

Persons Testifying (Government Operations, Tribal Relations & Elections): PRO: Joel Foster, Ballot Initiative Strategy Center; Lew Granofsky, Fieldworks; Adam Glickman, SEIU 775; Kim Abel, League of Women Voters; Karen Lee, AARP; Kristina Logsdon, Ballot Initiative Network; Katie Blinn, Secretary of State; Craig Salins, Washington Public Campaigns; Steve Breaux, Washington Public Interest Research Group; Jan Gee, Washington Food Industry Association.

CON: Jennie Stephenson, citizen; Tim Eyman, Voters Want More Choices; Edward Agazarm, Citizens Solutions; Michael Carrington, self; Katie Blinn, Secretary of State.

OTHER: Arthur West, citizen; Steve Gano, Walmart.

Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means): PRO: Initiative filers need to cover the costs of public agencies to process the initiative proposals. Approximately 70 initiatives are filed each year. The filing fee for initiatives has not been increased in 118 years. This measure will save money and have a positive fiscal impact. Paid signature gatherers should be required to sign the initiative petitions, as 19 other states require.

CON: This legislation is a solution in search of a problem. This is a 10,000 percent increase in the filing fee for initiatives. The increased filing fee will be a deterrent to democracy. Legislators don't pay a fee to file a bill, and citizens shouldn't be charged a fee to file an initiative. The bill will unnecessarily increase costs. The registration of paid signature gatherers will not do anything to increase political transparency, but it will increase costs to state government. The measure is an unconstitutional infringement on the initiative and referendum process established in our state Constitution.

Persons Testifying (Ways & Means): PRO: Steve Breaux, Washington Public Interest Research Group; Lonnie Johns-Brown, League of Women Voters; Kristina Logsdon, Ballot Initiative Network; Arthur West, citizen; Katie Blinn, Secretary of State's Office.

CON: Tim Eyman, Voters Want More Choices; Edward Agazarm, Citizen Solutions; Pat Tarzwell; Greg Woodworth, Tacoma 9/12 Project.