
Government Operations & Elections Committee

HB 2552

Brief Description: Concerning signature gathering for initiatives, referenda, and recall petitions.

Sponsors: Representatives Reykdal, Appleton, Sawyer, Kirby, Smith, Ormsby, Buys, Vick, S. Hunt, Fey and Tarleton.

Brief Summary of Bill

- Requires paid signature gatherers and signature gathering businesses that use paid signature gatherers to register with the Secretary of State.
- Requires the declarations on petitions for recall elections, referenda, and initiatives be signed by the signature gatherer.

Hearing Date: 2/4/14

Staff: Marsha Reilly (786-7135).

Background:

Initiative and Referendum in Washington.

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.

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.

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.

Recall Election.

The process for a recall election is analogous to the initiative process. The party initiating the recall complaint has 270 days to gather signatures against a statewide elected official, and 180 days to gather signatures against any other elected official. If the recall petition is against a state officer, an officer of a first class city, a member of a school board in a first class city, or a county officer in a county over 40,000 people, enough signatures must be gathered to equal 25 percent of the total votes cast for that office at the last election. For all other recall petitions, the signature requirement is 35 percent of the total votes cast for that office at the last election.

Petitions.

The required form of initiative and referendum petitions is set forth in statute. First, a petition for initiative or referendum must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. It also must include a warning as well as language that each petition signer: has personally signed the petition; is a legal voter in Washington; verifies that his or her residence address is correctly stated; and has knowingly only signed the petition once. In addition, there is a declaration that states:

"I,, swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both."

Constitutional Considerations.

Initiative and referendum processes are protected as free speech under the First Amendment. The United States Supreme Court (Court) held that petition circulation is core political speech. Because petition circulation involves interactive communication regarding political change, the Court opined that First Amendment protection is "at its zenith." Nonetheless, it is established law that elections, including initiative and referendum processes, can be substantially regulated in order to maintain that they are "fair and honest." The Court further defined the parameters of First Amendment protection for petition circulation and signature gathering. The Buckley Court held that states have considerable discretion to protect the integrity of the initiative and referendum process and while there is "no litmus-paper test" for alleged violations of the First Amendment, there are some bright-line rules for the signature gathering process:

- States may not require that signature-gatherers be registered voters. Such a regulation would eliminate non-registered voters from participating in the political process, 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 that signature-gatherers wear identification is impermissible insofar as such a requirement would entail signature-gatherers to display their names. Such a requirement discourages participation in the political process by forcing name identification at the time they are delivering their political message and when reaction "may be the most intense, emotional, and unreasoned." In contrast, affidavits are not instantly accessible, and are not prohibited under the First Amendment.

In *Buckley*, the Court 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 that burden; and
- considers the extent to which the state's concerns make the burden necessary.

Regulations that impose severe burdens must be narrowly tailored to advance a compelling state interest. Lesser burdens require a less exacting review, and a state's important regulatory interest may justify reasonable, nondiscriminatory regulations.

Summary of Bill:

A paid signature gatherer is required to register with the Secretary of State (Secretary) and complete a training program before collecting signatures. The information required on the application must include:

- the name, address, phone number, and email address of the applicant;
- a list of the measures in which the applicant will gather signatures;
- evidence that the applicant has completed the training program;
- a recent digital photograph of the applicant;
- a statement signed by the prime sponsor certifying that a national background check has been completed for the applicant and that the applicant has not been convicted for a criminal offense involving fraud, forgery, or identity theft in any state in the last five years and has not violated election laws in this state or in another jurisdiction in the past five years;
- a statement signed by the applicant acknowledging that the applicant has read and understands Washington laws regarding the gathering of signatures as the law is summarized in the training program;
- a statement signed by the prime sponsor or business paying the signature gatherer acknowledging liability for violations of the law or rule committed by the signature gatherer; and
- any other information required by the Secretary.

Once the application is complete, the Secretary must assign each registered signature gatherer a registration number. A registered signature gatherer must carry his or her photograph and registration when gathering signatures and, if requested, must produce the evidence of registration.

A registered signature gatherer must re-register with the Secretary before the second Monday in January of each odd-numbered year. Failure to do so terminates the registration.

A registered signature gatherer is prohibited from collecting signatures on a petition for which he or she is being paid and, at the same time, obtain signatures on a petition for which he or she is not being paid. A violation of this provision subjects the sponsor or the signature gathering business that pays the signature gatherer to a fine of \$500. In addition, the sponsor or signature gathering business may be fined \$500 for each of its paid signature gatherers who are not registered.

A signature gathering business operating in this state and that uses paid signature gatherers must register with the Secretary. The information required on the registration must include:

- the name, physical address, phone number and email address of the business;
- the name of the individual representing the business who will complete the training program;
- the business license number of the business;
- a list of individuals that will be paid to collect signatures;
- a list of the measures that the business is paying individuals to gather signatures; and
- a affirmation signed by the sponsor of the signature gathering business that the business operates in compliance with the law.

The signature gathering business must notify the Secretary if it is using paid signature gathers not listed on the original registration or if the business becomes involved in gathering signatures on a new measure within five days of hiring or becoming involved with a new measure.

Language is added that requires signature gatherers to sign the declaration after the sheet has been signed by petitioners but before the petition is submitted to the secretary of state. Signing the declaration constitutes an oath and subjects the signatory to the penalty of law. The same requirements for signing a petition for an initiative or a referendum are also required for petitions for recall elections.

A "paid signature gatherer" is defined as a person who is compensated through payments of money or other valuable consideration to obtain signatures on a state or local initiative, referendum, or recall petition. "Prime sponsor or sponsors" is defined as the registered voter or voters who complete the affidavit for proposed initiative or referendum or files a recall petition as well as any persons who hold themselves out publicly as the sponsor of an initiative, referendum, or recall petition. A "signature gathering business" is defined as a business that compensates individuals for gathering signatures for initiatives, referenda, or recall petitions.

The Secretary is given rule-making authority to implement this act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect December 1, 2014.