

HOUSE BILL REPORT

HB 2552

As Reported by House Committee On:

Government Operations & Elections

Appropriations Subcommittee on General Government & Information Technology

Title: An act relating to signature gathering for initiatives, referenda, and recall petitions.

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 History:

Committee Activity:

Government Operations & Elections: 2/4/14, 2/5/14 [DPS];

Appropriations Subcommittee on General Government & Information Technology:
2/6/14 [DPS(GOE)].

Brief Summary of Substitute Bill

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

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Christian, Kretz, Orwall, Robinson and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Young, Assistant Ranking Minority Member; Carlyle and Manweller.

Staff: Marsha Reilly (786-7135).

Background:

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.

Initiative and Referendum in Washington.

The Legislature adopted processes for initiatives and referendums 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.

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 nonregistered 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 Substitute Bill:

A paid signature gatherer is required to register with the Office of 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 e-mail 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 e-mail 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
- an 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 gatherers 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. 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.

Substitute Bill Compared to Original Bill:

The proposed substitute bill:

- requires the Secretary to provide an online training program as an option, in addition to the training prescribed by the Secretary;
- requires applicants for registration as signature gatherers to submit a copy of his or her driver license, state identification card, or other photo identification, and that this identification is exempt from public inspection and copying;
- clarifies that the applicant has read and understands the law applicable to local, as well as state, initiatives, referenda, and recall petitions;
- removes references to the Secretary's revolving fund, and is silent on deposits from fines; and
- changes the effective date of the act from December 1, 2014, to January 3, 2015.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect January 3, 2015.

Staff Summary of Public Testimony:

(In support) The courts have grappled with whether or not petition gatherers are exercising freedom of speech or are engaged in political activity. Recognizing that the court sees gathering signatures as speech, it should be regulated effectively. Petition sheets should be signed so that if there is fraud, the Secretary can follow through with an investigation. Signature gatherers should not be allowed to be paid for gathering signatures on one measure and, at the same time, gathering signatures on a measure for which they are not being paid. Businesses are forced to allow signature gatherers on their property, and it is only fair that some regulations be followed.

The Washington Food Industry Association supports the initiative and referendum process, and the bill will enforce those rights. The increased number of signatures required to get a measure on the ballot results in more signature gatherers out collecting signatures. While many are polite and ask permission to be on private property, there are always a few who spoil the process. The Washington Food Industry Association has worked with the Secretary and the Office of the Attorney General on issues pertaining to signature gathering in this state and have found that the Oregon law has resolved similar conflicts. The bill is modeled after

the Oregon law. Other people involved in the political process in a similar way must register, such as lobbyists, and this bill applies registration procedures to paid signature gatherers.

There has been a proliferation of activity gathering signatures in front of stores. While there are no issues with most signature gatherers, some are uninformed about the law and problems occur. Law enforcement is limited in many ways, and the policy of the bill provides some structure and protects customers.

Our property owners ask signature gatherers, as well as nonprofit groups, to get pre-approval to hold events on our property in order to avoid too many activities occurring at the same time. However, many signature gatherers show up without getting pre-approval and compete with other activities, causing confusion and congestion. Problems result when they are asked to leave and make an appointment. Customer complaints have increase and the local law enforcement is not able to help unless there are multiple complaints or there is a physical altercation. It is important to balance the rights of private business owners with the rights of initiative and referenda.

The Secretary is a strong defender of the right to petition government through referendum and initiative. In the past, similar bills contained provisions to reject petitions that did not comply with the regulations in the bill, and current bill does not do that. The Secretary supports this bill. This bill simply calls for fines, somewhat like what occurs for violations of disclosure requirements. The problem of forged signatures and fabricated names are an annual event, and there have been irregular petitions submitted every year, particularly in 2012. These problems were not just with signature gatherers, but also with the signature gathering firms. The Washington State Patrol handles investigations involving signatures. However, there is little that can be done because the signature gathering firm provides fictitious names, social security numbers, and dates of birth. The state has an interest to make sure business is done properly and legally. Past petitions have contained thousands of signatures that are forged or fabricated.

The Oregon experience has found that it does not affect the process. When there is fraud, the Oregon Secretary of State was able to identify those involved. The Department of Revenue would be interested in income not reported. Many signature gatherers are earning money and not reporting it in Oregon. As retailers, we need the ability to report incidents, such as spitting on customers. Harassment complaints have been issued but little can be done because the signature gatherers cannot be identified. There needs to be structure around the process.

The bill speaks to the difference between freedom of expression and economic activity. Lobbying and consulting is regulated. Lobbyists are required to register with the Public Disclosure Commission because it is important for the public to know who is lobbying and being paid to lobby. The provisions of the bill enable authorities to fully investigate fraud. Currently, investigations hit dead ends because information about the signature gatherer is fictitious.

(Opposed) There is a constitutional right to participate in the initiative and referendum process. In order to burden that right, it is important that the burden is narrowly tailored and that it serve a compelling government interest. This bill distinguishes between paid and

unpaid signature gatherers and treats them differently, resulting in an undue burden on those being paid. There are harassment provisions in law.

Persons Testifying: (In support) Representative Reykdal, prime sponsor; Jan Gee, Todd Korman, and Clement Stevens, Washington Food Industry Association; Jeff Philipps, Rosauers Supermarkets; Katie Blinn, Office of the Secretary of State; Holly Chisa, Northwest Grocery Association; Mark Johnson, Washington Retail Association; and Andrew Villeneuve, Northwest Progressive Institute.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: The substitute bill by Committee on Government Operations & Elections be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Christian, Dunshee, S. Hunt, Jinkins and Springer.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Alex MacBain (786-7288).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government & Information Technology Compared to Recommendation of Committee On Government Operations & Elections:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 3, 2015.

Staff Summary of Public Testimony:

(In support) This bill is different from previous versions because it does not call for rejection of petitions; it just imposes fines similar to Public Disclosure Commission fines. There has been a real increase over the last two years of irregular petitions submitted to the Secretary of State and it's been an issue since 2008. It is not just the signature gatherers that are providing forged signatures or fabricated names. In recent Washington State Patrol investigations, the signature gathering firms provided fabricated names and social security numbers of signature gatherers.

Grocery stores often have problems with aggressive signature gatherers. We have been looking for a way to provide access to the process, but also to ensure accountability. In instances where there is payment for signature gathering, it is similar to a business process. There really needs to be some regulation and this bill gives some tools to the Secretary of State to end fraudulent practices. This does not impede a person's First Amendment right to free speech. What is not included in the fiscal note is that a number of these individuals are contractors who may or may not be paying business and occupation taxes on the money they are paid to gather signatures.

(Opposed) None.

Persons Testifying: Katie Blinn, Office of the Secretary of State; Carolyn Logue, Washington Food Industry Association; and Holly Chisa, Northwest Grocery Association.

Persons Signed In To Testify But Not Testifying: None.