

HOUSE BILL REPORT

HB 1537

As Reported by House Committee On:
State Government, Elections & Information Technology

Title: An act relating to disclosure in initiatives, referenda, and recall petitions.

Brief Description: Requiring disclosure by entities that compensate for petition signatures.

Sponsors: Representatives Haler, Springer, Tarleton, Nealey, Goodman, Sawyer, Pollet and Fey.

Brief History:

Committee Activity:

State Government, Elections & Information Technology: 1/31/18, 2/2/18 [DPS].

Brief Summary of Substitute Bill

- Requires a ballot measure sponsor or political committee that employs, or expects to employ, any person to compensate individuals for gathering signatures on a state or local initiative, referendum, or recall petition to disclose certain information to the Public Disclosure Commission about the person employed.
- Requires persons who directly compensates an individual to gather signatures to maintain certain information on file pertaining to each paid signature gatherer.
- Prohibits compensation to any signature gatherer circulating a petition who has been convicted of election law violations, fraud, forgery, or identity theft in the last five years.

HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Appleton, Gregerson and Pellicciotti.

Minority Report: Do not pass. Signed by 2 members: Representatives McDonald, Ranking Minority Member; Kraft, Assistant Ranking Minority Member.

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.

Minority Report: Without recommendation. Signed by 1 member: Representative Irwin.

Staff: Desiree Omli (786-7105).

Background:

Initiative, Referendum, and Recall.

The Washington Constitution affords the people the power to propose or reject laws through the initiative and referendum process. The following initiatives and referendum are authorized:

- 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; and
- referendum measures, where laws recently passed by the Legislature are placed on the ballot after certification of petitions signed by registered voters.

The Constitution also subjects certain elective public officers to recall and discharge upon filing of a charge by a legal voter. The sponsor of a recall must circulate a petition and obtain a certain number of signatures.

Any legal voter of the state, either individually or on behalf of an organization, may petition the Legislature, submit a proposed initiative measure to the people, or order that a referendum of all or part of any law passed by the Legislature be submitted to the people.

The voter must file with the Office of the Secretary of State (Secretary) a:

- copy of the measure proposed, or the act or part of such act on which the referendum is desired;
- signed affidavit or electronic submission, that the sponsor is a registered voter; and
- filing fee.

Public Disclosure Commission – Penalties.

The Public Disclosure Commission (Commission) may determine, after a hearing conducted pursuant to the Administrative Procedure Act, whether a violation under the campaign disclosure and contribution statute occurred, and may assess penalties of up to \$10,000. The Commission may also refer the matter to the Attorney General or other enforcement agency.

Summary of Substitute Bill:

Disclosure Requirements.

Any ballot measure sponsor or political committee that employs, or expects to employ, any person for the purpose of compensating individuals for gathering signatures on a state or local initiative, referendum, or recall petition, must, at the time of registration or within 10 days of employing the person, disclose to the Commission:

- the name, physical and mailing addresses, phone number, and electronic mail (e-mail) address of the person employed; and
- a list of the measures for which the person employed is paying individuals to gather signatures;

The Commission must make the information disclosed available to the public within two days of receipt. The Secretary must post this information on its website and, for each ballot measure, include links to any persons that compensates individuals for gathering signatures, who are employed by the ballot measure sponsor.

The ballot measure sponsor or political committee must ensure that each person that directly compensates an individual to gather signatures maintains the following information on file pertaining to each paid signature gatherer:

- the name, permanent address and a Washington address if the signature gatherer is from out-of-state, phone number, and email address of the signature gatherer;
- a digital photograph of the signature gatherer taken within the past 12 months;
- a copy of the signature gatherer's driver's license or other government-issued photo identification;
- a list of measures for which the signature gatherer is collecting signatures;
- any documentation that the signature gatherer completed a training program; and
- confirmation of a completed national background check and that the signature gatherer has not been convicted of fraud, forgery, or identity theft and has not violated election laws in the past five years.

The signature gatherer's government-issued photo identification is exempt from public inspection or copying.

The training program describing the rights and responsibilities of voters, signature gatherers, and property owners must be available electronically. The Secretary must provide references to applicable statutes and case law for inclusion in training programs for signature gatherers.

Compensating Signature Gatherers.

An individual may not be compensated for gathering signatures on state or local petitions if the individual has been:

- convicted of a criminal offense involving an elections violation, fraud, forgery, or identification theft in any jurisdiction in the past five years; or
- found in violation of an election law in any jurisdiction in the past five years.

Any person compensating individuals for gathering petition signatures must update its disclosure statement within five days if he or she compensates or agrees to compensate an individual for gathering petition signatures on a ballot measure not previously disclosed. Compensation for gathering signatures may not be conditioned on gathering other signatures for free. The Commission may adopt rules to implement these provisions.

Failure to comply with disclosure requirements, or requirements related to maintaining certain information on file of paid signature gatherers is subject to penalties available to the Commission.

The effective date is January 1, 2020.

Substitute Bill Compared to Original Bill:

The substitute bill requires the ballot measure sponsor or political committee that employs, or expects to employ, a person for the purpose of compensating individuals for gathering signatures, to provide certain information about the person employed to the Commission. The information required to be disclosed is modified to remove identifying information pertaining to each paid signature gatherer, the business license number of the entity hiring the paid signature gatherer, and any other information as required by the Secretary. The Commission must make the information available to the public within two days. The Secretary must post this information on its website. The time for disclosure is modified to be at the time of registration or within 10 days of employing the person for the purpose of compensating individuals for gathering signatures.

The ballot measure sponsor or political committee must ensure that each person directly compensating a signature gatherer maintains certain information on file about the paid signature gatherers until two years after the certification date of the ballot measure.

The penalties for violation of disclosure or record keeping provisions is changed to be penalties that the Commission may assess under statute.

The substitute bill removes the modified language of the signature gatherer declaration that is printed on the reverse side of the petition, thereby restoring the statutory language.

Appropriation: None.

Fiscal Note: Requested on February 4, 2018.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2020.

Staff Summary of Public Testimony:

(In support) There needs to be some form of guaranteed safety that signature gatherers will not accost the public. Paid signature gatherers are typically paid per signature, so there is an incentive to be overly aggressive. Loss prevention officers are forced to tend to conflicts involving signature gatherers around the store, which takes them way from their main job. The police are called when there is a disruption, but signature gatherers will not provide their names so they are not reported. The lack of information is causing increasing problems. There needs to be accountability, and businesses who pay signature gatherers should know who they hire. The bill will help to deal with signature gatherers who are creating problems.

When money changes hands, the precedent is for transparency. Requiring disclosure for paid individuals and not having the same requirement for unpaid individuals is current practice. Paid lobbyists are required to disclose information, and people who are not paid are not required to disclose information. Not requiring paid signature gatherers to disclose

information is a gap in the law that needs to be closed. In addition, fraud has been found on petitions and the number of cases of fraud keeps rising. The full extent of the fraud is not known because the Secretary only spot-checks signatures.

The proposed substitute bill is a result of a cooperative effort with the Commission. The proposed substitute bill does not require the signature gatherer's information to be made public, unless requested by law enforcement.

(Opposed) This bill infringes on the Constitutional right of free speech. It places onerous burdens and limits on signature gatherers, and the bill does not offer evidence that paid signature gatherers or individuals with certain criminal convictions are more disruptive than unpaid signature gatherers. Treating paid and unpaid people differently is unconstitutional, and requiring signature gatherers to register is unconstitutional. To justify infringement on a person's First Amendment right, there needs to be a compelling government interest. A business interest is not a government interest. In addition, the bill will quadruple the cost of petitioning. It is meant to solve a problem that does not exist.

(Other) Strict scrutiny is a very high burden. The bill draws arbitrary distinctions between paid and unpaid signature gatherers. A person is more likely to be harassed by a true believer than by someone who is getting paid to do the job. The disclosure requirement is not necessary to foster a compelling state interest, nor is it the least restrictive means to further the state's interest. This bill tries to legislate civil conduct, and there should not be a requirement to be polite in a political debate.

Persons Testifying: (In support) Representative Haler, prime sponsor; Holly Chisa, North West Grocery Association; Mark Johnson, Washington Retail Association; Andrew Villeneuve, Northwest Progressive Institute; Jan Gee, Washington Food Industry Association; Paul Marth, Metropolitan Markets; and Zach Stratton, Fred Meyer and Quality Food Centers.

(Opposed) Elisabeth Smith, American Civil Liberties Union of Washington; and Tim Eyman.

(Other) Arthur West.

Persons Signed In To Testify But Not Testifying: None.