

SENATE BILL REPORT

SB 5386

As of February 9, 2017

Title: An act relating to strengthening the initiative process by providing for more comprehensive review before initiatives receive ballot titles.

Brief Description: Strengthening the initiative process by providing for more comprehensive review before initiatives receive ballot titles.

Sponsors: Senators Pedersen, Miloscia, Hunt, Fain, Billig, Carlyle, Mullet, Kuderer, Saldaña and Frockt.

Brief History:

Committee Activity: State Government: 2/10/17.

Brief Summary of Bill

- Extends the time period in which initiative measures may be filed.
- Increases the filing fee for initiative measures to \$500.
- Requires a 45-day review by the Code Reviser and Attorney General of proposed initiative language prior to submission to the Secretary of State.
- Requires a 28-day public notice and comment period on proposed initiative language prior to submission to the Secretary of State.
- Provides a process for challenging the constitutionality of proposed initiative measures before voter approval.

SENATE COMMITTEE ON STATE GOVERNMENT

Staff: Samuel Brown (786-7470)

Background: Initiative Filing. Under the Washington Constitution, any voter may initiate a ballot measure to petition the Legislature to enact a proposed measure or submit a proposed initiative to the people. The sponsor of the initiative must file a proposal with the Secretary of State along with an affidavit that they are a legal voter and a filing fee, which is established by rule. The filing fee for an initiative is currently \$5.

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.

Role of the Code Reviser. The Code Reviser reviews each proposed initiative measure and, within seven days, provides advisory recommendations to the sponsor regarding the drafting of the measure. Upon completing review, the Code Reviser certifies that the review is completed and that any recommendations have been communicated to the sponsor. The certificate must be issued regardless of whether or not the sponsor has agreed to any of the recommendations. The sponsor must file the proposed initiative measure, along with the Code Reviser's certificate of review, with the Secretary of State for assignment of a serial number and official processing.

Signature Gathering. After the Secretary of State issues a serial number, the proponent must obtain the signatures of legal voters equal to at least 8 percent of all votes cast at the last election for the Office of the Governor. In 2017, a proponent must obtain 259,622 signatures. Proponents have six months to collect signatures for initiatives to the people and ten months for initiatives to the Legislature. The Secretary must verify the signatures and, if sufficient, certify the measure for inclusion in the next election.

Legal Challenges to Initiative Language. Washington courts have declined to consider the constitutionality of ballot measure language prior to voter approval of the measure at the polls. However, courts have decided procedural challenges to ballot measures, including as to form and whether the proposed measure is administrative, rather than legislative, in nature.

Summary of Bill: Initiative Filing. Initiatives to the people may be filed with the Secretary of State up to 18 months before the election at which they are to be submitted. Initiatives to the Legislature may be filed with the Secretary of State up to 15 months before the legislative session at which they are to be submitted. The filing fee for initiative measures is increased to \$500.

Initiative Pre-Submission Review. Initiative proponents must file a plain statement of the intent of the initiative with the Secretary of State along with the proposed measure's text. The measure's text and statement of intent must be transmitted to the Code Reviser and the Attorney General. The Code Reviser has 45 days to review the text of the proposed measure and may recommend changes as needed to comply with legislative drafting requirements and prevent the measure from misleading voters. The Attorney General has 45 days to review the text and must provide the proponent an assessment of the measure's constitutionality. The recommendations of both the Code Reviser and Attorney General are advisory. Both the Code Reviser and Attorney General must issue the proponent a certificate of review.

Public Comment Period. After the proponent submits the measure's language and certificates of review to the Secretary of State, there is a 28-day public review and comment period on the measure's proposed language. At the end of the comment period, the Secretary of State provides all comments received on the measure to the proponent. The proponent may amend the measure in response to public comment and file the measure with the Secretary of State for processing and assignment of a serial number.

If the measure has been amended since the Attorney General's initial review, the Attorney General must review the measure as filed and determine within seven days if the measure is drafted in a constitutional manner and submit a certification of this determination to the Secretary of State. If the Attorney General determines the measure is not drafted in a

constitutional manner, the proponent may re-draft and re-submit the measure, but does not have to pay an additional filing fee.

Legal Challenges to Initiative Language. Any person may seek a declaratory judgment that a proposed initiative is facially unconstitutional within 30 days of the measure's assignment of a serial number. Such an action must be filed in Thurston County Superior Court, and a decision must be issued within 90 days.

Appropriation: None.

Fiscal Note: Requested on February 8, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.