

SENATE BILL REPORT

ESSB 5397

As Passed Senate, February 13, 2018

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

Brief Description: Concerning disclosure in initiatives, referenda, and recall petitions.

Sponsors: Senate Committee on State Government, Tribal Relations & Elections (originally sponsored by Senators Warnick, Lias, Walsh, Nelson, O'Ban, Billig, Kuderer, King, Honeyford, Wilson, Pedersen, Hunt, Wellman, Saldaña and Carlyle).

Brief History:

Committee Activity: State Government, Tribal Relations & Elections: 1/31/18, 2/02/18 [DPS, w/oRec].

Floor Activity:

Passed Senate: 2/13/18, 33-14.

Brief Summary of Engrossed First Substitute Bill

- Requires ballot measure sponsors or political committees using or expecting to use paid signature gatherers for ballot measures to disclose certain information about persons retained to compensate individuals for signature-gathering.
- Requires ballot measure sponsors or political committees using or expecting to use paid signature gatherers for ballot measures to retain certain information about individuals compensated for signature-gathering.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5397 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Saldaña.

Minority Report: That it be referred without recommendation.

Signed by Senators Miloscia, Ranking Member; Zeiger.

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.

Staff: Samuel Brown (786-7470)

Background: Initiative and Referendum in Washington. The processes for initiatives and referendums, adopted in the state Constitution in 1912, provide for the following:

- initiatives to the people, where if petitions have a sufficient number of signatures by registered voters, the issue is submitted for a vote of the people;
- initiatives to the Legislature, where if petitions have a sufficient number of signatures by registered voters, the issue is submitted to the Legislature;
- 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 or reject laws proposed by the Legislature.

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 signatures from 4 percent of voters.

Recall Elections. The party initiating a 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 with 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.

Constitutional Considerations. The initiative and referendum processes are protected free speech under the First Amendment to the United States Constitution. While courts have permitted regulation of the initiative and referendum processes to ensure that public interest in fair, honest, and efficient elections is served, several particular regulations have been overturned as overly burdensome. States may not require that signature gatherers be registered voters. Additionally, requiring that signature gatherers wear identification is impermissible. Washington courts have held that initiative and referendum signature gatherers enjoy the right to seek signatures at large shopping malls or other facilities which serve as the functional equivalent of downtown areas under the Washington Constitution.

The Public Disclosure Commission (PDC). The PDC was created by the passage of Initiative 276 in 1972. The PDC is empowered to provide timely public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with contribution limits and other campaign finance restrictions.

Summary of Engrossed First Substitute Bill: Disclosure Requirements. Any ballot measure sponsor or political committee that uses, or expects to use, paid signature gatherers for initiative, referendum, or recall petitions must, within ten days, disclose the following to the PDC about each person retained to compensate individual signature gatherers:

- the name, address, phone number, and email address of the person retained; and
- a list of the measures for which signature gatherers will be paid.

For two years after the certification date of any ballot measures for which an individual was compensated for gathering signatures, the ballot measure sponsor or political committee must retain the following information about the individual:

- the name, address, phone number, and email address of the individual;
- a recent digital photograph of the individual;
- a copy of the individual's government-issued photo identification;
- a list of the measures in which the individual will gather signatures;
- an attestation that the individual completed a training program outlining the rights and responsibilities of voters, signature gatherers, and property owners; and
- a confirmation that a national background check was completed and that the individual has not been convicted of a crime involving fraud, forgery, or identity theft and has not violated election laws in the past five years.

The information must be provided to the PDC or any law enforcement agency in response to an active investigation, and is exempt from public disclosure requirements.

Compensating Signature Gatherers. An individual may not be compensated for gathering signatures on petitions if the individual has been convicted of a criminal offense involving elections, fraud, forgery, or identification theft in any jurisdiction in the past five years. An individual may not be compensated for gathering signatures on petitions if the individual has been found in violation of an election law statute in any jurisdiction in the past five years.

Compensation for gathering signatures may not be conditioned on gathering other signatures on other ballot measures for free. Any person must update their disclosure statement within five days if receiving compensation for gathering petition signatures on a ballot measure was not previously disclosed.

Other Provisions. Failure to comply with the provisions of the act subjects an individual, ballot measure sponsor, or political committee to the PDC's statutory penalty authority. The Secretary of State must provide references to applicable statutes and case law for inclusion in signature gatherer training programs and a link to the information about person retained to compensate individual signature gatherers, which must be posted on the PDC's website. The PDC may adopt rules to implement the provisions of this act.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 28, 2018.

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

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

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: This bill creates a good balance that protects both signature gatherers and retailers. The disclosure requirements for signature gatherers would be the same as what lobbyists must currently disclose. Signature gatherers have become increasingly aggressive, leading to customer and employee complaints. This will restore civility to the process. We have caught signature

gatherers shoplifting and had to break up physical and verbal altercations. We have been told our guests will not shop with us because they believe we support the signature gatherers. It has taken significant resources to get some signature gatherers removed from our premises. Most paid signature gatherers are from out of state and not really petitioning their government. This will help crack down on the underground economy. Instances of signature fraud keep increasing, and there could be more fraud we do not know about. There will be fewer negative encounters if signature gatherers are better trained. Signature gatherers should know who works for them. Regulation is based on money changing hands because the public has a right to know how money is moving.

CON: Similar measures have been found unconstitutional in the past. Fraudulent signatures are not an issue. This will increase costs and decrease the number of initiatives that get on the ballot. This puts targets on every signature gatherer. The distinction between paid and unpaid signature gatherers makes no sense. The bill discriminates against individuals with criminal convictions or who lack government identification.

OTHER: The PDC has not taken a formal position on the bill, but it will increase workload. There needs to be identification of companies doing this, but it will raise the cost to qualify an initiative.

Persons Testifying: PRO: Senator Judy Warnick, Prime Sponsor; Jan Gee, Washington Food Industry Association; Paul Marth, Metropolitan Markets; Scott Brower, Yokes Markets; Zach Stratton, Fred Meyer Stores; Mark Johnson, Washington Retail Association; Andrew Villeneuve, Northwest Progressive Institute; Holly Chisa, NW Grocery Association.

CON: Tim Eyman, citizen; Elisabeth Smith, ACLU of Washington.

OTHER: Peter Lavalley, PDC; Arthur West, citizen.

Persons Signed In To Testify But Not Testifying: No one.