
**State Government & Tribal Affairs
Committee**

HB 1668

Brief Description: Concerning signature gathering.

Sponsors: Representatives Reykdal, Hunt, Appleton, Kenney, Goodman, McCoy, Dunshee, Carlyle, Pettigrew, Hasegawa, Ryu, Lias, Darneille, Fitzgibbon, Eddy, Dickerson, Ormsby and Jinkins.

Brief Summary of Bill

- Requires signature gathering businesses to register with the Secretary of State.
- Requires paid signature gatherers to register with the Secretary of State for each state or local initiative, referendum, or recall petition.
- Subjects unregistered, paid signature gatherers and signature gathering businesses to fines.
- Increases the net filing fee for a proposed ballot measure from \$5 to \$50.

Hearing Date: 2/9/11

Staff: Miranda Leskinen (786-7291).

Background:

Washington voters may exercise direct legislative power through initiatives and referenda. There are two types of initiatives: initiatives to the people and initiatives to the Legislature. Initiatives to the people submit an issue to a vote of the people at the next state election, whereas initiatives to the Legislature submit an issue to the Legislature at its regular session. In order for an initiative to be certified to the ballot or Legislature, the initiative's sponsor must first circulate the initiative proposal in its entirety among voters and obtain a legally required number of signatures (equal to 8 percent of the total votes cast during the last regular gubernatorial election).

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.

There are also two types of referenda: referendum bills and referendum measures. Referendum measures give voters the opportunity to approve or reject laws recently passed by the Legislature that are placed on the ballot due to voter petitions, whereas referendum bills are proposed bills referred to voters by the Legislature. Emergency laws that are necessary for the immediate preservation of the public peace, health, or safety, and the support of state government and its existing institutions are exempt from the referendum process. Referendum measures must be certified by the Secretary of State and contain a minimum number of signatures (equal to 4 percent of the total votes cast during the last regular gubernatorial election). Any registered voter, acting on their own behalf or on the behalf of an organization, may propose an initiative or referendum.

Initiative and Referendum Petition Filing Fee.

The sponsor of an initiative or referendum must file a copy of the proposed language in its entirety with the Secretary of State along with a \$5 filing fee and a sworn affidavit, all within the applicable filing deadline.

Signature Gathering.

Signature gatherers may circulate signature petition sheets for the initiative or referendum once it is given an approved ballot title and summary. However, the petition needs to include the full text of the measure, as well as a declaration by the signature gatherer on each petition page. The petition sheets must be filed with the Secretary of State and are subject to filing deadlines. If enough signatures are validated, a certification containing the measure's serial number and title is sent to each county for placement on the state general election ballot.

There are Constitutional free speech considerations pertaining to initiative and referendum processes that have been addressed in the courts. For example, petition circulation is a protected form of political speech held by the United States Supreme Court [*Meyer v. Grant*, 486 U.S. 414 (1988)]. However, the Court has also held that elections, including initiatives and referenda, may be regulated for the purposes of maintaining that they are fair and honest [*Storer v. Brown*, 415 U.S. 724 (1974)].

The boundaries of First Amendment protection were further defined in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), where the Court held that states may exercise discretion in protecting the integrity of the initiative and referendum process. This makes detecting First Amendment violations tricky, however, there are a few general rules regarding the signature gathering process:

- States may not require that signature-gatherers be registered voters since this would prevent non-registered voters from political process participation, 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 signature-gatherers to wear identification that displays their name is impermissible since this may cause discourage political process participation. However, affidavits are not prohibited under the First Amendment.

The Court, as its standard of review, considers the following in determining whether a state election regulation regarding petition circulation and signature gathering is a First Amendment violation:

- 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
- the extent to which the state's concerns make the burden necessary.

In other words, 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, non-discriminatory regulations [*Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997)].

Summary of Bill:

Registration requirements.

All businesses operating in Washington that collect signatures for state or local initiatives, referenda, or recall petitions using paid signature gatherers must annually register with the Secretary of State. Additionally, if these businesses gather signatures for ballot measures not listed in their original registration for the year, they must notify the Secretary of State within five days of becoming involved with the new petition. Signature collection businesses must provide the following registration information to the Secretary of State:

- the registered business name, as well as any other names used by the business in its operations;
- the business' contact information;
- the full name of the business owner(s) and any assumed names (if applicable);
- signature of the business owner;
- a signed statement attesting that the business owner(s) has not been convicted of any disqualifying crimes in the past five years;
- a list of state or local initiatives, referenda, or recall petitions for which signatures will be gathered; and
- a signed statement of understanding from the business owner(s) regarding applicable Washington laws.

Paid signature gatherers must also register with the Secretary of State. Paid signature gatherers must provide the following information when registering with the Secretary of State:

- full name (and assumed name if applicable);
- street address of permanent residence;
- signature;
- a list of state or local initiative, referenda, or recall petitions for which signatures will be gathered;
- a signed statement attesting that the paid signature gatherer has not been convicted of any disqualifying crimes in the past five years;
- a signed statement of understanding regarding applicable Washington laws;
- photograph; and
- a signed hiring statement from the employer assuming liability for employee misconduct.

Paid signature gatherers must carry their evidence of registration including their photograph and registration number while gathering signatures. This evidence of registration must be produced if requested. Paid signature gatherers who knowingly submit an invalid petition signature will have their registration number revoked and be barred from registering for five years of the revocation order.

Signatures gathered by an unregistered signature gathering business are not invalidated. However, any business that fails to register with the Secretary of State and submits petitions will be subject to a full signature check by the Secretary of State. Additionally, if these businesses do not register within three days of collecting their first signatures, they are subject to a minimum \$10,000 fine or the cost of conducting a full signature check (whichever is greater). All collected fines are deposited in the Secretary of State's Revolving Fund.

Initiative and referendum petition filing fee.

The filing fee for initiatives and referenda is raised from \$5 to \$500, \$450 of which is refunded upon certification by the Secretary of State. Exemption from this filing fee is available for sponsors lacking sufficient funds to pay the filing fee and submit at least one thousand valid voter signatures.

Signature gathering.

Petitions must expressly include a place for petitions to sign and print their name and address, including the city and county in which they are registered to vote. Petition gatherers are also expressly required to sign the declaration on the back of each petition sheet, including their address. This signature constitutes a legal oath on the part of the petition gatherer, and petition sheets are checked to verify these signatures.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect on January 1, 2012.