

State Government

HB 1509

Brief Description: *Establishing initiative review committees.*

Sponsors: *Representatives Clements and Skinner.*

Brief Summary of Bill

- *Requires the Secretary of State to create an initiative fiscal review committee for each initiative qualifying to the ballot. The committee prepares an advisory report on the fiscal impacts of the initiative measure that only includes information, findings, and opinions agreed to by all members.*
- *Requires the Secretary of State to create an initiative legal review committee for each initiative qualifying to the ballot. The committee prepares an advisory report on the legality of the initiative that only includes information, findings, and opinions agreed to by all members.*
- *Requires the initiative legal review committee to prepare a statement of its opinion whether the initiative is constitutional, not constitutional, or whether it is not clear if the initiative is constitutional. This statement is included in the state voters' pamphlet.*
- *Allows anyone dissatisfied with the legal review committee's opinion to appeal directly to the state Supreme Court for its expedited review of the constitutionality of the measure. The decision of the court is final and conclusive.*

Hearing Date: *2/9/01*

Staff: *Steve Lundin (786-7127).*

Background:

A. State initiatives and referenda.

The state constitution vests the legislative power of the state in the State Legislature, but grants state voters initiative and referendum on state legislation.

Two types of initiative measures are provided. First, an initiative may be submitted directly to state voters for their approval or rejection. This is referred to as an Initiative to the People. Second, an initiative may be submitted to the Legislature for its consideration. This is referred to as an Initiative to the Legislature. The Legislature may respond to an Initiative to the Legislature by:

- Enacting the measure as presented, without the potential of a veto by the Governor, but the measure is subject to referendum action by state voters;*
- Approve an alternative measure, in which case both the original measure and the alternative measure are presented to voters at the next general election for their approval or rejection; or*
- Fail to act, in which case the measure is submitted to voters at the next general election for their approval or rejection.*

The constitution directs how initiatives and referenda are placed on the ballot and provides that the powers of initiative and referendum are "self executing", but allows legislation to be enacted facilitating these powers. Nothing in the constitution provides whether the constitutionality of a proposed initiative may be tested by a court prior to its adoption by the people

The Supreme Court, in State ex rel. O'Connell v Kramer, 73 Wn.2d 85, 87 (1968), held in a challenge to the constitutionality of a proposed state initiative, that:

"There being before us no statute, or initiative measure enacted by the people, the proposed measure presents no justiciable controversy and we, therefore, do not pass upon its validity.... [W]e cannot pass on the constitutionality of proposed legislation, whether by bills introduced in the House or Senate, or measures proposed as initiatives, until the legislative process is complete and the bill or measure has been enacted into law. Then, and only then, can the constitutionality issue now urged upon us be properly considered."

B. State voters' pamphlet.

The Secretary of State prepares a state voters' pamphlet that, among other subjects, includes information on any state initiative or referendum measure submitted to state voters. Information on state initiative or referendum measures includes a summary of the measure prepared by the Attorney General, arguments for the measure prepared by a committee advocating approval of the measure, and arguments against the measure prepared by a committee advocating rejection of the measure.

Summary of Bill:

The Secretary of State is required to create and appoint both an initiative fiscal review committee and an initiative legal review committee for each initiative qualifying to the ballot. Members of both committees serve without compensation, but are eligible for normal subsistence allowance and travel expenses. The Secretary of State, and committee

members, are immune from suit in any action based on acts performed in good faith in performance of their duties.

A. Initiative Fiscal Review Committee.

The fiscal review committee is composed of the following persons:

- *Two persons licensed to practice law in the state;*
- *Two persons experienced in analyzing fiscal impacts of legislation;*
- *Two professional economists;*
- *Two persons employed in occupations impacted by the initiative;*
- *Two persons employed as professors by a recognized college or university;*
- *Two persons from recognized research organizations who are considered experts in the subject matter; and*
- *Two persons who are members of the public. A good-faith effort must be made to fill each of these positions with well qualified people, but an appointment need not be made if the Secretary of State is unable to make the appointment. The Secretary of State must ensure that membership on the committee reflects a fair-minded balance of perspectives.*

The fiscal review committee determines:

- *The short-term and long-term effects of the initiative, including any disproportionate impacts on particular public or private entities;*
- *The fiscal and economic costs of the initiative, including required public and private compliance costs; and*
- *If the initiative affects the collection of a tax or fee used to fund general government, the rate or amount of the tax or fee, or an exemption to the tax or fee.*

B. Initiative Legal Review Committee.

The legal review committee is composed of the following persons:

- *Two persons licensed to practice law in the state;*
- *Two persons experienced in analyzing legal impacts of legislation;*
- *Two persons employed as lawyers in organizations impacted by the initiative;*
- *Two persons employed as professors by a recognized college or university;*
- *Two persons from recognized legal research organizations who are considered experts in the subject matter; and*
- *Two persons who are members of the public. A good-faith effort must be made to fill each of these positions with well qualified people, but an appointment need not be made if the Secretary of State is unable to make the appointment. The Secretary of State must ensure that membership on the committee reflects a fair-minded balance of perspectives.*

The legal review committee determines the legality of the initiative, including its impact on other laws and any other legal or constitutional implications that may arise.

C. Final reports.

Each committee issues a final advisory report on its determinations only including information, findings, and opinions that all members agree upon. The Secretary of State must ensure that the report is analytical, objective, and impartial, is written in clear and concise language, and information, findings, and opinions are supported with specificity. The legal review committee's report is provided to the proponents and opponents to the initiative and any other person requesting the report.

The Secretary of State must insure that each report is submitted in time for proponents and opponents to respond to the reports in the arguments portion of the state voters' pamphlet. The voters' pamphlet must include a statement by the legal review committee whether in its opinion the initiative is constitutional, not constitutional, or if it is not clear whether the initiative is constitutional.

D. Challenge to the legal review committee's statement.

Any person dissatisfied with the opinion of the legal review committee may appeal directly to the state Supreme Court within five days after the report is submitted to the Secretary of State. The appeal is considered an emergency matter of public concern and must be heard and determined with all convenient speed. The court renders its decision regarding the constitutionality of the initiative and this decision is final and conclusive. An appeal must be heard without cost to the petitioner.

Rulemaking Authority: *The Secretary of State is required to adopt rules necessary to implement this act.*

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

Appropriation: *None.*

Fiscal Note: *Not Requested.*