

HOUSE BILL REPORT

HB 1802

As Reported by House Committee On:
State Government

Title: An act relating to fiscal impact of initiatives.

Brief Description: Clarifying fiscal impact of initiatives.

Sponsors: Representatives Clements, Moeller, Wallace, Quall, Linville, Hudgins and Edwards.

Brief History:

Committee Activity:

State Government: 2/20/03, 2/27/03 [DPS].

Brief Summary of Substitute Bill

- Requires the text of all initiatives that have a fiscal impact to specify the funding source or the spending reduction.
- Creates the initiative fiscal review committee, appointed by the Secretary of State.
- Requires the initiative fiscal review committee to issue a report on the fiscal impact of each initiative certified for the ballot.
- Changes the ethics laws to allow officials to make objective and fair presentations of facts relevant to ballot measures.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Tom and Wallace.

Minority Report: Do not pass. Signed by 1 member: Representative Nixon.

Staff: Katie Blinn (786-7114).

Background:

Initiatives:

The authority for the people to legislate was established in 1911 in the State Constitution, Article II, section 1. Any legal voter may file with the Secretary of State (Secretary) an initiative to the people, an initiative to the Legislature, or a referendum. Once the text of an initiative is filed with the Secretary it must be submitted to the Code Reviser for review of its form and style. The Code Reviser can recommend revisions or alterations, but such recommendations are advisory only and may be rejected by the sponsor. The Secretary then assigns the measure a serial number and the Attorney General (AG) writes a 75-word summary and the ballot title, which consists of a subject statement, a 30-word concise description, and a question. The ballot title becomes the title of the measure on all petitions, ballots and other material, and the summary appears after the ballot title on all petitions. Each petition must have lines for the signatures on one side, and the measure printed on the other side. When the person proposing the measure has enough signatures to exceed the 4 percent or 8 percent requirement, he or she files the petitions with the Secretary for certification. The Secretary must verify and canvass the names on the petitions. If an initiative to the people or referendum is found sufficient, the Secretary certifies to the county auditors the serial number and ballot title of each initiative and each referendum to be voted on at the next general election.

Initiative Fiscal Review:

The Office of Financial Management (OFM) must prepare a fiscal impact statement for each certified ballot measure. The fiscal impact statement must describe the projected increases or decreases in revenues, costs, expenditures, or indebtedness that state and local governments will experience if a ballot measure is approved. A 100-word summary of the fiscal impact statement must be printed in the voters' pamphlet.

Ethics Laws:

The ethics laws prohibit state and local officials and their employees from using, authorizing the use of, or acquiescing in the use of public facilities to assist a candidate or ballot proposition campaign. Exceptions to the rule include:

- Action taken at an open public meeting by members of an elected legislative body to express a collective decision, to actually vote on a motion, proposal or ordinance, or to support or oppose a ballot proposition. Notice of the meeting must include the title and number of the ballot proposition, and members of the public and the legislative body must be allowed equal opportunity to express opposing views;
- A statement by an elected official supporting or opposing a ballot proposition made at an open press conference or made in response to an inquiry; and
- Activities that are part of the "normal and regular conduct" of the office or agency.

In statute, state officials are afforded an additional exception of de minimis use of public facilities incidental to the preparation or delivery of self-initiated communications of their views on those ballot propositions that foreseeably may affect a matter that falls within their responsibilities. However, the Legislative Ethics Board has ruled that the "normal and regular conduct" of the Legislature does not include providing unsolicited information

or views on initiatives to the people or referendum measures. The only permissible self-initiated comments on ballot measures considered part of the "normal and regular conduct" exception are measures that have gone through the Legislature: initiatives to the Legislature, alternative legislative measures, and referendum bills.

On the other hand, the Public Disclosure Commission (PDC) has adopted a rule that does allow local officials to make an objective and fair presentation of facts relevant to a ballot proposition if such action is part of the normal and regular conduct of the office or agency. The information from the local government cannot advocate how to vote on the measure.

Summary of Substitute Bill:

Initiatives:

If an initiative to the people or an initiative to the Legislature requires public funds be spent for its implementation, the text of the initiative must specify an increase in an existing state revenue source, provide a new tax or fee, or a combination thereof, adequate to fully implement the measure. If an initiative to the Legislature or an initiative to the people repeals or restricts the collection of an existing tax or fee, reduces the rate or amount of a tax or fee, or creates or extends an exemption for a tax or fee, the text of the initiative must specify how the reductions are to be reflected in the affected budgets.

Initiative Fiscal Review Committee:

An Initiative Fiscal Review Committee (Committee) is created, appointed by the Secretary following consultation with the Governor and the AG. The Committee members must be appointed by January 1 each year and may include two lawyers, two people experienced in analyzing the fiscal impacts of legislation, two economists, two professors, two researchers, two members of the public, and one retired judge.

The Committee shall examine the fiscal impact of each initiative and issue a report no later than August 31 reflecting the findings of a majority of the Committee on the fiscal impact of each initiative. A 35-word brief summary of the report shall be printed on the general election ballots, and a 100-word extended summary shall be printed in the voters' pamphlet. The full report, which may include a minority report, must be available to the public upon request. The fiscal impact statement prepared by the OFM and currently printed in the voters' pamphlet is no longer printed in the voters' pamphlet.

Ethics Laws:

For state officials and employees, a new exception to the ethics law is created allowing them to use public facilities to prepare and deliver objective and neutral self-initiated communications consisting of explanatory information on the impact of any ballot proposition that foreseeably may affect a matter that falls within their responsibilities.

The exception applies to all ballot measures, not just those that go through the Legislature. The use of public facilities is not limited to de minimis use, but is limited to communicating explanatory information, rather than views. The portions of existing law allowing de minimis use of public facilities for expressing views are removed to more accurately reflect interpretations of the law by the Legislative Ethics Board.

For local officials and employees, the ethics exception currently provided in the PDC rule is provided in statute. It allows local officials to make an objective and fair presentation of facts relevant to the impact a ballot proposition may have on the office or agency if such activities are part of the normal and regular conduct of the office or agency.

Substitute Bill Compared to Original Bill:

The substitute bill removes authority for the Committee to hold public hearings on initiatives certified for the ballot. The date that the committee's report is due to the Secretary is changed from September 30 to August 31. The Committee's 25-word summary report that appears on the ballot is changed to a 35-word summary report. The sections of ethics laws that allow public officials to participate in the Committee's public hearings are removed since the authority for the hearings is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except section 1, requiring initiatives that have a fiscal impact to specify a revenue source or spending reduction, which takes effect January 1, 2004, if HJR 4208 is approved by the voters.

Testimony For: Washington has a long history of initiative activity. The bill requires initiatives to specify a funding source or revenue reduction for those initiatives that have a fiscal impact. This is an issue of full disclosure. Initiative sponsors must step up to the plate and acknowledge the impact of the measure. If an initiative is approved, the Legislature does not have to debate whether there are funds to support it because the text of the measure contains the funding source. Providing a revenue stream will benefit the state. The bill only impacts those initiatives that have a fiscal impact. It is the responsibility of the people proposing the measure to figure out how to fund it. Voters are simultaneously approving initiatives that increase services and reduce revenues.

The public hearing process allows the public to weigh the impact of the measure. Members of the Committee must be appointed before initiatives are filed. The Committee is intended to provide a good, reliable source of information that is unbiased.

Public officials should be allowed to use public facilities to make an objective and neutral presentation on the impact of ballot measures. Efforts to educate voters on the issues before they enter the ballot box are beneficial. However, the Legislature should be careful that it does not end up requiring more information on the fiscal impact of an initiative than on the policy impact of the initiative.

Testimony Against: It is almost impossible to adequately summarize the impact of an initiative in 25 words. The report that appears on the ballot itself should be 50 words rather than 25 words. The proponents and opponents of a measure should be provided an opportunity to respond to the fiscal report. The sponsor of the initiative should have a method by which to appeal the report to Thurston County Superior Court. The challenge with an appeal process is that it is too time-consuming and could potentially hold up printing of the voters' pamphlet. The report should continue to be prepared by OFM.

Testified: Representative Clements, prime sponsor; Representative Moeller, secondary sponsor; Genesee Adkins, 1000 Friends of Washington; and Ivy Sager-Rosenthal, Washington Public Research Group.