

HOUSE BILL REPORT

HB 1272

As Reported by House Committee On:
State Government & Tribal Relations
Appropriations

Title: An act relating to publishing, formatting, and distribution of the state and local voters' pamphlets.

Brief Description: Concerning publishing, formatting, and distribution of the state and local voters' pamphlets.

Sponsors: Representatives Bergquist, Volz, Reeves, Gregerson, Christian, Riccelli and Schmidt.

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/20/23, 1/31/23 [DPS];
Appropriations: 2/13/23, 2/22/23 [DP2S(w/o sub SGOV)].

Brief Summary of Second Substitute Bill

- Requires that people appointed by the legislative authority of a jurisdiction to write arguments for and against ballot measures in local voters' pamphlets reside within the jurisdictional boundaries.
- Increases the maximum fine for publishing or distributing campaign material that is deceptively similar to a voters' pamphlet to \$5 per copy or \$10,000, whichever is greater.
- Provides that a person or committee who receives a court order overturning a determination by the Office of Secretary of State regarding candidate or ballot measure statements may be awarded attorneys' fees and costs.
- Makes minor language and administrative changes to sections governing voters' pamphlets.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Ramos, Chair; Stearns, Vice Chair; Christian, Assistant Ranking Minority Member; Gregerson and Mena.

Minority Report: Without recommendation. Signed by 2 members: Representatives Abbarno, Ranking Minority Member; Low.

Staff: Jason Zolle (786-7124).

Background:

Statewide Voters' Pamphlet.

Production.

The Washington Constitution requires the Secretary of State (Secretary) to send a publication containing ballot measures referred to the people, along with arguments for and against the measure, to each individual place of residence in the state. By statute, the Secretary also must send a voters' pamphlet if a statewide candidate appears on the ballot.

Contents.

The statewide voters' pamphlet must contain:

- specific information about each measure initiated by or referred to the people, including explanatory statements prepared by the Attorney General, arguments for and against the measure, and a fiscal impact statement prepared by the Office of Financial Management (OFM);
- statements from candidates for federal and state offices that appear on the ballot that year; and
- specific information about advisory votes on legislation that increases taxes.

Candidates may include a photograph and information to contact their campaign and, for partisan offices, a statement of political party preference or independent status. Candidate statements and statements for or against ballot measures may not contain obscene matter. Candidate statements also may not contain false or misleading statements about the candidate's opponent that are defamatory or libelous, as defined by statute. Statements for and against ballot measures may include graphs and charts supported by factual statistical data and pictures or other illustrations, but cartoons and caricatures are not permitted. The Secretary may petition the Thurston County Superior Court for a judicial determination that a statement may be rejected because it contains obscene matter or is otherwise prohibited by law for distribution by mail. A person who is defamed by an argument or statement in a voter's pamphlet may also seek a court order in Thurston County Superior Court to have the statement rejected.

The statewide voters' pamphlet must also provide contact information for the Public

Disclosure Commission, which regulates campaign finance, and major political parties.

Distribution.

The Secretary must distribute the statewide voters' pamphlet to each household in the state, as well as to public libraries and other locations the Secretary deems appropriate. The Secretary must produce a taped or braille transcript of the pamphlet to send to anyone who requests it. The Secretary may distribute the voters' pamphlet in electronic form to computer networks, print and broadcast news, and similar services.

It is illegal to publish or distribute campaign material that is deceptively similar in design or appearance to a voters' pamphlet. The Secretary may petition a superior court for a restraining order to stop such publication or distribution, and a violator may be fined up to \$2 per copy or \$1,000, whichever is greater.

Local Voters' Pamphlets.

Production.

Each county auditor must produce a local voters' pamphlet for the entire county. Some counties have instead signed interlocal agreements with the Secretary to have local information about elections included with the statewide voters' pamphlet sent out by the Secretary. In those situations, the county produces the local content for the Secretary to include. Voters in those jurisdictions receive one pamphlet that includes all statewide and local elections.

Contents.

The local voters' pamphlet must include information about ballot measures and candidates within the jurisdiction. The format of the pamphlet must mirror the statewide pamphlet whenever applicable. Ballot measures must also include explanatory statements prepared by the prosecuting attorney for the county or by the jurisdiction's attorney, as well as statements for and against. Statements for and against are prepared by committees appointed by the legislative authority of the jurisdiction. Candidates must be permitted to submit a statement and a photograph. Candidate statements in a local voters' pamphlet must be limited to statements about the candidate.

Distribution.

The local voters' pamphlet must be sent to every residence in each jurisdiction that has included information in the pamphlet. If it will be more economical and efficient, a pamphlet can instead be sent to every registered voter in the jurisdiction. Local voters' pamphlets must be sent "as soon as practicable" before an election.

Summary of Substitute Bill:

Content-based Restrictions in Voters' Pamphlet.

Additional content-based restrictions are added to the state and local voters' pamphlet, and

all statements are subject to review and approval by the Secretary. Candidate statements in both state and local pamphlets must be limited to:

- plans and goals for the future of the jurisdiction; and
- directions on where to find more information about the candidate.

The bill also retains the restriction in current law that candidate statements in local pamphlets are limited to statements about the candidate themselves. Candidate statements in either pamphlet may not ask for contributions or make commercial solicitations. Photographs of candidates may not include hats, buttons, or clothing showing words, insignia, or symbols, and they may not be more than five years old.

Statements for or against ballot measures in statewide voters' pamphlets may not ask for contributions or make commercial solicitations. Graphs, charts, and photographs, and other nontextual aids are no longer permitted in the arguments for or against a ballot measure. The Secretary must consult with county auditors to make standards regarding statements for or against ballot measures in local voters' pamphlets.

The Secretary may reject noncompliant language in candidate and ballot measure statements without a court order. A person or committee that has had its statement rejected may edit it or petition the Thurston County Superior Court for a judicial determination that the language is compliant and acceptable.

The prohibition on false or misleading statements is modified. The prohibition is extended to govern ballot measure statements, not just candidate statements, and no longer needs to be about the candidate's opponent to be considered libelous or defamatory. Instead, a false or misleading statement can be libelous or defamatory if it is about "the opposition."

Changes Specific to Local Voters' Pamphlets.

People appointed by the legislative authority of a jurisdiction to write arguments for and against ballot measures in local voters' pamphlets must reside within the jurisdictional boundaries. If the legislative authority misses the deadline for appointments, the county auditor shall issue a media release and publish information on the election website, and the auditor shall appoint people on a first-come, first-served basis. If no statement is produced, the auditor shall include a statement to that effect in the pamphlet.

For cities, towns, or special districts located in more than one county, all information for the jurisdiction must appear in the local voters' pamphlets for each county. Such information must be submitted to the county auditor of the county that accepted the filings for that candidate or measure.

Other Notable Changes.

The maximum fine for publishing or distributing campaign material that is deceptively similar to a voters' pamphlet is increased: a violator may be fined up to \$5 per copy or \$10,000, whichever is greater.

Administrative rules for local voters' pamphlets must be adopted by the Secretary in consultation with county auditors, rather than by just county auditors or city clerks.

Information about each advisory vote no longer must extend to two pages; instead, each measure must be given "adequate space." The city or town that a legislator lives in is no longer required to be published in this section.

Minor language changes are made throughout.

Substitute Bill Compared to Original Bill:

The substitute bill adds language to clarify that a false or misleading statement must be libel or defamation per se to be prohibited from inclusion in the voters' pamphlet.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2024.

Staff Summary of Public Testimony:

(In support) This is the third time the Legislature is trying to pass this bill, a request from the county auditors. In the past it has been successful in the House in a bipartisan way. The bill provides a streamlined approach to voters' pamphlets, making sure that content and rules are uniform county by county. Voters' pamphlets are limited public forums under the First Amendment, so the state cannot have viewpoint restrictions but can limit subject matter if the restrictions are reasonable. The residency requirement for committee members for statements on local ballot measures has strong support, as in the past the "con" statements have been written by one out-of-district person who had no qualifications.

(Opposed) The pamphlet is for the voters, not the politicians. Voters are adults and can make their own decisions based on arguments. This bill is blatant censorship; the government cannot be the final arbiter of truth. The standards in this bill allow county auditors to be the arbiters of civility under vague standards for what is and is not permissible.

Persons Testifying: (In support) Representative Steve Bergquist, prime sponsor; Sara Betnel, Washington State School Directors' Association; Jim Stoffer; Michael Shaw, Washington State County Officials; and Lori Larsen, Washington State Association of County Auditors.

(Opposed) Tim Eyman.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on State Government & Tribal Relations. Signed by 26 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 3 members: Representatives Corry, Assistant Ranking Minority Member; Rude and Steele.

Staff: Emily Stephens (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government & Tribal Relations:

The substitute bill:

- removes standards that limited the content of candidate statements to certain topics;
- removes a prohibition on candidate photographs from containing certain clothing or accessories;
- restores current law describing information pertaining to legislators in the advisory vote section of the voters' pamphlet;
- rewords provisions regarding what the voters' pamphlet must say if no local ballot measure statements are produced; and
- provides that a person or committee who receives a court order overturning a determination by the Secretary of State that the candidate or ballot measure statement did not comply with legal standards may be awarded attorneys' fees and costs.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect on January 1, 2024.

Staff Summary of Public Testimony:

(In support) The bill would bring uniformity to voters' pamphlets. Definitions not found in

the bill can be found elsewhere in statute. Because there are no requirements for who can write statements, people who write statements for jurisdictions where they do not reside can impact policy across the state. Supporting and oppositional ballot statements should be provided only by those in the impacted community. The bill improves accountability and the democratic process. The bill saves public time and resources by harmonizing rules to the county and the state.

(Opposed) Taxpayers are paying for the voters' pamphlets. This censors what can be covered in the voters' pamphlet and micromanages what can and cannot be said on pamphlets. The bill gives unlimited power to the Office of the Secretary of State and county auditors to be referees. The Supreme Court has struck down a similar law.

Persons Testifying: (In support) Representative Steve Bergquist, prime sponsor; Jim Stoffer; Mike Hoover, Washington State School Directors' Association; Lori Larsen, Washington State Association of County Auditors; and Sara Betnel, Shoreline Public Schools, Board of Directors.

(Opposed) Tim Eyman, Permanent Offense.

Persons Signed In To Testify But Not Testifying: None.