

HOUSE BILL REPORT

SB 5373

As Reported by House Committee On:
State Government

Title: An act relating to actions on the validity of ballot measures.

Brief Description: Regulating actions on the validity of ballot measures.

Sponsors: Senators Roach, Fairley, Horn, Stevens and Winsley; by request of Secretary of State.

Brief History:

Committee Activity:

State Government: 2/20/04, 2/26/04 [DPA].

Brief Summary of Bill
(As Amended by House Committee)

- Prescribes procedures for civil suits challenging the validity of initiatives, referendums, and other ballot measures.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass as amended. Signed by 9 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

Staff: Marsha Reilly (786-7135).

Background:

The initiative and referendum are powers reserved by the people under the State Constitution. Initiatives and referenda become law if approved by a majority of the votes cast in a given election.

Measures are submitted to the Office of the Secretary of State (Secretary). If the signature, format, and time requirements are met, the Secretary will assign the measure a serial number and forward the measure to the Attorney General (AG). Within five days, the AG must formulate the ballot title and a summary of the measure and send it back to

the Secretary. Once this process is completed, an initiative would appear on the ballot in the next election, and a referendum would appear before the Legislature in the next session.

Statutory law addresses pre-election appeals of refusals by the Secretary to file the measure, and pre-election appeals of the ballot title or summary.

- If the Secretary refuses to file an initiative or referendum petition the persons submitting the petition may within 10 days of the refusal seek a writ of mandate in Thurston County Superior Court (Superior Court). The writ application takes precedence over other cases and matters. If the court determines that the petition is legal, the Secretary must file it as the date of submission for the filing. A decision of the Superior Court granting a writ of mandate is final. A decision of the court refusing a writ of mandate may be reviewed by the Supreme Court within five days after the Superior Court decision. If no appeal is made from the refusal of the Secretary to file a petition within the prescribed time, or if the Secretary is not required to file the petition by mandate, the Secretary destroys the petition.
- Any person dissatisfied with the ballot title or summary of a measure may appeal to the Superior Court of Thurston County within five days after the filing of the ballot title in the Secretary's office. The Superior Court examines the proposed measure, the ballot title or summary, and the objections to the ballot title or summary, hears arguments, and within five days renders its decision and files a certified copy of the ballot title and summary to the Secretary. The appeal is heard without cost to either party.

Nothing in statutory law addresses pre-election challenges to the measure itself. The courts have established a policy of hearing constitutional validity challenges only after the measure has been voted into law. The only exception to this are challenges based on scope-of-power issues.

Summary of Amended Bill:

The judicial treatment of challenges to the validity of an initiative or referendum is incorporated into statutory law.

A court may not hear challenges on the validity of a measure before it has been voted into law, with the exception of challenges based on the ballot measure being beyond the scope of the initiative or referendum power or otherwise being beyond the scope of authority for placing a measure on the ballot. Scope-of-power challenges will not be heard and may not be filed during the election period. The election period begins five days after the measure's supporters file their signature petitions with the Secretary and ends on the day the election results are certified.

Although courts can hear scope-of-power challenges before the election period, they also may decline to hear such challenges if their refusal is based on sound prudential concerns.

Existing statutory provisions for appealing the ballot title, summary, or explanatory statement, or the existing statutory procedure for appealing the Secretary's decision not to file a measure are not affected.

Amended Bill Compared to Original Bill:

The amended bill contains technical corrections changing Title 29 to Title 29A, and makes clear that although scope-of-power issues may be heard by the courts prior to certification of election, they will not be heard during the election period.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The Secretary of State is concerned about challenges made during the election period because they can interfere and hold up the election process. There is plenty of time for scope-of-power challenges to be heard before the election period begins.

Testimony Against: None.

Persons Testifying: Jeff Wise and John Pearson, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: None.