

SENATE BILL REPORT

SB 5373

As Passed Senate, February 10, 2004

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: Government Operations & Elections: 2/14/03, 2/28/03 [DP].
Passed Senate: 3/16/03, 47-0; 2/10/04, 49-0.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Roach, Chair; Stevens, Vice Chair; Fairley, Kastama, and Reardon.

Staff: Ronda Larson (786-7429)

Background: When citizens have gathered enough signatures to qualify an initiative or referendum for a vote, they must submit the measure to the Office of the Secretary of State, who then files it if it meets certain requirements. Once filed, the measure then goes to the Attorney General, whose office drafts a title and summary. After this, an initiative would then appear before voters in the next election and a referendum would then appear before legislators in the next session.

Current statutory law only addresses pre-election appeals of refusals to file and pre-election appeals of the ballot title or summary. As for refusals to file, the Secretary of State may refuse to file a measure if it was submitted past the statutory deadline, if it did not have enough signatures, or if it was not written in the correct format. Ten days after a decision not to file, any person may bring a pre-election challenge of that decision in Thurston County Superior Court.

As for the ballot title or summary, five days after the Attorney General files the title and summary with the Secretary of State, any person may bring a pre-election challenge to the title or summary in Thurston County Superior Court.

Nothing in statutory law addresses pre-election challenges to the measure itself. Courts have filled the gaps. They have established a policy of refusing to review a measure during the pre-election stage.

There is one exception to this. If a challenge is based on the measure being beyond the scope of the initiative power of the people, courts will hear the challenge. The state Constitution establishes the scope of the initiative power. For example, initiatives cannot attempt to alter federal law.

Although courts will hear pre-election challenges based on the scope of initiative power, they will not hear other types of constitutional validity challenges until after a measure has been voted into law.

Summary of Bill: The judicial treatment of pre-election challenges to a measure's validity is incorporated into statutory law. A court may not hear pre-election challenges to a ballot measure's validity before certification of an election unless the challenge is 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 measures on the ballot. Citizens also may not file pre-election challenges unless they are scope-of-power challenges.

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

No actions other than scope-of-power challenges may be brought to the court during the "election period." The "election period" begins five days after the measure's supporters file their signature petitions with the Secretary of State and ends on the day the election results are certified.

The bill does not affect existing statutory provisions for appealing the ballot title, summary, or explanatory statement, or the existing statutory procedure for appealing the Secretary of State's decision not to file a measure.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill does not prevent lawsuits challenging ballot validity. It just delays them until after the election. This year, there were two examples of late pre-election lawsuits that could have delayed the election. This bill makes elections run more smoothly. It is much more important to preserve voter confidence in the election process than to preserve confidence in the particular ballot measures being voted on. Confidence in the process leads to increased voter participation.

Testimony Against: None.

Testified: PRO: David Elliott, Secretary of State's Office; Rick Slunaker, Associated General Contractors; Kristen Sawin, Association of Washington Businesses.