

HOUSE BILL REPORT

HB 2601

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to signature gatherers.

Brief Description: Regarding signature gatherers for petitions.

Sponsors: Representatives Hunt, Hasegawa, Hudgins, Ormsby, Chase and Simpson.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/18/08, 2/5/08 [DPS].

Brief Summary of Substitute Bill

- Requires businesses engaged in the collection of signatures for state or local initiative, referendum or recall petitions and using paid signature gatherers to register with the Public Disclosure Commission (PDC).
- Requires paid signature gatherers engaged in the collection of signatures for state and local initiatives, referendum or recall petitions to register with the PDC.
- Requires all signature gatherers to sign initiative and referendum petitions.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hunt, Chair; Appleton, Vice Chair; Liias, Miloscia and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member; Kretz.

Staff: Tracey Taylor (786-7196).

Background:

Initiative and Referendum in Washington.

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

The Legislature adopted processes for initiative and referendum in 1912. The law as enacted allows:

- Initiatives to the People, where if petitions are certified to have a sufficient number of signatures by registered voters, the issue is submitted for a vote of the people at the next state general election;
- Initiatives to the Legislature, where if petitions are certified to have a sufficient number of signatures by registered voters, the issue is submitted to the Legislature at its next regular session;
- Referendum Measures, where laws recently passed by the Legislature are placed on the ballot after certification of petitions signed by registered voters; and
- Referendum Bills, where voters adopt laws proposed by the Legislature.

Under the State Constitution, initiative petitions require signatures from 8 percent of the total number of votes cast for the Office of Governor at the last regular gubernatorial election; referendum petitions require 4 percent.

From 1912 - 2006 there were 957 initiatives to the people; 129 were certified to the ballot and 64 passed into law. During this same period there were 381 Initiatives to the Legislature; 28 were certified to the ballot and 18 passed into law.

Constitutional Considerations.

Initiative and referendum processes are protected as free speech under the First Amendment. Indeed, in *Meyer v. Grant*, 486 U.S. 414 (1988), the United States Supreme Court (Court) held that petition circulation is core political speech. Because petition circulation involves interactive communication regarding political change, the Court opined that First Amendment protection is "at its zenith." Nonetheless, it is established law that elections, including initiative and referendum processes, can be substantially regulated in order to maintain that they are "fair and honest." *Storer v. Brown*, 415 U.S. 724 (1974).

In *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999) (*Buckley*), the Court further defined the parameters of First Amendment protection for petition circulation and signature gathering. The *Buckley* Court held that states have considerable discretion to protect the integrity of the initiative and referendum process and while there is "no litmus-paper test" for alleged violations of the First Amendment, there are some bright-line rules for the signature gathering process:

- States may not require that signature-gatherers be registered voters. Such a regulation would eliminate non-registered voters from participating in the political process, and there are less burdensome methods of meeting the states interests in administrative efficiency, fraud detection, and providing voters with information on the process.
- Requiring that signature-gatherers wear identification is impermissible insofar as such a requirement would entail signature-gatherers to display their names. Such a requirement discourages participation in the political process by forcing name identification at the time they are delivering their political message and when reaction "may be the most

intense, emotional, and unreasoned." In contrast, affidavits are not instantly accessible, and are not prohibited under the First Amendment.

In *Buckley*, the Court set the standard of review for First Amendment rights as they relate to petition circulation and signature gathering. For purposes of determining whether a state election regulation violates an individual's First Amendment Right, the Court:

- weighs the character and magnitude of the burden the state's regulation imposes on those rights against the interests the state contends justify that burden; and
- considers the extent to which the state's concerns make the burden necessary.

Regulations that impose severe burdens must be narrowly tailored to advance a compelling state interest. Lesser burdens require a less exacting review and a state's important regulatory interest may justify reasonable, nondiscriminatory regulations. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997).

Summary of Substitute Bill:

All businesses in Washington that are engaged in collecting signatures for state or local initiative, referendum, or recall petition and that are using paid signature gatherers must register with the Public Disclosure Commission (PDC). In addition, the paid signature gatherers must also register with the PDC. Volunteer signature gatherers are not required to register.

A paid signature gatherer's registration is only valid for one state or local initiative, referendum, or recall petition; therefore, an individual engaged in gathering signatures for more than one state or local initiative, referendum or recall petitions must obtain a separate registration number for each petition.

In order to register with the PDC, an individual must provide: his or her full name and assumed name, if any; residential street address; a signature; a list of the state or local initiative, referendum, or recall petitions on which the registrant will gather signatures; and a signed statement attesting that in the past five years, the registrant has not been convicted of a criminal offense involving fraud, forgery, or identification theft, has not been convicted of an election related offense, has not been found in violation of election law, and he or she is not a convicted sex offender. In addition, an individual must provide: a signed statement acknowledging the registrant has read and understands the applicable Washington law; evidence that the applicant has completed the required training; a conventional photograph showing the registrant's head, neck and shoulders appropriate for copying and processing by the PDC; and a statement signed by the prime sponsor of each state or local initiative, referendum, or recall petition upon which the applicant will gather signatures acknowledging the chief petitioner is liable for violations of law or rule committed by the applicant.

In order to register with the PDC, a business must provide: the name of the business and any trade names; the street address of the main office, the mailing address if different, the office phone number and the business e-mail address; the full name of the business owners and any

assumed names; and a signature of the business owner or owners. In addition, the business must provide a signed statement that in the past five years the owners have not been convicted of a criminal offense involving fraud, forgery, or identification theft, has not been convicted of an election related offense, has not been found in violation of election law, and he or she is not a convicted sex offender; a signed statement acknowledging the registrant has read and understands the applicable Washington law; and evidence that the applicant has completed the required training. The business must also submit a list of the state or local initiative, referendum, or recall petitions on which the business will utilize paid signature gatherers.

A person, including a business owner, is ineligible for registration if he or she: has been convicted of a criminal offense involving fraud, forgery, or identification theft in any jurisdiction in the past five years; has been convicted of an election related crime under chapter 29A.84 RCW, or its equivalent in another jurisdiction, in the past five years; has been found in violation of election law under chapter 29A.84 RCW or its equivalent in another jurisdiction, in the past five years; or is a convicted sex offender.

When gathering signatures, a paid signature gatherer must carry on his or her person evidence of registration. If requested, he or she shall produce the evidence of registration.

If an individual who receives money or other valuable consideration for obtaining signatures on a petition was not registered with the PDC at the time the signatures were obtained, the signatures collected will not be counted for the purpose of determining whether the state or local initiative, referendum, or recall petition contains the required number of elector signatures. If a business required to register under this act fails to register, the failure will result in the invalidation of any signatures gathered by the business and the business will be subject to penalties up to \$10,000.

If a registered paid signature gatherer knowingly submits fraudulent signatures, he or she will have his or her registration revoked and is prohibited from obtaining future permits. If the PDC is informed that a paid signature gatherer has been convicted of an election related criminal offense, found in violation of election law under chapter 29A.84, or has submitted false information on his or her registration application, the paid signature gatherer's registration is revoked and is prohibited for reapplying for registration for five years. If the PDC is informed that a paid signature gatherer has been convicted of any sex offense, he or she will have his or her registration number permanently revoked.

Lines for the signature gatherer's signature, date, name, and address are added to the declaration on the back of each petition sheet. Language is added that signing the declaration constitutes an oath and subjects the signatory to the penalty of law. Each declaration must be individually signed by the signature gatherer after the sheet has been signed by petitioners, but before the petition is submitted to the Secretary of State (Secretary). Each prime sponsor or sponsors of an initiative or referendum petition must check each petition sheet to ensure the declaration is signed. The prime sponsor or sponsors must sign an affidavit that he or she verified that the declaration on each petition sheet was completed and signed prior to submission to the Secretary. Failure to sign and date the declaration is grounds for the Secretary to refuse to file the petition sheet.

A "paid signature gatherer" is defined as a person who is compensated through payments of money, as an independent contractor, to obtain signatures on a state or local initiative, referendum, or recall petition.

"Prime sponsor or sponsors" is defined as the registered voter or voters who complete the affidavit for proposed initiative or referendum or files a recall petition under chapter 29A.56 RCW as well as any persons who hold themselves out publicly as the sponsor of an initiative, referendum, or recall petition.

A "volunteer signature gatherer" means an individual who is not compensated through payments of money or other valuable consideration to obtain signatures on a state or local initiative, referendum, or recall petition and is not required to register under this act.

The PDC is given rule-making authority to implement this act.

Substitute Bill Compared to Original Bill:

The substitute bill adds a definition of "prime sponsor" and changes any references to "chief petitioner" to "prime sponsor." The substitute bill also specifies the registration requirements for the businesses using paid signature gatherers. Election related crimes and violations are added to the types of crimes that will disqualify a person or business from registration.

The substitute bill specifies that the registration for a business is valid for one calendar year. In addition, the substitute bill clarifies that businesses using paid signature gatherers for initiative, referendum, or recall petitions that fail to register will have all signatures collected invalidated and will be subject to a fine of up to \$10,000. The substitute bill clarifies that the paid signature gatherer must simply carry his or her registration card on his or her person. If requested, he or she shall produce this evidence of registration. In addition, the substitute bill clarifies circumstances, processes and outcomes for the knowing submission of invalid signatures by a paid signature gatherer and other circumstances leading to the revocation of a registration. The substitute bill directs the Secretary to provide paid signature gatherers and businesses using paid signature gatherers training via the Internet.

Also, the substitute bill requires all signature gatherers to sign the declaration on the reverse of a petition sheet after the petitioners have signed the petitions but before it is submitted to the prime sponsor. It must be signed by the signature gatherer who solicited and received the signatures on the front side of the sheet. Also, the substitute bill clarifies that each declaration must be individually signed by the signature gatherer. Stamps or other signature reproductions are prohibited. The substitute bill requires the prime sponsor to verify the declarations have been signed and submit an affidavit to that effect when filing the petition with the Secretary. The substitute bill clarifies that the Secretary must refuse to file any petition sheets that have not been properly signed and dated by the signature gatherer. Finally, definitions of "paid signature gatherer," "prime sponsor," and "volunteer" are added to chapter 29.72 RCW.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2009.

Staff Summary of Public Testimony:

(In support) This bill addresses what used to be a citizen grassroots and volunteer endeavor – the collecting of signatures for a citizen's initiative, referendum, or recall effort – and what has now become a business enterprise. In fact, many of the paid signature gatherers are not even Washington residents, but independent contractors that work collecting signatures for petitions in many states. They are asking our citizens to provide their name, address, and signature. Unfortunately in today's world, it does not take much more than that to have your identity stolen. In fact, more and more businesses and the government have to take steps to keep that type of information confidential. By preventing individuals convicted of fraud, forgery, and identity theft as well as those who have broken election laws in the past from being a paid signature gatherer, the state takes a huge step to protect its citizens and the democratic process. In addition, by preventing sex offenders from becoming a paid signature gatherer, we are making our citizens safer. Unfortunately, there are too many opportunities for fraud and bad actors. This bill provides accountability through registration, training, clear penalties, and clarifying the use of the declaration on the petition. And this bill places the responsibility in the hands of those persons who have the most control over the collection of signatures – the signature gatherers themselves, the businesses that employ paid signature gatherers, and the prime sponsors of the petitions.

(Opposed) This bill infringes on citizens' First Amendment rights and their right to utilize the initiative and referendum process. According to a records request, the Secretary did not find any evidence of fraud between 1999 and 2006. Signature gatherers place themselves at risk by publicly representing a point of view and can be harassed. The declaration on a petition sheet does not really mean anything and otherwise valid signatures should not be discarded because someone does not sign the declaration. Election laws should facilitate the constitutional rights of the citizens; however, this law does not promote the facilitation of the initiative or referendum process. In fact, it disenfranchises innocent citizens who signed petitions by unregistered paid signature gatherers. If the Legislature is sincere about helping return a fundamental power to the citizens, they should consider deregulation, not over regulation, of the initiative process.

Persons Testifying: (In support) Representative Hunt, prime sponsor; Jim Bricker, Washington Roundtable; Michael Temple, Washington State Trial Lawyers Association; Ed Agazarm; Steve Zemke, Taxpayers for Washington's Future; and Adam Glickman, SEIU 775.

(Opposed) Merton Cooper; Mike Dunmire and Tim Eyman, reducecongestion.org; and Leonard Ruthford and Shawn Newman, Initiative and Referendum Institute.

Persons Signed In To Testify But Not Testifying: None.