

# SENATE BILL REPORT

## SB 5386

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As Reported by Senate Committee On:  
State Government  
State Government, Tribal Relations & Elections, January 31, 2018

**Title:** An act relating to strengthening the initiative process by providing for more comprehensive review before initiatives receive ballot titles.

**Brief Description:** Strengthening the initiative process by providing for more comprehensive review before initiatives receive ballot titles.

**Sponsors:** Senators Pedersen, Miloscia, Hunt, Fain, Billig, Carlyle, Mullet, Kuderer, Saldaña and Frockt.

**Brief History:**

**Committee Activity:** State Government: 2/10/17.

State Government, Tribal Relations & Elections: 1/19/18, 1/31/18 [DPS, DNP, w/oRec].

### Brief Summary of First Substitute Bill

- Extends the time period in which initiative measures may be filed.
- Increases the filing fee for initiative measures to \$200, with \$100 refunded to the sponsor if the measure qualifies for the ballot.
- Requires a 20-day review by the Code Reviser of proposed initiative language prior to submission to the Secretary of State.
- Requires a 10-day public notice and comment period on proposed initiative language prior to submission to the Secretary of State.
- Provides a process for challenging the constitutionality of proposed initiative measures before voter approval.

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## SENATE COMMITTEE ON STATE GOVERNMENT

**Staff:** Samuel Brown (786-7470)

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## SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

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*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.*

**Majority Report:** That Substitute Senate Bill No. 5386 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Saldaña.

**Minority Report:** Do not pass.

Signed by Senator Miloscia, Ranking Member.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Zeiger.

**Staff:** Samuel Brown (786-7470)

**Background:** Initiative Filing. Under the Washington Constitution, any voter may initiate a ballot measure to petition the Legislature to enact a proposed measure or submit a proposed initiative to the people. The sponsor of the initiative must file a proposal with the Secretary of State along with an affidavit that they are a legal voter and a filing fee, which is established by rule. The filing fee for an initiative is currently \$5.

Role of the Code Reviser. The Code Reviser reviews each proposed initiative measure and, within seven days, provides advisory recommendations to the sponsor regarding the drafting of the measure. Upon completing review, the Code Reviser certifies that the review is completed and that any recommendations have been communicated to the sponsor. The certificate must be issued regardless of whether or not the sponsor has agreed to any of the recommendations. The sponsor must file the proposed initiative measure, along with the Code Reviser's certificate of review, with the Secretary of State for assignment of a serial number and official processing.

Signature Gathering. After the Secretary of State issues a serial number, the proponent must obtain the signatures of legal voters equal to at least 8 percent of all votes cast at the last election for the Office of the Governor. In 2018, a proponent must obtain 259,622 signatures. Proponents have six months to collect signatures for initiatives to the people and ten months for initiatives to the Legislature. The Secretary must verify the signatures and, if sufficient, certify the measure for inclusion in the next election.

Legal Challenges to Initiative Language. Washington courts have declined to consider the constitutionality of ballot measure language prior to voter approval of the measure at the polls. However, courts have decided procedural challenges to ballot measures, including as to form and whether the proposed measure is administrative, rather than legislative, in nature.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (First Substitute):** Initiative Filing. Initiatives to the people may be filed with the Secretary of State up to 18 months before the election at which they are to be submitted. Initiatives to the Legislature may be filed with the Secretary of State up to 15 months before the legislative session at which they are to be submitted. Signatures may not be collected for an initiative until one week after the general election before the measure would appear on the ballot. The filing fee for initiative measures is only increased to \$200, with \$100 refunded to the sponsor if the measure is certified for the ballot.

Initiative Pre-Submission Review. Initiative proponents must file a plain statement of the intent of the initiative with the Secretary of State along with the proposed measure's text. The measure's text and statement of intent must be transmitted to the Code Reviser, who then has 20 days to review the text of the proposed measure and may recommend changes as needed to comply with legislative drafting requirements and prevent the measure from misleading voters. The Code Reviser's recommendations are advisory.

Public Comment Period. After the proponent submits the measure's language and certificate of review to the Secretary of State, there is a ten-day public review and comment period on the measure's proposed language. At the end of the comment period, the Secretary of State provides all comments received on the measure to the proponent. The proponent may amend the measure in response to public comment and file the measure with the Secretary of State for processing and assignment of a serial number.

Legal Challenges to Initiative Language. Any person may seek a declaratory judgment that a proposed initiative is facially unconstitutional within 30 days of the measure's assignment of a serial number. Such an action must be filed in Thurston County Superior Court, and a decision must be issued within 90 days.

**EFFECT OF CHANGES MADE BY STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS COMMITTEE (First Substitute):** Initiative Filing. Signatures may not be collected for an initiative until one week after the general election before the measure would appear on the ballot. The filing fee for initiative measures is only increased to \$200, with \$100 refunded to the sponsor if the measure is certified for the ballot.

Initiative Pre-Submission Review. The 45-day period for the Attorney General's Office to review a proposed initiative measure for substantive constitutionality is removed. The Code Reviser's review period is reduced from 45 to 20 days.

Public Comment Period. The public comment period is reduced from 28 to 10 days.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony (State Government):** *Testimony from 2017 Regular Session.* PRO: The purpose of this bill is to create a way for initiative sponsors to get feedback. This will increase confidence in the initiative process by getting a better product in front of the voters that won't get struck down and have to be re-run. This would discourage multiple filing and ease the Code Reviser's workload. Contrary to its initial intent, the initiative process has become dominated by heavily financed private interests. Voters lack unbiased information about initiative proposals, and this process would provide that. The

review process is envisioned as a back-and-forth between the agencies and the sponsor, much like the legislative process.

CON: The increased filing fee would destroy grassroots initiative campaigns. The initiative process is already difficult, and there's no need to throw additional road blocks that burden a fundamental First Amendment right. Citizens shouldn't be powerless to challenge laws without government permission first.

OTHER: The Attorney General's Office would like to be taken out of the process because there are concerns about creating a potential conflict within the office defending a law once it has been passed by the voters.

**Persons Testifying (State Government):** PRO: Senator Jamie Pedersen, Prime Sponsor; Andrew Maron, King County Bar Association; Rory O'Sullivan, King County Bar Association; Eric Christensen, King County Bar Association.

CON: Tim Eyman, citizen.

OTHER: Callie Castillo, Attorney General's Office.

**Persons Signed In To Testify But Not Testifying (State Government):** No one.

**Staff Summary of Public Testimony on Proposed Substitute (State Government, Tribal Relations & Elections):** *The committee recommended a different version of the bill than what was heard.* PRO: There is a cycle of cynicism that comes from having unconstitutional measures appear on the ballot then get struck down by the courts, which can be solved by having courts issue declaratory judgments and an opportunity for public comment. The goal of this legislation is to give initiative sponsors some of the same tools lawmakers have when drafting proposals. This is the product of research into best practices around the country, input from a lot of stakeholders. The filing fee should be increased because of the time and expense put into review and the potential for title-shopping.

CON: This is an attempt to end the right of citizen initiatives. Getting an initiative on the ballot is incredibly difficult, and this will delay the process even further. This will kill the ability of citizens to challenge legislative actions, because anything the Legislature passes will be referendum-proof and initiative-proof. The signature-gathering process already is a public comment process.

OTHER: We do need to raise the filing fee, but there should be another route to getting initiatives in, such as allowing citizen co-sponsors. Eighteen months is too long for signature gathering. One solution would be to impose a majority requirement for turnout in odd-numbered year elections for an initiative to be enacted.

**Persons Testifying (State Government, Tribal Relations & Elections):** PRO: Senator Jamie Pedersen, Prime Sponsor; Rory O'Sullivan, Dashiell Milliman-Jarvis, King County Bar Association.

CON: Tim Eyman, citizen.

OTHER: Andrew Villeneuve, Northwest Progressive Institute.

**Persons Signed In To Testify But Not Testifying (State Government, Tribal Relations & Elections):** No one.