

HOUSE BILL REPORT

EHB 1453

As Passed House:
January 26, 2022

Title: An act relating to voters' pamphlets.

Brief Description: Concerning voters' pamphlets.

Sponsors: Representatives Bergquist, Volz, Valdez, Lekanoff, Shewmake, Sutherland and Riccelli.

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/8/21, 2/11/21 [DP].

Floor Activity:

Passed House: 3/3/21, 90-7.

Passed House: 1/26/22, 70-27.

Brief Summary of Engrossed Bill

- Adds content-based restrictions to candidate statements and arguments for and against ballot measures in statewide and local voters' pamphlets.
- 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.
- Makes minor language and administrative changes to sections governing voters' pamphlets.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

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.

Majority Report: Do pass. Signed by 5 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Volz, Ranking Minority Member; Dolan and Gregerson.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Assistant Ranking Minority Member; Graham.

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, 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, 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. 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 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.

Up until July 1, 2021, counties, first-class cities, and code cities are permitted by statute to produce a local voters' pamphlet. To do so they must adopt an ordinance authorizing the creation of the pamphlet at least 90 days before a primary or general election or at least 40 days before a special election. The ordinance may provide for a pamphlet at a specific election or for any future elections.

Because of legislation passed last session, beginning on July 1, 2021, 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 himself or herself.

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 be instead sent to every registered voter in the jurisdiction. Local voters' pamphlets must be sent "as soon as practicable" before an election.

Summary of Engrossed Bill:

Additional content-based restrictions are added to the state and local voters' pamphlet, and all statements are subject to review and approval. 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 himself or herself.)

Candidate statements in either pamphlet may not:

- ask for contributions;
- make commercial solicitations; or
- make obscene or otherwise inappropriate comments.

Photographs of candidates may not include hats, buttons, or clothing showing words, insignia, or symbols.

Statements for or against ballot measures in statewide voters' pamphlets may not:

- ask for contributions;
- make commercial solicitations; or
- make obscene or otherwise inappropriate comments.

Graphs, charts, photographs, and other nontextual material 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.

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. The statewide voters' pamphlet must include candidate information for multi-county congressional or legislative districts that appear on an odd-numbered year ballot due to a vacancy.

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 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.

The deadline for the OFM to submit fiscal impact statements for state ballot measures, which are included in the statewide voters' pamphlet, is moved from August 10 to July 15.

Minor language changes are made throughout.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Many counties have done voters' pamphlets for decades. In recent years, there have been issues with candidates that used statements that include hate speech or attack people of different ethnicities, such as "Negro vampire criminals," "Justice 'Uncle' Clarence Thomas," and "[Jeffrey] Epstein didn't kill himself." This bill will eliminate hate and other inappropriate speech from the pamphlets. State rules for content are different than local rules, and this bill brings the statutes in line to bring consistency across counties. This bill is not about free speech because candidates can still say what they want outside of the pamphlet, and the pamphlet is speech paid for by the state. Now that smaller counties are required to create local pamphlets, this bill will help them by having the Secretary of State set rules. This is especially important when legislative districts are split among many counties. This bill will clear the way to help county election officials meet the requirements for local pamphlets.

(Opposed) None.

Persons Testifying: Jay Jennings, Office of the Secretary of State; Mary Hall and Lori Larsen, Washington State Association of County Auditors; Kathy Sakahara, League of Women Voters of Washington; and Paul Andrews, Kitsap County Auditor's Office.

Persons Signed In To Testify But Not Testifying: None.