

SENATE BILL 287

Introduced by Doherty, et al.

2/01	Introduced
2/01	Referred to State Administration
2/01	First Reading
2/01	Fiscal Note Requested
2/05	Fiscal Note Received
2/05	Fiscal Note Printed
2/16	Hearing
2/17	Tabled in Committee
3/16	Committee Report--Bill Not Passed as Amended
3/16	Adverse Committee Report Adopted

1 Sen. Kees BILL NO. 287  
 2 INTRODUCED BY Sen. Kees  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE LICENSURE  
 5 BY COUNTY ELECTION ADMINISTRATORS OF PERSONS WHO SOLICIT  
 6 SIGNATURES ON ELECTION PETITIONS; REQUIRING THE DISPLAY OF  
 7 THE LICENSE; REQUIRING REPORTS BY PRINCIPALS WHO HIRE  
 8 PETITION SIGNATURE GATHERERS; AND PROVIDING PENALTIES."  
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Purposes -- applicability. (1)  
 12 The purposes of [sections 1 through 17] are:

13 (a) to promote a high standard of ethics in the  
 14 practice of soliciting signatures on petitions for  
 15 qualifying candidates or issues for inclusion on an election  
 16 ballot;

17 (b) to prevent unfair and unethical practices;

18 (c) to provide for the licensing by county election  
 19 administrators of signature gatherers and for the suspension  
 20 or revocation of the licenses; and

21 (d) to require disclosure of the amounts of money spent  
 22 for signature gathering.

23 (2) Nothing in [sections 1 through 17] subjects an  
 24 individual soliciting signatures on the individual's own  
 25 behalf to any reporting requirements.

1 NEW SECTION. Section 2. Definitions. As used in  
 2 [sections 1 through 17], the following definitions apply:

3 (1) "Docket" means the register of signature gatherers  
 4 and principals maintained by the election administrator of  
 5 each county pursuant to [section 7].

6 (2) "Individual" means a human being.

7 (3) "Payment" means distribution, transfer, loan,  
 8 advance, deposit, gift, or other rendering made or to be  
 9 made of money, property, or anything of value.

10 (4) "Person" means an individual, corporation,  
 11 association, firm, partnership, state or local government or  
 12 subdivision of state or local government, or other  
 13 organization or group of individuals.

14 (5) "Principal" means a person who employs a signature  
 15 gatherer.

16 (6) (a) "Signature gatherer" means an individual who  
 17 engages in the practice of signature gathering for hire.

18 (b) The term does not include:

19 (i) an individual acting solely on the individual's own  
 20 behalf; or

21 (ii) an individual working for a principal who employs  
 22 licensed signature gatherers if the individual does not  
 23 personally gather signatures.

24 (c) Nothing in this section deprives an individual not  
 25 signature gathering for hire of the right to solicit

signatures on the individual's own behalf and not for hire.

(7) "Signature gathering" means soliciting or obtaining the signature of an elector on a petition:

(a) for recall of a public officer, as provided in 2-16-612;

(b) to qualify a presidential candidate in a presidential preference primary election, as provided in 13-10-404;

(c) for nomination for public office by an independent candidate or a political party, as provided in 13-10-501;

(d) for nomination for president or vice president as an independent candidate, as provided in 13-10-504;

(e) requesting a primary election by a minor political party, as provided in 13-10-601;

(f) for nomination in a nonpartisan election, as provided in 13-14-113;

(g) for constitutional amendment, constitutional convention, initiative, or referendum, as provided in Title 13, chapter 27;

(h) for the calling of an election on the proposition of issuing school district bonds, as provided in 20-9-423; or

(i) for qualifying other bond issues for inclusion on a ballot.

(8) "Signature gathering for hire" includes activities

of the officers, agents, or employees of a principal who are paid, reimbursed, or retained by the principal and whose duties include signature gathering.

(9) "Unprofessional conduct" means:

(a) violating any of the provisions of [sections 1 through 17]; or

(b) attempting to knowingly deceive an individual with regard to the pertinent facts of a matter or attempting to knowingly misrepresent pertinent facts of a matter in an attempt to obtain that individual's signature on a petition.

#### NEW SECTION. Section 3. Licenses -- fees --

eligibility. (1) Any adult of good moral character who is otherwise qualified under [sections 1 through 17] may be licensed as a signature gatherer. The election administrator of each county shall provide a license application form that may be obtained from and filed in the office of the election administrator. Upon approval of the application and receipt of the license fee of \$10 by the election administrator, a license must be issued that entitles the licensee to practice signature gathering in that county on behalf of one or more enumerated principals. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the signature gatherer.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the

1 applicant an opportunity for a hearing. The hearing must be  
2 held and the decision entered within 10 days of the date of  
3 the filing of the application.

4 (b) An application may not be approved if a principal  
5 has failed to file reports required under [section 12].

6 (3) The fines and license fees collected under  
7 [sections 1 through 17] must be deposited in the county  
8 general fund.

9 NEW SECTION. Section 4. Suspension of signature  
10 gathering privileges. A signature gatherer whose license has  
11 been suspended or a person who has been found guilty of a  
12 violation of any provision of [sections 1 through 17] may  
13 not engage in signature gathering for hire until that person  
14 has been reinstated to the practice or duly licensed.

15 NEW SECTION. Section 5. Inspection of applications and  
16 reports -- issuance of orders of noncompliance. (1) Each  
17 application and report filed with the election administrator  
18 of each county must be inspected within 10 days after it is  
19 filed. If a person has not satisfied the provisions of  
20 [sections 1 through 17], the election administrator shall  
21 immediately notify the person of the noncompliance. An order  
22 of noncompliance may be issued when:

23 (a) it is determined that an application or report  
24 filed with the election administrator does not conform to  
25 the requirements of [sections 1 through 17]; or

1 (b) a person has failed to file an application or  
2 report required by law.

3 (2) The person shall submit the necessary information  
4 within 5 days after receiving the notice of noncompliance.  
5 Upon failure to submit the required information within 5  
6 days, the election administrator may initiate a civil or  
7 criminal action pursuant to the procedures contained in  
8 [section 17].

9 NEW SECTION. Section 6. Procedures -- segregation of  
10 payments. (1) The election administrator of each county  
11 shall adopt procedures necessary to carry out the provisions  
12 of [sections 1 through 17] and, in particular, shall provide  
13 procedures necessary to allocate salary, expenses, and any  
14 other payments between signature gathering activities and  
15 other activities not connected with signature gathering for  
16 any person whose activities are not solely limited to  
17 signature gathering.

18 (2) The procedures must be designed to effect and  
19 promote the purposes of [sections 1 through 17], express or  
20 implied. The procedures must be as simple and easily  
21 complied with as possible.

22 NEW SECTION. Section 7. Docket -- contents. The  
23 election administrator of each county shall make available  
24 to the public the information required by [sections 1  
25 through 17], including but not limited to the name and

business address of each signature gatherer, the name and business address of the principal, and the subject or subjects to which the employment relates. The docket entry for each principal must also indicate the date of receipt of the principal's reports as required by [section 12].

**NEW SECTION. Section 8.** Docket -- public record. The docket is a public record and is open to the inspection of any individual upon demand at any time during the regular business hours of the office of the election administrator.

**NEW SECTION. Section 9.** Principal -- name of signature gatherer on docket. Every principal who employs a signature gatherer shall within 1 week after the employment cause the name of the signature gatherer to be entered upon the docket in each county in which the signature gatherer is to gather signatures. It is also the duty of the signature gatherer to enter the signature gatherer's name upon the docket. Upon the termination of the employment, that fact may be entered opposite the name of the signature gatherer by either the signature gatherer or the principal.

**NEW SECTION. Section 10.** Updating docket. A principal employing a signature gatherer shall, when additional petitions arise for which the signature gatherer is to obtain signatures, make or cause to be made additional entries in the docket stating the employment so that the docket will show at all times all petitions in relation to

which the signature gatherer is employed.

**NEW SECTION. Section 11.** Report to legislature. On the first Tuesday following the beginning of any regular or special session of the legislature, the election administrator of each county shall report to each member of each house of the legislature the names of signature gatherers registered under [sections 1 through 17], the names of the principals whom they represent, and the petitions in which each principal was interested in any election held since the last regular legislative session.

**NEW SECTION. Section 12.** Principals to file report. (1) A principal subject to [sections 1 through 17] shall file with the election administrator of each county in which the principal employed a signature gatherer a report of payments made during each year for the purpose of signature gathering.

(2) A report must be filed by December 31 each year.

(3) If payments are not made during a reporting period, the principal shall file a report stating that fact.

(4) Each report filed under this section must:

(a) list all payments for signature gathering, including costs for printing; postage; travel expenses; salaries and fees, including allowances, rewards, and contingency fees; telephone and telegraph; and other office expenses;

1 (b) identify each payee;

2 (c) list each petition on which the principal or  
3 signature gatherers employed by the principal gathered  
4 signatures; and

5 (d) be kept by the election administrator for a period  
6 of 10 years.

7 **NEW SECTION. Section 13.** Payments prohibited unless  
8 reported -- penalty for failure to report or for false  
9 statement. A principal may not make payments to obtain  
10 signatures on a petition unless that principal files the  
11 report required under [section 12]. A principal who fails to  
12 file a required report is subject to the criminal penalty  
13 provided in [section 17] as well as any civil action  
14 provided for in that section. A principal who knowingly  
15 files a false, erroneous, or incomplete statement commits  
16 the offense of unsworn falsification to authorities.

17 **NEW SECTION. Section 14.** Audit of signature gathering  
18 reports. (1) The election administrator of each county may  
19 audit the reports filed under [section 12] and shall  
20 investigate any irregularities and report any apparent  
21 violations of [sections 1 through 17] to the county  
22 attorney. The signature gatherer is required to provide and  
23 the principal is required to obtain and keep for a period of  
24 3 years from the date of filing all records supporting the  
25 reports filed under [section 12].

1 (2) All records under subsection (1) must be open to  
2 inspection on request of the election administrator or the  
3 county attorney. The election administrator and the county  
4 attorney may:

5 (a) issue subpoenas and compel attendance;

6 (b) issue enforceable civil investigative demands;

7 (c) take evidence; and

8 (d) require the production of any books,  
9 correspondence, memoranda, bank account statements, or other  
10 records that are relevant or material for the purpose of  
11 conducting any investigation pursuant to the provisions of  
12 [sections 1 through 17].

13 **NEW SECTION. Section 15.** Prohibition of practice  
14 without license and registration -- display of license. (1)  
15 An individual may not practice as a signature gatherer  
16 unless that individual has been licensed under [section 3],  
17 is listed on the docket in each county as employed in  
18 respect to all the petitions for which the signature  
19 gatherer is gathering signatures in that county, and  
20 displays the license while soliciting signatures.

21 (2) A principal may not directly or indirectly  
22 authorize or permit any signature gatherer employed by that  
23 principal to gather signatures until the signature gatherer  
24 is licensed and the names of the signature gatherer and the  
25 principal are entered on the docket of each county in which

the signature gatherer is to gather signatures.

**NEW SECTION. Section 16. Unprofessional conduct.** A signature gatherer or a principal may not engage in or directly or indirectly authorize any unprofessional conduct.

**NEW SECTION. Section 17. Penalties and enforcement.**

(1) A person violating the provisions of [sections 1 through 17] is guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for a period not to exceed 6 months or by a fine not to exceed \$200, or both.

(2) A person who violates any of the provisions of [sections 1 through 17] is subject to civil penalties of not less than \$250 and not more than \$7,500 according to the discretion of the district court. The license of a signature gatherer who violates any of the provisions of [sections 1 through 17] may be suspended or revoked at the discretion of the court.

(3) The attorney general or the election administrator or the county attorney of the county in which the violation takes place may bring criminal or civil actions in the name of the state for any appropriate criminal or civil remedy.

(4) If a prosecution is undertaken by an election administrator or the county attorney, all costs associated with the prosecution must be paid by the state.

(5) (a) An individual who has notified the attorney general, the appropriate election administrator, and the

appropriate county attorney in writing that there is reason to believe that some portion of [sections 1 through 17] is being violated may bring in the name of the state an action, referred to as a citizen's action, authorized under [sections 1 through 17] if:

(i) the attorney general and the appropriate county attorney have failed to commence an action within 40 days after notice; and

(ii) the attorney general and the county attorney fail to commence an action within 10 days after a written notice delivered to them advising them that a citizen's action will be brought if they do not bring an action.

(b) Each notification tolls the statute of limitations applicable until the expiration of the waiting period.

(c) If the individual who brings the citizen's action prevails, the individual is entitled to be reimbursed by the state for costs and attorney fees incurred; provided that in the case of a citizen's action that is dismissed and that the court also finds was brought without reasonable cause, the court may order the individual commencing the action to pay all costs of trial and reasonable attorney fees incurred by the defendant.

(6) A civil action may not be brought under this section more than 3 years after the occurrence of the facts that give rise to the action.

1       (7) All civil penalties imposed pursuant to this  
2 section must be deposited in the county general fund.

3       (8) A hearing under [sections 1 through 17] must be  
4 held by the court unless the licensee demands a jury trial.  
5 The trial must be held as soon as possible but at least 20  
6 days after the filing of the charges and takes precedence  
7 over all other matters pending before the court.

8       (9) If the court finds for the plaintiff, judgment must  
9 be rendered revoking or suspending the license and the clerk  
10 of court shall file a certified copy of the judgment with  
11 the election administrator.

12       NEW SECTION. **Section 18.** Codification instruction.  
13 [Sections 1 through 17] are intended to be codified as an  
14 integral part of Title 13, and the provisions of Title 13  
15 apply to [sections 1 through 17].

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0287, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring the licensure by county election administrators of persons who solicit signatures on election petitions.

ASSUMPTIONS:

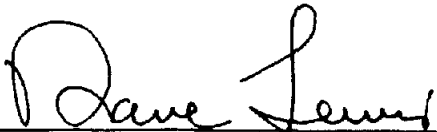
1. It is assumed that counties will incur costs associated with the licensure and monitoring of signature gatherers which are approximately offset by the \$10 fee collected to issue the license. The net statewide fiscal impact is not subject to reasonable estimate.
2. The number of licenses to be issued, total estimated revenue and potential fine and penalty revenue and enforcement expenses are not subject to reasonable estimate.

FISCAL IMPACT:

None to state agencies.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties will incur some costs associated with administering the program and will also accumulate fees for the services provided. An accurate estimate of the net fiscal impact to counties not subject to reasonable estimate.

 2-4-93

DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/5/93

STEVE DOHERTY, PRIMARY SPONSOR      DATE

Fiscal Note for SB0287, as introduced

SB 287