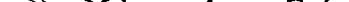


SENATE BILL NO. 89

2 INTRODUCED BY 

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LICENSURE BY THE COMMISSIONER OF POLITICAL
5 PRACTICES OF PERSONS WHO SOLICIT SIGNATURES ON ELECTION PETITIONS; REQUIRING THE
6 DISPLAY OF THE LICENSE; REQUIRING REPORTS BY PRINCIPALS WHO HIRE PETITION SIGNATURE
7 GATHERERS; AND PROVIDING PENALTIES."

STATEMENT OF INTENT

10 A statement of intent is required for this bill because [section 6] grants rulemaking authority. The
11 commissioner of political practices should ensure that the rules provide a means for the public to become
12 aware of the provisions of this bill and the rules implementing this bill. The rules should not restrict
13 voluntary signature gatherers.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

21 (b) to prevent unfair and unethical practices;

22 (c) to provide for the licensing by the commissioner of political practices of signature gatherers and
23 for the suspension or revocation of the licenses; and
24 (d) to require disclosure of the amounts of money spent for signature gathering.

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

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

30 (1) "Docket" means the register of signature gatherers and principals maintained by the

1 commissioner of political practices under [section 7].

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

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

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

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

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

10 (b) The term does not include:

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

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

14 (c) Nothing in this section deprives an individual who is not signature gathering for hire of the right
15 to solicit signatures on the individual's own behalf and not for hire.

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

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

18 (b) to qualify a presidential candidate in a presidential preference primary election, as provided in
19 13-10-404;

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

22 (d) for nomination for president or vice president as an independent candidate, as provided in
23 13-10-504;

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

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

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

28 (h) for the calling of an election on the proposition of issuing school district bonds, as provided in
29 20-9-423; or

30 (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 otherwise qualified under [sections 1 through 17] may be licensed as a signature gatherer. The commissioner of political practices shall provide a license application form that may be obtained from and the office of the commissioner. Upon approval of the application and receipt of the license fee of the commissioner, a license must be issued that entitles the licensee to practice signature gathering county on behalf of one or more enumerated principals. Each license expires on December 31 of 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 applicant an opportunity for a hearing. The hearing must be held and the decision entered within 10 days of the date of the filing of the application.

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

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

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

NEW SECTION. Section 5. Inspection of applications and reports -- issuance of orders of

1 **noncompliance.** (1) Each application and report filed with the commissioner of political practices must be
2 inspected within 10 days after it is filed. If a person has not satisfied the provisions of [sections 1 through
3 17], the commissioner shall immediately notify the person of the noncompliance. An order of
4 noncompliance may be issued when:

5 (a) it is determined that an application or report filed with the commissioner does not conform to
6 the requirements of [sections 1 through 17]; or

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

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

11 .

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

17 (2) The rules must be designed to effect and promote the purposes of [sections 1 through 17],
18 express or implied, and must be as simple as possible.

19

20 **NEW SECTION. Section 7. Docket -- contents.** The commissioner of political practices shall make
21 available to the public the information required by [sections 1 through 17], including but not limited to the
22 name and business address of each signature gatherer, the name and business address of the principal, and
23 the subject or subjects to which the employment relates. The docket entry for each principal must also
24 indicate the date of receipt of the principal's reports as required by [section 12].

25

26 **NEW SECTION. Section 8. Docket -- public record.** The docket is a public record and is open to
27 the inspection of any individual upon demand at any time during the regular business hours of the office
28 of the commissioner of political practices.

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30 **NEW SECTION. Section 9. Name of signature gatherer on docket.** Every principal who employs

1 a signature gatherer shall within 1 week after the employment cause the name of the signature gatherer
2 to be entered upon the docket in each county in which the signature gatherer is to gather signatures. It
3 is also the duty of the signature gatherer to enter the signature gatherer's name upon the docket. Upon
4 the termination of the employment, that fact may be entered opposite the name of the signature gatherer
5 by either the signature gatherer or the principal.

6

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

11

12 **NEW SECTION. Section 11. Report to legislature.** On the first Tuesday following the beginning
13 of any regular or special session of the legislature, the commissioner of political practices shall report to
14 each member of each house of the legislature the names of signature gatherers registered under [sections
15 1 through 17], the names of the principals whom they represent, and the petitions in which each principal
16 was interested in any election held since the last regular legislative session.

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18 **NEW SECTION. Section 12. Principal to file report.** (1) A principal who is subject to [sections
19 1 through 17] shall file with the commissioner of political practices a report of payments made during each
20 year for the purpose of signature gathering.

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

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

24 (4) The report must:

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

28 (b) identify each payee;

29 (c) list each petition on which the principal or signature gatherers employed by the principal
30 gathered signatures; and

1 (d) be kept by the commissioner for a period of 10 years.

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3 NEW SECTION. Section 13. Payments prohibited unless reported -- penalty for failure to report

4 or for false statement. A principal may not make payments to obtain signatures on a petition unless that

5 principal files the report required under [section 12]. A principal who fails to file a required report is subject

6 to the criminal penalty provided in [section 17] as well as any civil action provided for in [section 17]. A

7 principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn

8 falsification to authorities.

9

10 **NEW SECTION. Section 14. Audit of signature gathering reports.** (1) The commissioner of
11 political practices may audit the reports filed under [section 12] and shall investigate any irregularities and
12 report any apparent violations of [sections 1 through 17] to the county attorney. The signature gatherer
13 is required to provide and the principal is required to obtain and keep for a period of 3 years from the date
14 of filing all records supporting the reports filed under [section 12].

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16 The commissioner may:

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(a) issue subpoenas and compel attendance;

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(b) issue enforceable civil investigative demands;

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(c) take evidence; and

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

23

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NEW SECTION. Section 15. Prohibition of practice without license and registration -- display of
. (1) An individual may not practice as a signature gatherer unless that individual has been licensed
{section 3}, is listed on the docket employed in respect to all the petitions for which the signature
er is gathering signatures, and displays the license while soliciting signatures.

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29

by that principal to gather signatures until the signature gatherer is licensed and the names of the signature gatherer and the principal are entered on the docket.



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

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4 **NEW SECTION. Section 17. Penalties and enforcement.** (1) A person violating the provisions of
5 [sections 1 through 17] is guilty of a criminal offense and upon conviction shall be punished by
6 imprisonment in the county jail for a period not to exceed 6 months or by a fine not to exceed \$200, or
7 both.

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

12 (3) The commissioner of political practices may bring criminal or civil actions in the name of the
13 state for any appropriate criminal or civil remedy.

14 (4) (a) An individual who has notified the commissioner in writing that there is reason to believe
15 that some portion of [sections 1 through 17] is being violated may bring in the name of the state an action,
16 referred to as a citizen's action, authorized under [sections 1 through 17] if:

17 (i) the commissioner has failed to commence an action within 40 days after notice; and

18 (ii) the commissioner fails to commence an action within 10 days after a written notice is delivered
19 to the commissioner advising that a citizen's action will be brought if the commissioner does not bring an
20 action.

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

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

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

30 (6) All civil penalties imposed pursuant to this section must be deposited in the general fund.

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

4 (8) If the court finds for the plaintiff, judgment must be rendered revoking or suspending the license
5 and the clerk of court shall file a certified copy of the judgment with the commissioner.

6

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

9

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0089, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring licensure and implementing registration and regulation of paid signature gatherers for local and statewide petitions for qualifying candidates or issues for inclusion on an election ballot.

ASSUMPTIONS:

Secretary of State:

1. Hired signature gatherers and principals, as defined in the bill, will be involved only in statewide elections, not local elections.
2. Petitions for statewide elections must be qualified in at least 40 legislative districts.
3. Hired signature gatherers will be concentrated in the seven largest cities which comprise more than 40 legislative districts.
4. There will be five principals each statewide election cycle that hire paid signature gatherers and are required to register and submit reports under this bill.
5. There will be approximately five hired signature gatherers per principal in each of the seven largest cities. The total estimated signature gatherers per election cycle is 175 (5 X 7 X 5 = 175).
6. License fees will be \$10 per hired gatherer per county and will be deposited in each county general fund. It is estimated that total license fee revenue will be \$5,250 if each gatherer is licensed in an average of three counties (\$10 X 175 X 3 = \$5,250).

Commissioner of Political Practices:

7. Educational efforts will be needed to inform Montanans about the license requirements for petition signature gatherers. Staff time will be necessary to respond to questions regarding any such issues. Rulemaking and subsequent dissemination will be necessary.
8. Procedures to implement the requirements will demand significant coordination between the Commissioner of Political Practices and local county election administrators to meet the mandate to maintain the docket for individual signature gatherers licensed to engage in collecting signatures within their individual counties.
9. Licensing activity could commence at any time during any year since the regulated activity includes local issues as well as statewide ballot issues. Ballot issues become ballot issues when the wording is approved by the Secretary of State and can become active at any time since ballot issue elections can be scheduled at times other than regular election dates.
10. Complaints with regard to unprofessional conduct or reported violations of this bill will entail investigations and legal determinations as to the appropriateness of the named potential violation. Legal costs will be incurred.
11. Additional work will be required to register gatherers and principals, maintain the docket, check reports of expenses by principals employing the gatherers, and related compliance activities.
12. The bill will be effective October 1, 1995. It is estimated that 0.75 FTE grade 11 will be necessary in FY96 and 1.00 FTE in FY97 to manage the additional workload. Based upon 2,080 hours for an FTE, the average workload will be approximately 11.5 hours per signature gatherer/principal based upon the above estimates.
13. Estimated operating expenses include legal services expenses of \$8,000 per year. The start-up equipment includes office furniture and a personal computer and peripheral equipment.

(Continued)

Aug. 7, 1985

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

STEVE DOHERTY, PRIMARY SPONSOR DATE

Fiscal Note for SB0089, as introduced

SB 89

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Commissioner of Political Practices:		
FTE	0.75	1.00
Personal Services	18,763	25,104
Operating Expenses	14,250	12,250
Equipment	<u>4,700</u>	<u>0</u>
Total	37,713	37,354
General Fund (01)	37,713	37,354

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Statewide county general fund revenue from signature gatherer license fees is estimated to increase by approximately \$5,250 per year.