

Date of Hearing: April 27, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2152 (Gray) – As Amended March 7, 2016

SUBJECT: Elections: ballots: ballot order. Urgency.

SUMMARY: Allows certain local ballot measures to appear on the ballot before state measures at the November 2016, statewide general election, as specified. Specifically, **this bill:**

- 1) Authorizes a county board of supervisors, for the November 8, 2016, statewide general election, to direct the county elections official to place a local measure related to local transportation finance above state measures on the ballot.
- 2) Contains a January 1, 2017, sunset date.
- 3) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.
- 4) Makes technical changes.

EXISTING LAW:

- 1) Requires every ballot to contain the following:
 - a) The title of each office, arranged to conform as nearly as practical in accordance with existing law;
 - b) The names of all qualified candidates, as specified; and,
 - c) The titles and summaries of measures submitted to a vote of the voters.
- 2) Requires the offices on the ballot to be listed in the order detailed below, beginning in the column to the left:
 - a) Under the heading, PRESIDENT AND VICE PRESIDENT (at a Presidential general election): Nominees of the qualified political parties and independent nominees for President and Vice President.
 - b) Under the heading, PRESIDENT OF THE UNITED STATES (at a Presidential primary election): Names of the presidential candidates to whom the delegates are pledged and names of the chairpersons of unpledged delegations.
 - c) Under the heading STATE:
 - i) Governor;
 - ii) Lieutenant Governor;
 - iii) Secretary of State;

- iv) Controller;
- v) Treasurer;
- vi) Attorney General;
- vii) Insurance Commissioner; and,
- viii) Member, State Board of Equalization.

(d) Under the heading, UNITED STATES SENATOR: Candidates or nominees to the United States Senate.

(e) Under the heading, UNITED STATES REPRESENTATIVE: Candidates or nominees to the House of Representatives of the United States.

(f) Under the heading, STATE SENATOR: Candidates or nominees to the State Senate.

(g) Under the heading, MEMBER OF THE STATE ASSEMBLY: Candidates or nominees to the Assembly.

(h) Under the heading, COUNTY COMMITTEE: Members of the County Central Committee.

(i) Under the heading, JUDICIAL:

- (1) Chief Justice of California;
- (2) Associate Justice of the Supreme Court;
- (3) Presiding Justice, Court of Appeal;
- (4) Associate Justice, Court of Appeal;
- (5) Judge of the Superior Court; and,
- (6) Marshal.

(j) Under the heading, SCHOOL:

- (1) Superintendent of Public Instruction (SPI);
- (2) County Superintendent of Schools;
- (3) County Board of Education Members;
- (4) College District Governing Board Members;

- (5) Unified District Governing Board Members;
- (6) High School District Governing Board Members; and,
- (7) Elementary District Governing Board Members.

(k) Under the heading, COUNTY:

- (1) County Supervisor; and,
- (2) Other offices in alphabetical order by the title of the office.

(l) Under the heading, CITY:

- (1) Mayor;
- (2) Member, City Council; and,
- (3) Other offices in alphabetical order by the title of the office.

(m) Under the heading, DISTRICT: Directors or trustees for each district in alphabetical order according to the name of the district.

(n) Under the heading, MEASURES SUBMITTED TO THE VOTERS, ballot measures beginning with state measures.

- 3) Permits county elections officials to vary the order of school, county, city, and district offices and measures in order to allow for the most efficient use of space on the ballot provided that the office of SPI always precedes any school, county, or city office and state measures always precede local measures.

FISCAL EFFECT: None. This bill is keyed non-fiscal by Legislative Counsel.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

California's network of roads, highways, and bridges provides people and businesses with the ability to access destinations and services, and move goods throughout the state. The operation and maintenance of our transportation infrastructure is vital to the California economy and quality of life.

While transportation finance has traditionally been accomplished through a complicated maze of base and price-base excise taxes, federal fuel taxes, truck weight fees, diesel sales taxes, federal grants, state bond proceeds, and local transportation measures, the distinction between federal, state, and local components is largely arbitrary to the Californians that rely upon them. A fault at any level undermines the network as a whole.

California's transportation revenue shortage has been estimated at \$538.1 billion over nine years with existing local transportation measures contributing nearly \$160 billion over this period of time. Nonetheless, existing funds are expected to cover just 45% of need.

The Governor's proclamation convening the extraordinary session on transportation called for "legislation necessary to enact pay-as-you-go, permanent and sustainable funding to... complement local efforts for repair and improvements of local transportation infrastructure." As the Legislature considers key proposals to dedicate state funds to rebuild California's aging transportation infrastructure, the importance of local government contributions cannot be forgotten.

AB 2152 authorizes counties to place local transportation finance measures, known as self-help measures, above state measures on the November 2016 general election ballot. The choice to utilize this authority rests with the county supervisors and any measure will still require 2/3rds voter approval.

Local transportation funds play an important role in existing transportation financing and will be a vital component of any long-term, sustainable funding solution. When used as leverage to pull down federal funding, local matching dollars can significantly expand the state's transportation dollars. For example, the Federal Highways Administration will provide about \$88 for every \$11 in local money, the Federal Transit Administration will provide 80% of a project's cost when locals put up the other 20%, and the Federal Aviation Administration will match local funds at a 19:1 ratio.

Just as the Legislature placed the 2014 Water Bond and Rainy Day Budget Act at the top of the ballot, by renumbering them as Prop 1 and 2 respectively, AB 2152 provides county supervisors with the flexibility to determine local priorities for voter consideration.

- 2) **Ballot Content and Form:** Current law requires a ballot to comply with a variety of laws that dictate its form and content. For example, existing law requires a ballot to contain the title of each office, the names of all qualified candidates, as specified, ballot designations, as specified, titles and summaries of measures submitted to voters, and instructions to voters, among other things. In addition, current law requires a ballot to follow certain formatting requirements, such as the order offices must appear on the ballot and font size. Existing law, however, allows some flexibility in ballot format and permits a county elections official to make ballot formatting changes to accommodate the limitations of a voting system or vote tabulating device, as specified. Specifically, current law allows county elections officials to vary the order of school, county, city, and district offices and ballot measures. However, despite this flexibility, existing law explicitly requires the office of SPI to always precede any school, county, or city office and requires state measures to always precede local measures. It is this last requirement that this bill changes. This bill authorizes a county board of supervisors, for the November 8, 2016 statewide general election, to direct the county elections official to place a local transportation finance measure above state measures on the ballot and requires these provisions to expire on January 1, 2017. According to the author's office, the rationale behind allowing this change for the 2016 November general

election is to ensure a local transportation finance measure in the author's district is placed higher up on the ballot to ensure voters have the opportunity to vote on the measure.

- 4) **Past Legislation:** As mentioned above, current law provides county elections officials with the flexibility to vary the order in which school, county, city, district offices, and local ballot measures appear on the ballot. However, existing law explicitly requires state measures to always precede local ballot measures. This provision was added to the Elections Code in 1996 when the Legislature passed and Governor Pete Wilson signed AB 3092 (Gallegos), Chapter 58, Statutes of 1996. According to past policy analyses, the intent of AB 3092 was to address a confusing ballot layout issue by providing more flexibility to county elections officials and permitting them to additionally vary the order of ballot measures, but to make it explicitly clear that statewide ballot measures were to continue to precede local measures on the ballot.

These provisions of law have not been changed since 1996. This bill will change this longstanding precedent and permit a local finance measure to be placed on the ballot ahead of state ballot measures. The committee may wish to consider whether local ballot measures, in particular local transportation finance measures, should be treated differently than other local ballot measures.

Moreover, even though the provisions of this bill would only be in effect for the 2016 November general election, its effect on election policy would be lasting. It is plausible for this bill to set a new precedent leading to further legislative proposals seeking similar ballot order changes. What happens if there are competing legislative proposals permitting more than one local ballot measure to be placed on the ballot before state ballot measures? Are they both placed above state ballot measures? What's to stop requests for municipal and district measures to be placed above state ballot measures as well? If this bill is approved, it could result in unintended consequences and state ballot measures could be moved further and further down the ballot.

- 3) **Ballot Placement:** Many studies discuss the phenomenon of "voter fatigue" or "ballot drop-off" in which the number of votes cast per office drops consistently as a voter moves down the ballot. For instance, the number of votes cast for president is almost always much greater than the number of votes cast for many candidates for lower statewide elected office (such as lieutenant governor, attorney general, secretary of state, etc.) or other local offices (such as state legislators, city council members, etc.). Other studies discuss the advantage of ballot placement content and contend that there is an advantage to being listed first on the ballot and that offices in the middle and the bottom of the ballot tend to receive less attention.

- 5) **Arguments in Support:** In support, Merced County Board of Supervisors writes:

As we approach the November 2016 ballot, it is possible that we could see an increased number of measures. This is especially true when considering the low voter turnout in the last statewide election and the subsequently low threshold needed to qualify voter initiatives for the ballot.

Statewide initiatives are traditionally placed above local election matters on the ballot, even if they have less influence on local matters. While local initiatives may have critical implications to their respective communities, studies show that

the lower they appear on the ballot, the less likely there are to receive voter consideration.

Transportation funding options are being studied and considered at the local level with greater frequency. It is essential that these types of proposals receive a high placement on ballots due to the greater local impacts.

- 6) **Previous Legislation:** AB 562 (Holden) from 2015, would have required the office of the SPI to be listed on the ballot under the heading of STATEWIDE EDUCATION and required the office of SPI to appear on the ballot immediately after the races for State Assembly. Governor Brown vetoed AB 562 stating that "[the] current ballot order has existed with minimal changes for decades, and I don't think there is a good reason to change it now."

REGISTERED SUPPORT / OPPOSITION:

Support

Merced County Association of Governments
Merced County Board of Supervisors
Stanislaus County Board of Supervisors

Opposition

None on file.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094