

Date of Hearing: April 15, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 372 (Bigelow) – As Introduced February 17, 2015

SUBJECT: Elections: write-in candidates.

SUMMARY: Requires a write-in candidate for a voter-nominated office who advances to the general election to pay the prescribed filing fee in order to appear on the general election ballot. Specifically, **this bill:**

- 1) Requires a write-in candidate for a voter-nominated office who receives the highest or second highest number of votes cast at the primary election to pay a filing fee to the Secretary of State in order for his or her name to appear on the ballot at the ensuing general election.
- 2) Provides that the amount of the fee is as follows:
 - a) In the case of United States Senator or any statewide office, two percent of the first-year salary for the office;
 - b) In the case of Representative in Congress, member of the Board of Equalization, state Senator, or member of the Assembly, one percent of the first-year salary.
- 3) Provides that the salary that is used to calculate the filing fee is the annual salary for the office as of the first day on which a candidate may circulate petitions in lieu of filing fees.

EXISTING LAW:

- 1) Provides that write-in candidates for office are not required to pay a fee or charge except as provided for city office.
- 2) Requires a write-in candidate to gather the same number of signatures on nomination papers as non-write-in candidates for the same office.
- 3) Requires candidates for specified offices, other than write-in candidates, to pay a filing fee or to submit a petition containing signatures of registered voters in lieu of a filing fee. Permits candidates to submit signatures to cover all or any portion of the filing fee.
- 4) Provides that in order to be nominated at the primary election for a voter nominated office, a write-in candidate must receive the highest or second highest number of votes cast for the office.
- 5) Provides that the following offices are voter nominated offices: Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Controller, State Insurance Commissioner, Attorney General, State Board of Equalization, State Senator or Assemblymember and United States Senator or Representative.

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

COMMENTS:

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

Currently write-in candidates for a voter-nominated office who receive either the highest or the second highest number of votes cast in the primary election do not have to pay a filing fee to appear on the ballot in the general election. The filing fee is a tool for the state and the counties to help recoup their costs for running an election and is calculated as a percentage of the official salary of the position the candidate is running for. AB 372 would require write-in candidates that advance from the primary election to pay a filing fee in order to appear on the ballot at the ensuing general election, just like the other candidates. The purpose of this bill is to not discourage any candidates from running but rather to ensure that our counties do not have to absorb more costs during elections.

2) **Alternative to a Filing Fee and Suggested Amendments:** California law requires candidates for many elective offices to pay a filing fee at the time they obtain nomination papers from the elections official. Filing fees are intended, in part, to help cover the administrative costs of conducting the election, but also serve as a means of limiting the size of the ballot in order to reduce voter confusion, prevent overwhelming voting systems, and allow the electorate to focus attention on a smaller number of candidates in order that elections may better reflect the will of the majority. Courts have long recognized that states have a legitimate interest in regulating the number of candidates on the ballot for these reasons.

At the same time, courts have also found that a state cannot require candidates to pay a filing fee in order to appear on the ballot unless the state also provides a reasonable alternative means of ballot access. In *Lubin v. Panish* (1974) 415 U.S. 709, the United States Supreme Court found that a California law that required certain candidates for office to pay a filing fee in order to appear on the ballot was unconstitutional because the law did not provide an alternate means of qualifying for the ballot for indigent candidates who were unable to pay the fee. In finding California's filing fee law to be invalid, the court noted that there were other "obvious and well known means of testing the 'seriousness' of a candidacy which do not measure the probability of attracting significant voter support solely by the neutral fact of payment of a filing fee," including a requirement for a candidate who cannot pay the filing fee to "demonstrate the 'seriousness' of his candidacy by persuading a substantial number of voters to sign a petition in his behalf."

In response to the Supreme Court's decision in *Lubin*, the Legislature enacted and the Governor signed AB 914 (Ray Gonzales), Chapter 454, Statutes of 1974, an urgency measure that permitted candidates to file petitions containing the signatures of a specified number of registered voters in lieu of paying a filing fee. The number of signatures required to be collected in lieu of paying a filing fee has remained largely unchanged since the signatures-in-lieu procedure was originally adopted in 1974.

In light of the Supreme Court's decision in *Lubin*, the committee may wish to consider an amendment to this bill to provide for an alternative to the filing fee for indigent candidates. Because of the limited amount of time between the primary and the general

election, it is unclear whether it is feasible to have candidates collect signatures in lieu of paying a filing fee. Instead, the committee may wish to consider using a procedure that applies under existing law for indigent candidates who wish to place a candidate statement that appears in the voter information portion of the sample ballot. Under that procedure, a candidate who alleges to be indigent and unable to pay for a statement must submit a statement of financial worth to be used by the elections official in determining whether the candidate is eligible to have the fee waived.

Additionally, this bill does not currently include a deadline for candidates to pay the filing fee required by this bill. The committee and the author may wish to amend this bill to establish a deadline for that filing fee to be paid.

- 3) **Voter-Nominated Office:** This bill applies to write-in candidates who have received the highest or second highest number of votes cast for a voter-nominated office. Proposition 14 of 2010, which is also known as the Top Two Candidates Open Primary Act, changed the way that elections are conducted for all statewide elections in California. Under California's Constitution, political parties are not entitled to formally nominate candidates for voter-nominated offices at the primary election. All voters may vote for any candidate for a voter-nominated office, provided they meet the other qualifications required to vote for that office. The top two vote-getters at the primary election advance to the general election for the voter-nominated office, even if both candidates have specified the same party preference designation.
- 4) **Court Decisions on Fees for Write-In Candidates:** Federal courts have found certain laws that require write-in candidates to pay filing fees to be unconstitutional. *Dixon v. Maryland State Administrative Board of Election Laws*, 878 F.2d 776 (4th Cir. 1989) and *Phillips v. Hechler* 120 F. Supp.2d 587, 592 (S.D. W. Va. 2000). In light of those cases there may be some questions about the constitutionality of this bill. However, this bill is distinguishable from the laws that were invalidated by the federal courts because it applies only to candidates who ran as write-in candidates in the primary and received sufficient votes to qualify to appear on the general election ballot. As a result, the candidates that this bill applies to are no longer write-in candidates at the time they are required to pay the filing fee.
- 5) **Argument in Opposition:** In opposition to this bill, the Peace and Freedom Party writes:

The usual justification for filing fees is to avoid a "crowded ballot." But under the present California Top Two system, which we consider far too restricting as it is, no more than two candidates may appear on the November ballot for any "voter nominated" office. Cutting this to one for certain offices, because the second or even the first June vote-getter cannot pay the filing fee, would certainly not deal with ballot crowding. But single-candidate elections do contribute to voter apathy and low turnout.

AB 372 is poorly drafted. It does not address procedural issues necessary to make the filing fee requirement work. These include the deadline by which the fee must be paid and provisions for submitting signatures in lieu of filing fees. Even if it were amended to address these issues, however, it would substantially burden candidates for no public purpose.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

Peace and Freedom Party

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