

Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 884 (Rendon) – As Amended April 22, 2015

**SUBJECT:** Initiative petitions: title and summary.

**SUMMARY:** Requires the title and summary of a state initiative measure to contain a specified disclaimer if the Attorney General (AG) determines that the proposed measure would likely result in a violation of an individual's constitutional rights. Increases the fee that proponents must pay when submitting a proposed state initiative measure to the AG for preparation of the circulating title and summary. Specifically, **this bill:**

- 1) Requires the AG to include the following statement in the circulating title and summary of a proposed state initiative measure if the AG, when preparing the circulating title and summary, determines that the measure would likely result in a violation of an individual's constitutional rights:

The Attorney General has determined that this initiative measure, if approved by the voters, would likely result in a violation of an individual's rights under the United States Constitution or the California Constitution.

- 2) Increases the fee that proponents of a state initiative measure must pay at the time they submit the text of the proposed measure to the AG for preparation of the circulating title and summary, from \$200 to \$1,000. Permits the AG, on an annual basis, to determine the actual cost of preparing the title and summary and to increase the fee to a maximum of \$5,000 to recover the full cost of preparing the title and summary.
- 3) Makes technical changes.

**EXISTING LAW:**

- 1) Requires the proponents of a proposed state initiative measure to submit the text of the proposed measure to the AG with a written request that a circulating title and summary of the measure be prepared, prior to circulating the petition for signatures. Requires the proponents, at the time of submitting the text of the measure to the AG, to pay a fee of \$200. Provides that the fee shall be refunded to the proponents if the measure qualifies for the ballot within two years of the date that the circulating title and summary is provided to the proponents.
- 2) Requires the AG to prepare a circulating title and summary of the chief purposes and points of a proposed state initiative measure, which is not to exceed 100 words. Requires the Department of Finance (DOF) and the Legislative Analyst to prepare an estimate of the amount of any increase or decrease in revenues or costs to the state or local government from the measure. Requires the AG to include this estimate in the title and summary, as specified.

- 3) Requires the circulating title and summary of a state initiative measure, as prepared by the AG, to appear on each page of the initiative petition on which signatures are to appear and on each section of the petition preceding the text of the measure.

**FISCAL EFFECT:** Unknown. State-mandated local program; contains a public records disclaimer.

**COMMENTS:**

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

More than a century ago, Californians adopted the “initiative” process of gathering signatures for a ballot measure to change California law. Since that time, voters have approved countless initiatives, but the process has drawn criticism as well. In some cases, voters approve an initiative only to have a court throw out the measure, because it violates the federal or state constitution. AB 884 would allow the Attorney General to make a judgment on the constitutionality before the measure goes out for signatures. It also increases the cost of filing an initiative in order to cover the costs of the Attorney General preparing a title and summary.

- 2) **Recent Proposed State Initiative:** In February of this year a proposed initiative measure, entitled the "Sodomite Suppression Act" by its proponent, was submitted to the AG for preparation of a circulating title and summary. Among other provisions, that measure provides that a "person who willingly touches another person of the same gender for the purposes of sexual gratification [shall] be put to death" and that the distribution or transmission of "sodomistic propaganda," as defined, is punishable by a \$1 million fine, imprisonment for 10 years, or expulsion from the state.

Last month, Attorney General Kamala Harris filed an action for declaratory relief seeking judicial authorization not to issue a circulating title and summary for that proposed initiative measure. In announcing that action, Attorney General Harris issued the following statement:

As Attorney General of California, it is my sworn duty to uphold the California and United States Constitutions and to protect the rights of all Californians. This proposal not only threatens public safety, it is patently unconstitutional, utterly reprehensible, and has no place in a civil society. Today, I am filing an action for declaratory relief with the Court seeking judicial authorization for relief from the duty to prepare and issue the title and summary for the "Sodomite Suppression Act." If the Court does not grant this relief, my office will be forced to issue a title and summary for a proposal that seeks to legalize discrimination and vigilantism.

Attorney General Harris' request for declaratory relief is pending in the Sacramento Superior Court. The deadline for the AG to issue the circulating title and summary for the initiative is early in May.

- 3) **Word Limit on Circulating Title & Summaries and Suggested Amendment:** Existing law prohibits the circulating title and summary for a state initiative measure that is prepared by the AG from exceeding 100 words, not including the fiscal estimate of the measure that is prepared by the Legislative Analyst and the DOF. This bill requires the AG to include specified text in the circulating title and summary of a proposed state initiative measure if the AG determines that the measure would likely result in a violation of an individual's constitutional rights. It is unclear whether that text—which is 30 words long pursuant to the rules in the Elections Code that govern the counting of words—would count against the limit on the length of the title and summary. To the extent that those words *do* count against the limit, this bill could hamper the AG's efforts to accurately and completely describe the effect of certain proposed state initiative measures.

The committee and the author may wish to consider an amendment to explicitly specify that the inclusion of this text does not count against the 100 word limit on the circulating title and summary for a proposed state initiative measure.

- 4) **Appeals Process and Suggested Amendment:** While this bill allows the AG to make a determination that a proposed state initiative measure may violate an individual's constitutional rights, and requires specified information to be included in the circulating title and summary if the AG makes such a determination, the bill does not explicitly contain a remedy or appeals process for proponents that disagree with the AG's determination. In order to ensure that initiative proponents have an appropriate method of review in situations where they disagree with the AG's assessment that a proposed state initiative measure may violate an individual's constitutional rights, the committee and the author may wish to consider an amendment to permit the proponents of a measure to challenge the AG's determination in court.
- 5) **Increasing Number of Initiatives:** According to the AG's office, there has been a steady increase in the number of initiative proposals submitted in the last few decades. The following illustrates the increased number of state initiatives that were submitted for title and summary:
- a) 47 from 1960 to 1969;
  - b) 180 from 1970 to 1979;
  - c) 282 from 1980 to 1989;
  - d) 391 from 1990 to 1999;
  - e) 647 from 2000 to 2009; and,
  - f) 240 from 2010 to April 21, 2015.
- 6) **Background and Purpose of the Fee:** The purpose of the \$200 filing fee is two-fold. Primarily, the fee exists to discourage the submission of frivolous proposals; secondly, the fee is intended to defray some of the administrative costs to the state associated with processing initiatives.

The existing fee was established in 1943 and has never been increased. When adjusted for inflation using the Consumer Price Index, \$200 in 1943 corresponds to more than \$2,700 today.

- 7) **Costs to Prepare a Title and Summary:** According to information from the AG's office, between 2009 and 2013 (the last year for which cost information is available), 315 proposed state initiative measures were submitted to the AG for preparation of a circulating title and summary. Of those 315 proposals, 27 qualified for the ballot. Based on the staff time involved for the preparation of circulating titles and summaries for those measures, the AG estimates that each initiative costs an average of \$8,252 to the AG for preparation of the title and summary. Those costs do not include any costs incurred by the Legislative Analyst and the DOF for preparation of the fiscal estimate for proposed measures, nor do they include costs incurred by state and county elections officials for duties they must perform for proposed initiative measures.
- 8) **Arguments in Support:** In support of this bill, the American Civil Liberties Union of California writes:

Californians have a long history of passing initiatives that violate individual constitutional rights. In 1964, California voters passed Proposition 14 to repeal the Rumford Fair Housing Act, a statute that prohibited discrimination in housing based on race, religion and gender. Passed by 65 percent of the voters, Proposition 14 made it lawful to discriminate and went even further, changing California's Constitution to prohibit the state and local governments from enacting fair housing laws. As the argument against the initiative in the voter guide said, "Proposition 14 would write hate and bigotry into the constitution." The ACLU challenged the initiative on behalf of Dorothy Mulkey, an African American woman denied the right to rent an apartment. The case went all the way to the U.S. Supreme Court which upheld the California Supreme Court's decision that Proposition 14 violated the equal protection clause of the Fourteenth Amendment of the U.S. Constitution.

Just six and a half years ago, California voters approved Proposition 8, taking away the right of gay men and lesbians to marry the person they love. While Proposition 8 is no longer in effect in California as a result of legal challenges in federal court, its words remain in our state constitution.

California currently has no formal process to review ballot initiatives for their impact on protected constitutional rights before the election. In contrast, eight states and Washington, D.C, have some form of pre-certification review to ensure that only constitutionally sound measures make it onto the ballot.

AB 884 would not go as far as these other states have gone. Rather, AB 884 is a modest step forward. The bill provides a simple mechanism to inform voters of the likely impact of a potential ballot measure on the constitutionally protected

rights of individuals. For these reasons, we support AB 884.

9) **Arguments in Opposition:** In opposition to this bill, the Howard Jarvis Taxpayers Association writes:

AB 884 would increase the fee to file a ballot measure with the Attorney General for a circulating title and summary from \$200 to \$1000. At her discretion, the fee could be increased annually up to a maximum of \$5000 in order to recover the full cost of preparing the materials. AB 884 also states that if the Attorney General believes that the initiative measure would likely result in the violation of an individual's rights that she can include a statement to that effect along with any petition that is circulated.

Our main concern stems from the language regarding violating an individual's rights. While we recognize this is in response to numerous individuals who have filed directly offensive measures—things we too find distasteful—we think such broad language being included in the ballot pamphlet could lead to the direct democracy process becoming needlessly politicized, and also confusing, for voters. For instance, what is to stop a pension reform measure from having this warning because it might violate an individual's right to a secure retirement? Or regarding the more recent Proposition 26, that it violates an individual's right to breathe clean air because it allegedly aids polluters? While well intentioned, without tighter controls this language could be subject to manipulation.

10) **Related Legislation:** AB 1100 (Low), which is also being heard in this committee today, would raise the fee that is required to be paid to the AG at the time an initiative is submitted for title and summary from \$200 to \$8,000.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union of California  
American Federation of State, County and Municipal Employees, AFL-CIO (prior version)

**Opposition**

Howard Jarvis Taxpayers Association

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