

Date of Hearing: May 6, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2093 (Grove) – As Amended: March 28, 2014

SUBJECT: Petitions: filings.

SUMMARY: Modifies statewide initiative and referendum petition filing deadlines. Specifically, this bill:

- 1) Permits a statewide initiative or referendum petition, if the last day to file a petition is a holiday, as defined by current law, to be filed with the county elections official on the next business day. Prohibits a petition from being circulated after the petition deadline and provides that a signature obtained after that deadline shall be invalid.
- 2) Makes the following Legislative findings and declarations:
 - a) Under the California Constitution, an initiative or referendum may be proposed by presenting to the Secretary of State (SOS) a petition containing a specified number of signatures. The California Constitution requires that a petition for a referendum measure be submitted within 90 days of the date of enactment of the statute that is the subject of the referendum, and state law requires that a petition for an initiative measure be submitted within 150 days of the date of the circulating title and summary furnished by the Attorney General.
 - b) In some instances, the final day to submit an initiative or referendum petition falls on a holiday, when the offices of state and county elections officials are closed. In those circumstances, the proponents of an initiative or referendum measure are faced with the choice of either submitting the petition prior to the holiday, in which case the period to gather signatures would be reduced, or submitting the petition after the holiday, in which case the proponents would risk rejection of the petition as untimely.
 - c) While the California Constitution specifies a period of 90 days to gather signatures for a referendum measure, it gives no guidance as to how to construe the 90-day period in those instances in which the final day falls on a holiday.
 - d) The courts of this state have long held that the initiative and the referendum are sacred rights of the people and provisions of law shall be liberally construed to give full effect to the powers of initiative and referendum.
 - e) The framers of the California Constitution did not intend that the powers of initiative or referendum should be frustrated by the mere happenstance that the final day to submit a petition falls on a holiday.
 - f) It is a general and well-accepted rule of law that, when the last day to perform an act falls on a holiday, the time in which to perform that act is extended to the next business day.

- g) It is the intent of the Legislature in enacting this act to preserve the people's right of initiative and referendum by clarifying that, in those instances in which the final day to submit a petition falls on a holiday, the proponents of the initiative or referendum measure may submit the petition on the next business day following the holiday.

EXISTING LAW:

- 1) Provides that the initiative is the power of the electors to propose statutes and amendments to the California Constitution and to adopt or reject them.
- 2) Provides that a referendum is the power of the electors to approve or reject statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.
- 3) Requires a petition for a proposed statewide initiative to be filed with the county elections official not later than 150 days from the official summary date. Prohibits a county elections official from accepting a petition for the proposed initiative measure after that period.
- 4) Requires a petition for a proposed statewide referendum to be filed with the county elections official not later than 90 days from the date of the enactment of the bill. Prohibits a county elections official from accepting a petition for the proposed referendum after that period.
- 5) Prohibits a petition for a proposed initiative or referendum from being circulated for signatures prior to the official summary date.
- 6) Requires the Legislature to provide the manner in which petitions must be circulated, presented, and certified, and measures submitted to the electors.
- 7) Permits an act to be performed upon the next business day if the last day for the performance of any act provided for or required by the Elections Code is a holiday, as defined.

FISCAL EFFECT: Keyed non-fiscal by Legislative Counsel.

COMMENTS:

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

The courts of this state have long held that the initiative and the referendum are sacred rights of the people.

Most recently, on January 3 of this year, a Superior Court Judge ruled in Gleason v. Bowen that the Secretary of State violated California law by refusing to count petition signatures for a referendum filed in two counties which had refused delivery of petitions or were closed on the last business day before the 90-day filing deadline. The court ruled that by attempting to deliver petitions to county registrars within the 90 days, supporters had substantially complied with their legal requirements, and that the real deadline in this particular case should have been the following Tuesday due to the intervening holiday weekend.

In his ruling, the Judge cited a 1915 decision by the state Supreme Court which stated that referendum power “should be liberally construed and should not be interfered with by the courts except upon a clear showing that the law is being violated.” (Laam v. McLaren). The Judge further ruled that he “sees no basis to effectively diminish the people’s referendum power here by giving Petitioner only 88 days to collect signatures and submit her petition to elections officials.”

An initiative or referendum effort should not be hindered and reduced merely because the final day to submit a petition happens to land on a holiday.

By passing AB 2093, this point will be expressed clearly in statute, reducing the possibility of additional confusion and disagreement over initiative and referendum petition dates.

- 2) Initiative & Referendum Procedures: Article II, Section 8 of the California Constitution provides that an initiative is the power of the electors to propose statutes and amendments to the California Constitution and to adopt or reject them. In addition, Article II, Section 9 of the California Constitution provides that a referendum is the power of the electors to approve or reject statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.

Current state law requires a petition for a proposed statewide initiative to be filed with the county elections official not later than 150 days from the official summary date, and prohibits a county elections official from accepting a petition for the proposed initiative measure after that period. Article II, Section 9 of the California Constitution requires a petition for a proposed statewide referendum to be filed with the county elections official not later than 90 days from the date of the enactment of the bill, and state law prohibits a county elections official from accepting a petition for the proposed referendum after that period.

- 3) Referendum History: According to the SOS's office, referenda are fairly rare in comparison to initiative measures. Between 1912 and February 2014, a total of 79 referenda were titled and summarized for circulation, a total of 30 referenda (37.97%) failed to qualify for the ballot, and a total of 48 referenda (62.03%) qualified for the ballot. Of the 48 referenda that qualified for the ballot and have been voted on, 20 referenda (41.67%) were approved by the voters and a total of 28 referenda (58.33%) were rejected by the voters.
- 4) Constitutionality: In 2013, the Legislature passed and the Governor signed AB 1266 (Ammiano), Chapter 85, Statutes of 2013, which amended the Education Code to allow pupils to participate in school activities and use facilities based on gender identity. Petitioners sought to qualify a referendum asking voters to reject AB 1266 and the petitioner filed a request for title and summary for a referendum of the statute. The title and summary was issued on August 26, 2013, along with the circulating and filing schedule for the referendum. Article II, section 9 of the California Constitution requires a petition for a referendum to be presented to the SOS within 90 days after the enactment date of the statute. State law implements this constitutional provision and requires a petition for a proposed referendum measure to be filed with the county elections official not later than 90 days from the date the legislative bill was chaptered by the SOS. As a result, the referendum filing

scheduled stated that the last day to file referendum petitions with the county elections officials was Sunday, November 10, 2013. However, the 90 day requirement was complicated in this instance because the 90th day fell on a Sunday and the following day, November 11th, was a holiday (Veteran's Day), when counties offices were not open. Due to the holiday and the closure of county offices, referendum petitions from Mono and Tulare counties were not submitted within the 90 day deadline. Consequently, the SOS refused to accept petitions submitted to Mono and Tulare Counties on the grounds that the petitioner's filings were untimely and submitted after the November 10th deadline.

Earlier this year, a lawsuit was filed against the SOS challenging the rejected referendum petition signatures and requesting the court to require the SOS to accept, file, and process, as timely, the petitions delivered to Mono and Tulare counties. In the lawsuit, the petitioner asserted that Elections Code Section 15 permits any act, if the last day for the performance of any act provided for or required by the Elections Code is a holiday, to be performed upon the next business day. As a result, the petitioner argued that under the above rule the petitioner had until Tuesday, November 12th to file her petitions with the county election officials and that Tulare and Mono counties had a ministerial duty, under the California Constitution, to accept the petition materials up to, and until the expiration of the 90 day deadline. In addition, the petitioner argued that the doctrine of "substantial compliance" applies to the constitutional requirements pertaining to the referendum process. The petitioner further argued that the petitioner substantially complied with the 90 day filing limit so that her failure to actually file the Mono and Tulare county petitions within that time limit should be forgiven and if there was a departure from the constitutional requirements it was minor and did not undermine or frustrate the basic purposes by the statutory requirements in ensuring the integrity of the initiative or referendum process.

The Superior Court ruled in favor of the petitioner's request for a Writ of Mandate directing the SOS to accept, file, and process as timely the petitions delivered by the petitioner to Mono and Tulare Counties. In the ruling, the judge cited a 1915 decision by the state Supreme Court which stated that referendum power "should be liberally constructed and should not be interfered with by the courts except upon clear showing that the law is being violated." (*Laam v. McLaren* (1915) 28 Cal.App.632, 638.) The SOS has since appealed the court's ruling and this issue is still pending in the courts.

In an effort to bring clarity to state law, this bill permits a statewide initiative or referendum petition, if the last day to file a petition is a holiday, to be filed with the county elections official on the next business day. Additionally, this bill prohibits a petition from being circulated after the petition deadline, in accordance with existing law, and provides that a signature obtained after that deadline shall be invalid. According to the author, an initiative or referendum effort should not be hindered and reduced because the final day to submit a petition happens to land on a holiday. AB 2093 will reduce the possibility for additional confusion and disagreement over initiative and referendum petition dates.

While the author's effort to reduce confusion and disagreement over initiative and referendum petitions deadlines is laudable, the committee may wish to consider whether it is prudent to support a policy change that is currently pending in the courts. Because the SOS has appealed the ruling, it may be prudent to wait for the courts to rule on this policy issue

before making changes to our laws.

- 5) Secretary of State's Current Initiative and Referendum Practices: Statewide initiatives and referenda have distinctly different petition filing deadline requirements. Current state law requires a petition for a proposed statewide initiative to be filed with the county elections official not later than 150 days from the official summary date, and prohibits a county elections official from accepting a petition for the proposed initiative measure after that period. Additionally, Elections Code Section 15 permits an act to be performed upon the next business day if the last day for the performance of any act provided for or required by the Elections Code is a holiday, as defined. As a result, it has been the longstanding practice that when a deadline for a proposed initiative measure falls on a weekend or holiday, the deadline rolls forward to the next business day. However, this only applies to dates set in statute in the Elections Code, not to deadline dates set forth in the California Constitution.

Because the deadlines for statewide referendum are in the California Constitution, it is unclear whether the Legislature, by state statute, can extend deadlines established by the Constitution. As a result, it has been the longstanding practice for the SOS, should a filing deadline fall on a weekend, to request county registrars to briefly open their offices on the weekends. According to SOS's court filings, at the request of the petitioner, the SOS coordinated a conference call with 17 county registrars requesting them to briefly open on Sunday for the filing of the referendum petitions. The petitioner did not request Sunday filings for Mono and Tulare counties. By not making the same request of Mono and Tulare counties, the petitioner assumed the risk that petitions would not be timely filed in those counties.

- 6) Enforcement: This bill provides that if an initiative or referendum filing deadline falls on a holiday, the deadline is extended to the next business. In addition, this bill prohibits a petition from being circulated after the petition deadline and provides that a signature obtained after that deadline shall be invalid. While the author's intent to prevent proponents from collecting signatures after the deadline is laudable, the committee may wish to consider how these provisions will be enforced. When a voter signs a petition, current law requires each signer to personally affix his or her signature, printed name, residence address, and city on the petition. Current law does not require the signer to provide the date that he or she signed the petition. Moreover, existing law requires a petition circulator to provide the dates between which all the signatures on a petition were obtained. It is unclear how this bill will be enforced when there is no way to know if an individual signature is collected after the deadline because signatures are not required to be dated.

On the other hand, it has been the longstanding practice that when a deadline for a proposed initiative measure falls on a weekend or holiday, the deadline rolls forward to the next business day. When this occurs, initiative proponents are given an extra day or so to circulate and submit the petitions to the county elections official. If this bill is approved by this committee, the committee may wish to amend the bill to apply the same standard to referenda and amend the bill as follows:

On page 3, in lines 22 to 25, delete the following:

However, a petition filed pursuant to this subdivision shall not be circulated after the petition

filing deadline specified in subdivision (b) or (c), and a signature obtained after the deadline shall not be valid.

7) Technical Amendment: As mentioned above, there is pending litigation dealing with the issues raised by this bill. In addition, there is another lawsuit, *Pacific Justice Institute v Bowen* (2014), pending in the court that argues that referendum petitions signatures were improperly invalidated. In order to ensure this bill does not affect the ongoing litigation, the committee may wish to amend the bill to specify that it shall not be construed to affect the ongoing litigation.

8) Arguments in Support: The Howard Jarvis Taxpayers Association writes in support:

This bill comes in response to problems that occurred during the signature gathering process for the so-called "bathroom bill" referendum earlier this year. While [Howard Jarvis Taxpayers Association] took no formal position on either the legislative bill or subsequent referendum, we believe the desire of voters to engage in the initiative or referendum process should not be hindered because county elections offices are not open, or refuse to accept, valid petition signatures on the day they are submitted.

REGISTERED SUPPORT / OPPOSITION:

Support

Howard Jarvis Taxpayers Association

Opposition

None on file.

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