

Date of Hearing: May 6, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2233 (Donnelly) – As Amended: March 28, 2014

SUBJECT: Primary elections: petitions: signatures.

SUMMARY: Reduces the number of signatures that a candidate needs at a special vacancy election on a petition in lieu of paying a filing fee in proportion to any reduction in the amount of time to collect signatures. Specifically, this bill provides that if the number of days for a candidate to collect signatures on a petition in lieu of a filing fee for a special election that is held to fill a vacancy is less than the number of days that a candidate would have to collect signatures on a petition at a regular election for the same office, the elections official shall reduce the required number of signatures for the petition by the same proportion as the reduction in time for the candidate to collect signatures.

EXISTING LAW:

- 1) Requires a person who seeks to have his or her name printed on the ballot as a candidate for an office at the direct primary election to file a declaration of candidacy and nomination papers.
- 2) Requires a candidate for specified offices to pay a fee to file the declaration of candidacy. Provides that the amount of the fee is established 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, justice of the court of appeal, state Senator, or Member of the Assembly, one percent of the first-year salary;
 - c) In the case of a county or judicial office to be voted only wholly within one county, one percent of the annual salary of the office provided, however, that no filing fee shall be charged for any office for which the annual salary is \$2,500 or less.
- 3) Permits a candidate to submit a petition containing signatures of registered voters in lieu of paying a filing fee. Allows any registered voter to sign an in-lieu-filing-fee petition for any candidate for whom he or she is eligible to vote. Requires a candidate to collect the following number of signatures on an in-lieu-filing-fee petition in order to cover the full amount of the filing fee that is required to be paid:
 - a) For the office of Member of the Assembly, 1,500 signatures;
 - b) For the office of state Senate or Representative in Congress, 3,000 signatures;

- c) For statewide office, 10,000 signatures; and,
- d) For all other offices for which a filing fee is required:
 - i) If the number of registered voters in the district is 2,000 or more, four signatures for each dollar of the filing fee or 10 percent of the total of registered voters in the district, whichever is less; or,
 - ii) If the number of registered voters in the district is less than 2,000, four signatures for each dollar of the filing fee or 20 percent of the total of registered voters in the district, whichever is less.
- 4) Provides that if the number of signatures collected on an in-lieu-filing-fee petition is less than the total number of signatures needed to cover the filing fee, the filing fee shall be pro-rated based on the number of signatures collected on the petition.
- 5) Permits a candidate to begin soliciting signatures on an in-lieu-filing-fee petition 45 days before the first day for circulating nomination papers, and requires an in-lieu-filing-fee petition to be filed at least 15 days prior to the close of the nomination period. Requires an elections official to notify the candidate of any deficiency on the in-lieu-filing-fee petition within 10 days after receipt of the petition, and permits a candidate to submit a supplemental petition or to pay a pro rata portion of the filing fee to cover any deficiency. Provides that the period for a candidate to circulate nomination papers to appear on the ballot at a primary election shall begin 113 days before the primary election, and shall end 88 days before the primary election.
- 6) Provides that in cases of vacancies for which a special election is authorized or required to be held to fill the vacancy, and where the nomination period would commence less than 45 days after the creation of the vacancy, the forms for soliciting signatures on an in-lieu-filing-fee petition shall be made available within five working days after the creation of the vacancy, at which point a candidate may begin soliciting signatures on such a petition.
- 7) Requires the Governor, when a vacancy occurs in the office of Representative to Congress, or in either house of the Legislature, to issue a writ of election to fill the vacancy within 14 calendar days after the occurrence of the vacancy, except as otherwise provided.
- 8) Requires a special general election to fill a vacancy in the office of Representative in Congress, State Senator, or Member of the Assembly to be conducted on a Tuesday at least 126 days, but not more than 140 days, following the issuance of the writ of election, except that the special election may be conducted within 180 days following the writ in order that the election or the primary election may be consolidated with the next regularly scheduled statewide election or local election occurring wholly or partially within the same territory in which the vacancy exists, provided that the voters eligible to vote in the local election comprise at least 50 percent of all the voters eligible to vote on the vacancy. Requires the special primary election to be held on either the ninth Tuesday or the tenth Tuesday prior to the special general election. Provides that the period for a candidate to circulate nomination papers to appear on the ballot at the special primary election shall begin 73 days before the

primary election, and shall end 53 days before the primary election.

FISCAL EFFECT: Keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

This is a simple bill that will allow more access to special elections. Currently, the number of signatures required in a special election are the same amount required in a regularly scheduled election, even though the number of days to collect those signatures is usually far less. By dropping the number of signatures required in proportion to the number of days a candidate has to collect those signatures, we would be allowing the public better access to the ballot.

2) Filing Fees and Signatures in Lieu Petitions: 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, notwithstanding the fact that the number of registered voters in California has increased by more than 77 percent since that time.

3) Special Elections & Candidate Filing Timelines for Affected Offices: This bill affects only elections for offices for which candidates are required to pay a filing fee, and for which a special election is held to fill a vacancy. While local elective bodies call special elections in

some circumstances to fill vacancies, many such vacancies are filled by appointment. Additionally, even in cases where a special election is held, the period for collecting signatures on in-lieu petitions often is not shortened. This bill, however, frequently will affect special elections held to fill vacancies in the Legislature and in the United States House of Representatives.

When a vacancy occurs in the office of Representative to Congress, or in either house of the Legislature, the Governor is required to act within 14 calendar days to call a special election to fill that vacancy, unless the vacancy occurs after the close of the nomination period in the final year of the term of office. When calling the special election, the Governor sets the date of the special *runoff* election, which generally must be held between 126 days and 140 days after the date that the Governor calls the special election, though it can be held as much as 180 days later when doing so allows for the election to be consolidated with another election being held in an overlapping area, subject to certain conditions. The special *primary* election is then held either nine or ten weeks prior to the scheduled special runoff election, as specified by law. Taking into consideration the amount of time that the Governor has to schedule the special election, and the window within which the runoff election must be scheduled, a special primary election can occur anywhere between 56 days and 131 days after a vacancy occurs in the Legislature or Congress. The deadline for filing nomination papers at a special election in these circumstances falls 53 days before the special primary election.

In a regular election, candidates have 56 days to collect signatures on a petition in lieu of a filing fee. Given that a special vacancy election can occur as soon as 56 days after the creation of the vacancy, however, the period for collecting signatures on an in lieu petition at a special vacancy election can be considerably shorter. In fact, because state law gives elections officials up to five working days after a vacancy occurs to make in lieu petitions available, it is theoretically possible that the deadline for elections officials to make those petitions available could fall after the deadline for candidates to file nomination papers. In practice, however, in lieu petitions are generally made available on the same day that the Governor calls the special election, if not earlier, and the deadlines for submitting in lieu petitions are adjusted as appropriate based on the amount of time available until the deadline for candidates to file nomination papers. In practice, for special elections held during the 2013-2014 Legislative session, candidates have had between three and 42 days to collect signatures on in lieu petitions, as detailed below.

Special Election District	Days to Collect Signatures on In Lieu Petitions	Signatures Required Under AB 2233	Value Per Signature Under Existing Law	Value Per Signature Under AB 2233
SD 4	4	215	\$0.317636	\$4.432140
SD 40	5	268	\$0.301753	\$3.377836
SD 32	5	268	\$0.301753	\$3.377836
SD 16	15	804	\$0.301753	\$1.125945
AD 80	3	81	\$0.603507	\$11.176049
AD 52	8	215	\$0.603507	\$4.210512
SD 26	18	965	\$0.301753	\$0.938093
AD 45	18	483	\$0.603507	\$1.874244

AD 54	5	134	\$0.603507	\$6.755672
SD 23	42	2250	\$0.317636	\$0.423516

As demonstrated above, this bill would significantly reduce the number of signatures that candidates need to receive in lieu of paying a filing fee for some special elections, and will significantly increase the value of each signature received for those candidates who collect some, but not all, of the necessary signatures. As a result, this bill could increase the number of candidates that run for office at special elections. Additionally, this bill could reduce the revenue received from candidate filing fees.

- 4) Proliferation of Candidates & Possible Amendment: In an extreme case, if a special election were called to fill a vacancy in the Assembly at such a time that only one day was allowed to collect signatures on in lieu petitions, this bill would require a candidate at that special election to collect just 27 signatures on an in lieu petition in order to appear on the ballot without the payment of a filing fee. Although it may not be easy to collect 27 signatures in such a situation, it may be considerably easier for candidates than it would be to collect 1500 signatures in a 56 day period, since a candidate is likely to be able to collect the signatures of family members and friends relatively quickly. In such a situation, if it is too easy for candidates to collect the signatures needed to avoid paying the filing fee, the filing fee requirement may not serve its purpose of regulating the number of candidates on the ballot. To protect against this potential, the author and the committee may wish to consider an amendment to provide that not less than 100 signatures are needed on an in-lieu-filing-fee petition for an election to fill a vacancy in the Legislature or Congress, regardless of the number of days that a candidate has to collect signatures on such a petition.
- 5) Technical Issue & Suggested Amendment: This bill requires the number of signatures needed on an in lieu petition to be reduced for a special vacancy election in proportion to any reduction in the number of days that a candidate would have to collect signatures on a petition at a regular election for the same office. However, because a candidate can submit a supplemental petition with signatures in lieu of paying a filing fee, it is unclear whether the "number of days" that a candidate has to collect signatures at a regular election includes the time period under which a candidate could collect signatures on a supplemental petition. In order to clarify this ambiguity, committee staff recommends that this bill be amended to clarify that the amount of time that a candidate has to collect signatures on an in lieu petition is based on the number of days between the time that such petitions are made available and the time that such petitions must be submitted, and does not include any time that a candidate would be permitted to collect signatures on a supplemental petition as permitted by law.
- 6) Arguments in Support: In support of this bill, the Peace and Freedom Party of California writes:

As a result of the passage of Proposition 14 and its implementing legislation, the number of signatures in lieu of filing fees has increased from a maximum of 150 valid signatures in lieu of filing fees for candidates of the smaller parties to 10,000 valid signatures for our statewide candidates. This increase in the number of signatures is a major concern of California's three smallest parties and has caused a 70% drop in the number of candidates from these parties.

Even before the implementation of Proposition 14, the signature-in-lieu requirements were unfair to all candidates in the case of special elections to fill vacancies. AB 2233 reduces the number of signatures in lieu of filing fees in special elections in proportion to the reduction in the number of days needed to gather those signatures. This is necessary because when a special election is called the number of days to collect signatures in lieu is often drastically reduced, making them much more difficult to collect. While it does not reduce the number of signatures in lieu of filing fees, it does make an impossible situation somewhat better.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition for Free and Open Elections
Peace and Freedom Party of California

Opposition

None on file.

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