

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2394 (Gorell) – As Introduced: February 21, 2014

SUBJECT: Elections: Secretary of State.

SUMMARY: Requires elections for Secretary of State (SOS) to be conducted using a nonpartisan election system, and requires the SOS, instead of the Attorney General (AG), to prepare the titles and summaries for proposed state initiatives and for qualified state ballot measures. Specifically, this bill:

- 1) Makes elections for the office of SOS nonpartisan.
- 2) Requires the SOS, instead of the AG, to prepare the title and summary of each proposed state initiative or referendum measure.
- 3) Requires the SOS, instead of the AG, to prepare the ballot label and the ballot title and summary that appears in the state ballot pamphlet for each statewide ballot measure.
- 4) Provides that this bill shall become operative only if an unspecified Assembly Constitutional Amendment is approved by the voters.
- 5) Makes technical and corresponding changes.

EXISTING LAW:

- 1) Establishes the office of SOS and makes the SOS the chief elections officer of the state. Requires the SOS to see that elections are efficiently conducted and that state election laws are enforced.
- 2) Specifies that all judicial, school, county, and city offices, including the office of Superintendent of Public Instruction (SPI), are nonpartisan. Prohibits a candidate's political party preference from being included on the ballot for nonpartisan office.
- 3) Requires that primary elections for Congress and for state elective office, other than SPI, be conducted in a manner such that every voter, regardless of party affiliation, may vote for any candidate for that office without regard to the political party of the candidate, provided that the voter is otherwise eligible to vote for that office. Provides that the two candidates that receive the highest number of votes at a primary election for Congress or for state elective office other than SPI, regardless of political affiliation, move on to the general election.
- 4) Allows any candidate for congressional or state elective office, except a candidate for SPI, to have his or her political party preference, or lack of party preference, indicated on the ballot.
- 5) Requires the proponents of a state initiative or referendum measure, prior to circulating petitions for that measure, to submit a draft of the proposed measure to the AG with a written request that a circulating title and summary of the chief purpose and points of the proposed

measure be prepared.

- 6) Requires the AG to prepare a summary of the chief purposes and points of a proposed state initiative or referendum. Limits the circulating title and summary to not more than 100 words.
- 7) Requires a petition for a proposed state initiative measure to include the circulating title and summary prepared by the AG on each page of the petition on which signatures are to appear and on each section of the petition preceding the text of the measure.
- 8) Requires the AG to provide and return to the SOS a ballot title and summary and a ballot label for each measure submitted to the voters of the whole state. Provides that the ballot title and summary shall express in not more than 100 words the purpose of the measure. Provides that the ballot label shall be a condensed version of the ballot title and summary, including the financial impact summary, and shall be not more than 75 words long.

FISCAL EFFECT: Unknown

COMMENTS:

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

The primary responsibility of the Secretary of State (SOS) is to oversee the election process in the state. Although the SOS vows to carry out his or her duties in an impartial manner, there are inherent conflicts when a referee of elections is explicitly affiliated with a particular political party. The growing trend of both overtly partisan figures running to be the state's chief election official and increasing involvement of superPACs in Secretary of State races is a concerning pattern that can undermine the integrity of elections in California and throughout the nation.

The State of California turned a once partisan Superintendent of Public Instruction into a non-partisan office because the job of implementing policies to improve the education of our students should not be tainted by political biases and agendas. There are no compelling reasons why the overseer of elections should retain their ballot identification with a political party when taking on the duty of enforcing a fair election process.

There is evidence throughout the nation in which partisan secretaries of states on both sides of the aisle have attempted to unfairly influence the outcome of elections and ballot measures. In almost every major election since 2000, partisan secretaries of states have been key figures in the outcomes of those election battles—perhaps the most controversial being the 2000 ballot controversy in Florida that sealed the outcome of the next President of the United States.

In 2004, Ohio's Secretary of State engaged in controversial voting rules that favored a particular political party and influenced the outcomes of very close races. In 2008, Minnesota's Secretary of State was in the middle of voter fraud

and recount controversies that influenced the outcome of a razor-close U.S. Senate race.

There is enough evidence for voters to be concerned about the integrity of our elections and to support reforms that address the inherent tension involved with partisan officials serving as election referees.

While having a non-partisan chief election referee does not remove the opportunity for partisan decision-making, it does remove the obligation.

Additionally, the responsibility of issuing title and summary for ballot initiatives should also reside in a non-partisan constitutional election office. A recent Sacramento Bee editorial agreed that the partisan manner in which ballot initiatives are summarized is unacceptable in our democratic system. When ballot initiative responsibility is in the hands of partisan constitutional officers, they face considerable pressures and conflicts of interest as a result of their explicit affiliation.

- 2) Would Nonpartisan Elections Change Officials' Behavior? The author expresses concern that partisan Secretaries of State may be unable to enforce election law in a nonpartisan manner, or, at the very least, can undermine voters' confidence that elections will be conducted in a fair and impartial manner. However, it is unclear whether making the SOS a nonpartisan post would fundamentally change the behavior of candidates for SOS or the behavior of the SOS once he or she is in office.

Nothing in this bill prohibits the SOS from engaging in partisan or other political activity of the type described by the author in his statement in support of the need for this bill. The author's statement above, for instance, references the 2000 Presidential election, and the controversy surrounding the counting of ballots in Florida. In that case, the impartiality of the SOS was questioned in part because she simultaneously served as the co-chair of George W. Bush's Florida campaign committee while overseeing the Presidential election in her role as SOS. But this bill does not prohibit the SOS from simultaneously overseeing an election while taking an active role in the campaign for one of the candidates appearing on the ballot at that election, nor does it prevent or prohibit the SOS from using the power of his or her office improperly to affect the outcome of an election.

- 3) Top Two Primary & Voter Information: In February 2009, the Legislature approved SCA 4 (Maldonado), Res. Chapter 2, Statutes of 2009, which was enacted by the voters as Proposition 14 on the June 2010, statewide primary election ballot. Proposition 14 implemented a top two primary election system in California for most elective state and federal offices, including the office of SOS. At primary elections, voters are able to vote for any candidate, regardless of party, and the two candidates who receive the most votes, regardless of party, advance to the general election. Candidates who are running for one of the offices covered by the top two primary election system are permitted to have their political party preferences printed on the ballot.

Elections conducted using the top two primary system are fairly similar to nonpartisan elections, given that all candidates are listed on the ballot during the primary election, and voters are free to vote for any candidate at the primary election. In fact, there are only two

noteworthy differences between elections conducted using the top two system and nonpartisan elections. First, a candidate for nonpartisan office can win the election outright in the primary election by receiving more than 50 percent of the vote, while under elections conducted using the top two system, the two candidates who received the most votes advance to the general election, regardless of whether one candidate received more than 50 percent of the vote (except in special elections). Second, the political party preferences of candidates for office in elections governed by the top two election system are included on the ballot, and the political party preference histories for the preceding ten years of the candidates are included on the SOS's website. Information about candidates' political party preferences are not included in official election materials for nonpartisan offices.

While this bill requires elections for SOS to be conducted using a nonpartisan election process, candidates for SOS would still be permitted to register as preferring a political party. By virtue of the fact that elections for SOS would be nonpartisan, however, information about the candidates' current and historical political party preferences no longer would be provided to the voters in official election materials. By limiting the information that voters receive about the political party preferences of candidates for SOS, could this bill actually make the potential partisan biases of candidates for SOS less apparent?

- 4) Other States: According to information from the National Association of Secretaries of State, 34 states directly elect the person who serves as the state's chief election official (in most cases, the SOS is the state's chief election official). In the 16 other states, the chief election official is appointed, typically either by the Governor, the Legislature, or a board or commission that oversees state elections.

None of the 34 states that directly elect the chief election official have nonpartisan elections for that office.

- 5) Is the SOS the Appropriate Entity to Prepare Titles & Summaries? The purpose of a title and summary of a proposed initiative or referendum measure, and of a qualified state ballot measure, is to provide a short overview to voters of the primary changes to existing law that would be made by a measure. In that respect, one could argue that it is appropriate that the AG be the entity to prepare the title and summary, since the AG is the chief lawyer of the state and has legal expertise. The SOS, on the other hand, oversees state elections, but does not have the level of expertise that the AG does in the context of summarizing the changes that a measure would make.
- 6) Companion Measure and Suggested Amendment: This bill contains language specifying that it will not become operative unless voters approve an unspecified ACA. ACA 12 (Gorell), which is also being heard in this committee today, is a companion measure to this bill that would make the necessary changes to the California Constitution in order for this bill to become operative. In light of that fact, committee staff recommends that this bill be amended to specify ACA 12 as the measure that voters must approve in order for this bill's provisions to become operative.
- 7) Arguments in Opposition: In opposition to this bill, the California School Employees Association, AFL-CIO, writes:

The role of the Attorney General is to offer legal advice and guidance to state officers and the government at large. The Attorney General represents the People of California in civil and criminal matters before trial courts, appellate courts and the supreme courts of California and the United States. The Attorney General also serves as legal counsel to state officers and, with few exceptions, to state agencies, boards and commissions. The office is intimately intertwined with the rule of law and the multitude of codes that make up the body of California law.

It is with this unique charge that the Attorney General is the most qualified officer to prepare the legal title and summary of ballot measures, which alter the laws and Constitution of California. The opinion of the Attorney General is essential to preparing the proper analysis of ballot measures and a [measure's] impact on the law. The Secretary of State on the other hand, is better equipped to handle the mechanics of California's elections and business registration. Asking the civil office of the Secretary of State to prepare legal analyses of ballot measures would be similar to asking a lay person for legal representation.

- 8) Related Legislation: SB 1294 (Huff), which is scheduled to be heard in the Senate Elections & Constitutional Amendments Committee today, would make the Legislative Analyst, instead of the AG, responsible for preparing the ballot label and ballot title and summary for statewide ballot measures.
- 9) Previous Legislation: AB 5 (Canciamilla), ACA 33 (Canciamilla), and SCA 4 (Denham) of the 2005-06 Legislative Session all proposed having nonpartisan elections for the office of SOS, among other provisions. AB 5 failed passage in this committee, and SCA 4 failed passage in the Senate Elections, Reapportionment, and Constitutional Amendments Committee. ACA 33 was never heard in committee.

AB 319 (Niello) of 2009 and AB 1968 (Niello) of 2010 would have required the Legislative Analyst, instead of the AG, to prepare the circulating titles and summaries for state initiatives and referenda, and the ballot titles and summaries and ballot labels for state measures that will appear on the ballot, among other provisions. AB 319 failed passage in this committee, while AB 1968 failed passage in the Assembly Appropriations Committee. ACA 20 (Niello) of 2009 was a companion measure to both AB 319 and AB 1968. ACA 20 failed passage in this committee. AB 2209 (Niello) and ACA 18 (Adams) of 2008 were similar to AB 319, AB 1968, and ACA 20. AB 2209 failed passage in this committee, while ACA 18 was never heard in committee.

- 10) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974 that created the Fair Political Practices Commission and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the Political Reform Act (PRA). Most amendments to the PRA that are not submitted to the voters must further the purposes of the initiative, require a two-thirds vote of both houses of the Legislature, and must comply with certain other procedural requirements.

Certain provisions of the PRA specify the information that is to be included in the state ballot pamphlet, including a requirement that the pamphlet include the "official summary [of each state ballot measure] prepared by the Attorney General." Because this bill seeks to make the SOS, instead of the AG, responsible for preparing the official summary of state measures,

this bill proposes to amend that provision of the PRA accordingly.

The Office of the Legislative Counsel indicates that they believe that the changes proposed to the PRA by this bill are conforming changes, rather than substantive amendments to the PRA, since this bill is contingent upon a constitutional amendment that would make the SOS responsible for preparing the official summary of state measures. In accordance with that determination, this bill has been keyed as a majority vote bill by the Legislative Counsel, and the Legislative Counsel has not identified this bill as one that is subject to the other procedural requirements for amending the PRA.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California School Employees Association, AFL-CIO
Secretary of State Debra Bowen (unless amended)

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094