

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

ACA 1 (Mullin) – As Introduced December 5, 2016

SUBJECT: Ballot measures: effective date.

SUMMARY: Provides that an initiative statute, referendum, or constitutional amendment or revision approved by a majority of votes cast shall take effect on the fifth day after the Secretary of State (SOS) files the statement of the vote unless the measure provides otherwise, instead of going into effect the day after the election as is the case under existing law. Specifically, **this measure:**

- 1) Provides that an initiative statute, a referendum, or constitutional amendment or revision approved by a majority of votes cast thereon takes effect on the fifth day after the SOS files the statement of the vote for the election at which the measure is voted on unless the measure provides otherwise.
- 2) Makes technical changes.

EXISTING LAW:

- 1) Requires any initiative statute, a referendum, or constitutional amendment or revision approved by a majority of votes cast to take effect the day after the election, unless the measure provides otherwise. Provides that if a referendum petition is filed against a part of a statute, the remainder shall not be delayed from going into effect.
- 2) Requires that when provisions of two or more measures approved at the same election conflict, those measures receiving the highest number of affirmative votes shall prevail.
- 3) Requires the SOS to tally the results of all statewide measures, and prepare, certify, and file a statement of the vote from the compiled results not later than the 38th day after the election.

FISCAL EFFECT: Unknown. Although this measure has been keyed non-fiscal by the Legislative Counsel, it has been double-referred to the Assembly Appropriations Committee.

COMMENTS:

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

In 2016, with millions of ballots still left to be counted, initiatives and referenda deemed to have passed went into effect the day after the election, unless specified otherwise in the language of the measure. Even before the vote had been finalized and certified, these measures were considered law. This begs the question: what if a measure that was deemed to have passed was in fact shown not to have received enough votes by the certification of the vote? Allowing initiatives and referenda to go into effect essentially immediately following the election has the potential to create confusion and even the potential for an erroneous perceived change in the law.

This problem is exacerbated by the increase in vote-by-mail (VBM), which has led to longer times in counting ballots as many VBM ballots arrive on, or up to three days after, Election Day. Additionally, processing these VBM ballots takes longer - elections officials must confirm each voter's registration status, verify each voter's signature on the vote-by-mail envelope, and ensure each person did not vote elsewhere in the same election.

After a statewide election counties must send their certified election results to the Secretary of State up to 30 days after Election Day. Following that, the Secretary of State has seven days to compile the complete Statement of Vote (SOV), containing the official results.

ACA 1 will delay the enactment of initiative or referenda until five days after the Secretary of State releases the SOV. By delaying the enactment until after the vote has been certified, this measure ensures that the true and correct implementation of ballot measures occurs.

- 2) **Including VBM Ballots:** A majority of California voters now choose to vote using a VBM ballot, either by returning their ballot through the mail or by dropping off their VBM ballot in person. Under existing law, VBM ballots are required to be received by the elections official from who they were obtained or by the precinct board by the close of the polls on election day; or VBM ballots may be counted if they are cast by election day and received by the elections official by mail no later than three days after the election, as specified.

In the November 2016 general election, voter participation increased to 74% and more than 57% of voters chose to vote by mail. VBM ballots can be received by counties for up to three days after election day, and the time it takes to process those ballots is extended accordingly.

Under current law an initiative statute, a referendum, or constitutional amendment or revision approved by the majority of votes cast takes effect the day after the election. Because VBM ballots are still being delivered to elections officials to be processed for up to three days after the election and because counties continue to process and count VBM and provisional ballots for weeks after the election, it may not be possible to determine the accurate outcome until the SOS files the statement of the vote.

This measure will help ensure that VBM and provisional ballots are included in the official canvass before determining if an initiative statute, a referendum, or a constitutional amendment or revision is to be enacted.

- 3) **When Does That Measure Take Effect?** According to the California Constitution an initiative statute, referendum, or constitutional amendment or revision that is approved by a majority of voters takes effect on the day following the election unless the measure provides otherwise. Under existing law the SOS is required to compile the results of all statewide measures, and to then prepare, certify, and file a statement of the vote from the compiled results no later than the 38th day after the election.

This measure delays the enactment of an initiative statute, a referendum, or a constitutional amendment or revision approved by the voters until five-days after the SOS files the

statement of the vote for the election at which the measure is voted on, unless the measure specifies that it will take effect on a different date.

- 4) **Argument in Support:** In support of the measure, the California Grocers Association (CGA) writes:

The measure would clarify that the effective date of voter-passed measures is five days after the election is certified by the Secretary of State, unless otherwise specified by the measure itself. CGA is no stranger to the confusion that is often associated with an initiative's passage. At the last general election, our association supported Prop. 67, a referendum on the legislatures ban on single-use plastic bags. The measure passed, but there were many questions from grocers, consumers, and even the press as to when the actual ban would go into effect.

Though the Constitution states that voter approved measures go into effect "the day after the election", there was some dispute as to the meaning of that term. Some argued that "the day after the election" meant the day after the election was certified, reasoning that the election was not complete until it had been certified. With the uncertainty over the effective date some of our members experienced pushback from customers who remained convinced that we were complying with the removal of single-use plastic bags too soon.

- 5) **Double-Referred:** This measure is double-referred to the Assembly Appropriations Committee.
- 6) **Voter Approval:** As a constitutional amendment, this measure requires the approval of the voters to take effect.

REGISTERED SUPPORT / OPPOSITION:

Support

California Grocers Association
Secretary of State Alex Padilla

Opposition

None on file.

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