

Date of Hearing: June 15, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

ACA 9 (Gomez) – As Amended April 21, 2016

**SUBJECT:** Legislature: legislative vacancies.

**SUMMARY:** Requires the Governor to fill a vacancy in the Legislature by making an appointment from a list of three names selected by certain entities, as specified. Specifically, **this measure:**

- 1) Makes legislative findings and declarations that Members of the Legislature are expected to fulfill the full term of office to which they have been elected.
- 2) Provides that if a vacancy occurs in either house of the Legislature, each of the following shall, within 30 days of the vacancy, provide to the Governor the name of one person to be nominated for appointment to fill the vacancy:
  - a) In the legislative house in which the vacancy occurs, the legislative caucus of the same political party preference the vacating Member had at the time he or she was last elected to the Legislature. Requires the legislative caucus to agree by a majority vote on the name of the person to submit to the Governor for consideration.
  - b) The delegates to the state convention of the same political party preference the vacating Member had at the time he or she was last elected to the Legislature who reside in the vacating Member's district boundaries. Requires the delegates to agree by a majority vote on the name of the person to submit to the Governor for consideration.
  - c) The county board of supervisors of the county or counties in which the vacating Member's district is located. Requires the county board of supervisors or boards of supervisors jointly, as applicable, to adopt a resolution setting forth the name of the person to submit to the Governor for consideration.
- 3) Provides that a person may be nominated to fill a vacancy only if, at the time the person is nominated and during the 12 month period immediately preceding, the person had the same political party preference the vacating Member had at the time that Member was last elected to the Legislature.
- 4) Requires the Governor, within 60 days of the vacancy in the Legislature, to fill the vacancy by appointing one of the persons nominated pursuant to the provisions above. Deletes provisions of law that require the Governor, when a vacancy occurs in the Legislature, to immediately call an election to fill the vacancy.
- 5) Requires the Legislature to enact laws implementing the provisions of this measure related to filling vacancies in the Legislature.
- 6) Prohibits a Member who has vacated his or her seat before the expiration of his or her term of office, for reasons other than personal medical reasons, from lobbying before the Legislature,

for compensation, until 12 months has passed from the date his or her term of office was scheduled to expire.

- 7) Makes technical and corresponding changes.

**EXISTING LAW:**

- 1) Requires the Governor to issue a proclamation calling a special election within 14 calendar days of the occurrence of a vacancy in a legislative office, unless that vacancy occurs after the close of the nomination period in the final year of the term of office.
- 2) Permits the Governor, whenever there is a vacancy in the office of the Superintendent of Public Instruction, the Lieutenant Governor, Secretary of State, Controller, Treasurer, or Attorney General, or on the State Board of Equalization, to nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly, as specified.
- 3) Requires the Governor, whenever a vacancy occurs in a county board of supervisors, to fill the vacancy, as specified. Requires the appointee to hold office until the election and qualification of his or her successor.
- 4) Permits the Governor to appoint or nominate a person to fill a vacancy on the California Supreme Court, the court of appeal, or the California Superior Court, provided the individual is confirmed by the Commission on Judicial Appointments, as specified.
- 5) Prohibits a Member of the Legislature, for a period of one year after leaving office, for compensation, from acting as agent or attorney for, or otherwise representing, any other person by making any formal or informal appearance, or by making any oral or written communication, before the Legislature, any committee or subcommittee thereof, any present legislator, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

In 2013, Los Angeles County spent more than twelve million dollars on special elections. Recently, Fresno County spent more than \$500,000 on a special election in the 31st Assembly District. These costs are too great when there are many other priorities that could use this funding. ACA 9 proposes to maintain a democratic process, while also making sure that a district doesn't go too long without representation in the Assembly or Senate. This constitutional amendment also prohibits a legislator vacating their seat prior to the end of the term from lobbying until one year after the end of their term. This prevents legislators from leaving their elected office early and then benefiting from it by lobbying ahead of legislators that fulfilled their elected term.

- 2) **Current Practice:** Existing law provides the Governor with specific appointing authority for certain elected positions. For instance, current law authorizes the Governor, whenever there is a vacancy in the office of the Superintendent of Public Instruction, the Lieutenant Governor, Secretary of State, Controller, Treasurer, or Attorney General, or on the State Board of Equalization, to nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly, as specified. Additionally, existing law permits the Governor to appoint a person to fill a vacancy on a county board of supervisors, or for a vacancy on the California Supreme Court, the Court of Appeal, and the California Superior Court, as specified.

However, whenever a vacancy occurs in the State Senate or Assembly, current law requires the Governor to issue a proclamation calling for a special election within 14 calendar days of the occurrence of the vacancy unless the vacancy occurs after the close of the nomination period in the final year of the term of that office. This constitutional amendment makes changes to this process. Specifically, this measure deletes provisions of law that require the Governor to call a special election within 14 days after a vacancy occurs in the Legislature and instead requires the Governor to fill a legislative vacancy by making an appointment within 60 days of the vacancy from a list of three names selected by certain entities, as specified.

- 3) **Legislative Vacancies and Special Elections:** According to records provided by the Secretary of State's office, since 2000 there have been 50 special elections (including primaries and general elections) conducted to fill vacancies in the State Senate and Assembly. Generally, special elections are unexpected and as a result, county elections officials are unlikely to anticipate the cost in their budgets. A special election to fill a legislative vacancy can result in costs of approximately \$500,000 to \$1 million for counties to conduct depending on the size of the county. Moreover, aside from the cost of the election, critics argue that many special elections, in particular those that are not consolidated with a regularly scheduled election, result in significantly lower voter turnout than regularly scheduled elections. The turnout for special elections for state legislative vacancies averages around 15 percent.
- 4) **Resignations from the California Legislature:** Since the 2001-2002 Legislative Sessions, there have been 32 instances in which a member of the Legislature resigned from office before the completion of his or her term. More than 84% of the resignations were the result of members being elected to other public offices by the voters (25 cases) or being appointed by the Governor to fill vacancies in other elective offices (two cases). In the five cases where a member of the Legislature resigned for a reason other than assuming another public office, one resigned after a criminal conviction, one resigned amid press reports about comments he made regarding an alleged relationship with a lobbyist, and three resigned from office and subsequently accepted governmental relations jobs with private organizations.
- 5) **Other States:** There is tremendous variation among state legislatures in how they fill a vacancy among their membership when it occurs. According to a National Conference of State Legislatures (NCSL), in general, a vacancy is filled either through a special election or by appointment. The NCSL indicates that 25 states fill legislative vacancies through special elections, which may be ordered by the governor or other official after being notified of the vacancy. Moreover, 25 other states fill legislative vacancies through some form of

appointment process, such as by the political party of the incumbent legislator, a board of county commissioners, the governor, the Legislature, or members of the same house and party as the incumbent legislator.

- 6) **Revolving Door Restrictions on Former Government Officials:** Article IV, Section 5 (e) of California Constitution states, "The Legislature shall enact laws that prohibit a Member of the Legislature whose term of office commences on or after December 3, 1990, from lobbying, for compensation, as governed by the Political Reform Act of 1974, before the Legislature for 12 months after leaving office." The Political Reform Act (PRA) places restrictions on the post-governmental activities of certain former public officials, including Members of the Legislature. These restrictions are commonly known as a "revolving door ban." Specifically, Members of the Legislature are prohibited, for a period of one year after leaving office, for compensation, from acting as agent or attorney for, or otherwise representing, any other person by making any formal or informal appearance, or by making any oral or written communication, before the Legislature, any committee or subcommittee thereof, any present legislator or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action. The one-year ban generally serves to prevent former officials from taking advantage of their relationships with former colleagues for the benefit of third parties by prohibiting former officials from having direct communications with their former agency in an attempt to influence decisions.

This constitutional amendment expands the one-year-ban provision for Members of the Legislature. Specifically, this measure provides that a Member who has vacated his or her seat before the expiration of his or her term of office for any reason other than personal medical reasons, will be prohibited from lobbying before the Legislature, for compensation, until 12 months have passed from the date his or her term of office was scheduled to expire. The practical effect of this provision means that if a Member of the Legislature resigns from office for any reason other than a personal medical reason, the one-year-ban could be longer than one year. Moreover, because the term personal medical reason is not defined, committee staff is unsure what would constitute a personal medical reason and thus exempt the resigning Legislator from these provisions.

- 7) **No Party Preference Legislators:** This bill requires the Governor to fill a vacancy in the Legislature by making an appointment from a list of three names selected by certain entities. Specifically, this bill requires the legislative caucus of the same political party preference the vacating Member had at the time that Member was last elected to the Legislature, the delegates to the state convention of the same political party preference the vacating Member had at the time that Member was last elected to the Legislature, and the county board of supervisors of the county or counties in which the vacating Member's district is located to each submit the name of one person to Governor for consideration for appointment to fill the vacancy. It is unclear how these provisions would logistically work if the vacating Member was registered as having No Party Preference (NPP). There is neither a NPP legislative caucus, nor any NPP central committees. Would the Governor be limited to appointing the person who was nominated by the county board of supervisors of the county or counties from the vacating Member's district?
- 8) **Related Legislation:** AB 2284 (Patterson), requires a Legislator who resigns before the completion of his or her term to use surplus campaign funds to pay for the resulting special election. AB 2284 failed passage of this committee on a 2-3 vote.

SB 967 (Vidak), requires the state to pay expenses authorized and necessarily incurred on or after January 1, 2008 and before December 31, 2016, for elections proclaimed by the Governor to fill vacancies in the office of the Senate, Assembly, and United States Senator or Representative. SB 967 was held on the Senate Appropriations Committee's suspense file.

- 9) **Previous Legislation:** SCA 16 (Steinberg) of 2014, would have required the Governor to fill a Legislative vacancy by appointment within 21 days of the date of the vacancy, as specified. SCA 16 was approved by the Senate Elections & Constitutional Amendments Committee and the Senate Appropriations Committee, but subsequently was referred to the Senate Rules Committee and no further action was taken.
- 10) **Approval of Voters:** As a constitutional amendment, this measure requires the approval of the voters to take effect.

Existing law requires measures submitted to the people by the Legislature to appear on the ballot of the first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature. The statutory deadline to place a measure on the ballot for the November 8, 2016, statewide election is June 30, 2016. If this measure is chaptered after June 30, 2016 it would appear on the ballot at the 2018 statewide primary election, or at any statewide special election that is held prior to that date, but at least 131 days after this measure is adopted.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file.

##### **Opposition**

None on file.

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