

Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 1100 (Low and Bloom) – As Amended March 24, 2015

SUBJECT: Ballot initiatives: filing fees.

SUMMARY: Increases the fee to submit a proposed state ballot initiative to the Attorney General (AG) for preparation of the circulating title and summary from \$200 to \$8,000.

EXISTING LAW:

- 1) Defines a circulating title and summary to mean the text that is required to be placed on the petition for signatures that is either of the following:
 - a) The summary of the chief purpose and points of a proposed initiative measure that affects the Constitution or laws of the state, and the fiscal impact of the proposed initiative measure; or,
 - b) The summary of the chief purpose and points of a referendum measure that affects a law or laws of the state.
- 2) Requires the proponents of a proposed initiative or referendum measure to submit the text of the proposed measure to the AG with a written request that a circulating title and summary of the measure be prepared, prior to circulating the petition for signatures. Requires proponents of any initiative measure, at the time of submitting the text of the proposed initiative measure to the AG, to pay a fee of two hundred dollars (\$200), which shall be placed in a trust fund in the office of the Treasurer and refunded to the proponents if the measure qualifies for the ballot within two years from the date the summary is furnished to the proponents. If the measure does not qualify within that period, the fee shall be paid into the General Fund of the state.
- 3) Requires the AG upon receipt of the text of a proposed initiative measure, and after the public review period, to prepare a circulating title and summary of the chief purposes and points of the proposed measure. Specifies that the circulating title and summary shall not exceed 100 words.
- 4) Requires the AG to give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument nor be likely to create prejudice, for or against that proposed measure.

FISCAL EFFECT: Unknown

COMMENTS:

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

AB 1100 will increase the ballot initiative proposal fee from \$200 to \$8,000. The \$200 fee was set in 1943 to cover the administrative costs by the Attorney General (AG) to analyze a proposal and prepare a title and summary. According to the Consumer Price

Index, the value of \$200 today is the equivalent of \$14.80 in 1943 dollars. It has been 72 years since this aspect of the initiative process has been updated. This proposal is long overdue.

The \$8000 fee would cover the current estimated cost of analysis and preparation of title and summary. An analysis of previous budget change proposals relating to the cost to prepare title and summary for 315 initiatives from 2009-2013 totaled close to \$2.6 million, an average of over \$8,000 per initiative. As of early April, 16 initiatives have been submitted to the AG for the 2016 ballot.

In late February, Matt McLaughlin, a Huntington Beach lawyer admitted to the bar in 1998, submitted a ballot measure titled the “Sodomite Suppression Act,” that states LGBTs “be put to death by bullets to the head or by any other convenient method.” The Act further states that offenders be fined \$1 million, serve up to ten years in prison, and/or expelled from the state.

The AG has since filed an action for declaratory relief from the Supreme Court seeking authorization to not issue a title and summary for the proposal. If the court does not grant the relief, the AG will be forced to issue a title and summary. A title and summary also allows McLaughlin to start collecting 365,880 signatures in order to get the initiative on the ballot. The number of signatures needed is determined by the number of voters who participated in the previous gubernatorial election.

This immoral proposal is the just the latest – and most egregious – example of the need to further reform the initiative process.

- 2) **Attorney General's Process for Preparing Ballot Titles and Summaries:** Before circulating a state initiative measure, initiative proponents must first submit their proposal to the AG's office. Upon receipt of the proposed measure by the AG, a 30-day public comment period begins. Additionally, the proponent(s) may amend the initiative until close of business on the 35th calendar day after receipt. Before the AG can issue the circulating title and summary, the AG must request the preparation of a fiscal impact report prepared jointly by the Department of Finance (DOF) and the Legislative Analyst. These agencies have 50 calendar days following receipt of the proposed measure from the AG to prepare the fiscal estimate.

Within 15 calendar days following the receipt of the fiscal impact report, the AG is required to issue an official circulating title and summary to the proponent(s). A copy of the official circulating title and summary is provided to the SOS and the Legislature on the official summary date, the same date it is sent to the proponent(s).

Under current law proponents must pay a \$200 fee to the AG, a fee that is placed in a trust fund in the office of the Treasurer and is refunded in full to the proponent(s) if the initiative qualifies for the ballot within two years after the summary has been issued to the proponents. If the measure fails to qualify the fee is immediately paid into the General Fund of the state.

- 3) **Increasing Number of Initiatives and Ballot Summaries:** According to the AG's office, there has been a steady increase in the number of initiative proposals submitted for title and

summary in the last few decades. The following illustrates the increased number of filed initiative proposals:

- a) 47 from 1960 to 1969
 - b) 180 from 1970 to 1979
 - c) 282 from 1980 to 1989
 - d) 391 from 1990 to 1999
 - e) 647 from 2000 to 2009
 - f) 240 from 2010 to April 21, 2015
- 4) **California Initiative Proposals:** According to information obtained from the AG's office, between 2009 and 2013 there were 315 proposed initiative measures submitted for a circulating title and summary. Of those 315 initiative proposals 27 qualified for the ballot. Additionally, the AG's estimates that an average of 56 hours of staff time is accumulated in the preparation of each title and summary. Although the current fee is \$200, the average proposed initiative will cost the state more than \$8,000. Any costs for preparing a title and summary that exceed the \$200 fee are ultimately covered by the General Fund.

Since January 2015 there have been 22 initiative proposals introduced. Six of those proposals were submitted by one individual.

- 5) **Background and Purpose of the Fee:** The purpose of the \$200 filing fee is two-fold. Primarily, the fee exists to discourage the submission of frivolous proposals; secondly, the fee is intended to defray some of the administrative costs to the state associated with processing initiatives.

The existing fee was established in 1943 and has never been increased. When adjusted for inflation using the Consumer Price Index (CPI), \$200 in 1943 corresponds to over \$2,700 today.

- 6) **Argument in Support:** A joint letter sent by all the organizations in support of this bill, including the Glendale City Employees Association, states:

Current law requires a fee of \$200 to be paid by the proponents when a proposed ballot initiative or referendum is submitted to the Attorney General for preparation of a circulating title and summary. This bill would increase the filing fee from \$200 to \$8,000.

The \$200 fee was set in 1943 to cover the administrative costs by the Attorney General (AG) to analyze a proposal and prepare a title and summary. \$8000 would cover the current estimated cost of analysis and preparation of title and summary. According to the Consumer Price Index the value of \$200 today is the equivalent of \$14.80 in 1943 dollars.

- 7) **Argument in Opposition:** The California Taxpayers Association is in opposition to this bill for the following reasons:

Imposes an Illegal Tax. If an initiative fails to qualify within two years, the filing fee would be deposited directly into the state's General Fund to fund K-14 education, corrections, social services, and a host of other programs that have nothing to do with the cost of filing an initiative. A true filing fee should cover the administrative costs provided by the attorney general's office necessary to process and file an initiative measure.

Imposes Unreasonable Costs. Existing law requires the state to prove beyond the preponderance of the evidence that a fee is no more than necessary to cover the reasonable costs of government service. To propose a massive increase from \$200 to \$8,000, the state should be prepared to demonstrate why such a fee is reasonable and how the fee is no more than necessary to cover filing costs.

Allocates Costs In an Unfair Manner. Existing law requires a fee to be allocated among the payors fairly, in a manner that reasonably relates to the payor's burdens on and benefits from the state. This fee is paid by all individuals who file an initiative, but those that successfully qualify an initiative get their money back. By refunding the fee, AB 1100 creates an unfair allocation of the fee.

- 8) **Related Legislation:** AB 884 (Rendon), which is also being heard in this committee today, would raise the fee that is required to the AG at the time an initiative is submitted for title and summary from \$200 to \$1,000, among other provisions.
- 9) **Previous Legislation:** SB 202 (Hancock) of 2011, as introduced, would have increased the fee to submit a proposed state ballot initiative from \$200 to \$2,000. SB 202 was substantially amended in the Assembly and when passed did not deal with initiative filing fees.

AB 1832 (Saldana) of 2010 was similar to this bill, but raised the filing fees incrementally. Governor Schwarzenegger vetoed AB 1832. In his veto message, the Governor argued that although the \$200 filing fee may not be sufficient to deter frivolous initiative filings, he "cannot support increasing the fee ten-fold," and he stated that "[w]hile well-funded special interest groups would have no problem paying the sharply increased fee, it will make it more difficult for citizen groups to qualify an initiative."

AB 436 (Saldana) of 2009 was similar to AB 1832 and also was vetoed by Governor Schwarzenegger.

REGISTERED SUPPORT / OPPOSITION:

Support

Glendale City Employees Association
Organization of SMUD Employees
San Bernardino Public Employees Association
San Diego County Court Employees Association
San Luis Obispo County Employees Association

Opposition

Howard Jarvis Taxpayers Association
California Taxpayers Association

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