

Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 1296 (Jones) – As Amended April 6, 2015

**SUBJECT:** Elections: initiative and referendum measures.

**SUMMARY:** Makes changes to the procedures for placing a local initiative measure on the ballot, as specified. Specifically, **this bill:**

- 1) Requires an elections official, if a petition for a municipal, county, or district initiative measure, city or city and county charter proposal, or municipal referendum, is found to have sufficient signatures, to immediately place the initiative measure that is the subject of the petition on the election ballot for which it qualifies pursuant to existing law.
- 2) Requires the elections official, if more than one election date is legally available, to place the measure on the ballot for the earliest legally possible date unless the board of supervisors by resolution chooses a different legally possible date in accordance with existing law.
- 3) Prohibits the measure from being removed from the ballot on which it has been placed under the provisions of this bill unless the elections official is notified in writing that the board of supervisors has adopted the measure without alteration, or the elections official is ordered to remove the measure via a writ of mandate or injunction issued by the court of competent jurisdiction.
- 4) Makes other technical and conforming changes.

**EXISTING LAW:**

- 1) Requires an elections official, within 30 days from the date a local initiative measure petition is filed, excluding Saturdays, Sundays, or holidays, to examine the petition, and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters, as specified.
- 2) Requires the board of supervisors, if a county initiative petition is signed by not less than 20 percent of the entire vote cast within the county for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intention to circulate an initiative petition, and contains a request that the ordinance be submitted immediately to a vote of the people at a special election, to do one of the following:
  - a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented;
  - b) Immediately order a special election, to be held pursuant to existing law at which the ordinance, without alteration, shall be submitted to a vote of the voters of the county; or,
  - c) Order a report pursuant to existing law at the regular meeting at which the certification of the petition is presented. Requires the board of supervisors, when the report is presented, to either adopt the ordinance within 10 days or order an election, as specified.

- 3) Requires the board of supervisors, if a county initiative petition is signed by not less than 10 percent of the entire vote cast within the county for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intention to circulate an initiative petition, to do one of the following:
  - a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented;
  - b) Submit the ordinance, without alteration, to the voters pursuant to existing law, unless the ordinance petitioned for is required to be, or for some reason is, submitted to the voters at a special election in accordance with existing law; or,
  - c) Order a report pursuant to existing law at the regular meeting at which the certification of the petition is presented. Requires the board of supervisors, when the report is presented, to either adopt the ordinance within 10 days or order an election, as specified.
- 4) Requires the legislative body, if a municipal initiative petition is signed by not less than 15 percent of the voters of the city, as specified, or in a city with 1,000 or less registered voters, by 25 percent of the voters or 100 voters of the city, whichever is lesser, and contains a request that the ordinance be submitted immediately to a vote of the people at a special election, to do one of the following:
  - a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented;
  - b) Immediately order a special election, to be held pursuant to existing law at which the ordinance, without alteration, shall be submitted to a vote of the voters of the city; or,
  - c) Order a report pursuant to existing law at the regular meeting at which the certification of the petition is presented. Requires the legislative body, when the report is presented, to either adopt the ordinance within 10 days or order an election, as specified.
- 5) Requires the legislative body, if a municipal initiative petition is signed by not less than 10 percent of the voters of the city, as specified, or in a city with 1,000 or less registered voters, by 25 percent of the voters or 100 voters of the city, whichever is lesser, and contains a request that the ordinance be submitted immediately to a vote of the people at a special election, to do one of the following:
  - a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented;
  - b) Submit the ordinance, without alteration, to the voters pursuant to existing law, unless the ordinance petitioned for is required to be, or for some reason is, submitted to the voters at a special election in accordance with existing law; or,
  - c) Order a report pursuant to existing law at the regular meeting at which the certification of the petition is presented. Requires the legislative body, when the report is presented, to either adopt the ordinance within 10 days or order an election, as specified.

- 6) Requires a district board, if an initiative petition is signed by voters not less in number than 10 percent of the voters in the district, where the total number of registered voters is less than 500,000, or not less in number than 5 percent of the voters in the district, where the total number of registered voters is 500,000 or more, and the petition contains a request that the ordinance be submitted immediately to a vote of the people at a special election, to do either of the following:
  - a) Adopt the ordinance, without alteration, either at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented; or
  - b) Immediately order that the ordinance be submitted to the voters, without alteration, as specified.
- 7) Requires a district board, if an initiative petition does not request a special election, to do either of the following:
  - a) Adopt the ordinance, without alteration, either at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented; or
  - b) Submit the ordinance, without alteration, to the voters pursuant to existing law, unless the ordinance petitioned for is required to be, or for some reason is, submitted to the voters at a special election in accordance with existing law.
- 8) Requires the election for a county, municipal, or district initiative that qualifies in accordance with existing law to be held not less than 88 nor more than 103 days after the date of the order of the election.
- 9) Permits the election on the initiative measure, when it's legally possible to hold a special election on an initiative measure that has qualified in accordance with existing law within 180 days prior to a regular or special election occurring wholly or partially within the same territory, to be held on the same date as, and be consolidated with, that regular or special election.
- 10) Permits the election on the initiative measure, when it's legally possible to hold a special election on an initiative measure that has qualified pursuant to existing law during the period between a regularly scheduled statewide direct primary election and a regularly scheduled statewide general election in the same year, to be held on the same date as, and be consolidated with, the statewide general election.
- 11) Permits, in order to avoid holding more than one special election within any 180-day period, the date for holding the special election on an initiative measure that has qualified in accordance with existing law to be fixed later than 103 days but at as early a date as practicable after the expiration of 180 days from the last special election.
- 12) Provides that not more than one special election for an initiative measure that qualifies pursuant to existing law may be fixed to be held by a jurisdiction during any period of 180 days.
- 13) Requires the election for a county initiative that qualifies with not less than 10 percent of the vote, as specified, to be held at the next statewide election occurring not less than 88 days

after the date of the order of the election. Requires the election for a municipal petition that qualifies with not less than 10 percent of the vote, as specified, or a district petition that qualifies without requesting a special election pursuant to existing law, to be held at the jurisdiction's next regular election occurring not less than 88 days after the date of the order of the election.

- 14) Requires the election for a county or municipal referendum that qualifies pursuant to existing law to be held at the jurisdiction's next regular election occurring not less than 88 days after the date of the order of the election of at a special election called for that purpose not less than 88 days after the date of the order of the election.
- 15) Provides that a county, municipal, district, or school district initiative, referendum, or recall elections are not required to abide by established election days, as specified.
- 16) Provides a writ of mandate procedure for challenging matters in county elections, municipal elections, district elections, and school district elections, that among other things:
  - a) Requires the elections official to make a copy of any proposed ordinance or ballot initiative available for public examination for a period of 10 calendar days immediately following the submission of those materials;
  - b) Permits any voter in the jurisdiction in which the election is being held to seek a writ of mandate or injunction requiring any or all of the material to be amended or deleted, as long as such request is filed no later than the end of the 10-day public examination period; or,
  - c) Provides that the peremptory writ of mandate or injunction shall be issued only upon clear and convincing evidence that the material in question is false, misleading, or inconsistent with specified requirements, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law.

**FISCAL EFFECT:** Unknown. State-mandated local program; contains reimbursement direction.

**COMMENTS:**

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

Existing law (Elec. Code §§ 9118, 9215, 9311) requires local agencies, when presented with a certified initiative, to only do one of two things. They can either pass it into law themselves or place it on the next regular election ballot. Increasingly, however, local agencies are engaging in an unauthorized third option: withholding the initiative from the ballot because they view it as undesirable. This unlawfully shifts to the proponents the responsibility of presenting to the voters a proposal that enough of them signed to earn a spot on the ballot. If the proponents can afford an attorney, they can go to court to get the judge to do what the local agency was required to do--put the initiative on the ballot. If they cannot afford an attorney, then the initiative dies without a vote, in violation of our state constitution. Because governing officials have a conflict of interest, they should not be allowed to decide unilaterally that a measure is unfit for the ballot and keep it from the

voters. AB 1296 authorizes the elections official, upon certifying an initiative, to immediately place it on the ballot for which it qualifies pursuant to Elections Code section 1405. Nothing prohibits a local government agency from then using the election writ process to remove a measure from the ballot for things like inappropriately gathered signatures, etc. This bill simply says that, once an initiative receives its certification, the Registrar of Voters or applicable elections official shall place it on the ballot and not remove it unless ordered to do so by a court.

- 2) **Examination of Signatures:** Current law requires an elections official, within 30 days from the date a county initiative measure petition is filed, excluding Saturdays, Sundays, or holidays, to examine the petition, and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters, as specified. Existing law requires the elections official to verify the signatures thereon either from a 100 percent check or a random sampling. Upon completion of the signature verification, current law requires the elections official to certify as to the sufficiency or insufficiency of the petition. If the petition is insufficient, no action is taken and if the petition is sufficient, current law requires the elections official to certify the results to the governing body at the next regular meeting of the governing body. Elections officials are required to examine municipal and district initiative measures, city and county charter proposals, and municipal referendums in the same manner as county initiative measures.
- 3) **What happens when a petition is sufficient?** Current law requires the governing body of a local jurisdiction to take certain actions once a petition has sufficient signatures. For example, if a county initiative measure petition is signed by voters not less in number than 20 percent of the entire votes cast within the county for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intention, existing law requires the board of supervisors, to do one of the following: 1) adopt the ordinance, without alterations, at the regular meeting in which the certification is presented or within 10 days after it is presented; 2) immediately call a special election, if it is legally possible, at which the ordinance, without alteration, is to be submitted to the voters; or 3) order an impact report at the regular meeting at which the certification is presented and requires the board of supervisors, after receiving the report, to either adopt the ordinance within 10 days or call an election, as specified.

When legally possible, current law permits the election to be consolidated with a regular or special election held within six months (180 days) or the special election must be held not less than 88 or more than 103 days after the date of the order of election. However, in certain cases, current law permits the 103 day deadline to be extended. Existing law provides that not more than one special election for an initiative measure that has qualified may be held by a jurisdiction during any period of 180 days.

Moreover, existing law requires the board of supervisors, if the petition is signed by voters not less in number than 10 percent of the entire votes cast within the county for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intention, to do one of the following: 1) adopt the ordinance, without alterations, at the regular meeting in which the certification is presented or within 10 days after it is presented; 2) submit the ordinance, without alterations, to the voters, as specified, unless the ordinance petitioned for is required to be, or for some reason is submitted to voters at a special election, pursuant to existing law; or 3) order an impact report at the regular meeting at which the

certification is presented and requires the board of supervisors, after receiving the report, to either adopt the ordinance within 10 days or call an election, as specified. Existing law requires an election to vote on the county initiative to be consolidated with the next statewide election occurring not less than 88 days after the date of the board of supervisors order or after the board of supervisors is presented with the impact report.

This bill makes significant changes to the procedures a governing body must follow once a petition has sufficient signatures. Specifically, this bill requires an elections official, if a petition is found sufficient, to immediately place the initiative measure on the election ballot for which it qualifies. In addition, this bill requires an elections official, if there is more than one election date legally available, to place the measure on the ballot for the earliest legally possible date unless the board of supervisors by resolution chooses a different legally possible date in accordance with existing law. The new procedures required in this bill apply to county, municipal, and district initiative measures, as well as, city and city and county charter proposals, and municipal referendum measures.

- 4) **Is there a problem?** The author contends that the changes outlined in this bill are necessary because local governing bodies are withholding initiatives from the ballot that they view as undesirable. The committee, however, is not aware nor has been able to locate any examples demonstrating a current problem of abuse. Furthermore, neither the author nor the sponsors have provided the committee with any information or evidence to support their allegations that local agencies are improperly withholding measures from the ballot. Because the proponents are unable to provide evidence of a problem, the committee may wish to consider whether this bill is potentially a solution in search of a problem.
- 5) **Election Writ Procedure:** Current law permits a voter of the jurisdiction in which the election is being held, or an elections official, to seek a writ of mandate or an injunction requiring any material to be amended or deleted, as specified. In addition, existing law requires that a writ of mandate or an injunction be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent, as specified. The purpose of this writ procedure is to give voters or elections officials an opportunity to challenge very specific types of legal issues, and to do so on a very tight timetable so as not to delay publication or distribution of election ballots and materials. This bill prohibits a measure from being removed from the ballot on which it has been placed under the provisions of this bill unless the elections official is notified in writing that the governing body has adopted the measure without alteration, or the elections official is ordered to remove the measure via a writ of mandate or injunction issued by the court of competent jurisdiction.

- 6) **Arguments in Support:** In support, the Howard Jarvis Taxpayers Association, writes:

Despite existing law, however we have seen a growing trend of local agencies withholding from the ballot certified initiatives that they don't like. The agency may file suit against the proponents, tying them up in expensive litigation when it is unknown whether the initiative would even pass. Or the agency may wait for initiative proponents to take action themselves to force an election, which will never happen if the proponents cannot afford counsel. Because local agencies are not courts, and because they have a conflict of interest as to initiatives they don't like, they should not be allowed to decide unilaterally that a measure is unfit for the ballot and withhold it from the voters.

- 7) **Arguments in Opposition:** In opposition, California State Council of the Service Employees International Union, writes:

The process of placing measures on a ballot is a form of direct democracy that allows the public to seek changes to public policy when lawmakers are unable or unwilling to act on a given issue. The process of direct democracy inherently requires the [proponent] to spend time researching and drafting the proposal, funding to qualify the measure for the ballot, and activity towards informing the public of the need of the proposed change.

In the majority of instances, the choice to place a measure on [a] specific ballot is a matter of timing and strategy by the proponent(s) of the measures towards achieving success at the ballot. This measure seeks to require the elections official who certifies the measure, and if more than one election date is legally possible, to place it on the ballot at the earliest legally possible date. Moreover, AB 1296 thus, removes the option of choice from the proponent(s).

Exercising the right to choose is an important form of expression by voters, including a measure's proponent(s), who may cast a ballot on measures, or candidates during an election. AB 1296 removes the proponent's choice as to the ballot specifically sought after that would permit efforts towards maximizing voter outreach and success at the ballot. Moreover, the right to choose is further eroded if the Board of Supervisors (BOS) chooses to place the measure on a different ballot, as proposed by AB 1296. This then would require efforts by the proponent(s) to engage the BOS to place the measure on the specific ballot targeted by the proponents. This requirement creates additional challenges by the fact that the BOS might also be the body that initially was either unable or unwilling to act on the same proposed change to public policy.

Rather than simplifying the democratic process and permitting choice, AB 1296 would create additional challenges for voters to directly engage the public via the ballot.

- 8) **Previous Legislation:** AB 2338 (Wagner) of 2014, which failed in the Assembly Judiciary Committee on a 3-7 vote, would have required any local government or district seeking to challenge the qualification or validity of a certified ballot initiative to use a specified elections writ of mandate procedure instead of filing a pre-election action for declaratory relief, as specified.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Howard Jarvis Taxpayers Association  
Association of Builders and Contractors of California

### **Opposition**

California State Council of the Service Employees International Union

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