Date of Hearing: June 26, 2024

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ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SB 863 (Allen) – As Amended June 19, 2024

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SENATE VOTE: 30-7

SUBJECT: Measures proposed by the Legislature.

SUMMARY: Allows the Legislature to designate the statewide election at which a legislative constitutional amendment or constitutional revision will appear on the ballot, provided that the designated election is at least 131 days away. Specifically, **this bill** permits the Legislature to specify, in the text of a measure that proposes an amendment or revision of the California Constitution, that the amendment or revision submitted to the people shall appear on the ballot at a statewide election other than the election specified by state law if the election specified in the proposal would occur at least 131 days after adoption of the proposal by the Legislature.

EXISTING LAW:

1) Provides that the Legislature may make no law except by statute and may enact no statute except by bill. Provides that no bill may be passed unless a majority of the membership of each house concurs, as specified. (California Constitution, Article IV, §8)

2) Requires each bill passed by the Legislature to be presented to the Governor. Provides that a bill becomes a statute if it is signed by the Governor. Permits the Governor to veto a bill, as specified. Provides that a bill that was vetoed by the Governor shall become a statute if the Legislature overrides the veto by a two-thirds vote of each house, as specified. Provides that any bill that is presented to the Governor by the Legislature, and that is not vetoed and returned by the Governor to the Legislature within a specified period, becomes a statute. (California Constitution, Article IV, §10)

3) Permits the Legislature to propose an amendment to or revision of the Constitution, subject to the approval of the voters. (California Constitution, Article XVIII, §§1, 4)

4) Requires voter approval before the state can issue general obligation bonds to pay for a project. (California Constitution, Article XVI, §1)

5) Permits voters, through the initiative process, to propose statutes and amendments to the Constitution and to adopt or reject them. (California Constitution, Article II, §8) Permits the Legislature to amend or repeal an initiative statute that was approved by the voters only by another statute that becomes effective when approved by the voters, unless the initiative statute permits amendment or repeal without the voters' approval. (California Constitution, Article II, §10(c))

6) Requires every constitutional amendment, bond measure, or other legislative measure 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. (Elections Code §9040)

7) Defines "statewide election," for the purpose of the Elections Code, as an election held throughout the state. (Elections Code §357)

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

> The Legislature has the ability to propose bonds, certain changes to statute, and amendments to the California Constitution to the voters for approval at a statewide election. State law currently allows the Legislature to specify in a bond or statutory measure at which statewide election it will appear before voters. However, the same flexibility does not exist for constitutional amendments, which occasionally require accompanying legislation to determine ballot placement. SB 863 will conform these processes and allow the Legislature to specify a ballot in a proposed constitutional amendment.

2) **Legislative Ballot Measures**: There are several situations in which the Legislature can propose measures that will appear on the statewide ballot for voters' consideration. The two most common types of legislative ballot measures are constitutional amendments that are proposed by the Legislature, and bills that propose to authorize the issuance of general obligation bonds. Bills that propose to amend or repeal a previously-approved initiative measure may also require voter approval in order to take effect. The Legislature may also submit measures to the voters that propose a constitutional revision, ask the voters whether to call for a constitutional convention, or ask the voters an advisory question, though these types of measures are considerably less common.

When a legislative ballot measure qualifies to appear on the ballot, Section 9040 of the Elections Code generally requires the measure to appear on the first statewide election that occurs at least 131 days after the adoption of the proposal by the Legislature. Because that law governing the timing of when legislative ballot measures are submitted to voters is found in state statute, that law can also be waived or modified for a specific legislative ballot measure through the enactment of another statute.

In the case of a legislative ballot measure that is put on the ballot through the passage of a bill that must be signed by the Governor—like a bill proposing a general obligation bond or proposing to amend a previously-approved initiative—the text of the bill itself may also include language that overrides Section 9040 of the Elections Code and provides for the measure to be submitted to the voters at an election other than the one where it would appear if Section 9040 applied. For example, SB 1174 (Lara), Chapter 1174, Statutes of 2014, proposed to amend and repeal various provisions of Proposition 227 of 1998, related to English language instruction of limited English proficient students. Because SB 1174 proposed amending a previously-approved initiative, it required the approval of voters to take effect. SB 1174 was chaptered in late-September 2014, so it would have appeared on the

ballot at the June 7, 2016, presidential primary election if the provisions of Section 9040 of the Elections Code had applied. SB 1174, however, included language that required its provisions that proposed amending Proposition 227 to be submitted to the voters at the November 8, 2016, presidential general election instead, thereby overriding the provisions of Section 9040 for that measure.

Certain legislative ballot measures, however, are placed on the ballot using mechanisms other than bills. When the Legislature proposes a constitutional amendment, for example, it does so through the passage of a resolution (referred to as an Assembly Constitutional Amendment or Senate Constitutional Amendment, depending on the house in which it was introduced). Because a state statute (like Elections Code Section 9040) can only be amended or waived through the enactment of another statute, a resolution that places a proposed constitutional amendment on the ballot cannot also override the provisions of Elections Code Section 9040 that specify the election at which the voters will consider that measure.

As a result, when the Legislature desires to place a specific constitutional amendment on a ballot at an election other than the election where the measure would appear under Section 9040 of the Elections Code, it generally has done so by passing a separate bill that specifies the election at which that measure will appear. For example, SB 789 (Allen), Chapter 787, Statutes of 2023, provided for three identified legislative constitutional amendments to appear on the ballot at the November 5, 2024, presidential general election, notwithstanding the provisions of Section 9040 of the Elections Code. In the absence of SB 789, those three legislative constitutional amendments would have appeared on the ballot at the March 5, 2024, presidential primary election in accordance with the requirements of Section 9040 of the Elections Code.

3) **Governor's Role**: Existing law ensures that the Governor is part of the decision-making process any time that the Legislature seeks to require a legislative ballot measure to appear on the ballot at an election other than the one specified in accordance with Section 9040 of the Elections Code. Under this bill, however, the Legislature could specify the election at which a legislative constitutional amendment would appear on the ballot in the text of the resolution proposing the legislative constitutional amendment itself, provided that the specified election was at least 131 days away. In such a situation, the Governor would no longer have a formal role in deciding whether the proposed constitutional amendment would appear on the ballot at an election other than the one specified in accordance with Section 9040 of the Elections Code, since legislative constitutional amendments are chaptered by the Secretary of State following legislative approval without being presented for the Governor's consideration.

It should be noted, however, that the flexibility provided by this bill applies only to measures where the Governor does not have a formal role in deciding whether to place those measures on the ballot. If the Legislature wanted to specify the election at which a legislative bond measure or a legislative initiative amendment appeared on the ballot, the Governor would continue to have a role in considering that proposal.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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