

Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 359 (Moorlach) – As Amended June 26, 2019

SENATE VOTE: 38-0

SUBJECT: Elections: referendum.

SUMMARY: Permits a municipal referendum petition to contain an impartial summary of the ordinance, as specified, instead of the text of the ordinance or the portion of the ordinance that is the subject of the referendum, as specified. Specifically, **this bill:**

- 1) Permits a municipal referendum petition to contain an impartial summary of the referendum, instead of the text of the ordinance or the portion of the ordinance subject to the referendum.
- 2) Requires the impartial summary to not exceed 5,000 words and be prepared using the following procedure:
 - a) Requires the referendum's proponents, within three days of the final passage of the ordinance, to file a copy of the proposed summary with the local elections official and requires the local elections official to immediately transmit a copy of the proposed summary to the city attorney.
 - b) Requires the city attorney, within ten business days, to issue an approved summary to the local elections official and the referendum's proponents for circulation. Permits the city attorney to edit the summary prior to approval. Requires all edits made to the summary to be true and impartial and prohibits the edits from containing argument or any matter likely to cause prejudice for or against the referendum. Permits a city attorney to add the full text of the ordinance, or the portion of the ordinance that is the subject of the referendum, to the summary if doing so would not exceed the 5,000-word limit.
 - c) Requires the summary to include a link to a public website containing the text of the ordinance or the portion of the ordinance that is the subject of the referendum.
 - d) Requires the 5,000-word limit imposed by this bill to include all attachments, exhibits, and other supplements to the summary.
 - e) Requires the proposed summary submitted by proponents, if the city attorney fails to issue an approved summary within 10 business days, to be considered approved.
 - f) Requires the proponents who circulate a referendum petition pursuant to the provisions of this bill to have 30 days from the date the summary is approved to submit a petition with the required number of signatures to the local elections official. Prohibits an ordinance subject to the referendum petition from becoming effective until this period has expired.
- 3) Prohibits the proponents, after they begin circulating a referendum petition prepared pursuant to this bill, from circulating another version of the referendum petition prepared using another method.

EXISTING LAW:

- 1) Provides the people with the powers of referendum and defines the term referendum to mean “the power of the electors to approve or reject statutes or part of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.”
- 2) Extends referendum powers to the electors of each city, except charter cities, in procedures established by the Legislature.
- 3) Provides that if a petition protesting the adoption of a municipal ordinance is circulated and subsequently submitted to the elections official of the legislative body of the city within 30 days of the date the adopted ordinance is attested by the city clerk or secretary to the legislative body and is signed by not less than 10 percent of the voters of the city, then the effective date of the ordinance is suspended and the legislative body shall reconsider the ordinance, as specified.
- 4) Requires, across the top of each page of a municipal referendum petition, the following to be printed:

“Referendum Against an Ordinance Passed by the City Council.”

- 5) Requires each section of a county, municipal, or district referendum petition to contain the identifying number or title and the text of the ordinance or the portion of the ordinance that is subject of the referendum. Requires the petition to be designed in the same form, as specified.
- 6) Requires that if the legislative body does not entirely repeal the ordinance against which the petition is filed, then the legislative body submits the ordinance to the voters, as specified.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible costs.

COMMENTS:

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

Under the current referendum process, city councils can force proponents to include thousands of pages of documents within a petition. This can drive up the costs and reduce voter participation during the referendum process. Senate Bill 359 creates an alternative referendum method for parties who are interested in overturning an ordinance passed by a city council, keeping the current method in code and allowing proponents the opportunity to choose which pathway they prefer. SB 359 outlines the process and procedures required to introduce a referendum under the proposal.

- 2) **Museum House and Newport Beach:** In November 2016, the Newport Beach City Council approved a 25-story, 100-unit condominium project known as the Museum House project. Following Newport Beach’s approval of the project, members of a political action committee, Line in the Sand, circulated referendum petitions and submitted signatures to the

City Clerk. In January 2017, the Orange County Registrar of Voters certified that there were enough valid signatures on the referendum petitions. Subsequently, in February 2017, the City Council rescinded the approval of the condominium project.

While this referendum process was happening, the Orange County Museum of Art (who owned the land) filed a lawsuit in the Orange County Superior Court asking the judge to invalidate the referendum petition because it violated election law requirements. The museum challenged the referendum petition's small font size and argued that the petition did not include the full text of general plan amendments. Proponents of the referendum noted that the petition weighed roughly 10 pounds and contained about 1,000 pages because the City Council directed that the project's environmental impact report be attached.

Alleging that the lawsuit was intended to burden opponents until they drop their opposition, Line in the Sand requested the judge dismiss the case and argued that the museum filed a "strategic lawsuit against public participation", or SLAPP, suit. Judge Geoffrey Glass informed both sides that the museum did not file a SLAPP suit when it challenged the validity of the referendum petition. In his ruling, Judge Glass additionally noted that state law for the form and format of referendum petitions "does not overly burden the 1st Amendment right to petition the government. The statutes are content-neutral and simply require certain things in order to avoid confusing the electorate." Line in the Sand appealed the judge's ruling. The case was settled in 2018.

- 3) **Different Local Referendum Processes:** If this bill is signed into law, its provisions would only apply to a city referendum. County and special district referenda would be required to continue to use existing referendum process that requires a referendum petition to contain the ordinance's title or number as well as the text of the ordinance or the portion of the ordinance that is subject of the referendum and referendum proponents would not have the opportunity to avail themselves of the summary option proposed in this bill. The committee may wish to consider whether it is prudent to have inconsistent referenda processes and may consider amending the bill to align all local referenda processes to avoid voter confusion.
- 4) **Arguments in Support:** With a support if amended position, the Planning and Conservation League and Friends of Harbors, Beaches and Parks write:

Amendments to SB 359 in print as of yesterday address one of the concerns raised in our prior letter: the effect that preparing an impartial summary of a referendum might have on the short 30-day window for circulating referendum petitions. While we believe that the amendments we proposed in our prior letter would resolve this same concern clearly and effectively, should the Committee wish to follow the approach taken by the bill as currently in print, we would urge three additional technical changes to the bill (page and line numbers are from the PDF version of the bill as amended June 26, 2019):

1) On page 3, line 7, strike "Notwithstanding Section 9235" and insert "Notwithstanding anything to the contrary in Sections 9235, 9237, and 9242, and Section 36937 of the Government Code"

This change is necessary to avoid inconsistencies with other statutory sections that prescribe a 30-day window for circulating referendum petitions and dictate

when ordinances become effective. This change also attempts to narrow the effect of the “notwithstanding” clause to “contrary” portions of the cross-referenced sections (i.e., portions of those sections stating that proponents have 30 days to circulate referendum petitions and that ordinances become effective 30 days after final passage).

2) On page 3, line 7, strike “summary is approved” and insert “approved summary is provided to the proponents or the time for approval by the city attorney expires”

Because the date on which a summary is “approved” may come before the date on which an approved summary is provided to referendum proponents, this change is necessary to ensure that proponents have the full 30 days allowed by law to circulate petitions containing an approved summary.

3) On page 2, line 14, strike “referendum” and insert “ordinance or the portion of the ordinance that is the subject of the referendum”

As recommended in our prior letter, this technical change could help ensure that summaries address only the matter they are intended to replace—the text of the ordinance or portion thereof subject to referendum—instead of the “referendum” in general. We believe that this change would go a long way toward avoiding disagreements and disputes over the scope and impartiality of summaries.

We would also again urge the Committee to consider recommending the other amendments proposed in our prior letter. In particular, we believe that it would be wise to provide a swift and explicit procedure for resolving inevitable legal challenges to summaries. We also believe that a similar alternative approach to attaching the full “text” of an ordinance or resolution to referendum petitions can and should be provided for counties and special districts.

- 5) **Related Legislation:** SB 681 (Stern) authorizes the proponent of a county, municipal, or district referendum to withdraw the referendum at any time before the 88th day before the election, as specified. SB 681 is pending in the Assembly Committee on Appropriations.

REGISTERED SUPPORT / OPPOSITION:

Support

Friends of Harbors, Beaches and Parks (if amended)
Meyer Properties
Planning and Conservation League (if amended)
Approximately 93 Individuals

Opposition

None on file.

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