

Date of Hearing: April 1, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2439 (Donnelly) – As Introduced: February 21, 2014

SUBJECT: Secretary of State: initiative information.

SUMMARY: Requires the Secretary of State (SOS) to post on his or her Internet Web site and include in any SOS publication describing the initiative process, including the Statewide Initiative Guide pamphlet, information describing that the following services are available to the proponents of a proposed measure:

- 1) The Legislative Counsel's cooperation in preparing an initiative measure, as specified by current law; and,
- 2) The SOS's review of prepared initiatives prior to circulation, pursuant to current law.

EXISTING LAW:

- 1) Requires the SOS, upon request of the proponents of an initiative measure which is to be submitted to the voters, to review the provisions of the initiative measure after it is prepared prior to its circulation. Requires the SOS, in conducting the review, to analyze and comment on the provisions of the measure with respect to form and language clarity and request and obtain a statement of fiscal impact from the Legislative Analyst. Provides that the review performed shall be for the purpose of suggestion only and shall not have any binding effect on the proponents of the initiative measure.
- 2) Requires the SOS to prepare and make available a pamphlet describing the procedures and requirements for preparing and circulating a statewide initiative measure and for filing sections of the petition, and describing the procedure used in determining and verifying the number of qualified voters who have signed the petition.
- 3) Requires the Legislative Counsel to cooperate with the proponents of an initiative measure in its preparation when requested in writing by 25 or more electors proposing the measure when, in the judgment of the Legislative Counsel, there is reasonable probability that the measure will be submitted to the voters of the State under the laws relating to the submission of initiatives.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of the bill: According to the author:

The initiative process was created as a progressive reform to break the stranglehold of entrenched economic and political interests on California's political system. The initiative has given the People a means of direct control over their government and has allowed them to enact many important reforms over the past century. The right of

initiative is reserved by the People under our constitution, and has been described by the courts as one of the most precious rights of our democratic process.

Although the initiative system provides a valuable means for citizens to influence public policy, some critics have claimed that initiative measures sometimes contain drafting errors which could create legal ambiguities if adopted by the voters.

Fortunately, California law already provides two avenues for optional drafting assistance to initiative proponents. The first method is through the Legislative Counsel, who can assist in writing the measure before it receives an initiative title, and the second is through the Secretary of State, who must provide a review of a measure's form and language clarity prior to circulation.

While assistance from the Legislative Counsel requires a petition signed by 25 voters and a determination that there is a reasonable probability the measure will be submitted to the voters, assistance from the Secretary is available upon request. However, only a few initiative proponents have ever requested assistance from the Secretary, in part because so few have been aware of its availability. For example, while the Secretary's "Statewide Initiative Guide" notes the assistance offered by the Legislative Counsel, it makes no mention of the assistance available from her own office. This is clearly a missed opportunity to improve the initiative process for the benefit of all Californians.

Therefore, AB 2439 will ensure that the Secretary of State publicizes the availability of all assistance offered to initiative proponents under existing law, by placing notices in the Statewide Initiative Guide, on her Internet website, and on any other materials that describe the initiative process. This initiative reform proposal was recommended by the non-partisan Center for Governmental Studies.

- 2) Current Assistance: As mentioned above, current law requires the SOS to prepare a Statewide Initiative Guide which provides an overview of the procedures and requirements for preparing and circulating initiatives, for filing sections of the petition, and describing the procedure of verifying signatures on the petition. However, the guide is for general information only and does not have the force and effect of law, regulation, or rule.

Step one of the SOS's Statewide Initiative Guide states that the "first step in the process of qualifying an initiative measure is to write the text of the proposed law. The initiative measure's proponent(s) may obtain assistance from the Office of the Legislative Counsel in drafting the language of the proposed law. Proponent(s) must obtain the signatures of 25 or more electors on a request for a draft of the proposed law; proponent(s) must then present the idea for the law to the Legislative Counsel. If the Legislative Counsel determines that there is a reasonable probability the initiative measure will eventually be submitted to the voters, the Legislative Counsel will draft the proposed law. Proponent(s) may also seek the assistance of their own private counsel to help draft the text of the proposed law, or they may choose to write the text themselves." The SOS's guide also lists the contact information for the Office of the Legislative Counsel.

The requirement for the Legislative Counsel to assist proponents in the drafting the language of a proposed initiative measure became law in 1945 through the passage of SB 1138 (Fletcher & Burns), Chapter 111, Statutes of 1945. According to the Legislative Counsel's

Office, it is difficult to quantify how often this request for service has been utilized; however, it is not uncommon for the Legislative Counsel to receive requests for drafting assistance. However, in practice, the requests tend to come from initiative proponents with more limited financial resources. Initiative proponents with greater financial resources tend to use private counsel or legal firms that specialize in certain issue areas, such as the Political Reform Act, when drafting the text of a proposed initiative.

In 1975, the Legislature passed and the Governor signed AB 1142 (Hayden), Chapter 955, Statutes of 1975, which required the SOS, upon the request of the proponents of an initiative measure which is intended to be submitted to the voters of the state, to review the provisions of the initiative measure after its preparation and before its circulation. The review consists of analyzing and commenting on the provisions of the measure with respect to form and language clarity and obtaining a statement of fiscal impact from the Legislative Analyst. Additionally, current law provides that the review would be for the purpose of suggestion only, having no binding effect on the proponents of the initiative measure. According to the SOS's office, since its implementation into law, only a handful of proponents have requested this service.

- 3) Center for Governmental Studies: The author's statement above references that this bill originated from a proposal by the Center for Governmental Studies. In 2008, the Center for Governmental Studies released a report entitled "Democracy by Initiative: Shaping California's Fourth Branch of Government." The report provides a variety of recommended reforms to the initiative process. One of those recommendations provided by the report seeks to address problems that arise with poorly drafted initiatives. According to the report, poorly drafted initiatives can result in a variety of unpleasant scenarios. For example, ambiguous or imprecise terminology can result in implementation problems, drafting omissions and oversights can result in unintended consequences and interpretation, excessive length can overwhelm voters with too many issues, complicated wording can promote voter confusion and constitutional deficiencies can frustrate voters and cause proponents to start the enactment process all over again.

The report provides a number of recommendations to reform the initiative process. This bill includes one of those recommendations – publicize drafting assistance availability through the Legislative Counsel and the SOS's offices. According to the report, even if a small number of proponents took advantage of this assistance, it would improve the quality of statutory and constitutional language put in place by initiatives. The report does concede that "[m]any initiative proponents view official review and criticism of their proposals as a major inconvenience and one that can sometimes be usurped for political purposes." Additionally, the report states that "[e]ven supporters of an optional drafting assistance program concede that review procedures may be open to political opportunism... Moreover, it is difficult to prod the authors of legislation into seeking the opinions of others if they are not required to do so."

- 4) Technical and Clarifying Amendment: According to the author's office, the intent of the bill is to better publicize that initiative proponents may garner assistance in drafting the text of an initiative measure from the SOS. Specifically, it is the author's intent to require the SOS to publicize this service in the SOS's Statewide Initiative Guide. The bill can be interpreted to require the SOS to publicize this assistance in more than just the Initiative Guide. As a result, the committee staff recommends amending the bill to better reflect the author's intent

as follows:

On page 2, in lines 4 -5, strike: *include and in any publication of the Secretary of State describing the initiative process, including,* and insert: *and include in.*

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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