

Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
ACA 10 (Olsen) – As Introduced: February 22, 2013

SUBJECT: Voter-nominated primary elections.

SUMMARY: Allows a candidate for an elective state office (other than Superintendent of Public Instruction) to win outright in the primary election, and provides that the contest shall not appear on the general election ballot, if the candidate receives at least 60 percent of the votes cast for that office. Specifically, this measure:

- 1) Provides that a candidate for office wins the election outright, and no general election shall be held, if the candidate receives at least 60 percent of the votes cast in the primary election and the candidate is running for one of the following offices:
 - a) Governor;
 - b) Lieutenant Governor;
 - c) Secretary of State;
 - d) Controller;
 - e) Treasurer;
 - f) Attorney General;
 - g) Insurance Commissioner;
 - h) Member of the Board of Equalization;
 - i) State Senator; and,
 - j) Member of the Assembly.
- 2) Makes a corresponding change.

EXISTING LAW:

- 1) Requires a voter-nomination primary election to be conducted to select the candidates for the following offices:
 - a) Governor;
 - b) Lieutenant Governor;

- c) Secretary of State;
 - d) Controller;
 - e) Treasurer;
 - f) Attorney General;
 - g) Insurance Commissioner;
 - h) Member of the Board of Equalization;
 - i) United States Senator;
 - j) Member of the United States House of Representatives;
 - k) State Senator; and,
 - l) Member of the Assembly.
- 2) Provides that the candidates who are the top two vote-getters in the voter-nomination primary election shall compete in the ensuing general election.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of the Constitutional Amendment: According to the author:

This legislation is important for the elections process in California. In current law, if a candidate wins 60% of the popular vote in primary elections, they still must proceed to a costly general election runoff with their opponent. Candidates must participate in a top two runoff no matter the percentage of popular vote won. In the 2012 primary election, 21 Assembly candidates received 60% or more votes, and 8 of 20 Senate districts had one candidate who received votes of the same margin. All of these candidates went on to win the general election which drastically increased the cost of elections. Our proposal would establish a 60% threshold that would allow the winner of 60% of the primary election popular vote to be declared the winner.

- 2) Top Two Primary: In February 2009, the Legislature approved SCA 4 (Maldonado), Res. Chapter 2, Statutes of 2009, which was enacted by the voters as Proposition 14 on the June 2010, statewide primary election ballot. Proposition 14 implemented a top two primary election system in California for most elective state and federal offices. At primary elections, voters are able to vote for any candidate, regardless of party, and the two candidates who receive the most votes, regardless of party, advance to the general election. Candidates who are running for one of the offices covered by the top two primary election system are permitted to have their party preference printed on the ballot.

- 3) Participation Rates in Primary Elections vs. General Elections: Voter participation rates tend to be significantly higher at statewide general elections than they are at statewide primary elections. Statewide, for the 2012 elections, nearly two and a half times as many voters participated in the general election than participated in the primary. In some districts, the difference in participation between the primary and general was even more dramatic, as there were multiple Assembly races in which the number of ballots cast in the general election was more than four times the number of ballots cast for the same office in the primary election.

By allowing candidates for elective state office to win an election outright at the statewide primary election if they receive 60 percent of the vote or more, this measure could significantly reduce the number of voters who participate in choosing their elected officials. Given the levels of turnout at the 2012 elections, the number of votes needed to receive 60 percent in the primary election could be less than 20 percent of the number of voters who participate in the general election for the same office.

The author points out that in 29 of the 100 races for seats in the state Legislature that appeared on the ballot in 2012, a candidate received 60 percent or more of the votes in the primary election, and in every case, that candidate went on to win the general election. While this was indeed the case for the 2012 elections, given the significant difference in participation levels between the primary and general elections, that will not necessarily be the case for all races in the future. In fact, some of the results from the 2012 election demonstrate how a candidate's share of the vote can decrease substantially from the primary to the general election, and could result in a situation where a candidate who received 60 percent or more of the vote in the primary election nonetheless went on to lose the general election.

In order for a candidate who received 60 percent or more of the vote in the primary election to lose a subsequent general election, that candidate's share of the vote would have to drop at least 10 points from the primary election to the general election (from at least 60 percent in the primary election to less than 50 percent in the general election). In fact, there were two candidates who received the highest percentage of the votes of all candidates for that race in the primary election (for a seat where there were at least two candidates listed on the ballot), and who saw his share of the vote drop by more than 10 percent from the primary to general election. In one case, a candidate saw his percentage of the vote drop by 11.4 points between the primary and general elections; in another case, the candidate's percentage of the vote dropped by 10.8 points between the primary and the general. These results seem to suggest that it is not out of the realm of possibility that a candidate who received more than 60 percent of the vote in the primary election could lose the subsequent general election.

- 4) Potential Cost Savings: One of the arguments that the author makes in support of this measure is that it could save counties a significant amount of money that could be used for higher priorities rather than being used to run an unnecessary election. However, because the counties will still be conducting an election in November of even-numbered years, it is unclear how significant the savings would be from leaving a small number of races off the general election ballot. Even if a large number of races were decided in the primary election, elections officials would still need to print ballots, operate polling places, and take all other

necessary steps to conduct elections for President of the United States (in presidential election years), for members of Congress, for other elective state and local offices, and for state and local ballot measures.

- 5) Special Elections: Unlike at regularly scheduled elections, at special elections held to fill vacancies in the Legislature and in Congress, a candidate can win the election outright in the primary election if he or she receives more than 50 percent of the vote, in which case no runoff election is held. It could be argued that, in light of that policy, it is appropriate to adopt a similar policy for regularly scheduled elections for those offices. However, there are certain policy considerations to contemplate when establishing laws that govern special elections that may not apply to regularly scheduled elections.

For instance, because there is an interest in filling legislative and congressional vacancies in a timely manner, so that the voters who live in those districts are not denied representation for a long period of time, allowing a candidate to win the election outright in the primary can hasten the filling of those vacancies. This same consideration is not relevant to regularly scheduled elections, since candidates are running for a term that commences after the November election. Determining the candidate who was elected based on the primary election results would not result in that person taking office any sooner.

Additionally, because the timing of special vacancy elections depends on the time at which the vacancy occurs, these elections are often held as standalone elections, with no other candidates or ballot measures appearing on the ballot at the same time. In that case, there could be significant cost savings by avoiding the need to hold a runoff election. On the other hand, in the case of regularly scheduled elections, the general election will be conducted regardless of whether a candidate for a specific office gets more than 60 percent of the vote in the primary election. As noted above, while there may be some cost savings associated with not having to print that race on the ballot at the general election, the election itself will still be held, so the cost savings are likely to be minor relative to the savings that can be incurred by avoiding holding a special runoff election altogether.

Finally, because of the irregular timing of special vacancy elections, and due to the fact that those elections often are not consolidated with other elections, it is much less likely that voter participation in a special general (runoff) election will be higher or more representative of the public than participation in a special primary election will. On the other hand, in the case of regularly scheduled statewide elections, it is almost certain that voter participation will be higher at the general election than at the primary election (every general election in California for which information is available has had a higher turnout than the primary election held that year), so allowing the race to be decided at the general election likely will result in greater participation.

- 6) State Offices Only: This measure applies to elective state office only; it does not apply to elections for United States Senate and for Member of Congress, even though those elections are conducted using the same top two primary election process as most elective state offices. The reason for this distinction is that federal law requires members of Congress to be elected on the first Tuesday after the first Monday in November of even numbered years. In light of this federal law, allowing a candidate for Congress to win election outright in the primary election would violate federal law, since the election for that office would not be held in

November.

- 7) Superintendent of Public Instruction: The only elective state office that does not use the top two primary election system is Superintendent of Public Instruction, which is a non-partisan office. Because it is a non-partisan office, candidates for Superintendent cannot have a party preference printed on the ballot, unlike candidates for offices that are covered by the top two system. In other respects, elections for Superintendent of Public Instruction are similar to elections for offices covered by the top two primary election system, except that a candidate for Superintendent can win the election outright in the primary election if he or she receives more than 50 percent of the vote. In fact, a candidate for Superintendent of Public Instruction has received more than 50 percent of the vote in the primary election, and thus has won the election outright without the need for the race to appear on the ballot at the general election, at least three times in the last 30 years, most recently in 2006.
- 8) Companion Measure: AB 1075 (Olsen), which is also being heard in this committee today, is a companion bill to this measure that would make necessary changes to state statutes to conform to the policy proposed by this constitutional amendment. AB 1075 would become effective only if this constitutional amendment is submitted to and approved by the voters.
- 9) Related Legislation: SCA 14 (Anderson) and SB 148 (Anderson), which are pending in the Senate Elections & Constitutional Amendments Committee, are companion measures that would provide that, if a candidate for State Senator or Member of the Assembly receives at least a majority of the votes cast for the office in a voter-nominated primary election, the candidate would be declared elected, and no general election would be held for that office.

ACA 9 (Gorell) and AB 141 (Gorell), which are pending in this committee, are companion measures that would provide that a write-in candidate for an office that is elected using the voter-nomination primary election procedure is ineligible to appear on the ballot at the general election unless that candidate receives a number of votes equal to at least one percent of all votes cast for the office at the last preceding general election at which the office was filled, even if that candidate is one of the top two vote getters at the primary election. SCA 12 (Lara) and SB 712 (Lara), which are pending in the Senate Elections & Constitutional Amendments Committee, are companion measures that are similar to ACA 9 and AB 141.
- 10) Approval of Voters: As a constitutional amendment, this measure requires the approval of the voters to take effect.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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