

Date of Hearing: June 29, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

SB 1094 (Hernandez) – As Amended June 15, 2016

**SENATE VOTE:** 25-14

**SUBJECT:** Initiatives: petition circulators.

**SUMMARY:** Makes numerous significant changes to provisions of state law governing state initiatives. Specifically, **this bill:**

- 1) Requires at least 10 percent of the signatures collected to qualify a proposed state initiative measure for the ballot to be collected by individuals who did not receive money or other valuable consideration exclusively or primarily for the specific purpose of soliciting signatures of electors on the petition, as specified ("10 percent requirement").
  - a) Provides that signatures on a petition qualify toward meeting the 10 percent requirement if they are collected by a person who is an employee or member of a non-profit organization, other than an organization with the primary purpose of soliciting signatures on initiative petitions, who receives money or other valuable consideration from the organization and as part of that employment or membership solicits signatures for the qualification of an initiative measure, unless a primary purpose of that employment or membership is to solicit signatures on an initiative petition. Defines "member" for the purposes of this provision.
  - b) Provides that signatures solicited by registered voters or employees of a political party who receive money or other valuable consideration from the political party for soliciting signatures on an initiative petition do not qualify toward meeting the 10 percent requirement.
  - c) Provides that signatures solicited through direct mail do not count towards the 10 percent requirement unless the person soliciting the signatures through direct mail, and any other person who organizes, pays, or arranges for the direct mail, is eligible to solicit signatures that qualify toward meeting the 10 percent requirement, as described above. Provides that this provision shall not preclude an organization that has a primary purpose other than soliciting signatures on initiative petitions from soliciting signatures from its members through direct mail and relying on those signatures for the purposes of satisfying the 10 percent requirement.
  - d) Provides that nothing in this bill shall be construed to preclude signatures that are solicited by a person who receives nominal, non-monetary benefits, including food, transportation, or lodging, from qualifying toward meeting the 10 percent requirement.
  - e) Requires verification of a petition that contains a declaration pursuant to the provisions of this bill to be prima facie evidence that the signatures satisfy the 10 percent requirement.

- f) Specifies that if a qualified voter signs a petition for an initiative both on the petition section that qualifies for meeting the 10 percent requirement and on a petition section that does not qualify for meeting the 10 percent requirement, the voter's signature on the petition that meets the 10 percent requirement shall count, and other signature shall not.
  - g) Prohibits a person who receives money or other valuable consideration for the specific purpose of soliciting signatures on a state initiative petition from circulating a petition to collect signatures that qualify towards the 10 percent requirement for the same initiative measure.
- 2) Requires a petition for a proposed state initiative measure that is circulated by a person such that it will qualify toward meeting the 10 percent requirement to be printed on white paper in a contrasting color ink and to include the following notice printed in 12-point boldface type immediately prior to the portion of the petition for voters' signatures:
- "NOTICE TO THE PUBLIC: THIS PETITION IS BEING CIRCULATED BY A VOLUNTEER OR AN EMPLOYEE OF A NONPROFIT ORGANIZATION. YOU ARE ENCOURAGED TO READ THE CONTENTS OF THIS PETITION BEFORE SIGNING."
- 3) Requires a petition for a proposed state initiative measure that is circulated by a person such that it will not qualify toward meeting the 10 percent requirement to be printed on paper of a color other than white in a contrasting color ink and to include the following notice printed in 12-point boldface type immediately prior to the portion of the petition for voters' signatures:
- "NOTICE TO THE PUBLIC: THIS PETITION IS BEING CIRCULATED BY A PERSON PAID TO OBTAIN YOUR SIGNATURE. YOU ARE ENCOURAGED TO READ THE CONTENTS OF THIS PETITION BEFORE SIGNING."
- 4) Requires the circulating title and summary prepared by the Attorney General (AG) to be placed on the first page of each section of the petition in the one-inch space across the top of the page in 18-point roman boldface type.
- 5) Requires a person who solicits signatures on a petition that qualify toward meeting the 10 percent requirement to sign an affidavit that declares all of the following:
- a) That the person did not receive money or other valuable consideration for the specific purpose of soliciting signatures of electors pursuant to the requirements of this bill; and,
  - b) That to the best of his or her knowledge, the signatures on the petition sections circulated by him or her should be counted towards the 10 percent requirement.
- 6) Makes corresponding changes to the process for elections officials to verify signatures submitted on a state initiative petition. Increases the number of days that elections officials have to count and verify signatures on state initiative petitions, as specified. Requires the Secretary of State (SOS) to adopt regulations consistent with these provisions and permits the initial regulations to be adopted as emergency regulations.

- 7) Provides that the signatures on a state initiative petition section are invalid if they are solicited and submitted by a person who engages in intentional fraud, misrepresentation, or other illegal conduct concerning the circulation of the petition, as specified. Provides that the SOS, the AG, any district attorney, or any city attorney of a city having a population in excess of 750,000, may enforce this provision by a civil action in which the plaintiff has the burden of showing a violation by clear and convincing evidence. Prohibits a petition section from being invalidated after the SOS has certified that the measure has qualified for the ballot. Requires the local elections official, if he or she is notified of or discovers any conduct described above, to promptly notify the SOS. Provides that a local elections official who is notified of or discovers any conduct described above, is not permitted to refuse to examine or to stop the examination of the petition or petition sections.
- 8) Provides that the provisions of this bill do not apply to any initiative measure for which the AG issues a circulating title and summary before January 1, 2017.
- 9) Makes various findings and declarations about the initiative process and the influence that special interests and paid circulators have on that process.
- 10) Makes other clarifying, corresponding, and technical changes.

**EXISTING LAW:**

- 1) Allows electors to propose statutes and amendments to the Constitution and to adopt or reject them through the initiative process.
- 2) Requires that a state initiative petition contain a notice alerting voters that the petition may be circulated by a paid signature gatherer or a volunteer, and that voters have the right to ask if a petition circulator is a paid gatherer or volunteer.
- 3) Establishes penalties for fraudulent activity related to signature gathering.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, the SOS indicates that it would incur one-time costs of \$55,000 to revise regulations (General Fund).

**COMMENTS:**

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

The initiative system in California was originally intended as a means to ease the concern about the growing influence that monied interests, most notably the railroads, had on the legislative process. Thus the initiative system was established as a means of giving power back to the California voters. In recent years, however, this process has become increasingly dominated by corporations and wealthy individuals pushing narrower agendas. For numerous measures, volunteers and/or grassroots support are nowhere to be found. The initiative process has become exactly what the process aimed to combat. In many instances, nearly every signature is gathered by paid circulators, earning a fixed amount per signature, with little or no interest in the issue at hand. This may lead to abbreviated, simplistic explanations of the initiative, or in the worst cases, fraud

and deception on the part of the circulator. Currently, initiatives can qualify using solely paid circulators, making volunteers and genuine grassroots support for causes unnecessary, thus granting wealthy individuals and corporations unfettered access to the ballot. In such a system, money, not the quality or wisdom of a proposed policy, is the deciding factor when qualifying a measure for the ballot. In short, the system has devolved into the exact opposite of what Governor Hiram Johnson intended to create over 100 years ago. Although voter registration for eligible adults has remained steady since 2000, general and primary election turnout has plummeted since the high point in 2008. Allowing monied interests unchecked access to the ballots often results in long and confusing ballots, which can discourage voters and be a contributing factor to record low turnouts. In fact, lack of interest is a main reason cited for not voting. Requiring broad-based support for ballot measures will take steps to reignite public interest in the voting process, while drastically reducing the number of issues a voter must be informed on. Passing SB 1094 will be the first step to returning our initiative process to the people.

- 2) **10 Percent Signature Requirement:** Under the provisions of this bill, in order for a state initiative measure to qualify for the ballot, at least 10 percent of the signatures gathered on the petition for that measure would have to be collected on petition sections that were circulated by a person who does not receive money or other valuable consideration exclusively or primarily for the specific purpose of soliciting signatures of electors on the petition, as specified. This "10 percent requirement" does not apply to state referendum or recall petitions, nor does it apply to local initiatives, referenda, or recalls.

While signatures collected by volunteers will count toward meeting this 10 percent requirement, the language of the bill does not require the signatures to be gathered by volunteers in order to qualify to meet the 10 percent requirement. Instead, in certain circumstances, signatures collected by individuals who were paid for their time *could* count toward meeting the 10 percent requirement provided that the person wasn't paid *exclusively or primarily* for the specific purpose of soliciting signatures. This bill provides that signatures will count toward the 10 percent requirement if they are collected by employees and members of nonprofit organizations who receive compensation from that organization and solicit signatures as a part of their employment or membership, as long as the nonprofit organization is not primarily focused on soliciting signatures on petitions. In the case of signatures solicited by direct mail, those signatures would apply toward the 10 percent requirement if the person soliciting the signatures through direct mail and all persons that organize, pay for, and arrange the direct mail are persons who were eligible to solicit signatures that counted toward the 10 percent requirement. Additionally, signatures solicited by direct mail would count toward the 10 percent requirement if they are collected by an organization that is soliciting signatures through direct mail from its members, as long as the organization has a primary purpose other than collecting signatures.

In 1988, the United States Supreme Court ruled that a Colorado prohibition against the use of paid circulators for initiative petitions violated the First Amendment's guarantee of free speech. Writing for a unanimous court, Justice Stevens noted that "[t]he State's interest in protecting the integrity of the initiative process does not justify the prohibition because the State has failed to demonstrate that it is necessary to burden appellees' ability to communicate their message in order to meet its concerns." *Meyer v. Grant* (1988), 486 U.S.

414. It could be argued that the 10 percent requirement imposed by this bill could be susceptible to a court challenge in light of the United States Supreme Court's ruling in *Meyer*. However, the 10 percent requirement in this bill is distinguishable from the law struck down in *Meyer*. Unlike the law considered by the court in *Meyer*, the 10 percent requirement in this bill does not apply to all signatures gathered to qualify a measure for the ballot, but only a small portion of the signatures. Furthermore, the signatures that are gathered to meet that 10 percent requirement do not necessarily have to be collected by individuals who are unpaid if they are gathered by members and employees of a nonprofit organization in furtherance of that nonprofit's objectives.

- 3) **Invalidation of Signatures:** Existing law generally is silent on the issue of whether violations of state law prohibiting improper signature-gathering tactics will result in the signatures on those petitions being invalidated. In at least one case, however, a court invalidated signatures gathered to qualify an initiative for the ballot due to improper signature-gathering tactics by the proponents of the measure. In *San Francisco Forty-Niners v. Nishioka* (1999), 75 Cal.App.4<sup>th</sup> 637, the California Court of Appeals for the First District, Division One, prohibited an initiative measure from appearing on the ballot because the initiative petition included false statements intended to mislead voters, in violation of Section 18600 of the Elections Code. In this case, the false statements appeared on the text of the petition itself. As a result, every person who was asked to sign the petition was exposed to these false statements that were intended to mislead voters.

In a case where petition circulators make false or misleading statements about a proposed ballot measure, or engage in other illegal signature-gathering tactics in an attempt to get voters to sign a petition, it is unclear whether that misconduct can result in signatures being invalidated. Committee staff is not aware of any court cases that have addressed this issue.

This bill explicitly provides that signatures on a petition section are invalid if the signatures were solicited and submitted by a person who intentionally engages in fraud, misrepresentation, or other improper signature-gathering tactics, as specified. In order for signatures to be invalidated under this provision, the SOS, the AG, a district attorney, or a city attorney would have to file a civil action, and would have the burden of showing a violation by clear and convincing evidence, as specified.

- 4) **Signature Verification:** This bill makes corresponding changes to the process for elections officials to count and verify signatures submitted on a state initiative petition to reflect the 10 percent requirement. Under current law, elections officials are required to count and verify signatures on petitions within certain timeframes. While this bill increases the number of days elections officials have to count and verify signatures on state initiative petitions, as specified, will the increase be sufficient? This year an unprecedented number of state ballot measures have been introduced in an effort to be eligible for the November general election. At the time of writing this analysis, currently there are six state ballot measures eligible for the November general election and eight more pending signature verification with county elections officials.

5) **Arguments in Support:** In support, the California School Employees Association writes:

In recent years...the process for gathering enough signatures required for a ballot measure has increasingly been dominated by corporations and wealthy individuals pushing specialized and narrow interests.

Today, bands of paid signature gathers are hired to circulate petitions among the public. Often times these paid circulators live in other states and receive a fixed amount of money for each signature gathered, ranging from \$1 to over \$5 per signature. This lack of genuine connection to the community may lead to oversimplified explanations of initiatives, or in the worst case, fraud or deception on the part of the circulator.

This bill still allows for the use of paid signature circulators, but requires at least [10%] of signatures gathered to be obtained by volunteer efforts in order to qualify for the ballot. This threshold will ensure that measures which make the ballot truly possess widespread grassroots support and have a stronger nexus to the will of the electorate. Also, this bill will create stronger penalties against fraud and misrepresentation when petitions are circulated to protect the integrity of the initiative process.

6) **Arguments in Opposition:** In opposition, the Howard Jarvis Taxpayers Association writes:

This bill undermines the People's reserved power of initiative by advantaging certain special interests to the detriment of California voters who seek to preserve the last best hope the state has for reform.

SB 1094 states that an initiative measure must contain at least 10 percent non-paid signatures. This represents an arbitrary threshold that will be challenging for entities not coordinating with non-profits to accomplish, and may well be unconstitutional. In addition, singling out non-profits through a host of loopholes (including unions) and allowing them to be exempted from the above requirements puts government in a position of playing politics at the ballot box and is not sound public policy.

7) **Previous Legislation:** AB 857 (Fong) of 2013, would have made numerous significant changes to provisions of state law governing state initiatives similar to those proposed by this bill. AB 857 was vetoed by Governor Brown. In his veto message the Governor stated that "Requiring a specific threshold of signatures to be gathered by volunteers will not stop abuses by narrow special interests - particularly if 'volunteer' is defined with the broad exemptions as in this bill. Efforts to make the system fairer and more reflective of sound government should be considered. But this measure falls short of returning to the citizen-driven system originally envisioned in 1911."

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Labor Federation (co-sponsor)

California Professional Firefighters (co-sponsor)

American Federation of State, County and Municipal Employees, AFL-CIO

California Faculty Association

California School Employees Association

California State Council of the Service Employees International Union

Courage Campaign

Equality California

Secretary of State Alex Padilla

**Opposition**

Howard Jarvis Taxpayers Association

**Analysis Prepared by:** Nichole Becker / E. & R. / (916) 319-2094