

Date of Hearing: June 7, 2023

ASSEMBLY COMMITTEE ON ELECTIONS  
Isaac G. Bryan, Chair  
SB 297 (Allen) – As Introduced February 2, 2023

**AS PROPOSED TO BE AMENDED**

**SENATE VOTE:** 30-8

**SUBJECT:** Elections: initiatives and referenda: withdrawal.

**SUMMARY:** Allows the proponents of a statewide initiative or referendum to file a notice withdrawing the measure that is contingent on the enactment of a particular legislative measure. Reduces, from *all* of the proponents to a *majority* of the proponents, the number of proponents of a statewide initiative or referendum who must sign a written notice in order to withdraw the measure after the petitions for that measure have been filed, as specified. Specifically, **this bill:**

- 1) Allows a statewide initiative or referendum measure to be withdrawn by a written notice signed by a *majority* of the proponents of the measure, instead of requiring the signatures of *all* of the proponents as is required under existing law, if the measure is withdrawn after the petitions for that measure are filed with the appropriate elections official, but before the Secretary of State (SOS) certifies that the measure has qualified for the ballot.
- 2) Permits the proponents of a statewide initiative or referendum to file a written notice of withdrawal, signed by a majority of the proponents, that is contingent on the enactment of a particular legislative measure, with an identification of the publication date of the most recent version of the legislative measure. Requires the SOS to deem a contingent withdrawal to be effective if the legislative measure identified in the notice is enacted and given a chapter number by the SOS before the SOS certifies that the initiative or referendum has qualified for the ballot.
  - a) Requires the SOS to reject any notice of contingent withdrawal that is contingent on any action other than the enactment of a particular legislative measure.
  - b) Provides that if the legislative measure is not given a chapter number before the initiative or referendum has qualified for the ballot, or if the legislative measure is amended after the notice is filed with the SOS, the notice of contingent withdrawal shall not be effective.
  - c) Permits the proponents to file a new notice of contingent withdrawal at any time before the SOS certifies that the initiative or referendum has qualified for the ballot.
  - d) Permits the proponents to cancel the contingent withdrawal at any time before the legislative measure is enacted and given a chapter number by the SOS.

- 3) Provides that a notice of withdrawal that is not contingent on the enactment of legislation shall take precedence over a notice of contingent withdrawal if the proponents of the measure file both with the SOS.
- 4) Makes conforming changes.

**EXISTING LAW:**

- 1) Provides that the term “proponent” or “proponents,” as related to an initiative or referendum measure, means the following:
  - a) In the case of a statewide initiative or referendum measure, the elector or electors who submit the text of a proposed initiative or referendum to the Attorney General (AG) with a request that the AG prepare a title and summary of the measure.
  - b) In the case of non-statewide initiative and referendum measures, the person or persons who publish a notice or intention to circulate petitions, or, where publication is not required, who file petitions with the elections official or legislative body. (Elections Code §342)
- 2) Permits any person to engage in good faith bargaining between competing interests to secure legislative approval of matters embraced in a statewide or local initiative or referendum measure. Permits the proponents of a statewide or local initiative or referendum measure, as a result of such negotiations, to withdraw the measure at any time *before* filing the petition with the appropriate elections official. (Elections Code §9604(a))
- 3) Permits the proponents of a *statewide* initiative or referendum measure to withdraw the measure *after* filing the petition with the appropriate elections official at any time before the SOS certifies that the measure has qualified for the ballot, as specified. (Elections Code §9604(b))
- 4) Provides that withdrawal of a statewide or local initiative or referendum measure shall be effective upon receipt by the appropriate elections official of a written notice of withdrawal, signed by all proponents of the measure. (Elections Code §9604(b) & (c))
- 5) Requires the SOS, upon receipt from one or more elections officials of a statewide initiative or referendum petition that is certified to have been signed by a sufficient number of voters for the measure to qualify to appear on the ballot, to do all of the following:
  - a) Notify the proponents and immediately transmit to the elections official or registrar of voters of every county or city and county in the state a notice directing that signature verification be terminated.
  - b) In the case of an initiative measure, do all of the following:
    - i) Identify the date of the next statewide general election, as specified, or the next special statewide election, that will occur not less than 131 days after the date the SOS receives the petition certified to have been signed by the requisite number of

- qualified voters.
- ii) On the 131st day prior to the date of the identified election, do all of the following:
    - (1) Issue a certificate of qualification certifying that the initiative measure, as of that date, is qualified for the ballot at the identified election.
    - (2) Notify the proponents of the initiative measure and the elections official of each county that the measure, as of that date, is qualified for the ballot at the identified election.
    - (3) Include the initiative measure in a list of all statewide initiative measures that are eligible to be placed on the ballot at the identified election, and publish the list on the SOS's website.
  - c) In the case of a referendum measure, do all of the following:
    - i) Issue a certificate of qualification certifying that the referendum measure, as of that date, is qualified for the ballot.
    - ii) Notify the proponents of the referendum measure and the elections official of each county that the measure, as of that date, is qualified for the ballot.
    - iii) Include the referendum measure in a list of all statewide referendum measures that have qualified for the ballot and publish the list on the SOS's website. (Elections Code §9033)
- 6) Requires the SOS to submit a qualified statewide initiative measure to the voters at the next general election held at least 131 days after it qualifies, or at any special statewide election held prior to that general election. (California Constitution, Article II, Section 8(c))
- 7) Requires the SOS to submit a qualified statewide referendum measure to the voters at the next general election held at least 31 days after it qualifies, or at a special statewide election held prior to that general election. (California Constitution, Article II, Section 9(c))
- 8) Provides that a statewide initiative measure is deemed qualified for the ballot for the purposes of Article II, Section 8(c) of the California Constitution, and that a statewide referendum measure is deemed qualified for the ballot for the purposes of Article II, Section 9(c) of the California Constitution, upon the issuance of a certificate of qualification for that measure by the SOS, as specified. (Elections Code §9033(d))

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

**COMMENTS:**

1) **Proposed Amendments:** In response to concerns raised by committee staff, the author is proposing amendments to expressly prohibit proponents from attaching conditions to a contingent withdrawal other than the enactment of a specified legislative measure, to prohibit a contingent withdrawal from being applicable if the specified legislative measure is chaptered after the SOS certifies that the initiative or referendum has qualified for the ballot, and to clarify that the SOS is responsible for determining whether the conditions of a contingent withdrawal have been met. This analysis reflects those proposed amendments.

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

SB 1253 (Steinberg, Chapter 697, Statutes of 2014) created a mechanism for initiative proponents to remove their measure from the ballot before the Secretary of State officially qualifies it for the next general election. This withdrawal option was intended to provide initiative proponents and the Legislature with the ability to resolve a policy issue through the legislative process, which affords greater opportunity for input and negotiations. Under current law, however, in order for a measure to be removed from the ballot, the Secretary of State must receive a notice from all proponents confirming they agree to do so. For an initiative with several proponents, it is possible for a majority to agree to remove the measure from the ballot if they believe a legislative alternative thoroughly addresses their concern, yet a single holdout can disagree and force the measure to statewide election.

SB 297 reforms the process of withdrawing a statutory or constitutional initiative or referendum by allowing a majority of proponents to agree to remove the measure from the state ballot in reaction to an adequate legislative response. The bill also establishes a contingent withdrawal process with the Secretary of State through which initiative proponents can pre-file a notice of their intent to withdraw their measure on the condition that the Legislature and the Governor approve a specific bill that proponents believe solves the problem they sought to address.

3) **Withdrawal of State Initiative Measures and Previous Legislation:** SB 1253 (Steinberg), Chapter 697, Statutes of 2014, also known as the “Ballot Initiative Transparency Act,” made significant changes to the initiative process, including creating a formal process for the proponents of a statewide initiative measure to withdraw the measure after filing the petition with the elections official. That withdrawal process was designed to allow a proponent to remove a measure from the ballot if the proponent came to a compromise over the measure with the Legislature after the proponent submitted petition signatures. Under that process, the withdrawal of a state initiative measure is effective upon receipt by the SOS of a written notice of withdrawal, signed by all proponents of the measure.

According to background materials provided by the author, he introduced this bill in response to his experience in 2022 with negotiations between the Legislature and the proponents of a state initiative measure that sought to reduce plastic waste in California. On July 19, 2021, Secretary of State Shirley N. Weber, Ph.D., announced that the proponents of that

initiative—the California Recycling and Plastic Pollution Reduction Act—had filed a sufficient number of valid signatures for the measure to appear on the ballot. Based on that determination, Secretary Weber indicated that the initiative was eligible for the November 8, 2022, general election ballot, and announced that she would certify the initiative as qualified for the November 8, 2022, general election ballot on June 30, 2022, unless the measure was withdrawn by the proponents prior to that certification.

Negotiations between the Legislature, the proponents of the initiative, and other key stakeholders, led to the enactment of SB 54 (Allen), Chapter 75, Statutes of 2022, as an alternative to the initiative. SB 54 requires certain single-use plastic packaging and food service ware sold in California to be recyclable or compostable by 2032, among other provisions. Following the enactment of SB 54 on June 30, 2022, the proponents of the initiative withdrew it from the ballot. According to information provided by the author, only two of the three proponents of the measure initially submitted withdrawal letters to the SOS. The third proponent initially withheld sending a withdrawal letter, creating the possibility that voters could be asked to weigh-in on the initiative measure notwithstanding the fact that the Legislature had worked with the proponents to adopt an alternative to that measure. The third proponent subsequently submitted a withdrawal letter, however, and the initiative measure did not appear on the ballot.

- 4) **Conditional or Contingent Withdrawals of State Initiative Measures:** State law does not expressly permit initiative proponents to attach conditions to a notice of withdrawal that they submit to the SOS in accordance with the procedure created by SB 1253. Nonetheless, on at least one occasion, the SOS accepted a statement of withdrawal that was submitted by the proponent of an initiative in which the proponent indicated that he was consenting to the withdrawal of the measure only if specified conditions were met.

Specifically, in April 2020, the SOS announced that initiative #1864, which would change the requirements for transferring a property tax base from one property to a replacement property, was eligible to appear on the November 3, 2020, general election ballot. In a letter to the SOS dated June 25, 2020, the proponent of that initiative requested to withdraw the measure from the ballot if and only if two specific conditions were satisfied by specified dates in the future. Specifically, the letter indicated that the withdrawal of the initiative was conditioned on (1) the Legislature’s approval of the June 23, 2020, version of ACA 11 (Mullin) on or before June 26, 2020, and (2) the Legislature’s approval of and the Governor’s signature on the June 23, 2020, version of SB 300 (Umberg) on or before July 1, 2020. ACA 11 (Mullin), Resolution Chapter 31, Statutes of 2020, which proposed a constitutional amendment to allow property tax base year value transfers for replacement properties without regard to the replacement property’s location or value, among other provisions, was described by the proponent of the initiative as a legislative compromise to replace that initiative. SB 300 (Umberg), Chapter 26, Statutes of 2020, waived the statutory deadline for specified ACAs—including ACA 11—to qualify for the November 3, 2020, statewide general election ballot if those ACAs were approved by the Legislature on or before July 1, 2020.

The letter further specified that if those conditions were not satisfied, the proponent would not withdraw the measure from the ballot, and that if the SOS determined that he could not accept a conditional withdrawal, that the proponent did not consent to any withdrawal of the

initiative. Finally, the letter purported to give the proponent's designated counsel the authority to determine whether the proponent's conditions were satisfied and whether the withdrawal could be enforced.

On June 25, 2020, the Chief Counsel to the SOS sent a response to the letter from the proponent. In that response, the Chief Counsel stated that “[u]nder current law, we must still certify Initiative #1864 as qualified for the November 3, 2020 ballot.” The letter continued “however, should Assembly Constitutional Amendment 11 be passed and Senate Bill 300 be passed and signed into law, then, and only then, will we accept the withdrawal of Initiative #1864.”

Consistent with the Chief Counsel's letter to the proponent of initiative #1864, on June 25, 2020, the SOS certified that initiative #1864 was qualified for the November 3, 2020 ballot. On June 26, 2020, the Legislature gave final approval to ACA 11. On July 1, 2020, the Governor signed SB 300, and shortly thereafter, the SOS reported that initiative #1864 had been withdrawn by the proponent and thus was no longer qualified for the November 3, 2020 ballot.

Notwithstanding the fact that the SOS accepted the proponent's conditional withdrawal of initiative #1864, it is unclear whether existing law allows a proponent to place conditions on the withdrawal of an initiative measure that must be satisfied in order for the SOS to recognize that withdrawal.

- 5) **Ballot Measure Proponents:** As detailed above, existing law permits a state or local initiative or referendum measure to be withdrawn from the ballot through the submission of a written notice that is signed by *all* of the proponents of the measure. There is no minimum or maximum number of proponents that a ballot measure may have. According to background information provided by the author, in the last decade, 336 state initiative measures have been proposed, and those measures have had as few as one and as many as 27 proponents.

The provisions of this bill that allow a statewide initiative or referendum to be withdrawn by a written notice signed by a *majority* of the proponents of the measure would affect measures with at least three proponents. According to the information provided by the author, just 10% of state initiative measures in the last decade had three or more proponents.

- 6) **Previous Legislation:** SB 684 (Hertzberg) of 2020 would have prohibited the proponents of a statewide initiative or referendum measure who are withdrawing their measure pursuant to existing law from including any conditions on that withdrawal. SB 684 was approved by the Assembly Elections & Redistricting Committee (the predecessor to this committee) by a 7-0 vote, and was approved by the Assembly by a 72-0 vote, but died on the Senate inactive file.
- 7) **Arguments in Support:** In support of this bill, the League of Women Voters of California writes:

The League of Women Voters of California supports this bill because we believe expanding the withdrawal methods creates the time and opportunity for review, negotiation, and compromise with the Legislature. The League was a co-sponsor

of SB 1253 (Steinberg) (2014) instituting the withdrawal process. Too often, we only find out about problems after a measure has passed and we are implementing a flawed law. A contingent withdrawal process would streamline engagement by proponents and the Legislature to find a way to implement a well thought out legislative solution to the problem.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

League of Women Voters of California

**Opposition**

None on file.

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