

Date of Hearing: June 25, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 654 (Leno & Padilla) – As Amended: May 24, 2013

SENATE VOTE: 28-9

SUBJECT: Ballot measure petitions: translations.

SUMMARY: Requires the Attorney General (AG), if proponents intend to circulate a proposed initiative or referendum in a county covered by the federal minority language laws, to translate the title and summary of the proposed initiative or referendum into the applicable languages covered in that county. Requires the Secretary of State (SOS), if proponents intend to circulate a proposed recall petition in a county covered by the federal minority language laws, to translate the title and summary of the proposed recall petition into the applicable languages covered in that county. Specifically, this bill:

- 1) Makes the following findings and declarations:
 - a) California is a diverse state with a government selected by the votes of its citizens. The state's robust initiative process is designed to put lawmaking in the hands of the people, and continues to play an important role in setting public policy with regard to education, civil rights, fiscal policy, and other issues that affect the lives of all Californians, including the state's 6.9 million limited-English-proficient residents. The referendum and recall processes also play an important role in developing public policy;
 - b) The signature-gathering phase to qualify these proposed measures for the ballot is an integral part of the state's electoral system;
 - c) The federal Voting Rights Act (VRA) of 1965 (42 U.S.C. Sec. 1971 et seq.) prohibits discriminatory voting practices and protects the rights of voters with limited English proficiency by requiring covered jurisdictions to provide voting materials in the language of specified minority groups. However, ballot measure petitions, which are circulated for signature in hopes of qualifying a measure for the ballot, are not required to be provided in other languages under existing law. As a result, millions of voters with limited English proficiency are excluded from playing a role in determining which proposed measures qualify for the ballot; and,
 - d) The provision of translated versions of circulating titles and summaries of initiative and referendum measures, and of translated versions of recall petitions, will further the purpose of the federal VRA and ensure that voters with limited English proficiency have the ability to exercise their fundamental democratic rights.
- 2) Deletes a requirement that the AG, within 15 days after the receipt of the final version of a proposed initiative measure, provide a copy of the title and summary of the proposed initiative measure to SOS, and instead requires the AG to provide a copy only to the proponents.

- 3) Deletes a requirement that the AG, within 10 days after the receipt of a proposed referendum measure, provide a copy of the circulating title and summary of the measure to SOS and proponents, and instead requires the AG to provide a copy only to the proponents.
- 4) Requires the AG to provide a copy of the circulating title and summary of a proposed initiative measure to the proponents and to include a notice stating that, if the proponents intend to circulate the proposed initiative or referendum measure, that the proponents shall, no later than five days after receipt of the copy of the circulating title and summary, submit to the AG a list of the counties in which the petition will be circulated that are covered by Section 203 (42 U.S.C. Sec. 1977aa-1a) or Section 4(f)(4) (42 U.S.C. Sec. 1973b(f)(4)) of the federal VRA.
- 5) Requires the proponents, if they intend to circulate the initiative or referendum measure petition, to submit to the AG a list of the counties in which the petition will be circulated that are covered by the federal minority language laws no later than five days after receipt of the copy of the circulating title and summary.
- 6) Requires the AG, upon receipt of the list of the counties, to prepare a translation of the circulating title and summary of the proposed initiative or referendum measure in each applicable minority language for the counties identified by the proponents that are covered by federal minority language laws. Requires the AG, no later than 10 days after receipt of the list of counties, to provide a copy of each translation to the proponents.
- 7) Requires the AG, within 10 days after receipt of the list of the counties identified by the proponents, to provide to the SOS a copy of the circulating title and summary of the proposed initiative or referendum, its unique numeric identifier, the list of counties identified by the proponents, and each translation of the circulating title and summary.
- 8) Requires the SOS to provide the relevant translation to the county elections official in each county identified by the proponents.
- 9) Requires the circulator of an initiative or referendum petition that circulates the petition in a county covered by the federal minority language laws to attach the translated circulating title and summary prepared by the AG to the petition and make it available to each person whom the circulator solicits in that language to sign the petition. Requires the circulator to provide a copy of the translated circulating title and summary to any person upon request.
- 10) Requires the proponents of a recall of a state officer, at the time of filing with the SOS two blank copies of the recall petition, to submit to the SOS a list of the counties in which the petitions will be circulated that are covered by Section 203 or Section 4(f)(4) of the federal VRA.
- 11) Requires the SOS, within 10 days after ascertaining the proposed recall petition meets form and wording requirements, to prepare a translation of the petition in each applicable minority language for the counties identified by the proponents that are covered by the federal minority language laws and provide a copy of each translation to the proponents.
- 12) Requires a copy of the translation of the recall petition prepared by the SOS to be attached to the petition and available to each person whom the circulator solicits in that language to sign

the petition. Requires the circulator to provide a copy of the applicable translation of the petition to any person upon request.

EXISTING FEDERAL LAW:

- 1) Requires a state or a political subdivision of a state to provide voting materials in the language of a minority group when that group within the jurisdiction has an illiteracy rate that is higher than the national illiteracy rate, and the number of the United States citizens of voting age in that single language group within the jurisdiction meets at least one of the following:
 - a) Numbers more than 10,000;
 - b) Makes up more than five percent of all voting age citizens; or,
 - c) On an Indian reservation, exceeds five percent of all reservation residents.
- 2) Requires a state or political subdivision of a state to provide voting materials in the language of a minority group if all of the following apply:
 - a) Over five percent of the voting age citizens were, on November 1, 1972, members of a single language minority group;
 - b) Registration and election materials were provided only in English on November 1, 1972; and,
 - c) Fewer than 50 percent of the voting age citizens were registered to vote or voted in the 1972 Presidential election.
- 3) Defines language minorities or language minority groups, for the purposes of the above provisions, to mean persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

EXISTING STATE LAW:

- 1) Requires the proponent of a proposed initiative or referendum to submit the proposal to the AG who must prepare a circulating title and summary of its chief points and purposes. Requires the AG to provide a copy of the circulating title and summary to the SOS within 15 days after receipt of the final version of a proposed initiative measure, or if a fiscal estimate is to be included, within the 15 days after receipt of the fiscal estimate prepared by the Department of Finance and the Joint Legislative Budget Committee, which have 25 days to prepare the fiscal estimate.
- 2) Requires the AG to provide a copy of the circulating title and summary of a proposed referendum measure to the proponents of the measure and the SOS within 10 days after receipt of the proposed referendum.
- 3) Requires the proponents of a proposed initiative or referendum, at the time of submitting the text of the proposed measure to the AG, to pay a fee of two hundred dollars (\$200), which

will be refunded to the proponents if the measure qualifies for the ballot within two years from the date of the title and summary.

- 4) Requires the proponents of a recall of a state officer to file a notice of intention with the SOS that includes the name and title of the officer sought to be recalled, a statement of the reasons for the proposed recall, and the name, signature and residence address of each recall proponent. Requires a copy of the notice of intention to be served by personal delivery, or certified mail, to the officer sought to be recalled. Permits the state officer sought to be recalled to file with the SOS an answer to the statement of the proponents. Requires the answer, if any, of the officer sought to be recalled, to be included on the petition. Requires the petition to indicate if no answer was provided.

FISCAL EFFECT: Unknown

COMMENTS:

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

California is a diverse state with a government selected by the votes of its citizens. In addition, we have a robust initiative process designed to put lawmaking in the hands of the people. Federal law recognizes that many Americans rely heavily on languages other than English, and that they require information in minority languages in order to be informed voters and participate effectively in our representative democracy.

According to the Migration Policy Institute (MPI), California is home to the largest foreign-born LEP population in the United States – approximately 5,807,401 persons, to be precise – many of whom are eligible to vote. 46.5% of California’s naturalized U.S. citizens age 5 and older are limited- or non-English-proficient.

The Federal Voting Rights Act of 1965 protects the rights of limited English proficient (LEP) voters by providing language accessible election materials (i.e. official state voter’s guide and sample ballot) in their primary language. In California, the languages covered by the Federal Voting Rights Act include Spanish, Chinese, Vietnamese, Japanese, Korean, and Tagalog. However, ballot initiative and referendum petitions circulated in hopes of qualifying for the ballot are not covered by current law. As a result, millions of LEP voters [are] excluded from playing a role in determining what initiatives qualify for the ballot.

As the initiative system continues to play an important role in setting policy in California, it is imperative that we provide initiative material in languages set by the Federal Voting Rights Act. SB 654 will allow LEP voters to fully participate in the initiative process by requiring the Attorney General to translate the title and summary of the proposed initiative or referendum, or the recall petition, as applicable, into the applicable languages covered in that county.

- 2) Voting Rights Act of 1965: The 15th Amendment to the United States Constitution provides, in part, "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of

servitude." Additionally, the 15th Amendment authorizes Congress to enact legislation to enforce its provisions.

Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance by state officials to enforce the 15th Amendment. As a result, Congress passed and President Johnson signed the VRA. The VRA provides, among other provisions, that "[n]o voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge that right of any citizen of the United States to vote on account of race or color."

In 1975, Congress adopted the language minority provisions of Sections 4(f)(4) and 203 of the VRA. Congress extended these provisions in 1982, 1992, and 2006. Sections 4(f)(4) and 203 of the VRA require certain jurisdictions with significant populations of voting age citizens who belong to a language minority community to provide voting materials in a language other than English.

Specifically, Sections 203 and 4(f)(4) require that when a covered state or political subdivision "[p]rovides registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language."

- 3) New Census Data: On October 13, 2011, the U.S. Census Bureau released a notice of determination of minority language status following the 2010 census. Based on the findings, several California counties will be required to provide materials to voters in new or additional languages. Pursuant to Section 203, the State of California is required to provide bilingual voting assistance to Spanish speakers. Additionally, pursuant to Section 203, 27 of California's 58 counties are individually required to provide bilingual voting assistance to Spanish speakers, and eight counties (Alameda, Los Angeles, Orange, Sacramento, San Diego, San Francisco, San Mateo, and Santa Clara) are required to provide voting materials in at least one language other than English and Spanish. Pursuant to Section 4(f)(4) of the Act, three counties are required to provide bilingual voting assistance to Spanish speakers, though two of those counties are also required to provide assistance pursuant to Section 203. In total, 28 of California's 58 counties are required to provide voting materials in at least one language other than English.

Below is the breakdown of the covered counties and minority languages according to the Federal Register from last year.

Statewide: Spanish

Alameda: Chinese, Spanish, Tagalog, Vietnamese

Colusa: Spanish

Contra Costa: Spanish

Fresno: Spanish

Glenn: Spanish

Imperial: Spanish

Kern: Spanish

Kings: Spanish

Los Angeles: Chinese, Japanese, Korean, Thai, Khmer, Hindi, Spanish, Tagalog, Vietnamese

Madera: Spanish
Merced: Spanish
Napa: Spanish
Orange: Chinese, Korean, Spanish, Vietnamese
Riverside: Spanish
Sacramento: Chinese, Spanish
San Benito: Spanish
San Bernardino: Spanish
San Diego: Chinese, Spanish, Tagalog, Vietnamese
San Francisco: Chinese, Spanish
San Joaquin: Spanish
San Mateo: Chinese, Spanish
Santa Barbara: Spanish
Santa Clara: Chinese, Spanish, Tagalog, Vietnamese
Stanislaus: Spanish
Tulare: Spanish
Ventura: Spanish

The requirement that election materials be translated does not extend to initiative and referendum materials or recall petitions prior to qualification for the ballot.

- 4) Logistics: Current law requires the SOS to translate all qualified ballot titles and summaries for the state voter pamphlet, consequently the SOS already has an established administrative process in place for translating the ballot title and summaries. However, this bill instead places the translation requirement on the AG, resulting in a new duty for the AG. The committee may wish to consider how this new process would logistically work. For example, if the AG translates the circulating title and summary for an initiative that ends up qualifying for the ballot – would the SOS still be responsible for translating the title and summary for the state voter pamphlet or would the translation from the AG's office be used instead? How would that situation be reconciled? The committee may wish to consider whether it would be more appropriate for the SOS to prepare the translations required by this bill.
- 5) Practical Application: Proponents of the bill argue that limited English proficient voters are left out of the process of determining which measures qualify for the ballot. This bill, by requiring proponents to provide the AG a list of the counties in which the proposed measures will be circulated, will incorporate limited English proficient voters. For example, if proponents want to collect signatures on a proposed initiative in Sacramento County, the AG would be required to translate the circulating title and summary into both Spanish and Chinese. Moreover, proponents who are soliciting signatures for a proposed statewide initiative or referendum, would theoretically find it necessary, due to its large population, to solicit signatures for any statewide proposed measure in Los Angeles County. Consequently, the AG would be required to translate the title and summary into approximately 9 different languages and the cost of those translations would be absorbed by the state.

Additionally, as mentioned above, this bill requires the proponents, if they intend to circulate the initiative or referendum measure petition, to submit to the AG a list of the counties in which the petition will be circulated that are covered under the federal minority language laws. Subsequently, this bill requires the AG to prepare translations of the circulating title

and summaries of the proposed measures. However, what happens if the proponents decide to add a county that was left off their initial list? Will the proponents be required to start the process all over again or could they submit a secondary request? The committee may wish to consider whether requiring the AG to translate the circulating titles and summaries into every language would make for a more efficient and seamless process for both the AG and the proponents of the proposed measures.

- 6) Costs: Current law requires an initiative measure to be translated in its entirety, including title and summary, for the official state voter information guide, if it qualifies for the ballot. Therefore, measures that qualify for the ballot do not present an additional cost to the state. This bill would require the translations of the title and summary to occur earlier in the initiative process. However, translations for an initiative or referendum measure or a recall petition prior to qualification for the ballot will represent new costs. According to background information provided by the author's office, the Office of State Publishing, which translates and prints the official state voter information guide for the SOS, incurred the following costs for translation services for 2012 primary and general elections:

Spanish:	21 cents per English word (\$21 for 100 word title/summary)
Japanese:	24 cents per English word (\$24 for 100 word title/summary)
Chinese:	24 cents per English word (\$24 for 100 word title/summary)
Vietnamese:	24 cents per English word (\$24 for 100 word title/summary)
Korean:	24 cents per English word (\$24 for 100 word title/summary)
Tagalog:	24 cents per English word (\$24 for 100 word title/summary)
Asian Indian (Hindi):	35 cents per English word (\$35 for 100 word title/summary)
Thai:	30 cents per English word (\$30 for 100 word title/summary)
Khmer:	24 cents per English word (\$24 for 100 word title/summary)

As noted above, eight counties are currently required to translate election materials in one language other than English and Spanish. The committee may wish to consider whether the current \$200 filing fee for submitting a proposed initiative measure to the AG for the title and summary should be raised commensurately to cover the additional costs of translations.

- 7) Recall Petitions: This measure requires the SOS to translate recall petitions for state officers. As a result, the entire recall petition, including the explanation for the recall effort, the officer's response to the recall, as well as other aspects on the petition, would be required to be translated. Although there has been a low frequency of state officer recalls – approximately 10 attempts in the last decade, two of which qualified for the ballot – this bill nonetheless would result in a new duty for the SOS. However, as mentioned above, the SOS already has an established administrative process in place for translating qualified ballot titles and summaries for the voter pamphlet and the SOS is already involved in the recall petition process, consequently, this new duty may not be significantly burdensome.
- 8) Proposed Amendment: Current law requires the AG to provide a copy of the circulating title and summary to the SOS within 15 days after receipt of the final version of a proposed initiative measure, or if a fiscal estimate is to be included, within the 15 days after receipt of the fiscal estimate prepared by the DOF and the JLBC, which have 25 days to prepare the fiscal estimate. In addition, current law requires the AG to provide a copy of the circulating title and summary of a proposed referendum measure to the proponents of the measure and the SOS within 10 days after receipt of the proposed referendum. Existing law states that the

date the copy of the circulating title and summary is delivered or mailed to the proponents is the "official summary date." This bill deletes the requirement that the AG provide a copy of the circulating title and summary of a proposed initiative or referendum measure, as specified, to the SOS, and instead requires the AG to provide a copy only to the proponents. According to the SOS's office, this change would be problematic as it delays the date by which the SOS receives the English language version of the title and summary. The date on which the English language version is delivered to the proponents is the official summary date upon which deadlines are triggered. Moreover, on the official summary date, or within one business day, the SOS determines the official calendar of deadlines for the initiative or referendum petitions and informs the proponents, county elections officials, and the public of the calendar. This bill, which delays the date by which the SOS receives the title and summary until after the translations have been completed will extend that process by 15 days. Consequently, the committee staff recommends amending this bill to ensure the SOS would receive the English language version of the title and summary on the same date as the proponents and require the official summary date to begin once the AG has completed the translations and submitted the translated title and summaries to the SOS and the proponents. This will ensure the SOS, which serves as a clearinghouse for information on state initiatives and referendums, receives the English version of the circulating title and summary and can begin the process of creating the calendar of deadlines and informing county elections officials and the public. In addition, the amendment will ensure the official summary date is determined after the translations are complete thereby not delaying the process.

While the author has agreed to accept this amendment as an author's amendment, due to a timing issue, this proposed amendment will not be taken in the Assembly Elections and Redistricting Committee and instead will be taken in the Assembly Appropriations Committee if the bill passes out of this committee.

9) Arguments in Support: The Greenlining Institute, the sponsor of this bill, writes in support.

Over 2.6 million eligible voters in California are limited English proficient (LEP), including over 47% of naturalized citizens, all of whom are excluded from our so-called "citizen democracy." The Federal Voting Rights Act of 1965, acknowledging that language barriers can be a form of discrimination and intimidation in the electoral process, requires such programs as bilingual poll workers and translated voting materials to facilitate participation by LEP voters. Under this law, California already must provide translated voting materials in up to nine languages: Chinese, Hindi, Japanese, Khmer (Cambodian), Korean, Spanish, Tagalog, Thai, and Vietnamese. This assistance is not currently provided in the initiative system...

By providing language-accessible initiative petitions, SB 654 would promote greater civic participation among LEP voters and help to protect LEP voters against undue manipulation by paid signature-gathers, who may speak the voter's language but misstate the details of a petition.

10) Previous Legislation: SB 1233 (Padilla) of 2012, which was substantially similar to this bill, was vetoed by Governor Brown. In his veto message, the Governor stated that while the "provisions of this bill are well intended. Unfortunately, however, they add substantial burdens to the petition process without commensurate benefit. I would also note that the vast majority of initiatives submitted to the Attorney General's Office never get to the circulation

stage."

REGISTERED SUPPORT / OPPOSITION:

Support

The Greenlining Institute (sponsor)
American Civil Liberties Union of California
Asian Law Caucus
Asian Pacific American Legal Center
Asian Pacific Environmental Network
California Association of Nonprofits
California Calls
California Communities United Institute
California Immigrant Policy Center
California Labor Federation
California Nurses Association
California Teachers Association
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
League of Women Voters of California
MapLight
Mexican American Legal Defense and Educational Fund
National Association of Latino Elected and Appointed Officials

Opposition

None on file.

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