

Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 684 (Hertzberg) – As Amended July 27, 2020

SENATE VOTE: (vote not relevant)

SUBJECT: Initiative measures: withdrawal.

SUMMARY: Prohibits 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. Specifically, **this bill:**

- 1) Prohibits a written notice of withdrawal that is submitted by the proponents of a statewide initiative or referendum measure pursuant to existing law from including any conditions that must be satisfied in order for the Secretary of State (SOS) to deem the withdrawal to be effective.
- 2) Requires the SOS to reject any written notice of withdrawal that is submitted by the proponents of a statewide initiative or referendum measure if the notice purports to impose any conditions on the withdrawal of the measure.
- 3) Specifies that this bill's provisions shall become operative on January 1, 2021.

EXISTING LAW:

- 1) 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.
- 2) 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.
- 3) Provides that withdrawal of a statewide initiative or referendum measure shall be effective upon receipt by the SOS of a written notice of withdrawal, signed by all proponents of the measure.
- 4) 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 a statewide 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 statewide 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.
- 5) Requires the SOS, pursuant to subdivision (c) of Section 8 of Article II of the California Constitution, 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. Requires the SOS, pursuant to subdivision (c) of Section 9 of Article II of the California Constitution, 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. Permits the Governor to call a special statewide election for the initiative or referendum measure.
- 6) Provides that a statewide initiative measure is deemed qualified for the ballot for the purposes of subdivision (c) of Section 8 of Article II of the California Constitution, and that a statewide referendum measure is deemed qualified for the ballot for the purposes of subdivision (c) of Section 9 of Article II of the California Constitution, upon the issuance of a certificate of qualification for that measure by the SOS, as specified.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

In 2014, the Legislature enacted SB 1253 (Steinberg) to encourage negotiations regarding initiative measures by providing an opportunity for policy controversies to be solved through the legislative process, thus saving the costs and uncertainty of the ballot process. SB 1253 provides that “any person may engage in good faith bargaining between competing interests to secure legislative approval of matters embraced in a statewide or local initiative.” If negotiations are successful, it allows the proponents of the measure to withdraw it at any time before the Secretary of State certifies the measure for the ballot. SB 1253 did not address the situation in which proponents timely file a notice of withdrawal, but include a condition or conditions on the withdrawal. SB 684, which becomes operative on January 1, 2021, provides that proponents may not place conditions on withdrawal of an initiative.

2) **Conditional Withdrawal of Initiative Number 1864:** On April 23, 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, became eligible to appear on the November 3, 2020 General Election ballot. In the press release announcing that the measure was eligible to appear on that ballot, the SOS stated that “[o]n June 25, 2020, the Secretary of State will certify the initiative as qualified for the November 3, 2020 General Election ballot, unless it is withdrawn by the proponents prior to certification pursuant to Elections Code section 9604(b).”

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 proposes 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 initiative #1864 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 chose to accept the proponent’s conditional withdrawal of initiative #1864, it is unclear whether state 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. SB 1253 (Steinberg), Chapter 697, Statutes of 2014, enacted the provision of law that allows proponents of a statewide initiative or referendum measure to withdraw the measure *after* filing the petition with the appropriate elections official. Nothing in SB 1253 explicitly authorizes the proponents to impose conditions on the withdrawal of a measure, and committee staff is unaware of any legislative history to indicate that SB 1253 intended to permit conditional withdrawals of initiative measures, or that the potential of a conditional withdrawal was even contemplated during deliberation over the bill.

Furthermore, although the SOS announced on July 1, 2020 that initiative #1864 was withdrawn by the proponent and “is no longer qualified for the November 3, 2020, General Election ballot,” it is not clear whether state law gives the SOS the discretion to deem that a statewide initiative measure is not qualified for the ballot *after* the SOS has issued a certificate of qualification for a measure. As detailed above, the California Constitution *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. Under state law, initiative #1864 was deemed to have qualified for ballot for the purposes of that constitutional provision upon the issuance of the certificate of qualification by the SOS on June 25, 2020. There is no statutory procedure for the SOS to rescind a previously issued certificate of qualification for a statewide initiative measure.

The proponent of initiative #1864 has argued that a provision of SB 300 provided the legal authority to accept a conditional withdrawal of a statewide initiative measure. Specifically, the proponent noted in his letter to the SOS requesting to conditionally withdraw the initiative from the ballot that SB 300 directs the SOS to submit ACA 11 to the voters at the November 3, 2020 election “[n]otwithstanding any other law.” But it is unclear how the mandate that ACA 11 be submitted to voters at the November 2020 election “notwithstanding any other law” could be construed to permit the withdrawal of a separate initiative measure, since the withdrawal of that initiative was not necessary in order for the SOS to comply with the requirement of SB 300 that ACA 11 be submitted to the voters at the November 2020 election.

- 3) **Operative Date:** This bill contains language specifying that it shall become operative on January 1, 2021. Because this bill does not contain an urgency clause or any other provision that would allow the bill to take effect immediately, however, this bill would become operative on January 1, 2021 if it were signed into law even in the absence of that language.

Because this bill is being pursued in response to a situation that occurred earlier this year, the inclusion of language specifying a January 1, 2021 operative date may help clarify that this bill is not intended to affect any initiative withdrawals that have already occurred.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

None on file.

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