

Date of Hearing: March 27, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING  
Marc Berman, Chair  
AB 265 (Choi) – As Amended March 6, 2019

**SUBJECT:** Elections: state and county voter information guides: judicial candidates.

**SUMMARY:** Requires the Secretary of State (SOS), whenever the ballot contains a question as to the confirmation or retention of a justice of the Supreme Court or a court of appeal, to provide specified information about each justice in the state voter information guide. Requires county elections officials to include specified information about each candidate for judge of the superior court in the county voter information guide. Permits the SOS or county election official the discretion to include information about judicial candidates only in the online versions of state and county voter information guides, as specified. Specifically, **this bill:**

- 1) Requires the SOS to include the following information for each justice for the Supreme Court or the court of appeal who is subject to confirmation or retention in the state voter information guide:
  - a) Current title;
  - b) Date of admission to the State Bar;
  - c) Educational background;
  - d) Professional legal background; and,
  - e) Judicial background.
- 2) Permits the SOS, for justices of a court of appeal, to include the specified information required by this bill in the online version of the state voter information guide only.
- 3) Requires the county elections official to provide the following information about each candidate for judge of the superior court in the county voter information guide:
  - a) Current title;
  - b) Date of admission to the State Bar;
  - c) Educational background;
  - d) Professional legal background; and,
  - e) Judicial background.
- 4) Provides that a county elections official is not required to include the information about candidates for superior court judge required by this bill in the print version of the county voter information guide that is mailed to voters, but shall include this information on the internet website of the county elections official.

**EXISTING LAW:**

- 1) Requires the SOS, if the ballot contains a question as to the confirmation of a justice of the Supreme Court or a court of appeal, to include in the state voter information guide a written explanation of the electoral procedure for justices of the Supreme Court and the courts of appeal stating as follows:

Under the California Constitution, justices of the Supreme Court and the courts of appeal are subject to confirmation by the voters. The public votes “yes” or “no” on whether to retain each justice.

These judicial offices are nonpartisan.

Before a person can become an appellate justice, the Governor must submit the candidate’s name to the Judicial Nominees Evaluation Commission, which is comprised of public members and lawyers. The commission conducts a thorough review of the candidate’s background and qualifications, with community input, and then forwards its evaluation of the candidate to the Governor.

The Governor then reviews the commission’s evaluation and officially nominates the candidate, whose qualifications are subject to public comment before examination and review by the Commission on Judicial Appointments. That commission consists of the Chief Justice of California, the Attorney General of California, and a senior Presiding Justice of the Courts of Appeal. The Commission on Judicial Appointments must then confirm or reject the nomination. Only if confirmed does the nominee become a justice.

Following confirmation, the justice is sworn into office and is subject to voter approval at the next gubernatorial election, and thereafter at the conclusion of each term. The term prescribed by the California Constitution for justices of the Supreme Court and the courts of appeal is 12 years. Justices are confirmed by the Commission on Judicial Appointments only until the next gubernatorial election, at which time they run for retention of the remainder of the term, if any, of their predecessor, which will be either four or eight years.

- 2) Requires the SOS to prepare a state voter information guide containing specified information and to make it available over the internet.
- 3) Permits each candidate for nonpartisan elective office in any local agency, including a candidate for superior court judge, to prepare a candidate's statement to appear in the county voter information guide subject to the following procedures and restrictions:
  - a) Permits the statement to include the name, age, and occupation of the candidate and a brief description, of no more than 200 words, of the candidate's education and qualifications as expressed by the candidate. Permits the governing body of the local agency to authorize an increase in the limitations on the words for the statement from 200 to 400 words.

- b) Prohibits the statement from including the party affiliation of the candidate, or membership or activity in any partisan political organizations.
- c) Requires the county elections official to send each voter a county voter information guide that contains the written statements of each candidate printed in type of uniform size and darkness with uniform spacing.
- d) Allows, but does not require, a local agency to require each candidate filing a statement to pay for the pro rata share of the total costs of printing, handling, translating, and mailing all the candidate's statements. Requires the local agency to decide whether to charge candidates for the costs of statements before the nominating period opens for the election.

**FISCAL EFFECT:** Unknown. State-mandated local program; contains reimbursement direction.

**COMMENTS:**

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

AB 265 seeks to provide voters with more information in the retention and confirmation of justices for California's courts. While voter turnout is always key and one of the most talked about issues surrounding election time, one topic that is relatively ignored is empty ballots. While Californians vote for candidates or positions they know about or care about, there is a measureable lack of votes cast on returned ballots in the areas of justice confirmation and retention. In some districts across this state, the difference between votes turned in for a governor and the votes turned in over a justice is 33%. An estimated 3.5 million ballots were turned in this past election with the justice section left blank across the state. Voters deserve more information about these choices and AB 265 is the first step in providing that information.

In reviewing the State's Voter's Informational Guide, the Secretary of State provided a very informative sheet of information for voters in review for the State Level Justice decisions. It is with this informational page that we find that the law does not require the printing or providing of this information, and as such we believe that this should be protected as source of information provided objectively to voters during each election, at least electronically. In reviewing the county level informational packets, each county varied and some outright did not include any information on the Superior Court Justices that voters were asked to vote on. It is with this in mind and through the data collected in the last election, Supreme Court Justices received more votes than justices of lower courts with less information, that a requirement to present information to voters is necessary.

Through our communications with counties and justice groups, we find that this drop in votes for justices is a noticed problem all groups with calls and inquires asking "who are these people?" and "where can I find out information so I can vote on these people?"

- 2) **Judicial Elections:** The office of appellate or Supreme Court justice is nonpartisan. In order to serve as a justice of the appellate or Supreme Court a person must first have their name submitted by the Governor to the State Bar of California's Commission on Judicial Nominees Evaluation (JNE). The JNE assists the Governor in the judicial selection process, by providing independent, comprehensive, accurate and fair evaluations of candidates for judicial appointment and nomination. The JNE conducts a thorough review of the candidate's background and qualifications, and forwards their evaluation to the Governor.

After receiving the JNE's evaluation and concluding that a person is qualified for appointment, the Governor may nominate a person to become a justice of the appellate or Supreme Court. The Governor is not bound to these recommendations, but is held accountable to the Commission on Judicial Appointments, which is free to approve or veto the appointment by majority vote. Sitting as the Commission on Judicial Appointments, the Chief Justice of California, the Attorney General of California, and a senior presiding justice of the California Court of Appeal review the nominee's qualifications and conduct a public hearing where testimony is heard in support of or in opposition to the appointment. If the Commission on Judicial Appointments finds the nominee qualified to serve, it confirms the nomination. Following confirmation, the person takes an oath of office and becomes an appellate or Supreme Court justice.

Justices that wish to retain their seat for the remainder of the unexpired term are required to participate in yes-no retention elections and be confirmed by the public at the next gubernatorial general election following the appointment. These are not contested elections; no one may run against the justices. Instead, the voters simply decide whether the justice shall continue in office. If a majority of voters cast "yes" votes for a particular justice, that justice remains for another term. If a judge is not retained by the voters, the judge leaves office at the end of the term, and the governor may appoint a new judge.

Justices of the Supreme and appellate court generally do not actively campaign for retention. Biographical information on every justice who appears on the ballot is made available to voters.

Information on Supreme Court justices similar to the information that this bill requires is included in the statewide voter information guide prepared and distributed by the SOS. The statewide voter information guide does not contain biographical information on justices of the court of appeals, but the online version of the state voter information guide includes links to the biographies of justices on the appellate courts' websites.

- 3) **Superior Court Judges:** Judges of the California Superior Courts compete in nonpartisan races in even-numbered years. If a candidate receives more than 50% of the vote in the primary election, the candidate is declared the winner; if no candidate receives more than 50% of the vote, a runoff between the top two candidates is held during the November general election.

If an incumbent judge is running unopposed in an election, that candidate's name does not appear on the ballot. The judge is automatically re-elected following the general election.

Write-in candidates may file to run against an incumbent within 10 days after the filing deadline passes if they are able to secure enough signatures. The number of signatures varies

according to the number of voters in the county. If a sufficient number of signatures are submitted, the incumbent appears on the general election ballot along with an option to vote for a write-in candidate.

Candidates for superior court judge may file a candidate statement to be included in the county voter information guide that is prepared by the registrar of voters in each county. However, candidates who wish to be included in the guide may be required to pay their estimated pro rata share of the cost of printing and mailing the statement.

- 4) **State and County Voter Information Guides:** The SOS prepares and distributes the statewide voter information guide to voters. For Supreme Court Justices whose names appear on the ballot, the SOS has already been including the information that is required by this bill in the statewide voter information guide. However, the statewide voter information guide does not contain information on justices for the court of appeal and instead refers voters to internet websites they may visit to or to a toll-free telephone number they can call to request more information.

Under this bill, whenever the ballot contains a question as to the confirmation or retention of a justice of the Supreme court or court of appeal, the statewide voter information guide is required to include information for all judges, as specified.

Under current law the county registrar of voters prepares and distributes the county voter information guide and permits candidates for nonpartisan judicial offices to purchase statements to be included in the guide if they so desire. However, if an incumbent judge is running unopposed in an election, their name does not appear on the ballot.

Under the provisions of this bill, the county elections official is required to provide information about each judicial candidate whose name will appear on the ballot in the county information guide but is not required to include it in the version that is mailed to voters and can choose to include it only in the online version. Candidates for superior court judge who will have their name appear on the ballot would still be allowed, but not required, to purchase a statement for inclusion in the county guide.

- 5) **Not Included in Voter Information Guide That is Mailed to Voters:** Under the provisions of this bill, the SOS is not required to include candidate information from a justice of the court of appeal in the version of the state voter information guide that is mailed to voters and is required to only include it in the online version of the guide.

Similarly, local elections officials are not required to include candidate information for justices of the superior court in the version of the county voter information guide that is mailed to voters, but instead are required to post this information on the internet website of the local agency.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

None on file.

### **Opposition**

None on file.

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