

Date of Hearing: January 26, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1413 (Fong) – As Amended: January 5, 2012

CONCURRENCE IN SENATE AMENDMENTS

ASSEMBLY: (April 11, 2011) SENATE: 36-0 (January 19, 2012)
(vote not relevant)

SUBJECT: Elections.

SUMMARY: Makes numerous substantive and technical changes to state election law to implement the top two primary election system.

The Senate amendments delete the Assembly version of the bill, and instead:

- 1) Conform the procedure for presidential electors to be chosen by the Democratic Party to the top two primary system, by providing that the candidate who receives the most votes in the primary election for Congress and for US Senate among the candidates who declared a preference for the Democratic Party each choose a presidential elector, rather than having the Democratic nominees for Congress and US Senate choosing presidential electors. Provide that the chairperson of the Democratic Party shall appoint an elector if the candidate who is entitled to appoint that elector fails to do so.
- 2) Require that the option for a voter to decline to disclose a party preference be placed at the end of the listing of qualified political parties on the voter registration card. Permit the Secretary of State (SOS) to continue to supply existing voter registration cards prior to printing new or revised forms that reflect this change.
- 3) Permit candidate filing for a voter-nominated office to re-open if any candidate who filed nomination papers for the primary election for that office dies after the deadline for delivery of nomination documents to the elections official but not less than 83 days before the election. Permit nomination documents, in this case, to be submitted until 5 p.m. on the 74th day prior to the election.
- 4) Modify the format of the declaration of candidacy and nomination papers to conform to the top two primary system. Require a candidate for voter-nominated office to include a certification of his or her party preference history for the previous 10 years on his or her nomination papers.
- 5) Provide that if a candidate for voter-nominated office dies prior to the primary election, and that candidate receives a sufficient number of votes to entitle him or her to appear on the ballot at the general election if he or she had lived until after the election, the name of that deceased candidate shall appear on the ballot at the general election.
- 6) Provide that if a candidate for voter-nominated office who is entitled to appear on the general election ballot dies, the name of that candidate nonetheless shall appear on the general

election ballot.

- 7) Provide that if a candidate for voter-nominated office who is deceased receives a majority of votes cast for the office at the general election, a vacancy shall exist in the office to which he or she was elected. Provide that this vacancy shall be filled in the same manner as if the candidate had died subsequent to taking office.
- 8) Shorten and clarify the explanation of election procedure for party-nominated office, voter-nominated office, and nonpartisan office that will appear in the state ballot pamphlet. Require an explanation of the election procedure for voter-nominated office to be included in the voter information portion of the sample ballot at any special election held to fill a vacancy in the Legislature or in Congress.
- 9) Modify the manner in which the party preference designation for a candidate for voter-nominated office will appear on the ballot, pursuant to the following:
 - a) If the candidate has declared a preference for a qualified political party on his or her most recently filed affidavit of registration, the designation appears in the following manner: "Party Preference: _____ (name of the qualified political party)."
 - b) If the candidate has not declared a preference for a qualified political party on his or her most recently filed affidavit of registration, the designation appears in the following manner: "Party Preference: None."
- 10) Provide flexibility to counties in the placement on the ballot of the party affiliation of Presidential candidates.
- 11) Eliminate certain type-size and typeface requirements for instructions that must be printed on the ballot. Clarify and shorten the instructions that appear on the ballot. Require specified instructions to be printed on the ballot at general elections.
- 12) Provide that spaces for write-in votes will not be printed on the ballot for voter-nominated offices at the general election.
- 13) Conform provisions of the Political Reform Act (PRA) that regulate payments made by a political party for communications with its members to the top two primary election process.
- 14) Add a severability clause.
- 15) Make various technical and non-substantive changes.
- 16) Add an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Requires that primary elections for Congress and for state elective office, other than Superintendent of Public Instruction (SPI), be conducted in a manner such that every voter, regardless of party affiliation, may vote for any candidate for that office without regard to the political party of the candidate, provided that the voter is otherwise eligible to vote for that

office. Provides that the two candidates that receive the highest number of votes at a primary election for Congress or for state elective office other than SPI, regardless of political affiliation, move on to the general election.

- 2) Allows any candidate for congressional or state elective office, except a candidate for SPI, to have his or her political party preference, or lack of party preference, indicated on the ballot.
- 3) Permits a voter to declare a party preference when he or she registers to vote. Requires that the option for a voter to choose "No Party Preference" be placed at the beginning of the listing of qualified political parties on the voter registration card.
- 4) Defines the term "voter-nominated office" to include all congressional and state elective offices, except for SPI and judicial offices.
- 5) Prohibits write-in votes from being counted at the general election for a voter-nominated office.
- 6) Provides that payments made for communications to members of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures, provided that those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements. Requires such payments made by a political party for communications to its members that would otherwise qualify as contributions or expenditures to be reported in the same manner as contributions or expenditures.
- 7) Prohibits local governments from adopting campaign finance ordinances that restrict communications between an organization and its members unless state law similarly restricts such communications.

AS PASSED BY THE ASSEMBLY, this bill made minor and technical changes to the PRA.

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

COMMENTS:

- 1) Purpose of the Bill: In 2009, as part of a state budget agreement, a measure was placed on the ballot for the voters to consider authorizing a top two primary election system. At the same time that measure was approved, the Legislature also approved a series of changes to the Elections Code to implement a top two system.

Unfortunately, due to the nature in which those statutory changes were adopted, they created a number of problems for the effective and efficient operation of elections. Last session, this committee held an oversight hearing to hear from elections officials about some of the problems with those statutory changes. Among other problems, county elections officials testified that certain ballot printing requirements created an unnecessary burden, and could significantly increase election costs.

Since that time, state and county elections officials have been working diligently to develop

fixes that will help implement the top two primary system in a more effective manner. This bill reflects much of that work, and makes a number of technical and substantive changes to assist elections officials in carrying out their responsibilities. In addition, this bill addresses a few other substantive and technical issues with the implementation of the top two primary election system.

- 2) Top Two Primary & Ballot Formatting Issues: In February 2009, the Legislature approved SCA 4 (Maldonado), Res. Chapter 2, Statutes of 2009, which was enacted by the voters as Proposition 14 on the June 2010 statewide primary election ballot. Proposition 14 implemented a top two primary election system in California for most elective state and federal offices. At primary elections, voters are able to vote for any candidate, regardless of party, and the two candidates who receive the most votes, regardless of party, advance to the general election.

At the same time that it passed SCA 4, the Legislature also approved and Governor Schwarzenegger signed SB 6 (Maldonado), Chapter 1, Statutes of 2009. SB 6 made various changes to state statute that became effective upon the approval of Proposition 14 by the voters. While many of the changes to state law made by SB 6 were merely conforming changes to provide for a top two primary system, some of the changes were more substantive. For instance, for offices that are subject to the top two primary, SB 6 prohibited write-in votes from being counted at the November general election and required Independent candidates to appear on the ballot at the primary election (under the law prior to the adoption of SB 6, Independent candidates only appeared on the ballot at the general election). Additionally, SB 6 required the state voter registration form to be redesigned and required certain new information to be printed on the ballot at elections for state and federal office.

In March 2010, this committee held an oversight hearing on the impacts of the top two primary election system and SB 6 on election costs and administration. Among other testimony, the committee heard from elections officials who indicated that certain aspects of SB 6 could significantly increase the length of ballots at primary elections, thus increasing election costs. Specifically, elections officials expressed concern with the format in which a candidate's party preference was to appear on the ballot, with the length of language that will be printed on the ballot to explain the top two primary process, and with certain type size and typeface requirements for language that must be included on the ballot.

This bill makes various modifications to the language that will appear on the ballot to address these formatting concerns. This bill shortens the format in which a candidate's party preference is displayed on the ballot, shortens and clarifies the ballot instructions that appear on the ballot, and eliminates certain type size and typeface requirements to give county election officials greater flexibility to format their ballots. These changes should help address some of the concerns raised by elections officials in this committee's oversight hearing.

- 3) Death of a Candidate: Under the provisions of SB 6, if a candidate for voter-nominated office at the general election dies, depending on when that candidate dies, he or she may be replaced on the ballot by the next highest vote-getter from the primary election. This could lead to some unusual, and potentially undesirable, situations. For instance, in a district where voters strongly prefer one political party, if that party's only candidate dies, he or she could

be replaced on the ballot by a candidate from a different political party. This, combined with the fact that write-in votes are prohibited at the general election for voter nominated offices, could result in voters being left to choose between two candidates who are unrepresentative of the policy preferences of the vast majority of voters in the district. Similarly, if a number of candidates chose not to run for an office because a popular incumbent was running for re-election, and that incumbent subsequently died, voters could be forced to choose from a pool of lesser-qualified candidates.

In fact, state law already recognizes the potential for such a situation in races for nonpartisan office, and provides a mechanism to protect against this type of situation. In certain circumstances, when an incumbent candidate for nonpartisan office dies before the election, state law provides for the election to be canceled and a special election to be held at a future date.

This bill would provide that when a candidate for voter nominated office dies, the name of that candidate will nonetheless remain on the ballot. If the deceased candidate is one of the top two vote getters at the primary election, the name of that deceased candidate will also appear on the ballot at the general election. If the deceased candidate prevails at a general election, there will be a vacancy in the office that is filled in the same manner as if the vacancy had occurred after the candidate had taken office.

- 4) Write-In Candidates: One of the provisions of SB 6 prohibited write-in votes from being counted at a general election for a voter-nominated office. Other provisions of statute that require write-in spaces to appear on the ballot, however, were unaffected.

After SB 6 passed, and Proposition 14 was approved, a group of voters filed a lawsuit against the Secretary of State, arguing that it was unconstitutional for write-in lines to be printed on the ballot if write-in votes weren't going to be counted. In Field v. Bowen (2011) 199 Cal.App.4th 346, the California Court of Appeals for the First Appellate District, Division Three, concluded that "[i]t would make no sense to authorize the voters to cast votes that cannot be counted," and as such, the court ordered that "[n]o lines or spaces for write-in votes for voter-nominated offices can be placed on general election ballots." The deadline to appeal the decision in Field to the state Supreme Court has passed, and the decision by the Court of Appeals is final.

In light of the provisions of SB 6 and the Appellate Court's decision in Field, write-in votes won't be counted and write-in spaces won't appear on the ballot at the general election for voter-nominated offices. This bill conforms the Elections Code to the court's decision in Field.

- 5) Member Communications: Proposition 34 was placed on the November 2000 ballot by SB 1223 (Burton), Chapter 102, Statutes of 2000. The proposition, which passed with 60% of the vote, revised state laws on political campaigns for state elective offices and ballot propositions. One of the provisions of Proposition 34 provided that payments for communications by an organization to members, employees, shareholders, or families of members, employees, or shareholders of that organization (commonly known as "member communications") for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures under the PRA, provided those payments are not made for general public advertising such as broadcasting, billboards, and newspaper

advertisements. These member communications provisions were expressly made applicable to communications between a political party and the members of that party.

With the passage of SB 6, individuals who select a political party when registering to vote are no longer considered to be affiliating with that party, but instead are declaring a preference for that political party. However, SB 6 failed to make conforming changes to the member communications provisions of the PRA. This bill conforms the member communications provisions of the PRA to the top two system by clarifying that the member communications laws apply to communication between a political party and a person who expressed a preference for that party on his or her affidavit of voter registration.

- 6) Arguments in Support: In support of this bill, the California Association of Clerks and Election Officials writes:

AB 1413 focuses on critical challenges associated with the implementation language for Proposition 14 provided in Senate Bill 6 (SB 6, Chapter 1, 2009). Mandates in SB 6 require additional text and formatting associated with listing of candidates that, unless amended, will stress—and in some cases exceed—the capability of certain voting systems currently used in California. AB 1413 reduces the risk of exceeding system capacity and provides necessary technical changes to allow for a more practical implementation of the new Top Two Primary election system.

California election officials are tasked with implementing newly adopted policies, educating voters and poll workers, and providing quality election services. Adoption of the significant technical amendments listed in AB 1413 addresses the limitations of California's existing voting systems and will result in a more efficient implementation of Proposition 14 and assist in maintaining the integrity and transparency of California's elections.

- 7) Arguments in Opposition: The Asian American Action Fund and the Coalition for Free & Open Elections object to the provisions of this bill that specify that write-in spaces will not be printed on the ballot at a general election for voter-nominated office. However, as noted above, pursuant to SB 6 and the California Court of Appeals ruling in Field, write-in votes won't be counted and write-in spaces won't appear on the ballot at the general election for voter-nominated offices even absent the enactment of this bill.

In its opposition letter, the Asian American Action Fund writes:

For over a century, write-in voting has provided Californians with an important safety valve. If a candidate suddenly withdraws, becomes incapacitated or is charged with a crime, it is often too late to remove his or her name from the ballot—depriving the voters of the critical opportunity to vote for their second choice. Toward that end, write-in voting gives voters the ability to choose the candidate of their choice.

In November 2010, a write-in candidate (Lisa Murkowski) was elected to the U.S. Senate. Over the past century, California has elected one write-in candidate for the U.S. Senate and two write-in candidates for the U.S. Congress. Significantly,

even the State of Washington—which recently adopted the "Top Two" primary system—allows voters to cast write-in votes in the general election.

- 8) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974 that created the Fair Political Practices Commission and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Most amendments to the PRA that are not submitted to the voters, including those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.
- 9) Prior Version: The prior version of this bill, which was approved by the Assembly, made various minor and technical changes to the PRA. Those provisions were removed from this bill in the Senate, and the current contents were added. As a result, this bill has been re-referred to this committee pursuant to Assembly Rule 77.2.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials
California State Association of Counties
Californians to Defend an Open Primary
Secretary of State Debra Bowen

Opposition

Asian American Action Fund
Coalition for Free & Open Elections

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