
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2023 - 2024 Regular

Bill No: AB 421 **Hearing Date:** 7/5/23
Author: Bryan
Version: 5/18/23 **As proposed to be amended**
Urgency: Yes **Fiscal:** Yes
Consultant: Scott Matsumoto

Subject: Elections: referendum measures

DIGEST

This bill requires the top funders be listed on the ballot for a referendum measure, as specified. This bill also recasts the ballot question and responses for a referendum measure, as specified. Finally, this bill changes the certification timeline for statewide referendum allowing for additional time for proponents of a statewide referendum measure to withdraw the measure, as specified.

ANALYSIS

Existing law:

- 1) Allows electors to propose statutes and amendments to the Constitution and to adopt or reject them through the initiative process. Allows electors to approve or reject statutes or parts of statutes, except as specified, through the referendum process.
- 2) Requires that a state or local initiative, referendum, or recall petition contain a notice alerting voters that the petition may be circulated by a paid signature gatherer or a volunteer, and that voters have the right to ask if a petition circulator is a paid gatherer or volunteer.
- 3) Establishes criminal penalties for fraudulent activity and other misconduct related to the circulation of petitions.
- 4) Requires a petition with signatures for a proposed state initiative measure to be filed with the county elections official no later than 180 days from the official summary date, as specified. Requires a petition with signatures for a proposed state referendum measure to be filed with the county elections official no later than 90 days from the date the legislative bill was chaptered by the Secretary of State (SOS), as specified.
- 5) 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.

- 6) 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.
- 7) Requires, the SOS to do all of the following upon receipt of a referendum petition certified to have been signed by the requisite number of qualified voters:
 - a) Issue a certificate of qualification certifying that the referendum measure, as of that date, is qualified for the ballot.
 - b) 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.
 - c) 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.
- 8) 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.
- 9) 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.
- 10) 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.

This bill:

- 1) Requires the top funders of an effort to qualify a statewide referendum for the ballot to be listed on the ballot itself, as specified.
- 2) Requires the ballot question for a state referendum measure to be in the following form: "Should California keep or overturn a law passed in [year statute was enacted] [followed by no more than 15 words stating the general subject or nature of the law]?", followed by a condensed summary containing the chief purposes and points of the law proposed to be overturned, as specified. Provides that the condensed title and summary shall be no more than 75 words, followed by a list of the top funders of the effort to qualify the referendum for the ballot, as specified. Requires, commencing January 1, 2025, a list of the measure's top funders followed by a list of the names of the top funders and supporters and opponents in the ballot arguments printed in the state voter information guide, as specified.
- 3) Requires, for a statewide referendum measure, that voters be asked to choose between the options "Keep the law" or "Overturn the law" rather than being asked to vote "Yes" or "No."

- 4) Requires the SOS to identify the date of the next statewide general election, or the next special statewide election, that will occur not less than 31 days after the date the SOS receives a petition certified to have been signed by the requisite number of qualified voters, as specified. Provides, on the 131st day prior to the date of the election identified or upon receipt of a petition certified to have been signed by the requisite number of qualified voters if fewer than 131 days remain until the election identified pursuant the SOS shall do all of the following:
 - a) Issue a certificate of qualification certifying that the referendum measure, as of that date, is qualified for the ballot at the election identified by the SOS.
 - b) 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 at the election identified by the SOS.
 - c) Include the referendum measure in a list of all statewide referendum measures that are eligible to be placed on the ballot at the election identified by the SOS and publish the list on the SOS's website.
- 5) Requires, if a referendum measure has been issued a certificate of qualification as of the effective date of this bill, but has not yet appeared on the ballot, the SOS shall void that certificate of qualification and shall issue a new certificate of qualification pursuant to the provisions of this bill, as specified. Permits that the proponents of any such referendum measure to withdraw that measure at any time between the effective date of this bill and the date on which the SOS issues a new certificate of qualification, as specified.
- 6) Provides, in the case of a referendum measure, upon the SOS's transmission of notification to the proponents and elections officials that the number of signatures filed with all elections officials is 100 percent or more of the number of qualified voters needed to declare the petition sufficient, the statute that is the subject of the referendum measure shall cease to have effect unless and until one of the following occurs:
 - a) The SOS or a court of competent jurisdiction concludes that the petition was not signed by the requisite number of qualified voters.
 - b) The proponents of the referendum measure withdraw the measure, as specified.
 - c) The voters vote to keep the statute that is the subject of the referendum at the statewide election in which the referendum measure appears on the ballot.
- 7) Provides that any judicial action or proceeding to challenge, review, set aside, void, or annul the provisions within by this bill, or any portion of this bill, may proceed only by application or complaint filed in a court of competent jurisdiction within 45 days of the effective date of this this bill. Requires the action or proceeding, or any appeal therefrom, be given precedence on the court's docket and shall have priority over all other civil matters. Requires that any relief granted by a court not interfere with the

conduct of the November 5, 2024, statewide general election, and in no event shall relief be granted after the 88th day preceding that election.

8) Includes an urgency statute.

BACKGROUND

Campaign Contributors on the Ballot. For the first time, this bill requires the identities of certain campaign contributors to be listed on the ballot. Specifically, the top contributors for and against a state referendum would be required to be listed on the ballot following a brief description of the subject of the referendum.

Existing law requires a ballot to comply with a variety of laws that dictate its form and content. For example, existing law requires a ballot to contain the title of each office, the names of all qualified candidates, as specified, ballot designations, as specified, titles and summaries of measures submitted to voters, and instructions to voters, among other things. Additionally, existing law requires a ballot to be printed in a certain form. Once all of these requirements are met, there is limited space left on the ballot to accommodate further requirements. Consequently, it is common practice to include other important election information in the state or local voter information guides.

Additionally, it is unclear whether including information on the ballot about the top contributors for and against a state referendum measure will provide the voters with accurate, meaningful, and balanced information. For statewide elections, county elections officials generally begin printing ballots shortly after the SOS certifies the list of qualified candidates for office who will appear on the ballot, a step that is required to occur no later than the 68th day before the election. Counties then begin mailing ballots out to overseas and military voters 60 days before the election. As a result, any listing of campaign contributors that is printed on the ballot will reflect only those campaign expenditures that are made more than two months before the election. Any change in the top contributors for or against a state referendum measure during the last two months before the election—when the bulk of campaign communications are likely to occur—would not be reflected in the information that is printed on the ballot. As a result, the information printed on the ballot may give voters a misleading impression about the entities that are responsible for the campaign communications that they are receiving for and against a measure.

Additionally, in the case of a state referendum, it is likely that most of the campaign spending that will have occurred by the deadline for including information on the ballot is spending in connection with gathering signatures to qualify the measure for the ballot. In other words, the proponents of a state referendum (those who are urging voters to “overturn the law”) likely will have made significant campaign expenditures more than two months before the referendum appears on the ballot, but it is considerably less likely that opponents of the measure (those who are urging voters to “keep the law”) will have made significant expenditures at that point.

Referendum Question. Because the referendum process gives voters the ability to overturn an action taken by the Legislature, the meaning of a “yes” vote and a “no” vote on a referendum may not be completely clear. Counterintuitively, the proponents of a

referendum measure are those who are asking voters to vote “no,” thereby rejecting the statute enacted by the Legislature.

This bill seeks to reduce the potential for confusion when electors vote on a state referendum measure by changing the question that voters are asked so that they are asked whether they want to “keep the law” passed by the Legislature or if they want to “overturn the law” the law the Legislature enacted.

Ballot Design Advisory Committee (BDAC). In 2019, the Legislature passed and Governor Newsom signed AB 623 (Berman), Chapter 863, Statutes of 2019. AB 623, among other provisions, required the SOS to establish a BDAC to assist the SOS in promulgating regulations that prescribe ballot design and format. The BDAC consists of the SOS, or the SOS’s designee, and members to be appointed by the SOS who are recognized ballot design experts and county elections officials or a designee of a county elections official.

Initiative Withdrawal. In 2014, the Legislature passed and Governor Brown signed SB 1253 (Steinberg), Chapter 697, Statutes of 2014, also known as the “Ballot Initiative Transparency Act.” SB 1253 made 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. This withdrawal process was designed to allow a proponent to remove a measure from the ballot if the proponent came to a compromise 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.

It should be noted that SB 297 (Allen) of 2023 would allow 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. SB 297 also reduces 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 from all of the proponents to a majority of the proponents, as specified.

Referendum Withdrawal. Under existing law, the SOS is required to issue a certificate of qualification certifying that the referendum measure, as of that date, is qualified for the ballot upon receipt of a referendum petition certified to have been signed by the requisite number of qualified voters. Additionally, the proponents of a statewide referendum measure are permitted 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. This creates a different deadline than what exists for statewide initiatives (i.e. 131 days before the general election election).

This bill, among other provisions relating to referenda, changes when a statewide referendum measure is certified from the date the SOS receives a referendum petition certified to have been signed by the requisite number of qualified voters to a date closer to the election, as specified. This would bring the timelines for statewide referendum measures closer in alignment with statewide initiative measures and allow proponents additional time to find a legislative solution before sending the ballot measure to voters.

COMMENTS

- 1) According to the author: Now is the time to re-empower everyday voters choosing to participate in our democracy. Today, the participatory democracy system is being subverted and weaponized against the collective decision making authority of everyday Californians. Currently, what was a people driven process is now powered by unlimited campaign spending, deceptive practices, outright lies and purposeful confusion. AB 421 takes a reasonable, measured approach to restoring voter choice, authority, and agency, while uplifting genuine grass roots support over undertrained self-interested operatives.

Voters deserve the protections AB 421 provides—a stronger and more accountable process that centers the voice of the people in our policy making process. Voters deserve a process that provides them with clear choices on the ballot, and tools to more completely understand who is behind a measure.

- 2) Longer Ballots. This bill requires the top funders of a state referendum measure to be added onto the ballot and would increase the length of the ballot. Additionally, many county elections officials are required to translate ballot materials into multiple languages under state and federal law. To comply with these requirements, some counties include English and other languages on a single ballot, while other counties print separate ballots in languages other than English.
- 3) Local Ballot Inconsistencies. The requirements of this bill are only mandated for statewide referenda measures. When listing the top funders for a statewide referendum measure and not local referenda measures, it may lead to confusion for voters in some counties who will not see the top funders listed for all ballots measures on their ballot.
- 4) Politicizing the Ballot. Historically, other than the listing of a party preference for specific offices, the ballot has remained largely neutral, rather than the ballot being politicized. The ballot itself is sometimes considered “sacred.” After all the debate, endorsements, and advertisements, the ballot is where the voter makes the final decision to approve, reject, or skip a ballot measure and that decision is made on one of the most neutral ways possible (i.e. a ballot with brief information about the measure, an option for “Yes,” and an option for “No”).
- 5) Potential for Chicanery. Even though there are protections for the types of organizations that could be listed, this could be gamed as newly established entities become more established over time. The short-term effects may have long-term ramifications and could actually create more confusion among voters if the names of organizations, or even individuals, are similar.

This game could also be played when determining the date in which the top funders are established for the purposes of being listed on the ballot. The top funders listed on the ballot are the individuals who made the most aggregated contributions and expenditures to qualify the referendum as of the first day petitions are filed with an elections official. It is conceivable that many large contributions are received after the first petition is filed with an election official. In this scenario, the largest funders

of a state referendum could hide or remain unlisted because the established date is so early in the process.

- 6) Wording of Voting Selections. Under the provisions of this bill, voters will be asked to choose between the options "Keep the law" or "Overturn the law" rather than being asked to vote "Yes" or "No." The author should consider whether this wording is appropriate and could be easily understood by voters. One potential way to address this phrasing is to create wording that is simple and informs a voter what their vote does. The author should consider whether a phrase like "Yes. Keep the law" or "No. Repeal the law" are more effective than keeping "yes/no" from "keep the law/overturn the law" separate. Which phrase is listed first may also be something to consider moving forward.

To help determine the appropriate phrases and placement of the wording on the ballot, the SOS or the SOS's Ballot Design Advisory Committee would be an appropriate venue to provide valuable feedback on the matter.

RELATED/PRIOR LEGISLATION

SB 821 (Glazer) of 2023 would, among other provisions, allow the proponents of a state referendum measure to withdrawal the measure if certain conditions are met and as specified.

SB 297 (Allen) of 2023 would allow 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. SB 297 also reduces 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 from all of the proponents to a majority of the proponents, as specified.

AB 1416 (Santiago), Chapter 751, Statutes of 2022, required the ballot label for a statewide ballot measure, and permitted the ballot label for a local ballot measure to include the names of specified supporters and opponents of the measure.

SB 1253 (Steinberg), Chapter 697, Statutes of 2014, made 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, as specified.

PRIOR ACTION

Assembly Floor:	60 - 18
Assembly Appropriations Committee:	11 - 4
Assembly Elections Committee:	5 - 2

POSITIONS

Sponsor: SEIU California

Support: NOTE – Support reflects a prior version of the bill.

350 Bay Area Action
350 Humboldt: Grass Roots Climate Action
350 Southland Legislative Alliance
AAPIs for Civic Empowerment Education Fund
ACLU California Action
Alameda County Democratic Central Committee
American Federation of State, County and Municipal Employees, AFL-CIO
Asian Pacific Environmental Network
Californians Against Waste
California Calls
California Environmental Justice Alliance Action
California Environmental Voters
California Federation of Teachers AFL-CIO
California Labor Federation, AFL-CIO
California Labor for Climate Jobs
California Professional Firefighters
California School Employees Association, AFL-CIO
California State Legislative Board of Sheet Metal, Air, Rail and
Transportation Workers - Transportation Division
California Teachers Association, AFT, AFL-CIO
Catalyst California
Center for Biological Diversity
Center on Race, Poverty & the Environment
Central Coast Alliance United for a Sustainable Economy
Central Coast Labor Council
Climate Action California
Community Coalition
Culver City Democratic Club
Disability Rights California
Elders Climate Action, NorCal Chapter
Elders Climate Action, SoCal Chapter
Elected Officials to Protect America Code Blue
Fossil Free California
Glendale Environmental Coalition
Greenpeace USA
Indivisible CA: StateStrong
Indivisible Westside Los Angeles
InnerCity Struggle
Labor Network for Sustainability
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
NextGen California
Northern California Recycling Association
Oakland Rising
OC Action
Silicon Valley Rising
Solano County Democratic Central Committee

Stand.earth
Strategic Concepts in Organizing and Policy Education
Voices for Progress
Voices in Solidarity Against Oil in Neighborhoods
Worksafe

Oppose: NOTE – Opposition reflects a prior version of the bill

Agricultural Council of California
Auto Care Association
California Association of Clerks and Election Officials
California Builders Alliance
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Hotel & Lodging Association
California Life Sciences
California Manufacturers and Technology Association
California Metals Coalition
California Restaurant Association
California Retailers Association
CAWA - Representing the Automotive Parts Industry
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
Coalition of California Chambers – Orange County
Dana Point Chamber of Commerce
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Family Business Association of California
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Fresno Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Escondido Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Irvine Chamber of Commerce
Industrial Environmental Association
International Franchise Association
La Cañada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Lincoln Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
Orange County Business Council
Palm Desert Area Chamber of Commerce
Palos Verdes Peninsula Chamber of Commerce
Plastics Industry Association

Rancho Cordova Area Chamber of Commerce
Rocklin Area Chamber of Commerce
Roseville Area Chamber of Commerce
Sacramento Regional Builders Exchange
San Jose Chamber of Commerce
San Juan Capistrano Chamber of Commerce
San Marcos Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Shingle Springs/Cameron Park Chamber of Commerce
TechNet
Vacaville Chamber of Commerce
Western Electrical Contractors Association
Western Growers Association
Yuba Sutter Chamber of Commerce

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