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

Bill No: SB 858 **Hearing Date:** 4/18/23
Author: Niello
Version: 3/20/23
Urgency: No **Fiscal:** Yes
Consultant: Karen French

Subject: Initiative and referendum measures: title and summary

DIGEST

This bill requires the Legislative Analyst Office (LAO), instead of the Attorney General (AG), to prepare the ballot title and summary for all measures submitted to the voters of the state. This bill is a companion measure to SCA 3 (Niello) of 2023.

ANALYSIS

Existing law:

- 1) Requires, pursuant to both the California Constitution and specified statutes, the proponent(s) of a proposed initiative or referendum to submit the proposal to the AG to 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 Secretary of State (SOS) within 15 days after receipt of the fiscal estimate or opinion prepared by the Department of Finance (DOF) and the LAO. Provides that the date the copy is delivered is the "official summary date." Requires the fiscal estimate prepared by the DOF and the LAO to be delivered to the AG within 50 days of the date of receipt of the proposed initiative measure by the AG.
- 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. Requires the circulating title and summary of a proposed statewide ballot measure to appear on the measure's petitions.
- 3) Requires the AG to provide a ballot label and a ballot title for each measure to be submitted to the voters at a statewide election for inclusion in the state ballot pamphlet and the actual ballots.

This bill:

- 1) Requires the LAO, instead of the AG, to prepare the circulating title and summary of proposed ballot measures upon the effective date of SCA 3.
- 2) Requires the LAO, instead of the AG, to prepare the ballot title and summary for all measures submitted to the voters of the state, upon the effective date of SCA 3.

3) Makes other conforming changes.

BACKGROUND

The DOF and the LAO. The DOF serves as the Governor's chief fiscal policy advisor in fiscal matters. The LAO is overseen by the Joint Legislative Budget Committee (JLBC), a 16-member bipartisan joint committee of the Legislature. According to their website, the LAO's analytical staff covers several budget and policy areas: criminal justice, state finance, education (including K-12 and higher education), health and human services, natural resources and environment, general government (including local government), transportation, and capital outlay and infrastructure.

Historically, one of the most important responsibilities of the LAO has been to analyze the annual Governor's budget. More generally, the office is a staff resource to all legislators. The LAO also performs the following functions:

- Budget "Control." The LAO reviews requests by the administration to make changes to the budget after it is enacted. These reviews are used primarily by members of the JLBC and the fiscal committees.
- Special Reports. Throughout the year, the office prepares special reports on the state budget and topics of interest to the Legislature.
- Initiatives and Ballot Measures. The office estimates the fiscal effect on state and local government of all proposed initiatives (prior to circulation) and prepares analyses of all measures that qualify for the statewide ballot.
- Forecasting. The LAO forecasts the state revenues and expenditures.

History of similar proposals. Over the last 15 years, versions of this proposal have been introduced, most recently was ACA 4 (Kiley) of 2021. Some measures were not heard or were heard and subsequently defeated.

COMMENTS

1) According to the Author: The initiative process is an integral and vital component of direct democracy in California, and is being exercised with increased frequency. An effective initiative process necessitates a non-partisan entity, without political pressures, to draft the ballot title and summary. However, the soundness of our initiative process is compromised when the ballot title and summary is partial. Unfortunately, ballot language is susceptible to politicization, causing it to be inaccurate and misleading. This leads to a confused and frustrated, rather than educated and engaged, electorate. While initiatives themselves are inherently political, the ballot title and summary should not be. To maintain good governance and impartiality in California's initiatives process, the duty of drafting title and summary should be moved from the AG and placed under the jurisdiction of the LAO.

SB 858 would transfers the authority to write the ballot title and summary from the AG to the LAO, contingent upon approval by the voters of SCA 3. The LAO is an independent, non-partisan and trusted organization that provides credible and honest analysis of each initiative. With this new duty, the LAO will create a fair and balanced ballot title and summary for each initiative. As the non-partisan entity that

advises the Legislature and prepares fiscal analyses of measures, the LAO already has a solid track record of providing important information on behalf of voters.

- 2) Argument in Support. In a letter supporting SB 858, the California Chamber of Commerce stated, in part, the following:

SB 858 and its companion piece of legislation, SCA 3 (Niello), because they would ensure fairness and objectivity in the process of preparing the ballot title and summary for each statewide measure that the Secretary of State determines will appear on the ballot in a statewide election. Currently, the responsibility lies with the elected position of the Attorney General. These proposals would transfer that responsibility to the independent Legislative Analyst.

[...]

Statewide measures before the voters have wide-ranging and very serious consequences, impacting almost every aspect of the daily lives of Californians. It is long past time that we remove the politics from this process and ensure that a non-partisan entity perform this incredibly important task.

- 3) Argument in Opposition. In a letter opposing SB 858, The California Nurses Association/National Nurses United (CAN) stated, in part, the following:

. This legislation would inappropriately shift the duty of preparing titles and summaries for initiatives and ballot measures from the Attorney General to the Legislative Analyst's Office (LAO), insulating these duties from political accountability and shifting time-consuming responsibilities to an office with staff that already has tremendous responsibilities to provide advice to the Legislature. Given the wide-reaching effect that both ballot measures and the initiative process can have on California, robust systemic protections are necessary to ensure fairness and accountability. This bill serves to undermine those protections in California's ballot measure and initiative process.

RELATED/PRIOR LEGISLATION

SCA 3 (Niello) of 2023 would amend the California Constitution to require the LAO, instead of the AG, to prepare the ballot title and summary for all measures submitted to the voters. SCA 3 is pending in this committee.

ACA 4 (Kiley) of 2021 was substantively similar to this measure as it would have transferred from the AG to the LAO the duty of preparing both the title and summary for a proposed initiative or referendum and the ballot label and the ballot title and summary for the state voter information guide. ACA 4 was not heard and was returned to the Assembly Desk.

SB 283 (Nielsen) of 2015 was substantively similar to this bill, but differed in that it would not have affected the existing role of the AG in preparing the circulating title and summary of proposed ballot measures. SB 283 was not taken up in this committee and returned to the Secretary of the Senate.

SB 1253 (Steinberg), Chapter, 697, Statutes of 2014, imposed additional requirements on the AG when preparing ballot titles and summaries.

SB 1294 (Huff) of 2014 was substantively similar to SB 283. SB 1294 failed passage in this committee.

AB 2394 (Gorell) of 2014 would have required the SOS, instead of the AG, to prepare the ballot label and the ballot title and summary for all state measures submitted to the voters and the circulating title and summary for initiative and referendum measures. AB 2394 was not heard and subsequently died in the Assembly.

SCA 19 (Fuller) of 2012 and SB 1296 (Fuller) of 2012 would have transferred the duty of preparing the title and summary for proposed initiative or referendum measures from the AG to the LAO. Both measures failed passage in this committee.

AB 1968 (Niello) of 2010, among other provisions, would have required the LAO, instead of the AG to prepare a circulating title and summary of the chief purpose and points of a proposed state initiative or referendum measure. AB 1968 failed passage in the Assembly Committee on Appropriations.

AB 319 & ACA 20 (Niello) of 2009 were substantively similar to AB 1968 (Niello) in that they would have required the LAO, instead of the AG, to prepare a circulating title and summary of the chief purpose and points of a proposed state initiative or referendum measure. Both measures failed passage in the Assembly Elections and Redistricting Committee.

AB 2209 (Niello) of 2008 was substantively similar to AB 319 and AB 1968. AB 2209 failed passage in the Assembly Committee on Elections and Redistricting.

POSITIONS

Sponsor: Author

Support: California Chamber of Commerce
Howard Jarvis Taxpayers Association
League of Women Voters of California

Oppose: California Nurses Association

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