

Legislators examine bids to revamp rules of initiative elections

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By SIGRID BATHEN

Recorder Capital Correspondent

SACRAMENTO — Lawmakers who traditionally have been loathe to tinker with the right of citizens to amend state laws without involving the Legislature are considering reform proposals for Californians' cherished 76-year-old initiative process.

Critics say the initiative process is abused by special interests with enough money to place on the ballot self-serving measures backed by media hype that disguises their true intent.

"Many voters are frustrated with the current initiative process," said Sen. Gary Hart, D-Santa Barbara. Hart is sponsoring two measures that would not affect the existing direct initiative process, but would create an additional "indirect initiative option" requiring fewer signatures and subject to legislative review.

"It's difficult to write good laws, and many poorly drafted initiatives end up in the courts," he said. "The increasing number of statewide ballot measures, many of them long and complex, make it extremely difficult for voters to make informed decisions at the polls."

Legal experts say such measures should receive closer scrutiny to catch drafting errors, which can tie up successful referenda in years of expensive litigation.

Four major reform bills and one proposed state constitutional amendment are making their way through the Legislature, which will consider them when lawmakers return from their summer recess next month.

Several measures would make substantial changes in the initiative process itself to require more careful legal review, while others would mandate more complete disclosure of the special-interest groups and funding sources behind initiative proposals.

"Deception is commonplace," said Sen. Milton Marks, D-San Francisco, author of two bills requiring better disclosure of initiative backers. "Initiative committees often use lofty names in order to mask their true identity. Voters should be told right up front who's paying for initiative campaigns."

Perhaps the most significant legislation — and historically the most difficult to pass — is sponsored by Assemblywoman Jackie Speier, D-South San Francisco. Her bill would require a "non-binding pre-circulation review" of proposed initiatives by the secretary of state.

The bill was recently amended in the Senate Elections Committee to change the reviewing agency to the legislative analyst rather than the secretary of state. The measure now goes to the Senate Appropriations Committee.

Legislation similar to Speier's bill was sponsored last year by Assemblywoman Lucy Killea, D-San Diego, but it died on the Senate floor.

"There is a lot of built-in reluctance in the Legislature to tinker with the initiative process," said Deputy Attorney General Jeffrey Fuller. "They know there are problems, but that doesn't mean they want to change the process."

Fuller said the reluctance of elected officials to tinker with the process stems from concern that they might be perceived as frustrating the public's will. One legislator who sponsored a reform measure was subjected during a reelection campaign to "hit pieces" by the opposing candidate who suggested the legislator was attempting to block citizens' rights to pursue direct initiatives, he said. The legislator was reelected, Fuller said, but not easily.

The expensive, increasingly popular initiative process needs reform, experts say, but they differ on the nature of reform.

"The initiative has turned out to be a tool of large special interests, rather than a reflection of popular will," Fuller said.

The attorney general's office supports the Speier bill.

Eugene Hill, who heads the attorney general's government section that reviews all proposed initiatives for preparation of title and summary, said, "There is a need to get it [a proposed initiative] de-bugged before it goes on the ballot." But Hill doesn't say how that should be done.

Many critics of the process have suggested that the attorney general is the logical official to review initiatives for possible drafting errors, so that proponents would have the opportunity to correct them and the measure would stand a better chance of avoiding litigation should it pass.

But Fuller said such a review would put the office in an untenable conflict of interest if the state's lawyer were then required to defend a successful measure in court. The legislative counsel, the secretary of state or the legislative analyst are appropriate legal reviewing agencies, he said.

Under the current system, the attorney general provides only a routine, objective title and summary, and the initiative is reviewed for fiscal impact by the legislative analyst and the state

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Finance Department.

Proponents may then gather the necessary signatures to place the measure on the ballot. They can request technical, legal review by the secretary of state, but such a review is not required.

Consequently, some proposals have gone on the ballot and been enacted that:

- Have constitutional problems.
- Conflict with existing law.
- Contain spelling, grammatical, syntactical or punctuation errors.
- Use imprecise language resulting in ambiguity.

The Victims' Bill of Rights, Proposition 8, is a notorious example of "this frustration of the popular will" because it is strangled in litigation over language.

Five measures currently pending in the Legislature are:

- State Constitutional Amendment 22, by Hart, which would amend the state constitution to require that the Legislature provide an indirect initiative process. The process would include legislative hearings and a floor vote on qualified initiatives; fewer signatures for qualification than required for a direct initiative; and review by the attorney general of any amendments, to be sure such changes "are germane and further the original intent" of the initiative.

- SB 1201, also by Hart, a companion measure to put the amendment into effect. The bill has passed the Senate and is pending in the Assembly Elections Committee.

- AB 1331, by Speier, which requires legal review of proposed ini-

tiatives "for form, clarity and potential legal problems." The bill would require a non-binding pre-circulation review of proposed initiatives to be completed prior to the attorney general's providing a title and summary.

After receiving the review, proponents would have 10 days to correct or change the proposed initiative. The measure would extend from 25 to 30 days the period given to the legislative analyst and Finance Department to complete a fiscal estimate. It has been passed by the Assembly and the Senate Elections Committee and is now before the Senate Appropriations Committee.

- SB 1531, by Marks, would require committees formed "primarily to support or oppose the qualification of a ballot measure"

to file campaign disclosure statements as soon as they have raised or spent \$500. Under current law, such committees do not have to disclose their finances until the initiative actually qualifies for the ballot.

"If this bill had been in effect in 1986, we would have known for a fact that Lyndon LaRouche was behind Proposition 64 eight months before it qualified for the ballot," Marks said.

The measure was passed by the Senate 39-0 last month and is now before the Assembly Ways and Means Committee before it goes to the Assembly floor.

- SB 1198, also by Marks, would require identification of the major funding sources of a committee sponsoring a ballot initiative. The bill was passed by the Senate 38-0.

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session to change the initiative process.

Joe Caves, legislative assistant to Sen. Hart, who has sponsored various initiative reform measures in past sessions, said he is unsure whether Hart will sponsor any new measures.

"We've tried twice and failed both times," said Caves. "The Legislature has just not been willing to consider initiative reform. Politicians feel if they mess with the initiative process they will suffer the wrath of the voters."

Hodson said more precise legal review of initiatives might well improve the process, but noted drawbacks to such a proposal.

"Clearly, very few initiatives survive intact without significant judicial review," he said. "Such a [prior legal] review would in theory produce better written initiatives and improve the process. The drawback is that I don't think you could ever force a proponent to submit to legal review. Whoever makes that determination — the attorney general, the secretary of state, the man in the moon — would still be second-guessing the courts."

A key mover in efforts to change the initiative process in California has been the League of Women Voters, which sponsored a 1984 study (now in book form, "A Legacy Lost") which cited lack of voter access to information and ambiguity in the initiatives as two of the areas that need improvement.

League lobbyist Margaret Herman said a Field poll of the League's conclusions found widespread public support for changes in the process. "But that did not translate into votes in the Legislature," she said, on a variety of League-sponsored or recommended bills that did not survive the 1987-88 legislative session.

Herman expressed skepticism that the Legislature "will be any further moved to do something about the process simply because the electorate is concerned."

Legislative analyst Hodson expects new initiative-related measures — or recycled old measures — will be introduced this session. "I would anticipate a number of bills would be introduced to address the procedural questions, and we may be able to enact some of those. But I would not anticipate passage of any fundamental changes."

"As long as there are very wealthy special interests who think they can put on the ballot, from their viewpoint, a 'pure' solution, as long as there are special interests who will spend the money, you will have a proliferation of initiatives and no amount of procedural changes," Hodson added. "If they're willing to spend \$60 million, they will qualify and put something on the ballot. Once they decide that's not a viable solution, then there will be more of an inclination to accept the restrictions [inherent] in a legislative solution."

"The Legislature has many sins and inertia is one of them," he said. "Clearly, there are times when we have not acted as fast as we should have, although legislatures by their very nature are not supposed to act fast. But some of the blame has to lay at the feet of the outside parties. I'm not sure we will see the same rush to the initiative process by the organized economic interests that we saw this year, because they lost."

"I think there are some political managers and consultants who were being called on the carpet Wednesday morning," Hodson said, "to explain to insurance executives why they spent \$60 million."