

# New law to improve initiative process in effect

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The power of California voters to enact laws through ballot initiatives was enshrined by voters in the state Constitution in 1911 and a new state law that went into effect Thursday seeks to improve the process while at the same time preserving the century-old initiative right.

The measure, known as the Ballot Initiative Transparency Act, is aimed at giving voters more user-friendly information about proposed initiatives and providing more opportunities for correcting defects.

“It’s a really good first step in opening more public discussion and trying to align the legislative process and the initiative process more closely,” said Sarah Swanbeck, a policy advocate with California Common Cause in Sacramento.

Common Cause was one of a number of civic groups that worked with former state Senate President pro Tem Darrell Steinberg, D-Sacramento, to write the law, which was signed by Gov. Jerry Brown in September.

Other groups leading the effort included the League of Women Voters of California, California Forward and the Think Long Committee for California.

Eventually, more than 60 groups joined in supporting the new law, including the California Business Roundtable, California Chamber of Commerce, California NAACP and AARP, Swanbeck said.

“The initiative process is an integral part of California’s democracy and it is important that we iron out its flaws and strengthen it,” Steinberg said when the law was signed.

One provision of the law provides for a 30-day public comment period on a proposed initiative before the backers begin gathering the signatures needed to place the measure on the ballot.

The comment period is “a good time to get feedback on unintended consequences or wording mistakes” that could be fixed before the proposed initiative is circulated, Swanbeck said.

Nothing in the law requires the backers to make any changes following the public comment period.

Another provision requires the Legislature to hold hearings on a proposed initiative after 25 percent of the required signatures have been gathered, instead of waiting until the measure has qualified for the ballot.

The hearings must be held at least 131 days before the November general election at which voters would consider the measure. That means the hearings will now be held in the spring, rather than in August or September shortly before the election like they were before, Swanbeck said.

Although the wording of an initiative could not be changed at that point, the process gives more time for public discussion and possible development of alternative legislation that could meet the goals of the initiative backers while correcting unintended flaws.

Proponents are now allowed to withdraw an initiative after signatures are collected but before ballots are printed, up to 131 days before the election. Previously, an initiative could not be withdrawn after the required signatures were gathered.

The law also requires a “one-stop” source of information about an initiative on the California secretary of state’s website. The information must include the total financial contributions made to support and oppose the measure and the top 10 donors on each side.

Since 1912, Californians have voted on about 360 initiatives and approved about 30 percent of them.

The measures have shaped state government and the daily lives of Californians in many areas, ranging from criminal justice to taxes, the state budget, medical marijuana, term limits for legislators and the creation of a citizens’ redistricting commission.

Proposition 13 of 1978, limiting property taxes to 1 percent of value, has had far-reaching effects on the state budget and school funding. Proposition 65 of 1986 requires warning labels on products containing chemicals that cause cancer or birth defects.

When initiatives have been challenged in lawsuits, courts have tended to be deferential to the public’s constitutional power to enact the measures, but have struck down some of the measures.

A 1964 initiative that repealed a fair housing law and a 1994 measure that barred undocumented immigrants from public education and social services were found unconstitutional.

Proposition 8, a 2008 initiative that amended the state Constitution to ban same-sex marriage, was found by a federal judge to violate the U.S. Constitution.

Former California Chief Justice Ronald George, whose court was called on to rule on a number of initiatives, was a member of the Think Long Committee that advocated the new law.

George said last fall, “Too often here, ballot measures are confusing and poorly written, and there has been no chance of initiative backers to make even the most routine changes, let alone drive compromise.”

“All of that stands in the way of voter confidence and understanding, and leads to bad policy outcomes,” George said.

When the initiative power was created in 1911, it was seen as a way of enabling Californians to circumvent the state Legislature, which was then controlled by the Southern Pacific Railroad and other monied interests.

Swanbeck said that while ballot initiatives were once considered a “last resort,” they have been more recently perceived as a device for special-interest laws by individuals or groups that can afford to pay the high cost of gathering signatures.

The signature requirement is for 8 percent of recent voters for a constitutional amendment initiative and 5 percent for a proposed law.

“You now rarely see a grassroots campaign,” Swanbeck said. “You need to be able to write a check for \$1 million to \$2 million to a signature-gathering firm.”

Just how much the new law will enhance the initiative process is not known, however.

“We will have to see how that plays out,” Swanbeck said.