

ASSEMBLY BILL

No. 1075

Introduced by Assembly Member Olsen

February 22, 2013

An act to amend Sections 359.5, 8141.5, 8142, 8150, 9083.5, and 15452 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 1075, as introduced, Olsen. Primary elections: voter-nominated offices.

Existing provisions of the California Constitution require that all voters may vote for any candidate at a voter-nominated primary election for congressional and state elective offices, without regard to the political party preference of the candidate or the voter. These provisions also require that the top 2 vote-getters in a voter-nominated primary election, regardless of party preference, compete in the ensuing general election.

Existing law provides generally for the conduct of primary elections. Existing statutory law implements the above-mentioned constitutional provisions relating to voter-nominated primary elections for congressional and state elective offices, including the requirement that the top 2 vote-getters compete in the general election, regardless of party preference.

This bill would provide that a candidate for a voter-nominated office that is a state elective office who receives at least 60% of the votes cast for that office in a primary election that is not a special primary election shall be declared elected to that office.

This bill would provide that its provisions become operative only if ACA ____ of the 2013–14 Regular Session is approved by the voters.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 359.5 of the Elections Code is amended
2 to read:

3 359.5. (a) “Voter-nominated office” means a congressional
4 or state elective office for which a candidate may choose to have
5 his or her party preference or lack of party preference indicated
6 upon the ballot. A political party or party central committee shall
7 not nominate a candidate at a state-conducted primary election for
8 a voter-nominated office. The primary *election* conducted for a
9 voter-nominated office does not serve to determine the nominees
10 of a political party but serves to winnow the candidates for the
11 general election to the candidates receiving the highest or second
12 highest number of votes cast at the primary election, *or to elect a*
13 *candidate in the manner provided in Sections 8141.5.* The
14 following offices are voter-nominated offices:

- 15 (1) Governor.
- 16 (2) Lieutenant Governor.
- 17 (3) Secretary of State.
- 18 (4) Controller.
- 19 (5) Treasurer.
- 20 (6) Attorney General.
- 21 (7) Insurance Commissioner.
- 22 (8) Member of the State Board of Equalization.
- 23 (9) United States Senator.
- 24 (10) Member of the United States House of Representatives.
- 25 (11) State Senator.
- 26 (12) Member of the Assembly.

27 (b) This section does not prohibit a political party or party
28 central committee from endorsing, supporting, or opposing a
29 candidate for an office listed in subdivision (a).

30 SEC. 2. Section 8141.5 of the Elections Code is amended to
31 read:

32 8141.5. (a) Except as provided *in subdivision (b) of this*
33 *section and* in subdivision (b) of Section 8142, only the candidates
34 for a voter-nominated office who receive the highest or second
35 highest number of votes cast at the primary election shall appear

1 on the ballot as candidates for that office at the ensuing general
2 election. More than one candidate with the same party preference
3 designation may participate in the general election pursuant to this
4 subdivision. Notwithstanding the designation made by the
5 candidate pursuant to Section 8002.5, no candidate for a
6 voter-nominated office shall be deemed to be the official nominee
7 for that office of any political party, and no party is entitled to have
8 a candidate with its party preference designation participate in the
9 general election unless that candidate is one of the candidates
10 receiving the highest or second highest number of votes cast at the
11 primary election.

12 *(b) If a candidate for a voter-nominated office that is a state*
13 *elective office receives at least 60 percent of all votes cast for that*
14 *office at a primary election that is not a special election to fill a*
15 *vacancy in that office, he or she shall be declared elected and no*
16 *general election shall be held for that office. The term of office for*
17 *a candidate declared elected pursuant to this subdivision shall*
18 *commence at the time that the term of office would have*
19 *commenced if the candidate had been elected at the general*
20 *election.*

21 SEC. 3. Section 8142 of the Elections Code is amended to read:

22 8142. (a) In the case of a tie vote, nonpartisan candidates
23 receiving the same number of votes shall be candidates at the
24 ensuing general election if they qualify pursuant to Section 8141
25 whether or not there are more candidates at the general election
26 than prescribed by this article. In no case shall the tie be determined
27 by lot.

28 (b) In the case of a tie vote among candidates at a primary
29 election for a voter-nominated office, the following applies:

30 (1) All candidates receiving the highest number of votes cast
31 for any candidate shall be candidates at the ensuing general election
32 whether or not there are more candidates at the general election
33 than prescribed by this article.

34 (2) Notwithstanding Section 8141.5, if a tie vote among
35 candidates results in more than one primary candidate qualifying
36 for the general election pursuant to subdivision (a), candidates
37 receiving fewer votes shall not be candidates at the general election,
38 even if they receive the second highest number of votes cast.

39 (3) If only one candidate receives the highest number of votes
40 cast but there is a tie vote among two or more candidates receiving

1 the second highest number of votes cast, each of those second-place
 2 candidates shall be a candidate at the ensuing general election
 3 along with the candidate receiving the highest number of votes
 4 cast, regardless of whether there are more candidates at the general
 5 election than prescribed by this article. *This paragraph shall not*
 6 *apply to a primary election for a voter-nominated office that is a*
 7 *state elective office if the candidate who receives the highest*
 8 *number of votes cast for the state elective office is declared elected*
 9 *pursuant to subdivision (b) of Section 8141.5.*

10 (4) In no case shall the tie be determined by lot.

11 SEC. 4. Section 8150 of the Elections Code is amended to read:

12 8150. The certificate of the Secretary of State showing
 13 candidates nominated or selected at a primary election, *or declared*
 14 *elected pursuant to subdivision (b) of Section 8141.5*, and justices
 15 of the Supreme Court and courts of appeal to appear on the general
 16 elections ballot, shall be in a form prescribed by the Secretary of
 17 State.

18 SEC. 5. Section 9083.5 of the Elections Code is amended to
 19 read:

20 9083.5. (a) If a candidate for nomination or election to a
 21 partisan office will appear on the ballot, the Secretary of State shall
 22 include in the state ballot pamphlet a written explanation of the
 23 election procedure for such offices. The explanation shall read
 24 substantially similar to the following:

25

26 PARTY-NOMINATED/PARTISAN OFFICES

27 Under the California Constitution, political parties may formally
 28 nominate candidates for party-nominated/partisan offices at the
 29 primary election. A candidate so nominated will then represent
 30 that party as its official candidate for the office in question at the
 31 ensuing general election and the ballot will reflect an official
 32 designation to that effect. The ~~top-votegetter~~ *vote-getter* for each
 33 party at the primary election is entitled to participate in the general
 34 election. Parties also elect officers of official party committees at
 35 a partisan primary.

36 No voter may vote in the primary election of any political party
 37 other than the party he or she has disclosed a preference for upon
 38 registering to vote. However, a political party may authorize a
 39 person who has declined to disclose a party preference to vote in
 40 that party's primary election.

1
2 (b) If ~~any~~ a candidate for nomination or election to a
3 voter-nominated office will appear on the ballot, the Secretary of
4 State shall include in the state ballot pamphlet a written explanation
5 of the election procedure for such offices. The explanation shall
6 read substantially similar to the following:

7
8 VOTER-NOMINATED OFFICES

9 Under the California Constitution, political parties are not entitled
10 to formally nominate candidates for voter-nominated offices at the
11 primary election. A candidate nominated for a voter-nominated
12 office at the primary election is the nominee of the people and not
13 the official nominee of any party at the following general election.
14 A candidate for nomination or election to a voter-nominated office
15 shall have his or her party preference, or lack of party preference,
16 reflected on the primary and general election ballot, but the party
17 preference designation is selected solely by the candidate and is
18 shown for the information of the voters only. It does not constitute
19 or imply an endorsement of the candidate by the party designated,
20 or affiliation between the party and candidate, and no candidate
21 nominated by the qualified voters for any voter-nominated office
22 shall be deemed to be the officially nominated candidate of any
23 political party. The parties may list the candidates for
24 voter-nominated offices who have received the official endorsement
25 of the party in the sample ballot.

26 All voters may vote for any candidate for a voter-nominated
27 office, provided they meet the other qualifications required to vote
28 for that office. The top two ~~votegetters~~ *vote-getters* at the primary
29 election advance to the general election for the voter-nominated
30 office, even if both candidates have specified the same party
31 preference designation. *However, if a candidate for a*
32 *voter-nominated office that is a state elective office receives at*
33 *least 60 percent of all votes cast for that office at a primary election*
34 *that is not a special primary election, that candidate shall be*
35 *declared elected, and no general election shall be held for that*
36 *office.* No party is entitled to have a candidate with its party
37 preference designation participate in the general election unless
38 ~~such~~ *that* candidate is one of the two highest ~~votegetters~~
39 *vote-getters* at the primary election.

40

1 (c) If ~~any~~ a candidate for nomination or election to a nonpartisan
 2 office, other than judicial office, ~~shall~~ will appear on the ballot,
 3 the Secretary of State shall include in the state ballot pamphlet a
 4 written explanation of the election procedure for such offices. The
 5 explanation shall read substantially similar to the following:

6
 7 NONPARTISAN OFFICES

8 Under the California Constitution, political parties are not entitled
 9 to nominate candidates for nonpartisan offices at the primary
 10 election, and a candidate nominated for a nonpartisan office at the
 11 primary election is not the official nominee of any party for the
 12 office in question at the ensuing general election. A candidate for
 13 nomination or election to a nonpartisan office may NOT designate
 14 his or her party preference, or lack of party preference, on the
 15 primary and general election ballot. ~~The~~ *If a candidate for a*
 16 *nonpartisan office at a primary election receives votes on at least*
 17 *60 percent of all the ballots cast for that office, the candidate shall*
 18 *be elected to that office, and the office shall not appear on the*
 19 *ballot at the ensuing general election. Otherwise, the top two*
 20 ~~votegetters~~ *vote-getters* at the primary election advance to the
 21 general election for the nonpartisan office.

22
 23 (d) Posters or other printed materials containing the notices
 24 specified in subdivisions (a) to (c), inclusive, shall be included in
 25 the precinct supplies pursuant to Section 14105.

26 SEC. 6. Section 15452 of the Elections Code is amended to
 27 read:

28 15452. The person who receives a plurality of the votes cast
 29 for any office is elected or nominated to that office in any election,
 30 except *with respect to the following*:

- 31 (a)
- 32 (1) An election for which different provision is made by any
 33 city or county charter.
- 34 (b)
- 35 (2) A municipal election for which different provision is made
 36 by the laws under which the city is organized.
- 37 (c)
- 38 (3) The election of local officials in primary elections as
 39 specified in Article 8 (commencing with Section 8140) of *Chapter*
 40 *I* of Part 1 of Division 8.

1 ~~(d)~~

2 (4) The nomination of candidates for a voter-nominated office
3 at the primary election to participate in the general election for
4 that office as specified in Article 8 (commencing with Section
5 8140) of Chapter 1 of Part 1 of Division 8 *where no candidate for*
6 *a voter-nominated office that is a state election office receives at*
7 *least 60 percent of the votes cast for that office in the primary*
8 *election.*

9 SEC. 7. This act shall become operative only if Assembly
10 Constitutional Amendment ____ of the 2013–14 Regular Session
11 is approved by the voters.

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