

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1075**

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**Introduced by Assembly Member Olsen**

February 22, 2013

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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 amended, 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 \_\_\_\_\_ 10 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~~ Section 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 section  
33 and in subdivision (b) of Section 8142, only the candidates for a

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

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

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

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

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

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

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

(3) If only one candidate receives the highest number of votes cast but there is a tie vote among two or more candidates receiving the second highest number of votes cast, each of those second-place candidates shall be a candidate at the ensuing general election along with the candidate receiving the highest number of votes cast, regardless of whether there are more candidates at the general election than prescribed by this article. This paragraph shall not apply to a primary election for a voter-nominated office that is a state elective office if the candidate who receives the highest number of votes cast for the state elective office is declared elected pursuant to subdivision (b) of Section 8141.5.

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

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

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

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

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

#### PARTY-NOMINATED/PARTISAN OFFICES

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

No voter may vote in the primary election of any political party other than the party he or she has disclosed a preference for upon registering to vote. However, a political party may authorize a

person who has declined to disclose a party preference to vote in that party's primary election.

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

#### VOTER-NOMINATED OFFICES

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

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

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

7  
8 NONPARTISAN OFFICES

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

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

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

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

32 (1) An election for which different provision is made by any  
33 city or county charter.

34 (2) A municipal election for which different provision is made  
35 by the laws under which the city is organized.

36 (3) The election of local officials in primary elections as  
37 specified in Article 8 (commencing with Section 8140) of Chapter  
38 1 of Part 1 of Division 8.

39 (4) The nomination of candidates for a voter-nominated office  
40 at the primary election to participate in the general election for

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

6 SEC. 7. This act shall become operative only if Assembly  
7 Constitutional Amendment \_\_\_\_\_ 10 of the 2013–14 Regular  
8 Session is approved by the voters.

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