

Inspired Prop. 65 Authors Take Aim at Air Pollution

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NOV. 6, 1986 12 AM
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Glowing with the lopsided victory of Proposition 65, the chief authors of the anti-toxics initiative said Wednesday that they are already discussing another ballot measure—one that would do for air pollution what this initiative does for drinking water.

Describing the election results as a historic turning point, the initiative's proponents predicted that their effort will prove to be the environmental equivalent of Proposition 13, the 1978 property tax-slashing measure that set off a wave of imitation around the country. Already politicians and environmental groups in half a dozen states have contacted various authors to discuss drafting similar measures, the Yes on 65 leaders told reporters.

Proposition 65 was directed primarily at fighting toxic contamination of drinking water supplies, increasing penalties and putting strict limits on the discharge on land or into water of chemicals believed to cause cancer or birth defects.

But impatient with what they consider a lack of movement on cleaning up air pollution in California, the authors of Proposition 65 say they are encouraged enough to begin putting together a new statute that could be on the ballot in 1988, but only if the Legislature rejects their proposals.

Current Penalties

Penalties for violation of air pollution statutes are no more than \$1,000 a day per violation despite efforts by prosecutors to persuade the Legislature to increase them, said Barry Groveman, a former Los Angeles County deputy district attorney and one of the principal authors of Proposition 65. "The fines are considered just a cost of doing business," he contended.

"We've waited too long for the state Air Resources Board to set some goals and try to enforce them," complained another of the ballot measure's authors, Tom Houston, chief deputy to Los Angeles Mayor Tom Bradley.

The success of Proposition 65 will increase pressure on the Legislature to take action on air pollution problems, said Assemblyman Tom Hayden (D-Santa Monica), who with his wife, actress Jane Fonda, runs Campaign California, the biggest financial contributor to the Yes on 65 campaign. "Whether we use the initiative in 1988 is open to question, but we have to rely on the Legislature."

But the talk of other anti-pollution initiatives comes even before it is clear what the full effect of Proposition 65 will be. And representatives of the state's major business and agricultural interests spoke in worried tones about working to implement the ballot measure without damaging some of the state's largest industries.

“It will take a great deal of effort to make Proposition 65 work and at the same time not have an adverse impact on the California economy,” said Dave Ackerman, executive vice president of the California Chamber of Commerce.

“There are a lot of uncertainties, a lot of unknowns,” said Merlin Fagan Jr., a principal lobbyist for the California Farm Bureau Federation.

However, voters clearly did not share their concerns about the measure. The final, unofficial tally showed overwhelming support: 4,290,793 to 2,568,944, or 63% to 37%.

In the aftermath of the election, both sides agree that just how the measure will work will depend on how it is carried out by Gov. George Deukmejian, who opposed Proposition 65 just as Gov. Edmund G. Brown Jr. opposed Proposition 13 more than nine years ago.

Governor Vows Support

Deukmejian, buoyed by a reelection triumph of his own, assured reporters Wednesday that he will carry out the initiative despite his earlier opposition, although he said he thinks there could be a legal challenge.

“I will certainly go forward and implement that law that has been passed by the people, unless and until there is some court order that indicates otherwise,” Deukmejian said.

However, several leaders of the anti-65 campaign said Wednesday that they have not yet heard of any specific plans to mount a legal challenge to the measure. “The focus is on how it will be implemented,” said attorney Michele Corash, who worked with the No on 65 campaign.

Houston said he expects Deukmejian to be true to his word. “Deukmejian will move rapidly to deal with this, just as Jerry Brown turned around and endorsed Proposition 13. The governor is interested in a good record on toxics; he’s interested perhaps in moving on to another office. . . . He cannot afford a black eye. He will get the job done.”

Immediate Provisions

Parts of Proposition 65 went into effect immediately, without any need for further action from the governor. Under the measure, for example, criminal penalties for those found in violation of the state’s laws against dumping hazardous waste have doubled. And the measure puts into effect a new penalty, carrying a maximum fine of \$250,000 a day and up to six years in prison if the illegal dumping can be shown to lead to death or great bodily injury.

The law also now requires public officials to notify local boards of supervisors and county health officers whenever they learn of illegal dumping that threatens the public. The penalty for government officials who fail to do so is a fine of up to \$25,000 and up to three years in jail.

Other, more controversial provisions of Proposition 65 will not go into effect until later. By next March 1, the governor must produce a list of chemicals known to cause cancer, birth defects, sterility or miscarriages. At a minimum the listed substances must include more than 200 cancer-causing materials identified by the National Toxicology Program and the International Assn. for Research on Cancer.

Warnings Required

Beginning in March, 1988, businesses that knowingly expose the public to significant amounts of any of the listed chemicals must warn those who are exposed--with signs, labels or advertising.

In November, 1988, firms will no longer be able to discharge the chemicals into drinking water supplies unless they can show that the amounts will have no significant effect on those who drink the water.

Violators of both the warning and discharge provisions will be subject to civil fines of \$2,500 a day. Under the measure, any person can take violations to court and, if successful, would receive 25% of the fines meted out.

While proponents of the measure say that the civil suits are the key to enforcement of the initiative, they also argue that few actions will be filed because of the high cost of litigation.