

Date of Hearing: May 6, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2369 (Hagman) – As Introduced: February 21, 2014

SUBJECT: Elections: voter-requested recounts.

SUMMARY: Modifies provisions of law that govern who can pay for a recount. Specifically, this bill, requires a voter or the candidate-controlled campaign committee represented by the voter that files a request seeking a recount to deposit money to pay for the recount from the voter's own personal funds or from funds of the candidate-controlled campaign committee of the candidate on whose behalf the recount is being requested.

EXISTING LAW:

- 1) Defines "voter" to mean an elector who is registered pursuant to current law.
- 2) Allows any voter, within five days following the completion of the official canvass and following the completion of any postcanvass risk-limiting audit conducted pursuant to existing law, to request in writing that the elections official responsible for conducting an election commence a recount of the votes cast for candidates for any office or for or against any measure, provided the office or measure is not voted on statewide. Allows a recount for an election that is conducted in more than one county to be conducted in any or all of the affected counties.
- 3) Allows any voter, following the completion of the official canvass and within five days beginning on the 29th day after a statewide election, to file with the Secretary of State (SOS) a written request for a recount of the votes cast for candidates for any statewide office or for or against any measure voted on statewide. Allows any voter, within five days following the completion of any postcanvass risk-limiting audit conducted pursuant to existing law, to file with the SOS a written request for a recount of the votes cast for candidates for any statewide office or for or against any measure voted on statewide. Requires a request filed to specify in which county or counties the recount is sought and specify on behalf of which candidate, slate of electors, or position on a measure it is filed.
- 4) Permits any other voter, at any time during the conduct of a recount and for 24 hours thereafter, to request the recount of any precincts in an election for the same office, slate of presidential electors, or measure not recounted as a result of the original request.
- 5) Requires a voter seeking the recount, before the recount is commenced and at the beginning of each subsequent day, to deposit with the elections official the amount of money required by the elections official to cover the cost of the recount for that day.

FISCAL EFFECT: Keyed non-fiscal by Legislative Counsel.

COMMENTS:1) Purpose of the Bill: According to the author:

While current law requires the voter requesting the recount to deposit the funds required, the law is unclear from where those funds are allowed to come. AB 2369 clarifies existing law by explicitly stating that funds for the recount have to be provided by the voter's personal funds or funds from the voter's controlled campaign committee. This bill won't stop outside sources from being able to contribute [to] a recount effort, but ensures transparency and accountability within the recount process, as voters can easily track campaign contributions. However, AB 2369 will prevent direct 3rd party contributions towards an election recount. It is vital that we provide clarity under current law to bring transparency to election recounts. Voters deserve to know not only who requests a recount, but also how it is being funded.

2) Restrictions on Who Pays for a Recount: Existing law permits any registered voter to request a recount within five days following the completion of the official canvass. The voter requesting the recount must specify on behalf of which candidate, slate of electors, or position on a measure it is filed. Additionally, at any time during the conduct of a recount and for 24 hours thereafter, current law allows any voter other than the original requestor to request a recount of additional precincts. The voter filing the request for the recount is required to deposit, before the recount commences and at the beginning of each day following, sums as required by the elections official to cover the cost of the recount for that day. If upon completion of the recount, the results are reversed, the deposit shall be returned.

This bill restricts who may pay for a recount. Specifically, this bill requires a voter that requests a recount to pay for the recount from his or her own personal funds and requires a candidate controlled campaign committee that requests a recount to use funds from the candidate-controlled campaign committee of the candidate on whose behalf the recount is being requested to pay for the recount. According to the author, the law is unclear and there is confusion on where funds are actually allowed to come from to pay for the recount and voters deserve to know not only who requests a recount but also how it is being funded.

The practical effect of this bill is that a recount can only be requested if it is paid for by a voter who uses his or her own personal funds or a candidate who uses his or her candidate campaign committee funds. This bill excludes other entities, such as a local political party, a ballot measure campaign committee, or a passionate advocacy organization interested and invested in the outcome of a particular candidate or a ballot measure, from being able to request a recount because the bill does not permit these entities to directly pay for the recount.

It is possible that entities other than a candidate's campaign committee may be interested and invested in pursuing a recount to hopefully change the outcome of an election. One of the only ways in which another entity could plausibly request and pay for a recount would be if a candidate had a desire to request a recount and agreed to pay for it using funds from the candidate controlled campaign committee and the outside entity contributed to the candidate's controlled campaign committee to pay for the recount. The only other plausible alternative available to an outside entity would be if the entity was able to convince an

individual voter to request a recount on his or her behalf and then paid for it with his or her own personal funds.

In 1978, the Legislature passed and the Governor signed AB 3313 (Keysor), Chapter 847, Statutes of 1978, which made significant changes to recount processes and procedures. Specifically, AB 3313 allowed any voter to request and pay for a recount, instead of only allowing a candidate for office, an authorized representative of a candidate for office, or an authorized representative of a ballot measure to request and pay for a recount. According to bill documents obtained at the California Archives, the policy change to broaden who can request and pay for a recount was necessary because of the difficulty of identifying who is an "authorized representative" or should be entitled to request a recount, especially for ballot measures. According to the bill analysis, while it might be sufficient to provide that recounts could be only requested by the candidates themselves or by their representative, it is not the case for ballot measures. Furthermore, school and special district recounts avoided this problem by allowing "any voter" to seek a recount. Finally, the bill analysis states that it is unlikely that there will be a proliferation of recount requests since the person seeking the recount will have to pay the cost. It is clear that the Legislature made a conscious effort to change public policy and broaden who is allowed request and pay for a recount. This bill, which restricts who is able to pay for and request a recount, takes a step back and reverts public policy back to 1977.

- 3) Increased Transparency? According to the author's statement, while this bill won't stop outside sources from being able to contribute to a recount effort, it will however, ensure transparency and accountability within the recount process and provide clarity in the law as to who is able to pay for the cost of a recount and reveal how a recount is being funded. While the author's goal is laudable, the committee may wish to consider whether this bill truly provides sunshine on who is paying for a recount. This bill, which requires a voter that requests a recount to pay for the recount from his or her own personal funds may not truly reveal where those funds are coming from. A business or organization could contribute money to the person requesting the recount and the voter requesting the recount can then submit cash, a cashier's check, or a money order to cover the costs of the recount. So, while it may seem as though the recount is being paid by the personal funds of the voter, it is not entirely certain that is the case.

Furthermore, if a candidate pays for a recount, it is already required it to be disclosed and reported under the Political Reform Act (PRA). Additionally, if a recount is paid for by third party in coordination with or at the request of a candidate it is already considered a reportable in-kind contribution under the PRA. Consequently, it is unclear how this bill will result in more transparency when current law already provides for disclosure.

- 4) Political Reform Act and Enforcement: In 1974, California voters passed an initiative, Proposition 9 that created the Fair Political Practices Commission (FPPC) and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. The FPPC is responsible for enforcing state laws governing political campaigns, fundraising, lobbying, and conflicts of interest for elected officials. This bill, which requires a candidate controlled campaign committee to use funds from the candidate controlled campaign committee to pay for the recount, takes an aspect of the PRA and places it in the Elections Code. As a result, the FPPC would not be required to enforce these provisions of this bill and it is unclear who would enforce the requirements in

this bill. Would the enforcement of this bill fall into the hands of the elections official?

- 5) Other States: Each state has specific laws for conducting recounts. A recount can be initiated either automatically or by an individual or group of individuals. Some states require an automatic recount when the margin of victory falls within a predetermined percentage, such as 0.5 or one percent. According to a 2010 Election Assistance Commission's (EAC) draft Recounts and Contests Study, approximately 21 states and the District of Columbia have automatic recounts in some elections (California does not). Automatic recounts usually require the state to pay for the recount costs. The second type of recount is an initiated recount. Some states allow for candidate-initiated recounts that allow candidates to petition for a recount within a specified time period after certification of election results. According to the EAC draft study, 39 states and the District of Columbia have statutes or regulations authorizing candidate-initiated recounts. Additionally, there are citizen-initiated recounts allowed in 27 states and the District of Columbia, whereby a citizen may petition for a recount. It's common for the citizen who requested the recount to pay for the recount. As mentioned above, California law allows for any voter to request a recount.

In addition, election recount laws vary greatly across states. According to EAC's draft study, "there are no common practices across states associated with what an entity pays for the cost of a recount. For automatic recounts, it is usually the state or government that pays for the recount. For initiated recounts, there are many different ways states cover the costs of recounts." For instance, according to the report, 27 states have laws that require a petitioner to pay the actual costs of the recount, one state requires petitioners to pay a pre-determined estimated cost, and 17 states have a fixed fee as determined by their state laws. Additionally, two states give the court or government direction in assessing the costs of a recount, and in one state, the law is not clear regarding how the actual cost of the recount is determined. Finally, in some states, the outcome of the initiated recount can affect the payment requirement, such as when the petitioner is declared the winner, he or she often does not have to pay for the recount. California statute requires the voter that requested the recount to pay for the recount. If upon completion of the recount, the results are reversed, the payment is returned to the requestor.

As mentioned above, this bill requires a voter that requests a recount to pay for the recount from his or her own personal funds and requires a candidate controlled campaign committee that requests a recount to use funds from the candidate-controlled campaign committee. The author argues that other states clarify that the voter or candidate requesting the recount must pay for it at their own expense. The author's office provided the committee with two examples of states that make this clarification – Minnesota and Colorado. Minnesota requires a candidate to request a full or partial recount at his or her own expense. However, Minnesota state law allows for statewide automatic recounts. Specifically, if the margin between the two top candidates falls within one-half of one percent, an automatic hand recount is required. Moreover, in the instance that an automatic hand count is required, the taxpayers pay for the recount. However, if the vote margin is greater than the one-half of one percent, then Minnesota state law permits a candidate to request a full or partial recount, but it is at his or her own expense. Moreover, Colorado state law also provides for automatic recounts and states that a recount of any election contest shall be held if the difference between the highest number of votes cast in that election contest and the next highest number of votes cast in that election contest is less than or equal to one-half of one percent of the highest vote cast in that election contest. Additionally, whenever a recount is not required,

Colorado state law allows an interested party to submit a notarized written request for a recount at the expense of the interested party making the request. Under Colorado law, the term "interested party" is limited to the candidate who lost the election, the political party or political organization of such candidate, any petition representative for a ballot issue or ballot question that did not pass at the election, or the governing body that referred a ballot question or ballot issue to the electorate if such ballot question or ballot issue did not pass at the election.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094