

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SCA 1 (Newman) – As Introduced January 30, 2023

SENATE VOTE: 31-7

SUBJECT: Elections: recall of state officers.

SUMMARY: Provides for a state recall election to include only the question of whether the elected officer sought to be recalled should be removed from office. Requires the office, if a state officer is successfully recalled, to become vacant and to be filled in accordance with existing law, as specified. Specifically, **this measure:**

- 1) Repeals a provision of the California Constitution that generally requires an election to determine whether to recall a state officer to include the election of a successor if the recall is successful.
- 2) Provides that an office is vacant and shall be filled in accordance with the California Constitution and state statute if a majority of voters vote to recall the state officer who holds that office. Prohibits the recalled officer from being appointed to fill that vacancy.
- 3) Requires the Secretary of State (SOS), rather than the Lieutenant Governor, to perform the duties of the Governor related to a recall if the recall is initiated against the Governor. Specifies that if recalls of the Governor and SOS are initiated at the same time, the recall duties of both offices shall be performed by the Controller.
- 4) Provides that if the Governor is removed from office by recall, the Lieutenant Governor shall become Governor for the remainder of the unexpired term. Provides that if the Governor is removed from office by recall before the close of the nomination period for the next statewide election during the first two years of the Governor's term, a special election shall be called to replace the Governor and shall be consolidated with the statewide primary election and, if necessary, the subsequent statewide general election. Provides that if a candidate receives a majority of the votes in the special election that is consolidated with the statewide primary election, that candidate shall become Governor for the remainder of the unexpired term. Provides that if no candidate receives a majority of the votes, the top two vote-getters shall compete in a special election consolidated with the subsequent statewide general election, and the winner of that election shall become Governor for the remainder of the unexpired term.

EXISTING LAW:

- 1) Provides that recall is the power of the electors to remove an elective officer. (California Constitution, Article II, §13) Provides that the recall of a state officer is initiated by delivering to the SOS a petition alleging reason for recall that is signed by a specified number of electors. (California Constitution, Article II, §14)

- 2) Requires an election to determine whether to recall a state officer and, if appropriate, to elect a successor to be called by the Governor, as specified. Provides that if the majority vote on the question is to recall, the officer is removed and, if there is a candidate, the candidate who receives a plurality is the successor. Prohibits the officer who is the subject of the recall from being a candidate in the election to choose a successor. (California Constitution, Article II, §15)
- 3) Provides that if the recall of the Governor or SOS is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively. (California Constitution, Article II, §17)
- 4) Provides that the Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor. (California Constitution, Article V, §10)
- 5) Requires the Governor to nominate a person to fill any vacancy in the office of the Superintendent of Public Instruction, the Lieutenant Governor, SOS, Controller, Treasurer, or Attorney General, or on the State Board of Equalization, and provides that the nominee shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly and shall hold office for the balance of the unexpired term, as specified. (California Constitution, Article V, §5) Provides that a vacancy in the office of Insurance Commissioner shall be filled in the same manner. (Insurance Code §12900)
- 6) Requires the Governor to call an election to fill a vacancy in the Legislature, as specified. (California Constitution, Article IV, §2(d); Elections Code §§10700-10707; Government Code §1773)
- 7) Requires the Governor to fill vacancies in the office of judge of the Supreme Court or judge of a court of appeal by appointment, as specified. Provides that an appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments. (California Constitution, Article VI, §16(d))

FISCAL EFFECT: According to the Senate Appropriations Committee, this measure would result in one-time General Fund costs to the SOS in the range of \$738,000 to \$984,000, for printing and mailing costs to place the measure on the ballot in a statewide election. Actual costs may be higher or lower, depending on the length of required elements and the overall size of the ballot.

COMMENTS:

- 1) **Purpose of the Measure:** According to the author:

California's recall provisions were conceived of and enacted more than 110 years ago. Obviously, the world has changed quite a bit since then, and sadly, politics is no exception. The system in its current form offers bad actors an incentive to target an elected official with whom they disagree and to have the official replaced by someone who otherwise would not enjoy the support of a majority of voters. SCA 1 will ensure that statewide and legislative recalls in California are

democratic, fair, and not subject to political gamesmanship. This constitutional amendment will adjust how state-level recall elections are conducted, so that only one question will appear on a recall ballot, asking a voter to decide whether or not an elected official should be recalled from office. If a recall is successful, the official will be replaced in the manner consistent with existing law if the official were to leave office for any other reason.

- 2) **Recall Informational Hearings:** In late-2021 and early-2022, this committee held a series of joint informational hearings with the Senate Elections & Constitutional Amendments Committee to review California's recall process following the September 2021 gubernatorial recall election.

At the first hearing, on October 28, 2021, the committees heard from current and former elected officials, elections experts, and academics about their perspectives on the state's recall process and different reform proposals, including increasing the number of signatures for qualifying a statewide recall and changing the method for selecting the successor to a recalled official.

At the second hearing, on December 6, 2021, the committees heard from two panels of expert witnesses. The first panel of academics examined a limitation, used in several states, which only allows recalls to be initiated against an official for certain enumerated causes. The second panel of experts and local elected officials discussed the use of the recall at the local level, along with potential options for reform.

At the third and final recall informational hearing, on February 1, 2022, the committees heard from the SOS, who shared recommendations for improvements on the state recall process based on her consultation with outside experts and stakeholders. The committees also received an overview from Dr. Mark Baldassare, the President and Chief Executive Officer of the Public Policy Institute of California (PPIC), regarding its January 2022 statewide survey in which the PPIC asked Californians about their views on the recall process. Dr. Baldassare presented new data from their statewide survey, and discussed whether and how the views of California voters about the recall process have changed over time.

One of the major takeaways from the committee's first two hearings was that many of the recall reform proposals would require voter approval in order to take effect. In particular, proposals to make significant structural changes to the recall process at the state level generally require an amendment to the California Constitution. By contrast, changes to the process for recalling local elected officials and certain procedural changes to the state process can be made through statutory changes alone. The third hearing generally reinforced the importance of continuing to evaluate California's recall processes and that California voters generally support reform of the recall process, but are against any changes to the recall procedure or process that diminish or decrease the voter's power to recall an elected official.

- 3) **State Recall History:** According to the SOS, since 1913, there have been 180 recall attempts of state elected officials in California (trial court judges are considered local officials for the purposes of state statutes governing recalls, and are not included in these figures). Eleven recall efforts collected enough signatures to qualify for the ballot. Of the 11 recall elections,

the elected official was recalled in six instances. Below is a list of recall attempts of state officials that have qualified for the ballot and the outcome of the election:

Year	Officer	Outcome
1913	Senator Marshall Black	Recalled
1913	Senator Edwin E. Grant	Recalled
1914	Senator James C. Owens	Unsuccessful
1994	Senator David Roberti	Unsuccessful
1994	Assemblymember Michael Machado	Unsuccessful
1994	Assemblymember Paul Horcher	Recalled
1995	Assemblymember Doris Allen	Recalled
2003	Governor Gray Davis	Recalled
2007	Senator Jeffrey Denham	Unsuccessful
2018	Senator Josh Newman	Recalled
2021	Governor Gavin Newsom	Unsuccessful

The Governor and members of the Legislature have been the most frequent targets of attempts to recall elected state officials. The following information, also from the SOS, details the number of recall attempts initiated against elected state officials by position held since 1913:

Office	Recall Attempts
Governor	55
Lieutenant Governor	2
Attorney General	7
Secretary of State	1
State Treasurer	1
State Controller	1
Insurance Commissioner	2
Member of the Board of Equalization	2
Member of the State Senate	31
Member of the State Assembly	50
Supreme Court (entire membership)	1
Supreme Court (individual justices)	27

- 4) **Other States:** According to information from the National Conference of State Legislatures (NCSL), 19 states allow voters to recall state officials and at least 30 states provide a recall process for local officials. The procedures for qualifying and conducting a recall differ significantly between those 19 states.

Based on information from NCSL, the Little Hoover Commission, and committee staff research, California is one of only two states (along with Colorado) that hold the recall and replacement elections simultaneously for any recall of a state official, with both questions appearing on the same ballot. (New Jersey holds recall elections in this manner for state offices other than Governor and state Legislature, but has different rules for gubernatorial

and legislative recalls.) Five states (Arizona, Michigan, Nevada, North Dakota, and Wisconsin) conduct recall elections using a “snap election” process, under which the public official who is the target of the recall is listed on the ballot along with all replacement candidates. If the incumbent receives the most votes in the election, the recall fails and the incumbent remains in office. If a replacement candidate receives the most votes, the recall succeeds and that candidate takes office. (Michigan does not use a “snap election” process for gubernatorial recalls. Instead, for gubernatorial recalls, Michigan voters are asked whether they want to recall the Governor; if a majority vote “yes,” then the Governor is removed and replaced in accordance with the state’s succession rules.) The remaining states that permit recalls of elective state officers generally conduct an election where voters are asked a single question of whether they want to recall the officer in question. If that recall is successful, the resulting vacancy is filled either in accordance with relevant succession rules, by appointment, or by a subsequent special election.

- 5) **Local Recalls and Previous Legislation:** Until last year, *local* recall elections held in California generally were conducted in a similar manner to how *state* recall elections are conducted: namely, as a two-part election where voters were asked (1) whether the targeted official should be recalled, and (2) if the recall is successful, who should replace the recalled officer. In 2022, however, the Legislature passed and Governor Newsom signed AB 2582 (Bennett), Chapter 790, Statutes of 2022. For local jurisdictions that do not have a charter provision that provides for recall, AB 2582 removed the successor candidate question from the recall question, so that the election for a local officer only includes the question of whether the officer sought to be recalled shall be removed from office. Any vacancy created as the result of a successful recall election under AB 2582 is filled in the same manner as a vacancy in that office otherwise would be filled.

If this constitutional amendment is approved by voters, it generally would align the process for recalls of elected state officials with the process that now applies to recalls for elected local officials under AB 2582.

- 6) **Little Hoover Commission Report:** The Little Hoover Commission launched a study in 2021 to consider whether the state’s system for recalling state officeholders should be changed, and if so, how. The study resulted in its February 2022 report, “Reforming the Recall.” In its report, the commission concluded that the recall system should be retained, both because it is substantively valuable—voters should be able to fire an elected official mid-term—and because it is overwhelmingly popular with voters. However, the report also concluded that substantial changes are needed in California’s recall process.

According to the report, current recall procedures breed the possibility of an undemocratic outcome since they allow a replacement candidate to win office while receiving fewer votes than the incumbent. The report also concluded that California’s threshold for qualifying a recall election no longer provides an adequate barrier against potential abuse or overuse of the recall. The report made various recommendations, including replacing the existing two-part recall ballot with a “snap” special election in which the official targeted for recall is placed on the ballot with all replacement candidates.

- 7) **Previous Legislation:** SCA 18 (Allen) of 2018 (March 6, 2018 version) proposed to repeal the constitutional prohibition on a recall target appearing on the same ballot as a successor

candidate to their own recall, among other provisions. SCA 18 was not heard in a policy committee in that form.

SCA 18 (Allen) of 2018 (May 8, 2018 version) proposed to increase the vote required to recall a state officer from a majority to 55 percent. SCA 18 in this form was held on the Senate Appropriations Committee's suspense file.

SCA 2 (Allen) of 2019 proposed to eliminate the ballot question of whether or not a candidate should be recalled, except for judicial officers. Instead, SCA 2 would have provided that if a recall qualifies against an officer, other than a judicial officer, the name of the officer would be placed on the ballot as a successor candidate, unless the officer resigned, as specified. If the recall target received a plurality of the vote, the recall would fail. If a different successor candidate received the most votes, the recall would succeed and that successor candidate would be elected. SCA 2 was approved by the Senate, but was not heard in a policy committee in the Assembly in that form, and instead was amended and used for unrelated purposes.

SCA 3 (Allen) of 2021 was identical to SCA 2 (Allen) of 2019. SCA 3 was never heard in a policy committee.

SCA 6 (Newman) of 2022 was similar to this measure. SCA 6 was not heard in a policy committee.

- 8) **Arguments in Support:** In a joint letter of support for this measure, the League of Women Voters of California and California Common Cause (two of the co-sponsors of this measure) write:

Under current law, an off-cycle special election may be held for a recall, in which voters are presented with two questions - whether an officer should be recalled and who should replace the officeholder. While the first question requires a majority vote to remove the elected official, the second question allows a replacement candidate to be chosen by a slim plurality. Our state's most important leaders can therefore be picked at low-turnout elections with non-representative electorates, and replacements can be put into office with low plurality support, rather than a majority of voters in the election. Furthermore, voters have expressed deep confusion as to whether they are permitted to vote for a replacement candidate if they vote "no" on the first question. The perplexing system can cause people to refrain from answering the second question, thereby disenfranchising voters, and contributing to an undervote for replacement candidates...

SCA 1...would retain access to the recall, but in a way that should ensure recall outcomes are democratic and broadly supported and will help to eliminate recalls that are frivolous or degrade democratic legitimacy.

- 9) **Arguments in Opposition:** In opposition to this measure, Election Integrity Project California, Inc., writes:

On the rare occasion when a recall of a sitting state Governor is qualified, it is the people's right not only to vote to oust the person in question, but to choose a replacement...

The Lieutenant Governor is almost always on the same partisan and ideological "page" as the Governor, and as such would be just as unacceptable to the citizenry as the person they are "firing".

The proposal of SCA 1 that the Lieutenant Governor simply assume the governorship in the event of a successful recall would make a gubernatorial recall effort a "frying pan vs the fire" situation, and monumentally suppress not only the people's right to self-govern but their eagerness to participate in government at all.

Every step should be taken to encourage full participation of all eligible voters in making the decisions and choices that affect their lives and keep our Republic not only strong but also responsive to its constituents. SCA 1 is definitely a step in the wrong direction.

10) **Approval by Voters:** As a constitutional amendment, this measure requires the approval of the voters to take effect.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause (Co-sponsor)
League of Women Voters of California (Co-sponsor)
Secretary of State Shirley N. Weber, Ph.D. (Co-sponsor)
Indivisible CA: StateStrong
Lieutenant Governor Eleni Kounalakis
Santa Monica Democratic Club

Opposition

Election Integrity Project California, Inc.
One individual

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