

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 2582 (Bennett) – As Introduced February 18, 2022

SUBJECT: Recall elections: local offices.

SUMMARY: Requires a local 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 local officer is successfully recalled, to become vacant and to be filled in accordance with existing law. Specifically, **this bill:**

- 1) Requires a local recall election to include only the question of whether the local elected officer should be removed from office, instead of asking two questions: 1) should the elected official be removed from office, and 2) who should replace the recalled official in the event that the elected official is removed from office.
- 2) Prohibits an election for a successor in a recall of a local elected officer, and requires the office, if a local officer is successfully recalled, to become vacant and to be filled according to existing law.
- 3) Makes corresponding changes.

EXISTING LAW:

- 1) States, pursuant to the California Constitution, that the recall is the power of the voters to remove an elective officer. Requires the Legislature to provide for the recall of local officers, but provides that this provision does not affect counties and cities whose charters provide for recall.
- 2) Defines the following terms, for the purposes of the state's recall laws:
 - a) "Local officer" to mean an elective officer of a city, county, school district, community college district, or special district, or a judge of a trial court.
 - b) "Governing board" to mean a city council, the board of supervisors of a county, the board of trustees of a school district or community college district, or the legislative body of a special district. Provides in the case of the recall of a trial court judge that the term "governing board" means the board of supervisors.
- 3) Prohibits recall proceedings from commencing against an officer of a city, county, special district, school district, community college district, or county board of education if any of the following are true:
 - a) The officer has not held office during the current term for more than 90 days;
 - b) A recall election has been determined in the officer's favor within the last six months; or,

c) The officer's term ends within six months or less.

Provides that these limitations do not apply to an officer appointed in lieu of an election as specified.

- 4) Prohibits a person whose recall is being sought from being a candidate to succeed themselves at a recall election nor to succeed any other member of the same governing board whose recall is being sought at the same election.
- 5) Requires at every recall election (other than a landowner voting district election) the following question to be asked: "Shall [name of officer sought to be recalled] be recalled (removed) from the office of [title of office]?" Requires to the right of this question the words "Yes" and "No" on separate lines with an enclosed voting space to the right of each.
- 6) Requires a recall election to include the question of whether the officer sought to be recalled shall be removed from office and an election for the officer's successor in the event the officer is removed from office.
- 7) Provides that if a majority of the votes on a recall proposal are "Yes," the officer is removed and, if there is a candidate, the candidate who receives the highest number of votes is the successor to the unexpired term of the recalled officer.
- 8) Provides that if one-half or more of the votes on a recall proposal are "No," the officer sought to be recalled shall continue in office.

FISCAL EFFECT: None. This bill is keyed nonfiscal by Legislative Counsel.

COMMENTS:

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

California is one of at least 30 states that allows residents to recall a local official. This ability to recall local officials is important, and necessary, for ensuring that the electorate has a means of holding elected officials accountable. However, for this tool of democracy to be used effectively, it must be focused so that it isn't abused or used by special interests to win by a recall election what they cannot win in a regularly scheduled election. AB 2582 allows local recalls to focus solely on the merits of recalling a local official, instead of potentially requiring voters to consider the recall while also evaluating other candidates. This would allow voters to truly evaluate the cause for the recall, without being distracted by partisan politics, or focusing on potential replacement candidates. Under this bill, should a recall be successful the seat would be treated as vacant, and allow local governments the flexibility to fill that seat as they would any other vacancy. AB 2582 is a sensible good government reform that preserves an important tool of our democracy, while making it more focused and effective.

- 2) **Informational Recall Hearings:** Last fall and earlier this year, the Assembly Elections Committee and the Senate Elections & Constitutional Amendments Committee held a series

of joint informational hearings to review California's recall process following last September's 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 Secretary of State (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 since statewide surveys that PPIC conducted in July and November of last year.

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) **Local Recalls:** Section 13, Article II of the California Constitution defines a recall as "the power of the electors to remove an elective officer," and Section 19 of Article II requires the Legislature to provide for the recall of local officers, with the exception of counties and cities whose charters provide for recall. For most local jurisdictions, the relevant recall procedures are set out in state statute. However, some charter cities and counties, which have greater autonomy and authority to structure and organize their government under the state Constitution, have adopted different recall procedures in their charters.

Under current law, recall elections ask voters two questions: First, should the targeted elected official be recalled? Second, which candidate should replace the recalled official? On the first question, the Constitution requires a majority vote in order for the recall to succeed, and for the elected official to be removed from office. For the second question, if the targeted official

is recalled, the state Constitution provides that the replacement candidate who receives the most votes (i.e. a plurality, which may be less than a majority) is elected to succeed the recalled official.

This bill significantly modifies the local recall process. Specifically, this bill removes the second question that asks voters to vote for a replacement candidate, and instead only requires the local recall process to ask voters the first question, whether or not the elected official should be removed from office. If a majority of voters vote to remove the elected official from office, the office would become vacant and be filled in accordance with existing law.

Some critics argue that California's format for conducting recall elections has the potential to lead to fundamentally undemocratic outcomes because it creates a situation where an elected official who enjoys the support of a plurality of voters can be replaced by a candidate who receives a smaller number of votes. An elected official who is the target of a recall effectively must obtain a majority of the vote in the recall election in order to remain in office. If the recall succeeds, however, a replacement candidate can be elected with only a plurality of the vote. Additionally, some experts contend that this type of recall process may encourage the use of the recall as a political tool to exploit turnout differentials and provide an opportunity for a minority of voters to overturn the will of the majority by recalling an elected official and replacing them with a candidate who would be unlikely to win in a regular election. Such a situation could allow a replacement candidate who is unrepresentative of the preferences of voters generally to win with narrow support.

- 4) **Local Vacancies:** As mentioned above, if a local officer is successfully recalled, this bill requires the office to become vacant and filled in accordance with existing law. Under current law, vacant local elected offices are generally filled by appointment or a special election. For example, if a vacancy occurs in the board of supervisors of a general law county, current law requires the Governor to fill the vacancy through appointment and the appointee generally holds the office until the next general election when the election to fill the vacancy for the unexpired term occurs, as specified. Generally, if a vacancy occurs in the governing board of a general law city and the city has not already adopted its own ordinance governing vacancies, current law requires the vacancy to be filled by appointment or a special election, as specified. When a vacancy occurs on a school district governing board, existing law provides the board with the option to immediately call an election to fill the vacancy or make a provisional appointment, as specified.

In general, the procedures for filling a vacancy by special election for a local elected office are similar to the procedures that occur for conducting a recall election. An election is required to be conducted within a certain timeframe and may be consolidated with other regularly-scheduled elections, as specified. There are circumstances, however, when a local jurisdiction requires candidates that receive the highest number of votes to proceed to a general or run-off election. In these instances, a vacancy caused by the recall of a local officer could require two elections to fill that vacancy, which likely would increase costs and increase the time between when the recall occurred and a replacement is elected.

It could be argued that filling vacancies in elective office by appointment is a less a

democratic option, since the voters do not directly choose the person who fills an elective office for a period of time. In most situations, however, the appointed replacement is temporary and only serves until a special election is held to fill the vacancy for the rest of the unexpired term. In some situations, however, the appointed individual may serve longer if the vacancy election does not occur until next regularly scheduled election.

- 5) **State Recall Process vs Local Recall Process:** While this bill makes significant changes to the local recall process, it does not make any changes to the state recall process. The major framework governing the recall process for state officers is enshrined in the California Constitution and most changes to the process require a constitutional amendment. The local recall process, however, is in state statute and therefore may be modified through passage of a bill. If this bill is signed into law, the local recall process will be significantly different than the state process. That being said, differences already exist between the local and state recall processes. For example, state law places restrictions on when a local recall may be initiated that do not apply to state recalls. Additionally, the number of signatures needed to qualify a local recall petition is based on the number of registered voters in the electoral jurisdiction, while the number needed to qualify a state recall is based on the number of people who voted in the last election for the office. Furthermore, while the period for collecting signatures on a state recall petition is fixed at 160 days, the timeframe for collecting signatures on a local recall petition depends on the number of registered voters in the electoral jurisdiction.
- 6) **Local Recall Usage:** The recall is much more commonly used at the local level than the state level. According to data from the California Election Data Archive (CEDA), a joint project of the Center for California Studies at the California State University, Sacramento, and the SOS's office, there were 345 local recall elections for county, city, or school district officials in California between 1995 and 2020, or an average of about 13 per year. Although CEDA does not maintain comprehensive information about the number of local recall *attempts*, most local efforts to qualify a recall election fail. On the other hand, those that do qualify for the ballot generally are successful. According to the CEDA data, 73% of recall elections resulted in the recall of the local official. CEDA data seems to suggest that local recall elections have become less common in recent years; between 2013 and 2020, there were an average of just eight local recall elections per year.

According to information from Ballotpedia, a nonpartisan website that tracks American politics and elections, California saw an average of 67 local officials named in recall efforts from 2010 to 2021, with a high of 120 recall efforts in 2021 and a low of 35 recall efforts in 2019. Moreover, California was one of the three states with the highest number of local recalls from 2016 to 2021. Additionally, Ballotpedia tracked recalls by office type and reported that city-level officials, such as mayors and city council members, usually see the most recalls. However, that changed in 2021, when school board officials saw the most recalls.

- 7) **Little Hoover Commission:** The Little Hoover Commission (Commission) launched a study in 2021 to consider whether the state's system for recalling state office-holders should be changed, and if so, how. The study resulted in its 2022 report, *Reforming the Recall*. In the 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. There is also a concern that the recall is subject to potential overuse or abuse. 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. This would ensure that no official is recalled and replaced by a successor who receives fewer votes.

- 8) **Technical Amendment:** Committee staff recommends the following technical amendment to fix a code section reference error: on page 3, in line 33, delete "Section 11387," and insert "Section 11382".
- 9) **Related Legislation:** AB 2584 (Berman), which is also being heard in this committee today, increases the total number of proponents required to be included on a notice of intention to recall an elected officer, establishes a public display period for local recall petitions, authorizes a voter to seek a writ of mandate or injunction requiring any or all of the statement of the proponents or answer of the officer to be amended or deleted on a recall petition, requires a petition for the recall of a school board member to contain a fiscal estimate of the cost for conducting the recall election and the cost expressed on a per student basis for the district, and changes the timeframe for when a qualified local recall election is held.

SCA 3 (Allen), eliminates the first question on the recall ballot that asks whether a state official should be recalled, and instead automatically places the incumbent's name on the recall ballot along with any potential replacement candidates running for the office. If the incumbent receives a plurality of the vote, the recall fails, and if a replacement candidate receives a plurality, the recall succeeds and that candidate is elected. SCA 3 is pending in the Senate Elections & Constitutional Amendments Committee.

SCA 6 (Newman), eliminates the second question on the recall ballot that asks which candidate should replace the recalled official, and instead generally requires the office, if the state officer is recalled, to become vacant and to be filled in accordance with existing law. SCA 6 is pending in the Senate Elections & Constitutional Amendments Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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