

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 2584 (Berman) – As Amended April 19, 2022

SUBJECT: Recall elections.

SUMMARY: Increases the total number of proponent signatures required to be included on a notice of intention to recall a state or local elected officer. Establishes a public display period for local recall petitions and authorizes a voter to seek an order requiring the proponents' statement of reasons for the recall or the officer's answer to that statement to be amended or deleted on the 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. Changes the timeframe for holding a local recall election that has qualified for the ballot. Specifically, **this bill:**

- 1) Deletes a provision of existing law that requires a notice of intention to recall a state or local elected officer to contain a minimum of 10 proponents, or a number equal to the number of signatures required to have been filed on the nomination paper of the officer sought to be recalled, whichever is higher, and instead requires the notice of intention to include at least the number of proponents specified below:
 - a) For a state office, and for a local office where the number of registered voters in the electoral jurisdiction is at least 100,000, a minimum of 50 proponents, or a number equal to five times the number of signatures required to have been filed on the nomination paper of the officer sought to be recalled, whichever is higher.
 - b) For a local office where the number of registered voters in the electoral jurisdiction is at least 1,000 but less than 100,000, a minimum of 30 proponents, or a number equal to three times the number of signatures required to have been filed on the nomination paper of the officer sought to be recalled, whichever is higher.
 - c) For a local office where the number of registered voters in the electoral jurisdiction is less than 1,000, a minimum of 30 proponents.
- 2) Provides that the recall proponents' statement of the reasons for the proposed recall and the answer to that statement provided by the elected officer sought to be recalled, or the authors of the statement or answer, are not free or exempt from any civil or criminal action or penalty because of any false, slanderous, or libelous material included in the statement or answer.
- 3) Requires a county elections official, in the case of a petition for the recall of a local officer, to make a copy of the petition available for public examination in the elections official's office for 10 days, and requires the public examination to run concurrently with the 10-day review period for the elections official to determine whether the form and wording of the petition are in accordance with existing law.
- 4) Permits a voter of the applicable electoral jurisdiction or the elections official, during the public examination period described above, to seek a writ of mandate or an injunction requiring any or all of the statement of the proponents or the answer of the officer included

with the petition to be amended or deleted. Requires the writ of mandate or injunction request to be filed no later than the end of the 10-day public examination period.

- 5) Requires a peremptory writ of mandate or an injunction to be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with specified requirements of existing law.
- 6) Requires each page of each section of a recall petition for the recall of a member of the governing board of a school district to include the estimate of the county elections official, in consultation with the school district, of the cost of conducting the special election and the cost expressed on a per student basis for the school district.
- 7) Deletes provisions of existing law that require a local recall election to be held not less than 88, nor more than 125, days after the issuance of an order that the recall election be held, and instead requires the election to be held with the first regularly scheduled state or local election occurring not less than 88 days after the issuance of the order.
- 8) Makes conforming changes.

EXISTING LAW:

- 1) States, pursuant to the California Constitution, that the recall is the power of the voters to remove an elective officer, and specifies that in the case of a recall of a state officer, the sufficiency of the reason for recalling the official is not reviewable by a court.
- 2) Requires, pursuant to the California Constitution, that the Legislature provide for the recall of local officers. Provides that this provision does not affect counties and cities whose charters provide for recall.
- 3) 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.
- 4) Authorizes recall proceedings to commence for the recall of any elective officer by the service, filing, and publication of a notice of intention to circulate a recall petition.
- 5) Requires the proponents of a recall to be registered voters of the electoral jurisdiction of the officer they seek to recall.
- 6) Requires the notice of intention to circulate a recall petition to contain all of the following:
 - a) The name and title of the officer sought to be recalled.
 - b) A statement, not exceeding 200 words in length, of the reasons for the proposed recall.

- c) The printed name, signature, and residence address of each of the proponents of the recall. Requires the minimum number of proponents to be 10, or equal to the number of signatures required to have been filed on the nomination paper of the officer sought to be recalled, whichever is higher.
 - d) The provisions of state law that allow the officer sought to be recalled to file an answer to the statement of the reasons for the proposed recall.
- 7) Requires a copy of the notice of intention to be served by personal delivery, or by certified mail, on the officer sought to be recalled. Requires the original notice to be filed with the elections official or the Secretary of State (SOS), as specified, within seven days of the notice of intention being served on the officer. Requires a separate notice of intention to be filed for each officer sought to be recalled.
- 8) Permits the officer sought to be recalled, within seven days after the filing of the notice of intention, to file with the relevant elections official, an answer, in not more than 200 words, to the statement of the proponents. Requires the officer, if an answer is filed, within seven days after the filing of the notice of intention, to also serve a copy of it, by personal delivery or by certified mail, on one of the proponents named in the notice of intention. Requires the answer to be signed and to be accompanied by the printed name and business or residence address of the officer sought to be recalled.
- 9) Provides that the statement and answer are intended solely for the information of the voters and no insufficiency in form or substance thereof shall affect the validity of the election proceedings.
- 10) Requires the proponents to use a recall petition format provided by the SOS. Requires each page of each section of the petition to include all of the following:
- a) A request that an election be called to elect a successor to the officer, as specified.
 - b) A copy of the notice of intention, including the statement of grounds for recall. Requires the copy of the notice of intention to contain the names of at least 10 recall proponents..
 - c) The answer of the officer sought to be recalled, if any. Provides that if the officer sought to be recalled has not answered, the petition shall so state.
- 11) Requires the proponents, within 10 days after the filing of the answer to the notice of intention, or, if no answer is filed, within 10 days after the expiration of the seven-day period, to file two blank copies of the petition with the relevant elections official and requires the official to ascertain if the proposed form and wording of the petition meets the requirements of law. Requires the elections official or the SOS to notify the proponents in writing of their finding and requires the elections official to include in their findings a statement if they find that the requirements of this existing law are not met and what alterations in the petition are necessary. Requires the proponents to file two blank copies of the corrected petition with the elections official in their office. Requires the 10-day correction notification period and the 10-day filing period for corrected petitions to be repeated until the elections official or the SOS finds no alterations are required. Prohibits any signature to be affixed to a recall petition

until the elections official or the SOS has notified the proponents that the form and wording of the proposed petition meet the requirements of law.

- 12) Requires a recall election, in the case of a recall of a local officer, to be held not less than 88, nor more than 125, days after the issuance of an order that the recall election be held, and requires the recall election to be held on the same day as, and consolidated with, any regular or special election held throughout the electoral jurisdiction of the officer sought to be recalled that is scheduled in that 88-125 day time period.
- 13) Requires the following number of registered voters to sign a nomination paper for a candidate for office at a primary election:
 - a) In the case of a candidate for state office or United States (US) Senate, not fewer than 65 nor more than 100.
 - b) In the case of a candidate for House of Representatives in Congress, State Senate or Assembly, State Board of Equalization, or any office voted for in more than one county, and not statewide, not fewer than 40 nor more than 60.
 - c) In the case of a candidacy in a single county or any political subdivision of a county, other than State Senate or Assembly, not fewer than 20 nor more than 40.
 - d) With respect to a candidate for a political party committee, if any political party has fewer than 50 voters in the state or in the county or district in which the election is to be held, one-tenth the number of voters of the party.
 - e) If there are fewer than 150 voters in the county or district in which the election is to be held, not fewer than 10 nor more than 20.
- 14) Requires a candidate for municipal elective office to be nominated by not less than 20 nor more than 30 voters in a city of 1,000 registered voters or more, and by not less than five nor more than 10 voters in a city of less than 1,000 registered voters, as specified.
- 15) Requires an elections official to make candidate statements, candidate names, and ballot designations open and available for public examination in the elections official's office for a period of 10 calendar days immediately following the filing deadline for submission of those documents. Permits any voter of the jurisdiction in which the election is being held or the elections official, during this 10-calendar-day public examination period, to seek a writ of mandate or an injunction requiring any or all of the material in the candidate's statements to be amended or deleted. Requires the writ of mandate or injunction request to be filed no later than the end of the 10-calendar-day public examination period.
- 16) Requires a peremptory writ of mandate or an injunction to issue only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with specified requirements of existing law, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

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

The recall is an important tool for voters to address misconduct or corruption by elected officials. I was pleased to help lead hearings this past fall on our recall system in an effort to determine whether a system designed in the early 20th century has the appropriate checks and balances to ensure it cannot be abused by a small minority of voters.

Now is the time to revisit existing law and make common sense changes that would ensure that the recall continues to be a viable and valuable tool for voters. Accordingly, AB 2584 would make four good government reforms to increase efficiency and transparency in the state and local recall process. Specifically, it would address the process to initiate a recall, the review of official statements and answers, the information provided to recall petition signers regarding the potential fiscal impact of school district-related recall elections, and the timing for local recalls.

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 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 and Notice of Intention to Recall:** 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.

This bill changes the standard for determining the number of proponent signatures needed to initiate any recall effort (state or local). For local office, the number of proponent signatures needed to initiate a recall petition would depend on the number of registered voters in the jurisdiction. Such a policy mirrors existing requirements that set a standard for the number of nomination signatures needed for a municipal candidate to run for office, and the number of signatures needed to qualify a local recall petition for the ballot, that is dependent on the number of registered voters in the jurisdiction.

The practical effect these changes is to require recall proponents to list a larger number of proponents on the notice of intention to initiate a recall. For example, under this bill, the following changes would occur:

- **For state level offices:**

The minimum number of proponents is 50, or equal to five times the number of signatures required to have been filed on the nomination paper of the officer sought to be recalled, whichever is higher.

This means that 325 proponents would be needed to initiate a recall for a statewide officer, instead of 65 proponents, and 200 proponents would be needed to initiate a recall for Board of Equalization, State Senate, or State Assembly, instead of 40 proponents.

- **For local offices where the number of registered voters is at least 100,000:**

The minimum number of proponents is 50, or equal to five times the number of signatures required to have been filed on the nomination paper of the officer sought to be recalled, whichever is higher.

This means that 100 proponents will be needed to initiate a recall for a judge or any county office, instead of 20 proponents. For large community college or school districts, this would mean 50 proponents would be needed, instead of 10 proponents.

(With a few exceptions, most school districts and community colleges districts do not have candidate nomination signature requirements.)

- **For local offices where the number of registered voters at least 1,000, but is less than 100,000:**

The minimum number of proponents is 30, or equal to three times the number of signatures required to have been filed on the nomination paper of the officer sought to be recalled, whichever is higher.

This means 60 proponents for any county office, city office, or judge would be needed to initiate a recall, instead of 20 proponents. For smaller community college districts, school districts, or special districts, this would mean 30 proponents, instead of 10 proponents. (With a few exceptions, most school districts, community colleges districts, and special districts do not have candidate nomination signature requirements.)

- **For local offices where the number of registered voters is less than 1,000:**

The minimum number of proponents is 30.

This means that most smaller counties and cities would require 30 proponents, instead of 20 proponents or 10 proponents (Current law requires 10 proponents to initiate a recall petition in county and district with fewer than 150 registered voters and cities with less than 1,000 registered voters.)

- 4) **Local Recalls and Public Display Period:** As mentioned above, the state Constitution requires the recall petition to include information alleging the reason for the recall, however, the Constitution additionally provides that the sufficiency of the reason for recalling a state official is not reviewable by a court. In other words, the state Constitution does not limit the reasons for which a recall may be pursued.

Under existing state law, recall proponents are required to include a statement of the reasons for the recall on the recall petition and, if provided, the answer of the officer sought to be recalled to that statement. This bill specifies that the statement of reasons and answer are not free or exempt from any civil or criminal action or penalty because of any false, slanderous, or libelous material included in the statement or answer. In addition, this bill establishes a process for the public to review the statement of reasons and the answer, and to challenge the statement or answer in court. The practical effect of these provisions means that voters will be given the opportunity to address false, slanderous, or libelous material in the statement or answer, and potentially gives a court the opportunity to order changes to those materials before the recall proceeds. If court proceedings do occur, this added step could add delay to the recall process. However, ensuring that information provided to voters is true and accurate may justify the extra time added to the process.

The 10-day public examination period established in this bill mirrors the existing 10-calendar day review process required under existing law for candidate statements and ballot designations before they are printed in the voter information guides. This review period also serves to allow a person to challenge a candidate statement or ballot designation in court before election materials are finalized.

Adding this new step to the recall process could be a way to address a concern that was expressed by witnesses at the recall informational hearings that state law does not provide a process for voters to challenge a recall petition if they believe it contains false or misleading statements.

- 5) **Cost Estimate on Local Recall Petition:** In the case of an attempted recall of a school board member, this bill requires the recall petition 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. State and local ballot measure petitions are not required to contain an estimate of the cost for conducting the election. The only provision of existing law that is somewhat analogous relates to state recalls. Specifically, Elections Code section 11108 requires the Department of Finance (DOF) to consult with the affected county elections officials and the SOS to estimate the costs of the state recall election and to submit the estimate to the Governor, the SOS, and the Chairperson of the Joint Legislative Budget Committee. The SOS is required to publish this estimate on its website, as specified. These procedures, however, do not occur until after the SOS determines the state recall petition has the requisite number of verified signatures to initiate a state recall election; the cost estimate of the recall election is not provided to voters on the recall petition.

Moreover, this bill applies the requirement that the recall petition include the estimated costs of a recall only to a recall petition for a school district governing board member. If this policy is appropriate for school board recalls, should other local recall petitions or state recall petitions include similar information?

- 6) **New Timeline for Local Recalls:** Under existing law, local recall elections are required to be held between 88 and 125 days after the issuance of an order that the recall election be held, and requires the recall election to be consolidated with any regular or special election being held throughout the electoral jurisdiction of the officer sought to be recalled during that time period. This bill instead requires the election to be held with the first regularly scheduled state or local election occurring not less than 88 days after the issuance of the order.

The practical effect of this change will depend on when a recall petition qualifies for the ballot. Because the bill does not include a maximum number of days after the recall election is ordered before that election must be held, there could be an extended period of time between when a recall qualifies and when the recall is on the ballot. While allowing local recall elections to be consolidated with regularly scheduled elections can significantly reduce costs and lessen the risk of a lower or more unrepresentative voter turnout, this bill could enable an official who voters want to recall to remain in office for a significantly longer period of time before the election occurs.

In contrast, state recall elections generally occur 60 to 80 days after the recall petition qualifies. However, a state recall election can be held up to 180 days after the recall qualifies if doing so allows the election to be consolidated with the next regularly scheduled election occurring wholly or partially within the same jurisdiction in which the recall election is held if the number of voters eligible to vote at that next regularly scheduled election equal at least 50 percent of all the voters eligible to vote at the recall election. This approach reduces the number of standalone special elections that need to be held for state recalls, while still ensuring that state recall elections are held promptly.

The committee may wish to consider amending this bill to take a similar approach for local recall elections. For instance, the committee may wish to consider an amendment to maintain the existing timeline for conducting local recall elections (between 88 and 125 days after the issuance of an order that the recall election be held), while allowing local recall elections to be held up to 180 days after the recall qualifies if doing so allows the recall election to be consolidated with a regularly scheduled election.

- 7) **Little Hoover Commission Recall Study:** The Little Hoover Commission (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 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 concern that the recall is subject to potential overuse or abuse. The report made various recommendations to the state recall process, including amending the state Constitution to replace 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. Additionally, the report recommended amending the state Constitution to extend the timeframe for holding state recall elections to mirror existing local recall timeframes.
- 8) **Arguments in Support:** The sponsor of this bill, the California School Boards Association, writes:

Voters are currently being asked to sign recall petitions and are provided with official voter information that may contain false or misleading information. There is currently no process in place to review the proponent’s statement and the elected official’s answer for accuracy and truthfulness before the petition is circulated to the public for gathering signatures.

Unfortunately, the restrictive requirements for a recall petition unnecessarily limit transparency for voters and make it more difficult to manage election expenses. The source of funds used to pay these costs is the very same one that supports direct student programs and district schools. For many school districts, recall election expenses can severely threaten their financial stability, with the cost of holding a special election totaling a significant percentage of their annual budget. Voters should be able to consider how the elections costs will affect funding for student programs.

One of the most effective options available to a district to minimize elections costs is to combine the special election with another state or local election. However, current law only allows a narrow window for this to happen. A special election must be held not less than 88, nor more than 125 days after the issuance of the order. This limited timeframe prevents many districts from reducing their

total elections costs by more than half by placing the special election on a ballot with another local or state scheduled to occur after the period authorized in law.

As a crucial tool for voters to exercise their voice in the democratic process, the recall process should be better aligned with the needs of voters and the interest of schools. The smart reforms proposed in AB 2584 will help improve this tool by ensuring:

- Total estimated election costs and the costs expressed on a per student basis for the school district are expressed on the petition.
- Greater flexibility to combine special elections with other local or state elections to help reduce district election costs and improve voter participation.
- Signature thresholds for the notice of intention are adjusted to better reflect the sentiment of voters in the jurisdiction.

9) **Related Legislation:** AB 2582 (Bennett), which is also being heard in this committee today, eliminates, for local recalls, the second recall ballot question that asks which candidate should replace the recalled official, and instead requires a local recall election to include only the question of whether the local elected officer should be removed from office. If a local officer is successfully recalled, that office would become vacant and be filled according to existing law.

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

California School Boards Association (sponsor)

Opposition

One individual

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