Date of Hearing: April 25, 2018

<div align="center">

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Marc Berman, Chair
AB 2881 (Harper) – As Introduced February 16, 2018

</div>

SUBJECT: Recall elections.

SUMMARY: Repeals recently enacted changes to state law governing recall elections. Specifically, **this bill**:

1) Repeals a requirement that county elections officials check the validity of *every* signature included on a petition for the recall of an elected state officer, and instead permits elections officials to use a random sampling technique provided for in existing law to verify signatures. Permits the elections official, if 500 or more signatures are submitted on a petition for the recall of an elected state officer, to verify the greater of three percent of the signatures submitted or 500 signatures. Requires every signature filed with the elections official to be given equal opportunity to be included in the sample.

2) Eliminates the ability of a voter who has signed a petition for the recall of an elected state officer to have his or her signature withdrawn from the petition, as specified, during a 30-business day period after the Secretary of State (SOS) notifies county elections officials that the petition has been signed by a sufficient number of registered voters to initiate a recall election. Repeals corresponding provisions of law that establish procedures and timelines for county elections officials to report the number of signatures that were withdrawn, and for county elections officials to resume verifying signatures on the recall petition if the number of withdrawn signatures results in the petition not having a sufficient number of registered voters for the recall to qualify.

3) Repeals a requirement that the Department of Finance (DOF) prepare an estimate of the costs of the recall election if there is a sufficient number of verified signatures, not including withdrawn signatures, to initiate a recall election against an elected state officer. Repeals a provision of law that prohibits the SOS from certifying the sufficiency of signatures on a petition for the recall of an elected state officer until the Joint Legislative Budget Committee (JLBC) has had 30 days to review and comment on the cost estimate prepared by DOF.

4) Repeals a requirement for the DOF to direct the Controller to remit to elections officials, from funds designated for that purpose, an amount reasonably necessary to conduct a recall election against an elected state officer that has qualified.

5) Repeals a requirement that the voter information guide for an election that includes the recall of a state officer must include the report of estimated costs of the recall election prepared by the DOF.

6) Makes corresponding and technical changes.

EXISTING LAW:

1) Permits voters to remove an elective officer from state or local office before the end of the term of office, as specified, by recall.

2) Requires proponents to collect the following number of valid signatures on a petition within 160 days for a recall to qualify for the ballot:

   a) In the case of a recall of a statewide officer, 12 percent of the last vote for the office, with signatures from each of five counties equal in number to one percent of the last vote for the office in the county.

   b) In the case of a recall of a Senator, member of the Assembly, member of the Board of Equalization, or judges of a court of appeal or a trial court, 20 percent of the last vote for the office.

3) Requires an election to determine whether to recall an officer and, if appropriate, to elect a successor, to be called by the Governor and held not less than 60 days nor more than 80 days from the date of certification of sufficient signatures. Provides that a recall election may be held up to 180 days from the date of certification of sufficient signatures in order that the election may 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.

4) Provides that an officer is removed from office if a majority of votes cast on the question vote in favor of the recall. Provides that the candidate who receives a plurality of votes in the election to succeed the recalled officer is elected.

5) Requires a section of a petition for the recall of a state officer to be filed with the elections official of the county for which it was circulated.

6) Requires county elections officials to check the validity of every signature included on a petition for the recall of an elected state officer.

7) Permits a voter who signed a petition for the recall of an elected state officer to withdraw that signature during a 30-business day period after the SOS determines that a sufficient number of voters signed the petition to initiate a recall election, as specified.

8) Requires the DOF, within 30 business days of receipt of a notice from the SOS that a sufficient number of voters signed a petition to initiate a recall election against a state officer, to estimate the costs of the recall election, as specified, and to submit the estimate to the Governor, the SOS, and the Chairperson of the JLBC. Prohibits the SOS from certifying the sufficiency of the signatures on the recall petition until after the JLBC has had 30 days to review and comment on the estimate prepared by DOF.

7) Requires the DOF to direct the controller to remit to elections officials, from funds designated for that purpose, an amount reasonably necessary to conduct a recall election against an elected state officer that has qualified.

8) Requires the voter information guide for an election that includes the recall of a state officer to include the report of estimated costs of the recall election, as prepared by the DOF.

9) Permits elections officials to use a random sampling procedure for verifying signatures on state and local initiative and referendum petitions and local recall petitions if more than 500

names have been signed on sections of the petition filed with the official, as specified. Provides that a measure is deemed to have qualified if the examination of signatures based on the random sampling procedure projects that more than 110 percent of the number of required voters signed the petition. Provides that a measure is deemed to have failed to qualify if the examination of signatures based on the random sampling procedure projects that less than 95 percent of the number of required voters signed the petition (or 90 percent of the number of required voters in the case of local recall petitions). Requires elections officials to check the validity of every signature if the random sampling procedure shows that the number of valid signatures is within 95 (90 in the case of local recall petitions) to 110 percent of the number of signatures of qualified voters needed to declare the petition sufficient.

FISCAL EFFECT: Unknown

COMMENTS:

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

> The power to recall elected officials is one of three powers reserved by the People under the California Constitution, along with the power of initiative, which allows voters to pass laws, and the power of referendum, which allows voters to repeal laws. This Constitutional provision was intended to give the People a speedy process to remove and replace elected officials for misconduct, without having to wait until the next election cycle. The California Constitution specifically provides that once the requisite number of signatures on a recall petition has been presented and certified, the recall election must then be held within 60-80 days.

> But despite the California Constitution's requirement for a speedy recall procedure, in 2017 the Legislature passed and the Governor signed Senate Bill 117, which created a delay of many months in the certification of a recall election, by: (1) eliminating the ability of county elections officials to quickly count petition signatures using a random sample method, and instead requiring a time-consuming hand verification of every signature; (2) adding a nearly two-month delay during which voters who signed the petition can withdraw their signatures; (3) adding a six-week delay for the Governor's Department of Finance to estimate the costs of the recall election (even though the cost of the election is irrelevant to the determination of whether a sufficient number of voters signed the recall petition); and (4) adding another one-month delay for the Joint Legislative Budget Committee to review and comment on the Department's irrelevant election cost estimate.

> The recall of State Senator Josh Newman is the first recall attempt to be considered under these new rules. Although proponents had turned in a sufficient number of signatures by June 30, 2017 to trigger a recall election, the subsequent enactment of SB 117 guaranteed that the constitutional right of Sen. Newman's constituents to vote on his recall or retention is delayed almost one year, until the June 5, 2018 statewide primary election. By contrast, under prior law, the recall election would have been held in October or November, 2017.

Moreover, during this time, only 846 out of the 70,678 voters who signed the petition to recall Senator Newman withdrew their signatures. This was just one percent of the total number of signatures on the recall petition, and it did not affect the sufficiency of the signatures that had been submitted to initiate a recall election. And because of the additional procedures enacted by SB 117, the Secretary of State did not certify the sufficiency of the signatures on the recall petitions until January 5, 2018, more than six months after proponents had submitted their final petitions, with the result that the election will be delayed until June 5, 2018.

Therefore, as a result of the unnecessary delays imposed by SB 117, the voters of 29th Senate District were unjustifiably and unconstitutionally deprived of their right to a speedy election in which they could decide whether or not to recall and replace their representative.

AB 2881 will safeguard the Constitutional right of Californians to a speedy election to consider removing elected officials accused of wrongdoing, by repealing the additional, burdensome and unnecessary procedures enacted by SB 117, and restoring the prior law that was repealed by SB 117.

2) **Recall Process and Previous Legislation**: As detailed above, the California Constitution allows electors to initiate a recall of state officers by gathering sufficient signatures within a 160-day period. Upon certification by the SOS that this requirement has been met, the California Constitution authorizes the Governor to call a recall election within 60 to 80 days, or to consolidate it with a regularly scheduled election that is within 180 days of the certification of the signatures if certain conditions are met. The California Constitution requires the Legislature to establish procedures for recall elections, including providing for the circulation, filing, and certification of petitions, the nomination of candidates, and conduct of the recall election itself.

Last year, the Legislature approved and the Governor signed SB 117 (Committee on Budget and Fiscal Review), Chapter 180, Statutes of 2017, a budget trailer bill that made statutory changes to provisions of elections law related to the 2017-18 budget. Among other provisions, SB 117 enacted the changes to the recall process that this bill seeks to undo. Specifically, SB 117 made the following notable changes to the recall process:

a) **Withdrawal of Signatures**: Prior to the passage of SB 117, state law generally allowed a voter to withdraw his or her signature from an initiative, referendum, or recall petition by filing a written request with the elections official prior to the day that the petition section bearing the voter's signature was filed with the elections official.

Because state law has different rules governing the submission of recall petitions for state officers than the rules that apply to the submission of state initiative and referendum petitions, however, voters who signed a recall petition typically had a much shorter period of time to withdraw their signature from a recall petition. Specifically, state law requires all the sections of a petition that were circulated in a county for a state initiative or referendum petition to be submitted at the same time, which means that proponents of state initiatives and referenda do not submit those petition sections until they have finished signature gathering activities. Similarly, state law requires all petition sections

for local initiatives, referenda, and recalls to be submitted at the same time. Sections of a petition for the recall of a *state* officer, however, can be submitted on an ongoing basis. There is no limit on the number of times that proponents can submit petition sections, nor is there a minimum number of signatures that must appear on petition sections before the proponents can submit those sections. As a result, proponents of an effort to recall a state official could prevent voters from having their signatures withdrawn from petitions by regularly turning in petition sections shortly after the signatures on those sections were collected. Prior to the enactment of SB 117, a voter could not withdraw his or her signature from a section of a petition after that section was submitted to the elections official.

SB 117 specifically created a new period during which voters could withdraw their signatures from a petition for the recall of a state officer. That withdrawal period begins once the total number of verified signatures on recall petitions that have been submitted exceeds the number of valid signatures needed for the recall to qualify for the ballot, and lasts for 30 business days. If the number of withdrawn signatures results in the recall petitions having an insufficient number of valid signatures for the recall to qualify, elections officials continue verifying signatures that are submitted on sections of the recall petition to determine whether the recall will qualify.

This bill repeals the signature withdrawal period that was created by SB 117, and instead reverts to the prior provisions of state law that require a withdrawal request to be submitted to the elections official before the section of the petition containing the voter's signature is submitted to the elections official. As a result, in the situation where a section of a recall petition is turned in very shortly after signatures were collected on that petition, a voter may not have a meaningful opportunity to withdraw his or her signature from the recall petition.

b) **Verification of Signatures**: Prior to the adoption of SB 117, state law generally permitted elections officials to use a random sampling technique when verifying the signatures on petitions in certain situations where officials are presented with petitions with large numbers of signatures. Under this technique, officials select a specified number of signatures from the petition at random, check the validity of those signatures, and based on that check of a small number of signatures, project the total number of valid signatures on the petition. Because this technique only provides a projection of the number of valid signatures on the petition, rather than an actual hard count of the number of valid signatures, state law generally provides that the results of a random sample of signatures can only be substituted for a full verification of all signatures on the petition when the projected number of signatures is either significantly above or significantly below the number of signatures needed. If the number of signatures that are projected to be valid is neither significantly more nor significantly less than the number of signatures required on the petition in question, elections officials generally are required to determine the validity of each signature on the petition before making a final determination whether the petition contains a sufficient number of signatures. In situations where the random sampling technique projects that the number of signatures on the petition is significantly higher than the number of signatures required on the petition, the petition is deemed to have a sufficient number of signatures without the need for a full examination, and if the random sampling results in projection that the number of signatures is significantly lower than the number needed, the petition is deemed to have an insufficient number of

signatures without the need for a full examination. By avoiding the need to examine every signature on every petition filed with an elections official, the random sampling technique can reduce the time and expense associated with verifying signatures on petitions.

SB 117 repealed provisions of law that allowed elections officials to use a random sampling technique when verifying signatures on petitions for the recall of state officers, and instead required elections officials to check the validity of every signature on such a petition. This bill reinstates the ability of elections officials to use the sampling technique for state recall petitions.

c) **Cost Estimate of Recall Election**: SB 117 additionally required the DOF, once a recall petition was found to have sufficient signatures for the recall to qualify for the ballot, to prepare an estimate of the costs of conducting the election, including an estimate of the costs if the recall election was held as a standalone special election and an estimate of the costs if the recall election was consolidated with the next regularly scheduled election. Once DOF produces that estimate, the JLBC has 30 days to review and comment on the estimate before the SOS can certify the sufficiency of the recall election. When the time for JLBC to review and comment on the estimate has expired, DOF is required to direct the Controller to pay counties for the costs of the recall election, as specified. SB 117 also requires the report of the estimated costs of conducting the recall election to be included in the voter information guide for the recall election. This bill repeals the provisions of SB 117 regarding the preparation of a cost estimate and the payment to counties of the costs associated with holding the recall election.

3) **Arguments in Support**: In support of this bill, the Howard Jarvis Taxpayers Association writes:

This bill restores the rights of Californians to exercise their right to speedy recall elections to remove elected officials. It is the right of voters to act on their disapproval of elected officials in a timely manner. Reinstating the random sample method for signature verification is not only more efficient but also saves taxpayers additional expense of County Registrars verifying every petition signature. The delay caused by the requirement for the Governor's Department of Finance to estimate the cost of the recall election and the requirement of review of the Joint Legislative Budget Committee is also unnecessary and a stalling tactic meant to delay the will of the people to timely vote in a recall election for which tens of thousands of signatures had already been gathered.

REGISTERED SUPPORT / OPPOSITION:

Support

Howard Jarvis Taxpayers Association

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094