

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON ELECTIONS

Gail Pellerin, Chair

SB 1441 (Allen) – As Amended April 4, 2024

SENATE VOTE: 31-8

SUBJECT: Examination of petitions: time limitations and reimbursement of costs.

SUMMARY: Requires proponents of a petition that failed due to insufficient signatures to conclude their examination of the petition's insufficiency within 60 days, as specified. Requires all costs incurred by the county elections official due to the examination to be paid by the petition proponents, as specified. Specifically, **this bill:**

- 1) Requires a proponent of a petition who is permitted to examine a petition that failed due to insufficient signatures to conclude their examination of insufficiency no later than 60 days from the date examination commenced.
- 2) Requires all costs incurred by the county elections official due to the examination to be reimbursed by the proponent within 30 days from the date that the examination concludes.
- 3) Requires a proponent of a petition who requests to examine a failed petition and the memorandum of the reasons for the signature rejections, before the examination is conducted and at the beginning of each day following, to deposit with the elections official a sum as required by the elections official to cover the cost of the examination for that day. Requires the proponent to be entitled to the return of any money deposited in excess of the cost of the examination, and requires money not required to be refunded to be deposited in the appropriate public treasury. Provides that an elections official is not bound by any estimate of cost provided to the proponent or required to be deposited by the proponent and may, on a pro rata basis, bill the proponent for additional actual expense or refund any excess paid depending on the final actual cost.
- 4) Defines the term "cost" for the purposes of this bill to mean any cost incurred by a county elections official that is in addition to or greater than general operating costs.
- 5) Makes various findings and declarations.

EXISTING LAW:

- 1) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (California Constitution Article I, §3(b)(1))
- 2) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (California Constitution Article I, §3(b)(1))

- 3) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (California Constitution Article I §3(b)(1))
- 4) Governs the disclosure of information collected and maintained by public agencies pursuant to the California Public Records Act (CPRA). (Government Code §§7920.000 et seq.)
- 5) States that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code §7921.000)
- 6) Defines "public records" to mean any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Government Code §7920.530)
- 7) Defines "public agency" to mean any state or local agency. (Government Code §7920.525(a))
- 8) Requires all public records to be accessible to the public upon request, unless the record requested is exempt from public disclosure, as specified. (Government Code §7922.525)
- 9) Provides that some records are prohibited from being disclosed and other records are permissively exempted from being disclosed. (Government Code §§7920.505 & 7922.200)
- 10) Provides, among others, that the following are not public records:
 - a) A statewide, county, city, or district initiative, referendum, or recall petition;
 - b) A petition circulated pursuant to Section 5091 of the Education Code;
 - c) A petition for reorganization of school districts submitted pursuant to the Education Code;
 - d) A petition for reorganization of community college districts submitted pursuant to the Education Code;
 - e) A memorandum prepared by a county elections official in the examination of a petition, indicating which registered voters signed that particular petition. (Government Code §7924.110(a))
- 11) Provides that materials in 10) above, are not open to inspection except to the following persons:
 - a) A public officer or public employee who has the duty of receiving, examining, or preserving the petition, or who is responsible for preparation of the memorandum; or,

- b) If a petition is found to be insufficient, by the proponent of the petition and a representative of the proponent as may be designated by the proponent in writing, in order to determine which signatures were disqualified and the reasons therefor. (Government Code §7924.110 (b))
- 12) Provides that if the proponent of a petition is permitted to examine a petition and a memorandum pursuant to 10) (e) above, the examination must commence not later than 21 days after certification of insufficiency. (Government Code §7924.110 (d))
- 13) Requires a voter or campaign committee seeking a 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. Requires the money deposited to be returned to the depositor if, upon completion of the recount, the results of the recount show a different outcome, as specified. (Elections Code §15624.)
- 14) Requires a recount to be conducted publicly. (Elections Code §15629)
- 15) Requires the Secretary of State, if the random statistical sampling of the number of qualified voters who signed a petition shows that the number of valid signatures is within 95 to 110 percent of the number of qualified voters needed to declare the state petition sufficient, to order the examination and verification of the signatures filed. This process is referred to as a “full check.” Requires an elections official, within 60 working days after receipt of the order, to determine what number of qualified voters have signed the state petition. (Elections Code §9031(a)-(b))

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

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

When a petition receives insufficient signatures to qualify for the ballot, state law affords proponents the opportunity to examine the petition and reasons for signature rejections. However, there is no time limit for this review process which increases demand on county elections department staff time and resources. Some petition proponents have exploited this access to public resources through indefinite time for a review. SB 1441 establishes a reasonable 60-day time limit for the proponents to complete their review of the failed petition’s signatures and authorizes a county to recover costs for the additional resources expended accommodating the proponent’s access to election records.

- 2) **California Public Records Act and Petitions:** Under the CPRA, public records are open to inspection by the public at all times during the office hours of the agency, unless exempted from disclosure. A public record is defined as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. Additionally, the CPRA only allows an agency

to charge a fee to cover the direct costs of duplication of a public record in a non-electronic format or statutory fee if applicable. As an exception to the general rule, the CPRA expressly provides that certain records related to election petitions are not public records. For example, current law specifies that a statewide, county, city, or district initiative, referendum, or recall petition is not a public record. Additionally, the CPRA provides that those same election petition records are not open to inspection, except to specified public officials or, if a petition is found to be insufficient, by the proponent of the petition in order to determine which signatures were disqualified and the reasons for the rejections. The CPRA provides that an examination of petition records by a petitioner must commence within 21 days of their certification of insufficiency. However, existing law does not specify when such an examination must be completed.

This bill specifies that the petition proponent's examination of the failed petition and the reasons for the signature rejections must conclude within 60 days.

- 3) **Los Angeles County Local Recall:** According to the author and sponsor, the need for this bill is due to a petition review that occurred in Los Angeles County that resulted in litigation with recall proponents from a failed recall petition effort to recall Los Angeles County's District Attorney, George Gascón. In 2022, the Committee to Support the Recall of District Attorney George Gascón submitted a recall petition containing 715,833 signatures on July 6, 2022, which was 148,976 more signatures than required to trigger a recall election. The Los Angeles County elections official later concluded that the proponents were 46,000 signatures short of those needed for the recall petition to qualify for the November 2022 general election ballot because 195,783 signatures were rejected.

According to the author and sponsor, due to the ongoing litigation the petition review lasted 14 months, costing the county approximately \$1.5 million in additional staffing and resources, and diverted substantial resources and staffing away from existing election support activities; such as, examination of other initiative and referendum petitions at the state and local levels, updating of voter records, and preparing for the November 2022 General Election. The author and sponsor contend that because there currently is no time limit for the petition review process to conclude, petition proponents can exploit this access to public resources through indefinite reviews, creating uncertainty for election officials in how to allocate resources at significant taxpayer expense.

Despite the petition review incident that occurred in Los Angeles County, the author and sponsor have not provided the committee with other examples demonstrating that similar incidents are occurring in other parts of the state.

- 4) **New Reimbursement Requirement:** This bill requires costs incurred by a county elections official for a petition proponent's review of a petition that failed to qualify to be reimbursed by the proponent. Additionally, this bill requires a petition proponent to deposit a sum of money determined by the elections officials before the examination may begin, and each day after in which the examination continues.

According to the author and sponsor, most petition reviews conclude within two to three days, while others may require one to two weeks. However, because current law does not

specify a time limit for the petition review process to conclude and even though not all petition reviews incur costs, the cost recovery mechanism in this bill will ensure that the petition examination proceeds in an efficient manner, without undue delay and excessive expenditure of time and resources. Additionally, this bill would only allow for cost recovery of expenses in excess of and in addition to general ongoing operational expenses of the election official.

The author and sponsor note that there is precedent in existing law for elections officials to recover costs associated with a review of elections-related materials that is requested by a member of the public. Specifically, existing law requires a voter or campaign committee seeking a recount to cover the costs of the recount, and requires, before a recount may begin, a requester to provide money requested by the county elections official to pay for the cost of the first day's recount work, as specified.

On the other hand, there are notable differences between a voter-requested recount and a proponent-requested review of a failed petition. Notably, the counting of votes as part of the official canvass is a process that is required to be open to the public. Accordingly, when a voter requests a recount, that request requires that public resources be used to conduct a secondary review of ballots that were counted as part of a process that was already open for public observation. By contrast, the verification of signatures on petitions is not required by law to be open for public observation. As a result, a proponent-requested review of a failed petition may provide an opportunity for external scrutiny of a process that was not otherwise subject to public observation.

Furthermore, state law governing recounts provides for the requester to be refunded the cost of the recount if it changes the outcome of the election in a specified manner. Unlike a recount, however, an examination of a failed petition by the proponents does not have the ability to alter the original determinations made by the elections official that the petition failed to qualify. The only remedy a proponent has if they believe mistakes occurred during the petition signature review process is to file a lawsuit in court. As a result, a review of a failed petition by the proponents serves a different purpose than a recount.

Because the recount process is fundamentally different than the process for allowing a petition proponent to examine a failed petition, the committee may wish to consider whether requiring the proponents to pay the costs of that review is appropriate.

5) **Arguments in Support:** The sponsor of this bill, the County of Los Angeles, writes:

The law is silent regarding the amount of time proponents can take to review failed petitions, and protracted reviews, although rare, are costly. Government Code section 7924.110 states that a petition proponent has up to 21 days after certification of insufficiency to commence an examination of disqualified petition signatures. However, the statute does not provide proponents of a failed petition with a time limit for their review of the insufficient signatures. Also, the law is silent about cost recovery by the county for staff time and other public resources utilized during the examination process.

Elections have become increasingly complex, particularly following the enactment of the California Voter's Choice Act (SB 450, ch. 832, Statutes of 2016). This complexity is creating greater demand for existing staff time and office resources. County elections officials have a duty to ensure elections are conducted in a fairly, transparently, and lawfully, which is true of all aspects of the election process. It is then critical that county elections officials ensure that election activities, including review of failed petitions, are managed effectively. Through its silence on this issue, current law has enabled petition proponents in some jurisdictions to exploit this access to public resources through indefinite time for examination of failed petitions and no obligation to reimburse the county's costs. Some examinations by proponents of failed petitions have resulted in millions of taxpayer dollars being expended to support these efforts.

SB 1441 creates a finite period – 60 days – for the proponents to examine a failed petition and establishes a mechanism for county elections officials to recover the costs associated with the personnel and resources associated with those examinations. In this way, county elections officials throughout the state can better determine the impact petition reviews have on their operations and allocate resources accordingly. It's important to note that requiring proponents to reimburse the county for the costs of conducting this review aligns with provisions currently found in Elections Code section 15624 for cost recovery of voter-initiated recount efforts.

6) **Arguments in Opposition:** In opposition to this bill, former District Attorney of Los Angeles County Steve Cooley, writes:

In July 2022, I became intensely involved in a review of an effort to validate the work by the Los Angeles County Registrar of Voters [] related to the examination of a petition to recall District Attorney George Gascón under Elections Code section 11301 and Government Code section 7924.110. ...[We] felt that it was very important to bring to your attention our deep concerns about and opposition to SB 1441 in its current form to preserve direct democracy and the constitutional right of voters to recall their elective officers, and/or to fully participate in the initiative and referendum process...

Here are some of the major concerns that we have about Senate Bill 1441:

1. Time Constraints: The bill mandates that the examination of a petition must conclude within 60 days after it commences. For proponents, this tight timeline may limit their ability to thoroughly review and address any issues with the petition. This is especially true for large petitions, such as the Recall Petition. It took the Committee, consisting entirely of volunteers, 13 months (with limited access by the Registrar) to review only half of the 195,758 rejected signatures.

Despite creating a statutory limit on the length of a petition review, the bill doesn't place any requirements at all and the kind of access election officials must provide during that review process...

2. **Cost Reimbursement:** Proponents whose petitions are found to be insufficient must reimburse all costs incurred by the county election official due to the examination. While public accountability of election officials is essential, this financial burden could disproportionately affect grassroots campaigns or individuals with limited resources. This is particularly so because fundraising efforts almost always dry up after a failed petition. This was the experience of the Committee...

Proponents may find it challenging to cover these costs promptly.

Undue restrictions on the review process such as this could potentially feed a public perception that election officials are trying to escape accountability for their errors, or even their malfeasance, by essentially taking away the ability for proponents to participate in the examination process through the cost prohibitions of this bill.

3. **Deposit Requirement:** Before an examination begins and at the start of each subsequent day, the proponent requesting to examine a petition must deposit a sum with the election official to cover the cost of the examination for that day. This upfront deposit requirement adds an additional financial hurdle for proponents. It may also discourage some individuals from pursuing petitions, especially if they lack the necessary funds. The Committee could not have met this daily deposit requirement.

4. **Lack of Reimbursement:** Although the California Constitution generally requires the state to reimburse local agencies for certain mandated costs, SB 1441 specifies that no reimbursement is required for a specified reason. This bill places the entire financial burden of the petition process upon proponents, and threatens the ability of the People to participate in a functioning democracy.

- 7) **Previous Legislation:** SB 386 (Newman), Chapter 870, Statutes of 2023, extends the signature verification period for an elections official to complete a full check of the number of qualified voters that have signed a state initiative, referendum, or recall petition from 30 working days to 60 working days, among other provisions.
- 8) **Double Referral:** This bill was double-referred to the Assembly Judiciary Committee, where it was heard on June 11, 2024, and approved by a 9-3 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Los Angeles (Sponsor)
California Association of Clerks and Election Officials
California State Association of Counties

Opposition

Election Integrity Project California, Inc. (unless amended)
Howard Jarvis Taxpayers Association
Two Individuals

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