

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2584 (Berman)
Version: June 14, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Recall elections

DIGEST

This bill makes a series of reforms to the process for recalling elected officials.

EXECUTIVE SUMMARY

In California, voters retain the power to recall an elected official if they are dissatisfied with that elected official's job performance. The intention is to ensure that elected officials remain accountable to the people throughout their time in office. However, the recall process has also been criticized as costly to taxpayers and a distraction from governing. This bill proposes a set of four reforms to the current recall process. Those reforms would: (1) modestly increase the number of proponents needed to initiate a recall petition; (2) align rules intended to ensure the accuracy of statements for and against recalls in the official voter guide; (3) ensure that voters are informed of the cost of a recall election when signing school board recall petitions; and (4) allow for recall elections to be combined with other regularly scheduled elections. Proponents of these reforms assert that they will increase the transparency and efficiency of the recall process.

The bill is sponsored by the California School Boards Association. Support comes from local government associations and good governance advocates who believe the bill will improve the recall process. Opposition comes from policy advocacy organizations who worry that the proposed reforms could make recalling elected officials more difficult. The bill passed out of the Senate Elections and Constitutional Amendments Committee by a vote of 4-1. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

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. (Cal. Const., art. II, § 13.)
- 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. (Cal. Const., art. II, § 19.)
- 3) Defines the following terms, for the purposes of the state's recall laws:
 - a) "local officer" means an elective officer of a city, county, school district, community college district, or special district, or a judge of a trial court (Elec. Code § 110004); and
 - b) "governing board" means 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 that in the case of the recall of a trial court judge, the term "governing board" means the board of supervisors. (Elec. Code § 11003.)
- 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. (Elec. Code § 11006.)
- 5) Requires the proponents of a recall to be registered voters of the electoral jurisdiction of the officer they seek to recall. (Elec. Code § 11005.)
- 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; and
 - 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. (Elec. Code § 11020.)

- 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. (Elec. Code § 11021.)
- 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. (Elec. Code § 11023.)
- 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. (Elec. Code § 11024.)
- 10) Requires the proponents to use a recall petition format provided by the SOS. (Elec. Code § 11043.5.)
- 11) 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 and the names of at least 10 recall proponents; and
 - c) the answer of the officer sought to be recalled, if any, and if the officer sought to be recalled has not answered, the petition shall so state. (Elec. Code § 11041.)
- 12) 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. (Elec. Code § 11042.)

- 13) 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. (Elec. Code § 11242.)
- 14) 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. (Elec. Code § 13313(a).)
- 15) 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. (Elec. Code § 13313(b)(1).)
- 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. (Elec. Code § 13313(b)(2).)

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; and
- 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, shall not be deemed 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 an estimate by the county elections official, in consultation with the school district, of the cost of conducting the special election.
 - 7) Permits a recall election to be conducted within 180 days after the issuance of the order so that the election may be consolidated with a regularly scheduled election.
 - 8) Makes conforming changes.

COMMENTS

1. Background on the recall process in California

California instituted a process for recalling elected officials before the end of their term of office in 1911 in an effort to increase the accountability of government to the people. The California Constitution provides for the recall of state elected officials. (Cal. Const., art. II, § 13.) The state Constitution also directs the Legislature to provide for local recall procedures by statute. (Cal. Const., art. II, § 19.) Most local jurisdictions follow these state laws, but some charter cities and counties have chosen to adopt their own recall procedures.

2. Use of the recall process

According to the California Secretary of State's records, voters have attempted to recall state elected officials 179 times since the recall process came into being. Of these, just 11 attempts qualified for the ballot. Eight of those 11 took place within the last three decades. There have only been two statewide recall elections, both involving a governor. Both of those gubernatorial recall elections happened in the past twenty years.¹

According to the Senate Elections and Constitutional Amendments Committee analysis of this bill, use of the recall is more common at the local level. Citing data from the California Election Data Archive, that analysis states that:

[...] 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. While it appears that most local efforts to qualify a recall election fail, those that do qualify are generally successful. Additionally, it appears that the number of local recall efforts are on the rise.

3. Recall process reforms proposed by this bill

The bill before this Committee would make four changes to the recall process.

a. Increase the number of initial proponents required

The recall process begins with the filing of a notice of intention. The notice of intention sets forth the elected official to be recalled, states the reason for the proposed recall, and lists the names and addresses of the recall proponents. To proceed with the recall process, existing law requires that there be at least 10 recall proponents or at least as

¹ *Recall History in California (1913 to Present)*. California Office of the Secretary of State <https://www.sos.ca.gov/elections/recalls/recall-history-california-1913-present> (as of Jun. 18, 2022).

many recall proponents as the number of nominating signatures needed to run for the office, whichever is higher. For instance, an individual trying to run for the State Assembly must submit 40 nomination signatures in order to qualify for the election; accordingly, at least 40 would be needed on the notice of intention to start the recall process against an Assemblymember.

This bill would increase the number of recall proponents whose names must appear on the notice of intention in order to start the recall process. Specifically, as detailed by the Senate Elections and Constitutional Amendments Committee in its analysis of the bill, the specific effect of this change would be:

- **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.

As justification for this change, the proponents assert that:

[...] while the initial review and verification process for recall initiation is not onerous, should it proceed to signature collection, the verification process can be costly and disruptive for elections officials. The higher number is intended to ensure that recall initiation requires conversation among voters and some level of grassroots support.

b. Ensure statements of reasons contain truthful and accurate information for voters

In advance of each election, county elections officials send out voter guides to each registered voter. Candidates for public office may submit statements to be included in these voter guides. Existing law specifies that these voter guide statements are not “free or exempt from any civil or criminal action or penalty because of any false, slanderous, or libelous statements.” (Elec. Code § 13307(e).) Furthermore, existing law provides for a public examination period, during which voters can review the content of statements in the voter guide, and seek a court order to have content removed if the voter demonstrates to the court, by 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. (Elec. Code § 13313(b)(2).)

The provisions in the elections statutes governing the redaction of a candidate’s statement in the voter guide appear to be crafted to respond to court rulings that struck down earlier statutes which required elections clerks to redact libelous material from candidate states. (*See Loza v. Panish* (1980) 102 Cal.App.3d 821.) They echo elements of the U.S. Supreme Court’s ruling in *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, in which the high court found that there are heightened protections against defamation liability for speech that has an important public interest function.

The purpose behind these provisions is to discourage candidates from making false claims about themselves or other candidates in the voter information guide. The public examination process provides a mechanism for ferreting out and eliminating such falsehoods before the voter guide gets published and distributed to the voters.

These same provisions and procedures do not currently apply to the recall election process. That is, there is nothing in the statutes governing recall elections that warns either the petitioners seeking the recall or the responding candidate that the statements they submit may subject them to civil or criminal consequences if they are found to be false, slanderous, or libelous. The statutes governing recall elections also do not include the mechanism for public examination and court-ordered removal of material within the statement of reasons for the recall or the elected official's response if the court determines, by clear and convincing evidence, that the material is false. This bill would correct that omission.

c. Allow voters to consider the cost involved when deciding whether to sign a petition to trigger a recall election against a school board member

For providing greater transparency to prospective recall petition signers in school district related-recalls, existing law does not require that petitions list the estimated cost of conducting the special election.

In order to provide prospective recall petition signers with greater transparency in school district related-recalls, the bill would require that petitions list the estimated cost of conducting the special election.

d. Authorize the consolidation of recall elections with other, regularly-scheduled elections

Under existing law, local elections officials have 14 days from the time the recall petition has been certified to set the date for the recall election to take place. The date they select must fall between 88 and 125 days later. If there is another, regularly scheduled election set for that same period, then the recall election must be consolidated with that regularly scheduled election. Consolidating elections is cheaper, more efficient, and more likely to draw larger turnout. Since the current window for setting a local recall election is relatively short, however, the chances of election consolidation are not as high as they would be with a longer window. With that in mind, this bill would provide that local recalls may be consolidated with a regularly scheduled state or local election that will occur within 180 days after the recall question qualifies for the ballot.

4. Arguments in support 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.

As sponsor of the bill, the California School Boards Association writes:

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 [...].

In support, the League of Women Voters writes:

We encourage electoral methods that provide the broadest voter representation possible and support electoral systems that inhibit political manipulation. The process for local recall elections is currently susceptible to gamesmanship that undermines the democratic process. AB 2584 will help protect against frivolous recall elections, provide voters with accurate information, maximize community participation in government decision making, increase transparency, and boost participation by consolidating special elections.

5. Arguments in opposition to the bill

In opposition to the bill, the California Policy Center and the Howard Jarvis Taxpayers Association jointly write:

Recalling elected officials requires sober consideration but is absolutely a legitimate tool in the arsenal of a functioning democratic republic, though we can understand the concerns of the author. However, the recall process has been consistent for over a century. Used sparingly, it keeps our elected officials honest and accountable to the public, all of which this bill unfortunately undermines. Should the committee move this measure along, among other things, AB 2584 would eliminate the ability to have a stand-alone local special recall election and would allow special

interest groups to litigate the statement of reasons given for the recall and to sue proponents for libel.

In further opposition to the bill, the People's Movement writes:

Anything to make it harder for the people's voices to be heard – and for the super majority to keep power. We are watching the majority of people who take the time to show up, call, write letters, etc. oppose these horrible virus and vax bills, while you, seeing the same.....push the through the committees with aye votes against the voice of the people. Now you want to make it harder to get you out of office. You are acting against your oaths of office – you work for US!

SUPPORT

California School Boards Association (sponsor)
League of Women Voters
Small School Districts Association

OPPOSITION

California Policy Center
Howard Jarvis Taxpayers Association
The People's Movement

RELATED LEGISLATION

Pending Legislation:

SCA 6 (Newman, 2022) provides that, in the event an officer is removed in a recall election, the office remains vacant until a successor candidate receives a majority of votes at a special election, or for the office to remain vacant for the remainder of the term if the nomination period for the subsequent term of that office has closed. The measure would allow an officer who was the subject of the recall election to be a candidate in the special election. The measure would also specify that if the recall involved a statewide office other than the Governor, the Governor would appoint a successor. Finally, the measure would provide that if the Governor is removed from office in a recall election, the Lieutenant Governor will become Governor for the remainder of the unexpired term. SCA 6 is currently pending consideration before the Senate Elections and Constitutional Amendments Committee.

AB 2582 (Bennett, 2022) requires a local recall election to include only the question of whether the elected officer sought to be recalled should be removed from office. Moreover, it would require that the office, if a local officer is successfully recalled, to

become vacant and to be filled in accordance with existing law. AB 2582 is bill is currently pending consideration before the Senate Elections and Constitutional Amendments Committee.

SB 1061 (Laird, 2021) would change the components of the petition for signatures and the election's timing for when a school district or community college district governing board makes a provisional appointment to fill a vacancy and the voters of the district challenge that appointment. The bill is awaiting a hearing in the Assembly Elections Committee.

SCA 3 (Allen, 2021) provides that the name of the officer subject to recall be placed on the ballot as a successor candidate if the officer does not resign. If the officer does resign, the bill would require that the office be deemed vacant and the recall election would not be held. Additionally, in a recall election, if a candidate other than the officer receives a plurality, that candidate would be elected as the successor to serve the remainder of the officer's term. If the officer receives a plurality, however, the recall would fail and the officer would remain in office. SCA 3 is currently pending consideration before the Senate Elections and Constitutional Amendments Committee.

Prior Legislation: None known.

PRIOR VOTES:

Senate Elections and Constitutional Amendments Committee (Ayes 4, Noes 1)

Assembly Floor (Ayes 54, Noes 19)

Assembly Appropriations Committee (Ayes 12, Noes 4)

Assembly Elections Committee (Ayes 5, Noes 1)
