



Joint Informational Hearing
Assembly Elections Committee and
Senate Elections & Constitutional Amendments Committee
Assemblymember Berman and Senator Glazer, Chairs

Subject: Evaluating California's State and Local Recall Process

December 6, 2021, 9:30 AM
State Capitol, Room 4202

Hearing Overview and Background

This is the second joint informational hearing held by the Assembly Elections Committee and Senate Elections & Constitutional Amendments Committee to review California's recall process following the recent 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 perspective on the state 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.

This hearing continues the committees' review of the recall process. In the first of two panels, the committees will hear from academics about a limitation, used in several states, which only allows recalls to be initiated against an official for certain enumerated causes. At the committees' last hearing, several committee members and witnesses expressed an interest in hearing more about how this type of "for cause" requirement affects the recall process. In the second panel, the committees will hear from experts and local elected officials about the use of the recall at the local level, as well as their perspectives on how well the local recall process is functioning and potential options for reform.

For Cause Recall Requirements

California's recall process is sometimes referred to as a "political recall" process, since state law does not require any specific cause to be met before a recall can be commenced. In fact, while the California Constitution requires the recall petition to include information alleging the reason for the recall, the Constitution additionally provides that "[s]ufficiency of reason is not reviewable." According to information from the National Conference of State Legislatures (NCSL), 12 of the 19 states that allow for the recall of elected state officials are "political recall" states.

By contrast, seven of the 19 states that allow for the recall of elected state officials require specific grounds for the recall. This type of recall process is sometimes referred to as a “for cause” recall process. In some of those states, the law specifies a procedure for the courts to determine whether the grounds alleged are sufficient, while other “for cause” states have a cause requirement but do not have a specified procedure for determining whether that standard has been met. Those states – and the relevant statutory or constitutional provisions outlining the permissible grounds for initiating a recall election, are as follows:

Alaska: The grounds for recall are (1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption (Alaska Statutes Sec. 15.45.510).

Georgia: Grounds for recall include (1) the official has committed an act or acts of malfeasance while in office; (2) the official has violated the oath of office; (3) the official has committed an act of misconduct in office; (4) the official is guilty of a failure to perform duties prescribed by law; or (5) the official has willfully misused, converted, or misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed (Official Code of Georgia Annotated (O.C.G.A.) § 21-4-3). Georgia also has a formal process for timely court review of the grounds for recall (O.C.G.A., § 21-4-6).

Kansas: Grounds for recall are conviction of a felony, misconduct in office, or failure to perform duties prescribed by law. No recall that has been submitted to the voters shall be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured (Kansas Statutes §25-4302). Kansas law allows the Secretary of State to reject a proposed recall attempt before it goes to the voters if the Secretary of State determines that the facts provided do not support the grounds for recall as stated in the application (Kansas Statutes §25-4308).

Minnesota: The grounds for recall of an officer other than a judge are serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office or conviction during the term of office of a serious crime. A petition for recall must set forth the specific conduct that may warrant recall. A petition may not be issued until the supreme court has determined that the facts alleged in the petition are true and are sufficient grounds for issuing a recall petition (Minnesota Constitution, Art. VIII, Sec. 6).

Montana: Physical or mental lack of fitness, incompetence, violation of the oath of office, official misconduct, or conviction of specified felony offenses are the only grounds for recall. A person may not be recalled for performing a mandatory duty of the office that the person holds or for not performing any act that, if performed, would subject the person to prosecution for official misconduct (Montana Code §2-16-603).

Rhode Island: Recall is authorized in the case of a general officer who has been indicted or informed against for a felony, convicted of a misdemeanor, or against whom a finding of probable cause of violation of the code of ethics has been made by the ethics commission (Rhode Island Constitution, Art. IV, Sec. 1).

Washington: An elective public official is subject to recall for commission of some act or acts of malfeasance or misfeasance while in office, or violation of the oath of office

(Washington Constitution Art. I, §33). Washington law also specifies a procedure for the courts to determine whether the criteria for initiating a recall have been satisfied (Revised Code of Washington 29A.56.140).

Virginia has a process similar to the recall under which, if a sufficient number of signatures are obtained on a petition, a trial is held in court to determine whether to remove an official from office. Because Virginia's process does not involve voters deciding in an election whether to remove an official from office, it is generally not considered a recall state. Nonetheless, the criteria used by Virginia courts to decide whether to remove an official from office pursuant to that process are similar to the criteria used in many "for cause" recall states. Specifically, Virginia law provides that a court may remove an elected officer from office for neglect of duty, misuse of office, or incompetence in the performance of duties that has a material adverse effect upon the conduct of the office; upon conviction of a drug-related misdemeanor or a misdemeanor involving a "hate crime," as specified; or upon conviction of specified sexual offenses (Virginia Code § 24.2-233).

Local Recall Elections

According to information from the NCSL, at least 30 states provide a recall process for local officials. In California, Article II, Section 19 of the California Constitution requires the Legislature to "provide for recall of local officers." For most local jurisdictions, the relevant recall procedures are set out in the Elections Code. However, some charter cities and counties, which have greater autonomy and authority to structure and organize their government under the California Constitution, have adopted different recall procedures in their charters.

General Procedures

The Elections Code generally provides that local officers may be recalled by submitting a petition signed by at least 10% to 30% of the registered voters eligible to vote for the targeted official, with the exact percentage depending on the number of registered voters in the electoral jurisdiction. The timeframe for collecting petition signatures varies from 40 to 160 days depending on the number of registered voters in the electoral jurisdiction. Generally, proponents seeking to recall an official from an electoral jurisdiction with fewer registered voters must collect signatures equal to a higher percentage of registered voters and have less time to do so. For example, in an electoral jurisdiction with fewer than 1,000 registered voters, proponents have 40 days to collect signatures equal to 30% of registered voters, whereas, in an electoral jurisdiction with more than 100,000 registered voters, proponents have 160 days to collect signatures equal to 10% of registered voters. The rules for qualifying a local recall election differ from the rules provided in the Constitution for state recall elections. Notably, for state office, the number of signatures to be collected to qualify a recall is based on a percentage of the last vote for the office, rather than registered voters, and both the percentage for determining the required number of signatures and the time period for collecting those signatures is fixed, and does not vary based on the number of registered voters in the electoral jurisdiction.

Comparison: Time Allowed and Signatures Required to Qualify a State or Local Recall Election

Office	Signature Collection Period	Signatures Needed
Statewide Officers	160 days	- 12% of the last vote for the office - 1% of the last county vote for the office in 5 counties
Senators, Assembly Members, BOE Members, Courts of Appeal and Trial Court Judges	160 days	20% of the last vote for the office
Local Officers, based on the number of registered voters (RVs) in the electoral jurisdiction (<i>except for certain charter cities and charter counties</i>)	<1,000 RVs: 40 days	<1,000 RVs: 30% of RVs
	1,000 – 4,999 RVs: 60 days	1,000 – 9,999 RVs: 25% of RVs
	5,000 – 9,999 RVs: 90 days	
	10,000 – 49,999 RVs: 120 days	10,000 – 49,999 RVs: 20% of RVs
	50,000+ RVs: 160 days	50,000 – 99,999 RVs: 15% of RVs
		100,000+ RVs: 10% of RVs

For local officials, the Elections Code also places certain temporal restrictions on when local recalls may be initiated or held. Recall proceedings may not be commenced against a local officer if the officer has not held office in their current term for at least 90 days or if the officer’s term ends within six months or less. In addition, as is the case with recalls for state officials, recall proceedings cannot be commenced against a local officer if a recall against the officer was defeated in the prior six months.

If the relevant signature threshold for the recall of a local officer is met, the governing body has 14 days after the meeting at which it receives a certificate of sufficiency to order the recall election, which must be held between 88 and 125 days later, and must be consolidated with any special or regular election held in that time period throughout the electoral jurisdiction.

Once on the ballot, local recall elections are conducted in the same manner as a state recall election. A recall ballot asks voters two questions: First, should the targeted elected official be recalled? Second, which candidate should replace the recalled official? On the first question, a majority vote is needed to remove the official from office. For the second question, if the targeted official is recalled, the Elections Code provides that the replacement candidate who receives the most votes (i.e. a plurality, which may be less than a majority) is elected to succeed the recalled official. The official who is the target of the recall election may not run as a replacement candidate.

Charter Cities and Charter Counties

Some charter cities and charter counties, exercising their home rule autonomy, have adopted recall provisions that differ significantly from the Elections Code provisions described

above. For example, Alameda County requires that proponents collect signatures equal to 15% of the last *gubernatorial* vote in the county to qualify a recall against a countywide officer or 25% of the gubernatorial vote in a supervisorial district to qualify a recall against a supervisor. Alameda, Placer, Sacramento, San Mateo, and Santa Clara counties do not allow an elected official to be recalled until the official has been in office for at least six months, instead of the 90 days provided in state law. The City of Los Angeles requires that a recall petition be signed by 15% of registered voters (instead of 10%, as would be required for a citywide official and most council members under state law based on Los Angeles’s voter registration) and provides only 120 days to gather those signatures (instead of 160 days). In addition, if the recall is successful but no replacement candidate receives a majority of the vote, a runoff election is held between the top two candidates. By contrast, the City and County of San Francisco does not hold a successor election with the recall election; if an official is recalled, the successor is appointed, rather than elected.

However, many charter cities’ and charter counties’ charters expressly provide that state law governs their local process. Such cities and counties include, for example, Butte, Los Angeles, and San Diego counties and the cities of Anaheim, Fresno, and Long Beach.

Usage

Since the addition of recall provisions in the California Constitution in 1911, there have only been 11 recall elections against a state official. By contrast, the recall is much more commonly used at the local level. According to data from the California Election Data Archive (CEDA), a joint project of the Center for California Studies at the California State University, Sacramento, and the Secretary of State’s office, there were 345 local recall elections for county, city, or school district officials in California between 1995 and 2020, or an average of about 13 per year. Although CEDA does not maintain comprehensive information about the number of local recall *attempts*, most local efforts to qualify a recall election fail. On the other hand, those that do qualify for the ballot generally are successful. According to the CEDA data, 73% of recall elections resulted in the recall of the local official. CEDA data seem to suggest that local recall elections have become less common in recent years; between 2013 and 2020, there were an average of just eight local recall elections per year.

There are some indications, however, that the number of local recall efforts may have increased since the end of 2019. In June of this year, for example, the *Los Angeles Times* reported that “During the first five months of 2021, active recall efforts — those in which an official step has been taken — have targeted at least 68 local officials in California, according to a *Times* analysis. The total has already surpassed the number of local recall attempts seen during four of the last five years in California, according to Ballotpedia, a nonpartisan website that tracks American politics and elections.” The *Times* report does not, however, specify the number of local recall elections that have *qualified* for the ballot, so it is unclear whether an increase in local recall attempts will result in an increase in the number of local recall elections that are actually held. Based on information from CEDA and Ballotpedia, it appears that at least 11 local recall elections were held in 2020 and at least five local recall elections have been held in 2021. Recalls against an additional five local officials have qualified for the ballot and are scheduled to be held in early 2022, and other recall efforts are underway against more than 40 local officials in California.