SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Senator Catherine Blakespear, Chair
2023 - 2024 Regular

Bill No:	SB 1111	**Hearing Date:**	4/22/24
Author:	Min		
Version:	3/19/24		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Scott Matsumoto		

Subject: Public officers: contracts: financial interest

DIGEST

This bill expands the definition of remote interest to include the financial interests of a public officer's child, parent, or sibling, or the spouses of those individuals.

ANALYSIS

Existing law:

1) Prohibits Members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in a contract made by them in their official capacity or by any body or board of which they are members, subject to specified exceptions.

2) Provides that a public officer shall not be deemed financially interested in contract if the officer only has a remote interest. Identifies certain remote interests, including the interest of a parent in the earnings of their minor child for personal services. Provides that in order to be deemed not interested in the relevant contract due to a remote interest, a public officer must disclose the interest, and the body or board must authorize, approve, or ratify the contract in good faith without counting the vote of the public officer with the remote interest.

3) Creates the Fair Political Practices Commission (FPPC) and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act of 1974 (PRA).

This bill:

1) Adds, beginning January 1, 2026, a new remote interest for the financial interests of the public officer's child, parent, or sibling, or the spouse of a child, parent or sibling, if those interests are actually known to the public officer, as specified.

BACKGROUND

Government Code Section 1090. Section 1090 formalized the longstanding common law rule prohibiting public officials—including board members, officers, and employees—from having a personal financial interest in the contracts they participate in

awarding while exercising their official capacities. Financial interest has been liberally interpreted by the courts and includes the property and income of a public official's spouse. The consequences of violating Section 1090 are severe: a contract that runs afoul of the law is void, even if the affected official did not intend to receive a personal benefit. Willful violators can also face criminal penalties ranging from fines to prison time, plus a lifetime ban on holding public office.

There are several exceptions where the financial interest involved is deemed a "remote interest" or a "noninterest." If a "remote interest," is present, the contract may be made if (1) the officer in question discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the entity's official records, and (3) the officer abstains from any participation in the making of the contract. If a "noninterest" is present, the contract may be made without the officer's abstention, and generally, a noninterest does not require disclosure.

Remote interests apply only to members of multi-member bodies. Common remote interests in contracts include those situations where an official is:

- An officer or employee of a nonprofit corporation.
- Employed by a private contracting party that has 10 or more employees (other than the official) where he or she has been employed for at least three years prior to initially joining the public body, owns less than 3% of the stock, is not an officer or director, and did not directly participate in formulating the bid of the private contracting party.
- A landlord or tenant of a contracting party.
- A supplier of goods or services that have been supplied to the contracting party by the official for at least five years prior to his or her election or appointment to office.

Common noninterests in contracts include those situations where an official is:

- A recipient of public services generally provided by the public body or board of which they are a member, on the same terms and conditions as all other recipients.
- A noncompensated officer of a nonprofit tax-exempt corporation, which has at least one primary purpose that supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration.

Section 1090 requires an official with a remote interest to publicly disclose their interest, note the interest in the public record, and abstain from voting on the contract or influencing the other board members. The government body on which they sit may only approve the contract if there are sufficient votes to pass it without the interested official. This means that only public officials that sit on multi-member boards may use the remote interest exception; officers and employees may not. The courts and the Attorney General have found there is an additional, non-statutory exception to Section 1090: a "rule of necessity" that allows an interested public official to participate in a contract if (1) the government agency must contract for essential services but no other source is available, and (2) the board or official is the only authority that can legally act on the matter.

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, an initiative commonly known as the PRA. Proposition 9 created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The Legislature is permitted to amend the PRA, but the amendments must further the purposes of the PRA and requires a two-thirds vote of both houses of the Legislature.

In 2013, the FPPC's jurisdiction was expanded to include Section 1090 with the passage of AB 1090 (Fong), Chapter 650, Statutes of 2013. The PRA is broader than Section 1090 because it prohibits any state or local public official from using their official position to influence any "governmental decision" in which the official has a financial interest. The PRA also applies to decisions that will have a material financial effect on a member of the official's "immediate family," which the Legislature has defined as a government official's spouse or dependent children. The PRA supersedes most other conflict of interest laws, including Section 1090, in the case of an inconsistency. Public officials must therefore consider whether a conflict exists under either the PRA or Section 1090, or both.

Conflict of Interests Controversy. Beginning in late 2023, *LAist* reported that an Orange County Supervisor awarded COVID-19 relief funding to an organization run by the supervisor's daughter without disclosing the connection to the public. After public scrutiny over the contracts, news surfaced that the organization was also behind on required audits. Despite these issues, funding continued to be awarded to the organization.

COMMENTS

1) According to the author: Current law prohibits public officers from entering into state contracts that directly benefit them financially. However, the law does not apply when the contract directly affects a public official's child, parent, sibling, or the spouse of a child, parent, or sibling. Government officials have the responsibility of handling millions of taxpayer dollars and approving contracts on their behalf. As such, they must be held to the highest ethical standards in order to avoid any conflicts of interest or perception of impropriety when conducting business on the public's behalf. Public officials should not be using their positions to enrich themselves financially, directly or indirectly. SB 1111 would require government officials to abstain from voting when a family member has a financial interest or may benefit from the outcome of a public contract decision under the jurisdiction of that official. At a time where we see public officials direct millions in taxpayer dollars to groups without publicly disclosing family ties, this legislation is necessary.

2) Double Referral. Prior to being heard by this committee, SB 1111 was heard in the Committee on Local Government where it was approved with a vote of 6 – 0.

RELATED/PRIOR LEGISLATION

SB 1011 (Mendoza) of 2016 would have deemed a public officer to have a remote interest in a contract if the officer's child, parent, sibling, or the spouse of the child, parent, or sibling, has a financial interest in the contract and that interest is actually known to the public officer. SB 1011 was held under submission on the Assembly Committee on Appropriations' Suspense File.

SB 330 (Mendoza) of 2015 and would have provided that an elected officer of a state or local governmental entity was deemed to have a remote interest in a contract made by the governmental entity if the officer's spouse, child, parent, or sibling, or the spouse of the child, parent, or sibling, had a financial interest in the contract. SB 330 was held under submission on the Assembly Committee on Appropriations' Suspense File.

POSITIONS

Sponsor: Author

Support: None received

Oppose: None received

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SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Senator Catherine Blakespear, Chair
2023 - 2024 Regular

Bill No:	SB 1181	**Hearing Date:**	4/22/24
Author:	Glazer		
Version:	4/10/24		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Scott Matsumoto		

Subject: Campaign contributions: agency officers

DIGEST

This bill requires agendas for public meetings to include a notice stating the disclosure requirements and contribution limitations that a party to a proceeding involving a license, permit, or other entitlement of use must abide by in accordance with existing law, as specified.

ANALYSIS

Existing law:

1) Creates the Fair Political Practices Commission (FPPC) and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act of 1974 (PRA).

2) Defines the following terms and phrases:

   a) "Party" to mean any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

   b) "Participant" to mean any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as specified. Provides a person actively supports or opposes a particular decision in a proceeding if that person lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

   c) "Agency" to mean an any state or local government agency, except that it does not include the courts or any agency in the judicial branch of government, the Legislature, the Board of Equalization, or constitutional officers. The definition applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

   d) "Officer" to mean any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

e) "License, permit, or other entitlement for use" to mean all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

f) "Contribution" to mean and includes contributions to candidates and committees in federal, state, or local elections.

3) Provides that a public official has a financial interest in a decision if it reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family, or on any other of the following:

a) Any business entity in which the public official has a direct or indirect investment worth $2,000 or more.

b) Any real property in which the public official has a direct or indirect interest worth $2,000 or more.

4) Prohibits, while a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency from accepting, soliciting, or directing a contribution of more than $250 from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest, as specified. Provides that this prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution on the officer's own behalf, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

5) Requires each officer of the agency who received a contribution within the preceding 12 months in an amount of more than $250 from a party or from any participant to disclose that fact on the record of the proceeding prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use pending before an agency. Prohibits an officer of an agency from making, participating in making, or in any way attempting to use the officer's official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than $250 within the preceding 12 months from a party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as specified.

6) Permits an officer to participate in the proceeding if an officer receives a contribution which would otherwise require disqualification and returns the contribution within 30 days from the time the officer knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use.

7) Permits an officer to cure a violation by returning the contribution, or the portion of the contribution in excess of $250, within 14 days of accepting, soliciting, or directing

the contribution, whichever comes latest, if an officer accepts, solicits, or directs a contribution of more than $250 during the 12 months after the date a final decision is rendered in the proceeding

8) Provides an officer may cure a violation only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution.

9) Requires an officer's controlled committee, or the officer if no controlled committee exists, to maintain records of curing any violation, as specified.

10) Requires a party to a proceeding before an agency involving a license, permit, or other entitlement for use to disclose on the record of the proceeding any contribution in an amount of more than $250 made within the preceding 12 months by the party or the party's agent.

11) Prohibits a party, or agent to a party, to a proceeding involving a license, permit, or other entitlement for use pending before any agency or a participant, or agent to a participant, in the proceeding from making a contribution of more than $250 to any officer of that agency during the proceeding and for 12 months following the date a final decision is rendered by the agency in the proceeding.

12) Provides that when a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to specified disclosure and prohibition requirements.

This bill:

1) Requires agendas for public meetings to include a notice stating the disclosure requirements and contribution limitations that a party to a proceeding involving a license, permit, or other entitlement of use must abide by in accordance with existing law, as specified.

2) Provides that the notice be in substantially the following form:

> *Pursuant to Section 84308 of the Government Code, a party to a proceeding before an agency involving a license, permit, or other entitlement of use is required to disclose on the record of the proceeding any contribution in an amount of more than $250 made within the preceding 12 months by the party or their agent to an officer of the agency. The disclosure is required to include the name of the party and any other person making the contribution, the name of the recipient, the amount of the contribution, and the date the contribution was made. A party, or their agent, and a participant, or their agent, is prohibited from making a contribution of more than $250 to any office of that agency during the proceeding and for 12 months after the date a final decision is rendered by the agency in the proceeding.*

BACKGROUND

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, an initiative commonly known as the PRA. Proposition 9 created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The Legislature is permitted to amend the PRA, but the amendments must further the purposes of the PRA and requires a two-thirds vote of both houses of the Legislature.

The Levine Act. In 1982, the Legislature passed and Governor Brown signed AB 1040 (Levine), Chapter 1049, Statutes of 1982. AB 1040, also known as the Levine Act, prohibited an elected or appointed officer, alternate, or candidate for office who serves on a specific quasi-judicial board or commission from accepting, soliciting, or directing a contribution of $250 or more from any person or their agent who has an application for a license, permit, or other entitlement for use pending before the body and for three months following the date a decision is rendered on the application or until the end of the officer's term, whichever is longer, or from any person, or their agent, who actively opposes the application. Legislative bodies, such as city councils, county boards of supervisors, and the Legislature were excluded from these provisions unless the officer served on a specific board or commission. Additionally, constitutional officers who serve on a board or commission as a requirement of their constitutional office were also not subject to these provisions.

AB 1040 was in response to reports in the *Los Angeles Times* that several coastal commissioners had solicited and received large campaign contributions from persons who had applications pending before them. One of the purposes of the Levine Act was to assure that appointed members of boards or commissions were not influenced by the receipt of campaign contributions from the individuals and parties appearing before them, and that officials were not able to use their position of authority to unduly influence applicants to make contributions to their campaigns.

Since the chaptering of AB 1040, a number of bills were enacted to help clarify the prohibition and terminology following the initial implementation. This was seen in AB 2992 (Waters), Chapter 1681, Statutes of 1984, when many of the current prohibitions and changes took place, such as a clarification of the definitions of the terms used in statute. For example, AB 2992 clarified that competitively bid, labor, or personal employment contracts were excluded from the prohibition and not considered part of the meaning for "license, permit, or other entitlement for use."

SB 1439 (Glazer). In 2022, the Legislature passed and Governor Newsom signed SB 1439 (Glazer), Chapter 848, Statutes of 2022. SB 1439 modified and added to the Levine Act. First, the legislation removed an exemption for local government agencies whose members are directly elected by the voters. In other words, prior to the passage of SB 1439, elected local government officials were not included with the Levine Act. Following the bill's enactment, local government officials were required to follow the existing provisions that applied to agencies with membership that was not directly elected by voters and only to certain proceedings involving licenses, permits, or other entitlements of use unless certain conditions were met.

Second, SB 1439 also extended, from three months to 12 months, the period of time following the date that an agency renders a final decision in a matter involving a license,

permit, or other entitlement for use during which an officer subject to the Levine Act is prohibited from accepting, soliciting or directing a contribution of more than $250 from a party or participant in the matter, and during which a party or participant in the matter is prohibited from making a contribution of more than $250 to an officer of the agency.

Finally, SB 1439 provided a process to cure a violation should it occur and if certain conditions are met. Specifically, the bill permitted an officer who is subject to the Levine Act, and who accepts, solicits, or directs a contribution of more than $250 during the 12 months after the date a final decision is rendered in a proceeding involving a license, permit, or other entitlement for use, to cure the violation by returning the contribution or the portion exceeding $250 within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest. The officer is permitted to cure such a violation only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution, and requires the officer or the officer's controlled committee to maintain records of curing the violation.

Recent Litigation. Following the enactment of SB 1439, the Family Business Association of California, the California Restaurant Association, the California Retailers Association, the California Building Industry Association, the California Business Properties Association, the California Business Roundtable, the Sacramento Regional Builders Exchange, the California Manufacturers and Technology Association, Garrett Gatewood (Councilmember for the City of Rancho Cordova), and Pat Hume (Supervisor for Sacramento County) collectively pursued litigation and brought a motion for judgment on the pleadings directed to the FPPC and the FPPC's Chair, Richard Miadich. (*Family Business Association of California vs. Fair Political Practices Commission; case number: 34-2023-00335169-CU-MC-GDS*)

The plaintiffs sought injunctive and declaratory relief by seeking to have SB 1439 declared unconstitutional under the California Constitution and the United States Constitution. In the end, the court ruled that SB 1439 does not violate the United States Constitution or the California Constitution. The ruling was not appealed by the plaintiffs.

COMMENTS

1) According to the author: In 2022, the Legislature passed one of the most significant reforms in the last 50 years, the Pay to Play bill, SB 1439. This measure prohibited political contributions over $250 from parties seeking contracts with local governments to the elected local officials who make contracting decisions. However, much of this law is not transparent and can be nuanced and complex for the public to understand.

   To improve transparency and consistency, this bill would require the agenda for a proceeding that is a public meeting to disclose the details of the Levine Act. Californians deserve to know that their elected officials are making decisions that benefit the voters.

2) Notice on Agendas – Suggested Amendment. SB 1181 requires a public meeting's agenda for a proceeding to include information emphasizing existing law. This notice contains the disclosure requirements and contribution limitations that a party to a proceeding involving a license, permit, or other entitlement of use must abide by

in accordance with existing law. While it is worthwhile to include information to the general public about elements of state law, how it is presented and displayed is equally important. The general public may not understand the legalese in the proposed notice. As a result, committee staff recommends the bill be amended to simplify the language of the proposed notice to make it clear and understandable about what entities are required to do during and following a proceeding.

RELATED/PRIOR LEGISLATION

SB 1243 (Dodd) of 2024 makes various changes to the Levine Act by (1) providing that a person is not a "participant" if the individual's financial interest in the decision results solely from an increase or decrease in membership dues; (2) specifying that the periodic review of contracts is considered a "license, permit, or other entitlement for use;" (3) modifying the prohibition on contributions made during and after a proceeding to the nine months before and after a final decision in a proceeding is made; and (4) extending the period during which an officer may cure a violation to within 30 days of accepting, soliciting, or directing the contribution, whichever is latest. SB 1243 is pending consideration by this committee.

AB 2911 (McKinnor) of 2024 amends the Levine Act to raise the contribution threshold for contributions to $1,500.

SB 1439 (Glazer), Chapter 848, Statutes of 2022, applied existing campaign contribution prohibitions for state and local agencies and applied it to local elected agencies, such as city councils and boards of supervisors, and expanded the timeframe prohibiting specific contributions following an official's action from three months to 12 months, as specified.

AB 1728 (C. Garcia) of 2014 would have made all officials who are elected to local water boards subject to existing provisions of state law limiting contributions to officials from entities with business before the agency involving a license, permit, or other entitlement for use. AB 1728 was vetoed by Governor Brown who stated in his veto message, "The Levine Act was narrowly crafted to apply to local government entities whose membership includes individuals who are not elected directly by voters. Expanding the Act to one subset of special districts, namely water boards, would add more complexity without advancing the goals of the Political Reform Act."

AB 1241 (Norby) of 2011 would have exempted officials who are directly elected to an agency from the Levine Act for agencies that are governed by a board that contains both elected and appointed members. AB 1241 was approved by the Assembly on a 65-6 vote, but failed passage on the Senate Floor on a 19-20 vote.

AB 2164 (Norby) of 2010 was substantially similar to AB 1241. AB 2164 was approved by the Assembly on a 60-2 vote, but was held in the Senate Elections and Constitutional Amendments Committee.

AB 2992 (Waters), Chapter 1681, Statutes of 1984, clarified when many of the current prohibitions and changes took place, such as a clarification of the definitions of the terms used in statute. For example, AB 2992 clarified that competitively bid, labor, or

personal employment contracts were excluded from the prohibition and not considered part of the meaning for "license, permit, or other entitlement for use."

AB 1040 (Levine), Chapter 1049, Statutes of 1982, also known as the Levine Act, prohibited an elected or appointed officer, alternate, or candidate for office who serves on a specific quasi-judicial board or commission from accepting, soliciting, or directing a contribution of $250 or more from any person or their agent who has an application for a license, permit, or other entitlement for use pending before the body and for three months following the date a decision is rendered on the application or until the end of the officer's term, whichever is longer, or from any person, or their agent, who actively opposes the application.

POSITIONS

Sponsor: Author

Support: None received

Oppose: None received

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SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Senator Catherine Blakespear, Chair
2023 - 2024 Regular

Bill No:	SB 1294	**Hearing Date:**	4/22/24
Author:	Ochoa Bogh		
Version:	3/20/24		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Scott Matsumoto		

Subject: Elections: recall of local officers

DIGEST

This bill permits the proponents of a recall of a local officer to file with the elections official a notice withdrawing their petition at any time before the elections official submits the certificate of sufficiency to the governing body, as specified.

ANALYSIS

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 the 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) 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.

4) Requires the proponents of a recall to be registered voters of the electoral jurisdiction of the officer they seek to recall.

5) 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.

6) 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.

7) 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. 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, as specified. 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.

This bill:

1) Permits the proponents of a recall of a local officer to file with the elections official a notice withdrawing their petition at any time before the elections official submits the certificate of sufficiency to the governing body, as specified.

2) Provides, upon receipt of the proponents' notice of withdrawal, the elections official shall take no further action on the petition, whether or not the petition has already been found sufficient by the elections official. Requires a recall petition that has been withdrawn by its proponents to remain on file.

3) Provides that the withdrawal of a recall petition against a local officer does not bar the later filing of a new petition against that officer.

4) Defines, for purposes of this bill, "proponents" to mean the 10 recall proponents listed on the copy of the notice of intention that appears on each page of each section of the recall petition, as specified.

BACKGROUND

Informational Recall Hearings. In 2021 and 2022, this committee and the Assembly Committee on Elections held a series of joint informational hearings to review California's recall process following gubernatorial recall election in September of 2021.

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.

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.

At the third and final recall informational hearing, on February 1, 2022, the committees heard from the Secretary of State who shared recommendations for improvements on the state recall process based on her consultation with outside experts and stakeholders. 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.

Yucaipa. In May of 2023, recall proponents in Yucaipa, California, submitted a recall petition that was approved by the City Clerk. Concurrently, the City Clerk filed a writ of mandate challenging the information contained in the proponent's statement. The ruling on the writ of mandate went beyond the amount of time allocated to gather signatures, which meant the proponents were unable to move forward with the petition. While the proponents were allowed to remove their names from the petition, they could not withdraw the petition.

The delay in the ruling on the writ of mandate caused a delay in timing and deadlines with regard to signature gathering and the proponents were unable to move forward nor could they withdraw the petition.

Number of Recalls. Since the addition of recall provisions in the California Constitution in 1911, there have only been 11 recall elections against a state official. Of those, six were successful. The most recent statewide recall election was the effort in 2021 to recall Governor Newsom. In that election, voters chose to not recall the Governor.

The recall is 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 368 local recall elections for county, city, or school district officials in California between 1995 and 2022, or an average of approximately 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. It should be noted that for county, city, and school districts, recall efforts that do qualify for the ballot are generally successful. According to the CEDA data, from 2020 through 2022, there were 23 recall elections with 16 elections resulting in the recall of the local official. This equates to approximately 70% of recall elections.

COMMENTS

1) According to the author: Senate Bill 1294 would codify the ability of the recall proponents to file a notice of withdrawal informing the local elections official that no further action on the recall petition is needed. The notice of withdrawal can be submitted at any time before the elections official submits the certificate of sufficiency to the governing body at its next regular meeting.

Once the notice of withdrawal is received by the elections official, action on the recall petition would end. However, this would not preclude the recall proponents from filing a new notice of intention at a later date.

The recall is a popular tool of electoral accountability that has been used by California's voters for more than a century. While it is important to safeguard that right, it is also important to ensure that if a writ of mandate is filed and there is not a ruling from the court in a timely manner that the proponents be allowed to withdraw their petition.

2) Withdrawal as a Political Maneuver. Currently, if a recall petition fails to meet certain deadlines or does not comply with statute, then the entire recall effort starts over. SB 1294 provides a way for proponents to withdrawal their recall petition at any time before the petition is certified by the affected governing body. Typically, an undesirable action by an elected official leads to a recall effort. This could lead to a group of voters using a recall petition against an elected official to get a desired outcome on a matter important to the proponents.

RELATED/PRIOR LEGISLATION

SB 1293 (Ochoa Bogh) of 2023 requires the published copy of the notice of intention to omit recall proponents' signatures and residence addresses, as specified. SB 1293 passed this committee with a vote of 7 – 0 and is pending consideration in the Committee on Judiciary.

AB 2584 (Berman), Chapter 791, Statutes of 2022, among other provisions related to recall, permitted a voter of the applicable electoral jurisdiction or the elections official 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. AB 2584 also required that the writ of mandate or injunction request be filed no later than the end of the 10-day public examination period and only be issued upon clear and convincing proof that the material in question is false, misleading, or inconsistent, as specified.

POSITIONS

Sponsor: Author

Support: None received

Oppose: None received

-- END --