SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1441 (Allen)
Version: February 16, 2024
Hearing Date: April 2, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Examination of petitions: time limitations and reimbursement of costs

DIGEST

This bill requires a proponent to conclude an examination of an election petition for insufficiency no later than 60 days from the date the examination commenced. The bill also requires all costs incurred by the county elections official due to the examination to be paid by the proponent, as specified.

EXECUTIVE SUMMARY

The California Public Records Act (CPRA) makes all public records of a public agency open to public inspection upon request and grants the public the right to obtain a copy of any public record, unless the records are otherwise exempt from public disclosure. The CPRA expressly provides that certain election petitions are not public records and are not to be disclosed 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 therefor. The examination must commence within 21 days of certification of insufficiency, but no date is specified for when the examination must be completed. This bill seeks to provide a definitive end date to which an examination of an insufficient petition must be completed and seeks to shift the burden of paying the costs of the examination from the counties to the proponent seeking examination. The reason for these changes stems from a situation that occurred in the County of Los Angeles where an examination of a petition continued for 14 months and, according to the County, cost them $1.5 million. The bill is sponsored by the County of Los Angeles and supported by the California State Association of Counties and California Association of Clerks and Election Officials. The bill is opposed by two individuals, one of whom is the former District Attorney of Los Angeles County, Steve Cooley. Should this bill pass this Committee, it will next be heard in the Senate Elections and Constitutional Amendments Committee.

PROPOSED CHANGES TO THE LAW

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. (Cal. const. art. I, § 3(b)(1).)
    a) 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. (Cal. const. art. I, § 3(b)(1).)
    b) 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. (Cal. const. art. I, § 3(b)(1).)

2) Governs the disclosure of information collected and maintained by public agencies pursuant to the CPRA. (Gov. Code §§ 792.000 et seq.)
    a) 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. (Gov. Code § 7921.000.)
    b) Defines "public records" as 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. (Gov. Code § 7920.530.)
    c) Defines "public agency" as any state or local agency. (Gov. Code § 7920.525(a).)

3) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.525.)
    a) Some records are prohibited from being disclosed and other records are permissively exempted from being disclosed. (See e.g. Gov. Code §§ 7920.505 & 7922.200.)
    b) There are several general categories of documents or information that are permissively exempt from disclosure under the CPRA essentially due to the character of the information. The exempt information can be withheld by the public agency with custody of the information, but it also may be disclosed if it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, at 652.).

4) Provides 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 Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of Division 3 of Title 2 of the Education Code;
d) a petition for reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of Division 7 of Title 3 of the Education Code; and
e) a memorandum prepared by a county elections official in the examination of a petition, indicating which registered voters signed that particular petition. (Gov. Code § 7924.110(a).)

5) Provides that materials in 4), 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. (*Id*. at subd. (b).)

6) Provides that if the proponent of a petition is permitted to examine a petition and a memorandum pursuant to 5)b), above, the examination must commence not later than 21 days after certification of insufficiency. (*Id*. at subd. (d).)

7) 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.
   a) The money deposited must be returned to the depositor if, upon completion of the recount, the candidate, slate of presidential electors, or the position on the measure (affirmative or negative) for which the declaration is filed is found to have received the plurality of votes cast which it had not received according to the official canvass or, in an election where there are two or more candidates, the recount results in the candidate for whom the recount was requested appearing on the ballot in a subsequent runoff election or general election who would not have so appeared in the absence of the recount.
   b) The depositor shall be entitled to the return of any money deposited in excess of the cost of the recount if the candidate, slate, or position on the measure has not received the plurality of the votes cast or, in an election where there are two or more candidates, the recount does not result in the candidate for whom the recount was requested appearing on the ballot in

a subsequent runoff or general election as a result of the recount. (Elec. Code § 15624.)

8) Provides that, if the random 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 requisite number of qualified voters, the Secretary of State must order the examination and verification of the signatures filed, and within 60 days of this order, as specified, the elections official must determine the number of qualified voters who signed the petition. (Elec. Code § 9031(a)-(b).)

This bill:

1) Requires an examination of a petition for insufficiency to conclude no later than 60 days from the date examination commenced.

2) Requires that all costs incurred by the county elections official due to the examination must be reimbursed within 30 days from the date the examination concludes.
    a) Before an examination is conducted and at the beginning of each day following, the proponent of a petition who requests to examine a petition and a memorandum must deposit with the elections official a sum as required by the elections official to cover the cost of the examination for that day.
    b) The proponent is entitled to the return of any money deposited in excess of the cost of the examination.
    c) Money not required to be refunded must be deposited in the appropriate public treasury.
    d) The 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.

COMMENTS

1. Stated need for the bill

The author writes:

> 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 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 resources expended accommodating the proponent's access to election records.

2. Election petitions and the CPRA

a. Access to public records is a fundamental right

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Cod § 7921.000.) In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide general election),[1] which amended the California Constitution to specifically protect the right of the public to access and obtain government records: "The people have the right of access to information concerning the conduct of the people's business, and therefore . . . the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, sec. 3 (b)(1).) In 2014, voters approved Proposition 42 (Jun. 3, 2014, statewide direct primary election)[2] to further increase public access to government records by requiring local agencies to comply with the CPRA and the Ralph M. Brown Act[3], and with any subsequent statutory enactment amending either act, as provided. (Cal. Const., art. I, sec. 3 (b)(7).)

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. (Gov. Cod § 7922.525-7922.530.) 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. (Gov. Code § 7920.530.) 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. (Gov. Code § 7920.530(a).) The California Supreme Court has held that this is generally understood to include costs like running a copy machine and "conceivably also the expense of the person operating it, but excludes any supplemental tasks associated with the retrieval, inspection, or handling of the record. (*National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488 at 493.) For copies of records in an electronic format, a requester must also pay the direct duplication costs including, the cost of producing a copy of the record, the cost to construct the record, and the cost of programming and computer services necessary to produce a copy of the record when either: (1) an agency would be required to produce a copy of a record that is produced only at regularly scheduled intervals; or (2) the request would require data compilation, extraction, or

[1] Prop. 59 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 1 (Burton, Ch. 1, Stats. 2004).
[2] Prop. 42 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 3 (Leno, Ch. 123, Stats. 2013).
[3] The Ralph M. Brown Act is the open meetings laws that apply to local agencies. (Gov. Code §§ 59450 et. seq.)

programming to produce the record. (Gov. Code § 7922.575.) In 2020, the Court held that the term "extraction" of electronic records does not encompass every process that "might be colloquially described as 'taking information out' and cited specific examples of things that could not be charged for such as, searching an e-mail in box or computer's documents folder or redacting exempt data from otherwise disclosable records. (*National Lawyers Guild* supra at 506.)

b. Election petitions are not public records pursuant to the CPRA and can only be disclosed in limited circumstances

The CPRA expressly provides that certain election petitions are not public records. (Gov. Code § 7924.110(a).) Additionally, they and 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 therefor. (*Id*. at (b).) Existing law provides that the examination of a petition must commence within 21 days of certification of insufficiency, but there is no time prescribed for when the examination must end. (*Id*. at (d)).

3. A situation in Los Angeles County is the genesis for this bill

a. Background

The Committee to Support the Recall of District Attorney George Gascón (proponents) submitted a recall petition containing 715,833 signatures on July 6, 2022, which was 148,976 more than required to trigger a recall election. (*Committee to Support the Recall of District Attorney George Gascon v. Dean C. Logan et al.* (2023) 94 Cal.App.5th 352 at 359.) On August 15, 2022 the County issued a press release after a full count examination of the signatures on the petition to recall DA Gascón, stating that the proponents were 46,000 signatures short of those needed to qualify for the ballot. (*Ibid*.) The press release noted the number of invalidated signatures as 195,783 and provided categories for why the signatures were rejected: "Not Registered" (88,464); "Duplicate" (43,593); "Different Address" (32,187); "Mismatch Signature" (9,490); "Canceled" (7,344); "Out of County Address" (5,374); and "Other" (9,331). (*Ibid* at fn. 2.) The proponents began an examination of the signatures on September 6, 2022 and were permitted by the Registrar to examine the signatures three days a week from 9:00 am until 4:00 pm with "no more than 14 representatives working at seven computer workstations under the control of Registrar staff. The Registrar prohibited the Committee from using any personal electronic devices inside its examination room." (*Id*. at 360.)

The proponents were provided several reports by the Registrar in the examination room including: "(1) a report of signatures challenged as due to death with a date of death; (2) a report of signatures challenged as fatal pending with a fatal pending reason code; and (3) a report of signatures challenged as duplicates with all other signatures for the voter, including accepted signatures." (*Ibid*. at fn. 3.) The Registrar also provided "a hardcopy

list and report of invalided signatures, hardcopy list of signatures invalidated for death or fatal pending, and a hardcopy report showing when a voter changed or updated an address during the time the petition was circulated." (*Ibid*. at fn. 4). The Registrar declined to provide the proponents with information it deemed were not authorized by Section 7924.110 of the Government Code, including "training materials for the software program it used to store voter registration records […], all signatures on file for each voter, various lists and/or reports for signatures deemed valid and accepted, and signatures invalidated as duplicates, death, fatal pending, or different address. (*Ibid*.) The proponents brought suit seeking several things, including access to training materials for staff to interpret its own data, electronic copies of lists of all voters who submitted a valid signature, whose signatures were invalidated, and original affidavits of registration and re-registration for voters whose recall signatures were rejected. (*Id*. at 360-61.) Proponents also sought an order to allow 25 representatives of the proponents to be able to participate in the examination five days a week, access to computer stations for each representative, and the ability to use their own devices. (*Ibid*.)

The trial court issued several orders that, among other things, (1) authorized the proponents and their representatives to use electronic lists of voter data outside the examination room subject to a protective order, and (2) ordered disclosure of current and former affidavits of registration for rejected signatures to proponents. (*Id*. at 374.) The Registrar appealed the trial court's decision on multiple grounds, including that the use of electronic lists of voter data outside the examination room and access to current and former affidavits of registration for rejected signatures would violate confidentiality statutes and was outside the scope of Section 7924.110 of the Government Code. The Appeals Court ultimately agreed with the Registrar regarding the disclosure issue, dismissed other issues raised on appeal by the Registrar on procedural grounds, and remanded the case back to the trial court on certain outstanding issues that remained in the case.

The Appeals Court pointed to the constitutional guarantee of voter privacy as the main reason for its finding on the disclosure issues stating: (*Id*. at 376):

> In view of the constitutional guarantee of voter privacy, however, it is unlikely the Legislature intended to broaden a petition examination by permitting the proponent to copy petition and memoranda data for use beyond the control of county election officials. In *Bilofsky v. Deukmejian* (1981) 124 Cal.App.3d 825, 831, 177 Cal.Rptr. 621 (*Bilofsky*), this court narrowly construed a provision in the Elections Code to prohibit any circulator of a petition (initiative, referendum, or recall) from using the list of signatures "'for any purpose other than qualification of the ... question for the ballot.'" (*Id*. at pp. 827-828, fn. 1, 177 Cal.Rptr. 621, quoting former Elec. Code, § 2770.) Guided by "the California constitutional guarantee of privacy by insuring the least interference with that right of persons signing ... recall petitions," we narrowly construed the provision as "designed in order to protect the signer from any use of

> his identity other than that integral to the [petition] process." (*Id*. at pp. 831, 833, 177 Cal.Rptr. 621; see Cal. Const., art. I, § 1.)
>
> We agree with the Registrar that the same privacy concerns exist for voters who participate in recall petitions. (*See* [Government Code] §§ 7924.000, subds. (a)-(c).) Use of voter information in this case outside the Registrar's walls would undoubtedly give the Committee greater control over how they use the information. In turn, this level of control could expedite its petition examination. But the Committee already has access to this information for use inside the examination room. And as a practical matter, we are mindful of the risks of unlawful dissemination of voter data in this case, even if that risk is mitigated by a protective order.[] Under these circumstances, we do not believe that use of electronic voter data outside the Registrar's walls is "integral" to the Committee's petition examination. (*Bilofsky*, supra, at pp. 831, 833, 177 Cal.Rptr. 621.)

The Appeals Court also concluded that Section 7924.110 of the Government Code "does not authorize disclosure of affidavits of registration to proponents of recall petitions, the trial court erred by ordering disclosure of them in this case." (*Ibid*.)

b. This bill seeks to provide an end date for reviewing an insufficient petition and seeks to require the proponent to bear costs of the review

According to the County, the above described petition review lasted 14 months, cost 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 Court of Appeal decision does not address the duration of the failed petition examination or cost recovery as these were not issues in the case. The petition examination ultimately concluded because the trial court ordered the examination to conclude by November 21, 2023, which was 14 months after the petition review commenced. The County fears that had the trial court not issued this order the review could still be ongoing today. According to the County, plaintiffs in the litigation demanded increased staffing and resources be allocated during the petition examination effort, which the County did provide at a significant cost. The County believes that these extra costs should have been borne by the proponents instead of being ultimately absorbed by the County.

In light of the above described situation, this bill seeks to provide a specific time frame in which an examination must be completed—60 days from the commencement of the examination. The sponsors of the bill state that the 60 day time frame was chosen because it is the same amount of time in which a county must examine the signatures of a petition to determine if it is sufficient (i.e. verify the signatures). (*see* Elec. Code § 9031.) The bill also requires that costs incurred by the county elections official as a result

of the examination be reimbursed by the proponent within 30 days from the date that the examination concludes. Under the bill, before an examination is conducted and at the beginning of each subsequent day, the proponent of a petition who requests to examine a petition will be required to deposit with the elections official a sum as determined by the elections official to cover the cost of the examination for that day. The author and sponsor of the bill point to the fact that a voter or campaign committee seeking a recount is required to cover the costs of the recount as to why the costs to examine insufficient petitions should be passed on to the petitioner. (*see* Elec. Code § 15624.)

4. Proposed amendment

In discussions with Committee staff, the author and sponsor indicated it was their intent that "costs" was meant to apply to costs above general operating costs—such as additional staffing, additional equipment, and loss of resources towards other necessary duties of election officials and staff. In light of this stated intent, the Committee may wish to amend the bill to make it clear that the costs a proponent requesting examination of a petition would be required to pay are not any costs to county elections officials but those costs that are above and beyond the ordinary operating costs of running the county elections office. The specific amendment is as follows:

Amendment[4]

On page 4, between lines 7 and 8, insert:

(3) "Cost" for purposes of this subdivision means any cost incurred by a county elections official that is in addition to or greater than general operating costs.

5. Statements in support

The County of Los Angeles, the sponsor of the bill, writes in support stating:

> 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

[4] The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

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.

In an effort to ensure that elections officials remain able to conduct their work and allocate resources to the benefit of the people they serve, SB 1441 offers some modest but impactful opportunities that will modernize the local elections process.

6. Statements in opposition

Two individuals have submitted opposition to the bill, former District Attorney of Los Angeles County, Steve Cooley, and former Deputy District Attorney in Los Angeles County, Marian M.J. Thompson—both of whom were involved in the recall effort of DA Gascón. They are concerned that the bill will impact "direct democracy and the constitutional right of voters to recall their elective officers." They are majorly concerned with the 60-day time constraint, especially without any requirements on what kind of access should be given to proponents during an examination. They point to their own experience described above and believe that the Registrar did not provide them adequate access or time for examination. Additionally they are concerned that shifting the cost of examination to proponents and requiring an upfront deposit will discourage proponents from conducting examinations and will disproportionately affect grassroots campaigns or individuals with limited resources.

The opposition believes this bill could lead to corruption in the petition review process and offers other ideas to make the review process better, such as allowing observation of the signature verification process by proponents, allowing a signature cure process as provided for in AB 1004 (Ta, 2023), which died in the Assembly Appropriations Committee, and third party monitoring of an examination process by a neutral party, such as the Secretary of State or California State Auditor.

SUPPORT

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

OPPOSITION

Steve Cooley, former District Attorney of Los Angeles County
Marian M.J. Thompson, former Deputy District Attorney in Los Angeles County

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 286 (Newman, Ch. 870, Stats. 2023), among other things, extended the time in which a county must examine petitions for sufficiency from 30 days to 60 days.

AB 1004 (Ta, 2023), would have established a process for a voter whose signature on a state, county, city, or district initiative, referendum, or recall petition is rejected by an elections official to submit a statement to verify the voter's signature. AB 1004 died in the Assembly Appropriations Committee.

****