

## SENATE THIRD READING

SB 660 (Newman)

As Amended June 23, 2021

Majority vote

**SUMMARY**

Prohibits a person who is paid to gather signatures on an initiative, referendum, or recall petition from being paid on a per-signature basis.

**Major Provisions**

- 1) Makes it unlawful for a person to pay money or to provide any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition. Provides that a violation of this provision is punishable by a civil penalty equal to the greater of \$25,000 or \$50 times the number of signatures gathered in exchange for compensation.
- 2) Permits the Attorney General (AG) or any other person (known as a "qui tam plaintiff") to bring a civil action against a person for a violation of this provision.
- 3) Makes an action brought by a qui tam plaintiff subject to the following provisions:
  - a) Requires the qui tam plaintiff to serve the AG with a copy of the complaint on the day it is filed, and permits the AG to intervene and proceed with the action within 60 days.
  - b) Prohibits an action brought by a qui tam plaintiff from being dismissed except with the written consent of the court and the AG, as specified.
- 4) Requires the proceeds of an action or a settlement to be distributed as follows:
  - a) If the AG initiates or assumes control of an action, as specified, the AG receives 33 percent of the proceeds, with those moneys deposited in the newly created Petition Signature Fraud Account (PSFA). Provides that the funds in the PSFA are available upon appropriation by the Legislature to support the AG's investigation and prosecution of fraud related to the initiative, referendum, or recall process.
  - b) If a qui tam plaintiff initiates the action, the qui tam plaintiff receives between 17 and 50 percent of the proceeds of the action or settlement of the claim, depending on the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.
  - c) The portion of the recovery not distributed to the AG or the qui tam plaintiff is deposited in the newly created Petition Signature Fraud Voter Education Subaccount (SFVE subaccount). Provides that funds in the SFVE subaccount are available upon appropriation by the Legislature for use by the Secretary of State (SOS) to support voter registration and education efforts.
- 5) Requires a court to award reasonable expenses, costs, and attorneys' fees to the AG or qui tam plaintiff for any successful action originally brought under this bill, as specified.
- 6) Permits a court to award reasonable attorneys' fees and expenses in an action to a prevailing defendant against the qui tam plaintiff who conducts the action, as specified, if the court

finds that the claim was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

- 7) Specifies that this bill does not prohibit the payment for signature gathering not based, either directly or indirectly, on the number of signatures obtained on a state or local initiative, referendum, or recall petition.

## COMMENTS

According to information from the National Conference on State Legislatures, 24 states, including California, allow voters through the initiative to propose laws, constitutional amendments, or both through a petition process. Twenty-three states, including California, allow voters through the referendum process to petition to demand a popular vote on a new law passed by the Legislature. Nineteen states, including California, permit state officers to be removed from office before the end of the term of office through the recall process.

At least six states (Arizona, Florida, Montana, North Dakota, Oregon, and South Dakota) limit the ability of initiative or referendum proponents to pay signature gatherers on a per-signature basis. Nebraska repealed a state law in 2015 that prohibited petition circulators from being paid on a per-signature basis. Wyoming repealed a state law that restricted *initiative* proponents from paying signature gatherers on a per-signature basis in 2015, and repealed a law prohibiting payments on a per-signature basis for *referendum* petitions in 2018. Laws to ban per-signature payments in at least six other states (Colorado, Idaho, Maine, Mississippi, Ohio, and Washington) have been invalidated by courts. Alaska does not ban payments that are made on a per-signature basis, but prohibits any such payment that is greater than \$1 per signature.

In 1988, the United States Supreme Court ruled that a Colorado prohibition against the use of paid circulators for initiative petitions violated the First Amendment's right of free speech. Writing for a unanimous court, Justice Stevens noted that "[t]he State's interest in protecting the integrity of the initiative process does not justify the prohibition because the State has failed to demonstrate that it is necessary to burden appellees' ability to communicate their message in order to meet its concerns." *Meyer v. Grant* (1988), 486 U.S. 414. In 1999, the United States Supreme Court examined a Colorado law that provided a number of other restrictions on the signature collection process for ballot initiatives. In that case the court ruled that there must be a compelling state interest to justify any restrictions on initiative petition circulation. *Buckley v. American Constitutional Law Foundation* (1999), 525 U.S. 182.

Although the United States Supreme Court has not ruled on the constitutionality of prohibiting payment for signature collection on a per-signature basis, a number of federal courts have considered challenges to such laws, with the courts reaching different conclusions about the constitutionality of per-signature payment bans. In light of the differing opinions reached by various federal courts on the constitutionality of laws that prohibit payments on a per-signature basis for signature gathering on petitions, it is unclear whether this bill, if enacted, would be upheld in a court challenge.

Several bills introduced in the last 15 years have sought to prohibit paying signature gatherers on a per-signature basis, including AB 1451 (Low) of 2019, AB 1947 (Low) of 2018, SB 168 (Corbett) of 2011, and SB 34 (Corbett) of 2009. All of the bills identified above were vetoed, with the veto messages generally expressing concerns that prohibiting the payment of signature gatherers on a per-signature basis would increase the costs of qualifying ballot measures.

While this bill has a similar intent to the aforementioned bills, there are some substantive differences. Prior bills generally provided that a violation of the prohibition on paying signature gatherers on a per-signature basis was subject to misdemeanor penalties, while a violation of this bill would be subject to civil, but not criminal, penalties. Furthermore, some prior bills would have made a signature gatherer subject to penalties for being paid on a per-signature basis. The civil penalties imposed by this bill apply only to a person who *pays* signature gatherers on a per-signature basis, and not to the signature gatherers.

Please see the policy committee analysis for a full discussion of this bill.

### **According to the Author**

"California's constitutional provisions for the initiative, referendum, and recall processes can and should play an essential role in our state's politics and governance. Under the current system, which is driven by per-signature payments to qualify measures for the ballot, there are scant prospects for deterring bad actors who would willfully mislead voters at the expense of the public good...Typically [certain] signature gatherers are paid on a per-signature or commission basis, also known as a bounty, at a rate determined by the market as it is assessed at the time. Depending on the nature of the initiative, the characteristics of the district, the time of year, or competition with other initiatives at the same time, the costs per signature can vary widely, from as low as \$2 per signature gathered to as high as \$20...Other US states have recently examined the issues surrounding petitions and paid signature gatherers and adopted legislation prohibiting per-signature bounties, instead requiring that payment for signature gathering may be made only on an hourly or salaried basis... California should do the same. Our democracy and governance will be the better for it."

### **Arguments in Support**

In support of a prior version of this bill, California Professional Firefighters wrote, "Initiatives, referendums, petitions, and other items that are placed on the ballot by means of citizen signatures are an integral part of California's electoral process and provide access to direct democracy to millions. These measures can also have outsized, lasting impacts on our state's government, and because of this it is important to ensure that each measure for which signatures are gathered is conducted in a fair, transparent, and honest manner. While it is currently a misdemeanor action to compensate someone directly for their signature on a petition, loopholes exist in current law that allow groups to compensate their employees, contractors, or volunteers in a manner that is directly related to the number of signatures that they obtain. This provides explicit incentive to those individuals to obtain as many signatures in their time working as possible, encouraging potentially dishonest or otherwise fraudulent methods to ensure a higher payout. California's referendum system is too important to allow for financial motivation to influence what measures are placed before the voters."

### **Arguments in Opposition**

In opposition to this bill, the California Chamber of Commerce writes, "SB 660 makes the ballot process even more expensive. Under SB 660, the initiative process would be reserved exclusively to those who have the money to employ or contract for hourly workers to collect signatures. This is demonstrably more expensive than the current approach because the incentive system for collecting signatures would vanish, thus slowing down the signature collection process which increases the cost of keeping workers on the ground collecting signatures for longer periods of time. SB 660 will not result in more integrity, but with far fewer citizen lawmaking and accountability measures. SB 660 will have negative impact on California's ballot

process. SB 660 also creates a private right of action, which would have a chilling effect on California's ballot process by mixing ballot measures with the risk of frivolous lawsuits. The very real threat of predatory litigation will suppress public participation, erode trust in the process, and increase the likelihood that predatory lawyers gain control of our elections."

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee:

- 1) Department of Justice costs of \$340,000 in fiscal year 2021-22, and \$588,000 annually thereafter, to implement the provisions of the bill (General Fund). Costs will be offset by penalty revenue, the magnitude of which is unknown (PSFA).

Workload cost pressures of an unknown amount to the courts to adjudicate alleged violations of this measure. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations.

- 2) Potential increased penalty revenue for the SOS to support voter registration and education efforts (SFVE subaccount).

## **VOTES**

### **SENATE FLOOR: 28-11-1**

**YES:** Archuleta, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

**NO:** Bates, Borgeas, Caballero, Dahle, Glazer, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

**ABS, ABST OR NV:** Allen

### **ASM ELECTIONS: 5-1-1**

**YES:** Berman, Bennett, Low, Mullin, Blanca Rubio

**NO:** Mathis

**ABS, ABST OR NV:** Mayes

### **ASM JUDICIARY: 8-3-0**

**YES:** Stone, Chau, Chiu, Lorena Gonzalez, Holden, Kalra, Maienschein, Reyes

**NO:** Gallagher, Davies, Kiley

### **ASM APPROPRIATIONS: 12-4-0**

**YES:** Lorena Gonzalez, Bryan, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

**NO:** Bigelow, Megan Dahle, Davies, Fong

## **UPDATED**

VERSION: June 23, 2021

CONSULTANT: Ethan Jones / ELECTIONS / (916) 319-2094

FN: 0001213