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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### **SB 660 (Newman) - Initiative, referendum, and recall petitions: compensation for signatures**

**Version:** February 19, 2021

**Urgency:** No

**Hearing Date:** May 3, 2021

**Policy Vote:** E. & C.A. 3 - 2, JUD. 8 - 2

**Mandate:** No

**Consultant:** Robert Ingenito

**Bill Summary:** SB 660 would make it unlawful for a person to pay money or provide any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition

#### **Fiscal Impact:**

- This bill would not have a fiscal impact to the Secretary of State (SOS).
- The Department of Justice (DOJ) indicates that it would incur General Fund costs of \$341,000 in 2021-22, and \$588,000 annually thereafter, to implement the provisions of the bill (General Fund).
- As discussed below, the bill would impose a civil penalty for violations of the prohibition on paid signature gathering. Penalty revenues would flow, in part, to DOJ and DOS. The magnitude of the penalty revenue is unknown and would depend on future actions.
- Unknown, potentially-significant workload cost pressures 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. For illustrative purposes, the Governor's proposed 2021-2022 budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund\*)

\*Trial Court Trust Fund

**Background:** Twenty-four states have an initiative process where citizens can place measures on the ballot. A popular referendum is substantially similar to an initiative, and similarly requires petitions to change the law. Bringing these processes to the ballot generally requires an initial filing with the relevant authority and the circulation of a petition to obtain the required number of signatures from qualified, registered voters.

Proponents of these processes argue that they are vehicles for direct democracy on a wide range of issues, involving the people in a more direct way on issues that would not otherwise be addressed in a public forum. At the same time, there are critiques of these processes that often point to the undue influence of well-financed interests. One such example is payment-per-signature method of obtaining ballot signatures. This practice

involves initiative/recall sponsors paying circulators on a per-signature basis. The critique is that such a practice encourages fraud, essentially incentivizing the forging of signatures or misrepresenting the content of the petition or basis for the recall to increase profit.

As summarized by the Senate Committee on Elections and Constitutional Amendments, at least seven states limit the ability of initiative or referendum proponents to pay signature gatherers on a per-signature basis. One state (Nebraska) recently repealed a state law that prohibited petition circulators from being paid on a per-signature basis. Laws to ban per-signature payments in at least six other states 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 unanimously ruled that a Colorado prohibition against the use of paid circulators for initiative petitions violated the First Amendment's right of free speech. Eleven years later, the 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.

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.

**Proposed Law:** This bill would, among other things, do the following:

- Make it unlawful for a person to pay money or provide any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition. The bill would subject violators to a civil penalty equal to the greater of \$25,000 or \$50 for every signature gathered in exchange for compensation.
- Authorize either the AG or an individual (a qui tam plaintiff) to bring a civil action to enforce this prohibition and to recover the civil penalty.
- Provide that the AG shall receive a fixed 33 percent of the proceeds of any action or settlement of the claim they are involved in. These funds would be deposited in the Petition Signature Fraud Account, which the bill establishes in the General Fund. Moneys in the account shall be available, upon appropriation by the Legislature, for use by the Attorney General to support the AG's investigation and prosecution of fraud.
- Provide that a qui tam plaintiff shall receive at least 17 percent, but not more than 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, and reasonable costs and attorney's fees. A qui tam plaintiff shall also be entitled to all relief necessary to make the plaintiff whole if any retaliation for initiating or proceeding with an action pursuant to this bill takes place.

- Require the remainder of the funds to be deposited in the Petition Signature Fraud Voter Education Subaccount, which is established by the bill in the Petition Signature Fraud Account. Funds in the subaccount shall be available, upon appropriation by the Legislature, for use by SOS to support voter registration and education efforts.
- Authorize an award of reasonable attorneys' fees and expenses for the defendant and against the qui tam plaintiff that proceeded with the action if the defendant prevails in the action, the attorney general does not intervene, and the court finds that the claim was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.
- Clarify that it 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.

**Related Legislation:**

- SB 663 (Newman) permits the target of a recall petition, if there are 50,000 or more registered voters eligible to vote in the recall election, to request a redacted copy of the petition for the purposes of communicating with signers to determine whether they signed and understood the petition or to assist them with withdrawing their signature from the petition, as specified. The bill also increases the length of time a voter has to withdraw their signature from a petition and adds new language to the top of each page of a petition, as specified. The bill is currently pending in the Senate Judiciary Committee.
- AB 1451 (Low, 2019) would have prohibited paying initiative, referendum, or recall petition circulators on a per-signature basis, and required 10 percent of signatures on a state initiative petition to be collected by either unpaid circulators or employees or members of nonprofit organizations, as specified. The bill was vetoed by Governor Newsom.

**Staff Comments:** As noted previously, this bill would authorize the AG to bring a civil action for a violation; additionally, it would authorize a person, acting as a qui tam plaintiff, to bring a civil action for a violation and to share in the recovery, as provided. DOJ anticipates that the bill would increase the workload of its Civil Rights Enforcement Section (CRES), within the Public Rights Division, related to investigations of claims of violations of the statute as well as litigation, requiring three positions and \$588,000 on an ongoing basis.

The fiscal impact of this bill to the courts would depend on many unknown factors, including the numbers of violations alleged to have occurred, if parties settle the matter before the filing of an action, and the factors unique to each case. While it is not known how many actions for alleged violations ultimately would be filed, it generally costs about \$8,032 (in 2020-21) to operate a courtroom for one eight-hour day. Consequently, if alleged violations of this bill lead to the filing of cases that, combined, take 50 or more hours of court involvement, the cost pressures of this measure to the

courts would surpass the Suspense File threshold. As indicated above, while courts are not funded on a workload basis, an increase in workload could result in delayed services and would create pressure to increase the backfill amount appropriated from the General Fund for trial court operations.

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