

SENATE THIRD READING

SB 485 (Reyes)

As Amended April 7, 2025

Majority vote

SUMMARY

Allows an appointed public defender to be removed from office by a county board of supervisors by a three-fifths vote for neglect of duty, malfeasance or misconduct in office, or other good cause.

Major Provisions**COMMENTS**

- 1) *Background.* Counties fall into two types: "general law" and "charter." General law counties are organized according to the generally applicable laws for county governance established by the Legislature that set the number, appointment, and election procedures for county officials, including the board of supervisors.

Charter counties have greater leeway to determine their own governance structure, including to elect additional supervisors, appoint or elect additional officers, and select the length of their terms. A new charter, or the amendment of an existing charter, may be proposed by the board of supervisors, a charter commission, or an initiative petition. There are 14 charter counties: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama. Most large counties are charter counties: eight of the ten largest counties by population have adopted charters.

All counties elect or appoint a variety of county officials. The California Constitution requires all counties to elect a sheriff, a district attorney, an assessor, and a board of supervisors. State law lists the officers that general law counties must have. State law gives county boards of supervisors the authority to consolidate the duties of certain county offices by ordinance. Some county offices, including the office of the public defender, may be elected or appointed.

- 2) *Removing a County Official.* While some actions of public officials automatically result in vacating an office, such as conviction of a felony or of any offense involving a violation of their official duties, officials can be removed through other means. For example, the grand jury of a county that has elected or appointed a public official can bring an accusation in writing, which states the offense charged, for willful or corrupt misconduct in office. Such a written accusation requires concurrence of 8 to 14 members of the grand jury depending on the total number of members the respective grand jury has.

Additionally, some types of county officials can only be removed under certain conditions. For example, a county board of supervisors can only remove the county counsel, who serves as the county's lawyer, for neglect of duty, malfeasance or misconduct in office, or other good cause with a 3/5 board vote (AB 1539, Allen, 1959).

- 3) *Public Defenders*. To ensure individuals charged with a crime receive equal protection and due process under the law, the U.S. and California Constitutions guarantee the right to effective attorney assistance (unless knowingly and intelligently waived) to ensure that defendants in criminal proceedings receive equal protection under law and due process before being deprived of life or liberty. The U.S. Supreme Court's decision in *Gideon v. Wainwright* (1963) found that the right to counsel is "fundamental and essential to fair trials" in the United States and that defendants who can't afford to hire attorneys cannot be assured of a fair trial unless attorneys are provided by the government, also known as indigent defense. The U.S. Supreme Court further noted that even an intelligent and educated person would be in danger of conviction due to a lack of skill and knowledge for adequately preparing a defense to establish innocence. As such, effective defense counsel is necessary to ensure a defendant has a fair trial against government-funded and trained prosecutors – irrespective of their income level. In many counties, this is accomplished through the establishment of a public defender's office.

Of California's 58 counties, there are 34 public defender offices. Counties without a public defender office contract with law offices to provide indigent defense. Some counties share a public defender. When counties establish a public defender's office, the board of supervisors can elect to have an elected or appointed public defender. Of the state's 34 public defenders, only San Francisco elects their public defender. Unlike county counsels, which can only be removed for neglect of duty, malfeasance or misconduct in office, or other good cause, an appointed public defender serves at the will of the board of supervisors (AB 1796, Watson, 1943), meaning the board can remove them for any reason. County counsels serve for 4-year terms, while public defenders have no defined term.

Charter counties, on the other hand, may determine whether a term limit is necessary, or spell out conditions when they can remove an officer. For example, Fresno, San Diego and Alameda Counties all have provisions in their charter that specify that the county counsel serves at will, and the board can remove them for any reason.

According to the Author

Chief Public Defenders play a crucial role in ensuring a fair and equitable justice system. They uphold the Constitution by guaranteeing access to competent legal counsel for all, regardless of financial status. When a public defender fulfills this duty to their clients, it may mean taking unpopular stances which can include positions that, although legal, come into conflict with their appointing board. This creates a challenging environment as public defenders can be fired without cause by a county board of supervisors, creating a disincentive to fulfill their duties out of fear of retaliation, and in turn not offering their clients their constitutionally guaranteed rights.

To ensure a fair legal system, public defenders must be free from political pressure and retaliation. SB 485 seeks to eliminate the "at-will" status of Chief Public Defenders, allowing them to be removed only by a 3/5 vote of the board for neglect, misconduct, or other justifiable reasons. This reform would protect their independence and allow them to serve with integrity.

Arguments in Support

The California Public Defenders Association, sponsor of this bill, writes, "This bill protects the independence of chief public defenders who are appointed by county Boards of Supervisors by ensuring that they can only be removed from office by a 3/5 vote of the Board for neglect of

duty, malfeasance or misconduct in office, or other good cause. This affords chief public defenders the same protections that are currently in place for county counsels.

"In order to be effective, chief public defenders must have independence. Public defenders have a duty to their clients, guaranteed by the Constitution, that is unique among county agencies; it is this duty that must guide every decision that public defenders make. They need the freedom to take unpopular stances, to advocate for those who may not be politically popular, and to occasionally draw the ire of other county departments, or even the members of the Board of Supervisors who appointed them. A public defender who fears losing their job if they take up controversial causes cannot adequately fight for their office or for their clients.

"Currently, Government Code Section 27703 states that a public defender who is appointed by a county's Board of Supervisors shall 'serve at its will.' This stands in stark contrast to the protections afforded by Government Code Section 27641 to another, similarly situated, county department head: county counsel. SB 485 seeks to correct this anomalous discrepancy; it mirrors the language of Government Code Section 27641, and gives public defenders the same protection that county counsels currently enjoy.

"In this time of arbitrary terminations and political retribution, it is more important than ever to protect the independence and integrity of civil servants, particularly those entrusted with protecting Constitutional rights."

Arguments in Opposition

The California State Association of Counties (CSAC), the Urban Counties of California (UCC), and the Rural County Representatives of California (RCRC), expressing an "oppose, unless amended" position on this bill, write, "SB 485 proposes to change the public defender's employment status from at-will to one in which removal may only occur by a majority vote of the local board of supervisors and only for neglect of duty, malfeasance, misconduct in office, or other good cause. While we understand and respect the underlying objective to ensure independence in this important role, we believe the bill, as currently written, lacks key structural safeguards. Our request for amendments is rooted in principles of good governance, organizational consistency, and process clarity – standards that we would be seeking to accompany statutory changes in the employment status for any appointed county department head.

"Specifically, CSAC, UCC, and RCRC are respectfully requesting amendments that would:

- 1) Establish a defined term of office such as the four-year term outlined in Government Code section 27640 for county counsel; and
- 2) Set forth a clear process for judicial review should a public defender contest their removal from office.

"CSAC, UCC, and RCRC are concerned about the long-term implications of a perpetual appointment if it is not paired with routine performance oversight or a structured review process. These additional elements are needed to ensure that all department heads are held to the same standards to meet their various responsibilities adequately. Public accountability is an essential element of county governance, and it is both reasonable and prudent to provide clear procedures in the event of a contested termination.

"As organizations representing California's elected county supervisors, we urge your consideration of these amendments, which seek to (1) ensure appropriate governance safeguards and (2) maintain comparability across appointed county leadership positions. If this measure were enacted without these amendments, the public defender's employment status would be an outlier in the broader county organizational framework for non-elected department heads. Finally, we want to underscore that our proposed changes are not intended to – and would not in practice – interfere with a public defender's constitutional obligation to provide clients with ethical and competent legal representation."

FISCAL COMMENTS

Local costs of an unknown amount, but potentially greater than \$150,000 statewide for local agencies to revise administrative procedures regarding the ability of counties to remove appointed public defenders from office. These costs are potentially state-reimbursable, subject to a determination by the Commission on State Mandates.

VOTES

SENATE FLOOR: 36-0-4

YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Richardson, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Wahab, Weber Pierson, Wiener
ABS, ABST OR NV: Hurtado, Reyes, Rubio, Valladares

ASM LOCAL GOVERNMENT: 7-1-2

YES: Carrillo, Ta, Ramos, Ransom, Blanca Rubio, Stefani, Ward
NO: Hoover
ABS, ABST OR NV: Pacheco, Wilson

ASM PUBLIC SAFETY: 7-0-2

YES: Schultz, Alanis, Mark González, Haney, Harabedian, Nguyen, Sharp-Collins
ABS, ABST OR NV: Lackey, Ramos

ASM APPROPRIATIONS: 12-2-1

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache, Ta
NO: Sanchez, Dixon
ABS, ABST OR NV: Tangipa

UPDATED

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