

Date of Hearing: March 25, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 254 (Roger Hernández & Calderon) – As Amended March 18, 2015

SUBJECT: Election dates.

SUMMARY: Eliminates the ability of cities, school districts, community college districts, and special districts to hold their general elections and certain special elections in March of odd-numbered years or in April of even-numbered years, except as specified, thereby requiring most local jurisdictions to hold these elections at the same time as the statewide primary or statewide general election, or in June or November of odd-numbered years. Specifically, **this bill:**

- 1) Eliminates the second Tuesday in April of each even-numbered year, and the first Tuesday after the first Monday in March of each odd-numbered year, from the list of dates that are considered "established election dates" on which cities may hold their general municipal elections, and on which special districts may hold their general district elections.
- 2) Eliminates the second Tuesday in April of each odd-numbered year as a date on which cities may hold their general municipal elections.
- 3) Provides that a special election called by a local governmental entity is not required to be held on an established election date, except for specified special elections that state law explicitly requires to be held on established election dates.
- 4) Repeals provisions of law that allowed school districts and community college districts to conduct their elections on dates other than established election dates if the elections were consolidated with regularly scheduled elections in a charter city that has territory in common with the district.
- 5) Declares the intent of the Legislature, in enacting this bill, to do the following:
 - a) Encourage increased voter participation; and,
 - b) Not alter the date of a runoff election provided for in the principal act of a district.
- 6) Finds and declares that significantly increasing voter turnout at local elections and promoting the fundamental right to vote are matters of statewide concern, and provides that this bill therefore applies to every political subdivision in the state, including charter counties, charter cities, and charter cities and counties.
- 7) Specifies that this bill shall not be construed to shorten the term of office of any officeholder in office on the effective date of this bill. Provides that for each office for which this bill causes the election to be held at a later date than would have been the case in the absence of this bill, the incumbent shall hold office until a successor qualifies for the office, but in no event shall the term of an incumbent be extended by more than four years.
- 8) Makes corresponding and technical changes.

EXISTING LAW:

- 1) Provides that the following dates are "established election dates":
 - a) The second Tuesday of April in each even-numbered year;
 - b) The first Tuesday after the first Monday in March of each odd-numbered year;
 - c) The first Tuesday after the first Monday in June in each year; and,
 - d) The first Tuesday after the first Monday in November in each year.
- 2) Requires all state, county, municipal, district, and school district elections to be held on an established election date, except as specified. Provides that the following types of elections, among others, are not required to be held on an established election date:
 - a) Any special election called by the Governor;
 - b) Elections held in chartered cities or chartered counties in which the charter provisions are inconsistent with state election laws;
 - c) School governing board elections conducted pursuant to specified provisions of law;
 - d) Elections required or permitted to be held by a school district located in a chartered city or county when the election is consolidated with a regular city or county election held in a jurisdiction that includes 95 percent or more of the school district's population;
 - e) County, municipal, district, and school district initiative, referendum, or recall elections;
 - f) Any election conducted solely by mailed ballot pursuant to specified provisions of law; and,
 - g) Elections held pursuant to specified provisions of law on the question of whether to authorize school bonds.
- 3) Requires a general law city to hold its general municipal election on an established election date or on the second Tuesday in April of each odd-numbered year, except as specified.
- 4) Requires a school district, community college district, or county board of education to hold the regular election to select governing board members on the first Tuesday after the first Monday of November in each odd-numbered year, or at the same time as the statewide direct primary election, the statewide general election, or the general municipal election, except as specified.
- 5) Requires the general district election held to elect members of the governing board of a special district to be held on the first Tuesday after the first Monday in November of each odd-numbered year, unless the principal act of the district provides for the general district

election to be held on a different established election date, or on an established mailed ballot election date, as specified. Permits a special district to adopt a resolution requiring its general district election to be held on the same day as the statewide general election, upon approval of the county board of supervisors, as specified.

- 6) Requires various special elections, including the following types of elections, to be held on an established election date:
 - a) An election to fill a vacancy on the governing board of a city, school district, or community college district;
 - b) An election on a proposal to transfer territory between counties;
 - c) An election to elect a county charter commission; and,
 - d) Specified elections on proposals to form special districts.
- 7) Permits a county or a city to provide for its own governance through the adoption of a charter by a majority vote of its electors voting on the question.
- 8) Permits a city charter to provide for the conduct of city elections. Grants plenary authority, subject to limited restrictions, for a city's charter to provide for the manner in which and the method by which municipal officers are elected.
- 9) Provides that a legally adopted city charter supersedes all laws inconsistent with that charter with respect to municipal affairs.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Elections held in June and November of even years are considered, 'on-cycle' elections. Other elections are considered 'off-cycle'. In 2014, voter turnout hit record low numbers, with especially devastating numbers in large urban areas. One result of lower participation is that the elected officials are less likely to reflect the electorate. This is a self-perpetuating cycle, as voters feel less connected they are less likely to participate in the process in the next cycle, and so the gap between officials and their constituencies grows larger.

Multiple studies in the last 15 years have determined that [the] election date is a key factor in determining voter turnout. According to the Public Policy Institute of California, holding elections 'on cycle' is the largest single factor that affects voter turnout. Elections held 'on-cycle', help constituents establish voting as habit and they are more widely publicized. Both of these factors contribute to higher turnout.

A recent report by the Greenlining Institute examined three California case studies comparing even-year consolidated elections and off-year elections. Their data illustrates even-year consolidated elections showing a benefit of up to 54% increased participation and savings up to \$50.94 per voter. Even the low end of their results show significant improvements in using consolidated elections.

By consolidating elections, AB 254 will help avoid 'stand-alone' local elections and result in: decreased costs, reduction of special interested influence, increased voter turnout, and a more representative government.

- 2) **Can This Bill Be Made Applicable to Charter Cities?** The first section of this bill makes Legislative findings and declarations that significantly increasing voter turnout at local elections and promoting the fundamental right to vote are matters of statewide concern, and therefore provides that this bill is applicable to every political subdivision in this state, including charter counties, charter cities, and charter cities and counties.

As noted above, the California Constitution gives cities and counties the ability to adopt charters, which give those jurisdictions greater autonomy over local affairs. Charter cities, in particular, are granted a great deal of autonomy over the rules governing the election of municipal officers. In fact, the Constitution grants "plenary authority," subject to limited restrictions, for a city charter to provide "the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees... shall be elected or appointed." The Constitution further provides that properly adopted city charters "shall supersede all laws inconsistent" with the charter.

Notwithstanding the authority granted to charter cities with respect to municipal affairs, California courts have found that a charter city's authority over municipal affairs is not absolute. In determining whether a state law that affects municipal affairs may be made applicable to charter cities, however, the Supreme Court generally has held that a state law can be made applicable in charter cities only if the state law addresses a matter of statewide concern, is reasonably related to resolving the statewide concern, and is narrowly tailored to avoid unnecessary interference with municipal affairs. *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547.

By limiting the dates on which charter cities can conduct municipal elections, this bill goes to the heart of the autonomy granted to charter cities in the California Constitution to determine the times at which municipal officers are elected. The stated statewide concern in this bill for overriding that autonomy is that of "significantly increasing voter turnout at local elections and promoting the fundamental right to vote." Even if courts find that statewide concern to be compelling, however, and find that the policies proposed by this bill are reasonably related to the resolution of that concern, it is unclear whether the courts would find that this bill is narrowly tailored to avoid unnecessary interference with municipal affairs. This bill prohibits a charter city from holding its municipal elections at any time other than June or November, regardless of whether an alternative election date would result in a significantly different voter turnout or would otherwise interfere with the fundamental right to vote. As a result, it is unclear whether this bill can be made applicable to charter cities, and the courts

may find that this bill impermissibly interferes with the municipal affairs of charter cities.

Charter counties have less autonomy with respect to county elections, and generally elect county officials at the same time as statewide elections. As a result, the inclusion of charter counties in this bill is expected to have little practical effect on when charter counties can conduct elections.

- 3) **History of Established Election Dates:** In 1973, the Legislature approved and Governor Reagan signed SB 230 (Biddle), Chapter 1146, Statutes of 1973, which created "regular election dates" (which subsequently were renamed "established election dates"). The concept behind having a regular election schedule that governed when most elections would be held was that such a schedule would encourage election consolidations, thereby potentially reducing election costs, and could encourage greater voter participation because voters would become used to voting on these regular election dates. SB 230 created five established election dates in each two-year cycle—three in even-numbered years (in March, June, and November), and two in odd-numbered years (in March and November).

One year after established election dates were first created, AB 4180 (Keysor), Chapter 1386, Statutes of 1974, added an additional established election date in May of odd-numbered years. The rationale for adding an established election date was that the eight-month gap between established election dates in March and November of odd-numbered years delayed many special local elections from taking place in a timely manner, including elections to fill vacancies, annexation elections, bond elections, and tax rate elections. Since that time, the exact dates that are established election dates have fluctuated, often moving to reflect changes in the date of the statewide primary election held in even-numbered years, though generally there have been at least three established election dates in each year.

Having multiple established election dates in each year, but specifying that many types of elections must be held on an established election date, reflects an attempt to balance the desire to hold most elections on a predictable, regular schedule, while still providing the flexibility to ensure that elections can occur in a timely manner when necessary.

- 4) **Local General Election Dates:** By eliminating two established election dates, this bill would limit the dates on which local governmental bodies can hold their regularly-scheduled elections to elect governing board members (commonly referred to as general municipal or general district elections). Counties are required by law to hold regularly scheduled county elections at the same time as statewide elections, so their general elections would not be affected by this bill (San Francisco, which is a consolidated city and county, has the authority over local elections that is granted to charter cities, and therefore it is not required to elect county officers at the same time as the statewide election, unlike other counties). Cities, school districts, community college districts, and special districts, however, all could be affected by this bill.
 - a) **Cities:** Based on research by committee staff, approximately 87 percent of the 482 cities in California hold their general municipal elections in June or November of an odd-numbered year, or in June or November of an even-numbered year, and therefore would not be required to change the date of their general municipal elections pursuant to this

bill. Of the 61 cities that would be required to change the date of their general municipal election under the provisions of this bill, approximately 90 percent are located in Los Angeles County.

As noted above, it is unclear whether this bill can be made applicable to charter cities. According to the League of California Cities, there are 361 general law (i.e., non-charter) cities in California. Based on research by committee staff, approximately 89 percent of general law cities hold their general municipal elections on a date that is permitted by this bill. If this bill cannot be made applicable to charter cities, there are 41 general law cities that would be required to move the date of their general municipal elections. Of those 41 cities, all but two are located in Los Angeles County. (Additionally, there are three charter cities that do not explicitly provide for an election date in their charter or by ordinance but that hold municipal elections on dates not permitted by this bill—those charter cities may be required to change their election date if this bill passes, regardless of whether this bill can be made more broadly applicable to charter cities.)

- b) **School and Community College Districts:** According to the California Department of Education, there are 1,028 school districts in California, and according to the Chancellor's Office of the California Community Colleges, there are 72 community college districts in California. With certain exceptions, school districts and community college districts are required to hold their general district elections in November of odd-numbered years, or they can choose to hold the general district elections at the same time as the statewide primary or general election, or at the same time as the general municipal election of the city in which the district is located. Because municipal elections currently can be held at times that would not be permissible under this bill, some school and community college district elections are held at a time other than June or November of odd-numbered years, or at the same time as the statewide primary or general election. However, committee staff has been able to identify only about a dozen school districts and community college districts that hold their elections on dates that would not be permitted by this bill. In almost every case, those school or community college districts are located partially or wholly within a charter city, and the district elections are conducted on the same day as the city elections.
- c) **Special Districts:** According to information from the 2010 report, "What's So Special About Special Districts? (Fourth Edition)," prepared by the Senate Committee on Local Government, there are about 3,300 different special districts in California. Special districts generally are required to hold their general district elections on the first Tuesday after the first Monday in November of odd-numbered years or at the same time as the statewide general election, unless the principal act of the district provides otherwise, or unless the district conducts its general district elections entirely by mailed ballot in accordance with existing law. Water storage districts currently are required to hold their general district elections in March of odd-numbered years, but there are only eight such districts statewide, and it is unclear whether this bill would require those districts to change the date of their general district elections. Committee staff has been unable to identify any other special districts that would be required to change their election date under the provisions of this bill, but it is anticipated that only a small number of districts,

if any, would need to change their general district election dates if this bill becomes law.

- 5) **Impact on Special Elections:** In addition to affecting the dates available for local general elections, this bill also would limit the dates on which local governmental bodies could hold certain special elections. Most local initiative, referendum, and recall elections would be unaffected by this bill, as would certain other special elections. Special elections that are required to be held on established election dates, however, could be affected by this bill. Such elections could be held on one of only four dates in each two-year period (June and November of each year), compared to six dates under existing law, and there would be as long as seven months between established election dates. The local special elections that are required to be held on established election dates, and thus would be affected by the provisions of this bill, are as follows:
- a) **Counties:** Proposals to adopt, amend, or repeal a county charter, and proposals to consolidate counties or to alter the boundaries of a county must be submitted to the voters on an established election date.
 - b) **Cities:** Elections that are held to fill vacancies in elective city office must be held on an established election date.
 - c) **School and Community College Districts:** Elections that are held to fill vacancies on a school or community college board must be held on an established election date.
 - d) **Special Districts:** Elections on the question of whether to form or dissolve certain types of special districts must be held on an established election date. Additionally, elections that are held to fill vacancies in elective district office must be held on an established election date.
- 6) **Los Angeles County and Possible Amendments:** Existing law requires all state, county, municipal, district, and school district elections that are held on a statewide election date to be consolidated with the statewide election, except that the Los Angeles County Board of Supervisors is allowed to deny a request for consolidation of an election with the statewide election if the voting system used by the county cannot accommodate the additional election. This unique provision allowing Los Angeles County to deny consolidation requests was created through the passage of SB 693 (Robbins), Chapter 897, Statutes of 1985, in response to attempts by a number of cities in Los Angeles to move their municipal elections to the same day as statewide elections. Los Angeles County sought the ability to deny consolidation requests because its voting system could accommodate only a limited number of contests at each election, and the county was concerned that the move by cities to hold their elections at the same time as the statewide election would exceed the capacity of that voting system. Because of the capacity limitations of Los Angeles County's voting system, the county has denied requests from various local governmental bodies in the county that have sought to hold their elections at the same time as—and to have their elections consolidated with—statewide elections. To the extent that those previous requests to consolidate elections reflect an ongoing desire by local jurisdictions to move their elections to the same time as statewide elections, it is expected that the implementation of a new voting system in the county that allows for such consolidations will result in many

jurisdictions voluntarily moving their elections to a date that would be permitted under this bill.

As is noted above, the substantial majority of districts that would be required to move the dates of their elections under this bill are located in Los Angeles County. In light of that fact, it appears that the inability of local jurisdictions in Los Angeles County to have their elections consolidated with the statewide election is one factor that contributes to the large number of jurisdictions that hold their elections at a time other than June or November.

Los Angeles County still uses a variant of the voting system that it used in 1985, though the county is currently developing a new voting system. One of the principles that the county has articulated to guide the development of its new voting system is having a system that has "sufficient technical and physical capacity to accommodate...consolidation of elections with local districts and municipalities." That voting system, however, may not be available for use countywide until 2020.

Some local jurisdictions have already taken steps to move the date of their elections in anticipation of Los Angeles County's new voting system. Earlier this month, voters in the city of Los Angeles and in the Los Angeles Unified School District (LAUSD) approved ballot measures to move those jurisdictions' general elections so that they are held at the same time as statewide elections, beginning in 2020. Arguments in support of those measures indicated that such a timeline would allow local elections to be consolidated with federal and state elections.

In addition to including the city of Los Angeles, the LAUSD also includes all or parts of 11 other cities that currently hold their municipal elections at the same time as LAUSD elections. The shift in the date of LAUSD elections could give those cities an incentive to consider moving the dates of their municipal elections.

Until Los Angeles county replaces its voting system and is able to accommodate a larger number of requests to consolidate elections with the statewide election, however, this bill could force many local jurisdictions in Los Angeles County to choose between holding their elections in June or November of odd-numbered years, or holding an election on the same day as a statewide election in even-numbered years, but not having that election be consolidated with the statewide election. When two elections are held on the same day, but are not consolidated, those elections are commonly referred to as "concurrent" elections. When concurrent elections are conducted, voters who are voting in both elections have separate ballots for each election, and may have separate polling locations for each election. As a result, concurrent elections can cause voter confusion, and otherwise can create challenges for voters, candidates, and election officials.

Because this bill does not have a delayed implementation date, if signed into law, it would go into effect on January 1, 2016. At that point, it is expected that Los Angeles County will still be using the same voting system that it currently uses, and so that system's capacity limitations will still exist. If this bill results in local jurisdictions in Los Angeles choosing to hold their elections concurrently with statewide elections, such a result would seem to run counter to the author's intent of trying to improve voter participation and to decrease election

costs.

Furthermore, 18 cities are currently scheduled to hold their general municipal elections within three and a half months of the effective date of this bill. Jurisdictions that are required to change the dates of their elections as a result of this bill may benefit from additional lead-time in order to take the necessary steps to change election dates in an orderly manner.

The committee and the author may wish to consider an amendment to this bill to specify that the new election date requirements in this bill will not become effective until January 1, 2020. Such an amendment will minimize the disruption to upcoming elections, and potentially will allow affected jurisdictions in Los Angeles County to have their elections consolidated with state and federal elections.

- 7) **Arguments in Opposition:** The League of California Cities, which has an “oppose unless amended” position on this bill, writes:

[AB 254] reduces the number of days available for cities to conduct regular and special elections. Of particular concern are the stand-alone elections in Los Angeles County that would be forced to consolidate. The current voting system in LA County is outdated and lacks the technological capacity to handle the number of contests that would take place on a consolidated ballot.

In the case for LA County there are already plans to replace the voting system, with an estimated rollout in 2020. Passing legislation that makes changes to the election system prior to the project’s completion is simply putting the cart before the horse. We encourage you to take amendments to this measure that take into account the implementation of the new voting system and allow for the local community to determine whether they want consolidated elections.

- 8) **Related Legislation:** SB 415 (Hueso), which is pending in the Senate Rules Committee, declares legislative intent to prohibit a political subdivision from holding an election on a date other than the date of a statewide direct primary election or statewide general election if doing so would result in a significant decrease in voter turnout as compared to the voter turnout at a statewide election.
- 9) **Previous Legislation:** This bill is similar to AB 2550 (Roger Hernández) of 2014. AB 2550 was approved by this committee on a 5-2 vote, but was held on the Assembly Appropriations Committee's suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

City Clerks Association of California (unless amended)

City of Lakewood

League of California Cities (unless amended)

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094