

Date of Hearing: May 7, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 331 (Garcia) – As Amended: April 30, 2013

SUBJECT: Consolidation of elections.

SUMMARY: Requires voter challenges, election contests, and recounts to be conducted in accordance with state law for any election that is consolidated with a statewide election, a special election, or a regularly scheduled election held for the purposes of electing governing board members for school districts, community college districts, county boards of education, or special districts. Specifically, this bill:

- 1) Provides that the relevant provisions of state law regulating voter challenges, election contests, and recounts, shall apply to any election that is consolidated with a statewide election, a special election, or a regularly scheduled election held to elect governing board members to a school district, community college district, county board of education, or a special district.
- 2) Requires a jurisdiction, if it requests to have an election consolidated with a statewide election, a special election, or a regularly scheduled election held to elect governing board members to a school district, community college district, county board of education, or a special district, to acknowledge that the relevant provisions of state law regulating voter challenges, election contests, and recounts, shall apply to that election.

EXISTING LAW:

- 1) Permits an election that is called by a district, city, or other political subdivision to be consolidated with a statewide election that is being held on the same day if certain conditions are met.
- 2) Provides that if an election is consolidated with a statewide election or a regularly scheduled election held to elect governing board members to a school district, community college district, county board of education, or a special district, the consolidated election shall be held and conducted, election officers appointed, voting precincts designated, candidates nominated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, certificates of election issued, and all other proceedings connected with the election be regulated and done in accordance with the provisions of law regulating the statewide or regularly scheduled election.
- 3) 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.
- 4) Permits a city charter to provide for the conduct of city elections.
- 5) Provides that a legally adopted city charter supersedes all laws inconsistent with that charter with respect to municipal affairs.

FISCAL EFFECT: Keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

Existing law allows any state, county, municipal, district, and school district to consolidate elections (EC 10402.5). In certain cases, election consolidation may present a risk to the integrity of the elections process due to a lack of clarity with regard to the jurisdiction of the County Election Official over a county run election. County elections are conducted in accordance with applicable state and federal laws. Charter cities in California, however, establish a local election official and may often adopt additional election policies and procedures. When a local district, such as a charter city, consolidates an election with a county run election, it may create some confusion as to the jurisdiction of the local election official over the election. Also, because these municipalities are not conducting federal or state elections, they may (inadvertently or not) adopt policies that conflict with state and federal election laws. AB 331 would clarify and strengthen existing provisions ensuring a consistent application of election practices and procedures by requiring that a district that consolidates an election with a statewide or county election cannot apply practices that conflict with state and federal laws. Ultimately, this legislation would help provide citizens a fairer and more consistent election process.

2) Charter City Authority & Limitations on Election Consolidations: As noted above, existing law gives cities and counties the ability to adopt charters, which give those jurisdictions greater autonomy over local affairs. Charter cities, in particular, have a great deal of autonomy over the rules governing the election of municipal officers. Accordingly, a number of charter cities have adopted election policies and procedures that are not available to general law cities. To the extent that those election policies and procedures affect only municipal affairs, courts have generally given charter cities a great deal of latitude to set their own policies and procedures.

When an election for a charter city is consolidated with an election for other jurisdictions, however, the conduct of that city election can impact the elections for other jurisdictions that are on the same ballot. For instance, a charter city could adopt polling place hours that differ from the hours established under state law, but if an election for such a charter city is consolidated with a statewide election, it would not be feasible to conduct the election in accordance with the polling place hours adopted by the charter city, since that would also impact the other races on the ballot which must be conducted in accordance with state law. In light of this fact, state law already imposes limitations on elections when they are consolidated with statewide elections or with certain regularly scheduled local elections. For instance, as noted above, existing law provides that if an election is consolidated with a statewide or regularly scheduled local election, state laws governing the opening and closing of polls, the counting of ballots, and the canvassing of returns generally apply to all offices and measures appearing on that ballot.

This bill would place further restrictions on the conduct of consolidated elections, ensuring that provisions of state law governing certification of the election, election contests, voter

challenges, and recounts govern all offices and measures that appear on the ballot at a consolidated election. Because these aspects of the election process have the potential to affect all races on the ballot, having those procedures conducted in accordance with state law will ensure that a voter's ballot is treated consistently across all contests that appear on the ballot.

At the same time, because a charter city has the authority to schedule its elections, and is not required to consolidate its elections with statewide or other regularly scheduled elections, these policies should not impinge on charter cities' authority to conduct municipal elections in the manner that they see fit. To the extent that a charter city is unwilling to comply with state laws governing those aspects of the election, that city is free to conduct its election on a different date.

- 3) City of Vernon Municipal Elections & Voter Challenges: Last year, the City of Vernon contracted with Los Angeles County to have the county conduct a special municipal election to fill a vacancy on its city council, which was consolidated with the June statewide primary election. Because the City of Vernon is located entirely within one precinct, and because that precinct has fewer than 250 registered voters, existing law allows that precinct to be designated as an all-mail ballot precinct. As a result, every registered voter in the City of Vernon received a vote by mail ballot.

Prior to the election, the Vernon Chamber of Commerce challenged the vote by mail ballots of a number of voters, primarily on the grounds that the voters in question did not live in Vernon. The Los Angeles County Registrar of Voters ultimately rejected those challenges, finding that insufficient evidence was presented to sustain the challenges. After the Registrar of Voters rejected the challenges and counted the ballots of the challenged voters, the Vernon City Council adopted an emergency ordinance establishing new procedures for municipal election contests, and subsequently adopted procedures for such contests that required the city council to appoint a hearing officer to determine any election contest, instead of having election contests decided by a court, as is the case under state law. In an election contest held pursuant to these procedures, the hearing officer sustained seven of the challenges that the Registrar of Voters had dismissed, ruling that those seven voters had illegally cast their ballots. As a result, those voters' ballots were not counted for the purposes of determining the final results for the special election to fill the vacancy on the city council.

Because the election contest procedures adopted by the Vernon City Council applies only to municipal elections, however, the seven voters who were found to have voted illegally in Vernon for the purposes of the city election nonetheless were considered to have legally voted in the city of Vernon for other, non-municipal elections held on the same day using the same ballot. So, for instance, the ballots of those seven voters were still counted as though they were legally registered in Vernon for races for the state Assembly, state Senate, and for Congress.

This bill will help avoid similar situations in the future by ensuring that all voter challenges, recounts, and election contests are conducted in accordance with state election laws for elections that are consolidated with statewide, special, and regularly scheduled local elections.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Board of Supervisors (sponsor)
California Association of Clerks and Election Officials
Urban Counties Caucus

Opposition

None on file.

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