

Date of Hearing: June 25, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 311 (Padilla) – As Amended: June 18, 2013

SENATE VOTE: 25-9

SUBJECT: Local elections: charters and charter proposals.

SUMMARY: Requires certain city charter proposals and city charter amendments to be submitted to the voters only at a statewide general election, as specified. Specifically, this bill:

- 1) Requires a city or city and county charter proposal that is proposed by the governing body of a city or city and county on its own motion to be submitted to voters at the next statewide general election that is at least 88 days after the date of the order of election, except as specified.
- 2) Permits the governing body of a city or city and county to submit either of the following to voters at the next regularly scheduled general municipal election, or at any statewide primary or general election occurring at least 88 days after the date of the order of election:
 - a) A charter proposal that proposes to amend a charter in a manner that does not alter any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree of any local government employee organization; or,
 - b) A charter proposal that proposes to amend a charter solely to comply with a court injunction or consent decree or with federal or state voting rights laws.
- 3) Requires a charter or charter amendment proposed by a charter commission for a city or city and county to be submitted to the voters at an established statewide general election, as specified, provided there are at least 95 days before the election.
- 4) Makes conforming and technical changes.

EXISTING LAW:

- 1) Requires a charter or charter amendment proposed by a charter commission, whether elected or appointed by a governing body, for a city or city and county to be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election date, as specified, provided that there are at least 95 days before the election.
- 2) Requires the following city or city and county charter proposals to be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election, as specified, provided that there are at least 88 days before the election:
 - a) An amendment or repeal of a charter proposed by the governing body of a city or a city and county on its own motion;

- b) An amendment or repeal of a city charter proposed by a petition signed by 15% of the registered voters of the city;
 - c) An amendment or repeal of a city and county charter proposed by a petition signed by 10% of the registered voters of the city and county; and,
 - d) A recodification of the charter proposed by the governing body on its own motion, provided that the recodification does not, in any manner, substantially change the provisions of the charter.
- 3) Requires, prior to approving the submission to the voters of a proposal to adopt a charter, a governing body to hold at least two public hearings on the matter of the proposal of a charter and the content of the proposed charter. Requires the proposal to be submitted to voters at the next established statewide general, statewide primary, or regularly scheduled municipal election date provided there are at least 88 days before the election.

FISCAL EFFECT: This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

Voter participation in primary and municipal elections is significantly lower than November general elections, in most cases by at least 10 points. Primary turnout reached a record high of 69% in 1978 (compared to 70% in the general election) when Governor Jerry Brown ran as an incumbent in the Democratic primary and Proposition 13 was on the ballot. Primary turnout reached a record low of 34% in 2006. Turnout has been lower in the last six gubernatorial primaries than in the last six presidential primaries.

Statewide voter data indicates that turnout in primary elections has held at or around 30% of eligible voters since the late 1980's. In 2002 and 2006, the lowest ever turnout occurred in a primary with 25% and 23% respective participation of eligible voters. Voter data for recent charter city elections is even less impressive. In the city of Auburn (2012 Special Election), there was 31% turnout; the city of Rancho Palos Verdes (2011), there was a 9% turnout; the city of King City (2010), there was 10% turnout; the city of Bell (2005), with a population of approximately 36,000, there were only 390 voters.

In the most recent Los Angeles city election, approximately 16% of registered voters actually voted for two measures, contested school board races, nine City Council seats and Mayor of the City.

Measures should rightfully promote local voter participation in the adoption of changes to the city's system of governance. Ensuring voters are aware of and participate in the election to adopt a charter; a city council is more likely to address the issues of concern of local voters....

A city charter is a document that acts like a constitution for the city adopting it. It

can only be adopted, amended or repealed by a majority vote of a city's voters. The primary advantage of a charter is that it transfers the power to adopt certain legislation affecting municipal affairs from the state legislature to the adopting city. It serves as the road map to how services are provided to its residents.

Therefore, the conversion from a general law city to a charter city should warrant the maximum amount of public participation to ensure that voters are aware of and engage in the proposed changes to their city's system of governance.

- 2) Charter Adoptions, Amendments, and Repeals: Under existing law, proposals to adopt, amend, or repeal a city charter can be submitted to the voters pursuant to various different procedures. The governing body of a city can place a proposal on the ballot to adopt, amend, or repeal a charter, as specified. Alternately, an amendment to or repeal of a city charter, but not the adoption of a city charter, can be placed on the ballot by a petition that is signed by a specified number of voters. Finally, a charter commission can place a measure on the ballot to adopt or amend a city charter.

Under existing law, a proposal to adopt, amend, or repeal a city charter can appear on the ballot at a statewide primary election, a statewide general election, or at a regularly scheduled municipal election, regardless of how that proposal qualified to appear on the ballot. This bill, however, would create different rules for when a proposal to adopt, amend, or repeal a city charter can appear on the ballot, depending on how the proposal qualified for the ballot. The following table summarizes the changes proposed by this bill:

Proposal By:	What Can Be Proposed?	When Can it Appear on the Ballot?
A Charter Commission	A charter adoption or amendment	<p><u>Existing Law</u>: A statewide primary or general election, or a regularly scheduled municipal election</p> <p><u>This Bill</u>: A statewide general election only</p>
The Governing Body of the City or City and County	A charter adoption, amendment, or repeal	<p><u>Existing Law</u>: A statewide primary or general election, or a regularly scheduled municipal election</p> <p><u>This Bill</u>: No change to existing law for measures that (1) amend a charter in a manner that does not alter procedural or substantive protections, rights, benefits, or employment status of local government employees, retirees, employee organizations; or (2) amend a</p>

		<p>charter solely to comply with a court injunction or consent decree, or with federal or state voting rights laws.</p> <p>For all other measures, at a statewide general election only.</p>
Registered Voters of the City or City and County By Petition	A charter amendment or repeal	<p><u>Existing Law</u>: A statewide primary or general election, or a regularly scheduled municipal election</p> <p><u>This Bill</u>: No change to existing law</p>

- 3) Timing of Votes on Charter Proposals: As noted above, existing law already requires city and city and county charter proposals to be submitted to the voters only at a statewide primary or general election, or at a regularly scheduled municipal election. These requirements were enacted in 2011, as a response (in part) to a situation where the City of Bell adopted a charter in 2005 at an election scheduled just five days after Thanksgiving. That charter proposal was the only item on the ballot, and was promoted by city officials as a change that would give the city more local control. The ballot language included no mention of the fact, however, that the change also gave the city council the ability to set council members' salaries. Fewer than 400 voters turned out to vote on the charter proposal in the city of over 36,000 residents.

The rationale for requiring charter proposals to be submitted to voters only at statewide primary or general elections, or at regularly scheduled municipal elections, was that a city charter is akin to a Constitution for charter cities—a foundational set of rules that govern the essential operations of the city that adopts it. In light of that fact, requiring charter proposals to be voted on at regularly scheduled elections helps ensure broader voter participation in establishing those foundational rules, and helps prevent situations like the one in the City of Bell where votes on charter proposals are deliberately scheduled at a time when few voters will participate.

This bill would go further in regulating how a city adopts, amends, or repeals a charter before the impacts of the 2011 reforms have been fully realized. The Committee may wish to consider waiting to evaluate the impact of those reforms before further limiting the authority of cities to consider charter proposals.

- 4) Suggested Amendment: In order to clarify an ambiguity that was created in this bill by a prior set of amendments, committee staff recommends the following clarifying amendments to this bill:

On page 4, line 14, after "amendment" insert:

or repeal of a charter

On page 4, line 16, after "amendment" insert:

or repeal of a charter

- 5) Arguments in Support: One of the co-sponsors of this bill, the California Professional Firefighters, writes in support:

SB 311 would aid in increasing local voter participation in the development and approval of a city or county charter by, among other things, requiring charter conversion proposals to be placed on the statewide general election ballot.

Fewer voters actually participate in the local direct democracy process because many local proposals appear in primary elections when voter participation is historically and consistently much lower than in general elections. Just as the Legislature and Governor recognized last Session with the approval of SB 202, there is a need to bring the local initiative process back to its original intent and invite greater voter participation at the ballot box. Doing so is especially important when considered in the context of charter conversion proposals, which can have far-reaching impacts on the community's public services, including fire protection and other public safety services.

- 6) Arguments in Opposition: In opposition to this bill, the League of California Cities writes:

The unintended consequences of this bill can have significant negative impacts on cities. It is of great concern that this bill removes a charter city's decision-making authority to choose which election is best for putting labor related charter amendments before the voters. These kinds of charter amendments may generate much needed revenue and these changes may need to be dealt with expeditiously. Requiring that charter cities wait up to two years could mean putting a fiscally strapped city in further distress.

We are concerned that charter amendments and proposed adoption of charters have particularly been called out for needed change. Truthfully, other very important decisions are put before the voters at regularly scheduled municipal elections, special elections, and statewide primaries. For example, voters are often asked to elect their council representatives at these elections. Unfortunately, with the changes SB 311 proposes cities will not be able to govern appropriately, effectively, or efficiently.

- 7) Related Legislation: AB 822 (Hall), which is pending in the Senate Committee on Governance and Finance, would require a local ballot measure that proposes to change an employee retirement benefit plan to appear on the ballot only at a statewide general election, among other provisions. AB 822 was approved by this committee on a 5-2 vote, and was approved by the Assembly on a 52-19 vote.
- 8) Previous Legislation: AB 1344 (Feuer & Alejo), Chapter 692, Statutes of 2011, required a city charter or amendments to a city charter to be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election, among other provisions.

SB 202 (Hancock), Chapter 558, Statutes of 2011, provided that state initiative and referendum measures that qualify for the ballot on or after July 1, 2011, shall appear on the ballot only at the November statewide general election or at a statewide special election, among other provisions.

- 9) Double-Referral: On June 12, 2013, the Assembly Committee on Local Government approved this bill by a vote of 6-2.

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters (co-sponsor) (prior version)
State Building and Construction Trades Council, AFL-CIO (co-sponsor)
California State Association of Electrical Workers
California State Pipe Trades Council
Costa Mesans for Responsible Government (prior version)
Glendale City Employees Association (prior version)
Organization of SMUD Employees (prior version)
San Bernardino Public Employees Association (prior version)
San Luis Obispo County Employees Association (prior version)
Santa Rosa City Employees Association (prior version)
Western States Council of Sheet Metal Workers

Opposition

Air Conditioning Trade Association
Associated Builders and Contractors of California
City and County of San Francisco (prior version)
Cities of Brawley, Carlsbad, Cerritos, Del Mar, Inglewood, Pasadena, Sacramento, San Luis Obispo, Santa Barbara, Santa Maria, Torrance, and Vista (prior version)
League of California Cities
Mayor Tom Tait, City of Anaheim (prior version)
Vice Mayor Ken Weir, City of Bakersfield (prior version)
Mayor Emily Gabel-Luddy, City of Burbank (prior version)
Mayor Kevin Johnson, City of Sacramento (prior version)
Mayor Chuck Reed, City of San Jose (prior version)
Mayor Miguel Pulido, City of Santa Ana (prior version)
Mayor Edwin M. Lee, City and County of San Francisco (prior version)
Plumbing-Heating-Cooling Contractors Association of California
Western Electrical Contractors Association

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