

Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

SB 415 (Hueso) – As Amended June 23, 2015

SENATE VOTE: 24-13

SUBJECT: Voter participation.

SUMMARY: Prohibits a local government, beginning January 1, 2018, from holding an election on any date other than a statewide election date if doing so in the past has resulted in turnout that is at least 25 percent below the average turnout in that jurisdiction in the last four statewide general elections, as specified. Specifically, **this bill:**

- 1) Defines the following terms, for the purposes of this bill:
 - a) "Political subdivision" to mean a geographic area of representation created for the provision of government services, including, but not limited to, a city, school district, community college district, or other district organized pursuant to state law;
 - b) "Significant decrease in voter turnout" to mean the voter turnout for a regularly scheduled election in a political subdivision is at least 25 percent less than the average voter turnout within that political subdivision for the previous four statewide general elections;
 - c) "Voter turnout" to mean the percentage of voters who are eligible to cast ballots within a given political subdivision who voted.
- 2) Prohibits a political subdivision from holding an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout. Permits a voter who resides in a political subdivision where a violation of this requirement is alleged to file an action in the superior court in the county in which the political subdivision is located.
- 3) Permits a political subdivision to continue to hold elections on dates other than statewide election dates after January 1, 2018, notwithstanding the provisions of this bill, if the political subdivision adopts a plan not later than January 1, 2018 to consolidate future elections with the statewide election not later than the November 8, 2022 statewide election.
- 4) Requires a court, upon finding a violation of the provisions of this bill, to implement appropriate remedies, including the imposition of concurrent election dates for future elections and the upgrade of voting equipment or systems to do so. Permits a court to require a county board of supervisors to approve the consolidation of elections, as specified, when imposing remedies.
- 5) Permits a prevailing plaintiff party in an action brought pursuant to this bill, other than the state or a political subdivision of the state, to recover reasonable attorney's fees and litigation expenses, including, but not limited to, expert witness fees and expenses as part of the costs,

as specified. Prohibits a prevailing defendant party from recovering any costs unless the court finds the action to be frivolous, unreasonable, or without foundation.

- 6) Provides that the provisions of this bill do not apply to special elections.
- 7) Provides that this bill shall become operative on January 1, 2018.

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 charter 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) 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.
- 7) 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.
- 8) Provides that a legally adopted city charter supersedes all laws inconsistent with that charter with respect to municipal affairs.

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

COMMENTS:

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

Voter turnout in local elections held on odd-numbered years has been abysmal. On average, less than 30% of registered voters have come out to vote in local odd-year elections. As a result of low voter turnout, the voting population often does not look like the general public as a whole and neither does the city council. While there is no silver bullet, one way to increase voter turnout in local elections is to hold them concurrently with statewide and federal elections, where voter turnout is often twice as high.

Elections held on the same date can help reduce voter fatigue and make voting more habit forming, while saving local government on administrative costs. For example, the City of San Diego in 2012 spent 42 cents per voter on elections and saw a 70% voter turnout. The City of Los Angeles in 2011 spent \$39.35 per voter for a voter turnout of 14.1%.

This bill will give citizens the right to challenge local government for holding costly elections with little voter turnout.

- 2) **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.

- 3) **On-Cycle vs. Off-Cycle Elections:** Although existing law generally requires that regularly scheduled county elections be held at the same time as statewide elections, other local jurisdictions (e.g., cities, school districts, and special districts) have greater flexibility when deciding when to hold regularly scheduled elections that are held to elect governing board members. Elections that are held at the same time as statewide elections are often referred to as "on-cycle" elections, while elections held at other times are often referred to as "off-cycle" elections.

The degree to which local governments hold their elections on-cycle or off-cycle varies significantly throughout the state. Roughly 30 percent of the counties in California do not have regularly-scheduled off-cycle elections, because all the local jurisdictions in those counties hold their governing board elections at the same time as statewide elections. In other counties, large numbers of cities, school districts, and special districts hold their governing board elections off-cycle in November of odd-numbered years. A smaller number of local jurisdictions hold their regularly scheduled governing board elections on other permitted off-cycle dates.

- 4) **Charter Cities:** 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 potentially compelling charter cities to change the dates of their regularly scheduled 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. This bill does not explicitly address the question of whether it is intended to be applicable to charter cities, however, so it is unclear whether those cities would be subject to a lawsuit under this bill. (Counties are generally required to elect their public officials at the same time as statewide elections, so this bill generally would not affect counties, whether they are charter counties or general law counties. The only exception is San Francisco, which is a charter city and county, and thus has the autonomy of a charter city.)

Unlike general law cities, which conduct single-round elections in which the candidate who receives a plurality of the vote is deemed elected, many charter cities have chosen to conduct two-round elections, in which a runoff is held between the top two candidates if no candidate receives a majority of the vote in the first round. If this bill is found to be applicable to charter cities, it is unclear which election would be relevant for the purposes of determining whether the city has experienced a "substantial decrease in voter turnout" by holding its elections on a date other than a statewide election date. Would the first round election, the runoff election, or both be examined when determining whether a city experienced a substantial decrease in turnout?

- 5) **Substantial Limitation on Off-Cycle Elections:** Although this bill establishes a legal process for voters in a jurisdiction to challenge the timing of that jurisdiction's regularly scheduled elections if there is a "significant decrease in turnout" relative to turnout in statewide elections in that same jurisdiction, in practice, this bill may force almost all local jurisdictions to hold their regularly scheduled elections at the same time as statewide elections. Although the exact number of local governmental entities that would be affected by this bill is unknown, a review of recent election results by committee staff suggests that most local jurisdictions that hold regularly scheduled elections at a time other than at the same time as statewide elections would be forced to change the dates of their elections under this bill. Of more than five dozen cities whose election results were examined as part of this review, just two cities had turnout in their most recent regularly scheduled municipal election that was less than 25 percent lower than the average turnout in the city from the prior four statewide general elections. It is likely that turnout at off-cycle school district and special district elections also regularly falls below the threshold set by this bill under which local jurisdictions could be forced to move to conducting elections at the same time as statewide

elections.

- 6) **Canceled Elections & Logistical Issue:** Various provisions of existing law generally permit local elections to be canceled in situations where there are no contested races, if certain conditions are met. For example, if a district is scheduled to elect three governing board members at an upcoming election, and only three candidates file to run for those three seats on the governing board, state law generally allows for the election to be canceled, and for the three candidates who filed to be appointed to the district's governing board. Because of this policy, it is not uncommon for local jurisdictions to cancel their regularly scheduled elections to elect governing board members. In some cases, a local jurisdiction's election may be canceled for multiple consecutive election cycles. In such a situation, it is unclear how the provisions of this bill would apply. If a local government has not conducted an election for several years, will local election results from several years prior be used to determine whether a violation of this bill exists?
- 7) **Los Angeles County and Limitations on Election Consolidations:** 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. 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 before 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 year, voters in the city of Los Angeles and in the Los Angeles Unified School District 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.

While this bill would go into effect on January 1, 2018, recent amendments taken by the author would allow a political subdivision to continue to hold its elections on dates other than statewide election dates after January 1, 2018, notwithstanding the provisions of this bill, if the political subdivision adopts a plan not later than January 1, 2018 to consolidate future elections with the statewide election beginning no later than November 2022. Based on Los Angeles County's current timeline for deploying its new voting system, these amendments

should allow political subdivisions in that county to continue holding off-cycle elections until the county is able to accommodate additional election consolidations.

8) **Special Elections:** This bill explicitly provides that its provisions do not apply to special elections. As a result, special elections that are conducted by a political subdivision to fill a vacancy on that subdivision's governing board, or to vote on a local ballot measure, will not be required to occur at the same time as statewide elections, even if the turnout at special elections in the jurisdiction regularly is significantly lower than the turnout in that jurisdiction at statewide elections.

9) **Arguments in Support:** In support of this bill, California Common Cause writes:

One of the greatest barometers for waning civic engagement in American politics is declining voter turnout in federal, state, and municipal elections. There are many potential contributing factors: general cynicism about government and elected officials, a decline in investment in civics education, and an increasingly transient society.

Yet there is one major contributing factor to low voter turnout –the timing of elections –that could be addressed with a relatively simple policy change. The Public Policy Institute of California surveyed 350 California cities and found that simply moving an election to be synchronized with the even year state elections can result in a 21-36 percent boost in voter turnout for municipal and other local elections. Senate Bill 415 accomplishes this goal by prohibiting municipalities from holding off-cycle elections if doing so results in a significant (25% or more) decline in voter turnout.

10) **Arguments in Opposition:** The Desert Water Agency (DWA), which opposes this bill, writes:

DWA holds an election for its governing board in November of odd-numbered years. The Agency was asked many years ago by the Riverside County Elections Department to change...its election schedule due to the large size of the ballot when all elections were consolidated on a statewide election date. The November 2013 election turnout for DWA was 32.32%; the November 2014 statewide turnout for Riverside County was 34.52%. In comparison, voter turnout in Riverside County in the 2012 presidential election was nearly 75%, which would significantly skew the comparative analysis called for by SB 415 (an average of the previous four statewide elections).

Nevertheless, combining the DWA election with the statewide election would not likely result in greater voter participation...[A] review of voter analytics shows that voters are less likely to cast a vote as they move down the ballot, a phenomenon known as "roll-off." While this effect might be due to fatigue, it also might be due to the fact that contest saliency generally decreases with ballot positions. Voter fatigue would likely counteract any benefit of forcing local

agencies to change election dates as they would fall to the end of a crowded ballot.

11) **Related Legislation:** AB 254 (R. Hernández), which was scheduled to be heard in the Senate Elections and Constitutional Amendments Committee on June 30, 2015 (after this analysis was prepared, but before the scheduled hearing for this bill), requires general law cities, school districts, community college districts, and special districts to hold their general elections and certain special elections at the same time as the statewide primary or statewide general election, or in June or November of odd-numbered years, beginning in 2020. AB 254 was approved by this committee on a 5-2 vote, and was approved by the Assembly on a 44-31 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause

Opposition

Desert Water Agency

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