

Date of Hearing: June 12, 2024

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SB 907 (Newman) – As Introduced January 4, 2024

SENATE VOTE: 30-9

SUBJECT: Orange County Board of Education: members.

SUMMARY: Requires the Orange County Board of Education (OCBOE) to consist of seven members. Requires an election for a member of the OCBOE to be consolidated with the statewide general election in November. Specifically, **this bill:**

- 1) Requires the OCBOE to consist of seven members, instead of five members.
- 2) Requires an election for the OCBOE to be consolidated with the statewide general election in November of each even-numbered year. Requires the term of office of all incumbent officers to be extended accordingly, as necessary, until the successor takes office after the new election date.
- 3) Makes findings and declarations regarding the necessity of enacting a special statute that is applicable only to the OCBOE.

EXISTING LAW:

- 1) Requires, pursuant to the California Constitution, that the Legislature provide for a board of education in each county, as specified. Provides that a county charter may provide for the election of the members of the county board of education of such county and for their qualifications and terms of office. (California Constitution, Article IX, §3.3)
- 2) Requires there to be a county board of education, except in a city and county, consisting of five or seven regular members to be determined by the county committee on school district organization (county committee). (Education Code §1000)
- 3) Permits the county committee, upon request of the county board of education and by a two-thirds vote of the county committee's members, to change the boundaries of any or all of the trustee areas of the county or propose to increase or decrease the number of members of the county board of education, or both. (Education Code §1002)
- 4) Requires a county committee, when it proposes to reduce from seven to five or increase from five to seven the number of members of the county board of education, to call and conduct a hearing on the matter. Requires the county committee, at the conclusion of the hearing, to approve or disapprove the proposal by resolution. (Education Code §1003)
- 5) Requires the resolution of the county committee approving a reduction or increase in the number of members of the county board of education to constitute an order of election, and requires the proposal to be presented to the electors of the county not later than the next succeeding election for members of the county board of education. (Education Code §1004)

- 6) Provides that established election dates are as follows:
 - a) The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four.
 - b) The first Tuesday after the first Monday in March of each odd-numbered year.
 - c) The second Tuesday of April in each even-numbered year.
 - d) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four.
 - e) The first Tuesday after the first Monday in November of each year. (Elections Code §1000)
- 7) Requires all state, county, municipal, district, and school district elections to be held on an established election date, except as specified. (Elections Code §1002)
- 8) Provides that the requirement that elections be held on established election dates do not apply to the following:
 - 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 specified provisions of state law.
 - c) Specified school governing board elections.
 - d) Elections of any kind 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, as specified.
 - g) Elections held pursuant to specified provisions of the Education Code. (Elections Code §1003)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) By changing the date for the election of seats on the OCBOE, thereby imposing additional duties on local elections officials, this bill could create a reimbursable state mandate. Additional local costs resulting from the bill (among others) would include potentially adding an extra ballot card to presidential election cycle ballots to accommodate the additional contests. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs. The magnitude is unknown, but

potentially in the hundreds of thousands of dollars annually (General Fund). This bill is not likely to result in new costs to the Secretary of State (SOS).

- 2) By adding two members to the OCBOE, this bill would result in additional costs of approximately \$70,000 each year to the OCBOE. This estimate is based on the amount of expenses incurred each year for the existing Trustees (stipends and health benefits). Additionally, to the extent that the bill results in a new redistricting process of the Trustee areas to accommodate the additional members, there would be additional costs to the Orange County Department of Education and the OCBOE. The magnitude of these costs is unknown but could be in the low to mid hundreds of thousands of dollars on a one-time basis.

COMMENTS:

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

Comprised of five elected trustees, the Orange County Board of Education (OCBOE) is one of only five county education boards to hold their elections as part of the primary, and are the only contests in Orange County that are decided solely during the primary by a plurality, rather than majority, vote. Data indicates 360,000 fewer voters participated in the 2022 primary than in the general, and at least one OCBOE candidate won the support of as little as 11% of registered voters. Increasing the number of trustees will ensure a more representative and responsive board, and aligning OCBOE elections with the November balloting will improve civic participation and parental engagement in our local education decision-making processes. This is especially important for Orange County's Asian American and Latino families, who despite comprising 70% of the county's K-12 student population, remain underrepresented in the primary electorate and on the Board. Orange County's population has become more diverse, and more than doubled in size since the OCBOE was last modified in 1977. SB 907 offers two common-sense governance reforms that will enhance local control and ensure a more representative and responsive Board of Education for the residents of California's third-largest county.

- 2) **County Boards of Education:** County boards of education are the governing body for California's 58 county offices of education, which provide services directly to their counties' most vulnerable student populations through county office-run juvenile court schools and county community schools. County boards govern these schools while the day-to-day operations are handled by the county superintendent. Other county board duties include charter school petition approvals, denials and oversight, interdistrict transfer and expulsion appeal hearings, purchase and leasing of real property, and approval of the county office of education budget, annual audit, and Local Control and Accountability Plan.

Accordingly, OCBOE provides educational opportunities for Orange County students, promotes student achievement, and offers leadership, services, and resources for Orange County school districts, educators, and the community. Currently, the OCBOE consists of five members who represent the five trustee areas of the county. This bill instead requires the OCBOE to add two additional county board members increasing the board to seven members.

As mentioned above, current law requires county boards of education to have five or seven members and a county committee can propose changes to board member numbers or trustee area boundaries upon request by the county board of education. If the committee wants to change the board member number, a public hearing is held, followed by a vote. If the resolution is approved, it becomes an order of election presented to the county's electors at the next board of education election.

To date, committee staff is unaware of any attempt by the OCBOE to adopt such a resolution or request to add additional members to its county board. Moreover, earlier this year the OCBOE approved a resolution to oppose this bill.

- 3) **Charter Counties and the California Constitution:** The California Constitution recognizes two types of counties: general law counties and charter counties. General law counties are governed by state law, while charter counties have autonomy to create and enforce local ordinances, provided the ordinances do not conflict with the general law of the state. According to the California State Association of Counties, California has 44 general law counties and 14 charter counties, including Orange County.

Article IX, Section 7 of the California Constitution requires the Legislature to provide for a board of education in each county, as specified, and Article IX, Section 3.3 provides that a county charter may provide for the election of the members of the county board of education of such county and for their qualifications and terms of office. Specifically, Section 3.3 provides that, except in charter counties that share a joint county board of education with another county, "it shall be competent to provide in any charter framed for a county under any provision of this Constitution ... for the election of the members of the county board of education of such county and for their qualifications and terms of office." It could be argued that a charter county's power to "provide ... for the election" of its county board of education includes the power to set the timing of those elections. In other words, the Legislature may not have the authority to require different election dates for charter counties in situations where the county charter specifies an election date.

In contrast, the ability to provide for an election may not be interpreted to apply so broadly as to govern all elements of those elections, including election timing. For example, the state Constitution gives charter cities a larger amount of autonomy over local affairs. Specifically, Section 5(a) of Article XI gives charter cities broad authority to "make and enforce all ordinances and regulations in respect to municipal affairs" and provides that "City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." Additionally, Section 5(b) of Article XI grants charter cities broad authority to structure and organize their government and grants plenary authority, subject to limited restrictions, to provide "the manner in which, the method by which, the times at which, and the terms for which several municipal officers and employees whose compensation is paid by the city shall be elected and appointed, and for their removal..." The Constitution further provides that properly adopted city charters "shall supersede all laws inconsistent" with the charter.

Unlike charter cities, charter counties are not granted the same level of authority over the conduct of county elections. As such, it is unclear whether charter counties are authorized, similar to charter cities, to regulate the methods, times, or manner of elections of county

officials that differs from state procedures. Consequently, charter counties generally elect county officials in accordance with state laws for nonpartisan elections.

Section 202 of Article II of the Orange County charter states that “except as expressly set forth in this charter, the general law set forth in the Constitution of the State of California and the laws of the State of California shall govern the operations of the County of Orange (OC). The OC charter does not contain any provisions regarding the timing of the elections for the OCBOE. Consequently, it could be argued that state law determines when and how OCBOE elections are held.

- 4) **County Board of Education Elections:** Most county boards of education hold their elections with the statewide general election. According to data compiled by the California Elections Data Archive, a joint project between California State University, Sacramento, and the SOS, county board of education elections appeared on the ballot in 45 counties between 2017 and 2020. Of those 45 counties, 36 (80%) held county board of education elections only with the statewide general election. Five counties (11%), including Alameda, Orange, Riverside, Sacramento, and San Joaquin counties, held their county board of education elections with the statewide primary election.
- 5) **Term Extension:** OCBE members are elected to four-year terms, which are staggered so that three members are elected with the gubernatorial primary and two members are elected with the presidential primary. Moving these elections from being consolidated with the statewide primary to being consolidated with the statewide general election would also push back, from July to December after the election, the start date of a term of office of a member of the OCBE. For 2024 and 2026, this bill would automatically extend the terms of office of incumbent OCBE members by a little more than five months to ensure there is no break in representation until a new term of office begins.
- 6) **Voter Turnout:** Studies show that voter participation in general elections tends to be considerably higher than in primary elections. As a result, an election for a local officer that is not decided in the primary election and that moves on to the general election is likely to have much higher participation than one that is decided in the primary election.

According to a May 2014 report by the Public Policy Institute of California (PPIC), entitled “Voter Turnout in Primary Elections,” which examined voter turnout in California’s primary elections, over time and in relation to other states, there is evidence that statewide general elections have more diverse turnout than statewide primary elections. The PPIC report states that, “there is little question that primary electorates have included fewer young people, Latinos, and Asian Americans than the general electorate in the fall.” The report found that, between 2004 and 2012, younger voter (ages 18-24) turnout between the primary and general election, as a percentage share of the overall electorate, increased between 1.2 and 5.5 percentage points, Asian/Pacific Islander turnout increased between 0.6 and 2 percentage points, and Latino turnout increased between 2 and 7.3 percentage points.

- 7) **Plurality Vote Method:** Plurality voting, also known as "winner-take-all" or "first-past-the-post," gives all representation to the candidate finishing first. In plurality voting, each voter selects one candidate, and the candidate with the largest number of votes is the winner regardless of whether the winner receives a majority (more than 50%) of the vote. A plurality voting method may be used for a single candidate election or for electing a group of

candidates, such as a council or committee. In a majority vote method, a voter votes for one candidate and the candidate with the majority (more than 50%) of the votes wins. Commonly used majority vote methods include traditional run-off.

OCBE elections are “winner-take-all” plurality elections. As a result, no runoff election occurs even if none of the candidates receive more than 50% of the vote.

8) **Arguments in Support:** In support, Citizen Take Action, writes:

Government is generally more effective and responsive when there is a lower ratio of constituents to representatives. By expanding the number of seats on the OCBOE, SB 907 will make it easier for communities throughout Orange County to have their voice heard. And given that the population of Orange County has more than doubled since the OCBOE was last modified in 1977, this change seems long overdue.

The OCBOE is also one of just five county education boards to hold their elections during the primary, and the only race in Orange County to be a plurality, "one-and-done" election. As demonstrated in the Board's 2022 election, this antiquated system allows for trustees to represent more constituents than State Assemblymembers with as little as 11% of the electorate's support.

By shifting the OCBOE election date from the primary to the general election, SB 907 will lead to higher voter turnout in future OCBOE elections. That is critically important, especially given that despite accounting for roughly 60% of the county's overall population and 70% of its K-12 student population, Orange County's Asian American and Latino communities are underrepresented on the Board, which currently includes just one person of color.

9) **Arguments in Opposition:** With an oppose unless amended position, the California School Boards Association, writes:

SB 907 would require the membership of the governing board of the Orange County Board of Education (OCBOE) to increase from its current makeup of 5 members to a board consisting of 7 members. The bill would further require an election for the board to be consolidated with the statewide general election in November of each even-numbered year.

The bill sets a troubling precedent by singling out and manipulating just one of the state's county boards of education. By doing so, SB 907 tramples on the will of local voters by legislating the addition of two additional seats on the OCBOE in an effort to modify its makeup. The proposal enables the state to reach into this community to make changes to a locally elected governing board, circumventing the long-standing process that normally requires a vote of the electorate.

For these reasons, CSBA is asking that if this bill continues to move forward it be amended to remove the provisions that would increase the board's membership to seven.

10) **Previous Legislation:** AB 759 (McCarty), Chapter 743, Statutes of 2022, requires county district attorneys and sheriffs to be elected during presidential election years, instead of gubernatorial election years, beginning with the 2028 presidential primary election, except as specified.

SB 286 (Min) of 2021 would have required the election for seats on the OCBOE to be consolidated within the November statewide general election. SB 286 was held on the Assembly Appropriations Committee's suspense file.

SB 1450 (Umberg) of 2020, among other provisions, would have required an election for an office that is determined by the plurality of the votes cast for that office, with no possibility of a runoff, that is consolidated with a statewide election be consolidated with the statewide general election in November. This bill was not heard in a policy committee.

AB 901 (Gloria), Chapter 713, Statutes of 2017, authorizes an amendment to the San Diego County charter, either by a proposal submitted by the board of supervisors or by voter initiative, to require that candidates for certain county offices and the county board of education be elected at the general election, instead of at the primary election.

11) **Double Referral:** This bill has been double-referred to the Assembly Committee on Education.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers, AFL-CIO
California League of United Latin American Citizens (LULAC)
California School Employees Association, AFL-CIO
Citizens Take Action
Lavender Democrats OC

Opposition

California Charter Schools Association
California School Boards Association (unless amended)
Ednovate
Orange County Board of Education
One individual

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