

Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON ELECTIONS

Marc Berman, Chair

AB 1546 (Chau) – As Amended April 19, 2021

SUBJECT: City of Alhambra: charter amendment: Alhambra Unified School District: California Voting Rights Act.

SUMMARY: Allows the City of Alhambra to submit a city charter amendment for approval of voters at a special election to remove from the city's charter all references to the Alhambra Unified School District (AUSD), as specified. Specifically, **this bill:**

- 1) Authorizes the governing body of the City of Alhambra, on its own motion, to submit a proposal to amend the charter of the City of Alhambra to remove all references to the AUSD from the charter to be voted on at a special election held on any of the election dates established in accordance with existing law before the next established statewide general election.
- 2) Makes findings and declarations that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances facing the City of Alhambra and the AUSD regarding the November 3, 2020, election on Measure G and the need to enable the AUSD to complete its transition to an election system that complies with the California Voting Rights Act of 2001 (CVRA) before January 1, 2022.
- 3) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Provides, generally, that the governing board of a school district may be elected using one of the following alternative methods:
 - a) Each member of the governing board is elected by the registered voters of the entire district.
 - b) One or more members residing in each trustee area are elected by the registered voters of that particular trustee area.
 - c) Each member of the governing board is elected by the registered voters of the entire district, but resides in the trustee area which they represent.
- 2) Permits city charters to provide for the manner in which the members of boards of education are elected or appointed. Provides that, when the boundaries of a school district or community college district extend beyond the limits of a city, charter amendments affecting the manner in which the members of boards of education are elected or appointed must be submitted to and approved by a majority of all the qualified electors of the school district or community college district voting on the question.

- 3) Authorizes the governing body of a city or city and county to propose an amendment to the charter of the city or city and county, and to submit the proposal to the voters at the next established statewide general election, provided there are at least 88 days before the election. Permits the governing body of a city or city and county to submit a charter amendment proposal to the voters at the next regularly scheduled general municipal election or at any established statewide general or statewide primary election occurring not less than 88 days after the date of the order of election if certain conditions are met.
- 4) Prohibits, pursuant to the CVRA, an at-large method of election from being imposed or applied in a political subdivision in a manner that impairs the ability of a protected class of voters to elect the candidate of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.
- 5) Provides that the following are established election dates:
 - 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.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

This bill would allow the City of Alhambra and the Alhambra Unified School District (AUSD) to conduct a special election in order to proceed with its transition from at-large to by-trustee-area elections for members of the board of education, consistent with the Elections and Education Code requirements.

Measure G on the November 3, 2020 General Election ballot sought to remove from the Charter all references to the AUSD. However, Measure G only appeared on the ballots of voters residing in the City of Alhambra and not on the ballots of voters in the AUSD residing outside the City boundaries.

Under existing law, a charter amendment for a city must be submitted to voters at an established statewide general election; thus, the City of Alhambra and the AUSD are prohibited from conducting a special election to amend the Charter prior to the next statewide election on November 8, 2022.

Therefore, we need to create a special exception in the Government Code to permit the City of Alhambra and the AUSD to conduct a special election on any established election date as specified in Elections Code section 1000.

- 2) **At-Large vs. District Elections:** Generally under existing law, the governing board of a school district can be organized so that members are elected at-large or are elected using districts (also known as trustee areas). If members are elected at-large then each member of the governing board is elected by the registered voters of the entire district. If the school district governing board has districts or trustee areas, the board can be organized such that the registered voters in the entire district vote for board members from each of the trustee areas (known as "from district" elections), or the district can be organized so that only the registered voters in a district vote in the election to choose the board member from that area (known as "by district" or "by-trustee area" elections). In either case, a candidate for the governing board must reside in the district in which they are running.
- 3) **California Voting Rights Act of 2001:** SB 976 (Polanco), Chapter 129, Statutes of 2002, enacted the CVRA to address racial block voting in at-large elections for local office in California. In areas where racial block voting occurs, an at-large method of election can dilute the voting rights of minority communities if the majority typically votes to support candidates that differ from the candidates who are preferred by minority communities. In such situations, breaking a jurisdiction up into districts can result in districts in which a minority community can elect the candidate of its choice or otherwise have the ability to influence the outcome of an election. Accordingly, the CVRA prohibits an at-large method of election from being imposed or applied in a political subdivision in a manner that impairs the ability of a protected class of voters to elect the candidate of its choice or to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of the protected class.

The first case brought under the CVRA was filed in 2004, and the jurisdiction that was the target of that case—the City of Modesto—challenged the constitutionality of the law. Ultimately, the City of Modesto appealed that case all the way to the United States Supreme Court, which rejected the city's appeal in October 2007. The legal uncertainty surrounding the CVRA may have limited the impacts of that law in the first five years after its passage.

Since the case in Modesto was resolved, however, many local jurisdictions have converted or are in the process of converting from an at-large method of election to district-based elections due to the CVRA. While some jurisdictions transitioned from at-large to district-based elections in response to litigation or threats of litigation, other jurisdictions proactively changed election methods because they believed they could be susceptible to a legal challenge under the CVRA, and they wished to avoid the potential expense of litigation.

Most school district governing boards are elected at-large. However, mostly due to lawsuits or the threat of lawsuits brought under the CVRA, a large number of districts that had at-large governing boards have since transitioned or are in the process of transitioning to by-trustee area elections.

- 4) **Charter Cities and the California Constitution:** The California Constitution recognizes two types of cities: general law cities and charter cities. General law cities are governed by state law, while charter cities have greater autonomy to provide for their own government in

ways that may conflict with the general law of the state. Specifically, Section 5(a) of Article XI of the California Constitution 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 city charters broad authority to structure and organize their government, to conduct city elections, 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.

Additionally, Section 16 of Article IX of the Constitution provides that it shall be competent, in all city charters, to provide, "for the manner in which, the times at which, and the terms for which the members of boards of education shall be elected." In addition, Section 16 states that "when the boundaries of a school district or community college district extend beyond the limits of a city whose charter provides for any or all of the foregoing with respect to the members of its board of education, no charter amendment effecting a change in the manner in which, the times at which, or the terms for which the members of the board of education shall be elected or appointed, for their qualifications, compensation, or removal, or for the number which shall constitute such board, shall be adopted unless it is submitted to and approved by a majority of all the qualified electors of the school district or community college district voting on the question."

Section 16 does not indicate whether there is similar "plenary authority" to specify school district governing board election methods in city charters or whether election methods are subject to the CVRA. A 2013 lawsuit in the Superior Court for the County of Los Angeles, Central District, found that the City of Palmdale's at-large method for electing their city council members violated the CVRA (*Jauregui v. City of Palmdale* (2013) Case BC 483039). According to a previous bill analysis, in the case, the City of Palmdale denied that its elections violated the CVRA and argued that the CVRA was unconstitutional as applied to the city because it is a charter city, and Article XI, Section 5(b) of the California Constitution gives charter cities plenary authority to determine the manner and method in which their voters elect municipal officers. The court disagreed, finding that "state law regulating a matter of statewide concern preempts a conflicting local ordinance if the state law is narrowly tailored to limit its incursion into local interest," and concluding that "[t]here can be no question that the dilution of minority voting rights is a matter of statewide concern."

When appealed to the California Court of Appeals, Second District, Division Five, the court again found that the CVRA addresses an issue of statewide concern, is narrowly tailored to avoid unnecessary interference in municipal governance, and is reasonably related to the resolution of statewide concerns of the right to vote, equal protection, and the integrity of elections (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781). In response to this lawsuit, the Legislature passed and Governor Brown signed into law AB 277 (Hernández), Chapter 724, Statutes of 2015, which codified the appellate court's ruling in *Jauregui v. City of Palmdale* and explicitly provided that charter cities, charter counties, and charter cities and counties are subject to the provisions of the CVRA.

- 5) **City of Alhambra Charter & Measure G:** According to background materials provided to the committee, AUSD elections are currently governed by the city charter, despite the fact that the boundaries of the school district and the city are not the same. In addition, the charter requires that the members of the school board be nominated by district and elected at-large.

Last year, the Alhambra City Council approved a proposed charter amendment and subsequently submitted it to the voters at the November 2020 general election as Measure G, which would remove references to AUSD elections from the Alhambra City Charter. According to the Alhambra city attorney's impartial ballot measure analysis of Measure G, the AUSD expressed an intent to transition to elect their school board members by district, and requested that the charter be amended to eliminate references to the AUSD so that AUSD board elections could begin the transition.

According to the author and sponsors of this bill, the ballot measure was coded as a city measure rather than a school district measure, and as a result, the measure did not appear on the ballot for voters who lived in the school district but outside the boundaries of the city.

As detailed above, existing law requires a charter amendment to be submitted to the voters at the next established statewide general election, or at a statewide primary election or regularly scheduled municipal general election under certain circumstances. Consequently, absent a change in law, the City of Alhambra would be unable to submit another charter amendment to the voters to remove references to the AUSD from its charter until 2022. This bill instead permits the charter amendment to be submitted to voters at a special election as early as this year, as specified.

- 6) **Arguments in Support:** The AUSD, one of the sponsors of this bill, writes:

AB 1546 would permit the City, on the District's behalf, to conduct a special election on any established election date as specified in the Elections Code, thereby enabling the District to proceed with its transition from at-large to by-trustee-area elections for members of the District's Board of Education consistent with the Elections and Education Code requirements.

The City Charter currently dictates the manner and method of the District's Governing Board elections. Specifically, the City Charter requires the District's Board to be elected by the qualified electors of the entire unified school district at-large. On January 14, 2020 the District's Board started the process to transition from at-large to by-trustee area elections and adopted Resolution No. 19-20-09 (Resolution to Initiate a Transition to a By-Trustee Area Election System and Authorizing the Submission of a Request to the Alhambra City Council to Place Charter Amendment on the Ballot in November 2020 which Removes the District from the City Charter) regarding the same.

Measure G on the November 3, 2020 General Election ballot sought to remove all references to the District from the City Charter. Although Measure G received over 69% support at the polls, unfortunately, due to a clerical error on the part of the Los Angeles County Registrar Recorder/County Clerk's Office, Measure G

did not appear as required on the ballot for the voters of the District who reside outside of the City's boundaries.

Under existing law, a charter amendment for a city must be submitted to voters at an established statewide general election; thus, the City is prohibited from conducting a special election to amend the Charter and permit the District to continue with its transition from at-large to by-trustee area elections prior to the next statewide election on November 8, 2022. Existing law would further delay the District's completion and implementation of a trustee area election system to ensure compliance with the CVRA.

AB 1546 would authorize the governing body of the City to amend its Charter to remove all references of the District from the Charter at a special election held on specified election dates before the next established statewide general election. If AB 1546 is adopted and signed, and the measure passes in November 2021, the District can complete the remaining steps within Elections Code section 10010 and begin utilizing a trustee area election method for its November 2022 Governing Board elections.

- 7) **Related Legislation:** SB 442 (Newman), permits a county committee on school district organization to approve a proposal to establish trustee areas for the governing board of a community college district or a school district, including a school district whose governing board is provided for in a city's charter, without a vote of the district's electorate, as specified. SB 442 is pending in the Senate Education Committee, where it is scheduled to be heard on April 28, 2021.
- 8) **Urgency Clause:** This bill contains an urgency clause, allowing it to take effect immediately upon enactment.
- 9) **Double-Referral:** This bill was double-referred to the Assembly Local Government Committee. AB 1546 was heard in the Assembly Local Government Committee on April 14, 2021, and was approved by a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Alhambra Unified School District (co-sponsor)
 City of Alhambra (co-sponsor)
 Los Angeles County Board of Supervisors (co-sponsor)
 California Association of Clerks and Election Officials (prior version)

Opposition

None on file.

Analysis Prepared by: Nichole Becker / ELECTIONS / (916) 319-2094