

Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
AB 428 (Mayes) – As Amended March 18, 2021

SUBJECT: Local government: board of supervisors.

SUMMARY: Prohibits any term limits imposed on members of a county board of supervisors from limiting a member from serving fewer than two terms, and specifies that a county board of supervisors is included in the definition of county officers for whom the board prescribes compensation. Specifically, **this bill** specifies that if term limits are imposed on service of a county board of supervisors, the term limits may not restrict a person to serving fewer than two terms on the board. Clarifies that that the board of supervisors is included in the definition of county officers for whom the board of supervisors is required to prescribe compensation.

EXISTING LAW:

- 1) Requires each county to have a board of supervisors consisting of five members. Requires not more than three members to be elected at the same general election. Requires, if the terms of office of more than three members of the board expire at the same time, for the members elected to fill those terms to classify themselves by lot at the first regular meeting after January 1st following their election such that three members serve for four years, and two for two years. Requires thereafter the term of office of each member to be four years.
- 2) Permits the board of supervisors of any general law or charter county to adopt or the residents of the county to propose, by initiative, a proposal to limit to or repeal a limit on the number of terms a member of the board of supervisors may serve on the board of supervisors. Requires any proposal to limit the number of terms a member of the board of supervisors may serve on the board of supervisors to apply prospectively and prohibits the proposal from becoming operative unless it is submitted to the electors of the county at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.
- 3) Requires the board of supervisors to prescribe the compensation of all county officers and to provide for the number, compensation, tenure, appointment, and conditions of employment of county employees. Allows such action, except as otherwise required by the California Constitution, to be taken by resolution of the board of supervisors as well as by ordinance.
- 4) Permits a county or city to adopt a charter by majority vote of its electors voting on the question. Allows a charter to be amended, revised, or repealed in the same manner. Requires a charter, amendment, revision, or repeal thereof to be published in the official state statutes.
- 5) Provides that counties are legal subdivisions of the state.

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

COMMENTS:

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

As political subdivisions of the State of California created by Article XI, Section 1 of the California Constitution, it is the Legislature's duty to ensure that our local governments, whether established through general law or charter, are equipped with the tools needed to properly administer the heavy burdens we place upon them. County governments are oftentimes the front lines of government for the services and programs we create at the state level, including preventing the spread of a pandemic through public health programs, reliably administering our elections, delivering safety net health services, and responding to local emergencies and disasters. In any profession or public service, there is a need for some certainty and adequate compensation to attract the appropriate talent to do a job. We must clarify existing law to allow for County Supervisors to obtain reasonable compensation and allow for a minimum of two terms in office for the future classes of elected officials.

2) **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 greater autonomy over county government. Sections 3 and 4 of Article XI of the California Constitution provide the powers of charter counties. Specifically, Section 3 provides that "County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments."

Section 4 of Article XI provides the structure and operation of county charters. Specifically, Section 4(a) requires county charters to provide for a governing body of five members, elected by district, at large, or at large with a requirement that they reside in the district, and provides that charter counties are subject to state laws governing redistricting. Section 4(b) requires county charters to provide for the compensation, terms, and removal of members of the governing body. Section 4(c) requires county charters to provide for "an elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal." Finally, Section 4(d) requires county charters to provide for "the performance of functions required by statute," and Section 4(h) provides that charter counties have all the powers that are provided by the Constitution or by statute for counties.

3) **Local Ballot Measures:** SB 2 (Kopp), Chapter 432, Statutes of 1995, authorized the governing bodies of cities, counties, school districts, and special districts to submit to the electorate of their district, or have the residents submit by initiative measure, a proposal to limit the terms of members of the governing body of that city, county, district, or any locally elected official.

Last year, there were two competing local ballot measures related to the San Bernardino County Board of Supervisors on the November 2020 general election ballot in San Bernardino County. Measure K, which was placed on the ballot by initiative petition, limited the San Bernardino County Board of Supervisors to one four-year term, and set compensation at \$60,000 per year, as specified. Prior to the election, compensation for the county's supervisors ranged from approximately \$242,940 to \$280,900 annually, and supervisors were limited to three consecutive four-year-terms.

Additionally on the ballot was Measure J, which was placed on the ballot by a vote of the Board of Supervisors. Measure J revised the county charter to change county supervisor term limits from a limit of three consecutive four-year-terms to a limit of three total terms, and to set a base salary for the Board of Supervisors, as specified, among other provisions. Nearly 67% of voters approved Measure K and Measure J passed with 51% of the vote.

Last December the San Bernardino County Board of Supervisors filed a lawsuit with the San Bernardino County Superior Court asking whether enacting Measure K would be in compliance with the California Constitution, state statutes, and all other applicable laws, as specified. According to press reports, the lawsuit contends that the California Constitution requires that the compensation of county supervisors be set by the board of supervisors, and that it cannot be set by initiative, among other arguments. The lawsuit is pending.

It is committee staff's understanding that the changes proposed in this bill are prospective. However, with the pending litigation over Measure K in San Bernardino County, it is unclear whether this bill, if it is signed into law, will affect the validity of Measure K. The author, however, has indicated that the intent of this bill is not to overturn Measure K.

- 4) **Arguments in Support:** In support, the California State Association of Counties and the Urban Counties of California jointly write:

Our organizations strongly support this change in statute to ensure an appropriate commitment to the office of county supervisor, a level of expertise and accountability to the office, and a continuity of government that Californians can be confident of.

San Bernardino County voters recently approved Measure K, a charter amendment that imposes a single, four-year term limit on future members of the Board of Supervisors and dramatically limits the amount of compensation for supervisors of \$5,000 per month. Counties across the state are concerned about the potential for similar measures coming to a future local ballot.

Term limits serve an important purpose in communities that choose to adopt them, ensuring new voices have an opportunity to be heard, though they also come at a cost of experience. However, limiting supervisors to a single term seems to assume that the decisions of county government are either simple, or already familiar to newly elected representatives, or made at such a high level as to not need detailed understanding. For better or for worse, this assumption misunderstands the nature of modern county government in California.

California counties are responsible not only for local services such as public health, probation, road maintenance and repair, emergency response, land use, jails, workforce development, and child protective services, but also for state and federal entitlement programs like IHSS, Medi-Cal, and EPSDT, not to mention their role in many communities as the largest employer in the area. Counties are important partners with the state and federal governments, as well as a variety of local actors—governmental, non-profit, and business.

Ensuring a minimum of two four-year terms allows for elected county supervisors to gain experience in managing a complex set of service obligations and financial responsibilities in order to most effectively implement these county, state, and federal policies. A single term simply does not allow for development of expertise, nor does it allow for the kind of accountability a reelection provides. We are deeply concerned about what a single-term limit will mean for county policy-making. We know from other experiments with short term limits that the policy often shifts more power from elected representatives to staff and outside advocates, who have the time to build expertise in the issues at hand. While these positions have important roles to play in governance decisions, we believe that authority should be kept with those elected by the people.

5) **Arguments in Opposition:** In opposition, the Howard Jarvis Taxpayers Association writes:

AB 428 seeks to undo the overwhelming approval of Measure K in San Bernardino County that amended the County Charter to impose a term limit of one term and reduced the total compensation for each member of the Board of Supervisors to \$5,000 per month.

Now, other counties are concerned about the potential for similar measures. If Measure K is a problem, it is no worse than stripping voters of the ability to designate their preferred length of terms and set pay of the county supervisors because we dislike the outcome of an election.

Elected officials frequently complain when seeking to undermine Prop. 218 that getting two thirds of voters to agree is almost an impossible feat. Yet Measure K was approved by a two-thirds majority (66.84%) of voters and AB 428 still seeks to undo it. The people have spoken.

6) **Double-Referral:** This bill was double-referred to the Assembly Local Government Committee, where it was heard on April 14, 2021, and approved by a 7-1 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Counties
County of San Bernardino
Inland Empire Economic Partnership

SEIU California
Urban Counties of California

Opposition

Howard Jarvis Taxpayers Association

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