

Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
AB 759 (McCarty) – As Amended April 21, 2021

SUBJECT: Elections: county officers.

SUMMARY: Requires elective countywide officials to be elected during presidential election years, instead of gubernatorial election years, beginning with either the 2024 or 2028 presidential primary election. Specifically, **this bill:**

- 1) Repeals a requirement that an election to select county officers be held with the statewide primary election at which candidates for Governor are nominated, except as otherwise provided, and instead requires an election to select county officers be held with the presidential primary election.
- 2) Provides that this bill applies both to general law and charter counties.
- 3) Provides that for a county officer elected in 2022, a county (including a charter county) may provide by ordinance for a two-year term, with the next election for that office occurring at the presidential primary election in 2024, or a six-year term, with the next election for that office occurring at the presidential primary election in 2028.
- 4) Provides for the provisions of this bill to become operative on January 1, 2023.
- 5) Makes corresponding changes.

EXISTING LAW:

- 1) Requires the Legislature, pursuant to the California Constitution, to provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county.
- 2) Permits a county, for its own government, to adopt a charter by majority vote of its electors voting on the question. Requires a county charter to provide for an elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms, and removal, among other provisions.
- 3) Provides that specified general laws adopted by the Legislature to govern the powers and officers of counties are superseded by a legally adopted county charter as to matters for which the California Constitution permits a county to make provision in its charter, except as specified.
- 4) Requires, pursuant to the California Constitution, that all county offices be nonpartisan.
- 5) Provides for various county officers, and requires the county treasurer, county clerk, auditor, sheriff, tax collector, district attorney, recorder, assessor, public administrator, and coroner to be elective offices. Permits any county office other than sheriff, district attorney, assessor, and supervisor to become an appointive office upon approval of the voters of the county, as

specified.

- 6) Requires elective county officers to be elected at the general election at which the Governor is elected, except as specified. Requires an election to select county officers to be held with the statewide primary at which candidates for Governor are nominated, except as specified. Establishes a procedure for the elections of county supervisors to be staggered by dividing the supervisors into two classes. As a result of this procedure, some county supervisors are elected in gubernatorial election years, while other supervisors are elected in presidential election years.
- 7) Provides that a candidate for nonpartisan office who receives a majority of the votes in the primary election shall be elected to that office, and provides that the office shall not appear on the ballot at the ensuing general election. Provides that if a county officer is not elected at the primary election, a county general election shall be held with the statewide general election to select county officers.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

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

Local government, specifically, county officers and their policies have an immediate and direct effect on our daily lives. However, voter turnout for local elections fluctuates significantly depending on what year elections are held. For example, in Sacramento County voter turnout was 14-16% higher in presidential election years compared to gubernatorial election years. AB 759 will promote political equality and enhanced citizen participation in county elections by aligning those elections with the presidential election.

- 2) **Elections for County Office:** As detailed above, the California Constitution requires that each county have at least three countywide elected offices—sheriff, district attorney, and assessor. Other countywide offices may be elected or appointed. As a result, the number of elected countywide offices varies by county; some counties have as few as three elected countywide offices, while one county has nine elected countywide offices. In accordance with the provisions of the Government Code outlined above, almost all countywide elected officers in California are elected in gubernatorial election years. (The exceptions are the district attorney in Los Angeles County, who is elected in presidential election years in accordance with the Los Angeles County Charter; and the mayor, city attorney, district attorney, sheriff, and treasurer in the City and County of San Francisco, who are elected at municipal elections in odd-numbered years following the gubernatorial election, in accordance with San Francisco’s charter.) About three-quarters of California counties have between five and seven countywide elected offices.

Although this bill expressly provides that it applies to charter counties, it is not clear whether this bill can be made applicable to *all* charter counties, as discussed in more detail below. Even if this bill cannot be made applicable to certain charter counties, however, it nonetheless would change the dates of the election for *most* countywide officers in

California. This bill is not expected, however, to affect the timing of the election of county supervisors. State law provides for county supervisors' terms to be staggered such that some supervisors are elected in presidential years while others are elected in gubernatorial years, and nothing in this bill affects that requirement.

- 3) **Charter Counties:** The California Constitution allows cities and counties to adopt charters, which gives those jurisdictions greater autonomy over local affairs. For counties, the Constitution specifies that a county's charter shall provide for “an elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal,” among other provisions. According to information from the California State Association of Counties, 14 (Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama) of California's 58 counties are charter counties. The remaining 44 counties are commonly referred to as “general law” counties, because they are subject to the general laws passed by the Legislature.

This bill expressly provides that it applies both to general law and charter counties. In most of California's 14 charter counties, the charter provides for elective county officers to be nominated and elected in accordance with general law. At least four county charters, however, expressly provide the time at which certain county officers must be elected. The Los Angeles County Charter requires the district attorney to be elected in presidential election years, and requires the sheriff and assessor to be elected in gubernatorial election years. The San Bernardino County Charter requires all countywide elective offices to be elected in gubernatorial election years. The Santa Clara County Charter requires the assessor, district attorney, and sheriff to be elected at the same time that supervisors are elected in the First and Fourth Supervisorial districts, thereby requiring those officers to be elected in gubernatorial election years. Finally, San Francisco's charter requires the mayor, city attorney, district attorney, sheriff, and to be elected at municipal elections in odd-numbered years following the gubernatorial election, and requires the assessor-recorder and public defender to be elected in gubernatorial election years. (San Francisco is a consolidated city and county, and therefore has the authority of both a charter city and a charter county.)

Given the autonomy granted by the California Constitution to charter counties over elected county officers, including their election or appointment and their terms, it is unclear whether the provisions of this bill can be made applicable to charter counties—especially those whose charters conflict with this bill. It could be argued that this bill, by prescribing the election at which county officers must be elected, conflicts with a charter county's authority to provide for the terms of elected county officers. On the other hand, this bill expressly permits counties to change the election of county officers from gubernatorial election cycles to presidential election cycles either by electing county officers to two-year terms at the gubernatorial election cycle in 2022, or by electing officers to six-year terms in 2022; it could be argued that this provision maintains charter counties' autonomy over the terms of county officers, and thus that this bill does not infringe on the autonomy granted to charter counties under the California Constitution.

Furthermore, the autonomy granted to charter counties over the election of county officers is considerably narrower than the autonomy that charter *cities* have over the election of city officers under the California Constitution. Notably, the Constitution provides that city charters may provide for the “conduct of city elections,” and grants “plenary authority” for a

city charter to provide for “the manner in which, the method by which, the times at which, and the terms for which...municipal officers...shall be elected or appointed.” The fact that the Constitution expressly provides that city charters may provide for the conduct of city elections and the times at which municipal officers are elected, but does not similarly specify that county charters may include those types of provisions, supports the argument that the times at which county officers are elected is a subject that is controlled by state statute, notwithstanding any provision of a county charter to the contrary.

- 4) **Presidential vs. Gubernatorial Elections:** The author of this bill argues that county officers should be elected in presidential election years rather than gubernatorial election years because presidential elections tend to have higher turnout. Accordingly, the author maintains that electing county officers in presidential election years will “promote political equality and enhanced citizen participation.”

Generally, it is true that voter participation in presidential elections in California exceeds voter participation in gubernatorial elections. In the last 40 years, voter turnout as a percentage of eligible voters has averaged 32.7% in presidential primary elections compared to 26.9% in gubernatorial primary elections (these figures exclude the 2008 primary election, when California held a standalone presidential primary election in February and a separate primary election for all other offices in June). For general elections over the same time period, voter turnout in presidential elections has averaged 57.3% of eligible voters compared to 42.4% of eligible voters in gubernatorial elections.

It isn't *always* the case, however, that participation in presidential elections exceeds turnout in surrounding gubernatorial elections. For example, turnout in the 1982 gubernatorial primary election (36.9%) exceeded turnout in the next (1984) presidential primary election (34.1%). Similarly, turnout in the 2010 gubernatorial primary election (24.1%) exceeded turnout in the next (2012) presidential primary election (22.5%).

Notwithstanding the average differences in participation levels between presidential and gubernatorial election years, there are other factors that may have a larger impact in the number of voters who participate in electing county officers. For example, existing law allows a county officer to be elected outright in the primary election if a candidate receives more than 50% of the vote. Voter participation in general elections, however, tends to be considerably higher than in primary elections. As a result, an election for a county 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, regardless of whether the election is held in a gubernatorial or a presidential election year.

- 5) **Trend Toward Consolidation of Elections:** In recent legislative sessions, concerns about low and non-representative voter turnout have been the motivation behind a number of bills that moved votes for offices and ballot measures so that they occur at elections that are expected to have higher turnout. Specifically, SB 202 (Hancock), Chapter 558, Statutes of 2011, prohibits state initiative and referendum measures that qualify for the ballot on or after July 1, 2011, from appearing on the ballot at statewide primary elections, and instead requires such measures to appear on the ballot only at the November statewide general election or at a statewide special election, among other provisions. AB 1344 (Feuer), Chapter 692, Statutes of 2011, requires a city charter proposal or amendments to a city charter to be submitted to the voters for approval or rejection only at an established statewide general,

statewide primary, or regularly scheduled municipal election date, among other provisions. SB 311 (Padilla), Chapter 184, Statutes of 2013, requires certain city charter proposals and city charter amendments to be submitted to the voters only at a statewide general election, as specified. SB 415 (Hueso), Chapter 235, Statutes of 2015, prohibits a local government 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% below the average turnout in that jurisdiction in the last four statewide general elections, as specified. Finally, AB 765 (Low), Chapter 748, Statutes of 2017, eliminated a requirement that a special election be held to vote on a local initiative measure in certain situations, and instead generally provides for local initiative measures to be submitted to voters at regularly scheduled elections. Collectively, these bills resulted in a larger number of offices and ballot measures being voted on at statewide primary, statewide general, and other regularly scheduled elections, which generally have higher turnout than standalone local or special elections.

This bill similarly seeks to improve participation in elections for countywide offices by requiring those offices to appear on the ballot at *presidential* elections—the type of elections that generally (but not always) have the highest turnout. While such a move may help improve participation in elections for countywide office, it may also create other challenges for candidates for countywide office. Most notably, candidates for countywide office would have to compete for attention with candidates for president, which could make it harder for those county candidates to communicate their message to voters.

In isolation, the changes proposed by this bill are expected to have a relatively modest effect on the number of contests or measures that voters must consider in presidential election years. In fact, because eight elective statewide offices (Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, Insurance Commissioner, and Superintendent of Public Instruction) and all four seats on the Board of Equalization are elected in gubernatorial election years along with most countywide elective offices, most voters in the state probably vote on a larger number of contests in gubernatorial election cycles than in presidential election cycles. Accordingly, moving elections for countywide office from gubernatorial election cycles to presidential election cycles may result in a more even balance of the number of contests on the ballot in each type of election cycle. If this bill prompts similar proposals to move elections for other offices (e.g., city offices; school district governing board members; special district governing board members) to the presidential election cycle, however, the presidential election ballot could quickly become much more crowded. In turn, candidates could face an even more significant challenge in competing for voters' attention with candidates for other offices.

- 6) **Prior Effort in Sacramento County:** In background materials submitted to the committee, the author noted that Sacramento County recently considered a similar proposal to amend the county's charter to require countywide elected officers to be elected during the presidential election cycle. Specifically, on July 28, 2020, the Sacramento County Board of Supervisors received a report from staff as part of an informational item about the process for the county to consolidate elections for county sheriff, district attorney, and assessor with the presidential election cycle, rather than holding elections for those offices during the gubernatorial election cycle. As part of that agenda item, staff reported that such a consolidation could occur through an amendment to Sacramento County's charter.

Because the agenda item for the July 28 meeting was an informational item, no formal action

was taken by the Board of Supervisors. At the conclusion of the discussion on that item, the chair of the board expressed his belief, based on feedback from other members of the board, that it would be fruitless to schedule a future special meeting for the board to vote on whether to place a charter amendment on the 2020 general election ballot to change the timing of county elections for sheriff, district attorney, and assessor.

- 7) **Arguments in Support:** In their letters in support of this bill, Courage California, the Democratic Party of Sacramento County, Organize Sacramento, Queer Democrats of Sacramento, and Sacramento Area Congregations Together, all state:

Currently, countywide officers, which include the Sheriff, District Attorney and Assessor, are elected concurrently with the mid-term election cycle. These elected officers wield significant power in our communities, operating jails, prosecuting criminal violations, and assessing the value of real property. However, voter turnout during the mid-term election cycle is significantly less than during the presidential election cycle, resulting in less voter participation in the election of these critically important elected officers. AB 759 will improve election access for voters and increase voter turnout by changing the timing of countywide officer elections to run concurrently with presidential elections.

The Public Policy Institute of California has found that the best instrument for increasing voter turnout is scheduling elections during the presidential election cycle. Research has also found that there is less regular voting participation by communities of color, specifically Latinos and Asian Americans, during the mid-term election cycle, which leads to systematic underrepresentation on local governing bodies. California has taken bold steps to make voting more accessible for everyone, and AB 759 builds on this important work by making the process of voting in local elections easier and more convenient.

- 8) **Arguments in Opposition:** In opposition to this bill, the California State Sheriffs' Association writes:

While proponents may point to the notion that more voters on average may vote in presidential elections as a reason to move these elections, there is no guarantee that voters will examine their choices more carefully in a presidential election year or cast more votes in any particular contest. In fact, a longer election ballot could result in voter fatigue and fewer votes cast in "down-ticket" races. Instead, the only sure outcome is the administrative burden of upending the current election calendar.

Additionally, depending on a county's action, the bill could result in county officers elected in 2022 serving a two-year term only to have to seek re-election again in 2024 if the officer hoped to continue in office. This will require county resources and result in certain officers necessarily spending more time seeking election.

- 9) **Related Legislation:** SB 271 (Wiener), which is pending in the Senate Governance & Finance Committee, changes the eligibility requirements for candidates running for county sheriff.

SB 286 (Min), which is pending in the Senate Elections & Constitutional Amendments Committee, would eliminate the ability of a candidate for elective county office to be elected at the primary election if the candidate receives a majority of the vote, and instead would provide for the two candidates for a county office who receive the most votes at the primary election to appear on the ballot at the general election, among other provisions.

REGISTERED SUPPORT / OPPOSITION:

Support

Courage California
Democratic Party of Sacramento County
League of Women Voters of California
Oakland Privacy (prior version)
Organize Sacramento
Queer Democrats of Sacramento
Sacramento Area Congregations Together

Opposition

California State Sheriffs' Association

Analysis Prepared by: Ethan Jones / ELECTIONS / (916) 319-2094