

Date of Hearing: June 15, 2022

ASSEMBLY COMMITTEE ON ELECTIONS

Isaac G. Bryan, Chair

SB 286 (Min) – As Amended June 2, 2022

SENATE VOTE: 30-7

SUBJECT: Elections: Orange County Board of Education.

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

- 1) Requires an election for the OCBE that is determined by the plurality of the votes cast for that office, with no possibility of a runoff, and is consolidated with a statewide election to be consolidated with the statewide general election in November.
- 2) Requires the term of office of all incumbents 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 Orange County Board of Education.

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.
- 2) 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.
- 3) Requires, in charter counties, that the manner of selection of the county board of education be prescribed in the county charter, or by the county board of supervisors.
- 4) Provides, generally, that the regular election to select governing board members in a county board of education be held on the first Tuesday after the first Monday in November of each odd-numbered year, except as provided in 6) below.
- 5) Requires that members of the county board of education be elected on the date and in the manner prescribed for the election of members of governing boards of school districts, provided the elections are held throughout the county on the same date. Otherwise, requires that the election be consolidated with the direct primary election. Provides that, once established, no subsequent change of circumstances shall require that the time of holding the election be changed. Provides that these provisions govern the election and term of office of members of a county board of education, except as provided in 6) below.

- 6) Allows the county board of education, after the initial election of members of a county board of education, to adopt a resolution to hold county board of education elections on the same day as the statewide direct primary election, the statewide general election, or the general municipal election. Provides that the resolution becomes operative upon approval by the board of supervisors, as specified.
- 7) Prohibits, pursuant to the California Voter Participation Rights Act, a local jurisdiction from holding an election other than on a statewide election date if holding an election on a non-concurrent date has previously resulted in a significant decrease in voter turnout, as specified.
- 8) Authorizes a charter amendment to appear on the San Diego County ballot to require candidates for county office to be elected at the general election.
- 9) Requires members of a county board of education elected at that time of the direct primary to take office on the first day of July, and members elected at the date on which members of school district governing boards are elected to take office on the second Friday in December subsequent to their election.

FISCAL EFFECT: According to the Senate Appropriations Committee, by changing the date for the election of seats on the OCBE, 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.

COMMENTS:

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

School boards, including local school districts and county boards of education, have the option of holding their single plurality elections either in the primary or in the general election. Some school boards choose to hold their single plurality election in the primary therefore eliminating even the possibility of a general election school board election. Overall, statewide general elections attract significantly more voters than primary elections. Not only is the number of voters significantly smaller compared to general elections, primary electorates also include fewer people from underrepresented populations – including youth, Black, Latinx, and Asian American people, than do fall general electorates. The overwhelming majority of county offices of education hold elections for elected office in the November general election. From the county offices of education that had candidate elections in 2020, 42 (89%) appeared on the November general election ballot. Only five county offices of education held candidate elections on the primary ballot in 2020 (Secretary of State). SB 286 would increase voter participation in the Orange County Department of Education elections and reduce voter confusion by creating uniformity around the timing of elections.

- 2) **Plurality Vote Method and Majority 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.

- 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 under this provision 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 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 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 if 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. Moreover, 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 OC school board members. Consequently, it could be argued that state law determines when and how OC school board member 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 Secretary of State (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) **Orange County Voter Turnout Data:** According to data available on the SOS’s website, between 2010 and 2018, on average 82% more Orange County voters cast ballots in statewide general elections than in statewide primary elections.

Orange County Primary and General Election Voter Turnout

Year	Votes Cast in Primary Election	Votes Cast in General Election	Approximate Percentage Increase in Votes Cast from Primary to General Election
2010	482,708	898,205	86%
2014	340,187	640,358	88%
2016	691,802	1,239,405	79%
2018	635,224	1,106,729	74%
		Average:	82%

- 6) **Report on Turnout:** 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) **Local Remedy:** As mentioned above under existing law, county boards of education have the authority to adopt a resolution to change their elections to regularly occur on the same day as the statewide general election. A resolution must be approved by the county board of supervisors in order to become effective. Existing law requires the board of supervisors, within 60 days from the date of submission, to approve the resolution unless it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled.

Committee staff is unaware of whether the OCBE has adopted such a resolution or requested to consolidate its election with the statewide general election.

- 8) **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, SB 286 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.
- 9) **Arguments in Support:** In support of this bill, the League of Women Voters of California writes:

Democracy is strongest when our representatives are chosen at elections with the highest rates and broadest diversity of voter turnout. Overall, statewide general elections attract significantly more voters than primary elections. Furthermore, primary electorates include fewer people from underrepresented populations – including youth, Black, Latinx, and Asian American people than do fall general electorates.

In recent years California has made great strides in removing impediments to voter participation and expanding the franchise. Ensuring that a larger and more inclusive pool of general election voters can vote for candidates who reflect their values is critical to making democracy work.

Finally, SB 286 will reduce voter confusion and increase uniformity around the timing of elections by bringing Orange County into conformance with most other California county boards of education, which hold their elections with the statewide general election.

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

11) **Previous Legislation:** AB 759 (McCarty) of 2021 requires counties to hold elections for district attorney, sheriff, and assessor with the presidential primary, except as specified, starting on January 1, 2023, and authorizes a county board of supervisors to adopt an ordinance to hold elections for other county officers with the presidential primary. AB 759 is on the inactive file on the Senate floor.

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.

REGISTERED SUPPORT / OPPOSITION:

Support

Fourth District PTA
League of Women Voters of California

Opposition

None on file.

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