

Date of Hearing: June 16, 2021

ASSEMBLY COMMITTEE ON ELECTIONS

Marc Berman, Chair

SB 442 (Newman) – As Amended April 13, 2021

**SENATE VOTE:** 34-0

**SUBJECT:** School districts and community college districts: governing board elections: charter cities.

**SUMMARY:** Authorizes a county committee on school district organization (county committee) 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. Specifically, **this bill:**

- 1) Repeals an exception in current law that prevents a county committee from establishing or abolishing trustee areas, rearranging the boundaries of trustee areas, changing the number of governing board members, or adopting an alternative method of electing governing board members in a school district governed by a board of education provided for in the charter of a city or city and county.
- 2) Prohibits a county committee from rearranging trustee area boundaries in a school district or community college district that has established a hybrid or independent redistricting commission for this purpose in accordance with existing law, the charter of a city or city and county, or a legal settlement.
- 3) Provides that a resolution to rearrange trustee area boundaries will take effect for the next district election occurring at least 125 days after approval by the county committee, rather than the next district election occurring at least 120 days after approval.
- 4) Authorizes a county committee, by resolution, to approve a proposal to establish trustee areas and to elect governing board members using district-based elections *without* being required to submit the resolution to the electors of the district for approval. Requires the resolution to include a declaration that the change in the method of electing members of the governing body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (CVRA). Requires the resolution to take effect upon adoption and to govern all elections for governing board members occurring at least 125 days after the adoption of the resolution.
- 5) Makes the following findings and declarations:
  - a) Since the enactment of the CVRA, hundreds of school districts and community college districts have adopted by-trustee area elections, and still many others had already employed by-trustee area elections.

- b) The Legislature has recently enacted legislation making it possible and easier for some political subdivisions to adopt district elections without an election or costly court action brought pursuant to the federal Voting Rights Act of 1965 or the CVRA.
  - c) Under current law, school districts governed by a board of education provided for in the charter of a city or city and county, in contrast to most California school districts, have no means of adopting by-trustee area elections, except through costly judicial action or by seeking an amendment to the city charter.
  - d) At-large elections may operate to dilute minority votes, and campaigning in at-large elections is significantly more expensive than in by-trustee area elections.
  - e) By-trustee area elections may be established by a county committee on school district organization to protect the right to vote, the equal protection of the laws, and the integrity of the electoral process.
  - f) The dilution of votes of a protected class in elections for the governing boards of school districts is a matter of statewide concern.
  - g) It is the intent of the Legislature to allow county committees on school district organization to establish trustee areas, and thus save a school district's financial resources, even where the charter of a city or city and county specifies a different method of electing the governing board of the school district.
- 6) Makes technical and conforming changes.

**EXISTING LAW:**

- 1) Provides, generally, that the governing board of a school district may be elected using one of the following 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, as specified.
- 4) Requires any unified school district that is coterminous with or includes within its boundaries a chartered city or city and county to be governed by the board of education provided for in the charter of the city or city and county.
- 5) 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.
- 6) Requires each county, except a city and county, to have a county committee on school district organization.
- 7) Provides a process for changing the method for electing governing board members of school districts and community college districts with the approval of the county committee on school district organization as follows:
  - a) Authorizes the county committee in any school district or community college district, *except in a school district governed by a board of education provided for in the charter of a city or city and county*, to establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members.
  - b) Authorizes a proposal to make these changes to be either initiated by a county committee, made to the county committee by a governing board of a district, or made by a petition signed by a certain number or percentage of qualified registered voters residing in the district, as specified.
  - c) Requires that the county committee hold at least one hearing in the district before approving or disapproving a proposal.
  - d) Provides that the county committee's approval of the rearrangement of trustee boundaries goes into effect 120 days later, except as specified.
  - e) Provides that the resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members, or to increase or decrease the number of members of the governing board constitutes an order of election, and requires the proposal to be presented to the electors of the district not later than the next succeeding election for members of the governing board.
  - f) Requires a petition requesting an election on a proposal to rearrange trustee area boundaries that is filed, containing at least 5% of the signatures of registered voters of a

district, or signed by at least 10% of the registered voters of a district for all other proposals, to be presented to the electors of the district, as specified.

- 8) Authorizes the governing board of a school district, after a public hearing, to request that the State Board of Education (SBE) waive all or part of any section of the Education Code or any SBE regulation, except for certain specified sections and regulations. Requires that the SBE generally approve requests for waivers unless the SBE specifically finds that certain limited exceptions apply.
- 9) Authorizes the governing board of a community college district to change election systems, in accordance with the CVRA, by passing a resolution and receiving the approval of the Board of Governors of the California Community Colleges (BOG). Provides that the governing board resolution may:
  - a) Establish elections by trustee areas, where one member of the governing board is elected from each trustee area, as specified. The governing board shall set the initial boundaries of each trustee area, as specified.
  - b) Establish a top-two primary election system, as specified.
  - c) Determine the number of governing board members, which shall be composed of not less than five and not more than nine members, as specified. Provides that the county committee procedures for changing the number of governing board members, as described above, do not apply to the governing board's determination of the number of members pursuant to this law. Provides that if the number of governing board members is changed, the governing board shall adopt new trustee areas, as specified, and that any additional member shall be elected at the district's next regular election occurring at least 123 days after the increased number of members was approved.
  - d) Provides that this law does not apply to a community college district that has been authorized by statute to provide for its own trustee elections.

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

**COMMENTS:**

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

Since the passage in 2001 of the California Voting Rights Act (CVRA) to ensure greater representation and equity in California elections, more than 200 of California's 1,037 school districts have switched from systems of at-large elections, where all trustees are elected by the entire school district, to district-based elections, where trustees are elected by specific geographic segments of a school district.

California's Education Code deliberately allows county committees that oversee school district organization to establish trustee-area elections in a prompt, inclusive and efficient process. Under current code, however, this same process is

not available for school districts “governed by a board of education provided for in the charter of a city or city and county.”

School districts subject to this provision are statutorily required, as part of the process of establishing trustee-area elections for a particular district, to schedule an official election and secure the approval of a majority of the residents of a district.

As a matter of practice, school districts subject to this provision can bypass that requirement by securing a waiver from the State Board of Education, but this additional step nevertheless still adds time and additional costs to the adoption of trustee-area elections. In some cases, the delay associated with this additional step has resulted in the holding of at-large elections that are in violation of the provisions of the CVRA.

SB 442 fixes this problem by requiring ordinances establishing trustee area elections to take effect immediately upon adoption, without the need for an additional election or waiver to affirm approval. By creating a clear path and timeline for the transition to school district at-large elections, SB 442 will streamline the process while eliminating ambiguity and possible additional costs to the public resulting from delays and prospective litigation.

- 2) **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.

- 3) **Voting Methods for School Districts and Community Colleges:** Generally under existing law, the governing board of a school district and community college districts 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 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.

Most community college district governing boards are elected by-trustee area and 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) **Different Paths to Transition to District Elections and Previous Legislation:** There are a number of different ways in which a district can transition to by-trustee area elections, including by a court order or legal settlement resolving a CVRA claim or by a ballot measure. Most transitions, however, are done voluntarily by the governing board without an election. For instance, in response to concerns that community college districts were subject to liability under the CVRA but were unable to change to district-based elections without voter approval, AB 684 (Block), Chapter 614, Statutes of 2011, established a process that permits community college district governing boards to voluntarily transition to by-trustee area elections, without requiring a popular election, by receiving the approval of the BOG, as specified.

Additionally, school district governing boards may voluntarily establish trustee areas, without requiring an election, by receiving the approval of the county committee *and* having the SBE waive the traditional requirement that the county committee's approval be subject to a vote of the district's registered voters. According to the SBE, since the enactment of the CVRA, 240 school district governing boards have voluntarily transitioned to by-trustee area elections using this waiver process.

However, not all school district governing boards may utilize this process. Under current law, county committees may not approve changes to the organization or election method of a school district governing board that is provided for in the charter of a city or city and county. This bill eliminates this prohibition thereby enabling county committees to approve changes for school district governing boards that are provided for in the charter of a city or city and county.

Additionally, this bill authorizes a county committee, by resolution, to approve a proposal to establish trustee areas and to elect governing board members using district-based elections

without being required to submit the resolution to the electors of the district for approval. SB 442 requires the resolution to include a declaration that the change in the method of electing members of the governing body is being made in furtherance of the purposes of the CVRA. This bill would also result in the elimination of the need for a school district governing board to take the extra step of seeking an election waiver from the SBE.

- 5) **Local Governments and Previous Legislation Authorizing Changes from At-Large to District-Based Elections without Voter Approval:** At the time the CVRA was enacted, voter approval was generally necessary to change the method of electing a local government's governing board. The voter approval requirement made it difficult for jurisdictions to proactively transition from at-large to district-based elections to address potential liability under the CVRA. Moreover, if a jurisdiction attempted to transition to district-based elections to address CVRA concerns, but the voters rejected the proposal, the jurisdiction nonetheless would remain subject to a lawsuit under the CVRA. Additionally, to the extent that there was racially polarized voting on the question of whether to transition to district-based elections, the results of the vote on that question could provide further evidence for a lawsuit under the CVRA.

Aside from school districts and community college districts, a number of other local government jurisdictions have faced lawsuits or threats of lawsuits under the CVRA. In response to these concerns, the Legislature has taken steps to facilitate transitions from at-large to district elections for local governments. Specifically, SB 493 (Cannella), Chapter 735, Statutes of 2015, permitted a city with a population of fewer than 100,000 people to change the method of electing council members to a by-district method of election without receiving voter approval if such a change was made in furtherance of the purposes of the CVRA. In 2016, AB 278 (R. Hernandez), Chapter 736, Statutes of 2016, was signed into law and expanded on SB 493 by allowing any city, regardless of population, to change the method of electing its governing board members from at-large to a by-district method of election without receiving voter approval. Similarly, AB 2389 (Ridley-Thomas), Chapter 754, Statutes of 2016, permitted a special district to change the method of electing its governing board members from at-large to a by-district method of election without receiving voter approval, if the change was made in furtherance of the purposes of the CVRA.

This bill provides similar parity to school districts governed by a board of education provided for in the charter of a city or city and county. As noted by the author, the goal is to transition to by-trustee elections quickly and avoid costly elections in order to do so.

- 6) **County Committees on School District Organization:** According to the CDE, a county committee "means the county committee on school district organization or a county board of education organized and acting as the county committee." In 35 counties, the county board of education acts as the county committee. In all other counties (except for San Francisco, which has no county committee), the county committee is an independent board, whose size and membership may vary based on the number of school or community college districts in the county.

A county committee "has a major role in the review and approval of proposals to change school district organization in the county." Specifically, a county committee serves as "the

local initiator, coordinator, analyst, facilitator, and arbitrator for the reorganization of school districts.” According to the California Department of Education’s School District Organization Handbook, a county committee “has the power to establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, adopt one of the alternative methods of electing governing board members, and increase to seven or decrease to five the number of members of the governing board in any school district or community college district.” A county committee, however, does not have any authority in a situation involving a school district governed by a board of education provided for in the charter of a city or city and county.

- 7) **State Board of Education Waivers:** Existing law permits the SBE to waive all or part of any section of the Education Code, with certain identified exceptions, upon request by the governing board of a school district or county board of education. Specifically, current law authorizes school districts to request the SBE to waive the requirement to hold a popular election once a county committee approves a proposal to transition a governing board from at-large to by-trustee area elections. According to a previous analysis, elections waivers constitute a significant portion of the overall waiver requests received each year by SBE. Over the past five years for which data is available, there have been as few as nine and as many as 56 waiver requests in a year. According to CDE, no waiver request was rejected during this five-year period.

SBE Election Waiver Requests: 2015-2019

Year	2015	2016	2017	2018	2019
Election Waiver Requests	15	9	56	18	46

- 8) **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 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.

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." Section 16 further 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.

9) **Arguments in Support:** In support the California Teachers Association (CTA) writes:

SB 442 makes changes to county committees on school district organization authorized to approve petitions to adopt trustee-area elections, regardless of what a city charter may say on the subject including those with an established hybrid or independent redistricting commission.

CTA believes this proposal will remove a barrier to bringing fair district-based elections to California political subdivisions resulting in an increase in minority representation on school boards.

Currently, county committees on school district organizations can do that for all school districts except where a city charter provides otherwise. Consistent with *Jauregui v City of Palmdale* (2014) 226 Cal.App.4th 781 and the California

Voting Rights Act, as amended by AB 277 (2015), city charters should not stand in the way of eliminating dilutive at-large elections.

CTA believes voting is the right and responsibility of all citizens and the state should establish voting procedures which will maximize citizen participation in the democratic process and our voting system must be free of procedures resulting in barriers to fair and equal representation.

10) **Related Legislation:** AB 1546 (Chau) of 2021 authorizes the Alhambra City Council to submit a proposal to amend the Alhambra city charter to remove all references to the Alhambra Unified School District from the charter at a special election held on specified election dates before the next established statewide general election. AB 1546 passed out of this committee on a 7-0 vote and passed out of the Assembly Local Government Committee on a 7-0 vote. AB 1546 is pending in the Senate Elections & Constitutional Amendments Committee.

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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California League of United Latin American Citizens (prior version)  
California Teachers Association  
Southwest Voter Registration Education Project (prior version)

**Opposition**

None on file.

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