

Date of Hearing: June 16, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
SB 590 (Allen) – As Amended April 27, 2021

SENATE VOTE: 37-0

SUBJECT: 2022 statewide primary election: terms of office.

SUMMARY: Extends any term of office that is scheduled to expire in March or April 2022 until after the 2022 statewide primary election, if the next scheduled regular election for the office has been consolidated with the 2022 statewide primary election. Specifically, **this bill** provides that any term of office set to expire in March or April 2022, where the next scheduled regular election for that office has been consolidated with the 2022 statewide primary election, to be extended to expire following the certification of election results from the 2022 statewide primary election and the administration of the oath of office to the newly elected officeholder.

EXISTING LAW:

- 1) Provides that the following dates 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.
- 2) Requires the statewide direct primary election to be held on the first Tuesday after the first Monday in June of each even-numbered year that is not evenly divisible by four and on the first Tuesday after the first Monday in March in each even-numbered year that is evenly divisible by four.
- 3) Requires a general municipal election to be held on an established election date, except as specified.
- 4) Requires the regular election to select governing board members in any school district, community college district, or county board of education to be held on the first Tuesday after the first Monday in November of each odd-numbered year, except as specified.
- 5) Requires a general district election to select governing board members in a special district to be held on the first Tuesday following the first Monday in November of each odd-numbered year, except as specified.

- 6) Prohibits a local government body from holding an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout, as specified. Provides that this provision does not apply to special elections. Permits a political subdivision to continue to hold elections on dates other than statewide election dates after January 1, 2018, notwithstanding this provision, if the political subdivision adopts a plan not later than January 1, 2018 to consolidate future elections with the statewide election not later than the November 8, 2022 statewide election.
- 7) Permits a city council to enact an ordinance requiring the city's general municipal election to be held on specified dates, including the date of the statewide direct primary or statewide general election, as specified. Prohibits any term of office from being increased or decreased by more than 12 months as a result of the adoption of such an ordinance, as specified.
- 8) Permits the governing body of a school district or community college district, or the members of a county board of education, to adopt a resolution requiring the body's regularly scheduled election to choose governing board members to be held on specified dates, including the date of the statewide direct primary or statewide general election. Requires an election date adopted pursuant to such a resolution to occur not less than one month or more than 12 months from the date that election was otherwise required to be held under existing law, as specified. Provides that those governing board members whose terms of office would have expired prior to the new election date shall, instead, be extended until after the new election date, as specified.
- 9) Permits the governing body of a special district to adopt a resolution requiring the district's regularly scheduled elections to choose governing body members to be held on the same day as the statewide general election, as specified. Provides that those members whose terms of office would have expired prior to the new election date shall, instead, continue in their offices until their successors are elected and qualified, but in no event shall the term be extended beyond December 31 of the year following the year in which the request for election consolidation was approved by the board of supervisors.

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

COMMENTS:

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

In 2015 the legislature passed the California Voter Participation Rights Act (CVPR), aligning municipal elections with the statewide primary and general elections to increase ballot access, promote turnout, and reduce voter fatigue. Some municipalities have already utilized a statutorily allowed twelve-month term extension to align elections with the statewide schedule in compliance with the CVPR. The COVID-19 pandemic subsequently delayed collection of necessary Census data needed for the Citizens Redistricting Commission to complete the redrawing of state and municipal representative's districts in time for the 2022 statewide primary.

SB 970 of 2020 postponed the 2022 primary to give officials additional time to complete the redistricting process. Many local officials' terms ending in March

or April of 2022 will result in vacancies on elected bodies for up to 3 months, affecting numerous councils throughout the state and preventing at least one city council from establishing the quorum until the vacancy can be filled in the postponed June primary. This bill extends the terms of those officials set to expire in March or April of 2022 to align with the postponed June 2022 statewide primary to avoid prolonged vacancies and allow voters to select their municipal and statewide representatives simultaneously.

- 2) **Local Government Election Timing:** In 1973, the Legislature approved and Governor Reagan signed SB 230 (Biddle), Chapter 1146, Statutes of 1973, which created "regular election dates" (which subsequently were renamed "established election dates"). The concept behind having a regular election schedule that governed when most elections would be held was that such a schedule would encourage election consolidations, thereby potentially reducing election costs, and could encourage greater voter participation because voters would become used to voting on these regular election dates. As detailed above, existing law recognizes five established election dates in every two-year period, two of which are statewide election dates.

While state law has long required that regularly scheduled county elections be held at the same time as statewide elections, other local jurisdictions (e.g., cities, school districts, and special districts) generally had greater flexibility when deciding when to conduct regularly scheduled elections that are held to elect governing board members. Regularly scheduled local elections that are held at the same time as the statewide primary or general election are commonly referred to as "on-cycle" elections, while elections held at other times are commonly referred to as "off-cycle" elections. With a few exceptions, local jurisdictions that hold off-cycle elections nonetheless are still required to hold their regularly scheduled elections on an established election date.

Existing law establishes procedures for a local jurisdiction to change the date of its regularly scheduled elections by adopting an ordinance or a resolution, and generally permits the terms of office of sitting governing board members to be extended as part of the change in election dates. For school districts, community college districts, and county boards of education, an incumbent governing board member's term can be extended until a successor is elected and qualified. (However, state law prohibits these jurisdictions from moving their election date by more than about one year from the election date prescribed for those jurisdictions in state law.) For special districts, a governing board member's term of office is also extended until a successor is elected and qualified, but the extension may not go beyond December 31 in the year following the year that a county board of supervisors approved the special district's election date change. Finally, for cities, the term of office of a city elected official may not be decreased or increased by more than about one year because of a change in election dates.

- 3) **Changes in Election Dates:** In 2015, the Legislature approved and Governor Brown signed SB 415 (Hueso), Chapter 235, Statutes of 2015, also known as the "California Voter Participation Rights Act." SB 415 prohibits a local government, beginning January 1, 2018, 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. As a transition period, SB 415 additionally allowed local governments to continue holding off-cycle local elections until January 1, 2022 if the governing body adopted a plan not later than January 1, 2018 to

consolidate future elections with statewide elections not later than the November 8, 2022 statewide general election.

When SB 415 became law, most local government bodies already held their regularly scheduled elections at the same time as the statewide direct primary or general election. Of those jurisdictions that held off-cycle elections, many held their regularly scheduled elections to elect governing board members in November of odd-numbered years. A smaller number of local government bodies—primarily cities—held their regularly scheduled elections in March or April of odd-numbered years, and an even smaller number held their regularly scheduled elections on various other dates. Due in part to SB 415, most local jurisdictions that historically held off-cycle elections have taken steps to move their regular elections to be held at the same time as the statewide primary or general election. According to a February 2021 report prepared by California Common Cause, 54 cities switched from off-cycle to on-cycle elections between 2016 & 2020.

At the time SB 415 was signed into law, California's statewide primary elections were held in June of even-numbered years. In 2017, however, the Legislature approved and Governor Brown signed SB 568 (Lara), Chapter 335, Statutes of 2017, which moved California's primary elections from June to March, beginning with the 2020 election. Therefore, in the months leading up to the January 1, 2018, deadline for local jurisdictions to adopt a plan to come into compliance with SB 415, the statewide primary election for 2022 was scheduled to be held in March. Local government bodies that held their regular elections in March or April of odd-numbered years therefore were able to come into compliance with SB 415 by moving the election that otherwise was scheduled for 2021 to be consolidated with the 2022 primary election, and could extend the terms of their governing board members accordingly.

Since that time, however, the Legislature approved and Governor Newsom signed SB 970 (Umberg), Chapter 111, Statutes of 2020, which changed the date of the direct primary in gubernatorial election years (even-numbered years that are not evenly divisible by four, such as 2022) from the first Tuesday after the first Monday in March to the first Tuesday after the first Monday in June. Cities that already moved their regular elections from March or April 2021 to March 2022—and that extended the terms of incumbent officeholders accordingly—cannot further extend the terms of city officeholders, since doing so would result in those officeholders receiving an extension to their terms that was longer than the 12-month maximum allowed under existing law. This problem may be unique to city officeholders; as described above, state law generally does not impose a 12-month term of office extension limit for other local jurisdictions.

Based on research by committee staff, it appears that at least 18 cities (all located in Los Angeles County) have officeholders whose terms currently are set to expire months before the June 2022 primary election, and whose terms cannot be extended until after that election is conducted without resulting in a total term extension exceeding 12 months.

- 4) **Arguments in Support:** In support of this bill, the Los Angeles County Division of the League of California Cities writes:

Under the California Voter Participation [Rights] Act of 2015, general law cities, among other political subdivisions, must hold their elections on a statewide election date. To comply, our [member cities] changed the election dates from

March of odd-numbered years to March of even-numbered years beginning with the March 2020 election. Consequently, pursuant to existing law, councilmembers elected in March 2017 had their terms extended for 12 months from expiring in March 2021 to expiring in March 2022. However, 12 months is the maximum term extension allowed by Elections Code section 10403.5(b).

We are deeply concerned about the loss of representation and challenges to decision-making ability that our member cities and constituents will experience absent a remedy.

SB 590 provides this remedy by aligning the extension of term limits already in law with the new June primary in non-presidential election years.

- 5) **Suggested Amendments:** Because the provisions of this bill are operative only through the certification of election results for the 2022 statewide primary election and the administration of the oath of office of newly elected officeholders from that election, committee staff recommends that this bill be amended to add a January 1, 2023 sunset date.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Beverly Hills (prior version)
City of Lakewood
City of Monrovia
League of California Cities (prior version)
League of California Cities, Los Angeles County Division

Opposition

None on file.

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