

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 2095 (Quirk-Silva) – As Amended March 13, 2018

SUBJECT: Congressional and legislative vacancies.

SUMMARY: Provides that a special election to fill a vacancy in the office of Representative in Congress, State Senator, or Assembly may be conducted within 180 days following the Governor's election proclamation in order to consolidate the election or primary election with *any* regularly scheduled statewide or local election instead of limiting that flexibility to situations where the special election can only be consolidated with the *next* regularly scheduled statewide or local election.

EXISTING LAW:

- 1) Requires the Governor to issue a proclamation calling a special election within 14 calendar days of the occurrence of a vacancy in a congressional or legislative office, unless that vacancy occurs after the close of the nomination period in the final year of the term of office.
- 2) Requires a special election to fill a vacancy in the office of Representative in Congress, State Senator, or Member of the Assembly to be conducted on a Tuesday at least 126 days, but not more than 140 days, following the issuance of an election proclamation by the Governor.
- 3) Provides that the special election may be conducted within 180 days following the Governor's proclamation if it will allow either the special runoff or special primary election to coincide with the *next* regularly scheduled statewide or local election involving at least half the voters in the affected jurisdiction.
- 4) Provides that the date of the special primary election is calculated by counting back nine or ten Tuesdays preceding the day of the special general election at which the vacancy is to be filled, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

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

Currently, the Elections Code allows flexibility in scheduling a special vacancy election in order to allow it to be consolidated with the *next* regularly scheduled statewide election or local election in which at least 50% of the voters in the special election are eligible to vote. This bill allows that flexibility if it allows the election to be consolidated with *any* regularly scheduled statewide or local election in which at least 50% of the voters in the special election are eligible to vote.

A recent example of where this law could have been helpful: On January 24, 2017, Xavier Becerra was sworn in as California's Attorney General, creating a vacancy in Congressional District 34, therefore requiring a special election to be

held. The 34th Congressional District overlaps significantly with the City of Los Angeles, and the City of Los Angeles had regularly scheduled local elections for March 2017, with a runoff in May 2017.

Based on when the vacancy occurred, it was too late to consolidate the CD 34 Special election with the Los Angeles City Elections in March. So under normal circumstances, the Governor might try to consolidate the CD 34 special election with the Los Angeles City Runoff Election in May. But that option wasn't available because it didn't work with the 126-140 day window for scheduling the special election, and the flexibility for scheduling outside that window wasn't available because the May election wasn't the *next* regularly scheduled statewide or local election – the March primary was.

As a result, residents of the City of Los Angeles who lived in the 34th Congressional District had 4 elections over the span of a 4 month period. If AB 2095 had been in effect, they at least could have cut the number of elections down to 3.

It's a pretty unusual scenario, but given the general direction that the state has been moving with respect to consolidating elections when possible, and holding fewer standalone special elections, there could be value in providing a bit more flexibility when scheduling a special vacancy election if it allows that election to be consolidated with a regular election that's occurring in the next 6 months.

- 2) **Consolidating Special Elections with Local and Statewide Elections:** Statistics show that voter participation is at its highest during Presidential general elections. The Presidential general election in November 2016 experienced a voter turnout exceeding 75% of registered voters. Turnout among all Californians eligible to vote, not just those registered, exceeded 58%. According to studies conducted by the Public Policy Institute of California, the numbers of voters who participate in midterm and off-cycle municipal elections drop sometimes by as much as 36%, in comparison to elections held for statewide races.

Since 2013, 27 special primary and special runoff elections have been conducted to fill vacancies in the Legislature and Congress. Of those 27 special elections, 18 took place either wholly or partially within Los Angeles County. Historical data, provided by the Secretary of State, shows that voter turnout for those 18 special elections was between 5.55% and 16.11% of eligible registered voters. Holding elections where less than 20% of the eligible voters decide the outcome is not only costly for counties, but may not accurately represent the true desires of the electorate. Consolidating those elections with a regularly scheduled statewide or local election is one way to increase turnout and reduce costs for the conduct of special vacancy elections.

Under existing state law there is a strict timeline that must be followed when filling congressional or legislative vacancies. A special election must be announced by the Governor within two weeks and held within 126 to 140 days, unless there is a regularly scheduled election occurring shortly thereafter.

State law specifies that the special election may be conducted within 180 days following the proclamation if it will allow either the special runoff or special primary election to be

consolidated with the next regularly scheduled statewide or local election involving at least half the voters in the affected jurisdiction. If there is no regularly scheduled election that the special election can be consolidated with, a standalone special election date will be selected that fits within the timeline.

- 3) **Argument in Support:** The California State Association of Counties writes in support of this bill:

Elections administration is a basic and important duty assigned to counties on behalf of the State for candidate contests and policy decisions at all levels of government, from the smallest school district to the national stage. From 1993 through 2007, the state reimbursed counties for the costs of special legislative and congressional elections. However, this provision of law expired January 1, 2008. Since that time, the State has approved only a one-time allocation to support a single recall election through the 2017 Budget Act.

AB 2095 would allow greater flexibility by permitting a special election to be consolidated with any regularly scheduled statewide or local election in which at least 50% of the voters in the special election are eligible to vote occurring within 180 days of a gubernatorial proclamation. Current law is limited only to the "next" scheduled election occurring within the 180-day timeframe. AB 2095 is a reasonable approach to help limit further costs resulting from multiple special elections called to meet the current time frames and the limited consolidation opportunities falling outside the 126-140 day time frame. Creating opportunities to reduce elections costs is especially important as county voting equipment and systems are rapidly aging and counties continue to carry more than \$60 million in unpaid debt for election-related mandates.

- 4) **Reimbursing Counties for Special Election Costs:** AB 1886 (Carrillo), which was approved by this committee on March 21, 2018 on a 6-0 vote, requires the state to pay for all expenses authorized and incurred in the preparation and conduct of special elections proclaimed by the Governor to fill a legislative or congressional vacancy taking place after January 1, 2017. AB 1886 is pending on the Assembly Appropriations Committee's suspense file.

AB 37 (Johnson), Chapter 39, Statutes of 1993, originally enacted the reimbursement provisions that AB 1886 seeks to restore. The purpose of AB 37 was to provide relief to counties who could not afford the costs associated with special elections. AB 37 was enacted in response to an increasing number of special elections to fill vacancies in the wake of the enactment of term limits. AB 37 contained a sunset date of January 1, 1996.

AB 1709 (McPherson), Chapter 1102, Statutes of 1996, extended the sunset date on AB 37 from January 1, 1996 to January 1, 2000. AB 547 (Longville), Chapter 790, Statutes of 1999, further extended the sunset date to January 1, 2005. AB 183 (Longville) of 2001 would have removed the sunset date altogether, but it was vetoed by Governor Davis, who in his veto stated: "Given the decline of the state economy, there is ample time to make this decision before the 2005 sunset." AB 783 (Jones), Chapter 714, Statutes of 2005, reinstated the reimbursement provision enacted by AB 37 and extended the sunset date from January 1, 2005 to January 1, 2006. AB 1799 (McCarthy), Chapter 727, Statutes of 2006, extended the sunset date from January 1, 2006 until January 1, 2007. AB 119 (Price), Chapter 487,

Statutes of 2007, restored the reimbursement provision to apply to any special election held on or after January 1, 2007 and before January 1, 2008.

- 5) **Related Legislation:** AB 2512 (Kiley), which is also being heard in this committee today, eliminates the ability of the Governor to temporarily fill a vacancy in one of California's United States Senate seats by appointment, and instead requires all such vacancies to be filled by a special election that is conducted in the same manner and on the same timeframe as currently applies to vacancies in the Legislature and Congress.
- 6) **Previous Legislation:** SB 1275 (Lieu), Chapter 685, Statutes of 2012, modified the timeline for conducting special elections to fill vacancies, extended the time for candidates to circulate nomination papers before a special primary election by ten days, and extended the time period for voters to apply for a vote by mail ballot before a special primary election from 25 to 29 days.

AB 3070 (Elections & Redistricting Committee), Chapter 108, Statutes of 2008, gave the Governor additional flexibility in scheduling special elections held to fill vacancies in the Legislature or Congress in an attempt to allow a larger number of special elections to be consolidated with regularly scheduled elections.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Counties

Opposition

None on file.

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