

Date of Hearing: June 29, 2021

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, 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 to approve a proposal to establish a trustee-area for the governing board of a community college district or a school district, including those whose governing board is established in a city's charter without a vote of the district's electorate. Specifically, **this bill:**

- 1) Removes exception prohibiting a school district governed by a board of education created by a city or city and county charter from utilizing a county committee on school district organization to rearrange trustee-areas, abolishing trustee-areas, adopting alternative methods of electing governing board members, as specified, and increasing or decreasing the members of the governing board.
- 2) Notwithstanding (1) above, prohibits the 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, the charter of a city, or city and county or a legal settlement.
- 3) Increases from 120 days to 125 days the date by which a county committee on school district organization's approved proposal or resolution for rearranging the boundaries of trustee-areas within a district must be enacted for the next district election unless five percent of the registered voters within district sign a petition requesting an election on the proposed rearrangement. Increases from 120 days to 125 days the date by which a petition for the rearranging of trustee-area boundaries in a given district is effective if approved by the voters, as specified.
- 4) Permits a county committee on school district organization to by resolution, approve a proposal to establish trustee-areas and to elect governing board members using district-based elections, as defined, without voter approval. Requires the resolution to include a declaration that the change in the method of electing members of the governing body is being made to comply with the purposes of the California Voting Rights Act of 2001. Requires the resolution to take effect upon adoption and will govern all elections for governing board members occurring within 125 days of its adoption.
- 5) Increases from 123 to 125 days the effective date by which an increase in the number of members on a local governing board for a community college district will apply at the next regular community college district general election of board members.
- 6) State legislative finding and declaration relative to the need for districts, whether it be K-12 school district or community college district, to adopt by-trustee-area elections for governing

boards in order to ensure compliance with the California Voting Rights Act of 2001, as defined to mitigate the dilution of minority votes, and to reduce the cost of the elections.

- 7) Makes related technical and conforming changes.

EXISTING LAW:

- 1) Establishes the California Voting Rights Act of 2001 (CRVA) to prohibit at-large method of elections, as defined, from being imposed or applied in a manner that hinders a protected class, as defined, from electing candidates of their choice or influencing the outcome of an election due to the dilution or abridgement of the protected class's rights as voters (Elections Code Section 14025 and 14026).
- 2) Permits a county committee on school district organization, except for 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 membership from five to seven or decrease membership from seven to five, to seven from five or decrease from seven to five, or adopt one of the alternative methods of electing members of the board specified in Education Code Section 5030. Authorizes a county committee on school district organization to present to the voters, as defined, a resolution to establish or abolish a governing board for a high school district and elementary school district within the boundaries of the high school district. The (Education Code (EDC) Section 5019(a) and (b)).
- 3) Authorizes the county committee on school district organization to consider a proposal to make changes describe in (2). The proposal is to be heard, discussed, and approved or disapproved at a hearing in the district. The proposal may be:
 - a) Initiated by the county committee on school district organization;
 - b) Provided to the county committee on school district by a petition signed by a specified number of voters residing in the district, as defined; or
 - c) A resolution adopted by the governing board of the district (EDC Section 5019(c)).
- 4) Clarifies if a county committee on school district organization approves the rearrangement of boundaries of a trustee-area for a district, the rearrangement will be effective for the next district election occurring within 120 days of the approval; unless, 5% of the registered voters of the district sign a petition requesting an election on the rearrangement. Authorizes if qualified registered voters within the district approve of the rearrangement of boundaries of a trustee-area for a district, the rearrangement will be effective for the next district election occurring at least 120 days after the approval (EDC Section 5019(d)).
- 5) Requires a resolution of the county committee approving a proposal to establish or abolish trustee-areas, adopt one of the alternative methods of electing governing boards, or to increase or decrease the number of governing members will be presented to the electors of the district to be considered no later than the next election for members of the governing board (EDC Section 5020(a)).

- 6) Requires a petition, requesting an election on a proposal to rearrange trustee-area boundaries, to be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next statewide primary or general election, or the next regularly scheduled election at which the electors of the district are entitled to vote if there is sufficient time to place the issue on the ballot. The petition must be filed and include at least 5% of the signatures of the district's registered voters (EDC Section 5020(b)).
- 7) Requires a petition, as defined, to establish or abolish trustee-areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members, to the electors of the district, at the next succeeding election for the members of the governing board, at the next statewide primary or general election, or the next regularly scheduled election at which the electors of the district are entitled to vote if there is sufficient time to place the issue on the ballot. The petition must be filed and include at least 10% of the signatures of the district's registered voters. Permits the county committee on school district organization to call and conduct one or more public hearing on the petition prior to the proposal being presented to the electorate (EDC Section 5020(c)).
- 8) Permits the county committee on school district organization and the registered voters of a school district or community college district with trustee-areas to at any time recommend, as specified, one of the following methods of electing members of the district governing board:
 - a) Each member of the governing board is elected by registered voters of the entire district;
 - b) One or more member residing in a trustee-area is elected by the registered voters of the particular trustee-area;
 - c) Each member of the governing board is elected by the registered voters of the entire school district or community college district, but reside in a specific trustee area which the member represents (EDC Section 5030).
- 9) Authorizes the State Board of Education (SBE) to waive, unless explicitly prohibited by statute, any Education Code or Code of Regulation pertaining to education. Requires the SBE to approve any and all waiver except for specified cases in which the waiver does not meet specified criteria (EDC Section 33050 et seq.)
- 10) Establishes the California Community Colleges (CCC) under the administration of the Board of Governors of the CCC (BOG), as one of the segments of public postsecondary education in this state. The CCC shall be comprised of community college districts (EDC Section 70900).
- 11) Establishes that CCC districts are under the control of a board of trustees, known as the governing board, who has the authority to establish, maintain, operate, and govern one or more community colleges, within its district as specified (EDC Section 7902).
- 12) Permits the governing board of a CCC district, unless the district is authorized by statute to provide for its own trustee election, to change an election system in accordance with the CRVA by passing a resolution and receiving BOG approval as follows:

- a) The governing board may establish elections by trustee-areas, where one member who resides in a specific regions is elected to represent the region on the board and may establish the initial boundaries of each trustee-area, as defined.
- b) The governing board may establish a top – two primary election system, where the two candidates with the highest percentage of votes within the trustee-area during a primary election are selected to run in the general election and shall be selected to represent the trustee are on the governing board. The governing board may establish the trustee-area boundaries, as defined (EDC Section 72036).

FISCAL EFFECT: This bill is not keyed fiscal and therefore has little to no fiscal impact on the State.

COMMENTS: *Double referral.* This measure passed out of the Assembly Elections Committee on June 16, 2021, with a vote of 7 – 0.

Need for the measure. 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.

The author further contends the need of the measure as “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 who are governed by a board of education that is established in a charter of a city or city and county”.

The author continues “School districts subject to the 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 the district.

Furthermore the author states “as a matter of practice, school districts subject to this provision can bypass that requirement by securing a waiver from the SBE, 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.”

The author concludes by stating, “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.”

California Voting Rights Act of 2001 (CVRA). SB 976 (Polanco), Chapter 129, Statutes of 2002, established the CVRA, which expanded upon the federal Voting Rights Act of 1965 and whose intended purpose was to provide protections against the dilution or abridgement of the voting rights of a protected class. Specifically, CVRA was enacted to address the use of at-large methods of election to dilute the voting rights of minority communities by having the majority

vote to support candidates that differ from candidates who are preferred by the minority communities. This racial block voting can be mitigated by having the jurisdiction divided into districts who elected a representative from the district to represent them. At the time of its passing, the CVRA was not intended to mandate the conversion of all at-large districts into single-member districts; instead it was simply to prohibit at-large election system when it was found that the method of election was being utilized to dilute or abridge the voting rights of minority communities. Essentially, the law established the legal litmus test by which an individual of a protected class could challenge the validity of an at-large election systems in court.

The first case to question the constitutionality of the CRVA was *Sanchez v City of Modesto* (2006) 145 Cal. App. 4th 660. California's Fifth District Court of Appeal ruled the act constitutional invalidating the claim by the City of Modesto that the CRVA use of race to identify polarized voting that causes vote dilution equates to reverse racial discrimination. The City of Modesto further appealed to the United States Supreme Court who rejected their appeal in October 2007. Since the outcome of this case, a litany of local jurisdictions (city councils, school districts, and CCC districts), have either converted or begun the process of converting from an at-large method of election to district-based elections to avoid litigation.

Election methods for K-12 school board or community college local governing board. As of the 2019-2020 school year, there are 1,307 school districts in the state of California according to the California Department of Education (CDE) and there are 73 CCC districts according to the CCC Chancellor's Office (CCCCO). Each of these districts are governed by a local board which is comprised of board members or trustees who are elected to represent their education constituency by one of four election systems:

- 1) At-large – The entire registered voting electorate confined within the district boundary elects candidates to represent the K-12 school district on the school board and/or the CCC district on the local governing board.
- 2) From district – The entire registered voting electorate confined within the district boundary elects candidates from specified smaller areas (trustee-areas) within the district boundary to represent the district on the K-12 school district on the school board and/or the CCC district on the local governing board.
- 3) By trustee - The district is divided into smaller trustee-areas and the registered voters from within those trustee-areas elected a candidate to represent them on the K-12 school board and/or the CCC local governing board.
- 4) Specific area primary and then at –large – The final method is for a district to be divided into smaller trustee-areas who during a primary select the top two candidates to represent that specific trustee-area in the general election. Then the entire voting constituency selects between those two candidates to represent the smaller trustee-area on the K-12 school board and/or the CCC local governing board.

In 2001, more than 90% of California's school districts elected governing boards using at-large election methods, according to an article in California School's Magazine published by CSBA in Spring of 2010. Since then a plethora of K-12 school districts have transitioned to by-trustee districts to avoid being sued.

As of 2020, based on data collected from the 73 CCC districts by the Community College League of California: 17 districts use the “from district” election method, 43 use the “by trustee-area” election method, 10 districts use the “at –large” election method, and 2 districts use the “specific area primary and then at-large” election method.

Transitioning to a by-trustee election. Since the enactment of the CVRA, there are a variety of avenues a K-12 or CCC district may use to transition to a by-trustee-area election. A district may be compelled to transition by a court order or a legal settlement resolving a CVRA claim. Districts often elect to voluntarily transition as the legal cost of defending an “at-large” election system is high and ultimately results in a court order or settlement to adhere to CVRA; for example, Palmdale paid \$4.7 million in legal costs for their court case and Modesto paid \$3 million. Due to the exorbitant legal cost of CVRA litigation, the majority of districts have elected to voluntarily transition from at-large elections to by trustee-area elections by either ballot measure or evoking one of the waivers available to the district in Education Code.

AB 684 (Block), Chapter 614, Statutes of 2011, established a streamline process by which CCC districts could comply with the CVRA without requiring an election process for approval. AB 684 permits CCC districts to change their election system if the local governing board adopts a resolution and the BOG approve the resolution. This process bypasses the requirement for the electorate to vote on the election system change which can be costly to the district and would, if the ballot measure fails, still leave the district susceptible to lawsuits due to noncompliance with CVRA. According to the Senate Elections and Constitutional Committee’s analysis from April 2021, the BOG has approved waivers for 32 CCC governing boards to transition to by-trustee elections. The most recent CCC district to seek BOG approval for a change in their election system was Barstow Community College District, who was awarded the waiver in January 2020.

For K-12 districts, the waiver process for transitioning to by-trustee districts requires additional steps and verification. First, a district must receive approval from the county committee on school district reorganization and must receive a waiver from the SBE in order to bypass having the electorate vote on the change in the election system. According to SBE, almost 240 school districts have utilized the waiver process to transition to by – trustee-area elections and of the requested waivers none have been denied. The most recent waiver provided was requested by the Torrance Unified School District and was granted during the March 2021 SBE hearing.

Even with this streamlined process for K-12 and CCC school districts, the process to transition from at-large elections to by-trustee election is lengthy and requires numerous opportunities for public comment and discussion. In 2020, the Folsom Cordova Unified School District underwent a transition from an at-large election system to a by-trustee election system. From the first adoption of the resolution to change the election system by the school board to the implementation of the new election system, it took three months and six public hearings in which the public could provide commentary.

However, none of these streamlined processes established in statute for K-12 and CCC governing boards are applicable to school districts or CCC districts whose governance is established in the city or county and city charter. SB 442 seeks to provide parity between school districts and CCC districts to enable all districts to utilize the existing statutory processes for adopting by-trustee-area elections systems without an election process.

County committee on school district reorganization. In each county, except for a county that is also a city and school district (San Francisco), there exists a county committee on school district

organization. A county committee can either be the county board of education or a separate committee who are either appointed by the superintendent or elected by an annual meeting of school district trustee representatives. According to the CDE's 2016 *School District Organization Handbook*, 39% of counties have committees that are separate from the county board of education. A county committee provides the role of reviewing and approving proposals to change a K-12 school district's organization within a county. Specifically, according to the CDE, the county committee is the local initiator, coordinator, analyst, facilitator, and arbitrator for the reorganization of school districts. The county committee will formulate plans, respond to petitions, conduct public hearing, develop and release information, and analyze proposals throughout the approval process of a reorganization. The county committee has the power to regulate the elections of members to the county board of education and they have the power to establish, rearrange, abolish, adopt alternative methods of election, or change the number of board members in any school district or community college district. However, the county committee has no authority over school districts or community college districts whose governance is established in a charter of the city or city and county.

SB 442 impact on CCC and K-12. SB 442 seeks to provide parity between school districts and community college districts regardless of how their governance is established by enabling charter established school districts and CCC governing boards the ability to utilize a streamlined process for transition from at-large districts to by-trustee districts. While the Committee could not determine how many school and CCC districts governing boards are established in city or city and county charters, the League of California Cities, suggests there are 120 charter cities in the state of California and therefore, this bill conceivably could help districts within those charter cities. Furthermore, SB 442 would 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. The SBE has indicated the majority of the waivers they receive are election waivers. Over the last five years, the SBE has approved between nine and 46 waivers annually.

SBE Election Waiver Requests 2016-2020

Year	2016	2017	2018	2019	2020
Election Waiver Requests	9	21	18	46	26

Impact on local control. In education, local control is defined as the ability for a local school board or CCC governing board to have the jurisdiction to make independent or autonomous decisions about the governance and operation of the schools or campuses within their defined regional district. The policy behind local control is founded in the philosophy that the individuals and governing structures closest to the community, in this case students, teachers/faculty, and staff, are best suited to make decisions on behalf of the constituency because of the proximity and knowledge of the localized needs. The CVRA enhances local control because it ensures representation of all areas within district on a governing board. Since SB 442 furthers the intentions of CVRA it further establishes local control on governing boards by ensuring everyone is represented and not just the majority of the district.

Authority to circumvent charters established by a city or a city and county. The Constitution of California establishes two types of cities: general law cities and charter cities. General law cities

are governed by state law, while charter cities have more localized authority and greater autonomy to provide for their own government, even to the extent of conflicting with state law. Section 16 of Article IX of the State Constitution authorizes a city charter to provide the manner and terms by which members of boards of education may be elected. Therefore, one may question whether CVRA applies to boards of education who are established by a charter. In *Jauregui v. City of Palmdale* (2013) BC 483039, the Superior Court of Los Angeles Central District ruled that the City of Palmdale's at-large method for electing their city council members violated CVRA despite the election method being established by the city's charter. In response to this lawsuit, AB 277 (Hernández) Chapter 724, Statutes of 2015, was passed and enacted to codify that CVRA addresses a statewide concern and therefore charter cities, charter counties, and charter cities and counties must comply with the provisions of the CVRA.

Arguments in support. The California Teachers Association states "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."

Previous legislation. Since the enactment, there have been copious bills pertaining to the CVRA. Below is synopsis of bills relating to the provisions in SB 442.

- 1) AB 1546 (Chau) of 2021, authorizes the City of Alhambra to submit a proposal of a special election to remove from the City's charter all reference to the Alhambra Unified School District (AUSD). AB 1546 currently resides in the Senate Elections and Constitution Amendments Committee.
- 2) AB 277 (Hernández), Chapter 724, Statutes of 2015, amended the CVRA's definition of political subdivision to expressly include a charter city, a charter county, or a charter city and county and codified the holding of the state courts regarding the applicability of the CVRA to charter cities.
- 3) AB 684 (Block), Chapter 614, Statute of 2011, authorized the local governing boards of CCC districts to change election systems in accordance with the CVRA upon approval of the governing board and the BOG.
- 4) SB 976 (Polanco), Chapter 129, Statue of 2002, established the CVRA, whose intended purpose was to provide protections against the dilution or abridgement of the voting rights of a protected class

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

None on file.

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