

Date of Hearing: May 9, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2558 (Brough) – As Amended April 5, 2018

**SUBJECT:** County officers.

**SUMMARY:** Makes a number of changes to law governing the county offices of auditor, controller, treasurer, tax collector, and director of finance. Specifically, **this bill:**

- 1) Prohibits a county board of supervisors from consolidating elective offices of auditor, controller, treasurer, tax collector, and director of finance with appointed offices of auditor, controller, treasurer, tax collector, and director of finance, except through an election, as specified.
- 2) Requires any person elected or appointed to the combined office of auditor-controller-treasurer-tax collector-director of finance to meet the qualifications required for a county auditor, treasurer, tax collector, or treasurer-tax collector, as specified.
- 3) Requires, if the duties of auditor, controller, treasurer, tax collector, and director of finance are consolidated, the board of supervisors to separate those offices through an election, as specified.
- 4) Allows, in the counties of Mendocino, Santa Cruz, Sonoma, Trinity, and Tulare, the offices of auditor-controller, treasurer-tax collector, and director of finance to be consolidated into the elected office of auditor-controller-treasurer-tax collector-director of finance through an election, as specified.
- 5) Allows a resolution adopted by a board of supervisors to create the office of auditor-controller to be repealed as follows:
  - a) If the office of auditor-controller is appointive, the resolution may be repealed by a 3/5 vote of the board at any time; and,
  - b) If the office of auditor-controller is elective, the resolution may be repealed by the voters at any primary or general election.
- 6) Requires, rather than allows, a board of supervisors at an election asking voters if the office of director of finance shall be established to also submit to the voters the question of whether the office shall be elective or appointed by the board.
- 7) Requires, for the question of whether the office of director of finance shall be established, the ballot label to read as follows: "If the office of director of finance is established, shall the office be elected by the voters or be appointed by the board of supervisors?" The ballot label shall be followed by the words "Elected" and "Appointed," from which the person voting may cast their choice as to whether the office shall be elective or appointive.
- 8) Makes conforming changes.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Author's Statement.** According to the author, "Fiscal responsibility and transparency is at the core of county governments' role. That responsibility and transparency is called into question when counties propose changing the roles of elected offices to an appointed or consolidated position without voter approval. Few realize that this action threatens the balance of power that is the foundation of democracy and good governance, which is the hallmark of well-managed counties.

"There is great risk involved when there is a concentration of financial power. When independence and accountability are removed from the financial management of counties there is a perceived loss of impartiality and motivation to disclose deficiencies, or to raise a flag when numbers don't add up or intentions are questionable. County residents and voters deserve better. AB 2558 helps to ensure that the money taxpayers put in the hands of local government is managed to the highest standards of integrity, professionalism and impartiality."

- 2) **Background.** California law establishes more than 20 specified county officers, as well as "such other officers as are provided by law." The California Constitution requires members of the board of supervisors, sheriffs, district attorneys, and assessors to be elected in all counties. Statutes generally require the following additional county officers to be elected: treasurers, county clerks, auditors, tax collectors, recorders, public administrators, and coroners. However, state law also generally allows an elected office to become an appointed office with voter approval, and to be changed back to an elected office in the same manner. Despite these general requirements, there are multiple statutes allowing specified counties to appoint specified offices by ordinance, thereby avoiding the election requirement.

State law also generally allows county boards of supervisors via ordinance to consolidate county offices in one or more of 18 specified combinations, with additional combinations available to medium- and small-sized counties. There are also numerous statutes tailored to individual counties or a group of specified counties allowing them to consolidate offices in additional various specified combinations. Statutes contain dozens of exceptions to these general provisions. Ordinances consolidating county offices are subject to referendum and can be amended or repealed by local initiative.

- 3) **General Law Counties and Charter Counties.** The California Constitution recognizes two types of counties: general law counties and charter counties. General law counties adhere to state law as to the number and duties of county elected officials. Charter counties have a limited degree of "home rule" authority that may provide for the election, compensation, terms, removal, and salary of the governing board; for the election or appointment, compensation, terms, and removal of all county officers (except the sheriff, district attorney, and assessor, who must be elected); for the powers and duties of all officers; and for consolidation and segregation of county offices.

According to briefing paper published in 2010 by the Senate Local Government Committee, "Charter counties vary significantly in how they address the consolidation of county offices. Some county charters grant county supervisors broad authority to restructure county offices

by passing ordinances. In other counties, voter-approved charter amendments are required to consolidate offices, making the charter, in some cases, more restrictive than general law."

There are 44 general law counties and 14 charter counties, as follows:

General Law Counties: Alpine, Amador, Calaveras, Colusa, Contra Costa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, San Benito, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Trinity, Tulare, Tuolumne, Ventura, Yolo, and Yuba.

Charter Counties: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama.

- 4) **Board Supervision of County Officers.** A board of supervisors may supervise the official conduct of county officers and require them faithfully to discharge their duties, but a board cannot add to those duties or relieve the officers from these obligations. A board may not direct or control the day-to-day operations of a county department, or otherwise limit the exercise of discretion vested by law in a particular officer.

The supervision of elected officers by a board of supervisors is somewhat more limited. For example, the district attorney, as public prosecutor, is a state or quasi-state officer and is under the direct supervision of the attorney general. As such, a board of supervisors does not have supervisory authority over the district attorney's prosecutorial duties. However, a board has general supervisory authority over the district attorney to the extent that the district attorney functions as a county officer.

- 5) **Bill Summary.** This bill makes the following changes to current law governing county offices of auditor, controller, treasurer, tax collector, and director of finance:

- a) **Auditor-Controller-Treasurer-Tax Collector-Director of Finance.** Current law allows a board of supervisors to establish the office of director of finance by submitting the question to the voters, and allows the board to ask voters if the office should be elected or appointed. This bill requires, rather than allows, the board to ask voters if the office should be elected or appointed. It also requires the ballot label to specifically state, "If the office of director of finance is established, shall the office be elected by the voters or be appointed by the board of supervisors?" This question is to be followed by the words "Elected" and "Appointed," from which the voter may choose.

Current law also allows a county board, by ordinance, to consolidate the offices of auditor, controller, treasurer, tax collector, and director of finance. This bill specifies that a board shall not consolidate any of these offices that are elective with any that are appointed, except through an election. It also requires any subsequent separation of these offices to be accomplished through an election. This bill also requires a person elected or appointed to this combined office to meet the qualifications that are required for a county auditor, treasurer, tax collector, or treasurer-tax collector.

- b) **Auditor-Controller.** Existing law provides for the creation of the office of controller, which shall be held ex officio by the county auditor, upon adoption of a resolution passed by a unanimous vote by a county board of supervisors. Existing law allows such a resolution to be repealed by a 3/5 vote. This bill alters the repeal process as follows:
- i) If the office of auditor-controller is appointive, the resolution may be repealed by a 3/5 vote of the board; and,
  - ii) If the office of auditor-controller is elective, the resolution may be repealed by the voters at any primary or general election.
- c) **Mendocino, Santa Cruz, Sonoma, Trinity and Tulare Counties.** Existing law allows the boards of supervisors in Mendocino, Santa Cruz, Sonoma, Trinity and Tulare counties to consolidate the offices of auditor-controller and treasurer-tax collector into the combined elected office of auditor-controller-treasurer-tax collector via ordinance. This bill allows these counties to consolidate the offices of auditor-controller, treasurer-tax collector, and director of finance into the elected office of auditor-controller-treasurer-tax collector-director of finance through an election.

This bill also makes additional conforming changes.

This bill is sponsored by the California Association of County Treasurers and Tax Collectors (CACTTC) and Orange County Auditor-Controller Eric Woolery.

- 6) **Arguments in Support.** Orange County Auditor-Controller Eric H. Woolery, co-sponsor of this bill, writes, "Under existing law, if the county board of supervisors wishes to consolidate the elected county auditor-controller, elected county treasurer-tax collector, and appointed county director of finance, the board must submit the question to the voters. However, boards generally have had the question simply ask if the elected offices will be consolidated into the appointed office, without giving the voters the option as to whether the consolidated office will be elected or appointed. AB 2558 solves this problem by making this a separate question..."

"Existing law allows the board of supervisors to repeal the controller function of the county auditor-controller, but existing law does not permit the board to transfer the controller to another officer. In other words, the board can only abolish the controller. For most counties, the controller function is the majority of the staff of the office of the auditor-controller. My office, the Orange County Auditor, became the Orange County Auditor-Controller in 1959. Repealing the controller function after nearly sixty years would wreak havoc upon my county. AB 2558 safeguards the controller function in any county with an elected auditor-controller by ensuring that the controller can only be abolished by a vote of the people."

CACTTC, co-sponsor of this bill, also notes, "The Association wishes to observe to the Committee that, unlike almost any other elected office at the local, state or national level, the majority of California's elected treasurer-tax collectors are women. CACTTC also believes it is worth noting that the leadership of CACTTC right now is composed of five elected women treasurer-tax collectors and two elected men treasurer-tax collectors. By contract, when treasurer-tax collectors have become appointed or consolidated, this trend is reversed; men comprise the majority of those holding the appointed position."

- 7) **Arguments in Opposition.** The California State Association of Counties and Urban Counties of California, in opposition, state, "Existing law through the Ralph M. Brown Act (open meetings) and California Public Records Act provides opportunities for public access and public engagement to county (board of supervisor) meetings where resolutions seeking to modify county offices and their officers are considered. In addition, state statute requires delays in implementation before ordinances can take effect. Furthermore, existing law also provides a path for local voters to overturn a county ordinance.

"AB 2558 undermines the authority of each and every county (board of supervisors) and opens the door to a larger policy discussion that should consider the implications for other county offices that can be filled by elected or appointed officials. AB 2558 is one of several bills in recent years that shift non-constitutional office authority closer to that of constitutional officers such as Sheriffs, District Attorneys, Assessors in a piecemeal fashion without taking into account local conditions."

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Association of County Treasurers and Tax Collectors [CO-SPONSOR]  
Orange County Auditor-Controller Eric H. Woolery [CO-SPONSOR]  
Amador County Auditor-Controller Tacy Oneto Rouen  
Calaveras County Auditor-Controller Rebecca Callen  
Kern County Auditor-Controller-County Clerk Mary B. Bedard  
Lassen County Auditor-Controller Diana Wemple  
Mendocino County Auditor-Controller Lloyd B. Weer  
Napa County Auditor-Controller Tracy A. Schulze  
San Benito County Auditor-Controller Joe Paul Gonzalez  
San Bernardino County Auditor-Controller/Treasurer/Tax Collector Oscar Valdez  
State Association of County Auditors  
Tehama County Auditor-Controller LeRoy M. Anderson  
Yuba County Auditor-Controller Richard Eberle

##### **Opposition**

California State Association of Counties  
Rural County Representatives of California  
Urban Counties of California

**Analysis Prepared by:** Angela Mapp / L. GOV. / (916) 319-3958