Senate Committee on Elections & Constitutional Amendments

Senate Committee on Governance & Finance

October 27, 2016

Committee Background

This background paper prepares the members of the Senate Elections & Constitutional Amendments and the Senate Governance & Finance Committee for the October 27, 2016, joint informational hearing titled "Representative Democracy for a Growing California: Should Counties Have Elected Executives and Larger Boards?" The purpose of this hearing is to explore several issues associated with county governance, including:

- Should the size of county boards of supervisors be increased? If so, by how much, and should the county's population or other demographics be a determining factor?
- Should counties, like some other jurisdictions, have an elected executive? If so, what should their duties and powers entail?
- Assuming changes should be made, what role should the state play in enacting those changes? Is it more appropriate for them to be addressed solely by the counties and their voters?

This paper summarizes current county governance and powers in California, provides an overview of demographic changes that potentially affect decisions regarding county governance, and discusses the tradeoffs associated with expanding county boards of supervisors or providing for an elected county executive officer.

Overview of County Governance and Services in California

California has 58 counties, including San Francisco, which is both a city and a county. California created 27 original counties in 1850 and last formed a new county in 1907, when Imperial County separated from San Diego County.

General Law vs. Charter Counties. Counties fall into two types: "general law" and "charter." General law counties are organized according to the generally applicable laws for county governance established by the Legislature that set the number, appointment, and election procedures for county officials, including the board of supervisors. General law counties must also adhere to state laws which require county employees to perform most county functions and restrict counties' ability to contract-out for services. In addition, the California Constitution requires all counties to elect a sheriff, district attorney, assessor, and board of supervisors. All counties elect or appoint additional county officials.

Charter counties have greater leeway to determine their own governance structure. If a county adopts its own voter-approved charter, the California Constitution requires the county to have a directly elected board of supervisors with *at least* five members, but a majority of voters can increase this number by amending the charter. A new charter, or the amendment of an existing charter, may be proposed by the Board of Supervisors, a charter commission, or an initiative petition.

There are 14 charter counties: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama. As shown in Figure 1, 8 of the 10 largest counties by population have adopted charters.

Figure 1: Most Large Counties Have Charters

County	2015 Population	Charter or General Law
Los Angeles	10,147,070	Charter
San Diego	3,244,706	Charter
Orange	3,150,934	Charter
Riverside	2,323,527	General Law
San Bernardino	2,116,461	Charter
Santa Clara	1,890,424	Charter
Alameda	1,599,888	Charter
Sacramento	1,475,381	Charter
Contra Costa	1,108,963	General Law
Fresno	981,681	Charter

Board of Supervisors. Each county is governed by a five-member board of supervisors, as required by state law, although charter counties can increase this number. The board of supervisors has the legislative power to enact ordinances and resolutions for the county. Unlike the state and federal legislatures, however, the board of supervisors also has executive and judicial powers. In its executive role, the board oversees the operations and budgets of county departments, sets priorities for programs, has sole approval over the county's budget, supervises the conduct of other officials, and controls county property. Finally, the board has quasi-judicial power to resolve claims against the county in certain circumstances and may adjudicate appeals for permits and other land use approvals.

County Services. All counties provide three levels of service:

- **Services delegated** to the counties by the state, such as social services and health services;
- **Countywide services**, such as jails, probation, district attorney, assessor, elections, clerk, recorder, and animal control; and
- **Municipal-type service**s in their unincorporated areas, such as fire protection, sheriff patrol, libraries, parks and recreation, roads, and planning. (In some counties, special districts provide municipal services.)

Is Five the Right Number of Supervisors for Large Counties?

> "…the ratio between the representatives and the people ought not to be the same where the latter are very numerous as where they are very few… Sixty or seventy [representatives] may be more properly trusted with a given degree of power than six or seven. But it does not follow that six or seven hundred would be proportionably [sic] a better depositary."
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> --James Madison in the Federalist Papers #55.

Counties With Large Populations Are Growing. In 1850, Los Angeles County's five-member board of supervisors governed just 3,530 people. Today, five Los Angeles County Supervisors govern more than 10 million county residents, a population larger than most states. Each Los Angeles County supervisor represents nearly two million constituents, which is larger than the countywide population in 53 of California's 58 counties and more than twice the number of constituents represented by each State Senator.

California's other large counties have also experienced substantial growth—San Diego County and Orange County each house more than three million people. As shown in Figure 2 (see page 4), California's large counties will continue to grow. The Department of Finance estimates that within the next 35 years, the counties of Riverside and San Bernardino will grow to exceed three million people. Over time, California's racial and ethnic composition has also changed. As shown in Figure 3 (see page 5), non-white individuals have increased to make up more than half of California's population, with Latinos gaining a plurality in 2015.

Figure 2: California's Large Counties Are Expected to Continue Growing

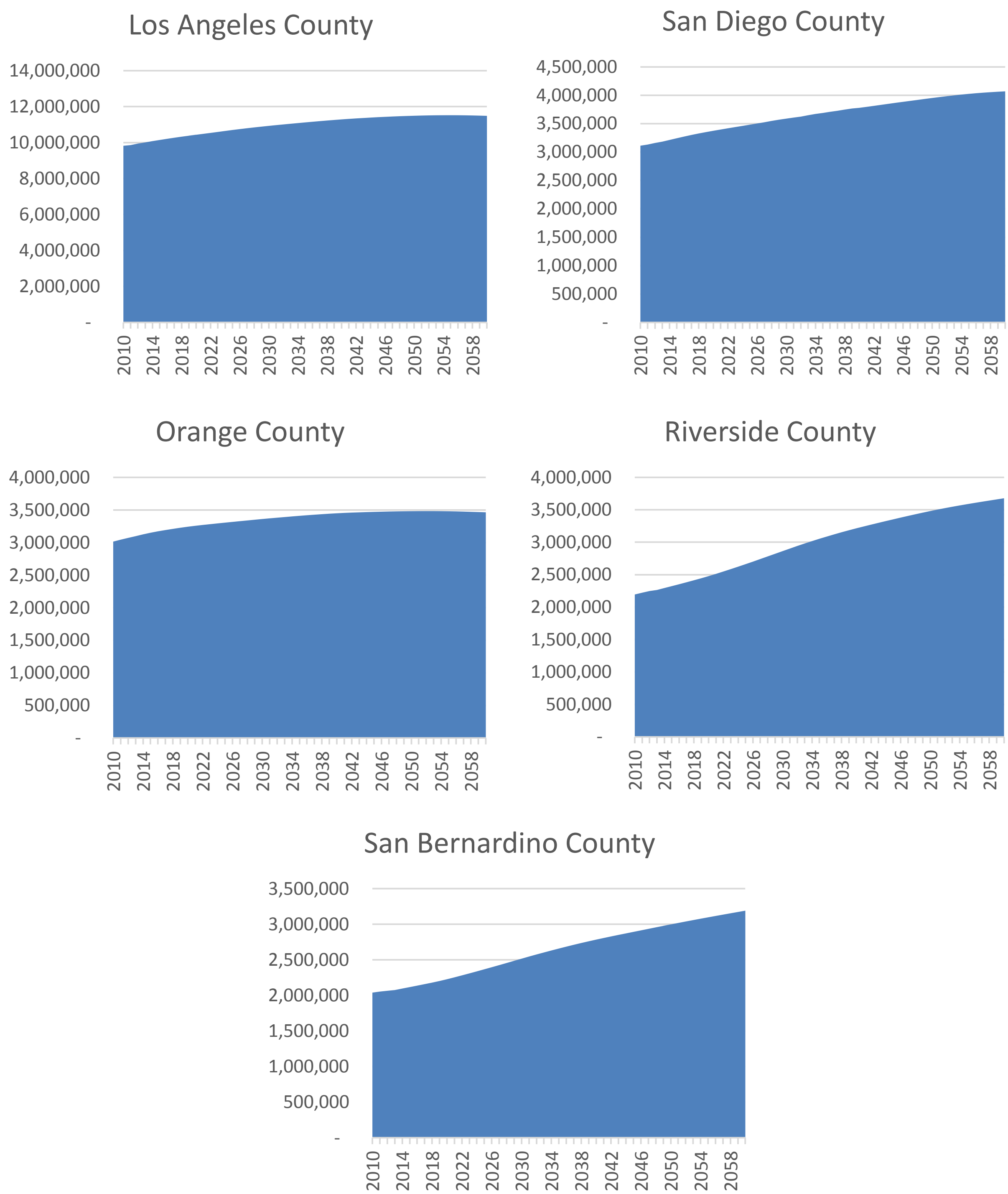

Figure 3: California Has Become a Minority-Majority State

Race/Ethnicity	1990	2000	2010	2015
Non-Hispanic or Latino				
White	57%	47%	40%	38%
Black or African American	7%	6%	6%	6%
American Indian and Alaska Native	1%	1%	0%	0%
Asian	9%*	11%	13%	13%
Native Hawaiian or Pacific Islander		0%	0%	0%
Other Race	0%	0%	N/A	N/A
Two or More Races	N/A	3%	2%	3%
Hispanic or Latino of Any Race	26%	32%	38%	39%
Total Population	**29,760,021**	**33,871,648**	**37,341,978**	**38,896,969**

*Combined Asian and Native Hawaiian or Pacific Islander

Past attempts to enlarge boards failed. Despite these past and projected demographic changes, San Francisco is the only county in California that has chosen to elect more than five supervisors (eleven, through a 1932 charter amendment). Recent attempts to increase the number of supervisors in other counties have been unsuccessful:

- On November 6, 1962, Los Angeles County voters rejected Proposition D, which would have expanded the Board of Supervisors from five members to seven members.
- At the November 2, 1976 General Election, Los Angeles County voters rejected Proposition B, which would have expanded the Board of Supervisors from five members to nine members.
- Proposition C on the November 3, 1992 ballot, would have increased the Los Angeles County Board of Supervisors from five to nine members, failed by a margin of about two-to-one.
- On the March 26, 1996 primary ballot, voters in Orange County rejected Measure U, a charter proposal to expand the board of supervisors from five members to nine members.
- On November 7, 2000, more than 64% of Los Angeles County voters rejected Measure A, which would have increased the number of county supervisors from five to nine.

SCA 8 (Mendoza, 2015). In 2015, the Senate Governance and Finance Committee and the Senate Elections and Constitutional Amendments Committee approved Senate Constitutional Amendment 8 (Mendoza, 2015), although it was held on the Senate floor. If it had been passed by the Legislature and approved by voters at a statewide election, the final version of SCA 8 would have required counties with more than three million residents to be governed by a body of seven or more members, beginning with the 2020 decennial United States Census. Accordingly, SCA 8 would have initially affected the counties of Los Angeles, San Diego, and Orange. In addition, SCA 8 would have prohibited counties from later reducing the number of members on the governing body to fewer than seven members if the county population later drops below three million. SCA 8 would have also capped expenditures for the governing body and its staff in those counties at the amount that was allocated for those purposes in the fiscal year after the release of the census finding a population of more than three million people, adjusted for inflation.

Policy Considerations for Increasing Board Size

Gains in representativeness. Some observers suggest that five-member boards of supervisors provide few opportunities to increase the diversity of the members to better represent demographic changes in California's most populous counties. Dividing a large county-wide population into smaller and more numerous districts creates smaller and more uniform constituencies that may be more easily represented by a single individual. For example, non-white residents are underrepresented among supervisors in four of the five largest counties:

- Los Angeles County: 74% of the residents are non-white; 2 of 5 supervisors.
- Orange County: 58% of the residents are non-white; 3 of 5 supervisors.
- Riverside County: 62% non-white; 1 of 5 supervisors.
- San Bernardino: 68% non-white; 2 of 5 supervisors.
- San Diego: 53% non-white; no non-white supervisors.

By contrast, 59% of San Francisco residents are non-white, as are 18 of the 32 supervisors (56%) that have held office since the city adopted by-district elections in 2000. This difference may partly be due to San Francisco's smaller district size—each supervisor represents less than 80,000 residents.

The magic number. The extreme ratio between constituents and supervisors can lead to political alienation and a lack of political responsiveness. As a result, large counties may be abdicating a key role of local governments: to be the government closest to the people. Adding two members to the board of any county with a population of greater than 3 million residents modestly reduces that ratio, but still leaves each supervisor representing nearly as many constituents as a state Assemblymember. A more dramatic increase in the number of supervisors may be needed to deliver improved responsiveness and representativeness. For example, a 2016 report by the Los Angeles County Civil Grand Jury recommended adding 6 new seats to that county's board. At the same time, a greater number of supervisors may find it more difficult to reach agreement, slowing down the policy-making process and undermining any hoped-for gains.

Bigger boards or smaller counties? It is unclear whether adding members to a board of supervisors is the best way to ensure that a county government is reflective of, and responsive to, the full diversity of interests within each county's population. The massive demographic changes that the state has experienced since Imperial County became the 58th county in 1907 may warrant a reconsideration of existing county jurisdictions. Streamlining the process for creating new counties from those with large populations might provide similar benefits to expanding an existing county's board. However, building a new county administration and reconstituting the many relationships between counties, the state, the federal government, and other local governments may result in costs that outweigh the benefits to county residents.

State interest vs. home rule. Voters in any charter county can increase the size of its board. Over a span of more than four decades, Los Angeles County voters have rejected multiple charter amendments that would have expanded the board of supervisors. Orange County voters also rejected a county charter proposal to create a nine member board of supervisors. If local voters don't support expanding boards of supervisors, why should legislators ask voters throughout California to amend the Constitution to tell Los Angeles County and Orange County residents how to govern themselves? On the other hand, if these reforms are intended to address consolidated political power at the local level among individuals or groups, it may be difficult to rely on local action to address those concerns.

Nudge. One possible way to balance the desire of state legislators to improve the responsiveness and representativeness with local autonomy over governance structures could be to require populous charter counties to hold an election on increasing the number of county supervisors after each census, as was proposed by SCA 17 (Marks, 1993). A recurring election requirement could ensure that the issue of expanding boards of supervisors would regularly be placed on voters' agenda. However, such an amendment would not guarantee that any board of supervisors would, in fact, be expanded.

Capping expenditures. Some voters may be concerned that increasing the number of supervisors will simply drive up administrative costs. Capping the board's expenditures, as proposed by SCA 8, may help ensure passage of a constitutional amendment (or a charter amendment at the local level). On the other hand, a larger board may incur necessary and prudent administrative costs that increase faster than the rate of inflation. Such a cap could therefore potentially impair county governance. Does inclusion of a cap increase the likelihood of a measure passing so as to outweigh this potential downside?

Would an Elected County Executive Improve County Governance?

As noted above, the board of supervisors fulfills both legislative and executive roles in every county except San Francisco (San Francisco elects a mayor as the chief executive for the city and county). Among other roles, the board of supervisors appoints a county administrative officer (CAO) or similarly titled position that heads the executive branch, directs the operations of county departments and performs administrative tasks.

The specific authorities that the board of supervisors grants to a CAO can vary by county. The CAO generally prepares the budget and coordinates the actions of department heads, but may also assist with labor negotiations on behalf of the board and act as the chief financial officer (along with other county officers such as the treasurer-tax collector and auditor-controller). Department heads may report directly to the board of supervisors or to the CAO. For example, under Los Angeles County's current system, all 34 appointed department heads report directly to the board, while in Orange County, most department heads report to the County Executive Officer.

History of Los Angles County strong executive. In 2007, Los Angeles County adopted an ordinance temporarily restructuring the relationship between the board and the CAO. Among other goals, the restructuring was intended to: benefit county residents by allowing the board to focus its efforts on large, complex policy issues and constituent response; streamline communication between departments and the board; create a single point of accountability for departmental activities; and foster interdepartmental collaboration.

The ordinance renamed the CAO as the "Chief Executive Officer" (CEO), created 5 new Deputy CEO positions to oversee "clusters" of departments with related programs, and delegated additional authority to the CEO, including greater responsibility for:

- Oversight, evaluation, and recommendation for appointment or dismissal of county officials.
- Development and management of board meeting agendas, including selecting issues raised by department heads for the board's consideration.
- Implementation of board policies within and across clusters.
- Budgeting, including coordination of budget requests from department heads.
- Legislative policy and intergovernmental affairs.
- Employee relations and compensation/classification.
- Resolution of constituent complaints where feasible without board involvement.

In 2009, an independent assessment of the strong CEO model found a general consensus that the reorganization had improved collaboration and integration of county services among departments. Other aspects were less successful. For example, some local officials noted filtering and censoring of communication between the board and department heads. Others noted that the new structure was excessively hierarchical. Furthermore, the CEO and department heads considered the reorganization to be much more effective than did the board of supervisors.

Strong CEO model repealed in 2015. Following this assessment, the CEO developed a strategic plan intended to address some of the findings in 2010. However, in July 2015, the board repealed the ordinance authorizing the strong CEO model and eliminated the five Deputy CEO positions, citing a need to improve communications and reduce bureaucratic layers between departments and the board of supervisors. Under the new structure, the scope of the CEO's role has been reduced significantly. In particular, the CEO no longer has direct control over appointed department heads; they report directly to the members of the board of supervisors.

Grand jury recommends electing a county executive. Every county has a Civil Grand Jury to investigate allegations of misconduct by public officials and issue reports that examine the efficiency and effectiveness of local governments. In July 2016, the Los Angeles County Civil Grand Jury examined the county's governance structure. It found that returning to the decentralized structure that existed prior to 2007 had several negative consequences, including:

- Rapid changes to policy priorities, which reduces the ability of departments to plan for long-term goals and needs;
- Micromanagement of departmental activities by the board of supervisors, which stifles creativity and makes it difficult to retain qualified people;
- Less structured communication between the board and department heads, which prevents the county from realizing some service improvements;

To address these issues, the Grand Jury made several recommendations including to approve a charter amendment that provides for an elected county chief executive, with powers similar to those provided to the CEO in the 2007 reorganization. The Los Angeles Board of Supervisors rejected this recommendation in its formal response, noting that the 2007 model had impeded communication to such a degree that it reduced the effectiveness of county government.

Policy Considerations for an Elected County Executive

Slow and Steady. Some observers, including the Los Angeles County Grand Jury and some former supervisors, argue that the current structure results in ineffectual policies and counterproductive direction to executive departments. A CAO that is responsible to five elected officials who may have the narrow interests of their districts in mind may be deprived of the ability to consider the needs of the entire county. A county executive that is elected county-wide may be better positioned to resist these pressures, provide consistent leadership, and implement policies to achieve long-term goals. On the other hand, introducing an elected county executive may reduce the responsiveness of county government to specific constituent issues. For example, numerous assessments identified a slowdown in communication as a negative of Los Angeles County's strong CEO model.

Who's in? Elected executives are common among large local governments. Five of California's largest cities have mayors that serve as the head of the executive branch and are elected by a citywide vote: Los Angeles, San Diego, San Francisco, Fresno, and Oakland. Together these cities provide services to 7.2 million people. Outside of California, many of the largest counties in the nation have elected county executives, including the counties that encompass the cities of Chicago, Houston, Miami, Brooklyn, Queens, Dallas, Seattle, and Fort Worth. In addition, nearly all counties in Texas, Arkansas, Tennessee, and Kentucky elect their county executives. Populous counties face complex challenges and provide a wide array of services. These counties may benefit from a strong elected executive that can take decisive action on issues of countywide importance. They also have larger budgets and tax bases, so the per-capita cost of a new elected official is small. However, less populous counties with smaller budgets may find that any improvements in policymaking may not offset those costs.

What authority should the executive have? An elected county executive could be endowed with a variety of powers, such as the ability to hire and terminate department heads and other personnel, propose a budget, spend money, enter into agreements with other governments, and control county property, or veto legislation. Greater authority could enhance the ability of an elected county executive to elevate countywide concerns or break through impasses. But granting too much authority to a single individual might undermine the very separation of powers that the elected executive is intended to strengthen. The Los Angeles County Grand Jury report may provide a guide; it recommended adopting the same powers provided to the strong (appointed) CEO in 2007.

Who decides? Local voters have the ability to adopt or amend a county charter through the initiative process to add an elected county executive and delegate specific powers if they think it will improve county governance. In fact, voters have defeated two prior proposals to elect an executive for Los Angeles County in 1992 and 1978. Should state lawmakers and voters statewide substitute their judgment for that of the local residents that benefit from county services? If state legislation is necessary to encourage the adoption of elected county executives, some decisions could still be left to local voters. For example, state law could specify the general powers to be possessed by an elected county executive, but allow charter counties to choose to adopt that model.

Other Background Information

Accompanying this paper are reports and other materials that elaborate on some of the concepts discussed in this paper, including:

- Voter Information Guide containing Measure A from the November 7, 2000 election. Would have increased the Los Angeles County Board of Supervisors to nine members.
- National Association of Counties, "An Overview of County Administration." Provides a basis for comparing California county governance to other states.
- Los Angeles County Civil Grand Jury "2015-2016 Final Report." Analyzes Los Angeles County governance structure and recommends (1) increasing the number of seats on the board of supervisors, and (2) amending the county charter to provide for an elected county executive.