

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2220 (Cooper) – As Introduced February 18, 2016

SUBJECT: Elections in cities: by or from district.

SUMMARY: Allows all cities, regardless of population, to change the method of electing council members to a by-district method of election without receiving voter approval.

Specifically, **this bill:**

- 1) Repeals the population limitation on a law that permits the legislative body of a city with a population of fewer than 100,000 people to adopt an ordinance, without being required to submit the ordinance to the voters for approval, that requires the members of the legislative body to be elected by districts, thereby giving all cities, regardless of population the flexibility that is provided by that law.
- 2) Makes conforming changes.

EXISTING LAW:

- 1) Permits a city, with a population of fewer than 100,000 people, which elects its city council members at-large to enact an ordinance switching its election method to by-district without submitting the change to voters for approval. Requires ordinances adopted pursuant to this provision to be accompanied by a declaration that the change is being made in furtherance of the purposes of the California Voting Rights Act (CVRA) of 2001.
- 2) Permits a city, with a population of 100,000 people or more, to submit an ordinance to the voters of the city to provide for city council members to be elected in any of the following ways:
 - a) By districts, in five, seven, or nine districts;
 - b) From districts, in five, seven, or nine districts
 - c) By districts, in four, six, or eight districts, with a mayor who is elected citywide; or,
 - d) From districts, in four, six, or eight districts, with a mayor who is elected citywide.

Provides that adoption of the ordinance shall occur only upon the approval of the voters.

Provides that the term "by districts," for the purposes of this provision, means the election of members by voters of the district alone and provides that "from districts" means the election of members who are residents of the district from which they are elected, but who are elected by voters of the city as a whole.

- 3) Prohibits, pursuant to the CVRA, an at-large method of election from being imposed or applied in a political subdivision (including a city, county, city and county, school district, and special district) in a manner that impairs the ability of a protected class of voters to elect the candidate of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.

- 4) Provides that a violation of the CVRA may be established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.
- 5) Requires a court, upon finding a violation of the CVRA, to implement appropriate remedies, including the imposition of district-based elections, which are tailored to remedy the violation.
- 6) Permits any voter who is a member of a protected class and who resides in a political subdivision where a violation of the CVRA is alleged to file an action in the superior court of the county in which the political subdivision is located.

FISCAL EFFECT: Keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

AB 2220 provides large cities with a cost effective method and streamlined process to convert from at-large to by-district council elections while furthering the purposes of the California Voting Rights Act (CVRA).

Last year, the Governor signed SB 493 (Cannella) which allows jurisdictions under 100,000 in population the option to convert from at-large to by-district elections by ordinance or resolution. AB 2220 would do the same for those jurisdictions over 100,000 in population who opt to convert to by-district elections. Cities with populations over 100,000 in California need a streamlined tool they can utilize to convert to by-district elections if they decide to convert on their own or when they are facing a potential lawsuit under CVRA. Since the enactment of SB 493, 3 cities have already elected to convert to by-district elections by ordinance or resolution. This tool serves as a cost saving measure to jurisdictions who face possible litigation under the CVRA because it allows them to settle with the plaintiffs and convert to by-district election system quicker than by placing the question on the ballot for voter approval. Under current law jurisdictions over 100,000 are required to go to the voters to approve converting to by-district elections. For cities over 100,000 in population requiring them to gain voter approval on the conversion can be costly and prolongs the process that they are able to take towards a settlement. Cities have reported costs ranging from \$1,000,000 to \$6,000,000 in legal fees and election costs associated with CVRA litigation and "by-district" conversions. These important local resources can be better used providing critical services for the community.

- 2) **At-Large vs. District-Based Elections:** Under existing law, a city can be organized so that members of the city council are elected at-large or are elected using districts. In cities that have districts, the city can be organized such that the registered voters in the entire city vote for councilmembers from each of the districts (known as "from district" elections), or the city can be organized so that only the registered voters in a district vote in the election to choose the councilmember from that area (known as by-district elections). In either instance, a candidate for the city council must reside in the district in which he or she is running.

For any city with a population of fewer than 100,000 people that wishes to move from an at-large method of electing their city council members, an ordinance may be adopted to switch their method of voting to by-district elections without seeking the approval of the voters, but a city with a population of 100,000 or more requires the voters of the city to approve the change. If the voters reject the proposed change, the city must continue holding elections using an at-large method of election.

- 3) **California Voting Rights Act of 2001:** SB 976 (Polanco), Chapter 129, Statutes of 2002, enacted the CVRA to address racial block voting in at-large elections for local office in California. In areas where racial block voting occurs, an at-large method of election can dilute the voting rights of minority communities if the majority typically votes to support candidates that differ from the candidates who are preferred by minority communities. In such situations, breaking a jurisdiction up into districts can result in districts in which a minority community can elect the candidate of its choice or otherwise have the ability to influence the outcome of an election. Accordingly, the CVRA prohibits an at-large method of election from being imposed or applied in a political subdivision in a manner that impairs the ability of a protected class of voters to elect the candidate of its choice or to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of the protected class.

The first case brought under the CVRA was filed in 2004, and the jurisdiction that was the target of that case—the City of Modesto—challenged the constitutionality of the law. Ultimately, the City of Modesto appealed that case all the way to the United States Supreme Court, which rejected the city's appeal in October 2007. The legal uncertainty surrounding the CVRA may have limited the impacts of that law in the first five years after its passage.

Since the resolution of the Modesto case, however, many local jurisdictions have converted or are in the process of converting from an at-large method of election to district-based elections due to the CVRA.

Generally, in order to move from an at-large method of election to a district-based method of selecting governing board members, local government bodies must first receive approval from the voters. This voter approval requirement can be an obstacle for jurisdictions to proactively transition to district-based elections in order to address potential liability under the CVRA. If a jurisdiction attempts to transition from at-large to district-based elections to address CVRA concerns, but the voters reject the proposal, the jurisdiction nonetheless remains subject to a lawsuit under the CVRA. Furthermore, to the extent that there is racially polarized voting on the question of whether to transition from at-large to district-based elections, the results of the vote on that question could provide further evidence for a lawsuit under the CVRA. As a result, many jurisdictions have sought ways to transition from at-large to district-based elections without having to receive voter approval for such a change.

Since the enactment of the CVRA in 2001, at least 160 local governments have switched from at-large to district based elections. While some jurisdictions did so in response to litigation or threats of litigation, other jurisdictions proactively changed election methods because they believed they could be susceptible to a legal challenge under the CVRA, and they wished to avoid the potential expense of litigation.

Notably, many school districts have transitioned from at-large to district-based elections without receiving voter approval in an effort to avoid potential liability under the CVRA. Even though state law generally requires such a transition to be approved by the voters in a school district, existing law also permits the State Board of Education (SBE) to waive all or part of any section of the Education Code, with certain identified exceptions, upon request by the governing board of a school district or county board of education. The SBE generally is required to approve any and all requests for waivers unless it makes a finding that one of the seven enumerated conditions exists. Since 2009, the SBE has approved more than 130 waivers to permit school districts to change from at-large to district-based elections without voter approval, as would otherwise be required by the Education Code.

Furthermore, in response to concerns that community college districts were subject to liability under the CVRA but were unable to change from at-large to district-based elections without receiving voter approval, AB 684 (Block), Chapter 614, Statutes of 2011, established a process under which a community college district could transition from at-large to district-based elections without receiving voter approval if such a transition was first approved by the Board of Governors (BOG) of the California Community Colleges, among other provisions. Since the enactment of AB 684, the BOG has received and approved requests from approximately 20 community college districts to change their election method from at-large to district-based elections.

This bill would permit cities of any size (not just cities with populations of less than 100,000) to transition to district-based elections without receiving voter approval, which could allow cities that potentially face liability under the CVRA to proactively change their method of electing city council members.

- 3) **Arguments in Support:** In support of this bill, the Lawyers' Committee for Civil Rights writes:

AB 2220 would authorize a city to enact an ordinance switching its city council election method to by-district without submitting it to the voters for approval. The bill would also allow the city council to by-pass the voter approval process for those jurisdiction with populations over 100,000 as determined under the most recent decennial census in the same way that last sessions' SB 493 (Cannella, Statutes of 2015) conferred that authority on general law cities under 100,000 in population and provide uniformity.

The CVRA is designed to protect against at-large election systems that dilute minority voting rights. As a result of the CVRA, local governments throughout the state have been transitioning from at-large to district based elections. Since the passage of SB 493 last year, at least 3 municipalities have already taken advantage and have voluntarily converted to district based elections without the added difficulty or confusion.

- 4) **Related or Previous Legislation:** AB 2389 (Ridley-Thomas) which was approved by this committee on a 5-2 vote and is pending in the Assembly Local Government Committee, would authorize the governing body of a special district to adopt a resolution, without being required to submit the resolution to the voters for approval, that requires members of its governing body to be elected using district-based elections to further the purposes of the CVRA.

AB 278 (Roger Hernández) which is currently pending in the Senate Elections and Constitutional Amendments Committee, contains provisions that are identical to this bill, but also contains other provisions governing the creation of district boundaries in cities. AB 278 was previously considered and approved by this committee but at that time, it would have required general law cities with a population of 100,000 or more to elect city council members through by-district elections.

SB 493 (Cannella), Chapter 735, Statutes of 2015, permits a general law city with a population of fewer than 100,000 people, to enact an ordinance switching its election method to by-district without receiving voter approval. SB 493 additionally requires any ordinance adopted to change the method of election to be accompanied by a declaration that the change is in furtherance of the purposes of the CVRA.

- 5) **Double-Referral:** This bill has been double referred to the Assembly Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

League of California Cities (co-sponsor)
Mexican American Legal Defense and Educational Fund (co-sponsor)
American Civil Liberties Union of California
City Clerks Association of California
City of Fontana
City of Rancho Cucamonga
Lawyers' Committee for Civil Rights
League of California Cities, Los Angeles County Division
League of Women Voters of California

Opposition

None on file.

Analysis Prepared by: Lori Barber / E. & R. / (916) 319-2094