

Date of Hearing: March 30, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2389 (Ridley-Thomas) – As Introduced February 18, 2016

SUBJECT: Special districts: district-based elections: reapportionment.

SUMMARY: Permits a special district to change the method of electing its governing board members from at-large to a by-district method of election without receiving voter approval.

Specifically, **this bill:**

- 1) Authorizes 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.
- 2) Defines a "special district," for the purposes for these provisions, to mean an agency of the state formed pursuant to general law or special act for the local performance of governmental or proprietary functions within limited boundaries, except a city, county, city and county, school or community college district, or special assessment district.

EXISTING LAW:

- 1) Provides that the principal act of a district shall govern whether directors are elected by divisions or by the district at-large.
- 2) Provides that the term "by districts" means the election of members by voters of the district alone; provides that "from districts" means the election of members who are residents of the districts from which they are elected, but who are elected by voters of the jurisdiction as a whole.
- 3) Prohibits, pursuant to the California Voting Rights Act of 2001 (CVRA), an at-large method of election from being imposed or applied in a political subdivision (including a 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: None. Keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

Current law provides for different forms of government for special districts in California. Depending on the type of district, a special district can be organized so that members of the governing board are elected at-large or are elected using districts.

In jurisdictions that have districts, the districts can be organized such that the registered voters in the entire district vote for governing board members from each of the districts (known as "from district" elections), or the jurisdiction can be organized so that only the registered voters in a district vote in the election to choose the board member from that area (known as "by district" elections). In either case, a candidate for the governing body must reside in the district in which he or she is running.

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.

If a special district wishes to move from at-large elections to a district-based method of election to address concerns under the CVRA, existing law provides no uniform process for accomplishing that conversion.

This voter approval requirement, however, can make it difficult and costly for jurisdictions to proactively transition to district-based elections in order to address potential liability under the CVRA.

AB 2389 allows a special district that is concerned about liability under the CVRA to voluntarily convert from at-large to district-based elections without the expense of a ballot initiative.

This bill mirrors a similar process that is already in place for general law cities with populations of fewer than 100,000 people.

2) **At-Large vs. District Elections:** Under existing law, a special district can be organized so that its governing board members are elected at-large or elected using districts. Jurisdictions that are organized using district-based methods are usually organized as "by-district" or "from-district." A "by-district" jurisdiction allows only the registered voters in a district to vote in the election to choose the governing board member from that area. A "from-district" jurisdiction permits registered voters in the entire jurisdiction to vote for governing board members from each of the districts. In either case, a candidate for the governing board must reside in the district in which he or she is running.

There is no uniform process for a special district to convert from at-large elections to a district-based method of election. Current law provides that the principal act of a special

district shall govern whether the governing board members are elected by districts or by the district at-large. Moreover, depending on the kind of district and its size, existing law may specify which method of election it is required to use to elect its governing board members as well as the process for conversion.

- 3) **Previous Legislation and Suggested Amendment:** Last year the Legislature approved and the Governor signed SB 493 (Cannella), Chapter 735, Statutes of 2015, which permits a city with a population of fewer than 100,000 people to change the method of electing council members to a by-district method of election without receiving voter approval. This bill mirrors this process and permits the governing body of a special district, as defined, to adopt a resolution, without being required to submit the resolution to the voters for approval, to elect the members of its governing body using district-based elections.

As mentioned above, it is the author's intent to make it easier for a jurisdiction to proactively transition to district-based elections in order to address potential liability under the CVRA. However, in order to ensure this bill does not facilitate changes in the method of electing governing board members in special districts that are unrelated to CVRA concerns, the committee and the author may wish to consider an amendment to require a governing board that changes the method of electing members pursuant to this bill to make findings and declarations when adopting the resolution that the changes are being made in furtherance of the purposes of the CVRA. This amendment also mirrors provisions of SB 493.

- 4) **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 case in Modesto was resolved, 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.

In many cases, local government bodies must receive voter approval to move from an at-large method of election to a district-based method of election for selecting governing board members. This voter approval requirement can make it difficult 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.

- 5) **Arguments in Support:** The sponsors of the bill, Mexican American Legal Defense and Educational Fund (MALDEF), write in support:

Current law provides for different forms of government for special districts in California. Depending on the type of district, the code may provide for district elections or at-large elections, and/or may provide for conversion to district election by voter approval or by Board ordinance alone. AB 2389 (Ridley-Thomas) would give the Boards of all special districts in California the authority to convert from at-large to by-district elections by Board ordinance, in the same way that last session's SB 493 (Cannella, Statutes of 2015) conferred that authority to general law cities under 100,000 in populations and provide uniformity.

AB 2389 would thus provide to special districts the flexibility to end minority vote dilution caused by at-large electoral systems without enduring costly litigation. For example, in 2015 MALDEF filed a voting rights lawsuit against Fallbrook's Public Utility District under the CVRA. Fallbrook recently entered into a court-approved settlement agreement, and has now converted to district elections. This legislation would have given the Fallbrook Board of Directors the option to avoid litigation entirely, with the same result...

- 6) **Related Legislation:** SB 927 (Anderson), permits directors of any public utility district that is wholly or partially within the County of San Diego to be elected at large, by subdistrict, or from subdistricts, as defined. SB 927 is pending in the Senate Governance and Finance Committee.
- 7) **Double-Referral:** This bill has been double-referred to the Assembly Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

Mexican American Legal Defense and Educational Fund (sponsor)

American Civil Liberties Union of California

Association of California Water Agencies

California Association of Recreation and Park Districts

Lawyers' Committee for Civil Rights

Opposition

None on file.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094