

Date of Hearing: August 29, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Shirley Weber, Chair
AB 278 (Roger Hernández) – As Amended August 11, 2016

CONCURRENCE IN SENATE AMENDMENTS

ASSEMBLY: (June 3, 2015) SENATE: 33-5 (August 17, 2016)

(vote not relevant)

SUBJECT: Municipal elections.

SUMMARY: Permits any city, regardless of population, to change the method of electing its governing board members from at-large to a by-district method of election without receiving voter approval and provides that if voter approval is sought, the proposed boundaries for the districts are not required to appear on the ballot.

The Senate amendments delete the Assembly version of the bill, and instead:

- 1) Repeal 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) Repeal a requirement that a city ordinance submitted to the voters asking whether they want to adopt a by-district or from-district method of election for members of the legislative body must include the boundaries and number of each such district. Require the legislative body to prepare a proposed map describing the boundaries and numbers of the legislative districts after the ordinance is passed, as specified. Permit the legislative body to seek public input, including accepting proposed maps submitted by the public. Require the district boundaries to be effective beginning the first election following approval by the legislative body for which election consolidation deadlines have not passed, as specified.
- 3) Require a legislative body that is establishing or adjusting district boundaries pursuant to this bill to hold public hearings on the boundaries, as required by existing law.
- 4) Require the legislative body of a newly incorporated city that has voted to elect members of the city council by districts, when establishing the boundaries of city council districts, to comply with applicable provisions of the federal Voting Rights Act of 1965.
- 5) Make technical, nonsubstantive, and 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 elections

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 of 2001 (CVRA).

- 2) Permits a city to submit an ordinance to the voters 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 the change shall occur, except as specified, 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) 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. 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.

AS PASSED BY THE ASSEMBLY, this bill required general law cities with a population of 100,000 or more, as specified, to elect members of the city council by district.

FISCAL EFFECT: None. This bill has been keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Prior Committee Consideration of this Bill:** In March 2015, this committee considered and approved this bill on a 4-1 vote. At the time, this bill would have prohibited general law cities with a population of 100,000 or more, as specified, from electing city council members through at-large elections, and instead would have required those cities to elect city council members by district, among other provisions. Subsequent to the committee's approval of this bill, it was amended in the Senate to delete the Assembly-approved provisions of the bill, and to add the current provisions. As a result, this bill has been re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.

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

AB 278 advances a more fair, comprehensive and balanced process to the potential adoption of district-based elections. I have worked diligently to address all the issues raised by the opposition to this bill over the last two years.

The bill accomplishes the following:

1. The bill broadens the applicability of SB 493 (Cannella) to allow all city councils, regardless of the city's population size, to adopt the district-based election method directly instead of going to the voters to seek that change.
2. In the event a city council chooses not to adopt a change in the election method and instead seek voter approval, the approval of the district maps would occur after the voters have approved changing to district-based elections, not concurrently. This is similar to how the map adoption process is envisioned to work under SB 493 which was approved last year.

The decoupling of the question of whether a city should convert to district-based elections and the subsequent approval of the maps allows for two very important objectives:

- Voters are better able to focus solely on the main question regarding the need to change the election method, and
- Saves money as the drawing of the maps matters most when voters have approved changing to the district-based election method.

AB 278 provides an opportunity to bring forward a more comprehensive modification to our state's district-based election law.

3) **At-Large vs. District Elections and Previous Legislation:** 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 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 case, a candidate for the city council must reside in the district in which he or she is running.

Until last year, any city that wished to move from at-large elections to a district-based method of election generally needed voter approval in order to make such a change. SB 493 (Cannella), Chapter 735, Statutes of 2015, however, permitted 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 if such a change was made in furtherance of the purposes of the CVRA. Any city with a population of 100,000 or more still generally needs voter approval in order to change from at-large elections to a district-based method of election.

- 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 all, at least 160 local government bodies have transitioned from at-large to district-based elections since the enactment of the CVRA. 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.

- 5) **Related Legislation:** AB 2220 (Cooper), which is pending on the Governor's desk, 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. AB 2220 was approved by the Assembly on a 60-11 vote.

AB 350 (Alejo), which is also being heard in this committee today, requires a political subdivision that changes to, or establishes, district-based elections to hold at least two public hearings both before and after drawing a preliminary map or maps of the proposed district boundaries, as specified, among other provisions.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (prior version)

Opposition

None on file.

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