

Date of Hearing: March 25, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 278 (Roger Hernández) – As Amended March 18, 2015

SUBJECT: District-based municipal elections.

SUMMARY: Requires cities with a population of 100,000 or more, as specified, to elect members of the city council by district. Establishes procedures that these cities must follow when creating city council districts. Specifically, **this bill:**

- 1) Requires the legislative body of a city with a population of 100,000 or more, as determined by the most recent federal census, to adopt an ordinance, without submitting that ordinance to the electors of the city for approval, that provides for the members of the legislative body to be elected by district. Requires the ordinance to provide for members of the legislative body to be elected in one of the following ways:
 - a) By districts, in five, seven, or nine districts; or,
 - b) By districts in four, six, or eight districts, with an elective mayor, as specified.
- 2) Requires a city that is establishing districts pursuant to this bill to do all of the following as part of the process of establishing districts:
 - a) Conduct hearings pursuant to the following requirements:
 - i) Hold at least four public hearings over a period of at least 30 days prior to drawing a draft map of boundaries;
 - ii) Hold at least two public hearings over a period of at least 30 days after a draft map of boundaries has been drawn and published, but before adopting a final map;
 - iii) Publish a calendar of hearings at least seven days before the first hearing;
 - iv) Hold hearings consistent with the following:
 - (1) In locations that are accessible to people with disabilities;
 - (2) To the greatest extent possible, in numerous locations to maximize community participation;
 - (3) To the greatest extent possible, in locations accessible by public transportation;
 - (4) To the greatest extent possible, on different days of the week and at varying times to maximize community participation; and,

- v) Provide simultaneous translation of a hearing held pursuant to this bill, if requested at least 24 hours before the hearing, in any language in which the city is required to post translated copies of ballots at any precinct in the city, pursuant to existing law.
- b) Encourage public participation in the drawing of the boundaries of the districts for the legislative body by doing all of the following:
- i) Developing an outreach and education plan, including media and social media strategy, in partnership with community organizations and individuals that advocate on behalf of, or provide services to, non-English-speaking individuals and individuals with disabilities;
 - ii) For each hearing required by this bill, publicizing at least one public service announcement using a media outlet that serves English-speaking individuals for purposes of informing individuals of the boundary-drawing process and the hearing date;
 - iii) For each hearing required by this bill, publicizing at least one public service announcement in any language in which the city is required to post translated copies of ballots at any precinct in the city, pursuant to existing law, using a media outlet that serves speakers of that language, for purposes of informing individuals of the boundary-drawing process and the hearing date;
 - iv) Publishing an Internet Web site that explains the boundary-drawing process and its significance, that includes notice of the hearings, and that explains how public testimony may be submitted. Requires the Internet Web site to be available in each language in which the city is required to post translated copies of ballots at any precinct in the city, pursuant to existing law;
 - v) Providing the means for the submission of public testimony by mail, by telephone, online, and in person at the hearings; and,
 - vi) Conducting any other outreach or publicity the legislative body determines will encourage public participation in the drawing of the boundaries of the districts for the legislative body.
- 3) Requires a city that is establishing districts pursuant to this bill to establish and adjust the boundaries of those districts in accordance with provisions of existing law governing the adjustment of the boundaries of city council districts, except as provided.
- 4) Requires a city council that is establishing districts pursuant to this bill to ensure that all of the following criteria are satisfied in preparing the boundaries of the districts for the city council:
- a) The boundaries are drawn to ensure fair and effective representation of all city residents including racial, ethnic, and language minorities;

- b) The boundaries conform to the requirements of the United States Constitution and all applicable federal and state laws;
 - c) The boundaries respect communities of interest;
 - d) The boundaries have substantially equal populations as determined by the most recent federal decennial census;
 - e) The boundaries are geographically compact and contiguous; and,
 - f) The boundaries are drawn without regard to the advantage or disadvantage of incumbents, challengers, or any political party.
- 5) Requires communications between any party and the city council regarding the drawing of boundaries of the districts for the city council to be disclosed to the public and maintained by the city in a publicly available log. Provides that communications related to the dissemination of procedural information about the drawing of boundaries of the districts for the city council, including but not limited to, communications regarding the time and place of meetings or how to submit public testimony, need not be disclosed or maintained in the log.
- 6) Makes corresponding changes.

EXISTING LAW:

- 1) Permits a general law city that elects its councilmembers through at-large elections to provide for city council members to be elected by districts or from districts. Provides that such a change shall occur only upon the approval of voters of a measure submitted to them by the city council or placed on the ballot through the initiative process. Provides that the term "by districts," for the purposes of this provision, 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 city as a whole.
- 2) 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 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.
- 3) 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.
- 4) 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.

- 5) 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.
- 6) Requires a general law city that elects councilmembers "by districts" or "from districts" to adjust the boundaries of the council districts following each decennial federal census so that the districts are as nearly equal in population as may be. Requires the districts to comply with specified provisions of the federal Voting Rights Act. Permits the city council to give consideration to the following factors when establishing the boundaries of districts:
 - a) Topography;
 - b) Geography;
 - c) Cohesiveness, contiguity, integrity, and compactness of territory; and,
 - d) Communities of interests of the districts.
- 7) Requires, in counties where the Secretary of State (SOS) has determined it is appropriate, each precinct board to post at least one copy of the ballot with ballot measures and ballot instructions printed in Spanish. Provides that the ballot shall also be posted in other languages if a significant and substantial need is found by the SOS. Provides that in determining whether it is appropriate to require a county to post a copy of the ballot at a precinct in a language other than English, the SOS shall find a need to post such translated copies of the ballot if the number of residents of voting age in the precinct who are members of a single language minority and who lack sufficient skills in English to vote without assistance equals three percent or more of the voting-age residents in the precinct.
- 8) Permits a city to provide for its own governance through the adoption of a charter by a majority vote of its electors voting on the question.
- 9) Permits a city charter to provide for the conduct of city elections, including the manner in which, the method by which, the times at which, and the terms for which municipal officers are elected or appointed.
- 10) Provides that a legally adopted city charter supersedes all laws inconsistent with that charter with respect to municipal affairs.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

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

While the diversity of city councils across the State has increased, evidence suggests that at-large based elections unsuccessfully reflect minority representation in large cities with sizeable minority populations. Currently, minority groups make-up close to 60% of the population in California. District-based elections offer several benefits. Each geographic area is represented which helps ensure an even distribution of city resources. While each voter is represented by all city council members, each voter has one specific council member to petition to for help.

This method of disenfranchisement of communities is found throughout the state, including in Antioch, Concord, Daly City, Fontana, Oxnard, Rialto and West Covina.

AB 278 will create stronger accountability in city councils for voters of the districts.

2) **General Law Cities Only:** The California Constitution gives cities the ability to exercise greater control over municipal affairs through the adoption of a charter by a majority vote of the city's electors voting on the question. Cities that have not adopted charters are commonly referred to as "general law" cities, because such cities are subject to the state's general laws, regardless of whether those laws concern a municipal affair.

The California Constitution grants charter cities the plenary authority, subject only to restrictions contained in specified provisions of the California Constitution, to provide for the manner in which municipal officers are elected or appointed. Because this bill seeks to regulate the manner in which municipal officers are elected, the provisions of this bill likely would not be applicable to charter cities, but instead would apply to general law cities.

3) **Cities Affected:** According to the 2010 United States Census, there are 66 cities in California with a population of at least 100,000 residents. Of those 66 cities, 41 are charter cities, and thus likely would not be affected by the provisions of this bill.

Of the 25 general law cities in California with a population of 100,000 or more, 22 (Antioch, Concord, Corona, Costa Mesa, Daly City, El Monte, Fairfield, Fontana, Fremont, Fullerton, Garden Grove, Murrieta, Norwalk, Ontario, Orange, Oxnard, Rancho Cucamonga, Santa Clarita, Simi Valley, Temecula, Thousand Oaks, and West Covina) elect city council members at-large, and one (Elk Grove) elects city council members at-large from districts. Those 23 cities would be required to change their method of electing city council members under the provisions of this bill. (The City of Santa Clarita has reached a settlement agreement in a CVRA lawsuit, but that agreement calls on the city to use an alternative voting method known as cumulative voting in an effort to address the voting rights issues raised in the lawsuit. Because cumulative voting would be conducted at-large in the city, this bill would require the City of Santa Clarita to move to by-district elections, notwithstanding

the tentative settlement. Additionally, two lawsuits brought under the CVRA challenging Fullerton's at-large method of election for city council members are pending.) Based on current population growth rates, as estimated by the United States Census Bureau, four additional cities (Clovis, Jurupa Valley, Mission Viejo, and Rialto) likely would be covered by this bill following the 2020 census.

The cities of Escondido and Moreno Valley are the only general law cities in California with a population of at least 100,000 that currently elect city council members by districts.

- 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.

Prior to the enactment of the CVRA, concerns about racial block voting led to the consideration of a number of bills that sought to prohibit at-large voting in certain political subdivisions (for instance, AB 2 (Chacon), of the 1989-90 regular session; AB 1002 (Chacon), of the 1991-92 regular session; AB 2482 (Baca), of the 1993-94 regular session; and AB 172 (Firebaugh), of the 1999-2000 regular session all proposed to prohibit at-large elections in school districts that met certain criteria; additionally, AB 8 (Cardenas) and AB 1328 (Cardenas), both of the 1999-2000 regular session, sought to eliminate the at-large election system within the Los Angeles Community College District). None of these bills became law—in many cases the bills were vetoed, while in other cases, the bills failed to reach the Governor's desk. For those bills that were vetoed, the veto messages typically stated that the decision to create single-member districts was best made at the local level, and not by the state.

The CVRA followed these unsuccessful efforts; rather than prohibiting at-large elections in certain political subdivisions, the CVRA instead established a policy that an at-large method of election could not be imposed in situations where it could be demonstrated that such a policy had the effect of impairing the ability of a protected class of voters to elect a candidate of its choice or its ability to influence the outcome of an election. The CVRA specifically provided for a prevailing plaintiff party to have the ability to recover attorney's fees and litigation expenses to increase the likelihood that attorneys would be willing to bring challenges under the law.

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. Generally, 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, though the State Board of Education and the Board of Governors of the California Community Colleges have the authority to waive the voter-approval requirement for school districts and community college districts, respectively. There is no procedure in law for cities or special districts to receive a waiver for the voter-approval requirement to move from at-large to district-based elections if those governmental bodies have concerns about liability under the CVRA. In at least some cases, however, judges have approved settlements to CVRA lawsuits that allow the governing body to transition from at-large to district-based elections without voter approval.

In all, more than 140 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) **State Mandates:** By requiring certain cities to elect city council members by districts, instead of at-large, this bill would impose a state-mandated local program, for which the state could be required to reimburse those cities for the costs of transitioning from an at-large election system to a district-based election system. On the other hand, political subdivisions that transition from at-large to district-based elections systems on their own, either as the result of a legal challenge brought under the CVRA, or for other reasons, must bear their own costs of changing election methods.

The last four state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2015-16 fiscal year. In light of this fact, and given the fact that the CVRA provides a remedy to compel jurisdictions to move from at-large to district-based elections when at-large elections are impairing the ability of a protected class of voters to influence the outcome of an election, the Committee may wish to consider whether it is desirable to establish this new mandate when the Legislature has voted to suspend the existing election mandates.

- 6) **Procedural Requirements and Standards for Cities Transitioning To District Elections:** AB 1440 (Campos), Chapter 873, Statutes of 2014, requires any political subdivision that is switching from an at-large method of election to a district-based method of election to hold at least two public hearings on the proposed district boundaries prior to adopting those boundaries. This requirement will continue to apply to any city that transitions from at-large to district-based elections, and that is *not* required to do so pursuant to this bill. For example, if a charter city, or a general law city with a population of less than 100,000, chooses to

transition from at-large to by-district elections, the hearing requirements of AB 1440 would continue to apply.

Cities that are required to change from at-large to by-district elections pursuant to this bill, however, would be subject to much more extensive procedural and hearing requirements than under existing law. In addition to being required to hold at least six public hearings prior to adopting district lines, cities forced to transition to by-district elections under this bill would face restrictions on the locations, dates, and times of public hearings; would be required to develop extensive outreach and educational plans and media strategies, potentially in multiple languages; could be required to provide real-time translations of public hearings, potentially in multiple languages; and would be required to comply with criteria in creating district boundaries that differ from the criteria that generally apply when local government entities draw district lines. According to the author, these requirements are intended to ensure that the process that cities follow when creating district boundaries is open and inclusive, and to ensure that cities do not undermine the voting rights of citizens when creating district lines.

These requirements, however, also will increase the cost to cities that are required to transition from at-large elections under this bill, and in turn, could increase the cost to the state to reimburse those cities if this bill is found to impose a reimbursable state mandate. Apart from the costs, some of these requirements could impose significant logistical burdens to cities that are required to comply. For example, this bill requires cities, under certain circumstances, to provide simultaneous translations of public hearings into languages other than English and to conduct voter outreach and education and media strategies in languages other than English. Those requirements could apply if as little as three percent of the voting age population of a single precinct in a city with a population of 100,000 or more are limited-English proficient and are members of a single language minority, even if there are very few members of that language minority in the city as a whole.

- 7) **Operative Date:** This bill does not contain an operative date, a deadline by which cities with a population of 100,000 or more must adopt an ordinance transitioning to by-district elections, or a date by which cities must begin conducting elections using the by-district method of election. The committee and the author may wish to consider an amendment to this bill to establish a reasonable timeline for cities to comply with the provisions of this bill.
- 8) **Arguments in Support:** The sponsor of this bill, the Mexican American Legal Defense and Educational Fund, writes:

Minority representation is affected by the electoral structure. California is now a minority-majority state, but number of minorities alone is no guarantee of political influence. A lack of fair representation still exists in cities with at-large elections.

An at-large method of electing a city council can result in vote dilution for minority residents, impairing their ability to elect candidates of choice or to influence the outcome of City elections. In contrast, district based elections can correct underrepresentation of minority governing board members, decrease

campaign costs, enhance direct neighborhood representation, promote councilmember accessibility and responsiveness, and increase voter turnout.

The provisions of AB 278 that address the process for drawing the lines of the new districts will enhance voter engagement by providing meaningful access through hearings at which community members will have the opportunity to submit testimony regarding their neighborhoods and their communities of interest – testimony that is crucial to the design of districts that are representative of the economic, racial, ethnic, educational, linguistic and social diversity of the jurisdictions. The public will also have the opportunity to review draft maps and submit proposals of their own prior to adoption of the final maps. The hearings will be held at times and in places designed to maximize community input, as is the outreach that precedes the hearings. Finally, language access and transparency are built into the provisions regarding process, and the districting criteria reflect this State's interest in ensuring effective and fair representation on local governing boards.

9) **Arguments in Opposition:** In opposition to this bill, the League of California Cities writes:

This measure is *a sweeping and costly unfunded state mandate*. Impacted cities would have to hire consultants to draft maps and analyze election patterns—with costs ranging from \$50,000 to \$100,000 per city to draw various maps. Attorneys with specialized expertise in the federal and state election laws would need to be retained to advise and protect cities from litigation over how district lines are drawn.

Additionally, this bill is based around an arbitrary population threshold and does not take into account that the affected cities all have unique population and geographic characteristics. In the event there is an issue of vote dilution, the CVRA provides significant legal leverage to any voter who seeks to challenge an at-large election system of a city, school district, community college district or any other district authorized by the state. In fact, under the CVRA it is easier for plaintiffs to bring and prevail in lawsuits alleging that their votes are diluted in at-large elections.

In short, for those who prefer existing at-large election systems to be closely examined for conformance with the CVRA, existing law is robust and working. *New mandates are unnecessary.*

10) **Technical Amendment:** Committee staff recommends the following technical amendment to address a drafting error in this bill:

On page 5, line 18, strike out "State" and insert: "States".

11) **Related Legislation:** AB 277 (Roger Hernández), which is also being heard in this committee today, expressly provides that the CVRA applies to charter cities, charter

counties, and charter cities and counties.

12) **Previous Legislation:** This bill is similar to AB 2715 (Roger Hernández) of 2014. AB 2715 was approved by this committee, but was held on the Assembly Appropriations Committee's suspense file.

AB 450 (Jones-Sawyer) of 2013 would have required the Los Angeles Community College District to elect governing board members by trustee area, instead of at-large. AB 450 was approved by this committee on a 4-1 vote, but was held on the Assembly Appropriations Committee's suspense file.

AB 1979 (Roger Hernández) of 2012 would have required the City of West Covina to elect city council members by districts, instead of at-large. AB 1979 was pulled by the author prior to being heard in this committee.

13) **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)

Opposition

Californians for Electoral Reform (unless amended)
City Clerks Association of California
City of Murrieta
City of Norwalk
City of Temecula
Howard Jarvis Taxpayers Association
League of California Cities
Southwest California Legislative Council

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094