

Date of Hearing: August 29, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 350 (Alejo) – As Amended August 17, 2016

**CONCURRENCE IN SENATE AMENDMENTS**

ASSEMBLY: (January 25, 2016) SENATE: 27-12 (August 22, 2016)

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(vote not relevant)

**SUBJECT:** District-based municipal elections: preapproval hearings.

**SUMMARY:** 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. Requires that written notice be provided before an action can be brought against a political subdivision under the California Voting Rights Act of 2001 (CVRA).

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

- 1) Require a political subdivision that changes from an at-large method of election to a district-based election, or that establishes district-based elections, to do all of the following before adopting the ordinance establishing district-based elections:
  - a) Hold at least two public hearings over a period of no more than 30 days before drawing a draft map or maps of the proposed boundaries, as specified;
  - b) After draft map or maps are drawn, publish and make the draft maps available along with the potential sequence of elections if the terms of office under the new districts are to be staggered;
  - c) Hold at least two additional public hearings after the release of the draft map or maps, with the first hearing held no sooner than seven days after the release of the map or maps, and the second hearing held no more than 45 days after the first hearing, as specified;
  - d) Make any revised draft map available to the public for at least seven days before the map can be adopted; and,
  - e) Give special consideration to the purposes of the CVRA, as specified, when determining the sequence of district elections if the terms of office are to be staggered.
- 2) Require a prospective plaintiff to send a written notice to a political subdivision, as specified, before commencing an action against that political subdivision under the CVRA.
  - a) Prohibit a prospective plaintiff from commencing an action under the CVRA within 45 days of the written notice being provided.

- b) Permit a political subdivision, prior to receiving a written notice or within 45 days after receiving a written notice, to pass a resolution outlining its intention to transition to district-based elections, as specified, including a discussion of specific steps the jurisdiction will undertake to facilitate the transition. Prohibit a prospective plaintiff from commencing an action to enforce the CVRA within 90 days of the passage of such a resolution.
- c) Permit a prospective plaintiff that sent a written notice to a political subdivision before that subdivision passed a resolution of intention to transition to district-based elections to recover the cost of the work product generated to support the notice, as specified. Require the political subdivision to reimburse the prospective plaintiff for reasonable costs claimed, or an amount to which the parties mutually agree, within 45 days of receiving the written demand from the prospective plaintiff, as specified. Limit the amount that a prospective plaintiff may recover from such a political subdivision to the lesser of \$30,000, as adjusted for inflation, or the cost of the work product, as specified.

**EXISTING LAW:**

- 1) Requires a political subdivision that changes from an at-large method of election to a district-based election to hold at least two public hearings on a proposal to establish the district boundaries of the political subdivision before a public hearing at which the governing body of the political subdivision votes to approve or defeat the proposal.
- 2) Prohibits, pursuant to the CVRA, 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 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) 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.
- 4) 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.
- 5) Permits a prevailing plaintiff party in an action brought under the CVRA, other than the state or political subdivision thereof, to recover reasonable attorney's fees and litigation expenses including, but not limited to, expert witness fees and expenses. Prohibits a prevailing defendant party from recovering any costs unless the court finds the action to be frivolous, unreasonable, or without foundation.

**AS PASSED BY THE ASSEMBLY**, this bill expanded the CVRA to allow challenges to district-based elections to be brought under the CVRA, as specified.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, costs for districts to hold the required public hearings would be state reimbursable, and statewide costs would depend

on the number of governments changing to district-based elections. Costs would be minimized to the extent the public hearings are consolidated with regularly-scheduled meetings of the governing body. Overall, annual state costs are unknown, but likely minor.

**COMMENTS:**

1) **Prior Committee Consideration of this Bill:** In January, this committee considered and approved this measure on a 4-2 vote. At the time, this measure would have expanded the CVRA to allow challenges to district-based elections to be brought under the CVRA, as specified. Subsequent to the committee's approval of this measure, 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 was re-referred to the Assembly Judiciary Committee and to this committee for further consideration pursuant to Assembly Rule 77.2. On August 25, 2016, the Assembly Judiciary Committee adopted a recommendation that the Assembly concur in the Senate amendments on a 6-3 vote.

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

Last year, the City of Anaheim began its transition from at-large city council elections to district-based elections after a lawsuit by [the] American Civil Liberties Union of Southern California and Latino activists in 2012. In November 2014, the people of Anaheim approved two ballot measures that would effect this transition. The first approved district maps provided for two Latino plurality districts and one majority Latino district.

In November of 2015, the Anaheim City Council scheduled the elections for the two Latino plurality districts for 2016, but scheduled the election for the only Latino majority district for 2018. The scheduling of the only Latino majority district in a midterm election year could have the effect of putting the election for a district whose population consists of a majority of a protected class during a cycle in which turnout is traditionally decreased.

This decision created an outrage amongst the Latino community in the city, and forced Anaheim to schedule the majority Latino district for 2016 before facing another lawsuit [for] violating the state and Federal Voting Rights Act.

Under existing law, nothing would stop another city from following Anaheim's example in scheduling its staggered city council districts in a manner that would dilute and suppress the vote of a protected class in violation of the state Voting Rights Act.

AB 350 will require local governments that are transitioning from at-large to district-based elections under a court order to hold at least two public hearings before drawing a draft map and two public hearings after the one or more draft maps are drawn. For governments who are willing to transition to district-based elections, this bill will allow cities to have 90 days to pass a resolution of intent or

an ordinance to transition to district-based [elections] before any legal action can be taken by outside parties alleging a violation of the CVRA.

- 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 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.

- 4) **Arguments in Support:** In support of this bill, the League of California Cities writes:

[T]he CVRA provides generous recovery for attorney's fees. As a consequence, cities have incurred extremely high legal costs. Over the past 7 years local agencies have paid an estimated 20 million dollars plus in legal fees to plaintiffs' attorneys. This does not include internal costs paid by local agencies for their own staff that are entangled in CVRA related litigation. As it stands, millions of taxpayer general fund dollars are being taken off the table for increased civic engagement, infrastructure investment, public safety or other critical public services and instead going to plaintiffs' attorneys.

The most recent amendments reflected in AB 350 ensure that cities are protected from serial litigants who have been targeting cities and other local agencies for financial gain rather than working with the local jurisdiction and stakeholder groups to ensure the best possible outcome. The League supports increased civic outreach and is committed to encouraging our cities to provide outreach to minority and non-English speaking communities throughout this process. AB 350

will boost outreach efforts to all communities. By providing a safe harbor period for cities that are making good faith efforts to switch to districts by ordinance, cities are incentivized to work *with* all stakeholders on district conversion through increased public outreach without the fear of soaring legal fees.

- 5) **Related Legislation:** AB 278 (Roger Hernández), which is also being heard in this committee today, permits any city, regardless of population size, 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.
- 6) **Previous Legislation:** 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, among other provisions.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

American Civil Liberties Union of California (prior version)  
City Clerks Association of California  
League of California Cities  
League of California Cities Latino Caucus  
Mexican American Legal Defense and Educational Fund (prior version)

##### **Opposition**

None on file.

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