

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Evan Low, Chair

AB 801 (Weber) – As Amended March 23, 2017

SUBJECT: County of San Diego Citizens Redistricting Commission.

SUMMARY: Repeals existing provisions of law requiring a redistricting commission made up of former or retired judges to adjust the boundary lines of supervisorial districts in San Diego County after each decennial federal census, and instead establishes a Citizens Redistricting Commission in the county and charges it with adjusting the boundaries of supervisorial districts. Changes the criteria to be used when the boundaries of supervisorial districts in San Diego County are adjusted. Specifically, **this bill:**

- 1) Repeals provisions of existing law that provides for the creation of a redistricting commission in San Diego County, to be made up of five members and two alternates who are former or retired federal or state judges, which has the responsibility for adjusting the supervisorial district boundaries after each decennial federal census, as specified. Repeals the procedures and criteria that the commission would be required to use when adjusting those boundaries.
- 2) Provides for the creation of a Citizens Redistricting Commission in San Diego County, and tasks the commission with adjusting the boundary lines of the County's supervisorial districts in the year following the year in which the decennial federal census is taken. Requires the San Diego County Board of Supervisors (board) to provide for reasonable funding and staffing for the commission.
- 3) Requires the commission to consist of 14 members, and to be created no later than December 31, 2020, and in each year ending in the number zero thereafter.
- 4) States that the selection process is designed to produce a commission that is independent from the influence of the board and reasonably representative of the county's diversity.
- 5) Requires the political party preferences of commission members, as shown on the members' most recent voter registration affidavits, to be as proportional as possible to the total number of voters who are registered with each political party in San Diego County or who decline to disclose or do not indicate a party preference, as determined by registration at the most recent statewide election. Provides that the political party preferences of commission members are not required to be exactly the same as the proportion of political party preferences among the registered voters of the county. Requires at least one commission member to reside in each of the existing five supervisorial districts in San Diego County.
- 6) Requires each commission member to meet all of the following qualifications:
 - a) Be a resident of, and a registered voter in, San Diego County, who has been continuously registered in the County with the same political party or with no party preference who has

- not changed political party preference for five or more years immediately preceding the date of his or her appointment to the commission;
- b) Has voted in at least one of the last three statewide elections immediately preceding his or her application to be a member of the commission;
 - c) Possess experience that demonstrates analytical skills relevant to the redistricting process and voting rights, and possess an ability to comprehend and apply the applicable state and federal legal requirements;
 - d) Possess experience that demonstrates an ability to be impartial; and,
 - e) Possess experience that demonstrates an appreciation for the diverse demographics and geography of San Diego County.
- 7) Provides that, within the 10 years immediately preceding the date of application to the commission, neither the applicant, nor an immediate family member of the applicant, as defined, may have done any of the following:
- a) Been appointed to, elected to, or have been a candidate for office at the local, state, or federal level representing San Diego County, including as a member of the board of supervisors;
 - b) Served as an employee of, or paid consultant for, an elected representative at the local, state, or federal level representing San Diego County;
 - c) Served as an employee of, or paid consultant for, a candidate for office at the local, state, or federal level representing San Diego County;
 - d) Served as an officer, employee, or paid consultant of a political party or as an appointed member of a political party central committee; or,
 - e) Been a registered federal, state, or local lobbyist.
- 8) Permits an interested person meeting the qualifications detailed above to submit an application to the county elections official to be considered for membership on the commission. Requires the county elections official to review the applications and eliminate applicants who do not meet the qualifications detailed above.
- 9) Requires the county elections official to select 60 of the most qualified applicants, taking into account the relevant requirements, and to make public their names for at least 30 days. Permits the elections official, during this period, to eliminate any of the previously selected applicants if the official becomes aware that the applicant does not meet the qualifications. Requires the county elections official to create a subpool for each of the five existing supervisorial districts in San Diego County. Prohibits the county elections official from communicating with a member of the board, or an agent for a member of the board, about any matter related to the nomination process or applicants before the publication of the list of

the 60 most qualified applicants.

- 10) Requires, at a regularly scheduled meeting of the board, the Clerk of San Diego County to conduct a random drawing to select one commissioner from each of the five subpools established by the county elections official, and to then conduct a random drawing from all the remaining applicants to select three additional commissioners.
- 11) Requires the eight selected commissioners to review the remaining applicants and to appoint six additional members to the commission. Requires the six appointees to be chosen based on relevant experience, analytical skills, and ability to be impartial, and to ensure that the commission reflects the county's diversity, including racial, ethnic, geographic, and gender diversity, provided that formulas or specific ratios are not applied for this purpose. Requires the eight commissioners additionally to consider political party preference, and to select applicants so that the political party preferences of the members of the commission are as proportional as possible to the registered voters in the county, as detailed above.
- 12) Requires commission members to apply the requirements of this bill in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process.
- 13) Provides that the term of office of each member of the commission expires upon the appointment of the first member of the succeeding commission.
- 14) Provides that nine members of the commission shall constitute a quorum and that nine or more affirmative votes are required for any official action.
- 15) Prohibits the commission from retaining a consultant who would not be qualified as a commission applicant due to any of the disqualifying criteria described above in 7). Provides, for this purpose, that the term "consultant" means a person, whether or not compensated, retained to advise the commission or a commission member regarding any aspect of the redistricting process.
- 16) Requires each commission member to be a designated employee for the purposes of the conflict of interest code adopted by San Diego County, as specified, thereby requiring members to file statements of economic interests and to comply with specified state laws regarding conflicts of interests and limits on gifts and honoraria.
- 17) Requires the commission to establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:
 - a) Requires districts to comply with the United States Constitution and requires each district to have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act (VRA) or allowable by law;
 - b) Requires districts to comply with the federal VRA;

- c) Requires districts to be geographically contiguous;
 - d) Requires the geographic integrity of any city, local neighborhood, or local community of interest, as defined, to be respected in a manner that minimizes its division to the extent possible without violating the above requirements; and,
 - e) Requires, to the extent practicable, and where this does not conflict with the higher-priority criteria detailed above, districts to be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.
- 18) Prohibits the place of residence of any incumbent or political candidate from being considered in the creation of a map, and prohibits districts from being drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.
- 19) Makes the redistricting commission subject to the Ralph M. Brown Act (the state's open meetings law).
- 20) Requires the commission, prior to drawing a draft map, to conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.
- 21) Requires the commission, after drawing a draft map, to do both of the following:
- a) Post the map for public comment on San Diego County's Internet Web site; and,
 - b) Conduct at least two public hearings to take place over a period of no fewer than thirty days.
- 22) Requires hearings to be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible.
- 23) Requires the commission to establish and make available to the public a calendar of all public hearings and to post the agenda for the public hearings at least seven days before the hearings. Requires the agenda for a meeting conducted after the commission has drawn a draft map to include a copy of that map.
- 24) Requires the commission to arrange for the live translation of their hearings in an applicable language if a request for translation is made at least 24 hours before the hearing. Provides that an "applicable language," for these purposes, means a language for which the number of residents of San Diego County who are members of a language minority is greater than or equal to three percent of the total voting age residents of the county.
- 25) Requires the commission to take steps to encourage county residents to participate in the redistricting public review process. Provides that these steps may include the following:

- a) Providing information through media, social media, and public service announcements;
 - b) Coordinating with community organizations; and,
 - c) Posting information on San Diego County's Internet Web site that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.
- 26) Requires the board to take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the commission members.
- 27) Provides that all records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.
- 28) Requires the commission to adopt a redistricting plan and to file the plan with the county elections official before August 15 of the year following the year in which each decennial federal census is taken. Provides that the plan is effective 30 days after it is filed with the county elections official, and is subject to referendum in the same manner as ordinances.
- 29) Requires the commission to issue, with the final map, a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria described above.
- 30) Prohibits a commission member from holding elective public office at the federal, state, county, or city level in the state for a period of five years beginning from the date of his or her appointment to the commission.
- 31) Prohibits a commission member from doing any of the following for a period of three years beginning from the date of his or her appointment to the commission:
- a) Holding an appointive federal, state, or local public office;
 - b) Serving as paid staff for or a paid consultant to, the Board of Equalization, Congress, the Legislature, or any individual legislator; or,
 - c) Registering as a federal, state, or local lobbyist in the state.
- 32) Defines "immediate family member," for the purposes of this bill, as a spouse, child, in-law, parent, or sibling.
- 33) Defines "community of interest," for the purposes of this bill, as a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Provides that communities of interest do not include relationships with political parties, incumbents, or political candidates.

- 34) Makes findings and declarations that a special law is necessary because of the unique circumstances facing San Diego County.

EXISTING LAW:

- 1) Provides for the creation of a redistricting commission in San Diego County, which has the responsibility for adjusting the supervisorial district boundaries after each decennial federal census, as specified. Requires the commission to be comprised of five members and two alternates who meet the following qualifications:
 - a) A resident of San Diego County;
 - b) A registered voter in San Diego County;
 - c) A former or retired state or federal judge; and,
 - d) Not a current member of the county board of supervisors.
- 2) Permits any person who meets the qualifications to serve on the commission to submit his or her name to the clerk of the board of supervisors of San Diego County to be included in a random drawing to select the members and alternates to the commission. Requires the clerk to conduct a random drawing at a regularly scheduled meeting of the board of supervisors to select the members and alternates of the commission.
- 3) Permits the presiding judge of the San Diego County Superior Court to assist the clerk of the board of supervisors in San Diego County in identifying former or retired judges that may be qualified to be included in the drawing.
- 4) Requires the boundaries of supervisorial districts to be adjusted so that the districts are equal or nearly equal in population. Requires the resulting supervisorial districts to comply with any applicable provisions of Section 2 of the federal VRA, as amended.
- 5) Permits the redistricting commission to consider all of the following factors when establishing the boundaries of supervisorial districts:
 - a) Topography;
 - b) Geography;
 - c) Cohesiveness, contiguity, integrity, and compactness of territory; and,
 - d) Communities of interests in each district.
- 6) Requires the redistricting commission to use federal census tracts and blocks in establishing the boundaries of supervisorial districts.

- 7) Requires the board of supervisors of San Diego County to provide for reasonable staffing and logistical support for the commission.
- 8) Provides that the redistricting commission is subject to the Brown Act and requires the commission to conduct at least seven public hearings with at least one public hearing held in each supervisorial district.
- 9) Requires the redistricting commission to adopt a redistricting plan adjusting the boundaries of supervisorial districts and to file the plan with the clerk of the board of supervisors prior to the first day of October of the year following the year in which each decennial federal census is taken. Provides that the plan is effective 30 days after it is filed with the clerk. Provides that the plan is subject to referendum in the same manner as ordinances.
- 10) Establishes a procedure for a government of a county to adopt a charter by a majority vote of its electors voting on the question. Generally provides greater autonomy over county affairs to counties that have adopted charters.
- 11) Provides that counties that have adopted charters are subject to statutes that relate to apportioning population of governing body districts.
- 12) Permits a county to establish a commission charged with adjusting the boundaries of supervisorial districts after each decennial federal census, subject to certain conditions.
- 13) Establishes a Citizens Redistricting Commission in Los Angeles County and charges it with adjusting the boundaries of supervisorial districts after each decennial federal census, as specified.

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

COMMENTS:

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

Over the past decade, there has been a greater desire to create "independent redistricting commissions" to draw district lines at the local and state levels. In 2012, Senator Kehoe authored SB 1331. This bill established the Independent Redistricting Commission in San Diego County that would be comprised of eligible former or retired state or federal judges. The goal of this was to create a commission that would be immune to political influence.

While a step in the right direction, this redistricting process does not sufficiently account for the changing demographics that have taken place over the past 20 years. Although San Diego's population is extremely diverse, the pool of eligible commissioners includes a disproportionate older group of individuals that do not reflect the socioeconomic demographics of San Diego County.

AB 801 will also help maintain communities of interests to ensure groups with similar socioeconomic interests are not negatively impacted by the upcoming redistricting process. By doing this, districts drawn by citizens can increase the supervisors' responsiveness to constituents and would encourage greater participation in the electoral process and, ultimately, increase accountability to San Diego citizens.

- 2) **California Citizens Redistricting Commission:** Proposition 11, which was approved by the voters at the 2008 statewide general election, created the Citizens Redistricting Commission (CRC), and gave it the responsibility for establishing district lines for Assembly, Senate, and Board of Equalization. Proposition 11 also modified the criteria to be used when drawing district lines. Proposition 20, which was approved by the voters at the 2010 statewide general election, gave the CRC the responsibility for establishing lines for California's congressional districts, and made other changes to the procedures and criteria to be used by the CRC. The CRC consists of 14 registered voters, including five Democrats, five Republicans, and four others, all of whom are chosen according to procedures specified in Proposition 11.
- 3) **San Diego County Redistricting Commission and Previous Legislation:** SB 1331 (Kehoe), Chapter 508, Statutes of 2012, provides for the creation of a redistricting commission in San Diego County, made up of retired state and federal judges, and charges it with adjusting the boundaries of supervisorial districts after each decennial federal census. SB 1331 was requested by the San Diego County Board of Supervisors, and as a result, it was not identified as a reimbursable state-mandated local program.

As detailed above, counties generally are subject to state laws governing redistricting. At the time SB 1331 was considered, San Diego County was unable to provide for the creation of a redistricting commission without statutory authorization. Because SB 1331 imposed conditions on the formation and composition of the redistricting commission, any change to the structure of the redistricting commission requires changes to state law.

Last year, the Legislature approved and the Governor signed SB 1108 (Allen), Chapter 784, Statutes of 2016, which generally permits counties to establish redistricting commissions to adjust the boundaries of supervisorial districts, subject to certain conditions. However, because SB 1331 explicitly provided for the structure of the redistricting commission that is tasked with redrawing the district lines for supervisorial districts in San Diego County, the option provided to counties under SB 1108 does not appear to be available for San Diego County in the absence of changes to state law.

This bill repeals the provisions of SB 1331, and instead requires the creation of a redistricting commission similar to a commission that is required in Los Angeles County pursuant to legislation that was adopted last year, as detailed below. Unlike SB 1331, this bill is not being requested by the County of San Diego. As a result, because this bill is identified as imposing a state-mandated local program, the state could be required to reimburse San Diego County for certain costs incurred in implementing the provisions of this bill.

- 4) **Los Angeles County Citizens Redistricting Commission, Previous Legislation, and Pending Litigation:** Last year, the Legislature approved and the Governor signed SB 958 (Lara), Chapter 781, Statutes of 2016, which established a Citizens Redistricting Commission in Los Angeles County and charged it with adjusting the boundaries of supervisorial districts after each decennial federal census, as specified. With the notable difference that this bill applies to San Diego County, rather than Los Angeles County, the provisions of this bill are similar to the provisions of SB 958.

In February, the Los Angeles County Board of Supervisors filed a lawsuit in the Los Angeles County Superior Court challenging the provisions of SB 958 (*County of Los Angeles v. State of California et al.* (2017), Case Number BS168212). That lawsuit alleges that SB 958 violates the California Constitution for three reasons: (1) That because SB 958 applies only to Los Angeles County, it violates Article IV, Section 16 of the California Constitution, which provides that "[a]ll laws of a general nature have uniform operation" and that "[a] local or special statute is invalid in any case if a general statute can be made applicable."; (2) that because SB 958 requires political party preferences to be taken into account when creating the redistricting commission, if redistricting commissioners are considered to be county offices, then SB 958 violates Article II, Section 6 of the California Constitution, which provides in part that "[a]ll judicial, school, county, and city offices, including the Superintendent of Public Instruction, shall be nonpartisan."; and (3) that if redistricting commissioners are *not* considered to be county offices, then SB 958 improperly delegates a municipal function to be performed by a private person or body, in violation of Article XI, Section 11 of the California Constitution. A trial date for the lawsuit has not yet been set.

In addition to the allegations that SB 958 violates the California Constitution for the reasons described above, the lawsuit alleges that SB 958 excludes voters who are registered as having "No Party Preference" from serving as members of the redistricting commission. That reading of SB 958, however, appears to be inconsistent with Legislative intent and history. In fact, this committee's analysis of SB 958 concluded that the 14-member redistricting commission created by SB 958 "might be expected to have...between 3-4 members registered as having No Party Preference." That conclusion was based on the same language that Los Angeles County relies upon to conclude that "No Party Preference" voters would be excluded from the redistricting commission entirely. Notwithstanding the fact that Los Angeles County's reading of SB 958 appears to be inconsistent with Legislative intent and history, in light of Los Angeles County's lawsuit, this language of this bill differs from that in SB 958 in order to expressly provide that "No Party Preference" voters would be included on the commission created by this bill.

- 5) **Partisan Make Up:** This bill requires the political party preferences of the San Diego County redistricting commission members to be as proportional as possible to the total number of voters who are registered with each political party in San Diego County or who decline to disclose or do not indicate a party preference, as determined by registration at the most recent statewide election. According to current voter registration figures from the Secretary of State, 36.75% of registered voters in San Diego County are registered as Democrats, 30.20% are registered as Republicans, 27.89% are registered as having No Party Preference, and the remaining 5.16% of voters are registered with another party or are registered with a political body that is attempting to qualify as a political party. While this

bill provides that "the political party preferences of the commission members are not required to be exactly the same as the proportion of political party preferences among the registered voters of the county," in order to reflect these registration figures, a 14-member redistricting commission might be expected to have between 5-6 Democrats, between 4-5 Republicans, 3-4 members registered as having No Party Preference, and between 0-1 members registered with other political parties or bodies. The ability for the commission to reflect those registration figures could be limited, to some extent, based on the results of the random drawing to select the first eight commissioners.

- 6) **Arguments in Support:** In support of this bill, Service Employees International Union writes:

AB 801 requires boundaries for supervisorial districts be drawn by a bipartisan group of individuals rather than being exclusively judges. San Diego is one of the most geographically, ethnically, and politically diverse counties in California. It is vital for the commission that draws the district lines be reflective of the region's diversity.

This bill will also help ensure that groups with similar socioeconomic interests are not negatively impacted by the upcoming redistricting process. For the purposes of fair representation, the 14 commission members will also reflect the political party preferences (including no party affiliation), as shown on the applicant's most recent registration affidavits.

By doing this, districts drawn by citizens can increase the supervisors' responsiveness to constituents.

- 7) **Arguments in Opposition:** In opposition to this bill, the San Diego County Board of Supervisors writes:

In 2012 the San Diego County Board of Supervisors sought a change in state law seeking the authority to remove control of their own redistricting and place it in the hands of an independent panel of retired judges. This proposal was introduced by then...Senator Christine Kehoe in the form of [SB 1331] and was signed into law by Governor Jerry Brown in September of 2012.

Our County believes that the most objective, qualified officials to oversee a legal redistricting process would be a panel of judges, as they would be the least likely to have any political bias or represent any special interests. Impartial judges would also be the most knowledgeable regarding the legally binding requirements of federal voting rights laws...

AB 801 seeks to undo SB 1331 which was a measure that enjoyed bipartisan and community support even before the system had been given the opportunity to be implemented...SB 1331 should be given the chance to be used before it is changed. AB 801 offers a remedy to a problem that does not exist nor may not ever exist.

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

REGISTERED SUPPORT / OPPOSITION:

Support

ACCE Action
Alliance San Diego
Asian Pacific Islander Community Actions
Center on Policy Initiatives
Council of Philippine American Organizations of San Diego County
Employee Rights Center
Independent Voter Project
Metropolitan Area Advisory Committee
San Diego Organizing Project
Service Employees International Union

Opposition

California State Association of Counties
San Diego County Board of Supervisors
Urban Counties of California

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