

Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

SB 493 (Cannella) – As Amended April 20, 2015

**SENATE VOTE:** 29-3

**SUBJECT:** Elections in cities: by or from districts.

**SUMMARY:** Permits a city to change the method of electing council members to a by-district method of election without receiving voter approval. Specifically, **this bill** permits the legislative body of a city to adopt an ordinance, without being required to submit the ordinance to the voters for approval, that requires members of the legislative body to be elected in one of the following ways:

- 1) By districts, in five, seven, or nine districts; or,
- 2) By districts in four, six, or eight districts, with a mayor who is elected citywide.

**EXISTING LAW:**

- 1) Permits a city to submit an ordinance to the voters of the city 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 such a change shall occur only upon the approval of voters. 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.

**FISCAL EFFECT:** None. This bill is keyed non-fiscal by the Legislative Counsel.

**COMMENTS:**

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

Since 2003, California cities using at-large elections methods have become subject to lawsuits asserting violations of the California Voting Rights Act and demanding by-district elections be implemented. For a city facing such a suit, the options are limited – they can either [1] submit an ordinance making this change to the voters for approval, which is expensive, slow, and not guaranteed to win approval, or [2] accept the lawsuit, which they are bound to lose, costing taxpayer money in legal fees. SB 493 proposes to save cities this time and money by permitting them to enact an ordinance switching their election method to by-district without submitting it for voter approval.

- 2) **At-Large vs. District Elections:** 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 the city can be organized 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.

For any city that wishes to move from at-large elections to a district-based method of election, existing law requires the voters of the city to approve the change. If the voters reject the proposed change, the city must continue holding elections using an at-large method of election.

- 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.

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. 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.

Most notably, many school districts have transitioned from at-large to district-based elections without receiving voter approval in an effort to avoid potential liability under the CVRA. Even though state law generally requires such a transition to be approved by the voters in a school district, existing law also permits the State Board of Education (SBE) to waive all or part of any section of the Education Code, with certain identified exceptions, upon request by the governing board of a school district or county board of education. The SBE generally is required to approve any and all requests for waivers unless it makes a finding that one of seven enumerated conditions exists. Since 2009, the SBE has approved waivers to permit approximately 110 school districts to change from at-large to district elections without receiving voter approval, as would otherwise be required by the Education Code.

Furthermore, in response to concerns that community college districts were subject to liability under the CVRA but were unable to change from at-large to district-based elections without voter approval, AB 684 (Block), Chapter 614, Statutes of 2011, established a process under which a community college district could transition from at-large to district-based elections without receiving voter approval if such a transition was approved by the Board of Governors (BOG) of the California Community Colleges, among other provisions. Since the enactment of AB 684, the BOG has approved requests from approximately 20 community college districts to change from at-large to district elections.

Unlike school districts and community college districts, however, no formal process exists for cities to transition from at-large to district-based elections without receiving voter approval. (A few cities have transitioned from at-large to district-based elections without receiving voter approval as a part of settlement agreements to lawsuits brought under the CVRA.) This bill would allow cities to transition to district-based elections without receiving voter approval, which could allow cities that potentially face liability under the CVRA to proactively change the method of electing city council members. Unlike the waiver process that applies for school districts and community college districts, this bill would not require any other entity to approve a city's request to change from at-large to district-based elections without receiving voter approval. However, there is no statewide body that has general oversight authority over all of the state's cities that is comparable to the authority that the SBE has over school districts, and that the BOG has over community college districts.

- 4) **Change in Election Method Not Related to CVRA Issues and Potential Amendments:** Although the author's intent for this bill is to make it easier for cities to proactively respond to potential liability under the CVRA, this bill could also bypass the voter approval requirement for changes in the method of electing city council members that are unrelated to CVRA concerns. For example, if a city currently elects its council members by districts, and the city council wants to increase the number of members on the council from five to nine, this bill would permit such a change to occur without voter approval, even though voter approval would be required under existing law. Similarly, a city council could move from electing seven council members by districts to electing six council members by districts with an elective mayor without the approval of voters.

AB 182 (Alejo), which is pending in the Senate, proposes to expand the CVRA to allow challenges to district-based elections to be brought under the CVRA. If AB 182 becomes law, it's possible that a city might need to expand the number of members on the city council in order to address potential liability under that bill.

In order to ensure that this bill is not used to bypass voter approval requirements in situations where CVRA concerns are not relevant while preserving flexibility for cities in the event that the CVRA is expanded, as proposed by pending legislation, the committee and the author may wish to consider an amendment to require a city council that changes the method of electing members pursuant to this bill to make findings and declarations when adopting the ordinance that the changes are being made in furtherance of the purposes of the CVRA.

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

Since the passage of the [CVRA], entities using at-large elections have faced an ever-increasing number of lawsuits asserting that racially polarized voting is occurring within their boundaries and demanding that district-based elections be implemented. Courts have found for the plaintiffs in all of the cases where racially polarized voting has been proven. Remedies have included the consolidation of elections, cumulative voting and district-based elections.

While remedies have varied by jurisdiction, what has been consistent in CVRA

cases is the high cost for litigation. The CVRA provides generous recovery for attorney's fees. As a consequence, cities have incurred extremely high legal fees—from the several hundred thousand to several million dollars.

Cities' sole alternative to going to court: seeking voter approval. Elections are costly too, however. Cities like Turlock and Woodland spent significant time and money ensuring that their residents understood the CVRA and the consequences of their votes. It's equally important to note that cities are not insulated from suit if their voters reject district-based elections. That's the case for the City of Highlands, now tied up in litigation after voters rejected district elections there....

The League believes SB 493 will give cities a much-needed tool for addressing concerns under the CVRA in an efficient and cost-effective manner.

- 6) **Amendments Sought:** Californians for Electoral Reform, which has a "support if amended" position on this bill, writes:

While we appreciate the intent of [SB 493], we are concerned that it does not recognize that, in some cases, modified at-large systems such as cumulative voting, limited voting, and the single-transferrable vote can result in better representation for the electorate than produced by a district system....

There are three electoral methods that provide protected classes the opportunity for their fair share of representation when districts cannot. These are the fully-proportional method of the single-transferrable vote and the semi-proportional methods of cumulative voting and limited voting. We would be fully supportive of SB 493 if it recognized these systems and put them on equal footing with a district system by allowing a city to switch to them without a vote of the people.

Notwithstanding the concern that a district-based method of election may not address voting rights concerns in all circumstances, the amendments proposed by Californians for Electoral Reform would represent a fundamental change in this bill, by authorizing the use of certain methods of election (single-transferrable vote, cumulative voting, and limited voting) that are not currently permitted to be used in public elections under state law. (The City of Santa Clarita reached a settlement agreement in a CVRA lawsuit in which the City agreed to use cumulative voting to address the voting rights issues raised in the lawsuit, and the Superior Court in that case subsequently authorized the use of cumulative voting in the City. Notwithstanding that settlement agreement, however, state statute does not generally permit single-transferrable vote, cumulative voting, or limited voting to be used in public elections.)

Because those methods of election are not explicitly permitted under existing law, state law does not define those methods of election or contain procedures for conducting elections using those methods of election. By contrast, the current provisions of this bill simply allow cities, without receiving voter approval, to transition between methods of election that are already explicitly provided for under state law. The authorization of the use of single-transferrable vote, cumulative voting, and limited voting for elections in California may present policy questions that are not addressed in this analysis.

- 7) **Related Legislation:** AB 278 (Roger Hernández), which is pending in the Senate, requires general law cities with a population of 100,000 or more, as specified, to elect members of the city council by district. AB 278 was approved by this committee on a 4-1 vote, and was approved by the Assembly on a 43-32 vote.
  
- 8) **Double-Referral:** This bill has been double-referred to the Assembly Committee on Local Government.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Advancement Project  
Californians for Electoral Reform (if amended)  
City of Ceres  
City of Greenfield  
City of Modesto  
Greater Merced Chamber of Commerce  
Latino Community Roundtable of Stanislaus County  
League of California Cities

**Opposition**

None on file.

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