

Date of Hearing: June 29, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

SB 927 (Anderson) – As Amended March 31, 2016

SENATE VOTE: 38-0

SUBJECT: Public Utility District Act: election of directors.

SUMMARY: Authorizes the board of directors of a public utility district (PUD) within San Diego County to elect directors by subdistricts, as specified. Specifically, **this bill:**

- 1) Authorizes the candidates for director of any PUD, wholly or partially within San Diego County, to be elected at-large or by subdistricts upon adoption of a resolution or ordinance adopted by the district's board of directors and approved by the board of supervisors, or as part of a change of organization or reorganization conducted pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act).
- 2) Requires a resolution or ordinance that divides a district into subdistricts adopted, pursuant to the provisions above, to describe the boundaries of the subdistricts so that the subdistricts are as nearly equal in population as may be.
- 3) Defines "by subdistricts" to mean the election of members of the board of directors by voters of the subdistrict alone.
- 4) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.
- 5) Provides the facts constituting the necessity of an urgency clause are to ensure that the election procedures for PUDs in San Diego County conform to the California Voting Rights Act of 2001 (CVRA), as soon as possible.
- 6) Makes Legislative findings and declarations that a special law is necessary because of the need to bring PUDs in San Diego County into compliance with the CVRA.

EXISTING LAW:

- 1) Establishes the Uniform District Election Law which provides that the principal act of a district or agency shall govern whether directors are elected by divisions or by the district at-large.
- 2) Provides definitions for the following terms which govern the election process for most local governments' legislative bodies:
 - a) An "at-large" election allows a voter residing anywhere within the local government's boundaries to vote for any candidate for the governing board;
 - b) A "by district" election allows a voter to vote only for a candidate who runs and resides in the same geographical district in which the voter resides; and,

- c) A "from district" election allows a voter residing anywhere within a local government's boundaries to vote for any candidate for a local government's governing board, but each candidate must run in the geographical district where he or she resides.
- 3) Prohibits, pursuant to the CVRA, an at-large method of election from being imposed or applied in a political subdivision (including a special district) 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.
- 4) 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.
- 5) 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.
- 6) 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.
- 7) Establishes the Public Utility District Act (Act) which requires a PUD that lies entirely in one county to have a governing board composed of three directors elected at-large.

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

COMMENTS:

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

Currently, [PUDs] are formed with an at-large model of representation for their directors. Current law does not provide a mechanism by which [PUDs] can modify their representation to reflect directors that are elected from specific districts. As such, districts that have previously wanted to change their composition, in response to an agency reorganization or other voting rights concerns, have been required to pursue district specific legislation. This proposal would allow, not require, a [PUD] located in San Diego County to move from at-large directors to directors elected from specific districts, under specific circumstances.

- 2) **Current Practice:** Under existing law, a special district can be organized so that its governing board members are elected at-large or elected using districts. Jurisdictions that are organized using district-based methods are usually organized as "by-district" or "from-district." A "by-district" jurisdiction allows only the registered voters in a district to vote in the election to choose the governing board member from that area. A "from-district" jurisdiction permits registered voters in the entire jurisdiction to vote for governing board members from each of the districts. In either case, a candidate for the governing board must reside in the district in which he or she is running.

There is no uniform process for a special district to convert from at-large elections to a district-based method of election. Current law provides that the principal act of a special district shall govern whether the governing board members are elected by districts or by the district at-large. Moreover, depending on the kind of district and its size, existing law may specify which method of election it is required to use to elect its governing board members, as well as the process for conversion.

The principal act for PUDs governs the 54 PUDs in California. The Act authorizes PUDs to maintain the infrastructure to provide electricity, natural gas, water power, heat transportation, telephone service, or the disposition of garbage, sewage, or refuse matter. Additionally, the Act provides for the formation and governance of PUDs. Under existing law, PUDs entirely located within one county are governed by a board of directors elected at-large.

- 3) **Previous Legislation:** Current law requires a PUD that is entirely located within one county to be governed by a board of directors that is elected at-large. As the author mentions above, current law does not provide a mechanism whereby a PUD can modify its representation to reflect directors that are elected from specific districts. Consequently, if a district desired to change its composition in response to an agency reorganization or voting rights concerns, the district would need to pursue district-specific legislation.

In 1980, the Legislature passed and Governor Brown signed AB 1410 (Waters), Chapter 63, Statutes of 1980, which authorized Georgetown Divide PUD directors to be elected by wards upon the adoption of a resolution or ordinance by the board of directors dividing the district into wards and fixing the boundaries. SB 1393 (Senate Local Government Committee), Chapter 939, Statutes of 1994, authorized any PUD, wholly or partially within Placer County, to elect governing board members at-large, by wards, or from wards upon adoption of a resolution or ordinance by the district board of directors and subject to the approval of the board of supervisors or as a part of a change of organization or reorganization pursuant to the CKH Act.

Similarly, this bill authorizes a PUD, partially or wholly within San Diego County, to adopt a resolution or ordinance to elect directors by subdistricts, instead of at-large. Specifically, this bill requires the PUD's board of directors to adopt a resolution or ordinance and subsequently requires the San Diego's Board of Supervisors to approve the resolution or ordinance to change the method of election for the district directors. Additionally, this bill requires the ordinance or resolution to describe the boundaries of the subdistricts so that the subdistricts are as nearly equal in population as may be. Additionally, this bill authorizes the election of directors by subdistricts as part of a change of organization or reorganization conducted pursuant to the CKH Act.

- 4) **Fallbrook PUD.** The Fallbrook PUD was formed in 1922 to provide water services for residential and agricultural purposes. Since that time, Fallbrook PUD has significantly expanded and currently has a service boundary of 43.99 square miles and provides retail water, sewer, and recycled water services to approximately 35,000 people residing within its boundaries in northern San Diego County. Fallbrook PUD is governed by a five-member board elected at-large.

A lawsuit was filed against Fallbrook PUD last year in San Diego County Superior Court alleging that the district's at-large board elections violated the CVRA by diluting the voting strength of Latino voters, thereby impairing their ability to participate meaningfully in the political process and to elect candidates of their choice (*Juan Atilano, Carmen Cardoso, Jesus Hernandez, Jesus Hernandez Jr., and Jose Huerta v. Fallbrook Public Utility District*). To avoid potentially lengthy and costly litigation, the parties to the lawsuit negotiated a settlement to resolve the claims against Fallbrook PUD. The settlement agreement, which is enforced by a recent court order, requires Fallbrook PUD to change from an at-large method of election to a by-district method of election where directors are elected from five distinct election districts. The settlement provides that candidates reside within the district and are elected only by voters residing within that election district in the November 2016 election. Since the settlement was reached, Fallbrook PUD has held public meetings to provide boundaries for the subdistricts and submitted the lines to San Diego County.

- 5) **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.

- 6) **Why Piecemeal Approach?** Background material provided by the author states that the only way in which a PUD may change its method of election is by special legislation or a court order. This bill only applies to PUDs wholly or partially in San Diego County. If other PUDs in California desire to change their method of election in response to CVRA concerns, the PUD would be required to seek special legislation or risk litigation. The committee may wish to consider whether this bill should be expanded to apply to other PUDs in California. Moreover, according to proponents of the bill, Fallbrook PUD negotiated a settlement that is enforced by a recent court order and has begun implementing the changes required by the settlement. Committee staff is unsure whether special legislation is needed as Fallbrook PUD is already in the process of converting its election method to address CVRA concerns. On the other hand, because this bill allows any PUD that is wholly or partially within San

Diego County to utilize this tool to convert from an at-large to a district-based election method, it could theoretically be helpful to other PUDs within San Diego County.

- 7) **Arguments in Support.** In support, the Mexican American Legal Defense and Educational Fund writes:

Current law that governs the formation of public utility districts requires that the members of a board of directors of a public utility district that lie entirely within one county to be elected on an at-large basis, which is how Fallbrook was formed and governed.

Last year, Fallbrook was sued under the [CVRA] over the usage of at-large districts. Fallbrook has worked cooperatively with all parties and has settled the lawsuit and is in the process of complying with a court order to move from at-large to district-based governance structure. SB 927 will provide Fallbrook with specific statutory authority to move to district-based elections.

More than 140 local government bodies have transitioned from at-large to district-based elections since the enactment of the CVRA in 2002. 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.

- 8) **Related Legislation:** AB 2389 (Ridley-Thomas), permits a special district to change the method of electing its governing board members from at-large to a by-district method of election without receiving voter approval. AB 2389 passed out this committee on a 5-2 vote and was approved by the Assembly on a 59-16 vote. AB 2389 is pending in Senate Governance and Finance Committee.
- 9) **Double-Referral:** On June 15, 2016, this bill was approved by the Assembly Local Government Committee on a 9-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Fallbrook Public Utility District (sponsor)
Association of California Water Agencies
California Special Districts Association
Mexican American Legal Defense and Educational Fund
San Diego County Water Authority

Opposition

None on file.

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