

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 1724 (Salas) – As Introduced February 22, 2019

SUBJECT: Elections: general law city and county redistricting.

SUMMARY: Requires general law cities and counties to establish independent redistricting commissions that are modeled after the constitutionally required Citizens Redistricting Commission (CRC), as specified. Specifically, **this bill:**

- 1) States the intent of the Legislature to require each general law city and county within the state to establish an independent redistricting commission that is modeled after the CRC described in Article XXI of the California Constitution.
- 2) Requires each general law city and county to establish an independent redistricting commission pursuant to this bill for the purpose of adjusting the boundary lines of districts for the legislative body of the general law city or county after each federal decennial census.
- 3) Defines the following terms for purposes of this bill:
 - a) “Commission” to mean an independent redistricting commission established pursuant to this bill.
 - b) “Local jurisdiction” to mean a general law city or county.
- 4) Requires a commission established pursuant to the provisions of this bill to conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines and to conduct themselves with integrity and fairness.
- 5) Requires the auditor of a local jurisdiction to administer an application and selection process that is designed to produce a commission that is independent from legislative influence and reasonably representative of the local jurisdiction’s diversity. Requires the application and selection process to have the following features:
 - a) Permits all residents of the local jurisdiction who are registered to vote in the local jurisdiction to apply to the commission;
 - b) Requires an applicant to be disqualified if the applicant or a member of the applicant’s immediate family has a conflict of interest; and,
 - c) Requires an applicant review panel consisting of independent auditors, selected at random by the auditor, to screen the applicants on the basis of relevant analytical skills, ability to be impartial, and appreciation for the local jurisdiction’s demographics and geography for the purpose of creating applicant subpools. Requires the applicant subpools to be balanced on the basis of applicant district residency in the local jurisdiction and applicant political party preference.

- 6) Requires the auditor to randomly draw an equal number of names from each of the applicant subpools to appoint to the commission.
- 7) Requires the appointed members of the commission to review the remaining names in the applicant subpools and appoint additional members to the commission on the basis of relevant analytical skills, ability to be impartial, and appreciation for the local jurisdiction's demographics and geography.
- 8) Requires a commission established pursuant to this bill to be subject to all of the following:
 - a) The Bagley-Keene Open Meeting Act, or its successor;
 - b) Records of the commission pertaining to redistricting and all data considered by the commission are public records to be posted in a manner that ensures immediate and widespread public access; and,
 - c) Commission members and staff are prohibited from communicating with or receiving communications about redistricting matters from anyone outside of a public hearing. Provides that these provisions do not prohibit communication between commission members, staff, legal counsel, and consultants retained by the commission that is otherwise permitted by the Bagley-Keene Open Meeting Act, or its successor outside of a public hearing.
- 9) Requires the commission to establish and implement an open hearing process for public input and requires deliberation to be subject to public notice and promoted through an outreach program to solicit broad public participation in the redistricting public review process.
- 10) Requires the hearing process to include hearings to receive public input before the commission draws any maps and hearings following the drawing and display of any commission maps. Requires hearings to be supplemented with other activities as appropriate to further increase opportunities for the public to observe and participate in the review process.
- 11) Requires the commission to display the maps for public comment in a manner designed to achieve the widest public access reasonably possible.

EXISTING LAW:

- 1) Authorizes a county, general law city, school district, community college district, or a special district to establish an independent redistricting commission, an advisory redistricting commission, or a hybrid redistricting commission by resolution, ordinance, or charter amendment, as specified.
- 2) Defines an "independent redistricting commission" to mean a body, other than a legislative body, that is empowered to adopt the district boundaries for a legislative body.
- 3) Defines "hybrid redistricting commission" to mean a body that recommends to a legislative body the new district boundaries in two or more maps for that legislative body, where the legislative body must adopt one of those maps without modification, except as may be required to comply with state or federal law.

- 4) Requires an independent redistricting commission to adopt new boundaries within six months after the final population figures in each federal decennial census have been released, but not later than November 1 of the year following the year in which the census is taken.
- 5) Allows a local jurisdiction to prescribe the manner in which members are appointed to an independent redistricting commission and permits the local jurisdiction to impose additional requirements and restrictions on the commission, members of the commission, or applicants for the commission in excess of those already prescribed.
- 6) Establishes various restrictions for an individual, or a family member of the individual, preceding service, during service, and following service on an independent redistricting commission, as specified.
- 7) Prohibits the composition of an independent redistricting commission from being entirely of members who are registered to vote with the same political party preference.
- 8) Requires a map of proposed boundaries be published and made available to the public for at least seven days prior to being adopted.
- 9) Requires an independent redistricting commission to hold at least three public hearings prior to the hearing at which the new boundaries are adopted, as specified.
- 10) Prohibits an independent redistricting commission from drawing districts that favor or discriminate against an incumbent or political candidate.
- 11) Requires that district boundaries adopted for a legislative body using an independent redistricting commission model not be altered until after the next federal census unless those boundaries have been invalidated by a court.
- 12) Permits specified local jurisdictions that are partially or wholly located within a county that has an existing independent redistricting commission to contract with that county to have the commission adopt the district boundaries for that local jurisdiction if certain conditions are met.
- 13) Requires the County of Los Angeles and the County of San Diego to create independent redistricting commissions to adjust the boundary lines of their respective county's supervisorial districts, as specified.
- 14) Specifies, pursuant to the California Constitution, that charter counties are subject to state statutes that relate to apportioning population of governing body districts.

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

COMMENTS:

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

AB 1724 will ensure people have equal representation by utilizing independent redistricting commissions. Creating permanent redistricting commissions at the local level, that are legally required to be re-established after each census to

redraw or recommend new district boundaries, will create fair representation and impartial redistricting.

- 2) **California Citizens Redistricting Commission.** In the November 2008 statewide general election, California voters approved Proposition 11, which 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. In the 2010 statewide general election, voters subsequently approved Proposition 20, which 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) **Local Redistricting and Previous Legislation:** Prior to 2017, state law generally permitted a county or a city to create an advisory redistricting commission (described in state law at the time as a "committee" of residents of the jurisdiction), but did not expressly permit local jurisdictions to create commissions that had the authority to establish district boundaries. Instead, the authority to establish district boundaries for a local jurisdiction generally was held by the governing body of that jurisdiction. While charter cities could establish redistricting commissions that had the authority to establish district boundaries, charter counties did not have that authority in the absence of express statutory authorization.

In 2016, however, the Legislature passed and the Governor signed SB 1108 (Allen), Chapter 784, Statutes of 2016, which permitted a county or a general law city to establish a redistricting commission, subject to certain conditions. Additionally, SB 958 (Lara), Chapter 781, Statutes of 2016, required the establishment of 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. Similarly, AB 801 (Weber), Chapter 711, Statutes of 2017, required the establishment of a Citizens Redistricting Commission in San Diego County and charged it with adjusting the boundaries of supervisorial districts after each decennial federal census, as specified.

In authorizing counties and general law cities to create redistricting commissions, SB 1108 authorized two different types of commissions: independent commissions and advisory commissions. SB 1108 imposed few restrictions and requirements on advisory commissions, but subjected members of independent commissions to extensive eligibility requirements and post-service restrictions. At the time SB 1108 was being considered by the Legislature, questions were raised about whether the substantial conditions imposed on independent commissions could serve as a disincentive for local governments to make the decision to establish such commissions.

In an effort to address these concerns, last year the Legislature passed and the Governor signed SB 1018 (Allen), Chapter 462, Statutes of 2018, which relaxed some of the eligibility requirements for members of independent commissions and eased one of the post-service restrictions on those members in an effort to expand the pool of individuals who are available to serve on such commissions. Additionally, SB 1018 allowed for the creation of hybrid commissions, subject to the same restrictions and requirements as independent commissions, and allowed local governmental entities (school districts, community college districts, and

special districts) that were not included in SB 1018 to establish redistricting commissions, as specified.

This bill makes significant changes to the local redistricting commission provisions of law described above and creates different policies for different local entities. First, this bill requires, instead of permits, a general law city and county to establish an independent redistricting commission to adjust the boundary lines of districts for the legislative body of the general law city or county, as specified. In other words, this bill takes away the option for a general law city or county to decide whether to establish a redistricting commission and the type of commission to establish.

Secondly, this bill removes counties and general law cities from certain requirements and protections in place under existing law that serve to ensure a functional, operational, and nonpartisan commission is established to draw fair district lines that represent the communities they serve. Furthermore, this bill provides a county and a general law city significantly more discretion when establishing an independent redistricting commission than existing law currently allows and does not extend that same discretion to other local entities that wish to establish an independent redistricting commission.

- 4) **Lack of Detail and Specificity:** According to the California Local Redistricting Project, “[most] redistricting ordinances define core elements of the commission’s structure, like the size of the commission, how commissioners are appointed, and whether the district maps the commission adopts are recommendations or have the independent force of law. Other major elements, which are especially likely in ordinances establishing independent commissions, include commissioner qualifications, enumerated redistricting criteria, and transparency requirements.”

The report points out that in general the following are common, major policy considerations in local redistricting ordinances: (1) commission duration and legal enactment; (2) commission authority; (3) commissioner selection method; (4) commission composition; (5) commissioner qualifications; (6) commissioner during- and post-service restrictions; (7) public engagement and transparency; (8) redistricting criteria; and (9) administration.

While this bill states its intent to require each general law city and county within the state to establish an independent redistricting commission that is modeled after the CRC, this bill lacks significant detail on many of the most common aspects and policy considerations listed above and reflected in the CRC that this bill is intended to be modeled after.

For instance, the certain eligibility requirements and post-service restrictions apply to members of the CRC, as specified. Specifically, an applicant is ineligible to serve on the CRC if the applicant has a conflict of interest, as defined. An applicant has a conflict of interest if, during the ten years prior to submitting an application to serve on the CRC, the applicant or a member of their immediate family, as defined, has been appointed to, elected to, or a candidate for congressional or state office; served as an employee, or paid consultant for a political party or campaign committee, as specified; served as an elected or appointed member of a political party committee; been a registered lobbyist; served as paid congressional, legislative, or State Board of Equalization staff; or contributed \$2,000 or more to any federal, state, or local elective public officer in a year. This bill requires an applicant for a city or county redistricting commission to be disqualified if the applicant or a member

of the applicant's immediate family has a conflict of interest. The term conflict of interest, however, is undefined.

Additionally, existing law contains a number of prohibitions to ensure an independent redistricting commission is created that protects against gerrymandering and ensures the districts drawn represent the communities they serve. For instance, current law imposes post-service restrictions on a person that served on an independent redistricting commission, such as prohibiting a person who serves on an independent commission from being a candidate for elective office in that jurisdiction for five years after the person's appointment and prohibiting a person who served on the commission from being a candidate for elective office in the jurisdiction if the elections will be conducted using district boundaries lines that were adopted by the commission, as specified. This bill does not contain any post-service restrictions.

Moreover, current law prohibits the district lines adopted by an independent redistricting commission from being altered by the legislative body of the commission until after the next federal decennial census occurs, unless the boundaries are invalidated by a court, as specified. This bill does not contain similar prohibitions to protect the integrity of the district lines.

In addition, existing law explicitly prohibits a commission from drawing districts for the purpose of favoring or discriminating against a political party or an incumbent or political candidate. This bill does not contain any such prohibitions.

Moreover, current law explicitly states that a local jurisdiction may prescribe the manner in which members are appointed to the commission provided that the jurisdiction uses an application process open to all eligible residents and the commissioners are not directly appointed by the legislative body or an elected office of the local jurisdiction. This bill requires a commission to conduct itself with integrity and fairness, to be independent from legislative influence and reasonably representative of the local jurisdiction's diversity, and requires the district lines to be draw without legislative influence.

After the committee's deadline for pre-committee author's amendments, the author proposed amendments to the committee to require a general law city and county to establish an independent redistricting commission pursuant to the requirements set forth in existing law for local entities that are authorized to establish redistricting commissions, as specified.

Because these amendments were not submitted by the committee's amendment deadline, however, committee staff has not had the opportunity to analyze these proposed amendments.

- 5) **Local Redistricting Commissions:** Since the establishment of the CRC, many local governments have created their own redistricting entities. According to research from the California Local Redistricting Project's 2017 updated report, 37 California local governments have either established or used a redistricting commission to recommend or redraw election district boundaries following the 2010 census. The report points that that while most of the commissions were established for the 2010 redistricting cycle, 17 are permanent commissions and are legally required to be re-established after each census. Of those 17 permanent commissions, 11 are independent commissions (8 cities, 2 counties, and

1 school district).

- 6) **Related Legislation:** SB 139 (Allen), requires a county with a population of 250,000 residents to establish an independent redistricting commission to adopt the county's supervisorial districts following each federal decennial census. SB 139 passed out of the Senate Elections & Constitutional Amendments Committee on a 4-0 vote.
- 7) **Previous Legislation:** SB 958 (Lara), Chapter 781, Statutes of 2016, establishes a 14-member Citizens Redistricting Commission in the County of Los Angeles, which is charged with adjusting the boundary lines of the districts of the Board of Supervisors.

AB 801 (Weber), Chapter 711, Statutes of 2017, revised the existing membership of the County of San Diego Citizens Redistricting Commission to a 14-member commission charged with adjusting the boundary lines of the districts of the Board of Supervisors.

SB 1331 (Kehoe), Chapter 508, Statutes of 2012, established the Independent Redistricting Commission in San Diego County and stipulated that only retired state or federal judges are eligible to serve on the redistricting commission.

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

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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