

Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 212 (Allen) – As Amended June 25, 2019

SENATE VOTE: 28-8

SUBJECT: Elections: local voting methods.

SUMMARY: Permits a city, county, or an educational district, as specified and subject to voter approval, to conduct a local election using ranked choice voting (RCV), as specified. Permits a general law city, county, or an educational district, as specified, to conduct elections for local office using a “top-two” election system, instead of a plurality vote, as specified. Specifically, **this bill:**

- 1) Permits a general law city, a county, county board of education, school district, or community college district, with voter approval, to elect governing board members using a “top-two” election system, under which the two candidates who receive the highest number of votes cast in a primary election will appear on the ballot at the ensuing general election and no candidate is declared elected at the primary election, regardless of the percentage of the vote received. Provides that such a system shall not be used for electing governing board members at large, except for a separately elected mayor in a city.
- 2) Provides that RCV is a method that allows voters to rank candidates for office in order of preference and that elections conducted by RCV may be used for both single-winner and multiple-winner elections. Provides that elections conducted by RCV are tabulated in rounds, as specified.
- 3) Permits a city, county, county board of education, school district, or community college district, with voter approval, to elect governing board members using RCV, as specified. Provides that governing board members elected to a full term using RCV pursuant to this bill shall only be elected in a general election held in November of an even-numbered year.
- 4) Permits a county elections official, if a county board of education, school district, or community college district authorizes the use of RCV, to certify that the county lacks the technological capacity to conduct elections by this method before that method is used in any election, as specified.
- 5) Requires a jurisdiction that uses RCV to elect governing board members to conduct a voter education and outreach campaign, as follows:
 - a) Requires the voter education and outreach campaign to be conducted before each RCV election until the conclusion of the second general election conducted using RCV.
 - b) Requires the campaign to include public meetings and public service announcements through different media, including media serving non-English language communities for which the jurisdiction is required to provide language assistance in voting under specified state or federal laws, to familiarize voters with RCV. Requires materials and information disseminated as part of the campaign to be provided in languages in which the

- jurisdiction is required to provide language assistance in voting under specified state or federal laws, and to be accessible to individuals with disabilities.
- c) Requires the jurisdiction to develop a plan for the voter education and outreach campaign in collaboration with the county elections official. Specifies the information that must be included in the plan, including all of the following:
 - i) How the jurisdiction will use media to inform voters about the election;
 - ii) What information will be available on the elections official's website;
 - iii) What information will be included in the sample ballot and vote by mail materials;
 - iv) How the jurisdiction will conduct direct outreach to voters, including voters with disabilities;
 - v) How the jurisdiction will have a community presence to educate voters, including voters with disabilities; and,
 - vi) How the jurisdiction will educate voters within specified non-English language communities.
 - d) Requires the jurisdiction to hold at least one public meeting on a draft plan before finalizing its plan, as specified.
- 6) Establishes procedures for the tallying of ballots in elections conducted by RCV and for determining which candidates are deemed elected.
 - 7) Requires a RCV ballot to allow voters to assign a different ranking to every candidate, as well as to write-in candidates. Permits the elections official conducting the election to limit the number of choices a voter may rank to the maximum number allowed by the voting equipment used to conduct the election.
 - 8) Requires, in an election conducted by RCV, the elections official to provide ballot instructions that make clear the proper voting procedures for voting in a RCV election. Permits the Secretary of State (SOS) to establish the required instructions.
 - 9) Permits the SOS to adopt regulations to implement the RCV provisions of this bill.
 - 10) Requires a jurisdiction that elects governing board members using RCV, and that consolidates a special election to fill one or more vacancies on the governing board with an election to elect one or more other members of the governing board to full terms, to conduct the special vacancy election and the regularly scheduled election as a single contest if the governing board is elected at large or the contests to be consolidated are for members elected by or from the same district. Provides that if such an election is a single, multi-seat election, the full terms shall be awarded to the candidates declared elected first, and the vacancies awarded to the candidates declared elected last, as specified.
 - 11) Requires an elections official who conducts an election using RCV to publish and post tabulation reports, as specified.

- 12) Specifies that this bill does not authorize a local agency to elect members at large if the agency is required by a court order or judgment to elect its members by or from trustee areas.
- 13) Specifies that the RCV provisions of this bill do not bind a charter city, charter county, or charter city and county.
- 14) Contains various findings and declarations.
- 15) Makes other corresponding and technical changes.

EXISTING LAW:

- 1) Provides, in general, that any candidate for a nonpartisan office who receives votes on a majority of all the ballots cast for that office at a primary election is elected to that office and prohibits the office from appearing on the ballot at the ensuing general election. Provides that where two or more candidates are to be elected to a given office and a greater number of candidates receives a majority than the number to be elected, those candidates that receive the highest number of votes proceed to the general or run-off election, as specified.
- 2) Requires certain local jurisdictions to determine the winning candidate in a single election by a plurality of votes cast.
- 3) Does not allow a general law city, general law county, county board of education, school district, community college district, or special district to use RCV for local elections.

FISCAL EFFECT: Unknown

COMMENTS:

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

SB 212 authorizes general law cities, counties, and school districts to utilize two majority-winner voting methods for local elections: top-two primary and ranked choice voting (RCV). The bill gives local jurisdictions access to solutions that charter cities are already using in California to counter vote-splits and the spoiler effect of plurality-winner voting. Under top-two, candidates compete in a primary election and the top-two vote getters for the office advance to the general election. San Diego implemented top-two for city council elections in 2018. Chula Vista uses top-two for city council, mayor and city attorney. Ranked choice voting (RCV) also elects a majority winner, but in a single election. Each voter has one vote and ranks the candidates in order of preference. Today RCV is used by more than ten cities for municipal elections, including San Francisco, Oakland, Berkeley, San Leandro, Minneapolis, and Santa Fe.

SB 212 does not impose any change in localities. It simply provides communities with more options so they can better select an elections method that matches their needs and circumstances. In order to adopt these majority-winner voting methods, a majority of voters must approve the change at a regularly scheduled election. If a jurisdiction decides to adopt RCV, it can allow more voters to fully participate because the single election can be scheduled for a date with higher turnout and

this consolidation may provide significant cost savings to the jurisdiction. By giving general law jurisdictions the same tools that charter cities have, SB 212 will expand access to electoral options that will ensure that elected officials enjoy wider-spread popular support before assuming office.

- 2) **Ranked Choice Voting Background:** RCV is an election method in which voters rank the candidates for office in order of preference, and the ballots are counted in rounds. In the case of a single-winner election, these rounds simulate a series of runoffs until only two candidates remain with the candidate having the greater number of votes being declared the winner. In the case of a multiple-winner election, these rounds fill all seats to be elected.

For single winner elections, in the first round, every ballot counts as a vote towards the candidate indicated by the highest ranking on that ballot. After every round, if a candidate receives a majority of votes from the continuing ballots, that candidate is declared elected. If no candidate receives a majority, the candidate receiving the smallest number of votes is eliminated, and every ballot counting towards that candidate will be advanced to the next-ranked continuing candidate on the ballot.

For an election to elect two or more candidates to office, a minimum threshold of votes necessary to be elected is determined according to a specified formula. All ballots are counted and each ballot is allocated as a vote to the candidate receiving the highest ranking. Each candidate that receives the minimum threshold of votes is declared elected.

If a candidate wins with more votes than the election threshold, but not all seats have been filled, any extra votes count proportionally toward voters' next choices. For example, if a candidate receives 10 percent more first choices than what was needed to win, then a tenth of each of their supporters' votes count toward their next choices.

If no candidate has more votes than the election threshold, the candidate with the fewest votes is eliminated, and voters who picked that candidate have their votes count for their next choice. This repeats, just like with single-winner ranked choice voting. This process continues until every seat has been filled.

While explaining the vote tabulation system is somewhat complex, no voter gets to vote twice and no vote is counted twice. In a single-winner system where the last place candidate is eliminated, voters who listed that candidate first on their ballot then get to use the second choice on their ballot once that first choice is eliminated. They may get two (or more) chances to use their vote, but they never get more than one vote. The multi-winner system is somewhat more complicated because fractions of a person's vote can be transferred to other candidates, but each voter still has only one total vote.

- 3) **Charter vs. General Law Jurisdictions:** In California, three cities and the City and County of San Francisco have chosen to conduct local elections using RCV. These jurisdictions were able to choose to use RCV because they are charter cities. Certain home rule provisions in California's state constitution allow cities and counties to exercise a greater degree of control over local affairs by adopting a charter. According to information from the League of California Cities, 121 of California's 482 cities are charter cities, and according to information from the California State Association of Counties, 14 of California's 58 counties

are charter counties. Cities and counties that are not charter jurisdictions are commonly known as "general law" jurisdictions.

Under current law the only way in which a general law city or a general law county may conduct elections using RCV is to become a charter jurisdiction. This bill authorizes a general law city, a general law county, and specified educational jurisdictions, with voter approval, to conduct local elections using RCV.

- 4) **Suggested Amendment:** As detailed above, this bill prevents RCV from being used for elections in educational districts in a county if the county elections official certifies that the county lacks the technological capacity to conduct elections using RCV, as specified. No such provision exists, however, to cover a situation where a city has voted to conduct elections using RCV. While cities theoretically have the ability to conduct their own elections, the conditions imposed by this bill for using RCV and other provisions of existing law make it highly unlikely that a city could conduct its own RCV election that complies with all the requirements of this bill and of existing law. Accordingly, committee staff recommends that this bill be amended to add provisions that permit a county elections official, if city authorizes the use of RCV, to certify that the county lacks the technological capacity to conduct elections by this method before that method is used in any election.
- 5) **Jurisdictions Using Ranked Choice Voting:** In California, the charter cities of San Francisco, Oakland, Berkeley, and San Leandro have all conducted city elections using RCV. San Francisco adopted RCV in 2002 and has used it since 2004 to elect the mayor, city attorney, Board of Supervisors, and five additional citywide offices. San Leandro, Berkeley, and Oakland have all used RCV since 2010 to elect the mayor, city council, and other city offices. None of these cities, however, have used RCV for a multi-winner election. According to FairVote California, besides these California cities, RCV is currently used in the following U.S. jurisdictions:
 - Basalt, Colorado: Adopted in 2002 and will be used when three or more candidates run for mayor.
 - Cambridge, Massachusetts: In use since the 1940s in multi-winner RCV form for the nine seat city council and six seat school board elected citywide.
 - Carbondale, Colorado: Adopted in 2002 for mayor when there are three or more candidates.
 - Minneapolis, Minnesota: Adopted in 2006 and used since 2009, in elections for 22 city offices, including mayor and city council in single winner elections and some multi-winner park board seats.
 - Portland, Maine: Adopted in 2010 and used since 2011 for electing mayor.
 - Maine: Adopted in 2016 and first used in June 2018 for all state and federal primary elections.

- Santa Fe, New Mexico: Adopted in 2008 and used since March 2018 for mayor, city council, and municipal judge.
- St. Paul, Minnesota: Adopted in 2009, used since 2011 to elect the mayor and city council.
- Takoma Park, Maryland: Adopted in 2006 and used since 2007 in all elections for mayor and city council.
- Telluride, Colorado: Adopted in 2008 and used since 2011 to elect the mayor when three candidates run, as in 2011 and 2015.

6) **Arguments in Support:** The sponsor of this bill, FairVote California, writes:

In 2016, California Common Cause reported that between 2006 and 2014, 42 percent of winning candidates in single-seat city elections were elected with less than a majority when three or more candidates ran.

Electing candidates without majority support can undermine voter confidence in elections and government. State law should not preclude jurisdictions from adopting more representative majority-winner voting methods. In fact, many of California's largest cities—and the State—already do.

Under current law, owing to their home rule authority, charter cities may use the top-two primary and RCV in their local elections...However, all other jurisdictions lacking home rule authority, including the roughly 75 percent of California's cities that are governed by the state's general laws, are precluded from using these systems.

[R]anked choice voting also results in higher participation rates. In 2017-2018, turnout in all ten jurisdictions nationwide holding ranked choice voting elections surpassed projections. San Francisco had more voters in their RCV election for mayor than for the gubernatorial and Senate election not using ranked choice voting. It was the second highest vote total in San Francisco mayoral election history.

7) **Amendment Sought:** The Center for Election Science, which had a “support if amended” position on a prior version of this bill, and five individuals wrote to request an amendment to this bill to allow local jurisdictions to use approval voting for local elections. In its letter to the committee, the Center for Election Science wrote:

Approval voting is a single-winner method that allows voters to vote for as many candidates as they want (without ranking them). The costs of implementing approval voting are low, as it can be used on any current voting machine. It also requires minimal tweaks to ballot design and is easy for voters to understand and implement. Approval voting would address the spoiler effect and vote splitting while decreasing political polarization and providing voters with a sense of empowerment and agency over their votes. Approval voting also allows voters to always support their honest favorite no

matter what, a feat that ranked-choice voting can struggle with during competitive elections...

Ideally, we'd like to see localities have the flexibility to implement any voting method which meets their needs rather than them receiving piecemeal approval.

- 8) **Previous Legislation:** Since 2006 there have been numerous prior bills intended to permit local jurisdictions to use RCV for either regular or special elections. All of these bills either failed passage in the Legislature or were vetoed by the Governor, including all of the following: SB 596 (Bowen) of 2006, AB 1294 (Mullin and Leno) of 2007, AB 1121 (Davis) of 2009, AB 2732 (Eng) of 2010, and SB 1346 (Hancock) of 2010.

Most recently, SB 1288 (Leno) of 2016 generally would have authorized local jurisdictions to conduct local elections using RCV, or to require a runoff election to be conducted in an election for local office if no candidate received a majority of the vote in the primary election. SB 1288 was vetoed by Governor Brown. In his veto message, Governor Brown stated, "In a time when we want to encourage more voter participation, we need to keep voting simple. Ranked choice voting is overly complicated and confusing. I believe it deprives voters of genuinely informed choice."

REGISTERED SUPPORT / OPPOSITION:

Support

FairVote California (sponsor)
Asian Americans Advancing Justice – California
Berkeley City Council (prior version)
Californians for Electoral Reform
Center for Election Science (if amended, prior version)
City of Arcata (prior version)
City of Eureka (prior version)
Humboldt County Board of Supervisors (prior version)
League of California Cities
League of Women Voters of California
Peace and Freedom Party of California
RepresentUs (prior version)
Unite America, San Francisco Chapter
Unite America, Southern California Chapter (prior version)

Opposition

None on file.

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