

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 1248 (Bryan) – As Introduced February 16, 2023

SUBJECT: Local redistricting: independent redistricting commissions.

SUMMARY: Requires a county, city, school district, or community college district that contains over 300,000 residents to establish an independent redistricting commission (IRC) to adopt district boundaries after each federal decennial census. Specifically, **this bill:**

- 1) Requires a county, city, city and county, school district, or community college district with more than 300,000 residents on July 1 of a year ending in the number nine to establish an IRC composed of residents of the local jurisdiction to adopt the district boundaries for the jurisdiction's governing body after each federal decennial census. Allows a city, school district, or community college district to contract with the IRC for a county in which the local jurisdiction is partially or wholly located, as specified, to adopt the district boundaries for the local jurisdiction's governing body. Provides that these requirements do not apply to Fresno, Kern, Los Angeles, Riverside, and San Diego counties to the extent that those counties have an IRC pursuant to other provisions of existing state law. Provides that these requirements do not apply to a local jurisdiction that established an IRC before January 1, 2023.
- 2) Requires a county, city, city and county, school district, or community college district that is required to establish an IRC or contract with a county IRC, and that does not do so by March 1 of a year ending in the number zero, to establish an IRC as follows:
 - a) Requires the local jurisdiction to recruit eligible residents to apply to serve on the IRC, with the assistance of civic and community groups, as specified.
 - b) Requires the IRC to consist of 14 members and 2 alternates.
 - i) Requires at least one commissioner to reside in each of the existing districts of the legislative body, to the extent feasible given the number of existing districts.
 - ii) Permits alternates to fully participate in IRC deliberations.
 - c) Requires each commissioner to meet all of the following qualifications, in addition to the qualifications that otherwise apply to members of IRCs under existing law:
 - i) Be a resident of the local jurisdiction.
 - ii) Possess a history of civic engagement and participation.
 - iii) Possess experience that demonstrates analytical skills relevant to redistricting and voting rights, and possess an ability to comprehend and apply applicable legal requirements.

- iv) Possess experience that demonstrates an ability to be impartial.
 - v) Possess experience that demonstrates an appreciation for the diverse demographics and geography of the local jurisdiction.
 - d) Permits an interested person meeting the qualifications to apply to the selection entity to be considered for membership on the IRC. Requires the selection entity to review the applications and eliminate applicants who do not meet the specified qualifications.
 - e) In the case of counties, requires the selection entity to select 60 of the most qualified applicants, as specified, and to make their names public for at least 30 days. Requires the commissioners to be chosen from this screened pool of 60 applicants. For all other local jurisdictions, no process for screening of applicants is provided.
 - f) Requires the selection entity to create a subpool of qualified applicants from each of the existing districts of the local jurisdiction, to the extent feasible given the number of existing districts. Requires a random drawing to select one commissioner from each of the subpools, as specified, and to the extent feasible. In the case of a county, requires a drawing to select additional commissioners at random, as specified.
 - g) Requires the randomly selected commissioners to review the remaining names in the subpools of applicants and to appoint additional applicants to the IRC until all remaining positions on the IRC are filled. Requires the appointees to be chosen based on relevant experience, analytical skills, and ability to be impartial, and to ensure that the IRC reflects the jurisdiction's diversity, as specified.
 - h) Requires the legislative body of the jurisdiction to prescribe the selection entity, as specified.
 - i) Requires a member of the IRC to apply the law in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process.
 - j) Provides that nine members of the IRC constitute a quorum, and nine or more affirmative votes are required for any official action.
- 3) Imposes all of the following requirements and conditions on IRCs created pursuant to this bill:
- a) Prohibits a member of the IRC from communicating with any individual or organization regarding redistricting matters outside of a public meeting, except for communications with staff of the local jurisdiction regarding administrative matters of the IRC, and communications with another commissioner, staff, legal counsel, or consultants retained by the IRC.
 - b) Requires that members of the IRC receive a stipend, in an amount determined by the local jurisdiction, for each day in which they attend a meeting of the IRC or a committee or subcommittee of the IRC, as specified.

- c) Requires the local jurisdiction to provide reasonable funding and staffing of the IRC.
- 4) Requires IRCs and hybrid redistricting commissions to be subject to the same redistricting procedures and criteria, and the same requirements for the minimum number of public redistricting hearings, which would otherwise apply to a legislative body.
- 5) Requires, if a local jurisdiction contracts with the IRC for a county, that the county's IRC must conduct the number of public redistricting hearings in the local jurisdiction that would otherwise apply to the legislative body for that jurisdiction if it were adopting the district boundaries.
- 6) Requires the State Auditor to provide the contact information of any applicant to serve as a commissioner on the California Citizens Redistricting Commission (CCRC) to any city or county that has established an independent or hybrid redistricting commission, and to make a good faith effort to identify all independent and hybrid redistricting commissions in the state. Requires the Auditor to notify CCRC applicants of opportunities to serve on such redistricting commissions in counties or cities where the applicant is a resident, as specified, and encourages the Auditor to notify CCRC applicants about opportunities to serve on local independent or hybrid redistricting commissions for jurisdictions other than cities or counties, as specified.
- 7) Requires the Department of Finance (DOF) to prepare a population estimate for each school district and community college district by May 1 in each year ending in the number nine. Requires population estimates prepared by the DOF to be used to determine whether a local jurisdiction must establish an IRC under this bill.
- 8) Makes existing law governing the formation and operation of local IRCs, hybrid redistricting commissions, and advisory redistricting commissions applicable to commissions formed by charter cities. Specifies that the provisions of this bill related to local redistricting address a matter of statewide concern rather than a municipal affair, and therefore specifies that those provisions are applicable to charter cities.
- 9) Makes various findings and declarations, including the following:
 - a) The State of California has a strong state interest in ensuring that local jurisdictions follow a fair and equitable redistricting process to ensure representation of communities, and thus redistricting is not solely a municipal affair.
 - b) A fair and equitable redistricting process ensures the integrity of elections.
 - c) In the 2020 redistricting cycle and historically, observations of the redistricting process in California jurisdictions indicate IRCs lead to better outcomes for communities in terms of fairness, transparency, public engagement, and representation.
 - d) IRCs help thwart threats of minority vote dilution.
- 10) Makes clarifying, technical, and conforming changes.

EXISTING LAW:

- 1) Authorizes a county, general law city, school district, community college district, or special district to establish an IRC, or an advisory or hybrid redistricting commission, subject to certain conditions. (Elections Code §§23000 et seq.)
- 2) Defines the following terms related to local redistricting commissions:
 - a) “Advisory redistricting commission” to mean a body that recommends to a legislative body placement of the district boundaries for that legislative body.
 - b) “Hybrid redistricting commission” to mean a body that recommends to a legislative body two or more maps for the placement of the district boundaries 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.
 - c) “Independent redistricting commission” to mean a body, other than a legislative body, that is empowered to adopt the district boundaries for a legislative body. (Elections Code §23000)
- 3) Places the following requirements and restrictions on local IRCs and hybrid redistricting commissions:
 - a) Allows a local jurisdiction to prescribe the manner in which members are appointed to the commission, provided that the application process is open to all eligible residents and provided that commissioners are not directly appointed by the legislative body or an elected official of the jurisdiction.
 - b) Establishes various restrictions for an individual, or a family member of the individual, preceding service, during service, and following service on an IRC or hybrid redistricting commission, as specified.
 - c) Prohibits an IRC or hybrid redistricting commission from being comprised entirely of members who are registered to vote with the same political party preference. (Elections Code §23003)
- 4) Permits specified local jurisdictions that are partially or wholly located within a county that has an established an IRC to contract with that county to have that IRC adopt the district boundaries for the local jurisdiction if certain conditions are met. (Elections Code §23004)
- 5) Establishes the CCRC, and requires it to adjust the boundary lines of the congressional, State Senatorial, Assembly, and Board of Equalization (BOE) districts in the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, as specified. (California Constitution, Article XXI)
- 6) Establishes Citizens Redistricting Commissions in Fresno, Kern, Los Angeles, Riverside, and San Diego counties, and charges the commissions with adjusting the boundaries of

supervisory districts after each decennial federal census, as specified. (Elections Code §§21530-21535, 21540-21546, 21550-21553, 21560-21565, 21570-21575)

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

COMMENTS:

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

AB 1248 ensures community control over the redistricting process. The bill would require a county, general law city, charter city, school district, or community college district that contains over 300,000 residents to establish an independent redistricting commission to adopt district boundaries. These localities will have until March 1, 2030 to establish an independent redistricting commission that meets local needs and adheres to best practices of independence and transparency.

Voters and communities should have the right to choose their elected representatives, rather than the elected officials choosing their voters. Independent redistricting commissions (IRCs) are a proven and effective tool to ensure that the redistricting process respects and fairly represents communities, neighborhoods, and shared interests. This bill would ensure independence, transparency and best practices in the vital task of drawing district lines.

- 2) **Redistricting Overview:** “Redistricting” is the process by which the boundaries of districts of a governmental body are adjusted. Redistricting generally occurs at the beginning of each decade following the decennial federal census, when new district lines are adopted based on the census data so that the populations of each district of a governmental body are roughly equal. Over the course of the decade, districts can become significantly unequal in population due to differential growth rates in various locations of a jurisdiction. Redistricting is the way this inequality is corrected.
- 3) **California Citizens Redistricting Commission:** Proposition 11, which was approved by the voters at the 2008 statewide general election, created the CCRC, and gave it the responsibility for establishing district lines for Assembly, Senate, and BOE. Proposition 11 also modified the criteria to be used when drawing district lines. Two years later, California voters approved Proposition 20, which gave the CCRC the responsibility for establishing lines for California's congressional districts, and made other changes to the procedures and criteria to be used by the CCRC. The CCRC 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. The CCRC adopted district lines for the Legislature, Congress, and the BOE in the 2011 following the release of 2010 census data, and again in 2021 following the release of 2020 census data.
- 4) **Local Redistricting Commissions 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. 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 permits a county or a general law city to establish a redistricting commission, subject to certain conditions. SB 1018 (Allen), Chapter 462, Statutes of 2018, built upon SB 1108 by allowing all local governmental entities to establish redistricting commissions, and by modifying some of the rules governing local redistricting commissions.

Separately, the Legislature has enacted a number of bills to require specified counties to establish redistricting commissions. SB 958 (Lara), Chapter 781, Statutes of 2016, required the establishment of a Citizens Redistricting Commission in Los Angeles County. Similarly, AB 801 (Weber), Chapter 711, Statutes of 2017, required the establishment of a Citizens Redistricting Commission in San Diego County. These commissions were in place for redistricting following the 2020 federal decennial census, and drew the district lines for those counties' supervisorial districts.

Last year, the Legislature approved AB 1307 (Cervantes), Chapter 403, Statutes of 2022, which creates a Citizens Redistricting Commission in Riverside County, AB 2030 (Arambula), Chapter 407, Statutes of 2022, which creates a Citizens Redistricting Commission in Fresno County, and AB 2494 (Salas), Chapter 411, Statutes of 2022, which creates a Citizens Redistricting Commission in Kern County, as specified. All of those commissions will be created for the next redistricting process following the 2030 census.

SB 139 (Allen) of 2019 would have required a county with a population of 400,000 or more to establish an IRC to adopt the county supervisorial districts after each federal decennial census, as specified. Governor Newsom vetoed SB 139 stating, "While I agree these commissions can be an important tool in preventing gerrymandering, local jurisdictions are already authorized to establish independent, advisory or hybrid redistricting commissions. Moreover, this measure constitutes a clear mandate for which the state may be required to reimburse counties pursuant to the California Constitution and should therefore be considered in the annual budget process."

- 5) **Affected Jurisdictions:** According to the January 1, 2022, population estimates from the DOF, the following counties and cities have populations of 300,000 or more, and would be required to establish IRCs for 2030 under this bill:

Counties: Alameda, Contra Costa, *Fresno*, *Kern*, *Los Angeles*, Monterey, Orange, Placer, *Riverside*, Sacramento, San Bernardino, *San Diego*, San Francisco, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, Stanislaus, Tulare, and Ventura. (Counties in *italics* are already required to have IRCs in accordance with other provisions of state law, as described in more detail below. This bill exempts those counties from the requirement to create IRCs provided that the provisions of existing law requiring IRCs in those counties remains in effect. San Francisco is a charter city and county, and would be subject to this bill's requirements that apply to cities, rather than those that apply to counties.) Based on

current population growth rates, Merced County may also have a population of 300,000 or more by July 1, 2029, and thus would be required to establish an IRC under this bill.

Cities: Anaheim, Bakersfield, Fresno, Irvine, Long Beach, Los Angeles, Oakland, Riverside, Sacramento, San Diego, San Francisco, San Jose, Santa Ana, and Stockton.

Based on data from the United States Census Bureau, the following school districts appear to have populations of 300,000 or more, and would be required to establish IRCs for 2030 under this bill: Anaheim Union High School District (HSD), Antelope Valley Union Joint HSD, Capistrano Unified School District (USD), Chaffey Joint Union HSD, Chula Vista Elementary School District, East Side Union HSD, Elk Grove USD, Fresno USD, Grossmont Union HSD, Huntington Beach Union HSD, Kern HSD, Long Beach USD, Los Angeles USD, Oakland USD, Oxnard Union HSD, Sacramento USD, San Diego USD, San Francisco USD, San Juan USD, and Sweetwater Union HSD.

Finally, based on research by committee staff, it appears that about 60% of community college districts in the state that elect board members by trustee area have populations of 300,000 or more, and would be required to establish an IRC for 2030.

- 6) **Local Control Over IRC Design:** Although this bill requires specified local government bodies with more than 300,000 residents to establish IRCs to adopt district boundaries following each federal decennial census, this bill does not mandate that those bodies use a specific model of IRC as long as the commission that a local government body creates meets all the requirements of an IRC as provided under existing law. Local jurisdictions would still have the ability to decide the size of the IRC, the manner in which members are appointed to the IRC (provided that commissioners are not directly appointed by local elected officials), and the timeline for the formation of the IRC. Local jurisdictions would also be able to establish additional qualifications for members of the IRC, beyond the qualifications that apply under state law to IRCs more generally. If a jurisdiction is required to have an IRC under this bill, and it fails to create its own IRC by March 1 of a year ending in zero, then that jurisdiction would be required to establish an IRC pursuant to a default structure specified in this bill.
- 7) **Default Commission Structure:** The default IRC structure and selection process provided in this bill for situations where a jurisdiction does not create its own IRC is loosely modeled after the structure of the CCRC, and of IRCs that are required to be formed in Fresno, Kern, Los Angeles, Riverside, and San Diego counties under existing law. There are slight differences between the default IRC for counties and the default IRC for cities, school districts, and community college districts under this bill.

Like the CCRC and IRCs in Fresno, Kern, Los Angeles, Riverside, and San Diego counties, the default IRCs under this bill would consist of 14 members, with some commissioners chosen randomly from the pool of applicants, and other commissioners appointed by those chosen at random in an effort to ensure that the commission reflects the diversity of the jurisdiction. The qualification requirements for members are also similar (though not identical) to the requirements for members of the IRCs in Fresno, Kern, Los Angeles, Riverside, and San Diego counties.

In at least some cases, however, the default IRC structure provided in this bill may not be compatible with the makeup of certain jurisdictions. For instance, the process for creating the IRC under the default structure provides for commissioners to be selected at random from each existing district of the legislative body of the jurisdiction *to the extent feasible* given the number of existing districts. The language does not, however, specify a process for how the IRC is to be selected in jurisdictions where it is *not* feasible to select commissioners at random from each of the existing districts—if, for example, the number of districts in the jurisdiction exceeds the number of commissioners to be chosen.

Furthermore, even if it is *feasible* to select a commissioner from each of the existing legislative districts, it is unclear whether it would be *desirable* to do so in all circumstances. As described above, the CCRC and the IRCs in Fresno, Kern, Los Angeles, Riverside, and San Diego counties all have a selection process under which some commissioners are chosen at random and other commissioners are appointed by the randomly-selected commissioners. Because there is no guarantee that a random selection process will produce an IRC that is diverse and representative of the jurisdiction, an IRC formation process that requires a portion of commissioners to be appointed allows for the appointing authority to consider the diversity of and representation on the IRC when making the appointments. If few or none of the commissioners are directly appointed, however, there would be little recourse if the random selection of commissioners resulted in an unrepresentative body.

Other aspects of the default IRC structure proposed by this bill similarly could be refined to ensure the greatest chance of forming a successful IRC if a local jurisdiction fails to create its own. For instance, the default IRC structure requires that two alternates be appointed so that any vacancies on the IRC can be promptly filled. The bill does not, however, clearly specify how the alternates are selected.

While the default IRC structure contained in this bill provides an important backstop for jurisdictions that fail to create their own IRCs, the author may wish to consider refinements to that structure to ensure that it is broadly compatible with the jurisdictions that would be required to create IRCs by this bill.

- 8) **Arguments in Support:** The co-sponsors of this bill, Asian Americans Advancing Justice-Southern California, California Common Cause, and the League of Women Voters of California, write in support:

California has been recognized nationally for bringing independent, nonpartisan redistricting to our state redistricting process. In 2008, California voters approved Proposition 11, which created the Citizens Redistricting Commission, giving it the responsibility to establish district lines for the State Assembly, State Senate, and the Board of Equalization. In 2010, Proposition 20 extended the Commission's responsibility to include drawing electoral boundaries for U.S. House seats. The Commission has been widely praised, by reformers and academics, as a model of fair, transparent, and nonpartisan redistricting. California's state redistricting commission has been so successful that it has been copied by other states.

IRCs have also been used successfully at the local level in California. Four counties, 14 cities, and one school district successfully used IRCs in the 2020 redistricting cycle. Three additional counties will use IRCs for the first time in 2030 due to legislative efforts following the 2020 redistricting cycle.

However, while local jurisdictions have the statutorily granted ability to create their own IRCs, most jurisdictions have not done so. Self-interested incumbents simply do not have an incentive to cede their own authority to gerrymander districts to protect themselves, their majority, and/or their political party...

AB 1248 would specifically require counties, cities, and educational districts with populations over 300,000 people to establish an IRC before March 1, 2030... Additionally, commissioners of these IRCs would be prohibited from engaging in ex parte communications, and would be required to receive a stipend in an amount determined by the local jurisdiction. In the case that a local government fails to establish an IRC by the March deadline, AB 1248 would require it to utilize a more detailed default commission structure...

AB 1248 will help Californians build a strong, fair, and more representative local democracy.

- 9) **Arguments in Opposition:** The California State Association of Counties, Rural County Representatives of California, and Urban Counties of California all have an “oppose unless amended” position on this bill. In a joint letter, the organizations write:

AB 1248 does not provide the necessary resources for counties to execute a successful independent redistricting commission process. To that end, we respectfully request that AB 1248 be amended to ensure counties are fully reimbursed for costs and incorporate more robust statutory and technical assistance supports to ensure that local agencies are able to effectively deliver on the promise of independent redistricting...

In general, the state should provide additional guidance to counties and the corresponding commissions in the statute in areas where there is a lack of clarity and provide some avenue for technical assistance... Without such direction, counties and their commissions will be left to make decisions about managing the commission process on their own, informed only by the practices of their peers or their own best judgment. While counties are capable of addressing such uncertainties in the normal course of business, the “independent” nature of these commissions make it inherently difficult to have confidence as to where the line between independence and not exists.

We also reiterate the well-known fact that county elections and redistricting work are under-resourced, from a fiscal and human perspective and that there is a current lack of redistricting professionals available to provide competent assistance at a reasonable cost. The existing shortage of redistricting professionals will be exacerbated by the proposed AB 764, the FAIR MAPS Act of 2023, which

will apply to hundreds of local government entities and require significant professional assistance to accomplish. There are simply not enough redistricting attorneys, map drawers, and consultants to go around and counties – and their independent redistricting commissions – will be ill-equipped to assess the expertise of such professionals without assistance.

10) **Related Legislation:** AB 34 (Valencia), which is also being heard in this committee today, creates a Citizens Redistricting Commission in Orange County, as specified.

AB 764 (Bryan), which is also being heard in this committee today, makes various changes to provisions of state law governing redistricting by counties, cities, special districts, school districts, community college districts, and county boards of education.

SB 52 (Durazo), which is pending in the Senate Elections & Constitutional Amendments Committee, requires charter cities with a population of 2.5 million people or more to create an IRC. The City of Los Angeles is the only City that would be affected by that bill based on current population figures.

SB 314 (Ashby), which is pending in the Senate Appropriations Committee, creates a Citizens Redistricting Commission in Sacramento County.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Americans Advancing Justice-Southern California (Co-Sponsor)
 California Common Cause (Co-Sponsor)
 League of Women Voters of California (Co-Sponsor)
 AAPIs for Civic Empowerment Education Fund
 ACLU California Action
 AFSCME
 Alameda County Coalition for Fair Redistricting
 Alliance San Diego
 Asian Americans Advancing Justice - Asian Law Caucus
 Central Coast Alliance United for a Sustainable Economy
 Community Health Councils
 Courage California
 Dolores Huerta Foundation
 Ella Baker Center for Human Rights
 Indivisible CA Statestrong
 Initiate Justice
 Initiate Justice Action
 Inland Empire Immigrant Youth Collective
 Inland Empire United

Inland Equity Partnership
League of Women Voters California
San Francisco Rising
Santa Monica Democratic Club
The Resistance Northridge-Indivisible
3 individuals

Opposition

California State Association of Counties (unless amended)
Rural County Representatives of California (unless amended)
Urban Counties of California (unless amended)

Analysis Prepared by: Ethan Jones / ELECTIONS / (916) 319-2094