

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 1848 (Bryan) – As Amended April 19, 2022

SUBJECT: Redistricting.

SUMMARY: Requires, for the purposes of drawing district lines for Congress, the State Legislature, and the State Board of Equalization (BOE), that each incarcerated person in the state be deemed to reside at that person's last known place of residence, as specified. Repeals an obsolete provision of law that related to district boundaries that were adopted by the Legislature. Specifically, **this bill:**

- 1) Requires the Citizens Redistricting Commission (CRC), when carrying out its redistricting responsibilities under the California Constitution, to deem each incarcerated person as residing at the person's last known place of residence, rather than at the institution of the person's incarceration, and to use information furnished to it by the California Department of Corrections and Rehabilitation (CDCR) about the last known place of residence of inmates incarcerated in state correctional facilities in carrying out its redistricting responsibilities.
- 2) Repeals an obsolete requirement that appropriate committees of the Legislature prepare detailed maps showing the boundaries of political districts established by specified provisions of the Elections Code, and that requires the Secretary of State (SOS) to distribute copies of those maps, as specified. Makes a corresponding change to require the SOS to distribute copies of certified final maps of congressional, Senatorial, Assembly, and State BOE districts that are adopted by the CRC and certified to the SOS pursuant to the California Constitution.
- 3) Makes technical changes.

EXISTING LAW:

- 1) Establishes the CRC, and requires it to adjust the boundary lines of the congressional, State Senatorial, Assembly, and 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.
- 2) Establishes statutory provisions that govern the formation and operation of the CRC. Provides that these specified provisions of the Government Code may be amended only through one of the following methods:
 - a) Through the enactment of a bill that becomes effective only upon approval of the voters; or,
 - b) Through the enactment of a bill that does not require voter approval, provided that all of the following conditions are met:
 - i) By the same vote required for the adoption of the final set of maps, the CRC recommends amendments to those procedures to carry out its purpose and intent.

- ii) The exact language of the amendments provided by the CRC is enacted as a statute approved by a two-thirds vote of each house of the Legislature and signed by the Governor.
 - iii) The bill containing the amendments provided by the CRC is in print for at least 12 days before final passage by the Legislature.
 - iv) The amendments further the purposes of the ballot measure that created the CRC.
 - v) The amendments may not be passed by the Legislature in a year ending in 9, 0, or 1.
- 3) Requires appropriate committees of the Legislature to prepare detailed maps showing the boundaries of any districts established by Division 21 of the Elections Code on or after January 1, 1991. Requires maps to be prepared no later than 90 days following the enactment of any redistricting plan pursuant to Division 21, and requires the maps to illustrate the boundary lines of every district described in the redistricting plan. Requires the maps to be provided to the SOS for distribution as specified.
 - 4) Requires CDCR to furnish specified information to the Legislature and the CRC regarding each inmate incarcerated in a state adult correctional facility on the decennial Census Day, including the residential address at which the inmate was domiciled before the inmate's most current term of incarceration, as specified.
 - 5) Requests the CRC to deem each incarcerated person as residing at that person's last known place of residence, rather than at the institution of the person's incarceration, using the information provided to it by CDCR as specified above.
 - 6) Requires the Legislature to take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide the public ready access to redistricting data and computer software for drawing maps. Requires the Legislature to coordinate these efforts with the CRC, as specified.
 - 7) Prohibits counties and cities, when adopting or adjusting the boundaries of districts within the jurisdiction, from counting an incarcerated person, as specified, toward the jurisdiction's population, except for an incarcerated person whose last known place of residence can be assigned to a census block in the jurisdiction, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with 6) above, and if that database is made publicly available.

FISCAL EFFECT: Unknown

COMMENTS:

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

In 2011, Governor Brown signed AB 420. That bill requested the Citizens Redistricting Commission to deem an incarcerated person as residing at the person's last known place of residence for the purposes of state redistricting. AB 420 sought to end the practice of considering incarcerated individuals, for

redistricting purposes, as residing at the prisons where they are incarcerated, a practice that distorts political representation.

For the 2021 redistricting process, the Citizens Redistricting Commission unanimously decided to comply with that request, and used census data that had been adjusted accordingly when adopting district lines. Subsequently, the Commission voted to support changing state law to *require* that incarcerated individuals be deemed as residing at their last known places of residence for all future state redistricting processes. AB 1848 makes that change.

Additionally, AB 1848 makes minor changes to the Elections Code to reflect the fact that the Legislature no longer has the responsibility for adopting congressional, Assembly, State Senate, and Board of Equalization districts following the decennial census.

- 2) **Citizens Redistricting Commission and Prior Legislative Redistricting Responsibilities:** Proposition 11, which was approved by the voters at the 2008 statewide general election, created the CRC, and gave it the responsibility for establishing district lines for Assembly, Senate, and the BOE. Proposition 11 also modified the criteria to be used when drawing district lines. Proposition 20, which was approved by the voters at the 2010 statewide general election, 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. With the passage of Propositions 11 and 20, the California Legislature no longer has a direct role in the adoption of district boundaries for congressional, legislative, and BOE districts.

Prior to the creation of the CRC, when the Legislature was responsible for redistricting, it generally adopted boundary lines through the passage of one or more bills that placed detailed written descriptions of the districts into the Elections Code. To assist in the implementation and interpretation of those districts, the Elections Code required that maps be prepared showing the boundaries of districts adopted by the Legislature. Specifically, Elections Code Section 21001 requires appropriate committees of the Legislature to prepare detailed maps showing the boundaries of any district established by Division 21 of the Elections Code no later than 90 days after the enactment of a redistricting plan under that Division.

Because the Legislature no longer has the responsibility for adopting district maps—and because district boundaries are no longer established by Division 21 of the Elections Code—that provision of state law is obsolete and inoperative. This bill repeals that obsolete requirement, and makes corresponding changes to provisions of law that require the SOS to deliver copies of district maps to interested parties.

- 3) **Census Bureau Policy Regarding Prison Inmates:** According to information from the United States (US) Census Bureau (Bureau), planners of the first decennial census in 1790 established the concept of a "usual residence" to determine where people would be counted. A person's usual residence is the place where the person lives and sleeps most of the time. Because of the "usual residence" rule, a person who is on vacation on census day (April 1 of each year ending in "0") is not counted as living at the place where the person is vacationing, but rather where that person usually lives. The usual residence policy has been used for every decennial census since the first census, including the 2020 census.

While it is easy to determine the "usual residence" of most people, the determination of the usual residence for people living in non-traditional living situations can be more complex. For example, for the 2020 Census, the Bureau changed its policy for determining the "usual residence" for certain US military personnel. In the 2010 Census, the Bureau counted all military personnel who were deployed or stationed overseas as residing in the state of the person's "home of record" (generally, the home of the person at the time the person enlisted or reenlisted in the Armed Forces) for the purposes of the apportionment of congressional seats only. For the 2020 Census, however, the Bureau distinguished between military personnel who were *deployed* overseas and those who were *stationed* overseas. Those who were *stationed* overseas (generally those who are overseas on a longer-term basis) continued to be recorded as residing in the state of their "home of record" for apportionment purposes only. Military personnel who were *deployed* overseas on a short-term basis, however, were counted for census purposes as having a usual residence at the location where they were stationed in the US.

The Bureau's policy for counting people in correctional facilities on census day is that those individuals are to be counted at the facility of incarceration. This is true for adults and juveniles and is true for people who are incarcerated in federal prisons or detention centers, state prisons, and local jails and confinement facilities. Although the Bureau received a large number of comments encouraging it to change the residence criteria for incarcerated individuals for the 2020 census, it announced in 2018 that it would continue to count prisoners at the correctional facility at which they are incarcerated on census day.

Because the state uses population data from the Bureau for redistricting purposes, until 2021, individuals who were incarcerated in California were counted at the place of incarceration when district lines are drawn for the state Legislature, Congress, and the BOE.

- 4) **Residence of Incarcerated Individuals for Redistricting Purposes:** In light of the Bureau's policy for counting people in correctional facilities on census day at their facilities of incarceration, after the 2010 census, the Legislature approved and Governor Brown signed AB 420 (Davis), Chapter 548, Statutes of 2011. AB 420 requested the CRC, when adjusting district boundaries for state Legislature, Congress, and the BOE, to deem an incarcerated person as residing at the person's last known residence, rather than the institution of the person's incarceration. AB 420 was intended to end the practice whereby incarcerated individuals are counted, for redistricting purposes, as residing at the prisons where they are incarcerated, rather than at the locations where they last resided prior to incarceration. Critics of that practice argue that it artificially inflates the political influence of districts where prisons are located, at the expense of other voters. Because the Census Bureau counts an incarcerated individual as living in the facility where they are incarcerated on Census Day, rather than at the person's last known residence, implementing this policy requires that census data be adjusted to reallocate data related to incarcerated individuals away from the census blocks where prison facilities are located, and back to the census blocks where those individuals last resided before being incarcerated. The following year, the Legislature approved and Governor Brown signed AB 1986 (Davis), Chapter 318, Statutes of 2012, which made a number of changes to the provisions of AB 420 in an attempt to allow for that bill to be more effectively implemented.

As the 2020 census and the 2021 redistricting process approached, it became apparent that

some modifications were required to state law in order to implement AB 420 and AB 1986 as originally envisioned. Accordingly, AB 2172 (Weber), Chapter 232, Statutes of 2018, made various changes to provisions of AB 420 and AB 1986. Among other changes, AB 2172 required CDCR to provide *all* information it maintains about inmates' prior residential addresses, instead of providing information only about inmates' *last* known places of residence, and established a rule for assigning an incarcerated individual to a census block for redistricting purposes in a situation where the residential address information from CDCR for that individual is not sufficiently specific to allow for the address to be assigned to a census block.

- 5) **Redistricting Dataset:** Since 1993, the University of California (UC) system has housed the Statewide Database, which is the official redistricting database for California. According to information from the Statewide Database, it originally emerged from a database that was created by the Assembly for the 1981 redistricting process. In 1993, the state budget included funding to the UC system for the purpose of transferring the Assembly's redistricting database to the Institute of Governmental Studies (IGS) at UC Berkeley, and for maintaining that database. The Statewide Database subsequently has moved and is now housed at the UC Berkeley School of Law.

According to the Statewide Database, when the Legislature decided to house the database permanently in a nonpartisan environment, it chose IGS for three primary reasons. First, the Associate Director of IGS at the time was an expert on California redistricting and was willing to handle the project. Second, the IGS library had an extensive collection of materials on California policy and politics, including redistricting maps. Finally, by housing the database at the UC system, it was believed that the database would benefit from academic input and would be openly accessible to the public.

Since voting to house the Statewide Database in the UC system, the Legislature has played an ongoing role in ensuring that the state's redistricting database remains complete and accurate. Section 21000 of the Elections Code requires county elections officials to make relevant information available to the Legislature for use in redrawing legislative and congressional districts, including precinct maps and election returns. The Legislature regularly works with the SOS and county elections officials to collect that information and to ensure that it is provided to the Statewide Database for inclusion in the redistricting dataset.

Additionally, even as Propositions 11 and 20 eliminated the Legislature's authority to establish the boundaries for legislative, congressional, and BOE districts, Proposition 11 also required the Legislature to continue its role in preparing and maintaining the database that is used for redistricting purposes, and further required the Legislature to provide ready access to redistricting data and computer software for drawing maps. Under Proposition 11, those efforts are required to be coordinated with the CRC.

- 6) **Citizens Redistricting Commission and Use of Adjusted Census Data:** Because Propositions 11 and 20 established the CRC in the Constitution and gave it the independent authority to draw district lines for Assembly, Senate, Congress, and BOE, AB 420, AB 1986, and AB 2172 did not *require* the CRC to use adjusted census figures, but rather *requested* that it do so in deference to the CRC's independence. On January 12, 2021, the CRC voted unanimously to comply with that request, and to "deem people incarcerated in a state correctional facility on April 1, 2020, as residing at their last known place of residence, rather

than at the institution of their incarceration,” for the purposes of the adoption of district lines for Assembly, Senate, Congress, and BOE following the 2020 Census. On September 20, 2021, the Speaker of the Assembly, Senate President pro Tempore, and Republican Leaders in the Senate and Assembly sent a letter to the CRC to inform the CRC that the Statewide Database had completed the official redistricting database for use in the 2021 redistricting process, which included the incarcerated population adjustment.

Since its adoption of new legislative, congressional, and BOE districts in December 2021, the CRC has been engaged in a “Lessons Learned” process that is intended to result in actionable recommendations from the CRC to future commissions, and in the development of proposals for legislative and regulatory changes that the CRC supports. At a meeting on March 30, 2022, the CRC voted to move forward with five conceptual proposals for potential legislative changes. One of those proposals was to require in statute the reallocation of state incarcerated people to their last known place of residence. This bill effectively would implement that policy recommendation, though the CRC has not voted on whether to take a position on the specific language included in this bill. The CRC is expected to continue discussing potential legislative proposals that it may wish to pursue, and is scheduled to discuss the specific proposal related to the reallocation of state incarcerated people to their last known place of residence at its meeting that is scheduled to occur at the same time as this committee’s consideration of this bill.

- 7) **Local Redistricting and Use of Adjusted Census Data and Previous Legislation:** While state law currently gives the CRC the *discretion* to decide whether to use census data that includes the incarcerated population adjustment, recent state legislation *requires* that adjusted data be used for certain local redistricting if the official redistricting dataset includes the adjusted data. Specifically, AB 849 (Bonta), Chapter 557, Statutes of 2019, required counties and cities to use the adjusted data when adopting or adjusting district boundaries, and AB 1276 (Bonta), Chapter 90, Statutes of 2020, required the Los Angeles County Citizens Redistricting Commission and the San Diego County Independent Redistricting Commission to use the adjusted data when adopting district boundaries for their respective jurisdictions.
- 8) **Arguments in Support:** In support of this bill, the League of Women Voters of California writes:

While the current [CRC] complied with [the Elections Code’s] request to count incarcerated people as residing at their last known place of residence, rather than at the institution of their incarceration, AB 1848 requires future Commissions to make this adjustment to ensure fair and equitable representation for all Californians.

The problem with counting incarcerated people as residing in the locality where they are imprisoned is that such localities receive more representatives, and the localities where incarcerated people came from and will return to receive fewer representatives, than is warranted. Since California’s prison population is disproportionately comprised of people of color, AB 1848 addresses an inequity that adversely impacts political representation among California’s Latino and African American populations.

Voting is a fundamental citizen right that must be guaranteed. Both the United

States Constitution and the Voting Rights Act of 1965 require that the redrawing of districts must not dilute the effective representation of minority citizens.

- 9) **Restrictions on Amending Statutes Related to the CRC:** As detailed above in Existing Law, state law imposes a number of restrictions on statutory amendments to provisions of state law that control the process for the selection and governance of the CRC. Because nothing in this bill seeks to amend those provisions of law, this bill as currently in print is not subject to those restrictions.

REGISTERED SUPPORT / OPPOSITION:

Support

League of Women Voters of California

Opposition

None on file.

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