

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 34 (Valencia) – As Amended March 23, 2023

SUBJECT: Elections: County of Orange Citizens Redistricting Commission.

SUMMARY: Creates a Citizens Redistricting Commission (Commission) in Orange County, as specified. Specifically, **this bill:**

- 1) Provides for the creation of the Commission, and tasks it with adjusting the boundary lines of the county's supervisorial districts in the year following the year in which the decennial federal census is taken. Requires the Orange County Board of Supervisors (board) to provide funding and staffing for the Commission, to ensure that a computerized redistricting database is available, and to ensure that the public has access to redistricting data and computer software equivalent to what is available to the commissioners.
- 2) Requires the Commission to consist of 14 voting members and two non-voting alternates, and to be created no later than December 31 in each year ending in the number zero.
- 3) Requires the political party preferences of commissioners to be as proportional as possible to the political party registrations of voters in the county, as specified. Requires at least one commissioner to reside in each of the existing supervisorial districts.
- 4) Requires each commissioner to meet all of the following qualifications:
 - a) Be a county resident who was continuously registered to vote in the county with the same party preference for at least five years immediately preceding the person's appointment;
 - b) Has voted in at least one of the last three statewide elections immediately preceding the person's application;
 - c) Possess experience that demonstrates analytical skills relevant to redistricting and voting rights, and possess an ability to comprehend and apply applicable legal requirements;
 - d) Possess experience that demonstrates an ability to be impartial; and,
 - e) Possess experience that demonstrates an appreciation for the diverse demographics and geography of the county.
- 5) Prohibits a person from being a commissioner if the person, or an immediate family member, did any of the following in the 10 years immediately preceding the person's application:
 - a) Was appointed or elected to, or was a candidate for, office at the local, state, or federal level representing the county, including as a member of the board of supervisors;

- b) Served as an employee or paid consultant of an elected representative at the local, state, or federal level representing the county, or of a candidate for such an office;
 - c) Served as an officer, employee, or paid consultant of a political party or as an appointed member of a political party central committee; or,
 - d) Was a registered state or local lobbyist.
- 6) Requires the county elections official to review commissioner applications and eliminate applicants who do not meet the qualifications. Requires the elections official to select 60 of the most qualified applicants and to publicize their names for at least 30 days. Permits the elections official, during this period, to eliminate any applicant if the official becomes aware that the applicant does not meet the qualifications. Requires the elections official to create a subpool for each existing supervisorial district. Prohibits the elections official from communicating with a member of the board or their agent about the nomination process or applicants before the publication of the 60 most qualified applicants.
- 7) Requires the Orange County Auditor-Controller to conduct a random drawing to select one commissioner from each of the subpools, and then conduct a random drawing from the remaining applicants to select three additional commissioners.
- 8) Requires the eight selected commissioners to appoint six additional members and two non-voting alternates from the remaining applicants. Requires these appointees to be chosen based on relevant experience, analytical skills, and ability to be impartial, and to ensure that the Commission reflects the county's diversity, as specified. Requires the eight commissioners to select applicants so that the political party preferences of the members of the Commission are as proportional as possible to the registered voters in the county, as detailed above.
- 9) Requires commissioners to apply the requirements of this bill in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process.
- 10) Permits each alternate commissioner to attend Commission meetings, other than closed session meetings, and to give public comment to the Commission.
- 11) Provides that the term of office of each member of the Commission expires upon the appointment of the first member of the succeeding Commission.
- 12) Provides that nine members of the Commission constitute a quorum and requires nine or more affirmative votes for any official action.
- 13) Requires each commissioner to be present for all the Commission's public hearings and internal meetings. Provides that a commissioner is subject to removal if the commissioner misses a significant number of meetings or hearings such that it interferes with the Commission's work and with the member's ability to meaningfully participate in the Commission's activities.

- 14) Prohibits the Commission from retaining a consultant, as specified, who would not be qualified as a Commission applicant due to any of the reasons described above in 5).
- 15) Prohibits a commissioner from endorsing, working for, volunteering for, or making a campaign contribution to a candidate for a county elective office while on the Commission.
- 16) Requires each commissioner to be a designated employee for the purposes of the conflict of interest code adopted by the county, as specified, thereby requiring members to file statements of economic interests and to comply with specified state laws regarding conflicts of interests and limits on gifts and honoraria.
- 17) Requires the Commission to establish single-member supervisorial districts pursuant to a mapping process using the following criteria as set forth in the following order of priority:
 - a) Requires districts to comply with the United States (US) Constitution and requires each district to have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act (VRA) or allowable by law. Provides that population equality shall be based on the total population of residents in the county as determined by the most recent federal decennial census for which redistricting data are available, as specified. Provides that an incarcerated person shall not be counted towards the county's population except for an incarcerated person whose last known place of residence can be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in a specified computerized database for redistricting;
 - b) Requires districts to comply with the VRA;
 - c) Requires districts to be geographically contiguous;
 - d) Requires the geographic integrity of any city, local neighborhood, or local community of interest, as defined, to be respected in a manner that minimizes its division to the extent possible without violating the above requirements; and,
 - e) Requires, to the extent practicable, and where this does not conflict with the higher-priority criteria detailed above, districts to be drawn to encourage geographical compactness, as specified.
- 18) Prohibits the place of residence of any incumbent or political candidate from being considered in the creation of a map, and prohibits districts from being drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.
- 19) Requires the Commission to comply with the Ralph M. Brown Act (the state's open meetings law).
- 20) Requires the Commission, prior to drawing a draft map, to conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public

hearing in each supervisorial district, as specified.

- 21) Requires the Commission, after drawing a draft map, to do both of the following:
 - a) Post the map for public comment on county's website; and,
 - b) Conduct at least two public hearings to take place over a period of no fewer than 30 days.
- 22) Requires the Commission to make available to the public a calendar of all public hearings and to post the agenda for the public hearings at least seven days before the hearings. Requires the agenda for a meeting conducted after the Commission has drawn a draft map to include a copy of that map. Requires hearings to be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible.
- 23) Defines an "applicable language," as a language for which the number of residents of the county who are members of a language minority is greater than or equal to three percent of the total voting age residents of the county. Requires the Commission to do both of the following for each applicable language:
 - a) Arrange for the live translation of a hearing into that language if a request is made at least 24 hours before the hearing; and,
 - b) Translate all written materials prepared by the Commission into that language.
- 24) Requires the Commission to take steps to encourage county residents to participate in the redistricting process. Provides that these steps may include the following:
 - a) Providing information through media, social media, and public service announcements;
 - b) Coordinating with community organizations; and,
 - c) Posting information on the county's website that explains the redistricting process and includes a notice of each hearing and procedures for testifying or submitting testimony.
- 25) Provides that all records of the Commission relating to redistricting, and all data considered by the Commission in drawing a draft map or the final map, are public records.
- 26) Makes the Commission subject to restrictions on the release of draft maps and deadlines for the adoption of final maps that are generally applicable to county redistricting. Provides that the adopted map is subject to referendum.
- 27) Requires the Commission to issue, with the final map, a report that explains how the Commission made its decisions in achieving compliance with the criteria described above.

- 28) Prohibits a commissioner from holding elective office at the federal, state, county, or city level in the state for five years beginning from the date of the person's appointment.
- 29) Prohibits a commissioner from doing any of the following for a period of three years beginning from the date of appointment to the Commission:
 - a) Holding an appointive federal, state, or local public office;
 - b) Serving as paid staff for or a paid consultant to, the Board of Equalization (BOE), Congress, the Legislature, or any individual legislator; or,
 - c) Registering as a federal, state, or local lobbyist in the state.
- 30) Permits the Commission, with nine affirmative votes, to remove a commissioner only for substantial neglect of duty, gross misconduct in office, or causing the Commission to be unable to discharge its duties. Requires at least three votes to be from members of one political party, and at least three votes to be from members of one other political party.
 - a) Prohibits a commissioner or alternate from voting on their own removal.
 - b) Provides that a commissioner who is proposed for removal is entitled to receive written notice of the reasons for the proposed removal and of the meeting where the Commission will vote on the proposal removal, as specified. Permits the member proposed for removal to respond to or rebut the reasons for their removal, as specified.
 - c) Provides that the decision of the Commission to remove a member is final, non-appealable, and is not subject to judicial review.
- 31) Requires the Commission chair to select an alternate member to fill any vacancy on the Commission. Requires the alternate who is appointed to have the same political party preference as the commissioner who vacated their position.
- 32) Requires the Auditor-Controller of Orange County, as specified, to recruit a pool of qualified applicants to fill vacancies on the Commission if it has fewer than nine voting members. Requires the remaining commissioners to appoint replacement commissioners to fill the vacancies by a two-thirds vote. Requires each person who is selected to fill a vacancy pursuant to this provision to have the same political party preference as the commissioner who vacated their position.
- 33) Makes findings and declarations that a special law is necessary because of the unique circumstances facing Orange County.

EXISTING LAW:

- 1) Requires the board of supervisors of each county, following each federal decennial census, to adopt boundaries for all of the supervisorial districts of the county so that the supervisorial

districts are substantially equal in population as required by the US Constitution, as specified. (Elections Code §§21500 et seq.)

- 2) Authorizes a local jurisdiction, including a county, to establish an independent, hybrid, or advisory redistricting commission by resolution, ordinance, or charter amendment, subject to certain conditions. (Elections Code §§23000 et seq.)
- 3) Establishes a procedure for a government of a county to adopt a charter by a majority vote of its electors voting on the question. Generally provides greater autonomy over county affairs to counties that have adopted charters. (California Constitution Article XI, §§3, 4)
- 4) Provides that charter counties are subject to statutes that relate to apportioning population of governing body districts. (California Constitution Article XI, §4(a))
- 5) Establishes Citizens Redistricting Commissions in Fresno, Kern, Los Angeles, Riverside, and San Diego counties, and charges the commissions with adjusting the boundaries of supervisorial districts after each decennial federal census, as specified. (Elections Code §§21530-21535, 21540-21546, 21550-21553, 21560-21565, 21570-51575)

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

COMMENTS:

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

This bill proposes the establishment of an independent citizens redistricting commission that will be responsible for drawing the County's supervisorial districts for the 2030 round of redistricting and subsequent cycles. This commission will be composed of individuals who are not politicians or government officials and will reflect the partisan makeup of Orange County voters. AB 34 takes into account the conflicts of interest that arise when elected officials are involved in decisions regarding the redrawing of political district lines. By establishing an independent citizens redistricting commission, the redistricting process can be conducted in a transparent and nonpartisan manner. This ensures that the interests of all voters are taken into account and that the drawing of district lines is fair and unbiased. AB 34, will ensure that the interests of Orange County voters are put first, and the redistricting process is conducted in a transparent and nonpartisan manner.

- 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 California Citizens Redistricting Commission (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.

- 5) **Notable Differences from Prior Commission Bills:** Although there are minor differences, the bills that provide for the creation of redistricting commissions in Fresno, Kern, Los Angeles, Riverside, and San Diego counties all have been substantially similar. By contrast, while the language of this bill is based off the language of the bills that created redistricting

commissions in those counties, this bill also contains a number of provisions that were not included in prior bills to require redistricting commissions in specified counties.

Notably, this bill provides for the appointment of two non-voting, alternate commissioners who would be available to fill any vacancy that occurs on the Commission. This bill also provides a formal process for the removal of commissioners for misconduct or neglect of duty, and a process for recruiting new applicants if the Commission has enough vacancies such that it is unable to take formal actions. Finally, this bill imposes additional restrictions on people who are serving on the Commission that are not applicable to members of other counties' commissions, and expressly requires the translation of redistricting materials into specified languages.

- 6) **Restrictions on Commissioner Activities:** This bill prohibits a member of the Commission from endorsing, working for, volunteering for, or making a campaign contribution to, a candidate for an elective office in Orange County while the person is serving on the Commission. Because the term of office of a commissioner does not expire until the appointment of the first member of the succeeding Commission, this restriction would significantly restrict the political activities of commissioners for a period of 10 years. Such a limit on political activities could reduce the number of individuals who are willing to apply to serve on the Commission.

This bill also prohibits a commissioner from holding elective office at the federal, state, county, or city level in the state for *five years* from the date of appointment to the Commission, a restriction that also has been included in previous legislation that required specified counties to create redistricting commissions. One counterintuitive effect of this bill, then, would be that a commissioner could run for a seat on the county board of supervisors six years after being appointed to the Commission, but that same person would be prohibited from volunteering for a candidate for countywide office at the same election.

The author and the committee may wish to consider whether this bill's restriction on commissioners endorsing, working for, volunteering for, or making a campaign contribution to a candidate for elective office in Orange County—and its applicability during the entire 10-year period of a person's service on the Commission—is appropriate or necessary.

- 7) **Commission Vacancies and Removal of Commissioners:** The provisions of this bill that create a formal process for removal of commissioners and the filling of vacancies may help ensure the continued operation and success of the Commission in adopting district lines. Nonetheless, some of the provisions of this bill appear to be at tension with one another, or may otherwise be unworkable in certain circumstances.

For example, this bill requires each commissioner to be present for *all* public hearings and internal meetings of the Commission, but provides for the removal of a commissioner only if the member misses "an excessive number of public hearings and meetings." It is unclear what recourse, if any, would be available if a member missed a *single* hearing or meeting, in violation of the person's legal obligation created by this bill. The committee and author may also wish to consider whether it is advisable to create a legal requirement for each commissioner to be present for all public hearings and meetings; such a requirement could

create disincentives for the Commission to schedule a larger number of public hearings in order to receive broader input if not every commissioner would be able to attend those hearings. The availability of video or audio recordings of Commission hearings and meetings should allow a commissioner to be aware of input provided at any such proceeding that the person was unable to attend.

In the case of a vacancy on the Commission, this bill requires the Commission chair to appoint an alternate member who has the same political party preference as the commissioner who vacated their position. Because this bill provides for only two alternates to be appointed, however, there is no guarantee that either of the alternates will have the same political party preference as the vacating member. Furthermore, this bill does not provide a procedure for filling any vacancies that occur if the two alternates have been seated on the Commission, unless there are fewer than nine members remaining on the Commission. Relatedly, to remove a commissioner, this bill requires at least three affirmative votes for removal to be from members of one political party, and at least three votes to be from members of one other political party. There is no guarantee, however, that the Commission makeup would allow for a vote that meets those requirements, particularly if there already are vacancies on the Commission. While having a formal process for the removal and replacement of commissioners is prudent, the author should consider future amendments to this bill to ensure that the removal and replacement processes comprehensively address potential issues and are workable with the makeup of the Commission.

- 8) **2021 Orange County Redistricting:** The authority to establish district boundaries for a local jurisdiction generally is held by the governing body of that jurisdiction. Because Orange County did not create a redistricting commission for the 2021 redistricting process, the Board of Supervisors redrew the boundary lines for supervisorial districts following the 2020 census. According to information from Orange County's website for the 2021 redistricting process, the Board of Supervisors held eight public hearings on redistricting (three prior to the release of any draft maps, and five following the release of draft maps), most of which were consolidated with regularly scheduled meetings of the Board of Supervisors. The county also held six public workshops on the redistricting process before draft maps were released. At its meeting on December 7, 2021, the Board of Supervisors unanimously adopted new boundaries for the county supervisorial districts.
- 9) **Partisan Make Up:** This bill requires the political party preferences of the commissioners to be as proportional as possible to the total number of voters who are registered with each political party in Orange County or who decline to state or do not indicate a party preference, as determined by registration at the most recent statewide election. According to the most recent voter registration figures from the Secretary of State, 37.57% of registered voters in Orange County are registered as Democrats, 33.13% are registered as Republicans, 23.57% are registered as having No Party Preference, and the remaining 5.73% of voters are registered with another party or are registered with a political body that is attempting to qualify as a political party. While this bill provides that "the political party preferences of the commissioners are not required to be exactly the same as the proportion of political party preferences among the registered voters of the county," in order to reflect these registration figures, a 14-member commission might be expected to have between 5-6 Democrats, between 4-5 Republicans, 3-4 members registered as having No Party Preference, and

between 0-1 members registered with other political parties or bodies. The ability for the Commission to reflect those registration figures could be limited, to some extent, based on the results of the random drawing to select the first eight commissioners.

10) **Arguments in Support:** In support of this bill, OC Action writes:

Orange County is past due for an independent redistricting commission that politically empowers people from historically disenfranchised communities and ensures more representative districts. During the 2021 redistricting cycle, while the California Independent Redistricting Commission drew fair maps that respected Orange County's communities of interest, the map drawn by the Board of Supervisors did not accurately represent the county's communities and was intended to benefit a single political party. Based on these events and our subject matter expertise, OC Action strongly supports AB 34 to establish an independent redistricting commission that prioritizes fair representation and community voices in district line drawing.

OC Action believes an independent districting process should be free of incumbent influence, adhere to federal and state Voting Rights Act mandates, and include robust community engagement support systems. AB 34 includes these elements and goes further by including additional requirements that ensure commissioner accountability and stronger provisions for more meaningful community engagement... Furthermore, AB 34 honors the diverse language needs of local communities. Approximately 45% of Orange County residents speak a language other than English at home. AB 34 addresses these language needs for our communities to participate meaningfully in our democracy by requiring all outreach materials, public notifications, agendas, and website content be translated into all applicable languages.

11) **Related Legislation:** AB 1248 (Bryan), which is also being heard in this committee today, requires a county, city, school district, or community college district that contains over 300,000 residents to establish an independent redistricting commission to adopt district boundaries after each federal decennial census.

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 independent redistricting commission. 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.

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

REGISTERED SUPPORT / OPPOSITION:

Support

AHRI for Justice
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
California Common Cause (if amended)
California Healthy Nail Salon Collaborative
Dolores Huerta Foundation
OC Action
Orange County Congregation Community Organization
Orange County Environmental Justice
Orange County Voter Information Project
Resilience Orange County

Opposition

None on file.

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