

Date of Hearing: April 1, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1440 (Campos) – As Amended: March 25, 2014

SUBJECT: Elections: district boundaries: public hearing.

SUMMARY: Requires any political subdivision that is switching from an at-large method of election to a district-based method of election to hold at least two public hearings on the proposed district boundaries prior to adopting those boundaries. Requires the governing body of a district to hold at least one public hearing on proposed division boundaries prior to a hearing at which the board votes to adjust the boundaries. Specifically, this bill:

- 1) Defines the following terms, for the purposes of this bill:
 - a) "At-large method of election" to mean any of the following methods of electing members to the governing body of a political subdivision:
 - i) One in which the voters of the entire jurisdiction elect the members to the governing body;
 - ii) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body; or
 - iii) One which combines at-large elections with district-based elections.
 - b) "District-based election" to mean a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.
 - c) "Political subdivision" to mean a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law.
- 2) Requires a political subdivision, when switching from an at-large method of election to a district-based method of election, to hold at least two public hearings on the proposal to establish district boundaries prior to the public hearing at which those boundaries are adopted. Provides that this requirement applies to, but is not limited to, a proposal that is required due to a court-imposed change from an at-large method of election to a district-based method of election.
- 3) Requires the governing board of a district to hold at least one public hearing on any proposal to adjust the boundaries of a division prior to a public hearing at which the board votes to approve or defeat the proposal.

EXISTING LAW:

- 1) Requires the board of supervisors of a county to hold at least one public hearing on any proposal to adjust the boundaries of a supervisorial district prior to a public hearing at which the board votes to approve or defeat the proposal.
- 2) Requires the council of a city to hold at least one public hearing on any proposal to adjust the boundaries of a city council district prior to a public hearing at which the council votes to approve or defeat the proposal.
- 3) Requires counties, cities, and specified districts to adjust the boundaries of the governing boards' districts in the year following the decennial census. Requires the new boundaries to result in districts that are as equal in population as practicable.

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

COMMENTS:

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

AB 1440 protects the voting rights for people of color when new district lines are drawn for local elections such as city councils, school boards, and water districts. Specifically, when a jurisdiction switches from an at-large to a district system of elections, AB 1440 requires that there be at least two open and public hearings prior to adoption of the new district lines.

The [California Voting Rights Act (CVRA)] has resulted in more than 140 jurisdictions across the state converting from at-large to district based elections in the last 12 years. This is a tremendous step for communities of color that have traditionally suffered the discriminatory effects of at-large elections.

AB 1440 takes the next step in encouraging community involvement, representation and ownership of local elections. It empowers the groups and individuals who have had their voices silenced with the tools to make sure their interests and newly obtained advances will be protected. The requirement for the jurisdiction to hold public hearings prior to adoption of new district lines will safeguard against further discrimination and ensure their rights and perspective will be heard.

- 2) California Voting Rights Act: SB 976 (Polanco), Chapter 129, Statutes of 2002, enacted the CVRA to address racial block voting in at-large elections for local office in California. In areas where racial block voting occurs, an at-large method of election can dilute the voting rights of minority communities if the majority typically votes to support candidates that differ from the candidates who are preferred by minority communities. In such situations, breaking a jurisdiction up into districts can result in districts in which a minority community can elect the candidate of its choice or otherwise have the ability to influence the outcome of an election. Accordingly, the CVRA prohibits an at-large method of election from being imposed or applied in a political subdivision in a manner that impairs the ability of a

protected class of voters to elect the candidate of its choice or to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of the protected class.

Prior to the enactment of the CVRA, concerns about racial block voting led to the consideration of a number of bills that sought to prohibit at-large voting in certain political subdivisions (for instance, AB 2 (Chacon), of the 1989-90 regular session; AB 1002 (Chacon), of the 1991-92 regular session; AB 2482 (Baca), of the 1993-94 regular session; and AB 172 (Firebaugh), of the 1999-2000 regular session all proposed to prohibit at-large elections in school districts that met certain criteria; additionally, AB 8 (Cardenas) and AB 1328 (Cardenas), both of the 1999-2000 regular session, sought to eliminate the at-large election system within the Los Angeles Community College District). None of these bills became law—in many cases the bills were vetoed, while in other cases, the bills failed to reach the Governor's desk. For those bills that were vetoed, the veto messages typically stated that the decision to create single-member districts was best made at the local level, and not by the state.

The CVRA followed these unsuccessful efforts; rather than prohibiting at-large elections in certain political subdivisions, the CVRA instead established a policy that an at-large method of election could not be imposed in situations where it could be demonstrated that such a policy had the effect of impairing the ability of a protected class of voters to elect a candidate of its choice or its ability to influence the outcome of an election. The CVRA specifically provided for a prevailing plaintiff party to have the ability to recover attorney's fees and litigation expenses to increase the likelihood that attorneys would be willing to bring challenges under the law.

The first case brought under the CVRA was filed in 2004, and the jurisdiction that was the target of that case—the City of Modesto—challenged the constitutionality of the law. Ultimately, the City of Modesto appealed that case all the way to the United States Supreme Court, which rejected the city's appeal in October 2007. The legal uncertainty surrounding the CVRA may have limited the impacts of that law in the first five years after its passage.

Since the case in Modesto was resolved, however, many local jurisdictions have converted or are in the process of converting from an at-large method of election to district-based elections due to the CVRA. Generally, local government bodies must receive voter approval to move from an at-large method of election to a district-based method of election for selecting governing board members, though the State Board of Education (SBE) and the Board of Governors (BOG) of the California Community Colleges have the authority to waive the voter-approval requirement for school districts and community college districts, respectively. In all, the SBE and the BOG have combined to grant nearly 120 requests for waivers from the voter-approval requirement for school districts and community college districts that have sought to move to district-based elections for board members due to concerns about potential liability under the CVRA.

There is no procedure in statute for cities and special districts to receive a waiver of the voter-approval requirement to move from at-large to district-based elections if those governmental bodies have concerns about liability under the CVRA, though in at least some cases, judges have approved settlements to CVRA lawsuits that allow the governing body to

transition from at-large to district-based elections without voter approval. According to information compiled by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, at least a dozen other local jurisdictions statewide have transitioned to electing governing board members by districts as a result of settlements to lawsuits brought under the CVRA.

In all, approximately 130 local government bodies have transitioned from at-large to district-based elections since the enactment of the CVRA. While some jurisdictions did so in response to litigation or threats of litigation, other jurisdictions proactively changed election methods because they believed they could be susceptible to a legal challenge under the CVRA, and they wished to avoid the potential expense of litigation.

While existing law generally requires cities and counties to hold at least one public hearing on a proposal to adjust the boundaries of city council or county supervisorial districts prior to the hearing at which the council or board votes on the proposed adjustment, state law does not appear to require hearings on proposed district boundaries when a local governmental body transitions from at-large to district-based elections. Given the large number of jurisdictions that have been transitioning from at-large to district-based elections due to the CVRA, many local governmental bodies are in the process of developing proposed district boundaries without any requirement that public hearings be conducted to ensure public access and involvement in those decisions.

- 3) Districts & Redistricting After the Decennial Census: As noted above, counties, cities, and districts that elect governing board members using a district-based election system are required under existing law to adjust the boundaries of the governing boards' districts in the year following the decennial census. The purpose of adjusting the district lines is to ensure that all districts within a local government body have roughly equal populations. AB 186 (Hertzberg), Chapter 429, Statutes of 1999, required county boards of supervisors and city councils to hold a public hearing prior to a vote to adjust the boundaries of supervisorial or council districts. However, no such public hearing requirement applies to districts when they are considering proposals to adjust the boundaries of the governing board's divisions. This bill expands the requirements of AB 186 such that they apply to districts, in addition to cities and counties.
- 4) State Mandates: The last three state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2014-15 fiscal year. This bill adds another elections-related mandate by requiring governing bodies of local governmental entities to conduct at least two public hearings prior to the meeting at which they adopt boundary lines following the transition from an at-large system of elections to a district-based system of elections, and by requiring districts to conduct at least one public hearing prior to voting to adjust the boundary lines of divisions within the district. The Committee may wish to consider whether it is desirable to create new election mandates when current elections-related mandates are suspended.
- 5) Technical Amendment: To clarify ambiguous language in this bill, committee staff recommends the following technical amendment on page 3, lines 21 to 24:

22001. The governing body of a district shall hold at least one public hearing on any proposal to adjust the boundaries of ~~the district~~ a division prior to a public hearing at which the governing body votes to approve or defeat the proposal.

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters

Opposition

None on file.

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