

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2715 (Roger Hernández) – As Amended: April 3, 2014

SUBJECT: District-based municipal elections.

SUMMARY: Requires cities with a population of 100,000 or more to elect city council members by district, instead of at-large. Specifically, this bill:

- 1) Prohibits a city with a population of 100,000 or more, as determined by the most recent federal decennial census, from using an at-large or "from district" method of election to elect members of the governing body of the city, and instead requires such cities to elect members of the governing body using one of the following methods:
 - a) By districts, in five, seven, or nine districts; or,
 - b) By districts in four, six, or eight districts, with an elective mayor who is elected at-large.
- 2) Requires the city council of a city that is subject to the provisions of this bill to establish and adjust the boundaries of the districts in accordance with provisions of existing law.
- 3) Becomes operative on July 1, 2015.

EXISTING LAW:

- 1) Permits a general law city that elects its councilmembers through at-large elections to provide for city council members to be elected by districts or from districts. Provides that such a change shall occur only upon the approval of voters of a measure submitted to them by the city council or placed on the ballot through the initiative process. Provides that the term "by districts," for the purposes of this provision, means the election of members by voters of the district alone; provides that "from districts" means the election of members who are residents of the districts from which they are elected, but who are elected by voters of the city as a whole.
- 2) Prohibits, pursuant to the California Voting Rights Act of 2002 (CVRA), an at-large method of election from being imposed or applied in a political subdivision (including a city) in a manner that impairs the ability of a protected class of voters to elect candidate of its choice or its ability 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 a protected class.
- 3) Provides that a violation of the CVRA may be established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

- 4) Requires a court, upon finding a violation of the CVRA, to implement appropriate remedies, including the imposition of district-based elections, which are tailored to remedy the violation.
- 5) Permits any voter who is a member of a protected class and who resides in a political subdivision where a violation of the CVRA is alleged to file an action in the superior court of the county in which the political subdivision is located.
- 6) Requires a general law city that elects councilmembers "by districts" or "from districts" to adjust the boundaries of the council districts following each decennial federal census so that the districts are as nearly equal in population as may be. Requires the districts to comply with specified provisions of the federal Voting Rights Act. Permits the city council to give consideration to the following factors when establishing the boundaries of districts:
 - a) Topography;
 - b) Geography;
 - c) Cohesiveness, contiguity, integrity, and compactness of territory; and,
 - d) Communities of interests of the districts.
- 7) Permits a city to provide for its own governance through the adoption of a charter by a majority vote of its electors voting on the question.
- 8) Permits a city charter to provide for the conduct of city elections, including the manner in which, the method by which, the times at which, and the terms for which municipal officers are elected or appointed.
- 9) Provides that a legally adopted city charter supersedes all laws inconsistent with that charter with respect to municipal affairs.

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

COMMENTS:

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

In June of 2013, the U.S. Supreme Court declared certain elements of the federal Voting Rights Act (VRA) unconstitutional. This has increased use of the California Voting Rights Act (CVRA) of 2001. The CVRA prohibits at-large elections to be applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.

Public officials may be elected by all of the voters of the jurisdiction (at-large) or from districts formed within political subdivision (district-based).

While the diversity of city councils across the State has increased, evidence

suggests that at-large based elections unsuccessfully reflect minority representation in large cities with sizeable minority populations. Currently, minority groups make up 57% of the population in California.

District based elections offer several benefits. Each geographic area is represented which helps ensure an even distribution of city resources. While each voter is represented by all city council members, each voter has one specific board member to petition to for help. Running for office may be less expensive since a smaller area is to be covered. Candidates may rely more on neighborhood campaigning and support of community groups and less on media advertising.

A lack of fair representation still exists in areas with at-large elections. Several California cities such as Modesto, Compton, Anaheim, and Whittier have recently undergone lawsuits seeking minority representation on the councils.

- 2) General Law Cities Only: The California Constitution gives cities the ability to exercise greater control over municipal affairs through the adoption of a charter by a majority vote of the city's electors voting on the question. Cities that have not adopted charters are commonly referred to as "general law" cities, because such cities are subject to the state's general laws, regardless of whether those laws concern a municipal affair.

The California Constitution grants charter cities the plenary authority, subject only to restrictions contained in specified provisions of the California Constitution, to provide for the manner in which municipal officers are elected or appointed. Because this bill seeks to regulate the manner in which municipal officers are elected, the provisions of this bill would not be applicable to charter cities, but instead would apply only to general law cities.

- 3) Cities Affected: According to the 2010 United States Census, there are 66 cities in California with a population of at least 100,000 residents. Of those 66 cities, 41 are charter cities, and thus would not be affected by the provisions of this bill.

Of the 25 general law cities in California with a population of 100,000 or more, 22 (Antioch, Concord, Corona, Costa Mesa, Daly City, El Monte, Fairfield, Fontana, Fremont, Fullerton, Garden Grove, Murrieta, Norwalk, Ontario, Orange, Oxnard, Rancho Cucamonga, Santa Clarita, Simi Valley, Temecula, Thousand Oaks, and West Covina) elect city council members at-large, and one (Elk Grove) elects city council members at-large from districts. Those 23 cities would be required to change their method of electing city council members under the provisions of this bill. (The City of Santa Clarita has reached a tentative settlement agreement in a CVRA lawsuit, but that agreement calls on the city to use an alternative voting method known as cumulative voting in an effort to address the voting rights issues raised in the lawsuit. Because cumulative voting would be conducted at large in the city, this bill would require the City of Santa Clarita to move to by-district elections, notwithstanding the tentative settlement. Additionally, it is unclear whether the tentative settlement can be implemented, since California law does not permit the use of cumulative voting.) Based on current population growth rates, as estimated by the United States Census Bureau, four additional cities (Rialto, Clovis, Jurupa Valley, and Mission Viejo) likely would be covered by this bill following the 2020 census.

The city of Escondido previously elected its council members using an at-large method of election, but it has agreed to transition to a district-based method of election for city council elections beginning this year, pursuant to a settlement reached in a lawsuit brought pursuant to the CVRA. The city of Moreno Valley was the only general law city in California with a population of at least 100,000 that elected city council members by districts prior to this year.

- 4) California Voting Rights Act of 2001: 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. 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.

- 5) State Mandates: By requiring certain cities to elect city council members by districts, instead of at-large, this bill would impose a state-mandated local program, for which the state could be required to reimburse those cities for the costs of transitioning from an at-large election system to a district-based election system. On the other hand, political subdivisions that transition from at-large to district-based elections systems on their own, either as the result of a legal challenge brought under the CVRA, or for other reasons, must bear their own costs of changing election methods.

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. In light of this fact, and given the fact that the CVRA provides a remedy to compel jurisdictions to move from at-large to district-based elections when at-large elections are impairing the ability of a protected class of voters to influence the outcome of an election, the Committee may wish to consider whether it is desirable to establish this new mandate when the Legislature has voted to suspend the existing election mandates.

- 6) Arguments in Support: In support of this bill, the California Teamsters Public Affairs Council writes:

In our view, district based elections are fundamentally more democratic and ensure that voters get a representative that truly represents them. Unfortunately, there are still many local governmental entities in this state that retain the old at-large system. For the most part, this means that well healed candidates that may be ideologically and socioeconomically very different from the folks they represent stand a good chance of getting elected anyway. This bill moves away from that old method of choosing leaders and closer to a more democratic system.

7) Arguments in Opposition: In opposition to this bill, the League of California Cities writes:

The [CVRA] already provides enormous legal leverage to any voter who seeks to challenge an at-large election system of a city, school district, community college district or any other district authorized by the state. The CVRA makes it easier for plaintiffs to bring and prevail in lawsuits alleging that their votes are diluted in "at large" and "from district" elections. Cases have been trending toward plaintiffs, and many have been recently filed against school districts, community colleges, cities and a county...

By *imposing*, effective July 1, 2015, a district-based election on...cities which fit the criteria of general law cities with populations at or above 100,000 and at-large election process, this measure would create a costly and chaotic environment costing millions of dollars to the affected agencies...

The City of Santa Clarita recently settled a CVRA lawsuit challenging its at large election system, by agreeing to two specific changes: 1) Move the timing of council elections to November of even numbered years to increase voter participation, and 2) Retain the at-large system, but employ "cumulative voting" that would allow a voter to cast multiple votes for the same candidate or distribute votes among candidates. Thus, AB 2715 would remove flexibility that is provided under the CVRA.

- 8) Related Legislation: AB 1440 (Campos), which is pending in the Assembly Local Government Committee, 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, among other provisions. AB 1440 was approved by this committee on a 7-0 vote.
- 9) Previous Legislation: AB 1979 (Roger Hernández) of 2012 would have required the City of West Covina to elect city council members by districts, instead of at-large. AB 1979 was pulled by the author prior to being heard in this committee.

AB 450 (Jones-Sawyer) of 2013 would have required the Los Angeles Community College District to elect governing board members by trustee area, instead of at-large. AB 450 was approved by this committee on a 4-1 vote, but was held on the Assembly Appropriations Committee's suspense file.

- 10) Double-Referral: This bill has been double-referred to the Assembly Local Government Committee. Due to impending committee deadlines, if this bill is approved in this committee today, it would need to be heard in the Assembly Local Government Committee next week, absent a waiver of the Joint Rules. However, if this bill is amended in committee today, that may prevent this bill from being heard in the Assembly Local Government Committee before next week's deadline for policy committees to hear and report fiscal bills. In light of this fact, if it is the committee's desire to approve this bill with amendments, committee staff recommends that this bill be passed out of committee with the author's commitment to take those amendments subsequent to passage by this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Teamsters Public Affairs Council
Pomona Valley Democratic Club
Service Employees International Union, California State Council
State Building and Construction Trades Council, AFL-CIO
United Farm Workers

Opposition

Association of California Cities—Orange County
City of Brea
City of Glendora
City of Murrieta
City of Norwalk
City of Santa Clarita
City of West Covina
Howard Jarvis Taxpayers Association
League of California Cities

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094