

Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING  
Marc Berman, Chair  
SB 158 (Allen) – As Amended June 17, 2020

**AS PROPOSED TO BE AMENDED**

**SENATE VOTE:** (vote not relevant)

**SUBJECT:** County of Los Angeles Citizens Redistricting Commission: membership.

**SUMMARY:** Clarifies that voters who are registered with no party preference (NPP) are eligible to serve on the Los Angeles County Citizens Redistricting Commission (commission).

Specifically, **this bill:**

- 1) Clarifies that a provision of law that requires the political party preferences of commission members to be as proportional as possible to the total number of voters who are registered with each political party in Los Angeles County includes voters who decline to state or do not indicate a party preference.
- 2) Makes technical and corresponding changes.
- 3) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

**EXISTING LAW:**

- 1) Establishes the commission in Los Angeles County and charges it with adjusting the boundaries of supervisorial districts after each decennial federal census, as specified. Requires the commission to be created no later than December 31, 2020, and in each year ending in the number zero thereafter.
- 2) Requires the commission to consist of 14 members. Requires the political party preferences of the commission members, as shown on the members' most recent affidavits of registration, to be as proportional as possible to the total number of voters who are registered with each political party in the County of Los Angeles, as determined by registration at the most recent statewide election. Provides that the political party preferences of the commission members are not required to be exactly the same as the proportion of political party preferences among the registered voters of the county.
- 3) Requires each commission member to be a voter who has been continuously registered in the County of Los Angeles with the same political party or unaffiliated with a political party and who has not changed political party affiliation for five or more years immediately preceding the date of the member's appointment to the commission.

**FISCAL EFFECT:** None. This bill is keyed non-fiscal by the Legislative Counsel.

**COMMENTS:**

- 1) **Author's Amendments:** The author has proposed amendments to add an urgency clause to this bill. Since existing law requires the commission for the next redistricting cycle to be created by December 31, 2020, an urgency clause is needed if the provisions of this bill are to apply to the formation of the commission for the 2021 redistricting process. Amendments to add an urgency clause to a bill, however, cannot be adopted through pre-committee author's amendments. Accordingly, this bill is being heard in committee today as proposed to be amended by the author to add an urgency clause.

This analysis reflects those proposed author's amendments. In accordance with Joint Rule 58, the Assembly Rules Committee approved the addition of an urgency clause to this bill on June 29, 2020.

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

Senator Ricardo Lara authored SB 958 (2016) with the goal of providing a similar public process to Los Angeles County as was provided by the Citizens Redistricting Commission. The author's statement in the committee analysis states, "For the purposes of fair representation, the political party preferences of the 14 commission members, as shown on the members' most recent registration affidavits, will be proportional to the total number of registered voters."

While this clearly states the author's intent for the commission members to be reflective of the voter registration preferences within the county, [NPP] voters are not considered a political party. However there are approximately 1.4 million NPP registered voters Los Angeles County, which represents 26% of registered voters in the county.

SB 158 clarifies that Los Angeles County voters who have been registered with No Party Preference (previously referred to as decline to state) can be included on the commission proportional to voter registrations in the county. The bill also extends the five-year residency requirement for voters who are registered with No Party Preference to ensure the inclusion of NPP voters.

Current law requires that the commission be created by December 31, 2020, so an urgency clause is needed to ensure this clarification is codified with enough time for the county to include [NPP] voters in the commissioner selection process.

- 3) **Los Angeles County Citizens Redistricting Commission:** In 2016, the Legislature approved and Governor Brown signed SB 958 (Lara), Chapter 781, Statutes of 2016, which established the commission and charged it with adjusting the boundaries of supervisorial districts after each decennial federal census, as specified.

In February 2017, the Los Angeles County Board of Supervisors filed a lawsuit in the Los Angeles County Superior Court challenging the provisions of SB 958 (*County of Los Angeles v. State of California et al.* (2017), Case Number BS168212). That lawsuit alleged that SB 958 violated the California Constitution for three reasons: (1) That because SB 958 applies only to Los Angeles County, it violates Article IV, Section 16 of the California Constitution,

which provides that "[a]ll laws of a general nature have uniform operation" and that "[a] local or special statute is invalid in any case if a general statute can be made applicable"; (2) that because SB 958 requires political party preferences to be taken into account when creating the redistricting commission, if redistricting commissioners are considered to be county offices, then SB 958 violates Article II, Section 6 of the California Constitution, which provides in part that "[a]ll judicial, school, county, and city offices, including the Superintendent of Public Instruction, shall be nonpartisan"; and (3) that if redistricting commissioners are *not* considered to be county offices, then SB 958 improperly delegates a municipal function to be performed by a private person or body, in violation of Article XI, Section 11 of the California Constitution. After briefing and oral argument, the Superior Court ruled against Los Angeles County and upheld the provisions of SB 958. The county appealed the Superior Court's decision to the Court of Appeal for the Second Appellate District, Division Five, which affirmed the Superior Court's ruling, and subsequently appealed to the California Supreme Court, which denied the county's petition for review in April of this year.

In addition to its contention that SB 958 violates the California Constitution for the reasons described above, the county's lawsuit in the Superior Court alleged that SB 958 excludes NPP voters from serving as members of the redistricting commission. That reading of SB 958, however, ignores a key provision of SB 958, and is inconsistent with legislative intent and history. Specifically, as detailed above, SB 958 requires that each commission member be a registered voter who has been continuously registered in the county "with the same political party *or unaffiliated with a political party* and who has not changed political party affiliation for five or more years immediately preceding...appointment to the commission" (emphasis added). The county's argument that SB 958 prohibits NPP voters from serving on the commission is inconsistent with this reference to members of the commission having been unaffiliated with a political party during the five years preceding appointment to the commission.

Furthermore, the legislative history of SB 958 makes clear that the Legislature contemplated and intended that NPP voters would serve on the commission. This committee's analysis of SB 958 concluded that the 14-member redistricting commission created by SB 958 "might be expected to have...between 3-4 members registered as having No Party Preference" based on voter registration figures in Los Angeles County at the time SB 958 was being considered. That conclusion was based on the same language that Los Angeles County relied upon to conclude that NPP voters would be excluded from the redistricting commission entirely. Similarly, the Senate Governance and Finance Committee analysis of SB 958 contemplated that NPP voters (referred to as "decline-to-state" voters in that analysis) would be included on the commission. Committee staff is unaware of anything in the legislative history of SB 958 that suggests that the intent of the bill was to exclude NPP voters from serving on the commission.

Notwithstanding the foregoing information, the clarifications proposed by this bill may help ensure that Los Angeles County implements the provisions of SB 958 in a manner that is consistent with the legislative intent of that bill. In the absence of such clarification, if the County maintains the position that it took during litigation that SB 958 excludes NPP voters from being members of the commission, more than 1.4 million NPP voters in Los Angeles County would be prohibited from serving on the commission. The application to serve on the commission—that Los Angeles County first made available last week—permits NPP voters

to apply.

- 4) **Arguments in Support:** In support of this bill, the Los Angeles County Board of Supervisors writes:

Under SB 958, the Registrar-Recorder/County Clerk (RR/CC) must select the 60 most qualified applicants strictly following the above-referenced criteria, including political party representation. After the RR/CC selects the qualified applicants, the Auditor-Controller will randomly draw eight commissioners who then select the remaining six members, and they must consider political party preference. The law requires that the political party preference of the remaining six commissioners be as proportional as possible to the County's voters registered with each political party.

The RR/CC indicates that existing law requires the commission to be as proportional as possible to the County's voters registered with each political party using the most recent statewide election data. While NPP voters are not considered a political party, there are approximately 1.4 million voters registered as NPP in Los Angeles County. RR/CC further indicates there is some ambiguity in the law as to whether NPP voters should be proportionally represented on the commission.

SB 158 would clarify that Los Angeles County voters who have been registered as NPP (previously decline to state) can be included on the commission proportional to registrations in the County.

- 5) **Related Legislation:** AB 1276 (Bonta), which is pending in the Senate Elections & Constitutional Amendments Committee, makes various, mostly minor, changes to the process to be used by counties and cities when they adjust the boundaries of the electoral districts that are used to elect members of the jurisdictions' governing bodies. AB 1276 was approved by this committee on a 6-0 vote, and was approved on the Assembly Floor on a 56-0 vote. Since the Assembly's approval of AB 1276, it has been amended to add language that changes the deadline for the commission in Los Angeles County to adjust the boundaries of supervisorial districts, among other amendments.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Los Angeles County Board of Supervisors

### **Opposition**

None on file.

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