Date of Hearing: July 27, 2020

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ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Marc Berman, Chair
SB 970 (Umberg & Berman) – As Amended May 29, 2020
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SENATE VOTE: 39-0

SUBJECT: Primary election date.

SUMMARY: Moves California's statewide primary election in gubernatorial years from March to June, as specified. Specifically, **this bill**:

1) Changes the date of the direct primary in gubernatorial election years (even-numbered years that are not evenly divisible by four, such as 2022) from the first Tuesday after the first Monday in March to the first Tuesday after the first Monday in June.

2) Makes the following findings and declarations:

   a) California voters approved the Voters FIRST Act in 2008 and the Voters FIRST Act for Congress in 2010, which together established the Citizens Redistricting Commission (CRC) and made the CRC responsible for adjusting the boundary lines of the congressional, State Senatorial, Assembly, and Board of Equalization (BOE) districts based on the federal decennial census and in conformity with standards set forth in both the federal and state constitutions.

   b) The CRC is required to conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines. That process includes holding public hearings both before and after releasing draft and final plans and providing adequate public comment periods after any plans are released.

   c) The CRC cannot draw new district lines until it receives census data from the United States (US) Census Bureau. Due to the COVID-19 pandemic, the US Census Bureau has announced that release of census data to California will be delayed up to four months to July 31, 2021. As a result, the CRC will not have sufficient time to undertake the redistricting process as required by the Voters FIRST Act and the Voters FIRST Act for Congress and to approve new district boundaries that will be in place in time for a statewide direct primary election held in March 2022. Therefore, the Legislature finds that the 2022 statewide direct primary election must be moved back to June 7, 2022.

3) Makes conforming and technical changes.

EXISTING STATE LAW:

1) Requires the direct primary election to be held on the first Tuesday after the first Monday in March in each even-numbered year.

2) Requires the presidential primary election to be held on the first Tuesday after the first Monday in March of any year that is evenly divisible by four.

3) Establishes, pursuant to the California Constitution, the CRC and requires it to adjust the boundary lines of the congressional, State Senate, Assembly, and BOE districts, as specified. Requires the CRC to approve the four final maps by August 15 in each year ending in the number one.

EXISTING FEDERAL LAW:

1) Requires an enumeration of everyone living in the United States to be made within three years after the first meeting of the Congress of the US, and within every subsequent term of ten years, in such manner as they shall by law direct.

2) Requires the decennial census to be taken the first day of April 1980 and every ten years thereafter, as specified.

3) Requires redistricting data be completed, reported, and transmitted to each respective State within one year after the decennial census date.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

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

> Because of the ongoing effects of COVID-19, the Census Bureau has sought Congressional approval for four additional months to deliver the census data needed to reapportion Congress and to redraw congressional, state legislative and local districts in 2021. While some related details may still be pending, we have been assured that the delay will be approved.

> That delay will make it impossible for the California Citizens Redistricting Commission, the Los Angeles and San Diego County redistricting commissions, and other local jurisdictions to complete their work under current legal deadlines. Those deadlines must be commensurately adjusted and so must the date of the 2022 primary.

> The other impetus for this bill is to reduce the length of the gubernatorial election cycle. Since 1946, the statewide primary election in gubernatorial election years has been held in June with the lone exception of 2002. A March gubernatorial primary results in an unnecessarily elongated election cycle with the gap between the primary and the general election at 8 months. Moving the primary to June would shorten the election season to a much more reasonable five months.

2) **History of California's Primary Elections**: From 1946 through 1994, California's primary elections were held in June of every even-numbered year. Additionally, since 1946, the only statewide primary election in a non-presidential election year that did not take place in June occurred in March of 2002. Changes to the primary election date have typically intertwined

with California's attempts to move up the presidential primary election due to the perceived lack of impact that California had on the presidential nominating process.

In 1993, the Legislature passed and the Governor signed AB 2196 (Costa), Chapter 858, Statutes of 1993, moving the statewide primary election in presidential election years to March. Following the presidential primary election in March of 1996 and the direct statewide primary election in June of 1998, the Legislature passed and the Governor signed SB 1999 (Costa), Chapter 913, Statutes of 1998. SB 1999 permanently moved all future primary elections to the first Tuesday in March. As a result, presidential primary and direct primary elections in 2000, 2002, and 2004 all took place in March of their respective years.

However, in 2005, the Legislature passed and Governor signed SB 1730 (Johnson), Chapter 817, Statutes of 2005. SB 1730 required California's primary election to be held on the first Tuesday after the first Monday in June in every even-numbered year. There were concerns raised with the perceived lack of influence California was having in the national presidential primary process, even with the earlier primary date, and concerns that the earlier primary for legislative, congressional, and statewide offices was increasing the costs of campaigning by lengthening the campaign season.

For 2008, the Legislature passed and the Governor signed SB 113 (Calderon), Chapter 2, Statutes of 2007. SB 113 moved California's presidential primary to February in an effort to increase California's influence in the presidential primary election and encourage candidates to discuss and debate issues relevant to this state. In addition to moving the presidential primary to February, SB 113 required a separate primary election for congressional and legislative offices to be held in June. In other words, California did not consolidate its presidential primary with the statewide direct primary election. This resulted in two primaries (March and June) and the statewide general election (November).

AB 80 (Fong), Chapter 138, Statutes of 2011, changed the date of the presidential primary election back to the first Tuesday after the first Monday in June from the first Tuesday in February of presidential election years. Combined with the changes established by AB 80 and the continuation of statewide direct primaries occurring in June of non-presidential years, all statewide primary elections between 2010 and 2018 took place in June.

Finally, in 2017, the Legislature passed and the Governor signed SB 568 (Lara), Chapter 335, Statutes of 2017. SB 568 changed the date of the statewide direct primary and the presidential primary to the first Tuesday after the first Monday in March with an operative date of January 1, 2019. As a result, the first direct primary following the provisions of SB 568 was the presidential primary election held on March 3, 2020. Under current law, the next statewide direct primary is scheduled to take place on March 8, 2022. This bill would instead move all future gubernatorial primary elections to June, including moving the next statewide direct primary to June 2022. Statewide presidential primary elections, however, would remain in March.

3) **Census**: Article I, Section 2 of the US Constitution mandates that an enumeration, or head count, be conducted of everyone living in the country every ten years. The data collected by the decennial census determines the number of seats each state has in the US House of Representatives, guides redistricting, and is used to distribute billions of dollars in federal

funding for healthcare, education, and infrastructure.

4) **Redistricting & the California Citizens Redistricting Commission**: Redistricting is the periodic redrawing of boundaries of districts that elect representatives who serve specific geographic areas. According to the National Conference of State Legislatures (NCSL), the periodic updating of districts is required because, in a series of 1960s court cases, the US Supreme Court held that districts must be equal in population, also known as the "one-person, one-vote" requirement. Over time, populations shift, and in order to ensure that each person's vote is equally weighted, district boundaries are redrawn after every census to create equally-populated districts. All electoral bodies that elect representatives from districts are required to be redistricted, such as the US House of Representatives, state legislatures, and local jurisdictions.

While legislatures are responsible for redistricting in most states, several states have delegated this authority to commissions. According to NCSL, some commissions have been created by citizens' voter initiatives, but more have been created by legislative referrals.

In California, district boundary lines are redrawn by the CRC, which was created by an initiative measure. At the 2008 statewide general election, voters approved Proposition 11 (also known as the Voters FIRST Act), which amended the state Constitution and established the CRC, and gave it the responsibility for drawing district lines for Assembly, Senate, and BOE districts in the year following the year in which the national census is taken at the beginning of each decade. Moreover, at the 2010 statewide general election, voters approved Proposition 20 (also known as the Voters FIRST Act for Congress), which also gave CRC the responsibility for adjusting district lines for California's congressional districts, among other provisions. State law requires the CRC to be created no later than August 15th in each year ending in the number zero and requires the CRC to approve four final maps by August 15 in each year ending in the number one. Existing state law also requires the CRC, no later than July 1 in each year ending in the number one, to publicly display the first preliminary statewide maps for public comment, as specified.

5) **Census Delay and Redistricting Timelines**: After the census is complete, federal law requires two types of data sets to be prepared that are used in the apportionment of congressional seats and the establishment of political district boundaries. According to the Brennan Center for Justice, by January 1 of the year after the census, federal law requires apportionment counts to be delivered to the President, which include the total population of each state and the number of congressional seats to which each state is entitled. Then, by January 10, the President must transmit the apportionment counts to Congress, which in turn is responsible for sending the counts to all US governors. According to the Brennan Center's research, in past decades, the US Census Bureau has finished the process earlier than required, delivering apportionment counts to the President in late December of census years. Additionally, federal law requires block-level population and demographic data be delivered to states and used to redraw congressional and legislative districts no later than April 1 of the year after the census.

Due to the COVID-19 pandemic, on April 13, 2020, the US Census Bureau announced it would be adjusting the 2020 census operations and requested statutory relief from Congress of 120 additional calendar days (approximately 4 months) to deliver the final apportionment counts. Under the plan announced by the US Census Bureau, the field data collection period

would be extended from August 15, 2020 to October 31, 2020. Additionally, the deadline to deliver the apportionment counts to the President would also be extended from December 31, 2020 to April 30, 2021. Finally, the deadline for the delivery of redistricting data to the states would be moved from no later than March 31, 2021 to no later than July 31, 2021. As mentioned above, the state Constitutional deadline for the CRC to approve final district maps is August 15, 2021. If the redistricting data is delivered to California on July 31, 2021, it would provide redistricting bodies and local jurisdictions with a nearly impossible timeframe to adjust state and local district lines. For example, regardless of a change to the primary date, the CRC would only have until August 12, 2021 to release final district maps for the US House of Representatives, the BOE, the State Senate, and the State Assembly. The final maps, pursuant to the California Constitution, would need to be approved by August 15, 2021. Additionally, both Los Angeles and San Diego counties have independent redistricting commissions established pursuant to state statute with a requirement that the supervisorial district maps be approved before August 15, 2021.

For other counties and municipalities, current state law requires district lines to be approved and completed 151 days before the next regular election occurring after March 1, 2022. For special districts, existing state law prohibits a change in division boundaries from being made within 180 days preceding the election of any director. As a result, if an election is held on March 8, 2022, district maps would need to be finalized for counties and municipalities by October 8, 2021 and for special districts by September 9, 2021. If the deadline is extended for delivering census data to the states without a change to the 2022 direct primary election date, jurisdictions throughout California would face an almost impossible challenge when adjusting their district lines in a timely manner.

6) **Emergency Petition**: In June, the California State Legislature filed an emergency petition with the state Supreme Court regarding relevant deadlines applicable to the CRC for the 2021 redistricting process (*Legislature of the State of California v. Padilla*, Case # S262530). Due to the delay in the completion of the census and the delay in the release of census data to the state from April 1 to July 31, 2021, the request contends that the CRC cannot draw maps that satisfy state and federal law until it has the census data in a form it can use to redistrict the state. Moreover, the petition states that existing law requires the state Legislature "to provide the [CRC] with a dataset that consists of the census data overlaid with state voter registration data and historical election results and that reassigns the state prison population to each person's last known residential address" and that "[neither] the [CRC] nor members of the public can begin drawing draft maps until the dataset is complete." Additionally the request states that "[under] the Census Bureau's new schedule, the Legislature cannot even begin assembling the dataset until after the July 1, 2021 deadline for the [CRC] to release draft maps to the public" and that "[there] is also no way that the [CRC] could meet the constitutional requirement that it approve and deliver final maps to the Secretary of State by August 15, 2021, because the dataset will not even be ready by then." Consequently, the Legislature requested an order extending those deadlines by up to four months to account for the delay by the US Census Bureau's release of census data and requested an expedited ruling.

On July 17, 2020, the Court granted the Legislature's petition and issued a peremptory writ of mandate adjusting the relevant deadlines in accordance with the forecasted delay in the US Census Bureau's release of the federal census data necessary to draw the new district maps.

7) **Arguments in Support**: In support, California Common Cause writes:

> According to the U.S. Census Bureau, COVID-19 has significantly delayed the completion and release of decennial U.S. Census data, which most states, including California, rely on for redistricting. The Bureau estimates that redistricting data may be delayed by as much as four months, from April 30, 2021 to August 31, 2021. However, for a March primary the signature-in-lieu process, where candidates may collect signatures to run for state and some local offices rather than pay a filing fee, begins on September 16, 2021. This would leave only two weeks for the State Commission to redraw 120 legislative, more than 50 congressional, and four Board of Equalization districts – a near impossibility.

> The State Constitution requires state redistricting be completed by August 15, 2021, which is after the latest expected date for the release of census data. The Legislature has petitioned the California Supreme Court to move that deadline to December 15, 2021, which it estimates would give the Commission sufficient time to draw these lines. However, this date is after the candidate nomination period opens for a March primary; this extension is only possible, without interfering with candidates' ability to run, if the March primary is moved to June.

> Local governments will be forced to rush their redistrict[ing] process as well if the primary date is not changed. Around 100 cities and counties consolidate their elections with the state primary. A significantly abridged timeline will make it difficult for communities, and particularly disadvantaged communities, to engage with the process, which could have negative repercussions for the quality of representation at the local level for a decade to come. It also goes against the grain of state public policy; in 2019, the Legislature passed AB 849 (Bonta), which requires that cities and counties engage their diverse communities in the redistricting process and hold four public hearings to gather public input on how to best draw the lines. There is insufficient time to hold the deliberative process contemplated by AB 849 unless the state primary is moved to June.

> Outside of the redistricting needs that are unique to 2022, there is also reason to favor a shortening of the time between a state primary and state general election, where possible. The March primary has led to a very long campaign season and has meant, particularly for the Assembly, that elected officials must be in campaign mode year-round. Shortening the gap between the primary and the general election will help less well-financed candidates compete, keep the election and candidates fresh in voters' minds, and give incumbent legislators more time to devote their energies to governing as opposed to their next campaign. For understandable reasons, SB 970 does not extend these benefits to presidential election years, because of the potential countervailing turnout and relevance benefits of having Californians weigh-in early in Presidential primary contests.

8) **Letter of Concerns**: In a letter of concerns, Secretary of State Alex Padilla writes:

> During the legislative debate over SB 568, the question was raised repeatedly and the Legislature wisely chose to maintain a consistent primary election timeframe

of March so as to minimize voter confusion. SB 970 would lead to voter confusion by moving the primary election date back to June for non-presidential elections. Our time, energy, and resources are best spent educating voters about matters on the ballot and their growing opportunities for how to vote and not regularly explaining a moving target of primary Election Day.

Due to unforeseen circumstances we now face due to COVID-19, however, a delay in receiving 2020 Census data for the purpose of redistricting is a real possibility. A delay in receiving census data would create a timeline that would be difficult, if not impossible to meet for approving new district lines in time for the 2022 primary election. If this delay of vital Census data does occur, then, and only then, would I support rescheduling the 2022 Gubernatorial Primary Election to June.

9) **Related Legislation**: ACA 26 (Berman) and SCA 10 (Umberg, et al.), which are identical, authorize the CRC, for 2021 only, to extend the deadlines for final map approval and public display of preliminary maps if the US Census Bureau fails to provide the CRC with necessary state redistricting population data within one year after the decennial census date. The CRC would not be permitted to extend the deadline for final map approval beyond December 15, 2021.

10) **Previous Legislation**: SB 568 (Lara), Chapter 335, Statutes of 2017, changed the date of the statewide direct primary and the presidential primary to the first Tuesday after the first Monday in March.

AB 84 (Mullin) of 2017 would have changed the date of the presidential primary election to first Tuesday after the first Monday in March. Following passage by the Assembly, AB 84 was amended for another purpose.

AB 80 (Fong), Chapter 138, Statutes of 2011, changed the date of the presidential primary election back to the first Tuesday after the first Monday in June of presidential election years from the first Tuesday in February of those years.

SB 113 (Calderon), Chapter 2, Statutes of 2007, moved California's presidential primary election from June to February in presidential election years and prohibited it from being consolidated with the statewide direct primary.

AB 2949 (Umberg) of 2006 would have required the Secretary of State to schedule California's presidential primary election before, or on the same day as, the earliest presidential primary election held in any other state. AB 2949 was held on the Assembly Appropriations Committee's suspense file.

AB 1730 (Johnson), Chapter 817, Statutes of 2004, moved California's statewide direct primary election to the first Tuesday after the first Monday in June and required it to be consolidated with the presidential primary election in presidential election years.

SB 1999 (Costa), Chapter 913, Statutes of 1998, required that the statewide direct primary election be held on the first Tuesday in March in each even-numbered year and that it be consolidated with the presidential primary in presidential election years.

AB 2196 (Costa), Chapter 858, Statutes of 1993, moved California's presidential primary election from June to the fourth Tuesday in March and required that it be consolidated with the statewide direct primary.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Americans Advancing Justice – California
California Common Cause
California Professional Firefighters
League of Women Voters of California

Opposition

None on file.

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