

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 2123 (Cervantes) – As Amended April 2, 2018

**SUBJECT:** District-based elections.

**SUMMARY:** Permits a prospective plaintiff and a political subdivision to agree to extend the deadline by up to 90 days for completing the transition from an at-large to a district-based election system in accordance with the California Voting Rights Act of 2001 (CVRA).

Specifically, **this bill:**

- 1) Allows a political subdivision and the prospective plaintiff that first sends the subdivision a specified pre-litigation notice asserting that the subdivision's method of election violates the CVRA to enter into a written agreement to extend the amount of time that the subdivision has between the time that the subdivision passes a resolution outlining its intention to transition from at-large to district-based elections and the time that a prospective plaintiff may commence a legal action to enforce the CVRA.
  - a) Allows the agreement to extend the time period for up to an additional 90 days in order to provide additional time to conduct public outreach, encourage public participation, and receive public input.
  - b) Requires such a written agreement to include a requirement that the district boundaries be established no later than six months before the political subdivision's next general election.
- 2) Requires a political subdivision that enters into a written agreement with a prospective plaintiff, as described above, within 10 days of the execution of the written agreement, to prepare and make available on its website a tentative schedule of the public outreach events and the public hearings that it will hold in accordance with existing law. Requires a political subdivision that does not have a website to make the tentative schedule available upon request.

**EXISTING LAW:**

- 1) Prohibits, pursuant to the CVRA, 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 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.
- 2) 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.

- 3) 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.
- 4) Requires a prospective plaintiff, before commencing an action to enforce the CVRA, to send a written notice by certified mail to the political subdivision against which the action would be brought asserting that the political subdivision's method of conducting elections may violate the CVRA. Prohibits the prospective plaintiff from commencing an action to enforce the CVRA within 45 days of the political subdivision's receipt of the written notice.
- 5) Permits a political subdivision, before receiving a written notice described above or within 45 days of receipt of a notice, to pass a resolution outlining its intention to transition from at-large to district-based elections, as specified. Prohibits a prospective plaintiff from commencing a legal action against a political subdivision to enforce the CVRA within 90 days of the political subdivision's passage of such a resolution.
- 6) Requires a political subdivision that is changing from at-large to district-based elections to do all of the following before holding a public hearing at which the governing body of the political subdivision votes to approve or defeat an ordinance establishing district-based elections:
  - a) Hold at least two public hearings over a period of no more than 30 days prior to drawing a draft map or maps of the proposed boundaries of districts, in order to receive public input regarding the composition of the districts, as specified;
  - b) After draft maps are drawn, publish and make available for release at least one draft map and the potential sequence of elections in situations where elections to the governing body will be staggered; and,
  - c) After publishing a draft map or maps, hold at least two additional hearings over a period of no more than 45 days to receive public input regarding the content of the draft map or maps, as specified.
- 7) Permits a prospective plaintiff to receive reimbursement from a political subdivision for the work product generated to support a written notice, as described above, if that notice was sent to the political subdivision before it passed its resolution outlining its intention to transition from at-large to district-based elections, and the subdivision subsequently adopts an ordinance establishing district-based elections, as specified. Caps the amount of reimbursement at \$30,000, as adjusted annually to reflect inflation, as specified. Based on the inflation measurement specified in existing law, the current cap on reimbursement is approximately \$30,650.
- 8) Requires a jurisdictional boundary change to be made at least 125 days prior to an election in order for that boundary change to be in effect for that election.

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

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

In recent years, many local governments in California have been subject to litigation alleging that their existing at-large election systems violate the California Voting Rights Act (CVRA). The enactment of AB 350 (Alejo, 2016) established a framework which governs local governments' transitions from at-large to district-based elections.

However, after the enactment of AB 350, local governments and voting rights organizations have both found that additional time is often needed to implement a successful transition to district-based elections. With additional time to mobilize, underrepresented communities would be better equipped to advocate for their interests in the drawing of district boundaries. Additional time would also allow local governments to engage in more outreach to ensure that public input is heard while prospective districts are being drawn.

AB 2123 would build upon the existing framework by providing for a mutually agreed-upon extension of up to 90 additional days to allow a local government and plaintiff to continue negotiating a transition to district-based elections. During this time extension, the existing AB 350 prohibition against commencing CVRA litigation against a local government due to its at-large election system would also be extended.

2) **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.

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. In all, at least 200 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.

3) **Previous Legislation to Facilitate Changes from At-Large to District-Based Elections:**

At the time the CVRA was enacted, local government bodies generally were required to receive voter approval to move from an at-large method of election to a district-based method of election for selecting governing board members. That voter approval requirement made it difficult for jurisdictions to proactively transition to district-based elections to address potential liability under the CVRA. If a jurisdiction attempted to transition from at-large to district-based elections to address CVRA concerns, but the voters rejected the proposal, the jurisdiction nonetheless would remain subject to a lawsuit under the CVRA. Furthermore, to the extent that there was racially polarized voting on the question of whether to transition from at-large to district-based elections, the results of the vote on that question could provide further evidence for a lawsuit under the CVRA.

As the number of jurisdictions that faced lawsuits or threats of lawsuits under the CVRA increased, many jurisdictions sought ways to transition from at-large to district-based elections without having to receive voter approval for such a change. Most notably, many school districts have transitioned from at-large to district-based elections without receiving voter approval in an effort to avoid potential liability under the CVRA. Even though state law generally requires such a transition to be approved by the voters in a school district, existing law also permits the State Board of Education (SBE) to waive all or part of any section of the Education Code, with certain identified exceptions, upon request by the governing board of a school district or county board of education. The SBE generally is required to approve any and all requests for waivers unless it makes a finding that one of seven enumerated conditions exists. Since 2009, the SBE has approved waivers to permit approximately 158 school districts to change from at-large to district elections without receiving voter approval, as would otherwise be required by the Education Code.

In response to concerns that community college districts were subject to liability under the CVRA but were unable to change from at-large to district-based elections without voter approval, AB 684 (Block), Chapter 614, Statutes of 2011, established a process under which a community college district could transition from at-large to district-based elections without receiving voter approval if such a transition was approved by the Board of Governors (BOG) of the California Community Colleges, among other provisions. Since the enactment of AB 684, the BOG has approved requests from approximately 28 community college districts to change from at-large to district elections.

During the 2015-2016 Legislative Session, the Legislature took further steps to facilitate transitions from at-large to district elections. Specifically, SB 493 (Cannella), Chapter 735, Statutes of 2015, permitted a city with a population of fewer than 100,000 people to change the method of electing council members to a by-district method of election without receiving voter approval if such a change was made in furtherance of the purposes of the CVRA. AB 278 (R. Hernandez), Chapter 736, Statutes of 2016, expanded on SB 493 by allowing any city, regardless of population, to change the method of electing its governing board members

from at-large to a by-district method of election without receiving voter approval. Similarly, AB 2389 (Ridley-Thomas), Chapter 754, Statutes of 2016, permitted a special district to change the method of electing its governing board members from at-large to a by-district method of election without receiving voter approval, if the change was made in furtherance of the purposes of the CVRA.

In addition to taking steps to make it easier for local governments to comply with the CVRA by transitioning from at-large to district based elections, the Legislature also enacted new laws designed to encourage greater public participation in that process, and to provide a more formal mechanism for prospective plaintiffs and local jurisdictions to address at-large election systems that are potentially unlawful under the CVRA prior to litigation being filed. Specifically, AB 1440 (Campos), Chapter 873, Statutes of 2014, required any political subdivision that was 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.

More recently, AB 350 (Alejo), Chapter 737, Statutes of 2016, required a political subdivision that changed to, or established, district-based elections to hold at least two public hearings both before and after drawing a preliminary map or maps of the proposed district boundaries, as specified. Additionally, AB 350 required that written notice be provided before an action can be brought against a political subdivision under the CVRA, and capped the amount of attorney's fees that a prospective plaintiff could recover from a political subdivision under the CVRA if the subdivision promptly transitioned from an at-large to a district-based method of election upon receiving such a written notice.

Under the provisions of AB 350, once a jurisdiction receives a written notice from a prospective plaintiff alleging that the jurisdiction's method of conducting elections may violate the CVRA, the jurisdiction has 45 days to pass a resolution outlining its intention to transition from at-large to district-based elections (a jurisdiction may also choose to enact such a resolution before receiving any such written notice). If a jurisdiction has passed such a resolution, no legal action may be filed against the jurisdiction alleging a CVRA violation within 90 days of the resolution's passage. To take full advantage of the cap on attorney's fees to prospective plaintiffs that is provided in AB 350, a jurisdiction would have a maximum of 135 days (45 days to pass a resolution plus 90 days to adopt districts) from the time it received a written notice from the prospective plaintiffs until it had to finalize the new district boundaries.

This bill would allow a political subdivision and the prospective plaintiff who first sent a written notice to that political subdivision to enter into an agreement to extend the time period during which no legal action could be filed against the political subdivision for up to an additional 90 days (for a total of 180 days). While nothing in existing law prevents a prospective plaintiff from reaching a voluntary agreement with a political subdivision to refrain from filing a CVRA lawsuit while that subdivision takes steps to adopt a district-based method of election, such a voluntary agreement would not prevent any other prospective plaintiff from filing such a lawsuit once more than 90 days elapsed after the jurisdiction passed a resolution indicating its intent to transition from at-large to district-based elections. This bill effectively allows the prospective plaintiff that *first* sent a written

notice in accordance with the procedures outlined in AB 350 to reach an agreement with the jurisdiction that would prevent *any* plaintiff from filing a lawsuit for up to 180 days after the jurisdiction's adoption of the resolution. To ensure that such an agreement does not delay relief from a method of election that is unlawful under the CVRA, this bill allows such agreements only if they include a requirement that district boundaries be established no later than six months before the jurisdiction's next general election.

- 4) **Technical Amendments:** To correct a drafting error, and to ensure that this bill covers all the types of election systems used by various political subdivisions in California, committee staff recommends the following technical amendment:

On page 4, line 11, strike out "general election." and insert:

regular election to select governing board members. However, in a political subdivision that holds a primary election as part of its process for selecting governing board members, the written agreement shall include a requirement that district boundaries be established no later than six months before the political subdivision's next regular primary election.

Furthermore, certain language that this bill proposes to add to existing law appears to be unnecessary. Specifically, page 4, lines 20-22 of this bill read as follows:

(iii) This subparagraph applies only to a political subdivision that enters into a written agreement for a time extension pursuant to clause (i) when changing from at-large to district-based elections.

The prior two clauses in the subparagraph in which that clause is found, however, clearly apply only to political subdivisions that enter into a written agreement pursuant to clause (i). Because this language does not appear to have a substantive effect and may create confusion, committee staff recommends that it be deleted.

- 5) **Arguments in Support:** In support of this bill, California Common Cause writes:

Underrepresented communities are often, because of their historical disenfranchisement, among the least politically engaged communities in a jurisdiction. As a result, it can be very difficult, in only the 90 days allowed under law, for a local government or civil rights or community-based organizations to identify these underrepresented communities, educate them about districting and its importance, and encourage and facilitate their participation in the process.

AB 2123 will allow an extension of up to another 90 days, for a total of 180 days, to complete the districting process, which provides a more generous timeframe for engaging and mobilizing underrepresented communities. The bill requires local jurisdictions and CVRA prospective plaintiffs to both agree to the extension, to ensure the transition is done in a way that encourages public engagement. The bill also prevents extensions from resulting in districts being adopted with fewer than six months before the next regular election to ensure all candidates have ample

time to run a campaign that reaches all communities of the newly formed districts.

- 6) **Related Legislation:** AB 2231 (Brough), which is set for hearing in this committee on April 25, 2018, makes numerous significant changes to the CVRA that generally would make it harder for plaintiffs to successfully challenge at-large voting systems under the CVRA.

AB 2432 (Oberholte), which is set for hearing in this committee on April 25, 2018, prohibits a court from imposing district-based elections upon a finding of a violation of the CVRA unless the plaintiff has established that the district-based elections would remedy the dilution or abridgment of voting rights and that alternatives to district-based elections would not achieve greater voting rights and other benefits.

- 7) **Double-Referral:** This bill is double-referred to the Assembly Judiciary Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union of California Center for Advocacy and Policy  
Asian Americans Advancing Justice – California  
California Common Cause  
League of California Cities  
League of Women Voters of California  
Mexican American Legal Defense and Educational Fund (MALDEF)

**Opposition**

None on file.

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