

Date of Hearing: May 4, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2220 (Cooper) – As Introduced February 18, 2016

SUBJECT: Elections in cities: by or from district.

SUMMARY: Allows any city to adopt an ordinance requiring the city council to be elected by district without being required to submit the ordinance to the voters.

EXISTING LAW:

- 1) Allows a city to provide for city council members to be elected by districts or from districts, as specified. 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.
- 2) Allows, notwithstanding the provisions of 1), above, a city with less than 100,000 people to adopt an ordinance requiring the city council to be elected by district or by district with an elective mayor, without being required to submit the ordinance to the voters for approval.
- 3) Prohibits, pursuant to the California Voting Rights Act (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 a 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.
- 4) 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.
- 5) 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.
- 6) 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.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill expands existing law, which allows a city with less than 100,000 people, to adopt an ordinance requiring the city council to be elected by district without submitting the ordinance to the voters for approval, to include all cities. This bill is sponsored by the League of California Cities and the Mexican American Legal Defense and Educational Fund (MALDEF).

- 2) **Author's Statement.** According to the author, "AB 2220 provides large cities with a cost effective method and streamlined process to convert from at-large to by-district council elections while furthering the purposes of the California Voting Rights Act (CVRA).

"Last year, the Governor signed SB 493 (Cannella) which allows jurisdictions under 100,000 in population the option to convert from at-large to by-district elections by ordinance or resolution. AB 2220 would do the same for those jurisdictions over 100,000 in population who opt to convert to by-district elections. Cities with populations over 100,000 in California need a streamlined tool they can utilize to convert to by-district elections if they decide to convert on their own or when they are facing a potential lawsuit under CVRA...

"This tool serves as a cost saving measure to jurisdictions who face possible litigation under the CVRA because it allows them to settle with the plaintiffs and convert to by-district election system quicker than by placing the question on the ballot for voter approval... Cities have reported costs ranging from \$1,000,000 to \$6,000,000 in legal fees and election costs associated with CVRA litigation and 'by-district' conversions. These important local resources can be better used providing critical services for the community."

- 3) **Background.** The CVRA was enacted 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 usually votes for majority candidates rather than for minority candidates. In such situations, breaking up a jurisdiction 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 CVRA also allows a prevailing plaintiff to recover attorney's fees and litigation expenses to increase the likelihood that attorneys will be willing to bring challenges under the law.

At least 160 local government bodies have transitioned from at-large to district-based elections since the enactment of the CVRA in 2002. 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.

- 4) **Voter Approval and Waivers.** 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. However, the State Board of Education (SBE) and the Board of Governors (BOG) of the California Community Colleges can waive the voter-approval requirement for school districts and community college districts. The SBE and the BOG have granted nearly 150 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.

Prior to SB 493, there was no provision in statute for cities to dispense with the voter-approval requirement to move from at-large to district-based elections, if those governmental bodies had concerns about liability under the CVRA. However, in at least some cases, judges approved settlements to CVRA lawsuits that allowed the governing body to transition from at-large to district-based elections without voter approval.

- 5) **General Law vs. Charter Cities.** 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.

This bill seeks to regulate the manner in which municipal officers are elected. It is not clear whether this bill would apply to charter cities. According to the League of California Cities, sponsor of this bill, if the charter of a charter city contains provisions that contradict this bill, the charter would take precedence. Conversely, if a city charter does not specify elections procedures or contains language stating that state elections laws shall govern that city's elections, the provisions of this bill would apply.

For example, the City of Visalia's charter states, "The Council may, by ordinance, make further provisions as to the manner of holding and conducting elections. The provisions of the laws of the State of California relating to municipal elections, the qualifications of electors, the manner of voting, the duties of election officers, and all other particulars so far as they may be applicable, shall govern all municipal elections, except as otherwise provided in this Charter, or by such ordinance, provided, that no primary elections shall be held."

California has 121 charter cities. It is not known how many of these charters conflict with the provisions of this bill and how many charters harmonize with this bill.

- 6) **Related Legislation.** AB 278 (Roger Hernández) contains provisions that are identical to this bill, but also contains other provisions governing the creation of district boundaries in cities. A similar version of AB 278 was heard by this Committee on April 29, 2015, and passed on a 5-1 vote. AB 278 is pending in the Senate Elections and Constitutional Amendments Committee.
- 7) **Previous Legislation.** SB 493 (Cannella), Chapter 735, Statutes of 2015, allowed California's smaller cities (of 100,000 or less in population) to adopt an ordinance, without going to the voters, that requires the city to elect its council members by district, or by district with an elective mayor.

AB 2715 (Roger Hernández) and AB 1383 (Roger Hernández) of 2014 would have allowed cities with a population of 100,000 or more to elect city council members by district. AB 2715 was held in the Assembly Appropriations Committee and AB 1383 was held in the Senate Rules Committee.

AB 1440 (Campos), Chapter 873, Statutes of 2014, required political subdivisions that change from an at-large method of election to a district-based election to hold public hearings, and required special districts to hold a public hearing before adjusting the boundaries of a division.

SB 1365 (Padilla) of 2014 would have prohibited the use of a district-based election in a political subdivision, if it would impair the ability of a protected class to elect candidates of its choice or otherwise influence the outcome of an election as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, and would have required a court to implement specified remedies. SB 1365 was vetoed with the following message: "While there is progress to be made, the federal Voting Rights Act and the California Voting Rights Act already provide important safeguards to ensure that the voting strength of minority communities is not diluted."

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 held in the Assembly Elections and Redistricting 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 held in the Assembly Appropriations Committee.

- 8) **Arguments in Support.** The League of California Cities, co-sponsor of this bill, writes, "Last year, SB 493 (Cannella) provided an option for cities with a population of less than 100,000 to switch to district based elections by ordinance. Since its passage, three cities have already used this tool. Providing this option furthers the intent and impact of the California Voters Rights Act (CVRA) while relieving local jurisdictions of costly and extensive lawsuits.

"The CVRA provides generous recovery for attorney's fees. As a consequence, cities have incurred extremely high legal costs – some as high as 7 million dollars. This is money taken off of the table for increased civic engagement, public safety or other critical public services and instead going to plaintiffs' attorneys.

"The by-ordinance option allows cities to be proactive and quickly switch to district elections before a lawsuit is brought. This process is much quicker and less expensive than placing the question on the ballot for voter approval. It is equally important to note that cities are not insulated from further litigation if their voters reject district-based elections. For example, the City of Highland is still tied up in a lengthy litigation after voters rejected their ballot measure for district based elections."

- 9) **Arguments in Opposition.** None on file.
- 10) **Double-Referral.** This bill was heard by the Elections and Redistricting Committee on April 13, 2016, where it passed with a 5-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

League of California Cities [CO-SPONSOR]

Mexican American Legal Defense and Educational Fund [CO-SPONSOR]

Cities of Chino Hills, Elk Grove, Fontana, Highland, and Rancho Cucamonga

City Clerks Association of California

Lawyers' Committee for Civil Rights

League of Women Voters

Los Angeles County Division, League of California Cities

Riverside County Division, League of California Cities

Opposition

None on file

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