

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 801 (Weber and Gloria) – As Amended March 23, 2017

SUBJECT: County of San Diego Citizens Redistricting Commission.

SUMMARY: Repeals existing law that established a redistricting commission for San Diego County with specified members and processes for adjusting the boundaries of the county's supervisorial districts, and instead establishes a new commission with different members and procedures for adjusting the districts. Specifically, **this bill:**

- 1) Repeals provisions of existing law that provide for the creation of an Independent Redistricting Commission in San Diego County, to be made up of five members and two alternates who are former or retired federal or state judges, which has the responsibility for adjusting the supervisorial district boundaries after each decennial federal census, as specified. Repeals the procedures and criteria that the commission would be required to use when adjusting those boundaries.
- 2) Provides for the creation of a Citizens Redistricting Commission in San Diego County, and tasks the commission with adjusting the boundary lines of the County's supervisorial districts in the year following the year in which the decennial federal census is taken. Requires the San Diego County Board of Supervisors (board) to provide for reasonable funding and staffing for the commission.
- 3) Requires the commission to consist of 14 members, and to be created no later than December 31, 2020, and in each year ending in the number zero thereafter.
- 4) States that the selection process is designed to produce a commission that is independent from the influence of the board and reasonably representative of the county's diversity.
- 5) Requires the political party preferences of commission members, as shown on the members' most recent voter registration affidavits, to be as proportional as possible to the total number of voters who are registered with each political party in San Diego County or who decline to state or do not indicate a party affiliation, as determined by registration at the most recent statewide election. Provides that the political party preferences of commission members are not required to be exactly the same as the proportion of political party preferences among the registered voters of the county. Requires at least one commission member to reside in each of the existing five supervisorial districts of the board.
- 6) Requires each commission member to meet all of the following qualifications:
 - a) Be a resident of, and a registered voter in, San Diego County, who has been continuously registered in the County with the same political party or with no party preference who has not changed political party preference for five or more years immediately preceding the date of his or her appointment to the commission;

- b) Has voted in at least one of the last three statewide elections immediately preceding his or her application to be a member of the commission;
 - c) Possess experience that demonstrates analytical skills relevant to the redistricting process and voting rights, and possess an ability to comprehend and apply the applicable state and federal legal requirements;
 - d) Possess experience that demonstrates an ability to be impartial; and,
 - e) Possess experience that demonstrates an appreciation for the diverse demographics and geography of San Diego County.
- 7) Provides that, within the 10 years immediately preceding the date of application to the commission, neither the applicant, nor an immediate family member of the applicant, as defined, may have done any of the following:
- a) Been appointed to, elected to, or have been a candidate for office at the local, state, or federal level representing San Diego County, including as a member of the board;
 - b) Served as an employee of, or paid consultant for, an elected representative at the local, state, or federal level representing San Diego County;
 - c) Served as an employee of, or paid consultant for, a candidate for office at the local, state, or federal level representing San Diego County;
 - d) Served as an officer, employee, or paid consultant of a political party or as an appointed member of a political party central committee; or,
 - e) Been a registered federal, state, or local lobbyist.
- 8) Permits an interested person meeting the qualifications detailed above to submit an application to the county elections official to be considered for membership on the commission. Requires the county elections official to review the applications and eliminate applicants who do not meet the qualifications detailed above.
- 9) Requires the county elections official to select 60 of the most qualified applicants, taking into account the relevant requirements, and to make public their names for at least 30 days. Permits the elections official, during this period, to eliminate any of the previously selected applicants if the official becomes aware that the applicant does not meet the qualifications. Requires the county elections official to create a subpool for each of the five existing supervisorial districts in San Diego County. Prohibits the county elections official from communicating with a member of the board, or an agent for a member of the board, about any matter related to the nomination process or applicants before the publication of the list of the 60 most qualified applicants.
- 10) Requires, at a regularly scheduled meeting of the board, the Clerk of San Diego County to conduct a random drawing to select one commissioner from each of the five subpools established by the county elections official, and to then conduct a random drawing from all

the remaining applicants to select three additional commissioners.

- 11) Requires the eight selected commissioners to review the remaining applicants and to appoint six additional members to the commission. Requires the six appointees to be chosen based on relevant experience, analytical skills, and ability to be impartial, and to ensure that the commission reflects the county's diversity, including racial, ethnic, geographic, and gender diversity, provided that formulas or specific ratios are not applied for this purpose. Requires the eight commissioners additionally to consider political party preference, and to select applicants so that the political party preferences of the members of the commission are as proportional as possible to the registered voters in the county, as detailed above.
- 12) Requires commission members to apply the requirements of this bill in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process.
- 13) Provides that the term of office of each member of the commission expires upon the appointment of the first member of the succeeding commission.
- 14) Provides that nine members of the commission shall constitute a quorum and that nine or more affirmative votes are required for any official action.
- 15) Prohibits the commission from retaining a consultant who would not be qualified as a commission applicant due to any of the disqualifying criteria described in 7), above. Provides, for this purpose, that the term "consultant" means a person, whether or not compensated, retained to advise the commission or a commission member regarding any aspect of the redistricting process.
- 16) Requires each commission member to be a designated employee for the purposes of the conflict of interest code adopted by San Diego County, as specified, thereby requiring members to file statements of economic interests and to comply with specified state laws regarding conflicts of interests and limits on gifts and honoraria.
- 17) Requires the commission to establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:
 - a) Requires districts to comply with the United States Constitution and requires each district to have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act (VRA) or allowable by law;
 - b) Requires districts to comply with the federal VRA;
 - c) Requires districts to be geographically contiguous;
 - d) Requires the geographic integrity of any city, local neighborhood, or local community of interest, as defined, to be respected in a manner that minimizes its division to the extent possible without violating the requirements in a) through c), above; and,

- e) Requires, to the extent practicable, and where this does not conflict with the higher-priority criteria detailed above, districts to be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.
- 18) Prohibits the place of residence of any incumbent or political candidate from being considered in the creation of a map, and prohibits districts from being drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.
- 19) Requires the commission to comply with the Ralph M. Brown Act (Brown Act).
- 20) Requires the commission, prior to drawing a draft map, to conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.
- 21) Requires the commission, after drawing a draft map, to do both of the following:
- a) Post the map for public comment on San Diego County's Internet Web site; and,
 - b) Conduct at least two public hearings to take place over a period of no fewer than 30 days.
- 22) Requires hearings to be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible.
- 23) Requires the commission to establish and make available to the public a calendar of all public hearings and to post the agenda for the public hearings at least seven days before the hearings. Requires the agenda for a meeting conducted after the commission has drawn a draft map to include a copy of that map.
- 24) Requires the commission to arrange for the live translation of their hearings in an applicable language if a request for translation is made at least 24 hours before the hearing. Provides that an "applicable language," for these purposes, means a language for which the number of residents of San Diego County who are members of a language minority is greater than or equal to 3% of the total voting age residents of the county.
- 25) Requires the commission to take steps to encourage county residents to participate in the redistricting public review process. Provides that these steps may include the following:
- a) Providing information through media, social media, and public service announcements;
 - b) Coordinating with community organizations; and,
 - c) Posting information on San Diego County's Internet Web site that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.
- 26) Requires the board to take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to

provide to the public ready access to redistricting data and computer software equivalent to what is available to the commission members.

- 27) Requires the board to provide for reasonable funding and staffing for the commission.
- 28) Provides that all records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.
- 29) Requires the commission to adopt a redistricting plan and to file the plan with the county elections official before August 15 of the year following the year in which each decennial federal census is taken. Provides that the plan is effective 30 days after it is filed with the county elections official, and is subject to referendum in the same manner as ordinances.
- 30) Requires the commission to issue, with the final map, a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria described in 17) and 18), above.
- 31) Prohibits a commission member from holding elective public office at the federal, state, county, or city level in the state for a period of five years beginning from the date of his or her appointment to the commission.
- 32) Prohibits a commission member from doing any of the following for a period of three years beginning from the date of his or her appointment to the commission:
 - a) Holding an appointive federal, state, or local public office;
 - b) Serving as paid staff for or a paid consultant to, the Board of Equalization, Congress, the Legislature, or any individual legislator; or,
 - c) Registering as a federal, state, or local lobbyist in the state.
- 33) Defines "immediate family member," for the purposes of this bill, as a spouse, child, in-law, parent, or sibling.
- 34) Defines "community of interest," for the purposes of this bill, as a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Provides that communities of interest do not include relationships with political parties, incumbents, or political candidates.
- 35) Makes findings and declarations that a special law is necessary because of the unique circumstances facing San Diego County.
- 36) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

EXISTING LAW:

- 1) Provides for the creation of a redistricting commission in San Diego County, which has the responsibility for adjusting the supervisorial district boundaries after each decennial federal census, as specified. Requires the commission to be comprised of five members and two alternates who meet the following qualifications:
 - a) A resident of San Diego County;
 - b) A registered voter in San Diego County;
 - c) A former or retired state or federal judge; and,
 - d) Not a current member of the board.
- 2) Permits any person who meets the qualifications to serve on the commission to submit his or her name to the clerk of the board to be included in a random drawing to select the members and alternates to the commission. Requires the clerk to conduct a random drawing at a regularly scheduled meeting of the board to select the members and alternates of the commission.
- 3) Permits the presiding judge of the San Diego County Superior Court to assist the clerk of the board in identifying former or retired judges that may be qualified to be included in the drawing.
- 4) Requires the boundaries of supervisorial districts to be adjusted so that the districts are equal or nearly equal in population. Requires the resulting supervisorial districts to comply with any applicable provisions of Section 2 of the federal VRA, as amended.
- 5) Permits the commission to consider all of the following factors when establishing the boundaries of supervisorial districts:
 - a) Topography;
 - b) Geography;
 - c) Cohesiveness, contiguity, integrity, and compactness of territory; and,
 - d) Communities of interests in each district.
- 6) Requires the commission to use federal census tracts and blocks in establishing the boundaries of supervisorial districts.
- 7) Requires the board to provide for reasonable staffing and logistical support for the commission.
- 8) Provides that the commission is subject to the Brown Act and requires the commission to

conduct at least seven public hearings with at least one public hearing held in each supervisorial district.

- 9) Requires the commission to adopt a redistricting plan adjusting the boundaries of supervisorial districts and to file the plan with the clerk of the board of supervisors prior to the first day of October of the year following the year in which each decennial federal census is taken. Provides that the plan is effective 30 days after it is filed with the clerk. Provides that the plan is subject to referendum in the same manner as ordinances.
- 10) Establishes a procedure for a government of a county to adopt a charter by a majority vote of its electors voting on the question. Generally provides greater autonomy over county affairs to counties that have adopted charters.
- 11) Provides that counties that have adopted charters are subject to statutes that relate to apportioning population of governing body districts.
- 12) Permits a county to establish a commission charged with adjusting the boundaries of supervisorial districts after each decennial federal census, subject to certain conditions.
- 13) Establishes a Citizens Redistricting Commission in Los Angeles County and charges it with adjusting the boundaries of supervisorial districts after each decennial federal census, as specified.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **San Diego County Redistricting Commission.** SB 1331 (Kehoe), Chapter 508, Statutes of 2012, established an Independent Commission in San Diego County and charged it with adjusting the boundaries of supervisorial districts after each decennial federal census. The commission is comprised of five former or retired state or federal judges who are residents and voters in the county and are not current members of the board. Members are selected via a random drawing. The commission must adjust the district boundaries after each decennial census according to specified parameters. SB 1331 was requested by San Diego County because, at the time, the county needed legislative authorization to create an independent commission.
- 2) **Bill Summary.** This bill repeals existing law that was enacted in 2012 to create a redistricting commission for San Diego County, and establishes a new commission with specified membership and procedures that differ substantially from the present commission. The stated goal of this bill is "to produce a commission that is independent from the influence of the board and reasonably representative of the county's diversity." This bill is sponsored by the authors.
- 3) **Author's Statement.** According to the authors, "Over the past decade, there has been a greater desire to create 'independent redistricting commissions' to draw district lines at the local and state levels. In 2012, Senator Kehoe authored SB 1331. This bill established the Independent Redistricting Commission in San Diego County that would be comprised of

eligible former or retired state or federal judges. The goal of this was to create a commission that would be immune to political influence.

"While a step in the right direction, this redistricting process does not sufficiently account for the changing demographics that have taken place over the past 20 years. Although San Diego's population is extremely diverse, the pool of eligible commissioners includes a disproportionate older group of individuals that do not reflect the socioeconomic demographics of San Diego County.

"AB 801 will also help maintain communities of interests to ensure groups with similar socioeconomic interests are not negatively impacted by the upcoming redistricting process. By doing this, districts drawn by citizens can increase the supervisors' responsiveness to constituents and would encourage greater participation in the electoral process and, ultimately, increase accountability to San Diego citizens."

- 4) **Background.** In 2008, voters approved Proposition 11, which created the California Citizens Redistricting Commission (CRC) and granted it the authority to establish district lines for the State Assembly, Senate, and Board of Equalization. Proposition 11 also modified the criteria used when drawing district lines. In 2010, voters approved Proposition 20, which gave the CRC the responsibility for establishing lines for California's congressional districts and made other changes to the procedures and criteria to be used by the CRC. The CRC consists of 14 registered voters, including five Democrats, five Republicans, and four others, all of whom are chosen according to procedures specified in Proposition 11.

Prior to 2016, cities and counties were allowed to create advisory redistricting commissions (described in law as a "committee" of residents of the jurisdiction), but were not allowed to create redistricting commissions with the authority to establish or adjust district boundaries. Instead, the authority to establish district boundaries for a local jurisdiction was generally held by the governing body of that jurisdiction. Charter cities were, and still are, able to establish redistricting commissions with the authority to set or change district boundaries because the state Constitution gives charter cities broad authority over the conduct of city elections and over the manner in which, method by which, times at which, and terms for which municipal officers are elected. As a result, a number of California's charter cities established redistricting commissions to adjust city council districts following each decennial census. Counties and general law cities, on the other hand, did not possess the same level of authority over the conduct of their elections, unless they were granted such authority by the Legislature.

- 5) **Redistricting Legislation in 2016.** Last year, two bills revisited the issue of redistricting commissions for cities and counties. SB 958 (Lara), Chapter 781, Statutes of 2016, established a redistricting commission in Los Angeles County and charged it with adjusting the boundaries of supervisorial districts after each decennial federal census. With the notable difference that this bill applies to San Diego County, rather than Los Angeles County, the provisions of this bill are similar to the provisions of SB 958.

SB 1108 (Allen), Chapter 784, Statutes of 2016, allowed any county or general law city to establish an independent redistricting commission with the power to adopt district boundaries for the county's or city's legislative body. Although SB 1108 now allows any county to

create an independent commission, the provisions of SB 1331 apparently prevent San Diego County from altering its commission without legislative approval.

- 6) **Los Angeles County Lawsuit.** In February, 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)]. This lawsuit alleges that SB 958 violates 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.
- 7) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **Local Control.** SB 1331 was requested by San Diego County. This bill is opposed by San Diego County. A perennial theme discussed in this Committee is the principle of local control. Both SB 1331 and SB 1108 maintained local control for San Diego County and for all counties (as well as cities) statewide, respectively. This bill removes local control from San Diego County. The Committee may wish to consider the implications of these conflicting policy approaches to redistricting practices in the state.
 - b) **Pending Litigation.** Given that litigation is pending regarding similar legislation approved last year (SB 958), the Committee may wish to consider whether this bill is premature.
- 8) **Arguments in Support.** The Service Employees International Union, in support, writes, "AB 801 requires boundaries for supervisorial districts be drawn by a bipartisan group of individuals rather than being exclusively judges. San Diego is one of the most geographically, ethnically, and politically diverse counties in California. It is vital for the commission that draws the district lines be reflective of the region's diversity. This bill will also help ensure that groups with similar socioeconomic interests are not negatively impacted by the upcoming redistricting process. For the purposes of fair representation, the 14 commission members will also reflect the political party preferences (including no party affiliation), as shown on the applicant's most recent registration affidavits. By doing this, districts drawn by citizens can increase the supervisors' responsiveness to constituents."
- 9) **Arguments in Opposition.** San Diego County, in opposition, states, "Unfortunately, the sponsors of AB 801 are injecting into the future process of drawing district lines a blatantly political element that will put the entire process at risk and cost both the state and the county significant dollars. The process set forth in the bill will place a great burden on the County Registrar of Voters while depriving the Registrar of access to legal support from County Counsel. Litigation is inevitable under the proposed process and the Registrar will be forced

to obtain separate counsel to defend the actions forced upon that office by the bill...The better option is to allow the process created by SB 1331 to be used...While the sponsors of AB 801 may feel that retired judges do not fully reflect the demographic make-up of the county they have not been able to illustrate such a composition of the redistricting body would be biased or partisan."

10) **Double-Referral.** This bill was heard in the Assembly Elections Committee on April 5, 2017, where it passed with a 5-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Service Employees International Union

Opposition

California State Association of Counties
San Diego County
Urban Counties of California

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