

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 1816 (Dahle) – As Amended March 31, 2016

**SUBJECT:** Tulelake Irrigation District.

**SUMMARY:** Makes changes to the qualifications for voters and directors in the Tulelake Irrigation District (District), including a requirement that voters be landowners, instead of registered voters in the District. Specifically, **this bill:**

- 1) Requires voters in the District to be owners of real property assessed by the District, instead of registered voters, in order to vote in District elections.
- 2) Establishes a weighted vote system that provides landowners with either one, two, or three votes based on the total number of assessed acres owned in the division, as follows:
  - a) For 50 or fewer assessed acres, one vote;
  - b) For more than 50, but no more than 250 assessed acres, two votes; and,
  - c) For more than 250 assessed acres, three votes.
- 3) Requires each director of the District, at the time of his or her nomination or appointment through the entire term, to meet the following requirements:
  - a) Be a registered voter in California;
  - b) Reside within the residency area, as defined by this bill; and,
  - c) Be a landowner within the division he or she represents or a legal representative of a landowner within the division he or she represents.
- 4) Defines the following terms:
  - a) "Corporation" to mean "any legal entity, public or private, properly organized under the laws of the state in which it was created, that is allowed to own real property in California;"
  - b) "Legal representative" to mean "a person authorized to act for or on behalf of a corporation, estate, or trust holding title to land within the District;" and,
  - c) "Residency area" to mean "land within the District or land within one mile of any District boundary".
- 5) Provides that the last District assessment roll is conclusive evidence of ownership and the number of assessed acres owned by the voter in the division.
- 6) Requires, if land is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of the land to designate in writing, as specified, which owner is

deemed the owner of the land for purposes of qualifying as a voter. Requires the designation to be made upon a form provided by the District. Requires the form to be filed with the District at least 40 days prior to the election and remains in effect until amended or revoked. Prohibits any amendment or revocation to occur within the period of 39 days prior to the election.

- 7) Allows the legal representative of a corporation, estate, or trust owning real property to vote on behalf of the corporation or estate, including a designee. Requires a legal representative, before voting, to present the District a copy of his or her authority.
- 8) Authorizes every voter, or representative, to vote at any District election either in person or by a person appointed as a proxy. Requires the appointment of a proxy, pursuant to the existing process for California Water Districts.
- 9) 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) Requires that each voter of an irrigation district be a resident registered to vote in the district.
- 2) Requires that each director of an irrigation district be a voter, a landowner in the district, and a resident of the division of the district that he or she represents at the time of nomination or appointment and through the entire term, unless elected at a formation hearing.

**FISCAL EFFECT:** This bill is keyed fiscal.

#### **COMMENTS:**

- 1) **Irrigation District Voter and Director Qualifications.** California's 93 irrigation districts function under a range of statutes that are a hybrid of registered voter and landowner-voter type districts. In general, registered voters are eligible to vote in district elections, but directors (also referred to as board members) must be landowners of the district. Originally drafted in 1897, the provisions requiring directors to be landowners in the Irrigation District Law were drafted to recognize that landowners (at that time) were the only ones affected by the decisions that irrigation district boards made. The Legislature has recognized landowners' special concerns for irrigation districts' operations by creating unique separate statutes that preserve the landowner requirement to vote in districts that primarily deliver agricultural water. Some of these districts have landownership, but not residency requirements. These provisions in current law for individual irrigation districts either contain a process to allow the irrigation district to internally change to a landowner voter district, pursuant to a resolution of the governing board and a protest process, or make the change statutorily, as this bill would do for the District. However, the Legislature has not passed a bill limiting voting to landowners for an individual irrigation district in over 15 years.

Historically, irrigation districts only provided irrigation water services to agricultural land. However, as California's population has grown, more and more residential and commercial development is encroaching on agricultural land. In response to this growth, many irrigation districts began providing retail water service to residential customers that live within their

jurisdictions in the absence of traditional retail water suppliers in the area. This trend has caused the Legislature to reevaluate these landowner restrictions, both uniformly and on a case-by-case basis.

- 2) **Are the Landowner Qualifications Constitutional?** The California Constitution provides that the right to vote or serve in elected office may not be conditioned on a landownership qualification. However, in 1973, the U.S. Supreme Court ruled in *Salyer Land Co. v. Tulare Water District* that the California statute requiring a landownership qualification did not violate the Equal Protection Clause of the U.S. Constitution. The court ruled there was no violation because those districts do not exercise normal governmental authority and their activities disproportionately affect landowners.

The California Supreme Court, in *Choudhry v. Free* (1976) 17 Cal. 3d 660, declared unconstitutional a section of the Irrigation District Law requiring potential board candidates to be landowners. The court ruled that this section was unconstitutional as applied to the Imperial Irrigation District and its board of directors, the real parties in interest, because it deprived the irrigation candidates and voters, including petitioner voters, of equal protection. The court's opinion gave two reasons it did not extend its ruling to other irrigation districts. First, the Imperial Irrigation District was singular at that time among irrigation districts in that it had more residents, land, and employees than any other irrigation district and it was providing retail water service. Second, neither respondents nor real parties in interest had opposed petitioners' claim that Water Code Section 21100 was unconstitutional, and numerous irrigation districts in the state that would have been affected by a finding of unconstitutionality did not have the opportunity to present their views or offer evidence regarding the characteristics and operation of irrigation districts in general.

- 3) **Bill Summary.** This bill establishes a separate provision in Irrigation District Law for the District and specifies voter and director qualifications.

**Voters.** Under existing law, voters in the District are registered voters. Under this bill, voters in the District would be landowners. In other words, this bill allows all owners of real property assessed by the District to vote, but non-landowner registered voters within the District would no longer be eligible to vote. Under this bill, any owner of property assessed by the District, regardless of whether they live on their property in the District, would be eligible to vote in elections. Additionally, this bill establishes a weighted vote system based on the total number of acres owned within a division of the District. Landowners of 50 or fewer acres would get one vote, 50 to 250 acres would get two votes, and more than 250 acres would get three votes. This bill also makes a number of other changes to the qualifications of voters to address different types of ownership and the use of a legal representative or proxy.

**Directors.** Under existing law, directors of the District are registered voters, landowners, and residents within the division they represent. This bill makes changes to the qualifications for directors to allow landowners *who do not live* within the division or even *within* the District to serve as a director. Under this bill, owners of assessed parcels would need to fulfill three qualifications during the time of nomination or appointment and through the entire term as director: a) be a registered voter in California; b) reside within the boundaries of the District or on land within one mile of the District's boundary; and, c) be a landowner within the division they represent. This bill is sponsored by the District.

- 4) **The District.** The Tulalake Irrigation District is located within the Upper Klamath Basin and includes land in both Modoc and Siskiyou counties. The District has an exterior boundary that includes 96,000 acres, and its northern boundary is contiguous to the border between California and Oregon. The District's governing body is a five-member board of directors. According to Modoc County Local Agency Formation Commission's municipal service review, the District was formed in 1952, and entered into a contract with the U.S. Bureau of Reclamation in 1956 for repayment of construction charges and the transfer to the District the maintenance of the facilities used to deliver water to District lands. In 1957, the Board of Directors approved the formation of an improvement district to operate and maintain pumps, dikes, and drainage facilities already constructed by landowners and to apportion all charges among several landowners according to the number of acres of land owned. The District only provides water services for agricultural purposes and is financed by assessments on landowners.
- 5) **Author's Statement.** According to the author, "The current system of qualifying and electing directors of TID [Tulalake Irrigation District] is failing. The current residency requirements preclude those with an interest in the proper functioning of the irrigation district from running. Directors who may wish to step down are concerned that a dearth of potential candidates exists and are therefore continuing to serve long past their preferred tenure. TID exists in the very rural northern part of the state and provides *no* municipal services. The TID leadership has come to the realization that candidates for board seats will more likely be found once potential candidates realize that the operations and governance of the irrigation district are directly tied to the farmland that they own and operate. TID held a community workshop on 3/15/16 to which residents and landowners were properly noticed and invited to discuss the pending amendments. No opposition was expressed by those in attendance."
- 6) **Prior Legislation.** This Committee has heard a number of bills addressing qualification requirements for both voters and directors of irrigation districts. There have been several legislative attempts that have sought to limit landowner qualifications for board directors. SB 614 (Wolk) of 2013 would have removed the landownership requirement from the list of qualifications to serve as a director of an irrigation district, if the district provided water for agricultural purposes and water for municipal or industrial purposes. SB 1939 (Alarcón), Chapter 1041, Statutes of 2000, deleted the landowner qualification for board members of irrigation districts that provide electricity. AB 2279 (Dymally) of 2004 would have deleted the landowner qualification for board members of most irrigation districts, but failed passage in the Senate Local Government Committee. AB 159 (Salinas), Chapter 847, Statutes of 2006, removed the landowner requirement for irrigation districts that are required to submit an urban water management, and thus, provide 3,000 or more acre-feet of water to residential customers or that have more than 3,000 customers.

Several bills seeking to make changes to voter and director qualifications for individual irrigation districts were never heard by a policy committee or failed passage. SB 1189 (Florez) of 2006, which was never heard by the Senate Local Government Committee, would have required voters to be landowners instead of registered voters in the Alpaugh Irrigation District. When AB 1189 was before the Legislature, the Alpaugh Irrigation District only had 131 registered voters, and only six of those registered voters were landowners eligible to serve on the board. AB 286 (Matthews) of 2005, which failed passage in the Senate Local Government Committee, would have allowed the Board of Directors of the Banta-Carbona Irrigation District to adopt a resolution to allow non-resident landowners to serve on the

board. This bill is nearly identical to AB 386 (Dahle) of 2015, which was never heard by the Committee.

7) **Committee Amendments.** The Committee may wish to consider the following alternatives to restricting the right to vote based on land ownership:

- a) **Voters.** The author argues that there are not enough potential candidates to serve on the Board. The Committee may wish to consider, if these arguments justify imposing the qualification of landownership on the right to vote. Further, the Committee may wish to consider that 200 registered voters within the District would no longer be eligible to vote because they do not own land.

In light of these considerations, the Committee may wish to ask the author to remove all portions of the bill that would require landownership as a qualification to vote and maintain the qualifications in current law for irrigation districts, which designates registered voters as the voters of the District. The Committee may wish to ask the author to remove subdivisions (b), (c), (d), (e), and (f) from the bill.

- b) **Directors.** The Legislature has authorized several irrigation districts: Pixley Irrigation District, Hills Valley Irrigation District, Stratford Irrigation District, and Byron-Bethany Irrigation District, to allow nonresident and nonvoter landowners to serve on the board of directors, if the board passes a resolution. There are protections in existing law that establish protest proceedings for resident voters in each of the Districts, if they do not want nonresident and nonvoter landowners to serve as directors.

In light of these considerations, the Committee may wish to ask the author to amend subdivision (g) in the bill to mirror existing law, which would authorize the District to modify the residency requirements for the qualifications for directors. The Committee may wish to ask the author to authorize the District to adopt a resolution, in a public hearing subject to protest proceedings, to allow landowners of the District, who are residents within the residency area defined by this bill, to serve on the board. According to the District, there are 200 landowners within the residency area defined by this bill, who would then qualify to be a director.

8) **Policy Considerations.** The Committee may wish to consider there are other approaches to widening the pool of eligible directors besides allowing nonvoter and nonresident landowners to serve as directors.

- a) **Resident Non-landowner Directors.** The principal acts for almost all other types of special districts do not require landownership as a qualification for office. The Committee may wish to consider allowing resident voters, who are not landowners, to be eligible to serve on the board as a director. The Legislature has established an exemption to the landowner requirements in existing law for the South Bay Irrigation District.
- b) **Size and Divisions.** Existing law provides a process for irrigation districts to change the number of divisions or the method of electing directors. Due to the expressed challenges by the District in getting five directors to serve, who are registered voters, landowners, and residents within the division, the Committee may wish to consider, if a three-member board or removing the divisions in the District would help remedy these challenges.

9) **Arguments in Support.** The District argues "AB 1816 will change the qualifications for voters and those seeking to serve on the District's Board of Directors, expanding the pool of eligible Directors and implementing a tired voting structure based on land ownership. The District has had difficulty finding landowners who are willing and eligible to serve on its Board of Directors given the current requirement that Directors live in the Division they represent."

10) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Tulelake Irrigation District [SPONSOR]  
City of Tulelake  
Modoc County Board of Supervisors  
Siskiyou County Board of Supervisors

**Opposition**

None on file

**Analysis Prepared by:** Misa Lennox / L. GOV. / (916) 319-3958