

Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 139 (Allen) – As Amended June 12, 2019

SENATE VOTE: 29-7

SUBJECT: Independent redistricting commissions.

SUMMARY: Requires certain counties to establish an independent redistricting commission to adopt the county's supervisorial districts after each federal decennial census. Specifically, **this bill:**

- 1) Requires a county with more than 250,000 residents on July 1, 2019, and on July 1, of every subsequent year ending in the number nine, to establish either a 9-member or a 12-member independent redistricting commission to adopt the county's supervisorial districts after each federal decennial census, as specified. Requires a county, if it does not pass an ordinance to establish either a 9-member or a 12-member independent redistricting commission pursuant to the provisions of this bill by March 1, 2020, and by March 1 of every subsequent year ending in the number zero, to establish a 12-member independent redistricting commission pursuant to the provisions of this bill.
- 2) Provides that a county with 750,000 residents or less is *not required* to establish an independent redistricting commission pursuant to this bill, unless an appropriation for that purpose is made in the annual Budget Act or other statute before July 15, 2020, and before July 15 of every subsequent year ending in the number zero.
- 3) Specifies, for the purposes of this bill, that the latest available estimate of a county's population by the Department of Finance, pursuant to existing law, on July 1 of each year ending in the number nine is determinative.
- 4) Specifies that the provisions of this bill do not apply to a county that has adopted a ballot measure establishing an independent redistricting commission before January 1, 2019, unless that commission is subsequently repealed or invalidated by a court.
- 5) Provides that the provisions of this bill does not apply to the following:
 - a) A charter city and county;
 - b) The County of Los Angeles, unless the commission established by existing law is repealed or invalidated by a court; and,
 - c) The County of San Diego, unless the commission established by existing law is repealed or invalidated by a court.
- 6) Defines, for the purposes of this bill:
 - a) "Board" to mean the board of supervisors of a county;

- b) “County” to mean either of the following:
 - i) A county that is not required to establish an independent redistricting commission pursuant to provisions of this bill, but which elects to create a commission using the procedures established in this bill; or,
 - ii) A county that is required to establish an independent redistricting commission pursuant to provisions of this bill, and which elects or is required to use the procedures established in this bill to establish the commission;
 - c) “County elections official” to mean a county’s registrar of voters; and,
 - d) “Screening panel” to mean a county’s civil grand jury, pursuant to existing law.
- 7) Requires the following for commission member qualifications:
- a) Requires a commission member to engage in conduct that is impartial and that reinforces public confidence in the integrity of the redistricting process;
 - b) Requires that each member of the commission established pursuant to this bill:
 - i) Be at least 18 years old and a resident of the local jurisdiction;
 - ii) Be a voter who has been continuously registered with the same political party preference, or with no political party preference, either during the five years immediately preceding the date of the member’s appointment to the commission or since the member registered to vote for the first time, whichever is shorter;
 - iii) Possess the competency to carry out the responsibilities of the commission;
 - iv) Possess the ability to serve with impartiality in a nonpartisan role; and,
 - v) Possess an appreciation for the diverse demographics and geography of the county.
- 8) Provides the following for the commission member application process:
- a) Requires the county to recruit eligible residents to apply to serve on the commission. Requires that the county request the assistance of neighborhood associations, community groups, civic organizations, and civil rights organizations to encourage eligible residents to apply to serve on the commission;
 - b) Permits an interested person meeting the qualifications specified in the bill to submit an application to the county to be considered for membership on the commission. Requires the application period to be open for at least two months. Requires a county, if fewer than five people apply from each existing supervisorial district or fewer than 40 people apply in total, to reopen the application period for a minimum of two weeks;
 - c) Requires the county elections official to review applications for membership on the commission and eliminate applicants who do not meet the criteria provided in the bill;

- d) Allows the county elections official to rely on an applicant's certification that, to the best of the applicant's knowledge, the applicant meets those criteria; and,
 - e) Requires the county, during the application period, to maintain and periodically update a public list with the name, relevant demographic characteristics, and party affiliation of each qualifying applicant and review any allegations that an applicant on that list is ineligible to serve on the commission pursuant to the bill. Requires the county, if those allegations are substantiated, to remove the applicant from consideration.
- 9) Provides the following for the commission member selection process:
- a) Clarifies that the commission selection process described in this bill is designed to produce a commission that is independent from the influence of the board and reasonably representative of the county's diversity;
 - b) Requires members of a commission, after the conclusion of the application process, to be selected pursuant to the following process:
 - i) Requires a county to organize the eligible applications and transmit them, as well as any written public comment received concerning any applicant or the screening process, to the screening panel. Requires a county to also provide the screening panel with relevant demographic and party registration figures for the county. Requires a county to provide additional administrative support to the screening panel upon request;
 - ii) Requires a screening panel, notwithstanding existing law, at one or more noticed public hearings, and after receiving public comment, to review the applications. Allows a screening panel to ask questions of an applicant at a public meeting or request that the applicant answer written questions. Requires a screening panel to nominate for membership on the commission no fewer than 30 and no more than 40 of the most qualified applicants, based on the criteria specified above. Requires a screening panel to nominate at least three applicants from each supervisorial district;
 - (1) *12-Member Commission*: Requires that the political party preferences of the pool of nominees, as shown on the nominees' most recent affidavits of registration, be approximately proportional to the number of voters who are registered with each political party in the county or who decline to state or do not indicate a party preference, based on voter registration at the most recent statewide election;
 - (2) *9-Member Commission*: Requires the political party preferences of the pool of nominees, as shown on the nominees' most recent affidavits of registration, be approximately evenly divided between applicants who are registered with the largest political party in the county, the second largest political party in the county, and neither of the two largest political parties in the county;
 - iii) Requires the county elections official to review the applications of the applicants nominated pursuant to this bill and remove from consideration any applicant who does not meet the eligibility criteria specified above;

- (1) *12-Member Commission*: Requires the screening panel, if the pool of remaining nominees has fewer than three nominees from each supervisorial district or has fewer than 30 nominees in total, to nominate additional applicants so that those conditions are met. Requires the county to then divide the remaining nominees into five subpools corresponding to each of the five supervisorial districts in the county;
 - (2) *9-Member Commission*: Requires the screening panel, if the pool of remaining nominees has fewer than 30 applicants, to nominate additional applicants so that the pool has at least 30 applicants. Requires the county to then divide the remaining nominees into five subpools corresponding to each of the five supervisorial districts in the county;
- iv) Requires the county elections official, at a noticed public meeting, to randomly select one nominee from each of the five subpools described above. Requires those five nominees be appointed to the commission unless, if those nominees were appointed, it would be impossible to create a commission with members whose political party preferences would comply with the provisions of this bill. Requires the county elections official to repeat the random selection as necessary until the composition of the political preferences of the selected nominees would make it possible to create a commission that complies with the provisions of this bill;
- v) Requires the commissioners selected to review the remaining applicants in the subpools described above and appoint additional applicants, as follows:
- (1) *12-Member Commission*: Appoint, by majority vote, seven additional applicants to the commission. Requires the seven appointees be chosen based on the factors described above, and ensure that the commission reflects the county's diversity, including racial, ethnic, geographic, and gender diversity. Clarifies that formulas or specific ratios shall not be applied for this purpose. Requires the commissioners selected pursuant to this bill to also consider political party preference and to select applicants so that the composition of the political party preferences of the members of the commission comply with provisions of this bill;
 - (2) *9-Member Commission*: Appoint, by majority vote, four additional applicants to the commission. Requires the four appointees be chosen based on the factors described above, and ensure that the commission reflects the county's diversity, including racial, ethnic, geographic, and gender diversity. Clarifies that formulas or specific ratios shall not be applied for this purpose. Requires the commissioners selected pursuant to this bill to also consider political party preference and to select applicants so that the composition of the political party preferences of the members of the commission comply with provisions of this bill;
- c) Allows the commission, by majority vote, to appoint an applicant from the pool of nominees described above to fill a vacancy that may occur on the commission, provided that the appointed applicant is registered with the same political party preference as the departed commissioner;

- d) Prohibits a member of the board, or an agent for a member of the board, from communicating with either the screening panel or a member of the screening panel regarding whom to nominate for consideration on the commission, or with the commissioners selected pursuant to this bill regarding whom to appoint to the commission, except at a public hearing or by submitting a written public comment through a formal process; and,
- e) Specifies that the term of office of each member of the commission expires upon the appointment of the first member of a successor commission.

10) Stipulates the following requirements for a 12-member commission:

- a) Specifies that the commission shall consist of 12 members who shall be appointed on or before March 1, 2021, and on or before March 1 in each year ending in the number one thereafter;
- b) Requires that the political party preferences of the commission members, as shown on the members' most recent affidavits of registration, be as proportional as possible to the total number of voters who are registered with each political party in that county or who decline to state or do not indicate a political party preference, based on voter registration at the most recent statewide election;
- c) Prohibits a majority of commissioners from being registered with the same political party;
- d) Provides that if a commission based on proportional representation would result in commissioners who are registered with the same political party occupying seven or more seats on the commission, each of those seats in excess of six seats shall instead be occupied by an individual who declines to state or does not indicate a political party preference; and,
- e) Stipulates that seven members of the commission shall constitute a quorum. Provides that seven or more affirmative votes of the commission are required to take an official action, except the adoption of a final map requires eight or more affirmative votes.

11) Stipulates the following requirements for a 9-member commission:

- a) Stipulates that commissioners be appointed on or before March 1, 2021, and on or before March 1 in each year ending in number 1 thereafter;
- b) Specifies that the commission shall consist of nine members, three of whom are registered with the largest political party in the county based on registration, three of whom are registered with the second-largest political party in the county based on registration, and three who are not registered with either of the two largest political parties in the county based on registration;
- c) Requires that the county political party registration be based on voter registration at the most recent statewide election;
- d) Stipulates that five members of the commission constitutes a quorum; and,

- e) Specifies that five or more affirmative votes of the commission are required to take an official action, except the adoption of a final map shall also require the affirmative vote of one commissioner who is registered with the largest political party in the county, one commissioner who is registered with the second largest political party in the county, and one commissioner who is not registered with either of the two largest political parties in the county.

12) Provides the following requirements regarding public hearings and public access:

- a) Requires the commission to conduct at least five public hearings, with at least one public hearing held in each supervisorial district, before adopting a final map. Requires the commission to schedule hearings at various times and on various days of the week to accommodate a variety of work schedules and to reach the largest possible audience;
- b) Requires that the commission give notice of any public hearing on the county's internet website at least seven days before the hearing, notwithstanding existing law;
- c) Requires the commission to publish a draft map on the internet for at least seven days before adopting it;
- d) Requires the commission to provide a live translation of a hearing held in an applicable language if a request for translation is made at least 72 hours before the hearing. Defines "applicable language," for the purposes of this bill, to mean a language in which ballots are required to be provided in the county pursuant to current law;
- e) Requires that the county and the commission take steps to encourage county residents to participate in the redistricting public review process. Specifies that these steps may include the following:
 - i) Providing information through media, social media, and public service announcements;
 - ii) Providing information through neighborhood associations, community groups, civic organizations, and civil rights organizations; and,
 - iii) Posting information on the county's internet website that explains the redistricting process and the procedures for testifying during a hearing or submitting written testimony directly to the commission.
- f) Requires the board to provide for reasonable funding and staffing of the commission; and,
- g) Requires the commission, with any final map that the commission adopts, to issue a report that explains the basis on which it made its decisions.

13) Provides the following when a commission fails to adopt supervisorial district boundaries by the deadline for completing county redistricting:

- a) Requires a board, if the commission does not adopt supervisorial district boundaries by the deadline for completing county redistricting, to immediately petition the superior court of the county for an order adopting supervisorial district boundaries. Requires that

the petition include a copy of the two complete draft maps that received the most commissioner votes;

- b) Requires the superior court to adopt supervisorial district boundaries, upon finding that a petition filed is valid. Requires these boundaries to be used in the county's next regular election. Requires the superior court to consider adopting one of the two draft maps filed with the petition, but allows the superior court to adopt different boundaries that better comply with the criteria established in existing law. Allows the superior court to also order the adjustment of electoral deadlines as necessary to implement the new supervisorial district boundaries in the next regular election;
 - c) Authorizes the superior court to appoint a special master or other experts to assist the court with adopting the supervisorial district boundaries. Requires the county to pay the cost for any special master or expert;
 - d) Requires that the superior court or the special master hold one or more public hearings before the superior court adopts the supervisorial district boundaries; and,
 - e) Requires the supervisorial district boundaries adopted by the superior court to be immediately effective in the same manner as if the commission had adopted the boundaries.
- 14) Permits a local jurisdiction that is partially or wholly located within the County of Los Angeles or the County of San Diego, with the approval of the board of supervisors of the county in which the local jurisdiction is located, to contract with the independent redistricting commission established pursuant to existing law to adopt the local jurisdiction's election district boundaries.
- 15) Makes minor technical and conforming changes.

EXISTING LAW:

- 1) Requires the governing body of each county and each city, following the decennial federal census, and using that census as a basis, to adjust the boundaries of any or all of the supervisorial or council districts so that the districts are as nearly equal in population as may be and comply with the applicable provisions of Section 2 of the federal Voting Rights Act (VRA), as amended.
- 2) Establishes the Citizens Redistricting Commission (CRC), and gives it the responsibility to establish district lines for the State Assembly, State Senate, congressional districts, and Board of Equalization. Modifies the criteria to be used when drawing district lines to prevent favoring or discriminating against an incumbent, political candidate, or political party.
- 3) Authorizes a county, general law city, school district, community college district, or a special district to establish an independent redistricting commission, an advisory redistricting commission, or a hybrid redistricting commission by resolution, ordinance, or charter amendment, as specified.

- 4) Requires the County of Los Angeles and the County of San Diego to create independent redistricting commissions to adjust the boundary lines of their respective county's supervisorial districts, as specified.
- 5) Defines an "independent redistricting commission" to mean a body, other than a legislative body, that is empowered to adopt the district boundaries for a legislative body.
- 6) Defines "hybrid redistricting commission" to mean a body that recommends to a legislative body the new district boundaries in two or more maps for that legislative body, where the legislative body must adopt one of those maps without modification, except as may be required to comply with state or federal law.

FISCAL EFFECT: According to the Senate Appropriations Committee, by requiring counties to establish independent redistricting commissions following each decennial census, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). The costs are unknown, but potentially in the low millions of dollars every ten years.

COMMENTS:

- 1) **Author's Statement.** According to the author, "In 2008, California voters approved Proposition 11, which created the Citizens Redistricting Commission (CRC), giving it the responsibility to establish district lines for the State Assembly, State Senate, and Board of Equalization. Proposition 20, approved by the voters in 2010, gave the CRC the additional responsibility of establishing lines for California's congressional districts. Responding to local interest in reform, Senator Allen authored SB 1108 in 2016 and SB 1018 in 2018, which authorized all counties, cities, school, community college and special districts to establish independent, hybrid or advisory redistricting commissions. These laws are permissive and jurisdictions can choose whether to adopt redistricting commissions.

"Unfortunately gerrymandering has continued at the local level. A 2015 National Association of Latino Elected and Appointed Officials (NALEO) report found that Latinos constitute only 10% of county supervisors in California even though almost 40% of the state's population is Latino. Similarly, although many jurisdictions' residents are politically diverse, there is often near single-party rule in many counties. In many jurisdictions, incumbents have used the local line-drawing process to disenfranchise growing ethnic and language minority communities, reduce the voting power of political minorities, and even draw political opponents out of the district they were planning to run in.

"SB 139 requires counties with more than 250,000 residents to establish an independent redistricting commission that will have the full power to draft and adopt district maps, independent of the board of supervisors. SB 139 requires that the commission members be politically independent. Draft maps must be published for seven days before they can be adopted. The commissions must engage the public by holding five public hearings prior to adopting any maps. For the first time, the bill also prohibits partisan gerrymandering in redistricting. Independent redistricting of county supervisorial districts will ensure a more democratic process and will lead to a more accurate reflection of the demographics of the electorate on governing bodies."

- 2) **Background.** In 2008, voters approved Proposition 11, which created the 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. Proposition 20, approved by voters in 2010, gave the CRC the responsibility for establishing lines for California's congressional districts as well, 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 2017, counties and general law cities were able to create *advisory* redistricting commissions, but were not able to create commissions with the authority to establish 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 are able to establish independent redistricting commissions that have the authority to establish 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 cities established redistricting commissions to adjust city council districts following each decennial census.

The passage of SB 1108 (Allen), Chapter 784, Statutes of 2016, allowed a county or general law city to establish a commission to either change the boundaries of the districts or recommend to the governing body changes to the boundaries of the districts. In recent years, the Legislature has statutorily authorized CRC to draw the boundaries of board of supervisors' districts in two counties: San Diego and Los Angeles.

SB 1018 (Allen), Chapter 462, Statutes of 2018, extended the authority to adopt redistricting commissions to school districts, community college districts, and special districts. The bill also relaxed some of the eligibility requirements for members of independent commissions and eased one of the post-service restrictions on those members in an effort to expand the pool of individuals who are available to serve on such commissions. Lastly, SB 1018 allowed for the creation of hybrid commissions, subject to the same restrictions and requirements as independent commissions.

- 3) **Bill Summary.** This bill requires counties that meet certain population thresholds to establish independent redistricting commissions to adopt the county's supervisorial districts after each federal decennial census, as specified. This bill outlines the qualifications, the application process, and the selection process for the commission members. Lastly, the bill lists the requirements for public hearings and public access of the commission, and delineates the process should the commission not adopt supervisorial district boundaries by the deadline.

This bill's provisions only apply to counties that fit within specific population thresholds, as follows (the counties of Los Angeles, San Diego, and the charter City and County San Francisco are exempt from the provisions of this bill, as specified):

Counties that would be required to establish an independent redistricting commission (by population):

<u>County</u>	<u>2019 Estimated Population</u>
1. Orange	3,236,920
2. Riverside	2,456,153
3. San Bernardino	2,200,426
4. Santa Clara	1,976,645
5. Alameda	1,679,769
6. Sacramento	1,553,452
7. Contra Costa	1,158,702
8. Fresno	1,021,394
9. Kern	917,635
10. Ventura	859,345
11. San Mateo	779,896
12. San Joaquin	769,930

Counties that would be required to establish an independent redistricting commission only if an appropriation is made (by population):

<u>County</u>	<u>2019 Estimated Population</u>
1. Stanislaus	561,141
2. Sonoma	504,499
3. Tulare	481,804
4. Santa Barbara	456,514
5. Monterey	447,464
6. Solano	444,507
7. Placer	394,114
8. Merced	284,273
9. San Luis Obispo	281,037
10. Santa Cruz	277,038
11. Marin	262,649

These are estimated projections and are subject to change. Yolo County and Butte County are projected to reach 250,000 residents in 2028 and 2032, respectively.

California Common Cause and the League of Women Voters are both sponsors of this bill.

- 4) **Policy Considerations.** The authority for counties to create their own independent redistricting commissions by ordinance has only been in place for two years. To date, only three counties have adopted independent redistricting commissions: Los Angeles and San Diego, pursuant to state legislation, and San Francisco (a city and county). According to a 2017 study by the California Local Redistricting Project, 37 local governments have used commissions to recommend or adopt maps, or have established a commission but not yet used it to redraw boundaries. However, counties have been slow to adopt redistricting commissions. It may be too early to expect counties to create their own independent redistricting commissions, but this could come at the expense of the democratic process.

- 5) **Arguments in Support.** According to Common Cause and League of Women Voters of California, the co-sponsors of this bill, “California has been recognized nationally for bringing independent, nonpartisan redistricting throughout the state...SB 139 requires that the commission members be politically independent. For the first time, the bill also prohibits partisan gerrymandering in county redistricting. SB 139 will bring more transparency and nonpartisan redistricting to California counties and ensure a more democratic process and more representative local government. Fair county redistricting is crucial to ensuring a more representative and inclusive local democracy.”
- 6) **Arguments in Opposition.** The California State Association of Counties, Rural County Representatives of California, and Urban Counties of California argue, “We are concerned that – as past experience has indicated – the state will avoid paying mandated costs by suspending the mandate, which leaves the statute apparently intact but actually optional. If that happens, either counties feel pressured to perform the activities without reimbursement, which is unfair, or they exercise the option not to perform them. To that end, we continue to request amendments to provide full and appropriate funding to allow counties to meet the obligations set forth in the bill.”
- 7) **Double-Referral.** This bill was heard by the Elections and Redistricting Committee on June 17, 2019, and passed with a 6-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause [CO-SPONSOR]
League of Women Voters of California [CO-SPONSOR]
Asian Americans Advancing Justice-California
Asian Pacific Environmental Network
California Clean Money Campaign
California League of Conservation Voters
California Voices for Progress
City of Santa Monica
Courage Campaign
Drug Policy Alliance
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Indivisible CA: StateStrong
Indivisible Marin
Mexican-American Legal Defense and Ed Fund (MALDEF)
Mi Familia Vota
NARAL Pro-Choice California
RepresentUs
Service Employees International Union (SEIU)
Supervisor Monica E. Brown, County of Solano
United Food and Commercial Workers (UFCW), Western States Council

Opposition

California Association of Clerks and Election Officials
California State Association of Counties
Rural County Representatives of California
Urban Counties of California

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