

Date of Hearing: July 15, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
SB 493 (Cannella) – As Amended July 7, 2015

SENATE VOTE: 29-3

SUBJECT: Elections in cities: by or from districts.

SUMMARY: Allows 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. Specifically, **this bill:**

- 1) Allows the legislative body of a city with a population of fewer than 100,000 people to adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, without being required to submit the ordinance to the voters for approval.
- 2) Requires an ordinance adopted pursuant to this bill to include a declaration that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (CVRA), as specified.
- 3) Requires, for purposes of this bill, the population of a city to be determined by the most recent federal decennial census.

EXISTING LAW:

- 1) Permits a general law city that elects its councilmembers through at-large elections to provide for city council members to be elected by districts or from districts. 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) Defines, for the purposes of 1), above, the following:
 - a) "By districts" to mean the election of members by voters of the district alone; and,
 - b) "From districts" to mean the election of members who are residents of the districts from which they are elected, but who are elected by voters of the city as a whole.
- 3) Prohibits, pursuant to the 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 allows 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. This bill is sponsored by the author.
- 2) **Author's Statement.** According to the author, "Since 2003, California cities using at-large elections methods have become subject to lawsuits asserting violations of the California Voting Rights Act and demanding by-district elections be implemented. For a city facing such a suit, the options are limited – they can either [1] submit an ordinance making this change to the voters for approval, which is expensive, slow, and not guaranteed to win approval, or [2] accept the lawsuit, which they are bound to lose, costing taxpayer money in legal fees. SB 493 proposes to save cities this time and money by permitting them to enact an ordinance switching their election method to by-district without submitting it for voter approval."
- 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.

More than 140 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 120 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.

There is no procedure in statute for cities or special districts to receive a waiver for the voter-approval requirement to move from at-large to district-based elections, if those governmental bodies have concerns about liability under the CVRA. However, in at least some cases, judges have approved settlements to CVRA lawsuits that allow the governing body to transition from at-large to district-based elections without voter approval. According to information compiled by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, at least a dozen other local jurisdictions statewide have transitioned to electing governing board members by districts as a result of settlements to lawsuits brought under the CVRA.

- 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. Because this bill seeks to regulate the manner in which municipal officers are elected, the provisions of this bill would not apply to charter cities, but instead, would apply only to general law cities with a population of less than 100,000 people.

- 6) **Cities Affected.** According to information compiled by the author's office, this bill would apply to nearly 350 California cities.
- 7) **Related Legislation.** AB 278 (Roger Hernández) requires general law cities with a population of 100,000 or more, as specified, to elect members of the city council by district, and requires certain criteria to be met in preparing district boundaries. AB 278 is pending in the Senate Elections and Constitutional Amendments Committee.

- 8) **Previous Legislation.** AB 2715 (Roger Hernández) and AB 1383 (Roger Hernández) of 2014 would have 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, which was vetoed by the Governor, 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.

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.

- 9) **Arguments in Support.** The League of California Cities, in support, states, "Since the passage of the California Voting Rights Act of 2001 (CVRA), entities using at-large elections have faced an ever-increasing number of lawsuits asserting that racially polarized voting is occurring within their boundaries and demanding that district-based elections be implemented. Courts have found for the plaintiffs in all of the cases where racially-polarized has been proven. Remedies have included the consolidation of elections, cumulative voting and district-based elections.

"While remedies have varied by jurisdiction, what has been consistent in CVRA cases is the high cost for litigation. The CVRA provides generous recovery for attorney's fees. As a consequence, cities have incurred extremely high legal fees – from the several hundred thousand to several million dollars. Cities sole alternative to going to court: seeking voter approval. Elections are costly, too, however...It's equally important to note that cities are not insulated from suit if their voters reject district-based elections...The League believes SB 493 will give cities a much-needed tool for addressing concerns under the CVRA in an efficient and cost-effective manner."

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

- 11) **Double-Referral.** This bill was heard by the Elections and Redistricting Committee on July 1, 2015, where it passed with a 5-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Advancement Project
Californians for Electoral Reform (if amended)
Cities of Ceres, Greenfield, Hesperia, Lodi, Modesto, Ontario, Rancho Cucamonga, Riverbank,
Turlock, and Woodland
Greater Merced Chamber of Commerce
Latino Community Roundtable of Stanislaus County
League of California Cities
League of California Cities, Central Valley Division
San Joaquin County Hispanic Chamber of Commerce

Opposition

None on file

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