

Date of Hearing: June 15, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Susan Talamantes Eggman, Chair
SB 927 (Anderson) – As Amended March 31, 2016

SENATE VOTE: 38-0

SUBJECT: Public Utility District Act: election of directors.

SUMMARY: Authorizes the board of directors of a public utility district within San Diego County to elect directors by subdistricts. Specifically, **this bill:**

- 1) Authorizes the directors of any public utility district (PUD), wholly or partially within San Diego County, to be elected at-large or by subdistricts by resolution or ordinance adopted by the district's board of directors and approved by the board of supervisors, or as part of a change of organization or reorganization conducted, pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act).
- 2) Requires a resolution or ordinance that divides a district into subdistricts adopted, pursuant to 1), above, to describe the boundaries of the subdistricts so that the subdistricts are as nearly equal in population as may be.
- 3) Defines "by subdistricts" to mean the election of members of the board of directors by voters of the subdistrict alone.
- 4) Contains an urgency clause.
- 5) Provides the facts constituting the necessity of an urgency clause are to ensure that the election procedures for PUDs in San Diego County conform to the California Voting Rights Act of 2001 (CVRA), as soon as possible.
- 6) Finds and declares that a special law is necessary because of the need to bring PUDs in San Diego County into compliance with the CVRA.

EXISTING LAW:

- 1) Establishes the Uniform District Elections Law which provides that the principal act shall govern whether directors are elected by divisions or by the district at-large.
- 2) Provides definitions for the following term which govern the election process for most local governments' legislative bodies:
 - a) An "at-large" election allows a voter residing anywhere within the local government's boundaries to vote for any candidate for the governing board;
 - b) A "by district" election allows a voter to vote only for a candidate who runs and resides in the same geographical district in which the voter resides; and,

- c) A "from district" election allows a voter residing anywhere within a local government's boundaries to vote for any candidate for a local government's governing board, but each candidate must run in the geographical district where he or she resides.
- 3) Prohibits, pursuant to the CVRA, an at-large method of election from being imposed or applied in a political subdivision (including a special district) in a manner that impairs the ability of a protected class of voters to elect the 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.
- 7) Establishes the Public Utility District Act which requires a PUD that lies entirely in one county to have a governing board composed of three directors elected at-large.

FISCAL EFFECT: None

COMMENTS:

- 1) **Background.** Under existing law, a special district can be organized so that its governing board members are elected at-large or elected using districts. Jurisdictions that are organized using district-based methods are usually organized as "by-district" or "from-district." A "by-district" jurisdiction allows only the registered voters in a district to vote in the election to choose the governing board member from that area. A "from-district" jurisdiction permits registered voters in the entire jurisdiction to vote for governing board members from each of the districts. In either case, a candidate for the governing board must reside in the district in which he or she is running.

There is no uniform process for a special district to convert from at-large elections to a district-based method of election. Current law provides that the principal act of a special district shall govern whether the governing board members are elected by districts or by the district at-large. Moreover, depending on the kind of district and its size, existing law may specify which method of election it is required to use to elect its governing board members, as well as the process for conversion.

The principal act for PUDs, the Public Utility District Act, governs the 54 PUDs in California. The Act authorizes PUDs to maintain the infrastructure to provide electricity,

natural gas, water power, heat transportation, telephone service, or the disposition of garbage, sewage, or refuse matter. The Act also provides for the formation and governance of PUDs. Under existing law, PUDs entirely located within one county are governed by a three-director board elected at-large.

AB 1410 (Waters), Chapter 63, Statutes of 1980, authorized Georgetown Divide PUD directors to be elected by wards upon the adoption of a resolution or ordinance by the Board of Director's dividing the district into wards and fixing the boundaries.

AB 1393 (Senate Local Government Committee), Chapter 939, Statutes of 1994, authorized any PUD, wholly or partially, within Placer County to be elected at-large, by wards, or from wards upon adoption of a resolution or ordinance by the District's board of directors and subject to the approval of the Board of supervisors or as a part of a change of organization or reorganization conducted pursuant to the CKH Act.

- 2) **Bill Summary.** This bill authorizes a PUD, partially or wholly, within San Diego County to adopt a resolution or ordinance to elect directors by subdistricts, instead of at-large. Under this bill, the district's board would adopt a resolution or ordinance and the San Diego Board of Supervisors would approve the ordinance or resolution to change the method of election for district directors. The ordinance or resolution must describe the boundaries of the subdistricts so that the subdistricts are as nearly equal in population as may be. This bill also authorizes the election of directors by subdistricts as part of a change of organization or reorganization conducted pursuant to the CKH Act. Fallbrook PUD is currently the only PUD in San Diego County. This bill is sponsored by the Fallbrook PUD.
- 3) **Author's Statement.** According to the author, "Under current law, [PUDs] are formed with at-large districts. Under this format all those within the boundaries of the [PUD] vote for all of the directors of the district, as opposed to voting for directors that represent a specific portion of the district. [PUDs] may wish to modify the formation of their board to represent specific portions of the district. This may be done for a number of reasons, including: in response to a consolidation or annexation, [to] allow for broader geographic representation on the board, or in response to concerns over voting rights. Under current law, in order for a district to move from at-large to district-based representation, specific legislation is needed.

"Over the years, several [PUDs] have pursued special legislation to modify their board structure; those districts include: Tahoe City PUD, Johnsville PUD, and Georgetown PUD. While the above-mentioned [PUDs] have been permitted to modify their board structure, the other [PUDs] in California do not enjoy that authority. As a result, should a [PUD] wish to modify its board structure in order to address any concerns with compliance with the [CVRA], a district either needs specific legislation or would need to be taken to court so a judge can order the district to elect its directors by geographic area.

"Additionally, current law limits the ability of a [PUD] to establish geographic districts in response to a consolidation or annexation that is approved through a local LAFCO process. This can result in uncertainties for geographic representation for the entirety of the expanded district. This proposed legislation, which would be permissive, would allow a [PUD], partially or wholly located in San Diego County, to pass an ordinance or resolution, which would be subject to approval by a county board of supervisors, to elect directors from a geographic area. Additionally, this proposal would allow a [PUD], partially or wholly

located in San Diego County, to move to district based elections as part of a local LAFCO process."

- 4) **Fallbrook PUD.** The Fallbrook PUD was formed in 1922 to provide water services for residential and agricultural purposes. Since that time, Fallbrook PUD has significantly expanded and currently has a service boundary of 43.99 square miles and provides retail water, sewer, and recycled water services to approximately 35,000 people residing within its boundaries in northern San Diego County. Fallbrook PUD is governed by a five-member board elected at-large.

A lawsuit was filed against Fallbrook PUD last year in San Diego County Superior Court alleging that the district's at-large board elections violated the California Voting Rights Act by diluting the voting strength of Latino voters, thereby, impairing their ability to participate meaningfully in the political process and to elect candidates of their choice (*Juan Atilano, Carmen Cardoso, Jesus Hernandez, Jesus Hernandez Jr., and Jose Huerta v. Fallbrook Public Utility District*). To avoid potentially lengthy and costly litigation, the parties to the lawsuit negotiated a settlement to resolve the claims against Fallbrook PUD. The settlement agreement, which is enforced by a recent court order, requires Fallbrook PUD to change from an at-large method of election to a by-district method of election where directors are elected from five distinct election districts. The settlement provides that candidates reside within the district and are elected only by voters residing within that election district in the November 2016 election. Since the settlement was reached, Fallbrook PUD has held public meetings to provide boundaries for the subdistricts and submitted the lines to San Diego County.

- 5) **Urgency Clause.** This bill contains an urgency clause and requires a two-thirds vote of each house.
- 6) **Related Legislation.** AB 2389 (Ridley-Thomas), pending in the Senate, authorizes special districts to change the method of electing governing board members from at-large to a by-district method of election without receiving voter approval.
- 7) **Arguments in Support.** According to the Mexican American Legal Defense of Education Fund, "Fallbrook has worked cooperatively with all parties and has settled the lawsuit and is in the process of complying with a court order to move from at-large to district-based governance structure. SB 927 will provide Fallbrook with specific statutory authority to move to district-based elections."
- 8) **Arguments in Opposition.** None on file.
- 9) **Double-Referral.** This bill is double-referred to the Elections and Redistricting Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Fallbrook Public Utility District [SPONSOR]
Association of California Water Agencies
California Special Districts Association
Mexican American Legal Defense of Education Fund
San Diego County Water Authority

Opposition

None on file

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