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AMENDED IN SENATE MAY 28, 2014
AMENDED IN SENATE SEPTEMBER 6, 2013
AMENDED IN SENATE JUNE 17, 2013
AMENDED IN ASSEMBLY MAY 15, 2013
AMENDED IN ASSEMBLY APRIL 11, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 280

Introduced by Assembly Member Alejo
(Principal coauthor: Senator Padilla)

February 11, 2013

An act to add Chapter 5 (commencing with Section 400) to Division 0.5 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 280, as amended, Alejo. Voting rights: *preclearance*.

Existing law, the federal Voting Rights Act of 1965, provides that a change in voting procedures may not take effect in a state or political subdivision that is covered by the preclearance requirements of the federal act until the change is approved by a specified federal authority. A state or political subdivision is covered by the preclearance requirements of the federal act if it maintained a specified test or device as a prerequisite to voting, and had low voter registration or turnout, in the 1960s and early 1970s. The federal act allows a state or political subdivision covered by the act to obtain an exemption from the preclearance requirements if it satisfies specified criteria. The United

States Supreme Court has held that the coverage formula of the federal act is unconstitutional and may not be used as a basis for requiring a jurisdiction to subject a proposed change in voting procedures to federal preclearance. Prior to that holding, the Counties of Kings, Monterey, and Yuba were covered jurisdictions subject to the federal preclearance requirements.

~~This bill would establish a state preclearance system applicable only to the Counties of Kings, Monterey, and Yuba. Under this system, if a county enacts or seeks to administer a voting qualification or prerequisite to voting, or a standard, practice, or procedure with respect to voting, that is different from that in force or effect on June 25, 2013, the county elections official would be required to submit the qualification, prerequisite, standard, practice, or procedure to the Attorney General for approval. This bill would require the Attorney General to approve the qualification, prerequisite, standard, practice, or procedure only if it neither has the purpose nor will have the effect of denying or abridging the right to vote on account of membership in a protected class, as defined. This bill would provide that the qualification, prerequisite, standard, practice, or procedure shall not take effect or be administered in the county until the county receives the approval of the Attorney General. The bill would allow the county to seek review of the Attorney General's decision by means of an action filed in the Superior Court of Sacramento. The bill would allow a county to obtain an exemption from the state preclearance system if it satisfies specified criteria. The bill would repeal these provisions as of January 1, 2019. By requiring specified counties to seek approval of the Attorney General for changes to voting procedures, this bill would impose a state-mandated local program.~~

~~This bill would make legislative findings and declarations as to the necessity of a special statute for the Counties of Kings, Monterey, and Yuba.~~

This bill would establish a state preclearance system. Under this system, if a political subdivision enacts or seeks to administer a voting-related law, regulation, or policy, as specified, that is different from that in force or effect on the date this act is enacted, the governing body of the political subdivision would be required to submit the law, regulation, or policy to the Secretary of State for approval. The bill would require the Secretary of State to approve the law, regulation, or policy only if specified conditions are met. The bill would provide that the law, regulation, or policy shall not take effect or be administered

in the political subdivision until the law, regulation, or policy is approved by the Secretary of State. The bill would allow the governing body of the political subdivision to seek review of the Secretary of State's decision by means of an action filed in the Superior Court of Sacramento. By requiring local governments to seek approval of the Secretary of State for changes to voting procedures, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 5 (commencing with Section 400) is
2 added to Division 0.5 of the Elections Code, to read:

3
4 CHAPTER 5. STATE PRECLEARANCE
5

6 400. For purposes of this chapter, the following terms have
7 the following meanings:

- 8 (a) "Citizen" means a citizen of the United States.
- 9 (b) "Citizen voting-age population" means the population of
10 citizens who are 18 years of age or older within a political
11 subdivision, as calculated by the United States Census Bureau in
12 the most recent federal decennial census.
- 13 (c) "Electoral jurisdiction" means a geographic area within
14 which reside the voters who are qualified to vote for an elective
15 office.
- 16 (c) "Multilingual voting materials" means registration or voting
17 notices, forms, instructions, assistance, or other materials or
18 information relating to the electoral process, including ballots,
19 provided in the language of one or more language minority groups.
- 20 (d) "Political subdivision" means a geographic area of
21 representation created for the provision of government services,

1 *including, but not limited to, a city, a school district, a community*
2 *college district, or other district organized pursuant to state law.*

3 (e) *“Protected class” means a class of voters who are members*
4 *of a race, color, or language minority group, as this class is*
5 *referenced and defined in the federal Voting Rights Act of 1965*
6 *(42 U.S.C. Sec. 1971 et seq.).*

7 (f) *“Voting locations” means places for casting a ballot.*

8 401. *To ensure that the right of citizens who reside in California*
9 *to vote is not denied or abridged on account of race, color, or*
10 *language minority status through the enforcement of a*
11 *voting-related law, regulation, or policy that is enacted or*
12 *administered after the enactment date of this chapter, the following*
13 *voting-related laws, regulations, and policies shall be subject to*
14 *this chapter:*

15 (a) *A change to an at-large method of election that adds offices*
16 *elected at-large or converts offices elected by single-member*
17 *districts to one or more at-large or multi-member districts.*

18 (b) *A change to the boundaries of an electoral jurisdiction or*
19 *a series of changes within a year to the boundaries of an electoral*
20 *jurisdiction that reduces the size of the citizen voting-age*
21 *population of a protected class by 3 or more percent.*

22 (c) *A change through redistricting that alters the boundaries of*
23 *an electoral jurisdiction in which a protected class has experienced*
24 *a population increase of at least 10,000 citizens or 20 percent of*
25 *the citizen voting-age population over the preceding decade, as*
26 *determined by the five-year estimates of the United States Census*
27 *American Community Survey.*

28 (d) *A change to voting locations that reduces, consolidates, or*
29 *relocates one or more voting locations, including an early,*
30 *absentee, or election-day voting location, and results in a net loss,*
31 *on a per voter basis, of voting locations in 20 percent of the total*
32 *number of census tracts in a political subdivision with the highest*
33 *proportion of voters from a protected class that represents at least*
34 *20 percent of the citizen voting-age population in the political*
35 *subdivision, provided that the net loss is greater than the net loss*
36 *resulting from the changes in 20 percent of the total number of*
37 *census tracts in a political subdivision with the highest proportion*
38 *of voters of any other protected class that represents at least 20*
39 *percent of the citizen voting-age population in the political*
40 *subdivision.*

1 (e) A change to multilingual voting materials that reduces the
2 voting materials available in languages other than English, or
3 alters the manner in which the materials are provided or
4 distributed, if no similar reduction or alteration occurred in
5 materials provided in English.

6 402. (a) If a political subdivision enacts or seeks to administer
7 a voting-related law, regulation, or policy described in Section
8 401 that is different from that in force or effect on the date the act
9 adding this section is enacted, the governing body of the political
10 subdivision shall submit the law, regulation, or policy to the
11 Secretary of State for approval. The law, regulation, or policy
12 shall not take effect or be administered in the political subdivision
13 until the law, regulation, or policy is approved by the Secretary
14 of State.

15 (b) The Secretary of State shall provide a written decision to
16 the governing body of the political subdivision within 60 days of
17 a request to enact or administer a voting-related law, regulation,
18 or policy described in Section 401. If the Secretary of State fails
19 to provide a written decision within 60 days, the governing body
20 of the political subdivision may implement the law, regulation, or
21 policy. The governing body of the political subdivision may make
22 a written request for an expedited review of a law, regulation, or
23 policy if the political subdivision has a demonstrated need to
24 implement the proposed change before the end of the 60-day review
25 period. The written request shall describe the basis for the request
26 in light of conditions in the political subdivision and shall specify
27 the date by which a decision is needed. The Secretary of State shall
28 attempt to accommodate a reasonable request.

29 (c) The governing body of the political subdivision shall have
30 the burden of establishing, by objective and compelling evidence,
31 that the law, regulation, or policy satisfies both of the following:

32 (1) Is not likely to result in a discriminatory effect on the
33 participation of voters from a protected class that constitutes at
34 least 20 percent of the political subdivision's citizen voting-age
35 population.

36 (2) Is not motivated in whole or substantially in part by an intent
37 to reduce the participation of voters from a protected class.

38 (d) If the Secretary of State denies a request to enact or
39 administer a law, regulation, or policy, the governing body of the

1 *political subdivision may seek review of the decision by means of*
2 *an action filed in superior court.*

3 *(e) The Secretary of State may file suit to enjoin the governing*
4 *body of a political subdivision from implementing a law,*
5 *regulation, or policy in violation of this section.*

6 *(f) Venue for an action filed pursuant to subdivision (d) or (e)*
7 *shall lie exclusively in the Superior Court for the County of*
8 *Sacramento.*

9 *403. A political subdivision with two or more protected classes*
10 *that each represent 20 percent of the citizen voting-age population*
11 *shall not implement a previously enacted or adopted voting-related*
12 *law, regulation, or policy described in Section 401 that has not*
13 *yet been implemented, unless the law, regulation, or policy is*
14 *approved pursuant to Section 402.*

15 *404. (a) The Attorney General, or a registered voter who*
16 *resides in a political subdivision where the change to a*
17 *voting-related law, regulation, or policy occurred, may file an*
18 *action in superior court to compel the political subdivision to*
19 *satisfy the obligations set forth in this chapter.*

20 *(b) In an action brought pursuant to this section, a court shall*
21 *provide as a remedy that the voting-related law, regulation, or*
22 *policy be enjoined unless the court determines that the law,*
23 *regulation, or policy is not subject to this chapter or has been*
24 *precleared by the procedures established in Section 402.*

25 *405. For purposes of this chapter, any data provided by the*
26 *United States Census Bureau, whether based on enumeration or*
27 *statistical sampling, shall not be subject to challenge or review*
28 *by any court.*

29 *SEC. 2. If the Commission on State Mandates determines that*
30 *this act contains costs mandated by the state, reimbursement to*
31 *local agencies and school districts for those costs shall be made*
32 *pursuant to Part 7 (commencing with Section 17500) of Division*
33 *4 of Title 2 of the Government Code.*

34 ~~SECTION 1. The Legislature finds and declares all of the~~
35 ~~following:~~

36 ~~(a) The United States Congress enacted the federal Voting~~
37 ~~Rights Act of 1965 (42 U.S.C. Sec. 1971 et seq.) to address the~~
38 ~~numerous obstacles and barriers that had been erected by many~~
39 ~~states and local governments to prevent the free exercise of the~~

1 right to vote and to participate on an equal basis in the electoral
2 process by members of racial minorities.

3 (b) Section 4 of the federal act provides a coverage formula
4 identifying jurisdictions with histories of discriminatory voting
5 practices. Under the coverage formula, a covered jurisdiction is a
6 state or political subdivision that maintained a specified test or
7 device as a prerequisite to voting, and had low voter registration
8 or turnout, in the 1960s and early 1970s. Section 4 prohibits a
9 covered jurisdiction from denying a person the right to vote because
10 of his or her failure to comply with that test or device.

11 (c) Section 5 of the federal act requires federal approval before
12 a covered jurisdiction may enact or seek to administer any voting
13 qualification or prerequisite to voting, or standard, practice, or
14 procedure with respect to voting. This approval process is known
15 as “preclearance.” A jurisdiction may obtain preclearance only by
16 proving that the change has neither the purpose nor the effect of
17 denying or abridging the right to vote on account of race or color.

18 (d) In this state, the Counties of Kings, Monterey, and Yuba
19 were each identified as a covered jurisdiction for purposes of
20 federal preclearance, which required each county to receive federal
21 approval for a proposed change to its voting procedures.

22 (e) Sections 4 and 5 of the federal act have contributed to the
23 immense progress in protecting and expanding the right to vote
24 over the past few decades by ensuring that state and local election
25 practices are just and fair.

26 (f) Recently, in *Shelby County v. Holder* (2013) 133 S.Ct. 2612,
27 the United States Supreme Court held that the coverage formula
28 in Section 4 of the federal act is unconstitutional in violation of
29 the Tenth Amendment to the United States Constitution and can
30 no longer be used as a basis for requiring jurisdictions to subject
31 proposed changes in voting procedures to federal preclearance.
32 As a result, a covered jurisdiction will no longer be required to
33 submit proposed changes to its voting procedures for federal
34 preclearance, leaving states and political subdivisions that have
35 histories of voter discrimination without safeguards to protect
36 against discriminatory voting practices.

37 (g) In an effort to remedy the abrupt ending to the federal
38 preclearance safeguards against discriminatory voting practices,
39 this bill establishes a state preclearance system, under which the
40 Counties of Kings, Monterey, and Yuba must receive the approval

1 of the state Attorney General before a change to voting procedures
2 may take effect in that county.

3 (h) ~~It is the intent of the Legislature in enacting this act that the~~
4 ~~preclearance safeguards against discriminatory voting practices~~
5 ~~under the federal Voting Rights Act of 1965 (42 U.S.C. Sec. 1971~~
6 ~~et seq.) that existed before the ruling in Shelby County v. Holder~~
7 ~~remain in effect in the Counties of Kings, Monterey, and Yuba~~
8 ~~until the United States Congress updates the coverage formula of~~
9 ~~the federal act.~~

10 (i) ~~This act shall not be construed to suggest that a county shall~~
11 ~~not be subject to a federal preclearance system enacted at a future~~
12 ~~date if the county is able to obtain an exemption from the state~~
13 ~~preclearance system pursuant to this act.~~

14 SEC. 2. ~~Chapter 5 (commencing with Section 400) is added~~
15 ~~to Division 0.5 of the Elections Code, to read:~~

16

17 CHAPTER 5. STATE PRECLEARANCE

18

19 400. ~~This chapter applies only to Kings County, Monterey~~
20 ~~County, and Yuba County.~~

21 401. ~~For purposes of this chapter, the following terms have the~~
22 ~~following meanings:~~

23 (a) ~~“Minority” means a person who is a member of a protected~~
24 ~~class.~~

25 (b) ~~“Protected class” means a class of voters who are members~~
26 ~~of a race, color, or language minority group, as this class is~~
27 ~~referenced and defined in the federal Voting Rights Act of 1965~~
28 ~~(42 U.S.C. Sec. 1971 et seq.).~~

29 (c) ~~“Test or device” means any requirement that a person as a~~
30 ~~prerequisite for voting, or registration for voting, demonstrate the~~
31 ~~ability to read, write, understand, or interpret any matter,~~
32 ~~demonstrate any educational achievement or his or her knowledge~~
33 ~~of any particular subject, possess good moral character, or prove~~
34 ~~his or her qualifications by the voucher of registered voters or~~
35 ~~members of any other class.~~

36 402. ~~(a) If a county enacts or seeks to administer a voting~~
37 ~~qualification or prerequisite to voting, or a standard, practice, or~~
38 ~~procedure with respect to voting, that is different from that in force~~
39 ~~or effect on June 25, 2013, the county elections official shall submit~~
40 ~~the qualification, prerequisite, standard, practice, or procedure to~~

1 the Attorney General for approval. The Attorney General shall
2 approve the qualification, prerequisite, standard, practice, or
3 procedure only if it neither has the purpose nor will have the effect
4 of denying or abridging the right to vote on account of membership
5 in a protected class. The qualification, prerequisite, standard,
6 practice, or procedure shall not take effect or be administered in
7 the county until the county receives the approval of the Attorney
8 General.

9 (b) The Attorney General shall provide a written decision to the
10 county within 60 days of a request to enact or administer a voting
11 qualification or prerequisite to voting, or a standard, practice, or
12 procedure with respect to voting. If the Attorney General fails to
13 provide a written decision within 60 days, the county may
14 implement the qualification, prerequisite, standard, practice, or
15 procedure. A county may make a written request for an expedited
16 review of the qualification, prerequisite, standard, practice, or
17 procedure if the county has a demonstrated need to implement the
18 proposed change before the end of the 60-day review period. The
19 written request shall describe the basis for the request in light of
20 conditions in the county and specify the date by which a decision
21 is needed. The Attorney General shall attempt to accommodate a
22 reasonable request.

23 (c) The county shall have the burden of establishing, by
24 objective and compelling evidence, that the qualification,
25 prerequisite, standard, practice, or procedure has neither the
26 purpose nor will have the effect of denying or abridging the right
27 to vote on account of membership in a protected class.

28 (d) If the Attorney General denies a request to enact or
29 administer a qualification, prerequisite, standard, practice, or
30 procedure, the county may seek review of the decision by means
31 of an action filed in superior court.

32 (e) The Attorney General may file suit to enjoin a county from
33 implementing a qualification, prerequisite, standard, practice, or
34 procedure in violation of this section.

35 (f) Venue for an action filed pursuant to subdivision (d) or (e)
36 shall lie exclusively in the Superior Court of the County of
37 Sacramento.

38 403. (a) Section 401 shall not apply to a county that obtains
39 a declaratory judgment pursuant to this section from the Superior
40 Court of the County of Sacramento.

1 ~~(b) To obtain a declaratory judgment pursuant to this section,~~
2 ~~a county shall demonstrate, by objective and compelling evidence,~~
3 ~~that during the 10 years preceding the filing of the action, and~~
4 ~~during the pendency of the action, the county has satisfied all of~~
5 ~~the following:~~

6 ~~(1) A test or device has not been used within the county for the~~
7 ~~purpose of, or with the effect of, denying or abridging the right to~~
8 ~~vote on account of membership in a protected class.~~

9 ~~(2) Any change by the county to a voting qualification or~~
10 ~~prerequisite to voting, or a standard, practice, or procedure with~~
11 ~~respect to voting, has been approved under Section 5 of the federal~~
12 ~~Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 et seq.) or Section~~
13 ~~401 of this code before its implementation.~~

14 ~~(3) A change by the county affecting a voting qualification or~~
15 ~~prerequisite to voting, or a standard, practice, or procedure with~~
16 ~~respect to voting, has not been the subject of an injunction obtained~~
17 ~~by the United States Attorney General or the state Attorney General~~
18 ~~or a denial of a declaratory judgment under Section 5 of the federal~~
19 ~~Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 et seq.) or this~~
20 ~~section.~~

21 ~~(4) There have been no judgments adverse to the county in~~
22 ~~lawsuits alleging voting discrimination on account of membership~~
23 ~~in a protected class.~~

24 ~~(5) There have been no consent decrees or settlement agreements~~
25 ~~that resulted in the abandonment by the county of a discriminatory~~
26 ~~voting practice on account of membership in a protected class.~~

27 ~~(6) There are no pending lawsuits against the county that allege~~
28 ~~voting discrimination on account of membership in a protected~~
29 ~~class.~~

30 ~~(7) Federal examiners or observers have not been assigned in~~
31 ~~the county under the federal Voting Rights Act of 1965 (42 U.S.C.~~
32 ~~Sec. 1971 et seq.).~~

33 ~~(8) There have been no violations by the county, as determined~~
34 ~~by a court of law, of the Constitution or federal, state, or local laws~~
35 ~~with respect to discrimination in voting on account of membership~~
36 ~~in a protected class, unless the county establishes that the violation~~
37 ~~was trivial, promptly corrected, and not repeated.~~

38 ~~(9) Voting procedures and methods of election in the county~~
39 ~~that inhibit or dilute equal access to the electoral process have been~~
40 ~~eliminated.~~

1 ~~(10) Constructive efforts have been made by the county to~~
2 ~~eliminate intimidation and harassment of persons seeking to register~~
3 ~~and vote, to expand opportunities for voter participation, including,~~
4 ~~but not limited to, opportunities for registration and voting, and~~
5 ~~to appoint minority officials throughout the county and at all levels~~
6 ~~and stages of the electoral process.~~

7 ~~(e) To assist the court in determining whether to issue a~~
8 ~~declaratory judgment under this section, the county shall present~~
9 ~~evidence of minority participation, including evidence of the levels~~
10 ~~of minority group registration and voting, changes in the levels~~
11 ~~over time, and disparities between minority group and~~
12 ~~non-minority group participation.~~

13 ~~(d) A county seeking a declaratory judgment under this section~~
14 ~~shall publicize the intended commencement and any proposed~~
15 ~~settlement of the action in the media serving the county and in the~~
16 ~~United States post offices located in the county.~~

17 ~~(e) A county seeking a declaratory judgment under this section~~
18 ~~shall establish that every city, town, school district, or other~~
19 ~~political subdivision within its boundaries has satisfied the~~
20 ~~requirements of this section.~~

21 ~~(f) Any aggrieved party may as of right intervene at any stage~~
22 ~~in an action under this section. An appeal from an action under~~
23 ~~this section shall be made directly to the California Supreme Court.~~

24 ~~(g) This section shall not prohibit the Attorney General from~~
25 ~~consenting to entry of a declaratory judgment if, based upon a~~
26 ~~showing of objective and compelling evidence by the county, and~~
27 ~~upon investigation, the Attorney General is satisfied that the county~~
28 ~~has complied with the requirements of this section.~~

29 ~~404. This chapter shall remain in effect only until January 1,~~
30 ~~2019, and as of that date is repealed.~~

31 ~~SEC. 3. The Legislature finds and declares that a special law~~
32 ~~is necessary and that a general law cannot be made applicable~~
33 ~~within the meaning of Section 16 of Article IV of the California~~
34 ~~Constitution because of the history of discriminatory voting~~
35 ~~practices in the Counties of Kings, Monterey, and Yuba.~~

36 ~~SEC. 4. If the Commission on State Mandates determines that~~
37 ~~this act contains costs mandated by the state, reimbursement to~~
38 ~~local agencies and school districts for those costs shall be made~~
39 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
40 ~~4 of Title 2 of the Government Code.~~

O