

ASSEMBLY BILL

No. 182

Introduced by Assembly Member Alejo

January 26, 2015

An act to add the heading of Article 1 (commencing with Section 14025) and the heading of Article 2 (commencing with Section 14027) to, and to add Article 3 (commencing with Section 14040) to, Chapter 1.5 of Division 14 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 182, as introduced, Alejo. California Voting Rights Act of 2001.

Existing law, the California Voting Rights Act of 2001 (CVRA), prohibits the use of an at-large election in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The CVRA provides that a voter who is a member of a protected class may bring an action in superior court to enforce the provisions of the CVRA, and, if the voter prevails in the case, he or she may be awarded reasonable litigation costs and attorney's fees. The CVRA requires a court to implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy a violation of the act.

This bill would provide parallel provisions that prohibit the use of a district-based election in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The bill would require a court to implement specified remedies upon a finding that a district-based election was imposed or applied in a manner that impaired

the ability of a protected class to elect candidates of its choice or otherwise influence the outcome of an election.

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

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

1 SECTION 1. The Legislature finds and declares that the
2 purpose of this act is to address ongoing vote dilution and
3 discrimination in voting as matters of statewide concern, in order
4 to enforce the fundamental rights guaranteed to California voters
5 under Section 7 of Article I and Section 2 of Article II of the
6 California Constitution. Therefore, the provisions of this act shall
7 be construed liberally in furtherance of this legislative intent to
8 eliminate minority vote dilution. It is the further intent of the
9 Legislature that any remedy implemented under this act shall
10 comply with the 14th Amendment to the United States Constitution.

11 SEC. 2. The heading of Article 1 (commencing with Section
12 14025) is added to Chapter 1.5 of Division 14 of the Elections
13 Code, to read:

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15 Article 1. General Provisions
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17 SEC. 3. The heading of Article 2 (commencing with Section
18 14027) is added to Chapter 1.5 of Division 14 of the Elections
19 Code, to read:

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21 Article 2. At-Large Elections
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23 SEC. 4. Article 3 (commencing with Section 14040) is added
24 to Chapter 1.5 of Division 14 of the Elections Code, to read:

25
26 Article 3. District-Based Elections
27

28 14040. District-based elections shall not be imposed or applied
29 in a manner that impairs the ability of a protected class to elect
30 candidates of its choice, or its ability to influence the outcome of
31 an election, as a result of the dilution or the abridgment of the
32 rights of voters who are members of a protected class.

1 14041. (a) A violation of Section 14040 is established if it is
2 shown that racially polarized voting occurs in elections for
3 members of the governing body of the political subdivision or in
4 elections incorporating other electoral choices by the voters of the
5 political subdivision. Elections conducted prior to the filing of an
6 action pursuant to Section 14040 and this section are more
7 probative to establish the existence of racially polarized voting
8 than elections conducted after the filing of the action.

9 (b) The occurrence of racially polarized voting shall be
10 determined from examining results of elections in which at least
11 one candidate is a member of a protected class or elections
12 involving ballot measures, or other electoral choices that affect
13 the rights and privileges of members of a protected class. One
14 circumstance that may be considered in determining a violation
15 of Section 14040 and this section is the extent to which candidates
16 who are members of a protected class and who are preferred by
17 voters of the protected class, as determined by an analysis of voting
18 behavior, have been elected to the governing body of a political
19 subdivision that is the subject of an action based on Section 14040
20 and this section.

21 (c) The fact that members of a protected class are not
22 geographically compact or concentrated does not preclude a finding
23 of racially polarized voting, or a violation of Section 14040 and
24 this section, but may be a factor in determining an appropriate
25 remedy.

26 (d) Proof of an intent on the part of the voters or elected officials
27 to discriminate against a protected class is not required.

28 (e) Other factors such as the history of discrimination, the use
29 of electoral devices or other voting practices or procedures that
30 may enhance the dilutive effects of the election system, denial of
31 access to those processes determining which groups of candidates
32 will receive financial or other support in a given election, the extent
33 to which members of a protected class bear the effects of past
34 discrimination in areas such as education, employment, and health,
35 which hinder their ability to participate effectively in the political
36 process, and the use of overt or subtle racial appeals in political
37 campaigns are probative, but not necessary factors, to establish a
38 violation of Section 14040 and this section.

39 (f) (1) Except as provided in paragraph (2), the fact that a
40 district-based election was imposed on the political subdivision

1 as a result of an action filed pursuant to Article 2 shall not be a
2 defense to an action alleging a violation of this article.

3 (2) (A) If a court orders a political subdivision to adopt, and
4 subsequently approves, a district-based election system as a result
5 of an action filed pursuant to Article 2, there shall be a rebuttable
6 presumption in any subsequent action filed pursuant to this article
7 that the district-based election system of that political subdivision
8 does not violate this article. The presumption shall apply only to
9 the exact district-based election system that was approved by the
10 court and shall not apply if the boundaries of the districts of the
11 political subdivision are subsequently adjusted for any reason.

12 (B) This paragraph shall apply only to a district-based election
13 system that is approved by a court on or after January 1, 2016.

14 14042. (a) Upon a finding of a violation of Section 14040 and
15 Section 14041, the court shall implement appropriate remedies,
16 as provided in this section, that are tailored to remedy the violation
17 and that are guided in part by the views of the protected class.

18 (b) (1) The court shall implement, as an appropriate remedy
19 under this section, an effective district-based elections system that
20 provides the protected class the opportunity to elect candidates of
21 its choice from single-member districts.

22 (2) If additional effective districts under paragraph (1) are not
23 possible, the court shall implement, as an appropriate remedy under
24 this section, a single-member district-based election system that
25 provides the protected class the opportunity to join in a coalition
26 of two or more protected classes to elect candidates of their choice.

27 (3) In addition to implementing district-based elections under
28 this subdivision, a court may implement additional remedies,
29 including the remedies provided in subdivision (c).

30 (c) If the remedies under subdivision (b) are not legally viable,
31 the court shall implement other appropriate remedies, including,
32 but not limited to, increasing the size of the governing body; issuing
33 an injunction to delay an election; or requiring an election to be
34 held on the same day as a statewide election, as provided in Section
35 1001.

36 14043. In any action to enforce Section 14040 and Section
37 14041, the court shall allow the prevailing plaintiff party, other
38 than the state or political subdivision thereof, a reasonable
39 attorney's fee consistent with the standards established in *Serrano*
40 v. Priest (1977) 20 Cal.3d 25, 48-49, and litigation expenses

1 including, but not limited to, expert witness fees and expenses as
2 part of the costs. Prevailing defendant parties shall not recover any
3 costs, unless the court finds the action to be frivolous,
4 unreasonable, or without foundation.

5 14044. Any voter who is a member of a protected class and
6 who resides in a political subdivision where a violation of Sections
7 14040 and 14041 is alleged may file an action pursuant to those
8 sections in the superior court of the county in which the political
9 subdivision is located.

10 14045. If any provision of this article or its application to any
11 person or circumstance is held invalid, the remainder of the article
12 or the application of the provision to other persons or circumstances
13 shall not be affected.

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