

AMENDED IN ASSEMBLY APRIL 9, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 182

**Introduced by Assembly Member Members Alejo, Bonta, and
Roger Hernández
(Coauthor: Assembly Member Calderon)
(Coauthor: Senator Hueso)**

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 amended, 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~~ *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~~. *choice*.

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:

14
15 Article 1. General Provisions
16

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:

20
21 Article 2. At-Large Elections
22

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~~

1 ~~an election~~, as a result of the dilution or the abridgment of the
2 rights of voters who are members of a protected class.

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

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

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

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

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

1 (f) (1) Except as provided in paragraph (2), the fact that a
 2 district-based election was imposed on the political subdivision
 3 as a result of an action filed pursuant to Article 2 shall not be a
 4 defense to an action alleging a violation of this article.

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

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

16 14042. (a) Upon a finding of a violation of ~~Section~~ Sections
 17 14040 and ~~Section~~ 14041, the court shall implement appropriate
 18 remedies, as provided in this section, that are tailored to remedy
 19 the violation and that are guided in part by the views of the
 20 protected class: *an effective district-based elections system that*
 21 *provides the protected class the opportunity to elect candidates of*
 22 *its choice from single-member districts.*

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

27 ~~(2) If additional effective districts under paragraph (1) are not~~
 28 ~~possible, the court shall implement, as an appropriate remedy under~~
 29 ~~this section, a~~

30 *(b) If additional effective districts under subdivision (a) are not*
 31 *possible without increasing the size of the governing body, or will*
 32 *not alone provide an appropriate remedy, the court may order*
 33 *additional remedies, including any of the following:*

34 *(1) Incrementally increasing the size of the governing body upon*
 35 *approval of voters in the jurisdiction.*

36 *(2) Approving a single-member district-based election system*
 37 *that provides the protected class the opportunity to join in a*
 38 *coalition of two or more protected classes to elect candidates of*
 39 *their choice if there is demonstrated political cohesion among the*
 40 *protected classes.*

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

4 ~~(e) If the remedies under subdivision (b) are not legally viable,~~
 5 ~~the court shall implement other appropriate remedies, including,~~
 6 ~~but not limited to, increasing the size of the governing body; issuing~~
 7 ~~an injunction to delay an election; or requiring an election~~

8 ~~(3) Requiring elections of the governing body to be held on the~~
 9 ~~same day as a statewide election, as provided in Section 1001.~~

10 ~~(4) Issuing an injunction to delay an election.~~
 11 14043. In any action to enforce ~~Section~~ *Sections* 14040 and
 12 ~~Section~~ 14041, the court shall allow the prevailing plaintiff party,
 13 other than the state or political subdivision thereof, a reasonable
 14 attorney’s fee consistent with the standards established in *Serrano*
 15 *v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses
 16 including, but not limited to, expert witness fees and expenses as
 17 part of the costs. Prevailing defendant parties shall not recover any
 18 costs, unless the court finds the action to be frivolous,
 19 unreasonable, or without foundation.

20 14044. Any voter who is a member of a protected class and
 21 who resides in a political subdivision where a violation of Sections
 22 14040 and 14041 is alleged may file an action pursuant to those
 23 sections in the superior court of the county in which the political
 24 subdivision is located.

25 14045. If any provision of this article or its application to any
 26 person or circumstance is held invalid, the remainder of the article
 27 or the application of the provision to other persons or circumstances
 28 shall not be affected.