

AMENDED IN ASSEMBLY APRIL 29, 2015

AMENDED IN ASSEMBLY APRIL 9, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 182

**Introduced by Assembly 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 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. 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.

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 *The Legislature also finds and declares that this act is consistent*
12 *with the decision of the Court of Appeal in Sanchez v. City of*
13 *Modesto (2006) 145 Cal.App.4th 660.*

14 SEC. 2. The heading of Article 1 (commencing with Section
15 14025) is added to Chapter 1.5 of Division 14 of the Elections
16 Code, to read:

17
18 Article 1. General Provisions
19

20 SEC. 3. The heading of Article 2 (commencing with Section
21 14027) is added to Chapter 1.5 of Division 14 of the Elections
22 Code, to read:

23
24 Article 2. At-Large Elections
25

26 SEC. 4. Article 3 (commencing with Section 14040) is added
27 to Chapter 1.5 of Division 14 of the Elections Code, to read:

1 Article 3. District-Based Elections

2
3 14040. District-based elections shall not be imposed or applied
4 in a manner that impairs the ability of a protected class to elect
5 candidates of its choice as a result of the dilution or the abridgment
6 of the rights of voters who are members of a protected class.

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

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

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

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

34 (e) Other factors such as the history of discrimination, the use
35 of electoral devices or other voting practices or procedures that
36 may enhance the dilutive effects of the election system, denial of
37 access to those processes determining which groups of candidates
38 will receive financial or other support in a given election, the extent
39 to which members of a protected class bear the effects of past
40 discrimination in areas such as education, employment, and health,

1 which hinder their ability to participate effectively in the political
2 process, and the use of overt or subtle racial appeals in political
3 campaigns are probative, but not necessary factors, to establish a
4 violation of Section 14040 and this section.

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

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

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

20 14042. (a) Upon a finding of a violation of Sections 14040
21 and 14041, the court shall implement an effective district-based
22 elections system that provides the protected class the opportunity
23 to elect candidates of its choice from single-member districts.

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

28 (1) Incrementally increasing the size of the governing body
29 upon approval of voters in the jurisdiction.

30 (2) Approving a single-member district-based election system
31 that provides the protected class the opportunity to join in a
32 coalition of two or more protected classes to elect candidates of
33 their choice if there is demonstrated political cohesion among the
34 protected classes.

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

37 (4) Issuing an injunction to delay an election.

38 14043. In any action to enforce Sections 14040 and 14041, the
39 court shall allow the prevailing plaintiff party, other than the state
40 or political subdivision thereof, a reasonable attorney's fee

1 consistent with the standards established in *Serrano v. Priest* (1977)
2 20 Cal.3d 25, 48-49, and litigation expenses including, but not
3 limited to, expert witness fees and expenses as part of the costs.
4 Prevailing defendant parties shall not recover any costs, unless the
5 court finds the action to be frivolous, unreasonable, or without
6 foundation.

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

12 14045. If any provision of this article or its application to any
13 person or circumstance is held invalid, *Articles 1, 2 and the*
14 remainder of ~~the article~~ *this article*, or the application of the
15 provision to other persons or ~~circumstances~~ *circumstances*, shall
16 not be affected.