

AMENDED IN SENATE FEBRUARY 29, 2016

AMENDED IN ASSEMBLY JANUARY 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 350

Introduced by Assembly Member Alejo

February 17, 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~~ *amend Section 14029 of the Elections Code, and to add Section 34887 to the Government Code*, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 350, as amended, Alejo. California Voting Rights Act of ~~2001~~. *2001: district-based municipal elections.*

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 the 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.~~

If a court imposes district-based elections in a political subdivision and the members of the governing body of that political subdivision will be elected in their districts at different times to provide for staggered terms of office, this bill would require the districts that have the largest populations of members of the protected class to elect their governing board members at the first election under the district-based election system.

Existing law generally requires all elective city offices, including the members of a city council, to be filled at large by the city electorate at a general municipal election. Existing law, at any municipal election or special election held for this purpose, authorizes the legislative body of a city to submit to the registered voters an ordinance providing for the election of members of the legislative body by district or from district, as defined, and with or without an elective mayor. Existing law also authorizes the legislative body of a city with a population of fewer than 100,000 people to adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor without being required to submit the ordinance to the voters for approval.

If, during the implementation of by district or from district elections, the members of the legislative body will be elected in their districts at different times to provide for staggered terms of office, this bill would prohibit a city from selecting district election dates for the purpose of, or in a manner that will have the effect of, impairing the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the abridgment of the rights of voters who are members of the protected class.

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. Section 14029 of the Elections Code is amended
- 2 to read:
- 3 14029. (a) Upon a finding of a violation of Section 14027
- 4 and Section 14028, the court shall implement appropriate remedies,

1 including the imposition of district-based elections, that are tailored
2 to remedy the violation.

3 (b) *If a court imposes district-based elections in a political*
4 *subdivision pursuant to subdivision (a), and if the members of the*
5 *governing body of the political subdivision will be elected in their*
6 *districts at different times to provide for staggered terms of office,*
7 *the districts that have the largest populations of members of the*
8 *protected class shall elect their governing board members at the*
9 *first election under the district-based election system.*

10 SEC. 2. *Section 34887 is added to the Elections Code, to read:*

11 *34887. If, during the implementation of by district or from*
12 *district elections pursuant to this article, the members of the*
13 *legislative body will be elected in their districts at different times*
14 *to provide for staggered terms of office, a city shall not select*
15 *district election dates for the purpose of, or in a manner that will*
16 *have the effect of, impairing the ability of a protected class, as*
17 *defined in Section 14026 of the Elections Code, to elect candidates*
18 *of its choice or its ability to influence the outcome of an election,*
19 *as a result of the abridgment of the rights of voters who are*
20 *members of the protected class.*

21 ~~SECTION 1. The Legislature finds and declares that the~~
22 ~~purpose of this act is to address ongoing vote dilution and~~
23 ~~discrimination in voting as matters of statewide concern, in order~~
24 ~~to enforce the fundamental rights guaranteed to California voters~~
25 ~~under Section 7 of Article I and Section 2 of Article II of the~~
26 ~~California Constitution. Therefore, the provisions of this act shall~~
27 ~~be construed liberally in furtherance of this legislative intent to~~
28 ~~eliminate minority vote dilution. It is the further intent of the~~
29 ~~Legislature that any remedy implemented under this act shall~~
30 ~~comply with the 14th Amendment to the United States Constitution.~~
31 ~~The Legislature also finds and declares that this act is consistent~~
32 ~~with the decision of the Court of Appeal in Sanchez v. City of~~
33 ~~Modesto (2006) 145 Cal.App.4th 660.~~

34 ~~SEC. 2. The heading of Article 1 (commencing with Section~~
35 ~~14025) is added to Chapter 1.5 of Division 14 of the Elections~~
36 ~~Code, to read:~~

37
38 **Article 1. General Provisions**
39

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

4

5

Article 2. ~~At-Large Elections~~

6

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

9

10

Article 3. ~~District-Based Elections~~

11

12 ~~14040.—District-based elections shall not be imposed or applied~~
13 ~~in a manner that impairs the ability of a protected class to elect~~
14 ~~candidates of its choice as a result of the dilution or the abridgment~~
15 ~~of the rights of voters who are members of a protected class.~~

16

17 ~~14041. (a) A violation of Section 14040 is established if it is~~
18 ~~shown that racially polarized voting occurs in elections for~~
19 ~~members of the governing body of the political subdivision or in~~
20 ~~elections incorporating other electoral choices by the voters of the~~
21 ~~political subdivision. Elections conducted prior to the filing of an~~
22 ~~action pursuant to Section 14040 and this section are more~~
23 ~~probative to establish the existence of racially polarized voting~~
24 ~~than elections conducted after the filing of the action.~~

25

26 ~~(b) The occurrence of racially polarized voting shall be~~
27 ~~determined from examining results of elections in which at least~~
28 ~~one candidate is a member of a protected class or elections~~
29 ~~involving ballot measures, or other electoral choices that affect~~
30 ~~the rights and privileges of members of a protected class. One~~
31 ~~circumstance that may be considered in determining a violation~~
32 ~~of Section 14040 and this section is the extent to which candidates~~
33 ~~who are members of a protected class and who are preferred by~~
34 ~~voters of the protected class, as determined by an analysis of voting~~
35 ~~behavior, have been elected to the governing body of a political~~
36 ~~subdivision that is the subject of an action based on Section 14040~~
37 ~~and this section.~~

38

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

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

3 ~~(e) Other factors, such as the history of discrimination, the use~~
4 ~~of electoral devices or other voting practices or procedures that~~
5 ~~may enhance the dilutive effects of the election system, denial of~~
6 ~~access to those processes determining which groups of candidates~~
7 ~~will receive financial or other support in a given election, the extent~~
8 ~~to which members of a protected class bear the effects of past~~
9 ~~discrimination in areas such as education, employment, and health,~~
10 ~~that hinder their ability to participate effectively in the political~~
11 ~~process, and the use of overt or subtle racial appeals in political~~
12 ~~campaigns are probative, but not necessary factors, to establish a~~
13 ~~violation of Section 14040 and this section.~~

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

18 ~~(2) (A) If a court orders a political subdivision to adopt, and~~
19 ~~subsequently approves, a district-based election system as a result~~
20 ~~of an action filed pursuant to Article 2, there shall be a rebuttable~~
21 ~~presumption in any subsequent action filed pursuant to this article~~
22 ~~that the district-based election system of that political subdivision~~
23 ~~does not violate this article. The presumption shall apply only to~~
24 ~~the exact district-based election system that was approved by the~~
25 ~~court and shall not apply if the boundaries of the districts of the~~
26 ~~political subdivision are subsequently adjusted for any reason.~~

27 ~~(B) This paragraph shall apply only to a district-based election~~
28 ~~system that is approved by a court on or after January 1, 2017.~~

29 ~~14042. (a) Upon a finding of a violation of Sections 14040~~
30 ~~and 14041, the court shall implement an effective district-based~~
31 ~~elections system that provides the protected class the opportunity~~
32 ~~to elect candidates of its choice from single-member districts.~~

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

37 ~~(1) Incrementally increasing the size of the governing body~~
38 ~~upon approval of voters in the jurisdiction.~~

39 ~~(2) Approving a single-member district-based election system~~
40 ~~that provides the protected class the opportunity to join in a~~

1 coalition of two or more protected classes to elect candidates of
2 their choice if there is demonstrated political cohesion among the
3 protected classes.

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

5 14043. In any action to enforce Sections 14040 and 14041, the
6 court shall allow the prevailing plaintiff party, other than the state
7 or political subdivision thereof, a reasonable attorney's fee
8 consistent with the standards established in *Serrano v. Priest* (1977)
9 20 Cal.3d 25, 48-49, and litigation expenses including, but not
10 limited to, expert witness fees and expenses as part of the costs.
11 Prevailing defendant parties shall not recover any costs, unless the
12 court finds the action to be frivolous, unreasonable, or without
13 foundation.

14 14044. Any voter who is a member of a protected class and
15 who resides in a political subdivision where a violation of Sections
16 14040 and 14041 is alleged may file an action pursuant to those
17 sections in the superior court of the county in which the political
18 subdivision is located.

19 14045. If any provision of this article or its application to any
20 person or circumstance is held invalid, Articles 1, 2, and the
21 remainder of this article, or the application of the provision to other
22 persons or circumstances, shall not be affected.