

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

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.

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~~ *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~~ *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 ~~race or color~~ *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~~ *Counties* of Kings, Monterey, and Yuba.

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. The Legislature finds and declares all of the
2 following:

3 (a) The United States Congress enacted the federal Voting
4 Rights Act of 1965 (42 U.S.C. Sec. 1971 et seq.) to address the
5 numerous obstacles and barriers that had been erected by many
6 states and local governments to prevent the free exercise of the
7 right to vote and to participate on an equal basis in the electoral
8 process by members of racial minorities.

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

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

24 (d) In this state, the ~~counties~~ *Counties* of Kings, Monterey, and
25 Yuba were each identified as a covered jurisdiction for purposes
26 of federal preclearance, which required each county to receive
27 federal approval for a proposed change to its voting procedures.

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

32 (f) Recently, in *Shelby County v. Holder* (2013) 133 S.Ct. 2612,
33 the United States Supreme Court held that the coverage formula
34 in Section 4 of the federal act is unconstitutional in violation of
35 the Tenth Amendment to the United States Constitution and can
36 no longer be used as a basis for requiring jurisdictions to subject
37 proposed changes in voting procedures to federal preclearance.
38 As a result, a covered jurisdiction will no longer be required to

1 submit proposed changes to its voting procedures for federal
2 preclearance, leaving states and political subdivisions that have
3 histories of voter discrimination without safeguards to protect
4 against discriminatory voting practices.

5 (g) In an effort to remedy the abrupt ending to the federal
6 preclearance safeguards against discriminatory voting practices,
7 this bill establishes a state preclearance system, under which the
8 ~~counties~~ *Counties* of Kings, Monterey, and Yuba must receive the
9 approval of the state Attorney General before a change to voting
10 procedures may take effect in that county.

11 (h) *It is the intent of the Legislature in enacting this act that the*
12 *preclearance safeguards against discriminatory voting practices*
13 *under the federal Voting Rights Act of 1965 (42 U.S.C. Sec. 1971*
14 *et seq.) that existed before the ruling in Shelby County v. Holder*
15 *remain in effect in the Counties of Kings, Monterey, and Yuba*
16 *until the United States Congress updates the coverage formula of*
17 *the federal act.*

18 (i) *This act shall not be construed to suggest that a county shall*
19 *not be subject to a federal preclearance system enacted at a future*
20 *date if the county is able to obtain an exemption from the state*
21 *preclearance system pursuant to this act.*

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

24
25 CHAPTER 5. STATE PRECLEARANCE

26
27 400. This chapter applies only to Kings County, Monterey
28 County, and Yuba County.

29 401. *For purposes of this chapter, the following terms have*
30 *the following meanings:*

31 (a) “Minority” means a person who is a member of a protected
32 class.

33 (b) “Protected class” means a class of voters who are members
34 of a race, color, or language minority group, as this class is
35 referenced and defined in the federal Voting Rights Act of 1965
36 (42 U.S.C. Sec. 1971 et seq.).

37 (c) “Test or device” means any requirement that a person as a
38 prerequisite for voting, or registration for voting, demonstrate the
39 ability to read, write, understand, or interpret any matter,
40 demonstrate any educational achievement or his or her knowledge

1 *of any particular subject, possess good moral character, or prove*
2 *his or her qualifications by the voucher of registered voters or*
3 *members of any other class.*

4 ~~401.~~

5 402. (a) If a county enacts or seeks to administer a voting
6 qualification or prerequisite to voting, or a standard, practice, or
7 procedure with respect to voting, that is different from that in force
8 or effect on June 25, 2013, the county elections official shall submit
9 the qualification, prerequisite, standard, practice, or procedure to
10 the Attorney General for approval. The Attorney General shall
11 approve the qualification, prerequisite, standard, practice, or
12 procedure only if it neither has the purpose nor will have the effect
13 of denying or abridging the right to vote on account of ~~race or~~
14 ~~color~~ *membership in a protected class*. The qualification,
15 prerequisite, standard, practice, or procedure shall not take effect
16 or be administered in the county until the county receives the
17 approval of the Attorney General.

18 (b) *The Attorney General shall provide a written decision to*
19 *the county within 60 days of a request to enact or administer a*
20 *voting qualification or prerequisite to voting, or a standard,*
21 *practice, or procedure with respect to voting. If the Attorney*
22 *General fails to provide a written decision within 60 days, the*
23 *county may implement the qualification, prerequisite, standard,*
24 *practice, or procedure. A county may make a written request for*
25 *an expedited review of the qualification, prerequisite, standard,*
26 *practice, or procedure if the county has a demonstrated need to*
27 *implement the proposed change before the end of the 60-day review*
28 *period. The written request shall describe the basis for the request*
29 *in light of conditions in the county and specify the date by which*
30 *a decision is needed. The Attorney General shall attempt to*
31 *accommodate a reasonable request.*

32 (c) *The county shall have the burden of establishing, by objective*
33 *and compelling evidence, that the qualification, prerequisite,*
34 *standard, practice, or procedure has neither the purpose nor will*
35 *have the effect of denying or abridging the right to vote on account*
36 *of membership in a protected class.*

37 (d) *If the Attorney General denies a request to enact or*
38 *administer a qualification, prerequisite, standard, practice, or*
39 *procedure, the county may seek review of the decision by means*
40 *of an action filed in superior court.*

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

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

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

10 (b) To obtain a declaratory judgment pursuant to this section,
11 a county shall demonstrate, by objective and compelling evidence,
12 that during the 10 years preceding the filing of the action, and
13 during the pendency of the action, the county has satisfied all of
14 the following:

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

18 (2) Any change by the county to a voting qualification or
19 prerequisite to voting, or a standard, practice, or procedure with
20 respect to voting, has been approved under Section 5 of the federal
21 Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 et seq.) or Section
22 401 of this code before its implementation.

23 (3) A change by the county affecting a voting qualification or
24 prerequisite to voting, or a standard, practice, or procedure with
25 respect to voting, has not been the subject of an injunction obtained
26 by the United States Attorney General or the state Attorney General
27 or a denial of a declaratory judgment under Section 5 of the federal
28 Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 et seq.) or this
29 section.

30 (4) There have been no judgments adverse to the county in
31 lawsuits alleging voting discrimination on account of membership
32 in a protected class.

33 (5) There have been no consent decrees or settlement
34 agreements that resulted in the abandonment by the county of a
35 discriminatory voting practice on account of membership in a
36 protected class.

37 (6) There are no pending lawsuits against the county that allege
38 voting discrimination on account of membership in a protected
39 class.

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

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

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

12 (10) Constructive efforts have been made by the county to
13 eliminate intimidation and harassment of persons seeking to
14 register and vote, to expand opportunities for voter participation,
15 including, but not limited to, opportunities for registration and
16 voting, and to appoint minority officials throughout the county
17 and at all levels and stages of the electoral process.

18 (c) To assist the court in determining whether to issue a
19 declaratory judgment under this section, the county shall present
20 evidence of minority participation, including evidence of the levels
21 of minority group registration and voting, changes in the levels
22 over time, and disparities between minority-group and
23 non-minority-group participation.

24 (d) A county seeking a declaratory judgment under this section
25 shall publicize the intended commencement and any proposed
26 settlement of the action in the media serving the county and in the
27 United States post offices located in the county.

28 (e) A county seeking a declaratory judgment under this section
29 shall establish that every city, town, school district, or other
30 political subdivision within its boundaries has satisfied the
31 requirements of this section.

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

35 (g) This section shall not prohibit the Attorney General from
36 consenting to entry of a declaratory judgment if, based upon a
37 showing of objective and compelling evidence by the county, and
38 upon investigation, the Attorney General is satisfied that the county
39 has complied with the requirements of this section.

1 404. *This chapter shall remain in effect only until January 1,*
2 *2019, and as of that date is repealed.*

3 SEC. 3. The Legislature finds and declares that a special law
4 is necessary and that a general law cannot be made applicable
5 within the meaning of Section 16 of Article IV of the California
6 Constitution because of the ~~the—unique—histories~~ *history* of
7 discriminatory voting practices in the ~~counties~~ *Counties* of Kings,
8 Monterey, and Yuba.

9 SEC. 4. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.