

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: June 8, 2015

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tse 
Chief Legislative Analyst

Assignment No: 15-06-0457

SUBJECT: AB 1301 – Preclearance of Local Voting-Related Changes

CLA RECOMMENDATION: Adopt the attached Resolution to include in the City's 2015-2016 State Legislative Program **OPPOSITION** to AB 1301 (Jones-Sawyer and Alejo) which would make various changes to City voting-related laws, regulations, and/or policies, subject to the approval of the Secretary of State, prior to implementation.

SUMMARY

The attached Resolution states that, AB 1301 (Jones-Sawyer and Alejo) seeks to amend the State Elections Code in order to implement a preclearance requirement in an effort to protect voters from discriminatory voting-related practices. Additionally, the subject Resolution indicates that the bill resembles a former provision of federal law that was struck down by the U.S. Supreme Court, which required certain counties throughout the U.S. to submit various voting-related changes to a federal authority for approval, prior to implementation. While the bill seeks to provide protections from discriminatory election practices, it would also require the City to submit proposed voting-related changes to laws, guidelines, and/or policies to the Secretary of State for approval, per the Resolution. Further, the Resolution states that such action would result in the loss of local control over certain local voting-related changes, and would delay timely and necessary changes to the City's election process. Therefore, the Resolution contains a recommendation to oppose AB 1301.

On March 25, 2015, the City Clerk submitted a bill response report to the Office of the Chief Legislative Analyst regarding AB 1301. Currently pending in the California State Senate is AB 1301, which would make various changes to City voting-related laws, regulations, and/or policies, subject to the approval of the Secretary of State, prior to implementation. Per the City Clerk, the intent of the bill is to prevent discriminatory election procedures and to shield protected classes of voters, which is a concept that the City supports. However, the City Clerk also indicates that the bill would increase the amount of time and work needed to pass new voting-related laws. In addition, if the Secretary of State were to reject the City's proposed changes, the City could appeal the decision to a Superior Court, which would require additional time and resources. Therefore, the City Clerk has recommended that the bill be opposed.

BACKGROUND

AB 1301 (Jones-Sawyer and Alejo) would make various changes to City voting-related laws, regulations, and/or policies, subject to the approval of the Secretary of State, prior to implementation. This process, known as preclearance, was established through the federal Voting Rights Act of 1965, as a way to require certain counties to submit their proposed voting-related changes to preserve the rights of those who have

historically been subjected to discrimination based on race/color (protected classes). In California, those counties were Kings, Monterey, and Yuba. The preclearance provision was subsequently struck down by the United States Supreme Court, as it was determined that using a protected class to require preclearance of voting-related changes was unconstitutional.

AB 1301 would create a State preclearance system in a manner consistent with the federal provision. The subject bill would require that all election authorities, including the City of Los Angeles, submit certain voting-related changes to laws, regulations, and/or policies to the Secretary of State for approval. The State would have 60 days to approve or deny the proposed change. If a proposed change were to be denied by the State, then the City could revise the change and re-submit it to the State, or it could request a Superior Court to review the decision. The bill provides that any change to the following would be subject to State review: new voting systems which would add at-large offices or which converts offices elected by single-member districts to an at-large model; changes to election boundaries that reduce a proportion of voting-age citizens of members of a protected class by five or more percent; a redistricting change to a district which has a single protected class that experienced a population increase of at least 25,000 residents, or 20 percent of the voting-age population of the protected class; and a reduction in multilingual voting materials or an alteration in the manner in which the materials are distributed.

Given the size and diversity of the City of Los Angeles, many changes which occur during the redistricting process could be subject to review and approval by the State. In addition, if, for instance, the City needed to make changes to the amount of multilingual voting materials for budgetary purposes, or if the City deemed a more appropriate or effective distribution method of said voting materials, those decisions would be subject to the approval of the State, not the City. While the City supports protecting the rights of disadvantaged groups and protected classes, the local autonomy of voting-related decisions would essentially be circumvented, and subject to regulation by the State. Such action violates the principle of Home Rule. Additionally, while this process may have once been needed for such counties identified in the Voting Rights Act of 1965, the City of Los Angeles was not included in this list, and should not be subject to its provisions.

The City of Los Angeles has recently identified and adopted several recommendations to improve voter turnout. If AB 1301 were adopted, future changes to laws or policies in the interest of improving local voter participation could be delayed due to the proposed new law, as some of those changes could require State approval. The same changes could further be delayed if the State were to reject any proposed changes made by the City. If the City were to appeal the decision, it could do so by requesting a review by a California Superior Court. This would delay a proposed legal or policy change by at least 90 days, considering the State's review time of the original request, which would make timely and necessary changes more difficult to enact. This delay would be especially problematic for redistricting changes, which have set Charter-mandated deadlines.

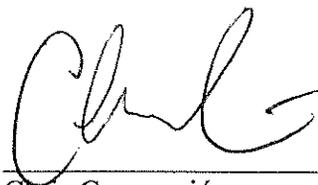
DEPARTMENTS NOTIFIED

City Clerk

BILL STATUS

2/27/15	Introduced
3/23/15	Referred to Committee on Elections and Redistricting
5/6/15	Amended and re-referred to Committee on Appropriations

5/12/15 Amended per Author's request by Committee on Appropriations
5/28/15 Passed and ordered to Assembly Floor
6/2/15 Passed Assembly. Ordered to the Senate
6/2/15 First Reading in Senate



Chris Concepción
Analyst

Attachments: 1. Resolution
2. AB 1301

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, on February 27, 2015, AB 1301 (Jones-Sawyer and Alejo) was introduced, which seeks to amend the State Elections Code in order to implement a preclearance requirement in an effort to protect voters in a protected class from discriminatory elections/redistricting practices; and

WHEREAS, the provision would resemble a former federal provision of the Voting Rights Act of 1965 (the Act), which stipulated that a change in voting procedures may not take effect in jurisdictions that are subject to "preclearance requirements" of the Act, until the amendment was approved by a federal authority, although this law was later struck down by the United States Supreme Court and deemed unconstitutional; and

WHEREAS, AB 1301 would require that all local election officials must submit certain proposed elections/redistricting changes to the Secretary of State for approval, prior to said law becoming effective or administered; and

WHEREAS, in addition, the provision would create criteria by which all jurisdictions must adhere when submitting voting-related law, guideline, and/or policy changes, by presenting objective and compelling evidence that each criterion is met; and

WHEREAS, while the City supports protecting the rights of disadvantaged groups and protected classes, the bill is problematic for jurisdictions such as the City of Los Angeles, which was not originally subjected to the federal preclearance requirements of the Act, as the City would lose local discretion as to the necessary changes, which is critical for the State's largest city; and

WHEREAS, AB 1301 would further require that the City submit various changes to the Election Code and provisions of the City Charter concerning the redistricting process, to the State for approval, despite the will of the Los Angeles constituency; and

WHEREAS, not only do such requirements constitute a loss of local autonomy and violate the principle of Home Rule, but they would also provide significant administrative delays to an already extensive process, which would make the approval system more bureaucratic and would delay timely and necessary changes to the City's election process, and thereby would be a disservice to the people of Los Angeles;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2015-2016 State Legislative Program, OPPOSITION to AB 1301 (Jones-Sawyer and Alejo) which would make various changes to City voting-related laws, regulations, and/or policies, subject to the approval of the Secretary of State, prior to implementation.

cc

CITY OF LOS ANGELES
BILL RESPONSE REPORT

DEPARTMENT/BUREAU/OFFICE City Clerk/Election Division		BILL NO. A.B. 1301	AUTHOR R. Jones-Sawyer (22 nd District)
PREPARED BY Christopher E. Garcia	EXT. 8-3265	DATE March 25, 2015	AMENDED DATE February 27, 2015 (Introduced)

I. Describe the impact this bill will have on your department or the City, its program(s), and/or its constituency (state existing law or practice, a summary of the effect the bill will have on existing department operations, etc.).

Assembly Bill 1301 would require jurisdictions that enact or change a voting-related law, regulation, or policy to submit such law, regulation, policy to the Secretary of State (SOS) for approval, or preclearance. The type of laws, regulations, or policies that would be subject to preclearance include the following:

1. Switching from a single-member district election to an at-large or multi-member district election.*
2. Changes in election boundaries that reduce the proportion of the citizen voting-age population that are members of a single protected class by more than five percent.
3. A redistricting change that alters the boundaries of districts in which a single protected class has experienced a population increase of at least 25,000 residents or at least 20 percent of the citizen voting-age population of the protected class over the preceding decade, as determined by the five-year estimates of the United States Census American Community Survey.*
4. A change to voting locations that reduces, consolidates, or relocates one or more voting locations, including an early, absentee, or election day voting location, and results in a net loss, on a per voter basis, of voting locations in the 20 percent of the total number of census tracts in a jurisdiction with the highest proportion of voters from a single protected class that represents at least 20 percent of the citizen voting-age population in the jurisdiction, provided that the net loss is greater than the net loss resulting from the changes in the 20 percent of the total number of census tracts in the jurisdiction with the highest proportion of voters of any other racial or ethnic group that represents at least 20 percent of the citizen voting-age population in the political subdivision.
5. A change to multilingual voting materials that reduces the voting materials available in languages other than English, or that alters the manner in which the materials are provided or distributed, if no similar reduction or alteration occurred in materials provided in English.

In the event of an unexpected circumstance that occurs during the 30 days before an election, a jurisdiction may enact or administer a law, regulation, or policy described above only for the purposes of that election. After the election, the jurisdiction must immediately submit the changes to the SOS for approval.

Otherwise, once new law, regulation, or policy is submitted, the SOS would have 60 days to review and approve the proposed changes. If no decision is made after this period, a jurisdiction may implement the proposed change. A jurisdiction may also request an expedited review of their proposed changes, but only if the change is not likely to result in a discriminatory effect on the affected classes of voters and the change is not motivated by the intent to reduce the participation of the affected classes.

When submitting a request for review, a jurisdiction must establish, with objective and compelling evidence, that the proposed change satisfies the following:

1. The change is not likely to result in a discriminatory effect on the participation of voters from a protected class that constitutes at least 20 percent of the political subdivision's citizen voting-age population
2. The change is not motivated in whole or substantially in part by an intent to reduce the participation of voters from a protected class.

If necessary, both the affected jurisdictions and Secretary of State may seek a court's review of the state's decision in the Superior Court for the County of Sacramento. Likewise, the Attorney General or a registered voter may file a suit to prevent a jurisdiction from implementing a law or other change that may violate the bill's provisions.

This bill could alter the City's current processes for amending the Election Code (Code) and implementing administrative procedures such as recruiting polling places. Section 412 of the City Charter states that an amendment to the City Election Code can only be implemented after six months have passed from the publication of the ordinance effecting the amendment. This six-month delay ensures that an upcoming election is not affected by recent changes to the code. The proposed requirements in AB 1301 would require the City Clerk to conduct a thorough analysis of the proposed amendment to determine if the change qualifies for state review. If so, the City Clerk would also have to provide evidence that the proposed change is not likely to result in a discriminatory effect and is not intended to reduce voter participation. This process could extend the City's code amendment process or other procedural changes by at least an additional six months, making timely and necessary changes more difficult to enact.

In the event the City Clerk has to make a change that falls under this bill's guidelines within the 30-day period before Election Day, such as relocating a polling place or altering multilingual voting materials, the City can proceed with the change, but must submit the change for approval immediately after the election.

* These types of changes are governed by the City Charter and not overseen by the City Clerk.

- II. Give estimate of cost or savings to your department (include SB 90 reimbursements, if applicable).
This bill should have no fiscal impact on the City.

- III. Arguments both "For" and "Against" this bill.

For: The intent of the bill is to prevent discriminatory election procedures, policies, or actions against protected classes of voters before they are implemented. This bill would require the City to conduct more research when proposing new election laws, guidelines, or policies.

Against: This bill would increase the amount of time and work needed to pass new voting-related laws, guidelines, or policies. In the event the SOS were to reject the City's proposed changes, the City could either appeal the decision or revise the proposed law, guideline, or policy to obtain approval. This process would require additional time and resources.

(See Other Side)

FOR CLA USE ONLY

Position Noted _____ Committee
Analyst _____ Council
Program No. _____ Position

- IV. Recommended position and justification:

[] No Position [] Support [X] Oppose [] Amend

Describe reasons for recommended position (include relevant existing City legislative policy, and any proposed amendments in underline and ~~strike-out~~ format).

This bill would increase the amount of time and work needed to pass new voting-related laws, guidelines, or policies, possibly delaying timely and necessary changes to the City's election process.

V. Interested Parties:

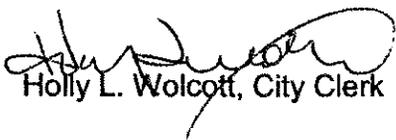
Indicate any interest other departments or organizations may have on the bill. Also, list any contacts you made in preparing this information.

Los Angeles County Registrar-Recorder/County Clerk. The County nor the California Association of Clerks and Election Officials (CACEO) have yet to take a position on this bill. Last session, the CACEO opposed a similar bill (AB 280) as "unworkable and incredibly costly." This new bill offers some solutions to the concerns the CACEO raised regarding the restrictions on changing polling places.

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: April 2, 2015

TO: Office of the Chief Legislative Analyst
Attn: John Wickham

FROM: 
Holly L. Wolcott, City Clerk

SUBJECT: CALIFORNIA ASSEMBLY BILL 1301
(PRECLEARANCE SYSTEM)

Attached is the completed Bill Response Report for California Assembly Bill 1301. If there is anything further needed or have any questions, please contact me at (213) 978-1020.

HLW/GRA:amm

Attachment

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