

ASSEMBLY THIRD READING  
AB 764 (Bryan and Cervantes)  
As Amended May 18, 2023  
Majority vote

## SUMMARY

Makes special districts, school districts, community college districts, and county boards of education subject to similar criteria and process requirements that apply to counties and cities that are adjusting the boundaries of the districts used to elect members of their governing bodies. Increases the public hearing and outreach requirements that apply to all local jurisdictions as part of the process for adopting or adjusting boundaries. Establishes a procedure for legal challenges when a local jurisdiction does not comply with the requirements of state law related to redistricting.

### Major Provisions

- 1) Standardizes the criteria to be used for drawing districts in local jurisdictions by requiring a special district, school district, community college district, or county board of education to use the same criteria, generally, that a county is required to use under existing law when adopting or adjusting the boundaries of districts. Requires an advisory or hybrid redistricting commission to comply with these criteria for any districts it proposes. Updates those criteria as they apply to *all* local jurisdictions, including counties and cities, when adopting district boundaries.
- 2) Increases public workshop, hearing, and outreach requirements required as part of the redistricting process and applies these requirements to all local jurisdictions.
- 3) Requires, except in the case of special districts and small educational districts, that a local jurisdiction or the districting body for that jurisdiction adopt a redistricting public education and outreach plan, as specified.
- 4) Requires a local jurisdiction to establish a redistricting web page, containing specified information about the jurisdiction's redistricting process, prior to holding its first workshop or public hearing.
- 5) Requires the Secretary of State (SOS) to develop templates related to the redistricting process that can be used by local jurisdictions to meet their obligations under this bill and existing law. Requires the SOS to create, upon appropriation, a public, free electronic mapping tool with relevant population and demographic data.
- 6) Permits any interested person to bring a legal action to enforce the provisions of state law related to local redistricting, as specified. Permits an action alleging that an adopted district map does not comply with the criteria and requirements of law to be brought at any time prior to an election that will be conducted using those district boundaries. Provides a notice-and-cure process before a legal action can be brought alleging a past violation of the law related to the redistricting process.

## COMMENTS

"Redistricting" is the process by which the boundaries of districts of a governmental body are adjusted. Redistricting generally occurs at the beginning of each decade following the decennial federal census, when new district lines are adopted based on the census data so that the populations of each district of a governmental body are roughly equal.

AB 849 (Bonta), Chapter 557, Statutes of 2019, also known as the Fair Maps Act (FMA), revised and standardized the criteria and process to be used by counties and cities when they adjust the boundaries of the electoral districts that are used to elect members of the jurisdictions' governing bodies, and required counties and cities to comply with substantial public hearing and outreach requirements as part of the process for adjusting the boundaries of electoral districts. Prior to the enactment of AB 849, the rules that govern the local redistricting process generally had not been changed in decades.

The FMA was in effect for the first time for the redistricting process that followed the 2020 census. Following that redistricting process, the organizations that are co-sponsoring this bill and related organizations commissioned a report to evaluate the impact of the FMA and other changes to redistricting policies on the local redistricting process. The report, *The Promise of Fair Maps, California's 2020 Local Redistricting Cycle: Lessons Learned and Future Reforms*, concluded that "the FMA was broadly successful in promoting a more transparent and more participatory local redistricting process," and that "[t]o a lesser extent, it was successful in producing maps that better reflect the diverse communities residing in cities and counties across the state."

On the other hand, the report also concluded that "the 2020 local redistricting cycle... revealed that improvements to the FMA are necessary to address ambiguities, loopholes, and deficiencies in the legislation that undermined the law's important goals, and were often exploited to protect incumbents." In particular, the report concluded that notwithstanding the ranked, mandatory redistricting criteria that was included in the FMA, "in many jurisdictions incumbency protection proved to be the overriding criterion for how maps were drawn."

Please see the policy committee analysis for a full discussion of this bill.

### **According to the Author**

"Four years ago, the Legislature enacted the [FMA], the most comprehensive reform of local redistricting laws in decades. The result was a more transparent and participatory local redistricting process in 2021 and 2022. Public and community group participation in the local redistricting process exceeded that from prior cycles. Despite significant challenges due to the pandemic, most local jurisdictions complied with – and even surpassed – the requirements of the FMA. Notwithstanding the FMA's improvements to the local redistricting process, the last redistricting cycle showed that there is still work to be done. Too many local jurisdictions continue to prioritize incumbency protection when drawing district lines, splintering neighborhoods and communities of interest as a result. Furthermore, the FMA's reforms did not apply to educational or special districts, resulting in a less transparent and participatory redistricting process in many of those local jurisdictions."

### **Arguments in Support**

The co-sponsors of this bill, ACLU California Action, Asian Americans Advancing Justice-Asian Law Caucus, California Common Cause, and the League of Women Voters of California,

wrote in support of a prior version of this bill, "FMA reforms brought notable improvements to local redistricting processes in 2020, but community members, community-based organizations, and good government groups still witnessed major problems...AB 764 addresses the problems observed during the 2020 redistricting cycle by closing important loopholes and deficiencies in the FMA...AB 764 would expressly prohibit incumbency protection in the redistricting process, provide examples to clarify the definition of 'communities of interest,' and require that jurisdictions do their due diligence to ensure their compliance with the federal Voting Rights Act...AB 764 would apply the FMA's fair and standardized redistricting criteria, as well as other key provisions, to all special districts and to educational districts based on jurisdiction size."

### **Arguments in Opposition**

The California State Association of Counties, Rural County Representatives of California, and Urban Counties of California all have an "oppose unless amended" position on this bill. In a joint letter of opposition to a prior version of this bill, the organizations wrote, "AB 764 contains a number of new reporting requirements for counties that will require significant professional assistance to ensure compliance. New requirements to publish federal Voting Rights Act analyses, a report outlining compliance with new district boundary criteria, new redistricting public education and outreach plans with specific components and a public review period...and detailed analyses of each draft map 'that a member of the districting body asks be discussed or considered,' as proposed in AB 764, will be costly, time-consuming, and in all likelihood simply not feasible with existing county staff...AB 764 increases the number of public workshops and hearings for all counties and, in some instances, increases them dramatically... Public hearings and workshops require considerable time and effort to plan and execute; such a marked increase in public meetings again makes compliance a challenge...Counties have strong concerns about the special private right of action contained in AB 764 for any ongoing violation or prevention of a future violation or a threat of violation of the provisions of the Act."

### **FISCAL COMMENTS**

According to the Assembly Appropriations Committee:

- 1) By requiring local agencies to hold more hearings and provide more information as part of the redistricting process, this bill creates a state-mandated local program. If the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service for which the state must reimburse local costs, local agencies could claim reimbursement from the state (General Fund (GF)). The magnitude of these costs is unknown, but definitely significant. Additionally, local agencies may incur non-reimbursable costs to the extent they are subject to additional litigation as a result of the cause of action created by this bill.
- 2) One-time GF costs of approximately \$519,000 to the SOS to develop and translate webpage templates and provide training to local jurisdictions. Additionally, GF cost pressures to develop, upon appropriation, the electronic mapping tool. The SOS estimates needing approximately \$139,000 to develop and manage the mapping tool.
- 3) Cost pressures (GF or Trial Court Trust Fund (TCTF)) of an unknown amount to the courts in additional workload. This bill increases the number of local jurisdictions that must petition the court to adopt district boundaries after a specified deadline and authorizes a cause of action for violation of expanded local redistricting laws. It is unclear how many petitions or actions may be filed statewide, but the estimated workload cost of one hour of court time is

\$1,000. If 10 cases are filed statewide resulting in 20 hours of court time for each case, costs would be approximately \$200,000. Although courts are not funded on the basis of workload, elections-related cases are given precedence on the court calendar and increased pressure on staff and the TCTF may create a need for increased court funding from the GF to perform existing duties. The Governor's 2023-24 state budget already proposes \$109.3 million in ongoing GF revenue to continue backfilling the TCTF for expected revenue declines.

## VOTES

### **ASM ELECTIONS: 5-1-2**

**YES:** Bryan, Bennett, Lee, Pellerin, Blanca Rubio

**NO:** Lackey

**ABS, ABST OR NV:** Essayli, Low

### **ASM LOCAL GOVERNMENT: 6-2-0**

**YES:** Aguiar-Curry, Boerner, Pacheco, Ramos, Robert Rivas, Wilson

**NO:** Dixon, Waldron

### **ASM APPROPRIATIONS: 11-4-1**

**YES:** Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Ortega

**NO:** Megan Dahle, Dixon, Mathis, Sanchez

**ABS, ABST OR NV:** Robert Rivas

## UPDATED

VERSION: May 18, 2023

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