Date of Hearing: April 6, 2022

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ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 2808 (O'Donnell) – As Introduced February 18, 2022

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SUBJECT: Elections: ranked choice voting.

SUMMARY: Prohibits state and local elections from being conducted using ranked choice voting (RCV). Specifically, **this bill**:

1) Prohibits state and local elections from being conducted using RCV. Defines "RCV" to mean a method of voting that allows voters to rank candidates for office in order of preference.

2) Provides that the Legislature finds and declares that the provisions of this bill address a matter of statewide concern rather than a municipal affair and therefore the provisions of this bill apply to all cities, including charter cities.

3) Makes the following findings and declarations:

   a) Ranked choice voting can lead to inherently undemocratic outcomes like the winners of elections failing to receive a plurality of the vote.

   b) Ranked choice voting is fundamentally more complicated than currently available alternatives and this complexity can lead to mistakes that can further disenfranchise voters.

   c) Ranked choice voting can lead to elections that are more expensive given the additional computer systems or manpower required to tabulate the ranked votes.

   d) Many of the purported benefits of ranked choice voting, including more diverse fields of candidates and fewer negative campaign advertisements, have not been realized in the jurisdictions that have used this election method.

   e) Ranked choice voting does not lead to outcomes that reflect the ideals of our democracy and could harm the ability of voters to express their vote.

EXISTING LAW:

1) Provides, in general, that any candidate for a nonpartisan office who receives votes on a majority of all the ballots cast for that office at a primary election is elected to that office and prohibits the office from appearing on the ballot at the ensuing general election. Provides that where two or more candidates are to be elected to a given office and a greater number of candidates receives a majority than the number to be elected, those candidates that receive the highest number of votes proceed to the general or run-off election, as specified.

2) Requires certain local jurisdictions to determine the winning candidate in a single election by a plurality of votes cast.

3) Does not allow a general law city, general law county, county board of education, school district, community college district, or special district to use RCV for local elections. Does not provide for RCV to be used for any elections for state office.

FISCAL EFFECT: None. This bill is keyed nonfiscal by the Legislative Counsel.

COMMENTS:

1) **Purpose of the Bill**: According to the author:

> While proponents of ranked-choice voting tout the cost savings and greater voter expression offered by ranked-choice voting, these benefits have not necessarily been realized. Despite claims of cost savings ranked-choice voting requires significant investments in both technology and staff training in order to calculate election results. In addition many voters, especially those using the system for the first time, may not realize they need to pick multiple candidates and choose a single candidate instead. In these instances voters are disenfranchised by having their vote count "less" than others and a candidate might win election without a majority of all voters, the one situation ranked-choice voting is designed to address. AB 2808 will ensure no California voter has their vote disenfranchised through ranked-choice voting by prohibiting it in California's elections.

2) **Ranked Choice Voting Background**: RCV is an election method in which voters rank the candidates for office in order of preference, and the ballots are counted in rounds. In the case of a single-winner election, these rounds simulate a series of runoffs until only two candidates remain with the candidate having the greater number of votes being declared the winner. In the case of a multiple-winner election, these rounds fill all seats to be elected.

For single winner elections, in the first round, every ballot counts as a vote towards the candidate indicated by the highest ranking on that ballot. After every round, if a candidate receives a majority of votes from the continuing ballots, that candidate is declared elected. If no candidate receives a majority, the candidate receiving the smallest number of votes is eliminated, and every ballot counting towards that candidate is advanced to the next-ranked continuing candidate on the ballot.

For an election to elect two or more candidates to office, a minimum threshold of votes necessary to be elected is determined according to a specified formula. All ballots are counted and each ballot is allocated as a vote to the candidate receiving the highest ranking. Each candidate that receives the minimum threshold of votes is declared elected.

If a candidate wins with more votes than the election threshold, but not all seats have been filled, any extra votes count proportionally toward voters' next choices. For example, if a candidate receives 10 percent more first choices than what was needed to win, then a tenth of each of their supporters' votes count toward their next choices.

If no candidate has more votes than the election threshold, the candidate with the fewest votes is eliminated, and voters who picked that candidate have their votes count for their next choice. This repeats, just like with single-winner ranked choice voting. This process continues until every seat has been filled.

While explaining the vote tabulation system is somewhat complex, no voter gets to vote twice and no vote is counted twice. In a single-winner system where the last place candidate is eliminated, voters who listed that candidate first on their ballot then get to use the second choice on their ballot once that first choice is eliminated. They may get two (or more) chances to use their vote, but they never get more than one vote. The multi-winner system is somewhat more complicated because fractions of a person's vote can be transferred to other candidates, but each voter still has only one total vote.

3) **Plurality Vote Method and Majority Vote Method:** Plurality voting, also known as "winner-take-all" or "first-past-the-post," gives all representation to the candidate finishing first. In plurality voting, each voter selects one candidate, and the candidate with the largest number of votes is the winner regardless of whether the winner receives a majority (50% +1) of the vote. A plurality voting method may be used for a single candidate election or for electing a group of candidates, such as a council or committee. In a majority vote method, a voter votes for one candidate and the candidate with the majority (50%+1) of the votes wins. Commonly used majority vote methods include traditional run-off and RCV.

Current law generally provides that any candidate for a nonpartisan office who receives a majority of votes from all the ballots cast for a office at a primary election is elected to that office and prohibits the office from appearing on the ballot at the ensuing general election. Additionally, existing law provides that if two or more candidates are elected to a given office, the candidates that receive the highest number of votes proceed to a general or run-off election, as specified. Certain local jurisdictions, however, are excluded from these provisions. Current law specifically excludes a general law city, school district, and special district from using a majority vote primary election method and instead only permits these jurisdictions to use a single, plurality election method.

4) **Jurisdictions Using Ranked Choice Voting**: In California, the charter cities of San Francisco, Oakland, Berkeley, and San Leandro have all conducted city elections using RCV. San Francisco adopted RCV in 2002 and has used it since 2004 to elect the mayor, city attorney, Board of Supervisors, and five additional citywide offices. San Leandro, Berkeley, and Oakland have all used RCV since 2010 to elect the mayor, city council, and other city offices. None of these cities, however, have used RCV for a multi-winner election. Additionally, in 2020 voters in the charter cities of Albany and Eureka passed ballot measures to use RCV.

According to FairVote California, an organization that advocates for the use of RCV, besides these California cities, RCV is currently used in the following US jurisdictions:

- Maine (state): Adopted in 2016 and first used in 2018 for all state and federal primary elections and all general elections for Congress. Extended to apply to the general election for president beginning in 2020 and presidential primary elections beginning in 2024.

- Arden, Delaware: In use since early twentieth century in multi-winner RCV form for the 7-seat citywide elections to the board of assessors.

- Basalt, Colorado: Adopted in 2002 for mayoral races only with 3 or more candidates. First used in April 2020.

- Benton County, Oregon: Adopted in 2016 for general elections for the partisan offices of county offices of commissioner and sheriff. First used in November 2020.

- Bloomington, Minnesota: Adopted by voters in 2020 to amend the city charter to elect the mayor and city council. First city council elections with RCV were in 2021.

- Cambridge, Massachusetts: In use since the 1940s in multi-winner RCV form for the nine seat city council and six seat school board elected citywide.

- Carbondale, Colorado: Adopted in 2002 for mayoral races with three or more candidates. Not yet used as of 2021.

- Easthampton, Massachusetts: Adopted in 2019 for mayoral and all single-seat city council elections. Used RCV for mayor in 2021.

- Eastpointe, Michigan: Adopted multi-winner form of RCV for 2019 and 2021 city council elections to resolve a federal Voting Rights Act lawsuit. Also used RCV in 2020 to fill a city council vacancy.

- Las Cruces, New Mexico: Adopted by the city council in 2018 and RCV used since 2019 for all municipal elections, including mayor and council.

- Minneapolis, Minnesota: Adopted in 2006 and used since 2009, in elections for 22 city offices, including mayor and city council, and some park boards. Used multi-winner form of RCV for multi-winner districts.

- Minnetonka, Minnesota: Adopted in 2020 to be used to elect the mayor and city council. First city council elections with RCV held in 2021.

- New York City: Adopted in 2019 and used in all city primary elections for mayor, citywide offices, borough presidents and city council, starting in 2021.

- Portland, Maine: Adopted in 2010 and used since 2011 for electing mayor. Expanded in 2020 to also apply to city council and school board. Used to elect charter commission in 2021, including 4 citywide seats with sequential RCV.

- Santa Fe, New Mexico: Adopted in 2008 and used since March 2018 for mayor, city council, and municipal judge.

- St. Louis Park, Minnesota: Adopted in 2018 and used since 2019 for mayor and city council races.

- St. Paul, Minnesota: Adopted in 2009 and used since 2011 to elect the mayor and city council.

- Takoma Park, Maryland: Adopted in 2006 and used since 2007 in all elections for mayor and city council. Also used for vacancy elections.

- Telluride, Colorado: Adopted in 2008 for mayoral elections in 2011, 2015 and 2019.

5) **Charter Cities Jurisdictions**: The California Constitution recognizes two types of cities: general law cities and charter cities. General law cities are governed by general laws passed by the state legislature, while charter cities have greater autonomy to create and enforce local ordinances. Specifically, Section 5(a) of Article XI of the California Constitution gives charter cities broad authority to "make and enforce all ordinances and regulations in respect to municipal affairs" and provides that "City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." Additionally, Section 5(b) of Article XI grants charter cities broad authority to structure and organize their government and provide for the conduct of city elections, and grants plenary authority, subject to limited restrictions, to provide "the manner in which, the method by which, the times at which, and the terms for which several municipal officers and employees whose compensation if paid by the city shall be elected and appointed, and for their removal…" The Constitution further provides that properly adopted city charters "shall supersede all laws inconsistent" with the charter.

As mentioned above, in California, five cities and the City and County of San Francisco have chosen to conduct local elections using RCV. These jurisdictions were able to choose to use RCV because they are charter cities. According to information from the League of California Cities, 121 of California's 482 cities are charter cities.

This bill, however, contains findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, applies to all cities, including charter cities. If this bill is signed into law, all charter cities, including those that have been conducting their elections using RCV for over a decade, will not be able to use that method to conduct future elections.

6) **Arguments in Opposition**: A coalition of organizations writes in opposition to this bill:

> **RCV has many benefits over other voting methods:**
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> **More Representative Results:** RCV produces far more representative results than plurality-winner elections, the most common local voting method. In single-seat plurality-winner elections, candidates can be elected with as little as 25% of the vote if the majority splits it support between two or more similar candidates. This "spoiler effect" can lead to unrepresentative candidates being elected, which can undermine voter confidence in elections and government. A 2016 study by California Common Cause found that vote-splitting was prevalent: in city single-seat elections involving three or more candidates, the winner received less than majority support 42% of the time. By contrast, RCV solves vote-splitting by looking at voters' second and third choices to ensure that the winning candidate is elected with majority support.
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> **Higher Voter Turnout and No Runoff Elections:** RCV also has strong benefits over runoff election systems, which are used by some large cities and all counties,

including far higher voter turnout. Runoff jurisdictions typically hold their elections with the statewide primary so a runoff election, if needed, can be held with the statewide general election. However, this means most elections are decided during the primary, when turnout is much lower and less demographically representative. As reported by the Public Policy Institute of California, "primary electorates have included fewer young people, Latinos, and Asian Americans than the general electorate in the fall." Because RCV requires only one election to select a majority winner, jurisdictions adopting this system have moved their elections to November, leading to more voters electing their local officials…

More Diverse Representation: In the four Bay Area cities that have used RCV for over a decade – San Francisco, Oakland, Berkeley, and San Leandro – RCV has led to greater representation for women and people of color…A 2021 study of Bay Area elections found that women had won 56% of RCV elections between 2010 and 2019. Moreover, women's representation on city councils was 10 percentage points higher in cities with RCV compared with Bay Area cities that did not use RCV. Studies have found similar success for candidates of color in RCV elections. A 2019 analysis of Bay Area cities by FairVote found that candidates of color had won 62% of elections since the adoption of RCV, compared with only 38% prior to RCV's introduction.

AB 2808 threatens to roll back these hard-fought gains: AB 2808 would lock local governments into using less representative voting systems. The bill would lead to lower and less-representative voter turnout in jurisdictions that are forced to revert to a two-round runoff. Additionally, it would eliminate a powerful voting rights remedy in multi-seat RCV.

7) **Previous Legislation**: Since 2006 there have been numerous bills intended to permit local jurisdictions to use RCV for either regular or special elections. All of these bills either failed passage in the Legislature or were vetoed by the Governor, including all of the following: SB 596 (Bowen) of 2006, AB 1294 (Mullin and Leno) of 2007, AB 1121 (Davis) of 2009, AB 2732 (Eng) of 2010, and SB 1346 (Hancock) of 2010.

Most recently, SB 1288 (Leno) of 2016 generally would have authorized local jurisdictions to conduct local elections using RCV, or to require a runoff election to be conducted in an election for local office if no candidate received a majority of the vote in the primary election. SB 1288 was vetoed by Governor Brown. In his veto message, Governor Brown stated, "In a time when we want to encourage more voter participation, we need to keep voting simple. Ranked choice voting is overly complicated and confusing. I believe it deprives voters of genuinely informed choice."

Most recently, SB 212 (Allen) of 2019 would have permitted a city, county, or an educational district, as specified and subject to voter approval, to conduct a local election using RCV, as specified. SB 212 was vetoed by Governor Newsom. In his veto message, Governor Newsom stated, "Ranked choice is an experiment that has been tried in several charter cities in California. Where it has been implemented, I am concerned that it has often led to voter confusion, and that the promise that ranked choice voting leads to greater democracy is not necessarily fulfilled. The state would benefit from learning more from charter cities who use ranked choice voting before broadly expanding the system."

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

350 Humboldt Grassroots Climate Action
ACLU California Action
Alameda County Democratic Party
Albany City Council
Asian Americans Advancing Justice-California
Bay Rising
Berkeley City Council
California Clean Money Campaign
California Common Cause
Californians for Electoral Reform
CalRCV Coalition
Campaign Legal Center
City Clerks Association of California
Eureka City Council
FairVote Action
Green Party of Santa Clara County
Independent Voter Project
League of Women Voters of California
Libby Schaaf, Mayor of Oakland
Oakland City Council
Peace and Freedom Party of California
Rank the Vote
RepresentUs
San Francisco Democratic Party
Unite America
Voices for Progress

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