

HOUSE BILL REPORT

HB 1413

As Reported by House Committee On: Government Operations & Elections

Title: An act relating to establishing a voting rights act to promote equal voting opportunity in certain political subdivisions by authorizing district-based elections, requiring redistricting and new elections in certain circumstances, and establishing a cause of action to redress lack of voter opportunity.

Brief Description: Enacting the Washington voting rights act of 2013.

Sponsors: Representatives Moscoso, Hunt, Santos, Lias, Ryu, Fey, Upthegrove, Dunshee, Tarleton, Pedersen, Bergquist, Hudgins, McCoy, Maxwell, Cody, Jinkins, Appleton, Sawyer, Roberts, Fitzgibbon, Habib, Reykdal, Pollet, Ormsby, Green, Kagi, Freeman, Riccelli and Farrell.

Brief History:

Committee Activity:

Government Operations & Elections: 1/30/13, 2/12/13 [DPS].

Brief Summary of Substitute Bill

- Establishes a voting rights act to promote equal voting opportunity in certain political subdivisions.
- Authorizes political subdivisions who already conduct district-based elections, as well as those with at-large election systems, to change their election system if necessary to remedy a potential violation.
- Prohibits election districts that are drawn or maintained in a manner that denies an equal opportunity for members of a race, color, or language group to elect candidates of their choice or influence the outcome of an election.
- Establishes a cause of action to redress violations.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunt, Chair; Bergquist, Vice Chair; Carlyle, Fitzgibbon, Orwall and Van De Wege.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 5 members: Representatives Buys, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Alexander, Kristiansen and Manweller.

Staff: Jasmine Vasavada (786-7301).

Background:

Federal Voting Rights Act.

The Voting Rights Act of 1965 (Federal VRA) prohibits discrimination in elections. The Federal VRA contains several sections, some of which affect all states and localities. All states and localities are prohibited from using election practices or procedures that impair the ability of a race or language minority group to elect its candidate of choice on an equal basis with other voters. In certain parts of the country, not including Washington, state and local governments must also receive advance clearance from the federal government for any changes in voting practices or regulations. States and political subdivisions are prohibited from conditioning the right to vote on the voter's ability to pass a literacy, subject matter, or morals test. Private citizens, as well as the United States Attorney General, may sue to enforce the Federal VRA.

California Voting Rights Act.

The California Voting Rights Act of 2001 prohibits at-large methods of election that impair the ability of a protected class to elect candidates of its choice or to influence the outcome of an election. A violation is established by showing that racially polarized voting occurs in elections for members of the governing body. The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, but may be a factor in determining an appropriate remedy. A violation may be demonstrated without proving an intent on the part of voters or elected officials to discriminate against a protected class.

Summary of Substitute Bill:

The Voting Rights Act (Act) prohibits elections from being imposed or applied in a manner that denies a protected class an equal opportunity: (1) to elect candidates of its choice; or (2) to influence the outcome of an election. "Protected class" means a class of voters who are members of a race, color, or language minority group.

The Act applies to elections held to elect members of the governing body of certain political subdivisions, defined to include:

- cities and towns with populations of 1,000 or more;
- school districts with K-12 full-time equivalent enrollments of 250 or more; and
- counties, ports, public utility districts, and fire protection districts.

Drawing New Districts.

Political subdivisions are authorized to change their election systems to avoid a potential violation of the Act. This includes changing from at-large elections to district-based

elections, or changing from district-based elections to a different district-based election plan. "District-based elections" mean systems where the candidate must reside within an election district that is a divisible part of the political subdivision, and only voters residing within that district are eligible to vote, or systems that combine aspects of at-large and district-based elections.

In implementing a district-based election system, the districts may not be drawn in a manner that denies a protected class an equal opportunity to elect candidates of its choice or influence election outcomes. Redistricting must occur:

- within 45 days of invoking authority under the Act to switch to a district-based election; and
- periodically, pursuant to a plan developed no later than eight months after receipt of federal census data.

After a political subdivision invokes its authority to switch to a district-based election system or redistricts pursuant to the Act, it must order new elections for the next date authorized by state law for conducting elections. The districting plan must be adopted with full and reasonable public notice, including at least one public hearing held at least one week before the plan's adoption.

Districts must:

- be as nearly equal in population as possible;
- be as compact as possible;
- be geographically contiguous;
- coincide with existing natural boundaries, to the extent feasible; and
- preserve existing communities of related and mutual interest, to the extent possible.

Demonstrating a Violation.

A voter who is a member of a protected class and who resides in a political subdivision where there is a violation may bring an action in superior court to stop the violation. A violation is shown by demonstrating that the elections in the political subdivision have polarized voting and members of a protected class lack an equal opportunity to elect candidates of their choice or to influence election outcomes. "Polarized voting" means "voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate." It is not necessary to prove that there was an intent to discriminate against a protected class.

An action may be brought by:

- an individual voter who is a member of a protected class, without filing a class action; or
- members of different protected classes, demonstrating that their combined voting preferences as a group are different from the rest of the electorate.

To find polarized voting, a court must:

- analyze elections for members of the governing body, or elections incorporating other electoral choices;

- examine results of elections in which at least one candidate is a member of a protected class, or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class who are voters; and
- consider only elections conducted prior to the filing of an action.

A court may find a violation resulting from polarized voting even where protected class members are not "geographically compact or concentrated so as to constitute a majority of the proposed or existing district-based election district." A violation may be found even where a candidate who is a member of a protected class was previously elected in the district.

Remedies.

A court may order appropriate remedies. The court may issue a temporary restraining order or preliminary injunction, and may not require the plaintiff to post bond or any other security. The court may also impose a district-based election district that is tailored to remedy the violation. In requiring redistricting:

- The court may appoint an individual or panel to draw the district lines, or direct the affected jurisdiction to do so.
- The new district-based election districts must be geographically compact.
- If the next election date is 90 or more days after the court's ruling, the court shall order new elections for the next date authorized by state law.
- If the next election is less than 90 days after the court's ruling, the election will occur as scheduled.

Procedures for an action in superior court are established:

- Venue: The action may be filed in the superior court of the county in which the political subdivision is located; if the action is against a county, it may instead be filed in the superior court of either of the two nearest judicial districts.
- Notice: The plaintiff must first notify the political subdivision of its intent to challenge the electoral system. If the political subdivision does not invoke its authority to redistrict within 45 days of this notice, the plaintiff may file an action.
- Timeline: Trial shall be set for no later than 180 days after the filing of a complaint, with a corresponding discovery and motions calendar.
- Statute of Limitations: A cause of action arises every time there is an election pursuant to a districting method that is the subject of the court action.
- Fee and Cost Recovery: A court shall allow the prevailing plaintiff to recover reasonable attorneys' fees, all non-attorney fee costs, and all reasonable expert witness fees.

Substitute Bill Compared to Original Bill:

In the original bill, political subdivisions who conduct at-large elections were authorized to change their election system if necessary to remedy a potential violation. In the substitute bill, this authority is expanded to permit political subdivisions who already conduct district-based elections to change their election system if necessary to remedy a potential violation. Similarly, a plaintiff is now considered a prevailing party, not only where, to comply with the Act after an action is filed, a political subdivision with an at-large election system adopts or implements a district-based election system, but also where a political subdivision with a district-based election system changes its system by redistricting.

A change is made to the description of the circumstances when polarized voting may be found. The election of candidates who are members of a protected class prior to the filing of the action does not preclude a finding of polarized voting. In the original bill, a finding of polarized voting was not precluded where additionally, the candidate was preferred by voters of the protected class.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Communities of interest should have representation in a democratic government. Voting rights does not just mean being allowed to fill out a ballot; it means that a ballot matters and elected officials are accountable to you. Some at-large districts fail to accomplish this. Ensuring the entirety of a city is represented and not just one neighborhood is good government.

This bill brings people together to talk when there is evidence of polarized voting, to collaborate, and to negotiate without having to go to court to prove something. There is a 45-day notice provision. It is a locally-based solution to a persistent problem in parts of our state, to ensure communities have a fair chance of electing candidates of their choice. It brings governments closer to the people so they can elect candidates who care about their issues, even if it is just getting potholes fixed. There are places in this state where a majority of council members live in a small circle close to the center of town and vast areas are unrepresented.

Extensive statistical analysis has shown that certain communities do not have a chance of electing the candidate of their choice. Yakima is being sued under the Federal Voting Rights Act (Federal VRA); a goal of this bill is to allow governments to avoid that problem. A clear timeline is laid out, and everyone benefits. No particular solution is prescribed, no one is removed from office, and it is not directed to any particular community or bloc. It does not mandate district-based elections. In a time when the Federal VRA is under attack, this legislation opens the door to participation in the process for a large number of people who are excluded. In some communities, Latinos are in the majority and represented in every aspect of the economy, from agriculture to restaurants, schools, banks, and law enforcement, except political office. This equates to Latinos not being able to fully participate in all aspects of the state's democracy.

(With concerns) It would be preferable if the Legislature set up a system to address lack of voter opportunity in a different way. In 1994 the Legislature created more at-large districts in

cities. It might make sense to look at a uniform system for cities. Awarding attorneys' fees to the prevailing party means that there could be a significant fiscal impact.

(Opposed) School districts currently have a mix of election systems, some all at-large, some all district-based, some a blend. There is often a move to at-large election districts because it makes it easier to make sure candidates are actually running. This bill could limit local districts' choice in determining what works best for them, and could prevent the ability to have a full board of qualified candidates. There is a Federal VRA that can be used to curb election abuses.

Litigation is a blunt-force object, not surgical. In California, school districts have been forced to pay millions of dollars to plaintiffs' lawyers. This bill is vague, it will lead to litigation, and at a minimum there should be clear standards of review and limitations on the availability of injunctive relief. Unlike California, where people were not getting the relief they needed through the courts, Washington does not have a lengthy history of the type of abuses this bill is intended to curb. The Yakima case is almost the first such challenge to elections that does not involve felon disenfranchisement in our state. Six weeks to begin redistricting is not enough time. Counties who already have district voting do not have authority to make changes to avoid lawsuits. Section 4 does not authorize political subdivisions with district-based elections to redistrict.

Persons Testifying: (In support) Representative Moscoso, prime sponsor; Shankar Narayan, American Civil Liberties Union of Washington; Kathy Sakahara, League of Women Voters of Washington; Lua Pritchard; Claudia Kauffman; Emily Gonzales; Lauren McCullough, The Washington Bus; Claudia D'Allegrì, Latino Civic Alliance; Nicolas E. Ceil; Miguel Perez Gibson, Progreso Latino; Elizabeth Lara; Toby Guevin, One America; Cassandra Arellano; and David Perez, Korematsu Center.

(With concerns) Victoria Lincoln, Association of Washington Cities.

(Opposed) Dan Steele, Washington Association of School Administrators; Trent England, Freedom Foundation; and Michael Schechter, Foster Pepper.

Persons Signed In To Testify But Not Testifying: None.