
Government Operations & Elections Committee

HB 1413

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, Jenkins, Appleton, Sawyer, Roberts, Fitzgibbon, Habib, Reykdal, Pollet, Ormsby, Green, Kagi, Freeman, Riccelli and Farrell.

Brief Summary of Bill

- Establishes a voting rights act to promote equal voting opportunity in certain political subdivisions.
- Authorizes certain political subdivisions to switch from at-large elections to district-based elections.
- 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.

Hearing Date: 1/30/13

Staff: Jasmine Vasavada (786-7301).

Background:

Federal Voting Rights Act

The Voting Rights Act of 1965 (VRA) prohibits discrimination in elections. The VRA contains several sections, some of which affect all states and localities and some of which do not. All states and localities are prohibited from using election practices or procedures that impair the

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.

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 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. All states and localities must also allow voters who need assistance because of a disability to receive assistance by someone of the voter's choice. Private citizens, as well as the United States Attorney General, may sue to enforce the 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. Proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required.

Summary of 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 one thousand 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.

These political subdivisions are authorized to switch from at-large elections to district-based elections. 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 state court to stop the violation.

Switch to district-based elections

Political subdivisions covered by the Act are authorized to switch from an at-large election system to district-based elections. District-based elections are 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. In switching to district-based elections, 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:

1. within 45 days of invoking authority under the Act to switch to a district-based election; and
2. 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, 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 at least one week before the plan's adoption.

Redistricting principles

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 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 election district-based election district." A violation may be found even where a candidate who is a member of a protected class and who was preferred by voters of the 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 prevailing plaintiff shall recover reasonable attorneys' fees, all non-attorney fee costs, and all reasonable expert witness fees.

Appropriation: None.

Fiscal Note: Requested 1/25/13.

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