

SENATE BILL REPORT

SHB 1413

As Reported by Senate Committee On:
Governmental Operations, February 27, 2014

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: House Committee on Government Operations & Elections (originally sponsored by Representatives Moscoso, S. 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: Passed House: 3/07/13, 53-44; 1/27/14, 53-43.

Committee Activity: Governmental Operations: 3/26/13, 2/20/14, 2/27/14 [DPA].

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Majority Report: Do pass as amended.

Signed by Senators Roach, Chair; Benton, Vice Chair; Hasegawa, Ranking Member; Conway and McCoy.

Staff: Karen Epps (786-7424)

Background: The Voting Rights Act of 1965 (VRA) prohibits discrimination in elections. The 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 VRA.

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.

Summary of Bill (Recommended Amendments): Establishes the state Voting Rights Act (Act), which prohibits at-large and district-based elections from being imposed or applied in a manner that denies a protected class an equal opportunity to elect candidates of its choice; or 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, including the following:

- cities and towns with populations of 1000 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.

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 means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district. If a plaintiff's action includes a compliance plan and the political subdivision adopts the plan within 90 days of service of the action, the plaintiff cannot bring another action against the political subdivision for three years after filing the complaint.

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 90 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
- not deny an equal opportunity for a protected class to elect candidates of its choice or an equal opportunity to influence the outcome of an election.

If a fire protection district has commissioner districts, the commissioner districts must be drawn in compliance with the Act. The boundaries of public utility district commissioner districts may be changed by court order under the Act.

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 polarized voting and members of a protected class lack an equal opportunity to elect candidates of their choice or to influence election outcomes. It is not necessary to prove that there was an intent to discriminate against a protected class.

An action may be brought by the following:

- 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, 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. Mandated redistricting requirements include the following:

- 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 must 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; and
- all of the positions that were elected pursuant to the at-large or district-based election that was the subject of the action filed under the Act and have at least two years remaining in their terms of office are subject to new elections.

Procedures for an action in superior court are established as such:

- 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 90 days of this notice, the plaintiff may file an action.
- Timeline – trial must be set for no later than one year after the filing of a complaint, with a corresponding discovery and motions calendar.

- Statute of Limitation – 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 must allow the prevailing plaintiff to recover reasonable attorneys' fees, all non-attorney fee costs, and all reasonable expert witness fees.

EFFECT OF CHANGES MADE BY GOVERNMENTAL OPERATIONS COMMITTEE (Recommended Amendments): Requires a trial court to set a trial date no later than one year, rather than 180 days, after the filing of a complaint. Requires that a political subdivision that invokes its authority to implement a district-based election system must district its governmental unit within 90 days, rather than 45 days. Provides the political subdivision with 90 days to invoke its authority to implement a district-based election system, rather than 45 days, prior to the plaintiff filing an action. Provides that if a plaintiff's action includes a compliance plan and the political subdivision adopts the plan within 90 days of service of the action, the plaintiff cannot bring another action against the political subdivision for three years after filing the complaint.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill:

Testimony From 2013 Regular Session.

PRO: This bill provides a process where communities of interest can respectfully petition for a change in the election process when it can be demonstrated that communities or neighborhoods are not able to elect people from their neighborhood. The Federal VRA already creates a possibility of litigation, but this bill avoids that by bringing communities together with the jurisdiction to discuss whether there is a problem and whether it can be worked out without litigation. This bill will not come into play in situations where there are not enough people running for office. For this bill to have an impact, there must be a choice of candidates available to voters. The remedies provided in the Federal VRA are one size fits all and focus on litigation. This bill would allow for local control of election systems, allow a local jurisdiction to craft a local alternative that is unique to their jurisdiction, and focus remedies on mediation and local solutions as opposed to litigation. This bill does not prescribe a particular solution to a local election problem. This bill is designed to tailor a solution that fits that specific jurisdiction. This bill does not require district-based elections to be imposed on a local jurisdiction. There is no new legal exposure for a local jurisdiction under this bill. The California VRA has enabled a much larger number jurisdictions have voluntarily examine and change their election system before being sued. This bill enables a local jurisdiction, upon becoming aware of an election problem, to tailor whatever solution it wants to solve the problem.

CON: School districts have a mix of elections in this state: at-large elections, district-based elections, and a mixture of both. It is a complicated process to make a change from one to

another, but sometimes districts do make changes. Normally, there is a movement to at-large elections because it is easier to ensure that there will be candidates running for the various positions. HB 1413 could limit the actual local district's choice in which type of election method is used and it could limit a school district's ability to have a full compliment of candidates running for positions. The major concern about this bill is that local governments, including school districts, could be held accountable for and sued for circumstances that are beyond their control. Local governments do not decide who runs for office, who registers to vote, who votes in elections, and who they vote for in those elections. There can be election abuses, but the Federal VRA provides recourse for citizens. There are concerns about how this bill will work when there are very few candidates or just one candidate up for the positions. Cities are very concerned about this bill creating a cause of action and the potential for millions of dollars in legal fees and litigation costs for the local governments. Under the California VRA, nearly a dozen local governments were sued and the costs to those local governments was over \$8 million.

Testimony From 2014 Regular Session.

PRO: The issue of fairness in voting is very important. This bill is not about individual bias or voter suppression. This bill does not require the election of candidates of color or ethnicity. This bill is about voting systems that may be systemically unfair. Where such unfair systems exist, the VRA exists, but it provides a very expensive litigation option. This bill provides additional solutions prior to the possibility of court action to allow local jurisdictions to tailor their solutions to unique local conditions without being told what to do by a judge. This bill is intended to be a workable, sensible solution to address unfair electoral systems without involving courts or litigation. This bill does not address voter suppression or gerrymandering. This bill is intended to provide off ramps that get away from litigation. This bill empowers local governments to identify whether their electoral systems are fair and to design electoral systems that work for specific local jurisdictions. This process will improve the effectiveness of local governments by ensuring accountability to the people that they serve. Federal litigation is extremely expensive and time consuming. For jurisdiction sued under the VRA, the costs of going to court could run into massive amounts. Instead of moving straight to litigation, this bill sets up a process by which the issue is brought to the local jurisdiction and provides timelines to address the issue. This process allows a local jurisdiction to use the solution that makes the most sense for the jurisdiction. Every person has the right to have their vote count.

CON: Local jurisdictions are concerned about the bill. Local jurisdictions are having conversations with the proponents and would like to make the bill workable. The goal is to have diverse representation at the local level. Everyone would like diversity that reflects the local community. Local jurisdictions want to encourage involvement in the local governmental process. This bill is a litigation bill in the end. The fiscal note shows an indeterminate impact, but there will be fiscal impacts to local governments. It is difficult to know how many communities will be impacted by this bill and it is difficult to know what the costs will be to that community. The bill sets up a very short amount of time for local jurisdictions to address the issue and to make changes to the electoral system. The bill needs more definitions and clarification to help local jurisdictions better understand what they need to do to address the issue. The bill should include safe-harbor provisions for local jurisdictions when they take action to address the issue.

Persons Testifying:

Persons Testifying From 2013 Regular Session.

PRO: Representative Moscoso, prime sponsor; Toby Guevin, OneAmerica; Shankar Narayan, American Civil Liberties Union of WA.

CON: Dan Steele, WA Assn. of School Administrators; Victoria Lincoln, Assn. of WA Cities.

Persons Testifying From 2014 Regular Session.

PRO: Representative Moscoso, prime sponsor; Shankar Narayan, American Civil Liberties Union of WA; Daniel Dunne, citizen; Emily Murphy, OneAmerica.

CON: Victoria Lincoln, Assn. of WA Cities.