

SENATE BILL REPORT

SB 5473

As of February 22, 2013

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: Senators Nelson, Shin, Ranker, Mullet, Billig, Harper, Kline, Keiser, Hasegawa, Conway, Chase, Kohl-Welles, Cleveland, McAuliffe, Darneille, Rolfes, Schlicher, Murray and Hobbs.

Brief History:

Committee Activity: Governmental Operations: 2/21/13.

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Staff: Karen Epps (786-7424)

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

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.

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 Bill: Establishes the 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, defined to include cities and towns with populations of 1,000 or more, and school districts with K-12 full-time equivalent enrollments of 250 or more.

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 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.

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
- 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.

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. 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, 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 such as:

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

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: PRO: The Act is legislation that respects how important our local governments are to the citizens of the state. It is important that the representation in our local governments reflects the communities. There have been some issues and concerns about polarized voting. This bill would allow those citizens who feel that the districting in their area is polarized to have an action through our state courts. Going through state court should resolve things more expeditiously. The Act will ensure that all communities have a fair chance to elect candidates of their choice in local elections in Washington. For local government to be accountable, all voices need to be heard, but some election systems when combined with polarized voting prevent all neighborhoods from being represented in local government. The challenge is that there are no lines in local elections. Nearly all local elections use at-large elections systems.

This bill provides local governments with the flexibility to fix the issue by allowing them to voluntarily change their voting systems. The Act empowers local government to fix the problem of excluding communities by bringing cases from the federal courts into local superior courts where the cases will move more quickly and be significantly less costly. An example of district-based elections is in the city of Spokane. Spokane has used its districts to guide infrastructure funding throughout the city. The districts are being used to build coalitions so that the people support tax increases or bond measures. When citizens feel that they are not being represented, it breeds cynicism and apathy. Equal access to voting is more than just casting a ballot. It is having a sense as a citizen that your vote has meaning and that your elected officials are accountable to you. Far too many voters feel removed from government. Some local elections do not provide all communities with an equal opportunity to elect candidates of their choice. Polarized voting can be objectively shown. This bill provides local governments with a process of moving toward a remedy, including district-based elections. This bill allows local jurisdictions to fix the problem without going to court. This bill is vital to local communities.

CON: Currently, school districts have a mix of election systems, some at-large, some district-based, and some a hybrid system. School districts already have this authority to go to district-based elections. All school districts can choose to have a district-based, at-large based, or a hybrid and they are doing that. Of school director positions, 59 percent are elected in district-based districts and 41 percent are elected in at-large elections. It can be difficult to find citizens to run for school board positions. Some school districts have drawn districts or set up a hybrid system in an effort to find candidates. The way the bill is drafted, the preferred remedy is to push everything into district-based elections. The 45-day notice is

not enough time and there is no safe harbor for districts that believe they are doing the right thing. The prevailing plaintiff gets attorney fees, but the local jurisdiction does not get attorney fees if they prevail. The cause of action is concerning to cities and towns. Cities and towns will be subjected to litigation under this Act. Some of the issues this bill is trying to address could be done without the threat of litigation. Small and medium cities would not have expertise on how to deal with this litigation.

Persons Testifying: PRO: Senator Nelson, prime sponsor; Toby Guevin, OneAmerica; Jon Snyder, citizen; Kathy Sakahara, League of Women Voters of WA; David Perez, Korematsu Center, Seattle University; Terry Tilton, NW Carpenters.

CON: Marie Sullivan, WA State School Directors Assn.; Victoria Lincoln, Assn. of WA Cities.