
SUBSTITUTE HOUSE BILL 1413

State of Washington

63rd Legislature

2013 Regular Session

By House Government Operations & Elections (originally sponsored by 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)

READ FIRST TIME 02/15/13.

1 AN ACT Relating to establishing a voting rights act to promote
2 equal voting opportunity in certain political subdivisions by
3 authorizing district-based elections, requiring redistricting and new
4 elections in certain circumstances, and establishing a cause of action
5 to redress lack of voter opportunity; amending RCW 36.32.020,
6 54.12.010, and 29A.76.010; adding a new section to chapter 28A.343 RCW;
7 adding a new section to chapter 35.21 RCW; adding a new section to
8 chapter 35A.21 RCW; adding a new section to chapter 52.14 RCW; and
9 adding a new chapter to Title 29A RCW.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 NEW SECTION. **Sec. 1.** This act may be known and cited as the
12 Washington voting rights act of 2013.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply
14 throughout this chapter unless the context clearly requires otherwise.

15 (1) "At-large method of election" means any of the following
16 methods of electing members of the governing body of a political
17 subdivision:

1 (a) One in which the voters of the entire jurisdiction elect the
2 members to the governing body;

3 (b) One in which the candidates are required to reside within given
4 areas of the jurisdiction and the voters of the entire jurisdiction
5 elect the members to the governing body; or

6 (c) One that combines the criteria in (a) and (b) of this
7 subsection.

8 (2) "District-based elections" means a method of electing members
9 to the governing body of a political subdivision in which the candidate
10 must reside within an election district that is a divisible part of the
11 political subdivision and is elected only by voters residing within
12 that election district.

13 (3) "Polarized voting" means voting in which there is a difference
14 in the choice of candidates or other electoral choices that are
15 preferred by voters in a protected class, and in the choice of
16 candidates and electoral choices that are preferred by voters in the
17 rest of the electorate. A plaintiff may establish and a court may find
18 that elections are characterized by polarized voting based on relevant
19 and admissible evidence.

20 (4) "Political subdivision" means any county, city, town, school
21 district, fire protection district, port district, or public utility
22 district.

23 (5) "Protected class" means a class of voters who are members of a
24 race, color, or language minority group.

25 NEW SECTION. **Sec. 3.** (1) At-large elections and district-based
26 elections may not be imposed or applied in a manner that denies a
27 protected class an equal opportunity to elect candidates of its choice
28 or an equal opportunity to influence the outcome of an election.

29 (2) An at-large election district or a district-based election
30 district is in violation of this section, when it is shown that:

31 (a) The elections in the political subdivision exhibit polarized
32 voting; and

33 (b) Members of a protected class do not have an equal opportunity
34 to elect candidates of their choice or an equal opportunity to
35 influence the outcome of an election.

36 (3) The fact that members of a protected class are not
37 geographically compact or concentrated to constitute a majority in a

1 proposed or existing district-based election district shall not
2 preclude a finding of polarized voting that results in an unequal
3 opportunity for a protected class to elect candidates of their choice
4 or influence the outcome of an election.

5 (4) In determining whether there is polarized voting under this
6 section, the court shall analyze elections for members of the governing
7 body of the political subdivision or elections incorporating other
8 electoral choices by the voters of the political subdivision.

9 (5) The court shall determine whether polarized voting has occurred
10 by examining results of elections in which at least one candidate is a
11 member of a protected class or elections involving ballot measures, or
12 other electoral choices that affect the rights and privileges of
13 members of a protected class who are voters of the political
14 subdivision that is the subject of an action filed pursuant to this
15 chapter. Only elections conducted prior to the filing of an action
16 pursuant to this chapter shall be used to establish or rebut the
17 existence of polarized voting that results in an unequal opportunity
18 for a protected class to elect candidates of their choice or influence
19 the outcome of an election.

20 (6) The election of candidates who are members of a protected class
21 and who were elected prior to the filing of an action pursuant to this
22 chapter shall not preclude a finding of polarized voting that results
23 in an unequal opportunity for a protected class to elect candidates of
24 their choice or influence the outcome of an election.

25 (7) Members of different protected classes may file an action
26 jointly pursuant to this chapter if they demonstrate that their
27 combined voting preferences as a group are different from the rest of
28 the electorate and demonstrate that there is polarized voting that
29 results in an unequal opportunity for these protected classes to elect
30 candidates of their choice or influence the outcome of an election.

31 (8) In an action filed pursuant to this section, the trial court
32 shall set a trial to be held no later than one hundred eighty days
33 after the filing of a complaint, and shall set a discovery and motions
34 calendar accordingly.

35 (9) Proof of intent on the part of the voters or elected officials
36 to discriminate against a protected class is not required.

37 (10) For purposes of any applicable statute of limitations, a cause

1 of action under this section arises every time there is an election
2 pursuant to an at-large method of election or a district-based election
3 district that is the subject of an action pursuant to this section.

4 (11) The plaintiff's constitutional right to the secrecy of the
5 plaintiff's vote is preserved and is not waived by the filing of an
6 action pursuant to this section, and is not subject to discovery.

7 (12) In seeking a temporary restraining order or a preliminary
8 injunction, a plaintiff shall not be required to post a bond or any
9 other security in order to secure such equitable relief.

10 NEW SECTION. **Sec. 4.** A political subdivision that conducts an at-
11 large or district-based method of election pursuant to state, county,
12 or local law, is authorized to change its electoral system, including
13 implementing a district-based election system to remedy a potential
14 violation of section 3 of this act. If a political subdivision invokes
15 its authority under this section to implement a district-based election
16 system, the districts shall be drawn in a manner consistent with
17 section 5 of this act.

18 (1) If a political subdivision invokes its authority under this
19 section to implement a district-based election system, the political
20 subdivision must district its governmental unit within forty-five days.
21 Thereafter, it is the responsibility of each political subdivision with
22 a governing body comprised of single-member districts to periodically
23 redistrict its governmental unit, based on population information from
24 the most recent federal decennial census.

25 (2) Within forty-five days after receipt of federal decennial
26 census information applicable to a specific local area, the commission
27 established in RCW 44.05.030 shall forward the census information to
28 each political subdivision that has invoked its authority under this
29 section to implement a district-based election system, or that is
30 charged with redistricting under section 5 of this act.

31 (3) No later than eight months after its receipt of federal
32 decennial census data, the governing body of the political subdivision
33 that invokes its authority under this section to implement a district-
34 based election system, or that is charged with redistricting under
35 section 5 of this act, shall prepare a plan for redistricting its
36 districts.

37 (4) The plan shall be consistent with the following criteria:

1 (a) Each district shall be as nearly equal in population as
2 possible to each and every other such district comprising the political
3 subdivision.

4 (b) Each district shall be as compact as possible.

5 (c) Each district shall consist of geographically contiguous area.

6 (d) To the extent feasible, the district boundaries shall coincide
7 with existing recognized natural boundaries and shall, to the extent
8 possible, preserve existing communities of related and mutual interest.

9 (e) During the adoption of its plan, the political subdivision
10 shall ensure that full and reasonable public notice of its actions is
11 provided. The political subdivision shall hold at least one public
12 hearing on the redistricting plan at least one week before adoption of
13 the plan.

14 (f) District boundaries may not be drawn or maintained in a manner
15 that denies an equal opportunity of a protected class to elect
16 candidates of its choice or an equal opportunity to influence the
17 outcome of an election.

18 (5) After invoking its authority under this section, the political
19 subdivision shall order new elections to be scheduled at the next date
20 authorized by state law for conducting elections. All of the positions
21 that were elected pursuant to the previous electoral system and have at
22 least two years remaining in their terms of office shall be subject to
23 new elections in order to continue their term of office.

24 NEW SECTION. **Sec. 5.** (1) Upon a finding of a violation of section
25 3 of this act, the court shall implement appropriate remedies,
26 including the imposition of a district-based election system, that are
27 tailored to remedy the violation. The court may direct the affected
28 jurisdiction to draw or redraw district boundaries or appoint an
29 individual or panel to draw or redraw district lines. The proposed
30 districts must be approved by the court prior to their implementation.

31 (2) When tailoring a remedy consisting of district-based elections,
32 the court shall implement a district-based election district that is
33 geographically compact. The fact that members of a protected class do
34 not constitute a numerical majority within a proposed district-based
35 election district shall not preclude the implementation of such a
36 district-based election district. If, in tailoring a remedy, the court
37 orders the implementation of a district-based election district where

1 the members of the protected class are not a numerical majority, the
2 court shall do so in a manner that provides the protected class an
3 equal opportunity to elect candidates of their choice or an equal
4 opportunity to influence the outcome of an election.

5 (3) In tailoring a remedy after a finding of a violation of section
6 3 of this act:

7 (a) If the next date authorized by state law for conducting
8 elections occurs ninety days or more after the court's ruling, the
9 court shall order new elections, conducted pursuant to the remedy, to
10 be scheduled at the next date authorized by state law for conducting
11 elections. If a special filing period is required, the county auditor
12 shall establish a five-day filing period at the earliest possible date.

13 (b) If the next election date occurs less than ninety days after
14 the court's ruling, the next election will occur as scheduled and
15 organized.

16 (c) All of the positions that were elected pursuant to the at-large
17 or district-based election system that was the subject of the action
18 filed pursuant to this chapter and have at least two years remaining in
19 their terms of office, including those elected pursuant to (b) of this
20 subsection, shall be subject to new elections, pursuant to the remedy
21 implemented under subsection (1) of this section.

22 (4) State laws or local ordinances requiring cities, towns,
23 counties, and school districts to conduct district-based elections in
24 a primary and at-large elections in the general election do not apply
25 in jurisdictions that implement district-based elections pursuant to
26 section 4 of this act, or in jurisdictions that are required to
27 implement district-based elections, pursuant to subsection (1) of this
28 section, where district-based elections is defined in section 2(2) of
29 this act.

30 NEW SECTION. **Sec. 6.** (1) In any action to enforce this chapter,
31 the court shall allow the prevailing plaintiff or plaintiffs, other
32 than the state or political subdivision thereof, reasonable attorneys'
33 fees, all nonattorney fee costs as defined by RCW 4.84.010, and all
34 reasonable expert witness fees.

35 (2) Prevailing defendants shall not recover an award of fees or
36 costs except pursuant to RCW 4.84.185.

1 (3) A plaintiff shall be deemed to be a prevailing party for
2 purposes of this section if the political subdivision that is the
3 subject of an action filed pursuant to this chapter adopts or
4 implements an election system, such as a district-based election
5 system, after the action is filed that is different from the at-large
6 or district-based election system that is the subject of the action
7 filed.

8 NEW SECTION. **Sec. 7.** Any voter who is a member of a protected
9 class and who resides in a political subdivision where a violation of
10 section 3 of this act is alleged may file an action in the superior
11 court of the county in which the political subdivision is located. If
12 the action is against a county, the action may be filed in the superior
13 court of such county, or in the superior court of either of the two
14 nearest judicial districts as determined pursuant to RCW 36.01.050(2).
15 There is no requirement that an action filed pursuant to this chapter
16 be filed as a class action.

17 NEW SECTION. **Sec. 8.** Prior to filing an action pursuant to this
18 act, a plaintiff shall first notify the political subdivision that the
19 plaintiff intends to challenge the political subdivision's electoral
20 system under this act. If the political subdivision does not invoke
21 its authority under section 4 of this act within forty-five days after
22 receiving notice, a plaintiff may file an action under this act.

23 NEW SECTION. **Sec. 9.** The provisions of this act are not
24 applicable to cities and towns with populations under one thousand or
25 to school districts with K-12 full-time equivalent enrollments of less
26 than two hundred fifty.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 28A.343
28 RCW to read as follows:

29 The school board of directors may authorize a change to a district-
30 based election as defined in section 2(2) of this act, such districts
31 to be drawn in a manner consistent with sections 4 and 5 of this act.
32 The school board of directors shall order new elections to be scheduled
33 at the next date authorized by state law for conducting elections. The

1 staggering of directors' terms shall be accomplished as provided in RCW
2 28A.343.030 and 28A.343.620 through 28A.343.650.

3 **Sec. 11.** RCW 36.32.020 and 1982 c 226 s 4 are each amended to read
4 as follows:

5 The board of county commissioners of each county shall divide their
6 county into three commissioner districts so that each district shall
7 comprise as nearly as possible one-third of the population of the
8 county: PROVIDED, That the territory comprised in any voting precincts
9 of such districts shall remain compact, and shall not be divided by the
10 lines of said districts.

11 However, the commissioners of any county composed entirely of
12 islands and with a population of less than thirty-five thousand may
13 divide their county into three commissioner districts without regard to
14 population, except that if any single island is included in more than
15 one district, the districts on such island shall comprise, as nearly as
16 possible, equal populations.

17 Except where necessary to comply with a court order issued pursuant
18 to sections 3 and 5 of this act, the lines of the districts shall not
19 be changed (~~often~~) more often than once in four years and only when
20 a full board of commissioners is present. The districts shall be
21 designated as districts numbered one, two and three.

22 NEW SECTION. **Sec. 12.** A new section is added to chapter 35.21 RCW
23 to read as follows:

24 The legislative authority of a city or town may authorize a change
25 to its electoral system, including the implementation of a district-
26 based election system as defined in section 2(2) of this act, to remedy
27 a potential violation of section 3 of this act. If the legislative
28 authority of a city or town invokes its authority under this section to
29 implement a district-based election system, the districts shall be
30 drawn in a manner consistent with sections 4 and 5 of this act. The
31 legislative authority of a city or town shall order new elections to be
32 scheduled at the next date authorized by state law for conducting
33 elections. All of the positions that were elected pursuant to the
34 previous method of election and have at least two years remaining in
35 their terms of office shall be subject to new elections in order to
36 continue their terms of office.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 35A.21
2 RCW to read as follows:

3 The legislative authority of a code city or town may authorize a
4 change to its electoral system, including the implementation of a
5 district-based election system as defined in section 2(2) of this act,
6 to remedy a potential violation of section 3 of this act. If the
7 legislative authority of a code city or town invokes its authority
8 under this section to implement a district-based election system, the
9 districts shall be drawn in a manner consistent with sections 4 and 5
10 of this act. The legislative authority of a code city or town shall
11 order new elections to be scheduled at the next date authorized by
12 state law for conducting elections. All of the positions that were
13 elected pursuant to the previous method of election and have at least
14 two years remaining in their terms of office shall be subject to new
15 elections in order to continue their terms of office.

16 NEW SECTION. **Sec. 14.** A new section is added to chapter 52.14 RCW
17 to read as follows:

18 Where the board of fire commissioners of a fire protection district
19 exercises its authority pursuant to RCW 52.14.013 to create
20 commissioner districts, such districts shall be drawn in a manner
21 consistent with section 3(1) of this act.

22 **Sec. 15.** RCW 54.12.010 and 2004 c 113 s 1 are each amended to read
23 as follows:

24 A public utility district that is created as provided in RCW
25 54.08.010 shall be a municipal corporation of the state of Washington,
26 and the name of such public utility district shall be Public Utility
27 District No. of County.

28 The powers of the public utility district shall be exercised
29 through a commission consisting of three members in three commissioner
30 districts, and five members in five commissioner districts.

31 (1) If the public utility district is countywide and the county has
32 three county legislative authority districts, then, at the first
33 election of commissioners and until any change is made in the
34 boundaries of public utility district commissioner districts, one
35 public utility district commissioner shall be chosen from each of the
36 three county legislative authority districts.

1 (2) If the public utility district comprises only a portion of the
2 county, with boundaries established in accordance with chapter 54.08
3 RCW, or if the public utility district is countywide and the county
4 does not have three county legislative authority districts, three
5 public utility district commissioner districts, numbered consecutively,
6 each with approximately equal population and following precinct lines,
7 as far as practicable, shall be described in the petition for the
8 formation of the public utility district, subject to appropriate change
9 by the county legislative authority if and when it changes the
10 boundaries of the proposed public utility district. One commissioner
11 shall be elected as a commissioner of each of the public utility
12 district commissioner districts.

13 (3) Only a registered voter who resides in a commissioner district
14 may be a candidate for, or hold office as, a commissioner of the
15 commissioner district. Only voters of a commissioner district may vote
16 at a primary to nominate candidates for a commissioner of the
17 commissioner district. Voters of the entire public utility district
18 may vote at a general election to elect a person as a commissioner of
19 the commissioner district.

20 (4) The term of office of each public utility district commissioner
21 other than the commissioners at large shall be six years, and the term
22 of each commissioner at large shall be four years. Each term shall be
23 computed in accordance with RCW 29A.20.040 following the commissioner's
24 election. All public utility district commissioners shall hold office
25 until their successors shall have been elected and have qualified and
26 assume office in accordance with RCW 29A.20.040.

27 (5) A vacancy in the office of public utility district commissioner
28 shall occur as provided in chapter 42.12 RCW or by nonattendance at
29 meetings of the public utility district commission for a period of
30 sixty days unless excused by the public utility district commission.
31 Vacancies on a board of public utility district commissioners shall be
32 filled as provided in chapter 42.12 RCW.

33 (6) The boundaries of the public utility district commissioner
34 districts may be changed only by the public utility district commission
35 or by a court order issued pursuant to section 5 of this act, and shall
36 be examined every ten years to determine substantial equality of
37 population in accordance with chapter 29A.76 RCW. Except as provided
38 in this section, section 5 of this act, or RCW 54.04.039, the

1 boundaries shall not be changed oftener than once in four years.
2 Boundaries may only be changed when all members of the commission are
3 present. Whenever territory is added to a public utility district
4 under RCW 54.04.035, or added or withdrawn under RCW 54.04.039, the
5 boundaries of the public utility commissioner districts shall be
6 changed to include the additional or exclude the withdrawn territory.
7 Unless the boundaries are changed pursuant to RCW 54.04.039, the
8 proposed change of the boundaries of the public utility district
9 commissioner district must be made by resolution and after public
10 hearing. Notice of the time of the public hearing shall be published
11 for two weeks before the hearing. Upon a referendum petition signed by
12 ten percent of the qualified voters of the public utility district
13 being filed with the county auditor, the county legislative authority
14 shall submit the proposed change of boundaries to the voters of the
15 public utility district for their approval or rejection. The petition
16 must be filed within ninety days after the adoption of resolution of
17 the proposed action. The validity of the petition is governed by the
18 provisions of chapter 54.08 RCW.

19 **Sec. 16.** RCW 29A.76.010 and 2011 c 349 s 26 are each amended to
20 read as follows:

21 (1) It is the responsibility of each county, municipal corporation,
22 and special purpose district with a governing body comprised of
23 internal director, council, or commissioner districts not based on
24 statutorily required land ownership criteria to periodically redistrict
25 its governmental unit, based on population information from the most
26 recent federal decennial census.

27 (2) Within forty-five days after receipt of federal decennial
28 census information applicable to a specific local area, the commission
29 established in RCW 44.05.030 shall forward the census information to
30 each municipal corporation, county, and district charged with
31 redistricting under this section.

32 (3) No later than eight months after its receipt of federal
33 decennial census data, the governing body of the municipal corporation,
34 county, or district shall prepare a plan for redistricting its internal
35 or director districts.

36 (4) The plan shall be consistent with the following criteria:

1 (a) Each internal director, council, or commissioner district shall
2 be as nearly equal in population as possible to each and every other
3 such district comprising the municipal corporation, county, or special
4 purpose district.

5 (b) Each district shall be as compact as possible.

6 (c) Each district shall consist of geographically contiguous area.

7 (d) Population data may not be used for purposes of favoring or
8 disfavoring any racial group or political party, except to the extent
9 necessary to ensure compliance with this act.

10 (e) To the extent feasible and if not inconsistent with the basic
11 enabling legislation for the municipal corporation, county, or
12 district, the district boundaries shall coincide with existing
13 recognized natural boundaries and shall, to the extent possible,
14 preserve existing communities of related and mutual interest.

15 (5) During the adoption of its plan, the municipal corporation,
16 county, or district shall ensure that full and reasonable public notice
17 of its actions is provided. The municipal corporation, county, or
18 district shall hold at least one public hearing on the redistricting
19 plan at least one week before adoption of the plan.

20 (6)(a) Any registered voter residing in an area affected by the
21 redistricting plan may request review of the adopted local plan by the
22 superior court of the county in which he or she resides, within fifteen
23 days of the plan's adoption. Any request for review must specify the
24 reason or reasons alleged why the local plan is not consistent with the
25 applicable redistricting criteria. The municipal corporation, county,
26 or district may be joined as respondent. The superior court shall
27 thereupon review the challenged plan for compliance with the applicable
28 redistricting criteria set out in subsection (4) of this section.

29 (b) If the superior court finds the plan to be consistent with the
30 requirements of this section, the plan shall take effect immediately.

31 (c) If the superior court determines the plan does not meet the
32 requirements of this section, in whole or in part, it shall remand the
33 plan for further or corrective action within a specified and reasonable
34 time period.

35 (d) If the superior court finds that any request for review is
36 frivolous or has been filed solely for purposes of harassment or delay,
37 it may impose appropriate sanctions on the party requesting review,

1 including payment of attorneys' fees and costs to the respondent
2 municipal corporation, county, or district.

3 NEW SECTION. **Sec. 17.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 18.** Sections 1 through 9 of this act constitute
8 a new chapter in Title 29A RCW.

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