
HOUSE BILL 1413

State of Washington

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2013 Regular Session

By Representatives Moscoso, Hunt, Santos, Liias, 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 01/25/13. Referred to Committee on Government Operations & Elections.

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 are preferred by voters of the protected class and who were
22 elected prior to the filing of this action pursuant to this chapter, as
23 determined by an analysis of voting behavior, shall not preclude a
24 finding of polarized voting that results in an unequal opportunity for
25 a protected class to elect candidates of their choice or influence the
26 outcome of an election.

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

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

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

1 (10) For purposes of any applicable statute of limitations, a cause
2 of action under this section arises every time there is an election
3 pursuant to an at-large method of election or a district-based election
4 district that is the subject of an action pursuant to this section.

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

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

11 NEW SECTION. **Sec. 4.** A political subdivision that conducts an at-
12 large method of election pursuant to state, county, or local law, is
13 authorized to change its electoral system to a district-based method of
14 election. The districts shall be drawn in a manner consistent with
15 section 5 of this act.

16 (1) It is the responsibility of each political subdivision to
17 district its governmental unit forty-five days after invoking its
18 authority under this section. Thereafter, it is the responsibility of
19 each political subdivision with a governing body comprised of single-
20 member districts to periodically redistrict its governmental unit,
21 based on population information from the most recent federal decennial
22 census.

23 (2) Within forty-five days after receipt of federal decennial
24 census information applicable to a specific local area, the commission
25 established in RCW 44.05.030 shall forward the census information to
26 each political subdivision charged with redistricting under this act.

27 (3) No later than eight months after its receipt of federal
28 decennial census data, the governing body of the political subdivision
29 shall prepare a plan for redistricting its districts.

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

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

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

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

36 (d) To the extent feasible, the district boundaries shall coincide

1 with existing recognized natural boundaries and shall, to the extent
2 possible, preserve existing communities of related and mutual interest.

3 (e) During the adoption of its plan, the political subdivision
4 shall ensure that full and reasonable public notice of its actions is
5 provided. The political subdivision shall hold at least one public
6 hearing on the redistricting plan at least one week before adoption of
7 the plan.

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

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

18 NEW SECTION. **Sec. 5.** (1) Upon a finding of a violation of section
19 3 of this act, the court shall implement appropriate remedies,
20 including the imposition of a district-based election district that is
21 tailored to remedy the violation. The court may direct the affected
22 jurisdiction to draw or redraw district boundaries or appoint an
23 individual or panel to draw or redraw district lines. The proposed
24 districts must be approved by the court prior to their implementation.

25 (2) In tailoring a remedy consisting of district-based elections,
26 the court shall implement a district-based election district that is
27 geographically compact. The fact that members of a protected class do
28 not constitute a numerical majority within a proposed district-based
29 election district shall not preclude the implementation of such a
30 district-based election district. If, in tailoring a remedy, the court
31 orders the implementation of a district-based election district where
32 the members of the protected class are not a numerical majority, the
33 court shall do so in a manner that provides the protected class an
34 equal opportunity to elect candidates of their choice or an equal
35 opportunity to influence the outcome of an election.

36 (3) In tailoring a remedy after a finding of a violation of section
37 3 of this act:

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

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

10 (c) All of the positions that were elected pursuant to the at-large
11 or district-based election district that was the subject of the action
12 filed pursuant to this chapter and have at least two years remaining in
13 their terms of office, including those elected pursuant to (b) of this
14 subsection, shall be subject to new elections, pursuant to the remedy
15 implemented under subsection (1) of this section.

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

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

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

31 (3) A plaintiff shall be deemed to be a prevailing party for
32 purposes of this section if the political subdivision that is the
33 subject of an action filed pursuant to this chapter adopts or
34 implements a district-based election district after the action is filed
35 that is different from the district-based election district that is the
36 subject of the action filed.

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

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

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

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

22 The school board of directors may authorize a change to a district-
23 based election as defined in section 2(2) of this act, such districts
24 to be drawn in a manner consistent with sections 4 and 5 of this act.
25 The school board of directors shall order new elections to be scheduled
26 at the next date authorized by state law for conducting elections. The
27 staggering of directors' terms shall be accomplished as provided in RCW
28 28A.343.030 and 28A.343.620 through 28A.343.650.

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

31 The board of county commissioners of each county shall divide their
32 county into three commissioner districts so that each district shall
33 comprise as nearly as possible one-third of the population of the

1 county: PROVIDED, That the territory comprised in any voting precincts
2 of such districts shall remain compact, and shall not be divided by the
3 lines of said districts.

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

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

15 NEW SECTION. Sec. 12. A new section is added to chapter 35.21 RCW
16 to read as follows:

17 The legislative authority of a city or town may authorize a change
18 to a district-based election as defined in section 2(2) of this act,
19 such districts to be drawn in a manner consistent with sections 4 and
20 5(2) of this act. The legislative authority of a city or town shall
21 order new elections to be scheduled at the next date authorized by
22 state law for conducting elections. All of the positions that were
23 elected pursuant to the previous method of election and have at least
24 two years remaining in their terms of office shall be subject to new
25 elections in order to continue their terms of office.

26 NEW SECTION. Sec. 13. A new section is added to chapter 35A.21
27 RCW to read as follows:

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

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

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

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

9 A public utility district that is created as provided in RCW
10 54.08.010 shall be a municipal corporation of the state of Washington,
11 and the name of such public utility district shall be Public Utility
12 District No. of County.

13 The powers of the public utility district shall be exercised
14 through a commission consisting of three members in three commissioner
15 districts, and five members in five commissioner districts.

16 (1) If the public utility district is countywide and the county has
17 three county legislative authority districts, then, at the first
18 election of commissioners and until any change is made in the
19 boundaries of public utility district commissioner districts, one
20 public utility district commissioner shall be chosen from each of the
21 three county legislative authority districts.

22 (2) If the public utility district comprises only a portion of the
23 county, with boundaries established in accordance with chapter 54.08
24 RCW, or if the public utility district is countywide and the county
25 does not have three county legislative authority districts, three
26 public utility district commissioner districts, numbered consecutively,
27 each with approximately equal population and following precinct lines,
28 as far as practicable, shall be described in the petition for the
29 formation of the public utility district, subject to appropriate change
30 by the county legislative authority if and when it changes the
31 boundaries of the proposed public utility district. One commissioner
32 shall be elected as a commissioner of each of the public utility
33 district commissioner districts.

34 (3) Only a registered voter who resides in a commissioner district
35 may be a candidate for, or hold office as, a commissioner of the
36 commissioner district. Only voters of a commissioner district may vote
37 at a primary to nominate candidates for a commissioner of the

1 commissioner district. Voters of the entire public utility district
2 may vote at a general election to elect a person as a commissioner of
3 the commissioner district.

4 (4) The term of office of each public utility district commissioner
5 other than the commissioners at large shall be six years, and the term
6 of each commissioner at large shall be four years. Each term shall be
7 computed in accordance with RCW 29A.20.040 following the commissioner's
8 election. All public utility district commissioners shall hold office
9 until their successors shall have been elected and have qualified and
10 assume office in accordance with RCW 29A.20.040.

11 (5) A vacancy in the office of public utility district commissioner
12 shall occur as provided in chapter 42.12 RCW or by nonattendance at
13 meetings of the public utility district commission for a period of
14 sixty days unless excused by the public utility district commission.
15 Vacancies on a board of public utility district commissioners shall be
16 filled as provided in chapter 42.12 RCW.

17 (6) The boundaries of the public utility district commissioner
18 districts may be changed only by the public utility district commission
19 or by a court order issued pursuant to section 5 of this act, and shall
20 be examined every ten years to determine substantial equality of
21 population in accordance with chapter 29A.76 RCW. Except as provided
22 in this section, section 5 of this act, or RCW 54.04.039, the
23 boundaries shall not be changed oftener than once in four years.
24 Boundaries may only be changed when all members of the commission are
25 present. Whenever territory is added to a public utility district
26 under RCW 54.04.035, or added or withdrawn under RCW 54.04.039, the
27 boundaries of the public utility commissioner districts shall be
28 changed to include the additional or exclude the withdrawn territory.
29 Unless the boundaries are changed pursuant to RCW 54.04.039, the
30 proposed change of the boundaries of the public utility district
31 commissioner district must be made by resolution and after public
32 hearing. Notice of the time of the public hearing shall be published
33 for two weeks before the hearing. Upon a referendum petition signed by
34 ten percent of the qualified voters of the public utility district
35 being filed with the county auditor, the county legislative authority
36 shall submit the proposed change of boundaries to the voters of the
37 public utility district for their approval or rejection. The petition

1 must be filed within ninety days after the adoption of resolution of
2 the proposed action. The validity of the petition is governed by the
3 provisions of chapter 54.08 RCW.

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

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

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

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

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

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

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

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

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

31 (e) To the extent feasible and if not inconsistent with the basic
32 enabling legislation for the municipal corporation, county, or
33 district, the district boundaries shall coincide with existing
34 recognized natural boundaries and shall, to the extent possible,
35 preserve existing communities of related and mutual interest.

36 (5) During the adoption of its plan, the municipal corporation,
37 county, or district shall ensure that full and reasonable public notice

1 of its actions is provided. The municipal corporation, county, or
2 district shall hold at least one public hearing on the redistricting
3 plan at least one week before adoption of the plan.

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

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

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

19 (d) If the superior court finds that any request for review is
20 frivolous or has been filed solely for purposes of harassment or delay,
21 it may impose appropriate sanctions on the party requesting review,
22 including payment of attorneys' fees and costs to the respondent
23 municipal corporation, county, or district.

24 NEW SECTION. **Sec. 17.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

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

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