Washington Voting Rights Act draws contentious testimony: Minority representation versus at-large elections

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OLYMPIA — A group of House Democrats re-introduced a bill this session that would affect how local governments run their elections in certain political subdivisions.

Known as the Washington Voting Rights Act, House Bill 1413 is intended to address underrepresentation of minority groups in local government. The bill prohibits unfair elections in which members of a protected class (members of a racial, ethnic or language minority) are unable to influence an election and/or receive adequate representation in local political subdivisions.

To affect how elections are operated in local government districts, persons of a minority group must provide evidence that polarized voting has occurred and that members of a protected class, while maybe a smaller percentage of the total electorate, do not have an equal opportunity to influence election results.

Polarized voting may be observed when there is a disparity between the candidate chosen by voters of a protected class or by those of the remainder of the electorate.

To remedy the issue, under the proposed legislation, political subdivisions face two options.

They can transition from at-large to district-based elections or, if they do not make the switch, they risk being sued by members of the protected class that have notified the political subdivision of their grievance.

At-large elections typically occur when voters of a jurisdiction vote for candidates living within that jurisdiction.

Supporters of the bill take issue with these types of elections because they say it limits the minority representation because it does not require candidates to live within geographic areas where the majority of civilians are of a protected class.

District-based elections would require that political subdivisions be divided into different geographic districts that each contains majorities of members of different protected classes.
By doing this, supporters said, minorities will have a greater chance of influencing local elections.

Political subdivisions include any city, county, fire protection district, school district, public utility district or port district.

Mountlake Terrace Rep. Luis Moscoso (D-1st District) sponsored HB 1413 because he believes there has been mounting evidence of polarized voting in Washington during recent years.

“It’s a rare occasion when you have legislation like this that enhances and augments the democratic process,” he said. “It’s an honor to bring this bill forward.”

There are several concerns with the legislation. Some say the bill only offers a greater opportunity for litigation, costing the districts and, thus, taxpayers more money.

Trent England, executive vice president of the Freedom Foundation – a conservative, Washington-based educational research organization – said: “The only thing you can be sure that this legislation will do is create lots and lots of lawsuits.”

Countering the argument that this bill would enhance the freedom of others to influence elections, England said, “it provides lots of freedom for action for attorneys and for judges to tie up local jurisdictions in court and extract money from them.”

Moscoso disagrees, claiming that the bill is not an open invitation for more lawsuits but that “it brings people together to talk about things. It does not initiate litigation,” he said.

Supporters, such as Toby Guevin of OneAmerica, reminded skeptics of the bill that litigation would only be brought if, after a county or district had been approached about its violation of the law, the district failed to act on that warning within 45 days. The 45-day window is a provision Guevin said is unprecedented in voting-rights laws throughout the U.S. and is an attempt to create a partnership between citizens and local government, not tension between the two.

Some argue that this so-called attempt to bring citizens and government closer together is just an illusion.

“This is not an opening for dialogue,” said Michael Schechter of Foster Pepper Law Firm.

“Jurisdictions that are served notice have 45 days to do something about it. Basically, begin redistricting or be faced with a lawsuit,” he said.
Matt A. Barreto, associate professor of political science and adjunct professor of law at the University of Washington, disagreed.

"Concerns over the potential costs of the legislation are completely made up," Barreto said.

"The legislation provides an opportunity for jurisdictions to avoid lawsuits altogether with an ‘opt-out’ clause that allows jurisdictions to switch to district-based elections and face zero litigation costs," he said.

A similar law was passed in California in 2002. The major difference with the Washington proposed legislation being that the 45-day time period for review of accusations and violations is not established.

And while supporters see the California law as a great success, others see it as something that may work in California, but not in Washington.

Prior to the 2002 law, California had repeated offenses under the federal Voting Rights Act. Washington has had virtually none, with the exception being the recent lawsuit against the city of Yakima by the American Civil Liberties Union.

The ACLU claims that Yakima City Council elections prevent Latino participation. Although Yakima’s population is 41 percent Latino, no Latino has ever been elected to a city council position.

Sonia Rodriguez True, a Latino, was appointed to the Yakima City Council in 2009 but was defeated in her race to be elected to the position that fall.

Lawsuits concerning violations of the federal or California’s Voting Rights Acts have often carried large litigation costs. In Sanchez vs. the City of Modesto, a California case, the city had to pay $3 million in attorney fees to the defendants. The case as a whole cost upward of $4.5 million.

Some take issue with the assumption that appears to be made that all members of certain protected classes vote the same way. More specifically, the assumption that minorities vote for minority candidates based on the candidate’s race or ethnicity rather than the merits of their candidacy.

In the 2012 presidential election, Barack Obama won the majority of votes from minority groups, but when it comes to local elections, which may not be as highly politicized or partisan, some believe that people vote based on specific issues rather than if a candidate can toe a party line or shares the same ethnicity that they are.
Rep. Matt Manweller (R-13th District, Ellensburg) used the example of Ellensburg City Councilmember Anthony (Tony) Aronica, a Native American, to defend his position.

“People didn’t vote for or against Tony because he was Native American. They voted for him because he was a quality candidate,” Manweller said.

“I think that’s the American way; you vote for the best candidate,” he continued. “You don’t start gerrymandering so that you can vote for people that look like you.”

According to Baretto, however, data using a technique called “ecological inference” reliably measures voting behaviors of different groups.

“It has been widely accepted by state and federal courts as the best way to assess polarized voting,” he said.

Manweller stated that there is no doubt that majorities of subgroups tend to vote either Democrat or Republican, depending on the priorities of those specific groups.

However, he explained: “As we become more racially diverse and have more minority persons running for office, we start to vote more on quality of candidate than color of skin.”

One other concern is the impact this bill could have on the potential candidates for different positions.

Dan Steele, assistance executive director of the Washington Association of School Administrators, is concerned that going from at-large to district-based elections would narrow the pool of potential candidates and may limit the selection of qualified candidates.

“It’s almost disingenuous to say that somebody wouldn’t step up,” said Moscoso. “We have all types of candidates with various experience that run for office and they learn once they get in there.”

Forty-four persons signed in support of HB 1413 when it received a public hearing in the House Government Operations and Elections committee Jan. 30. These individuals were representing various organizations, including the ACLU of Washington, OneAmerica, the League of Women Voters of Washington, Progreso: Latino Progress Alliance and Planned Parenthood. Some were there to support the legislation on their own behalf; many were from Yakima and surrounding cities.

The legislation was scheduled for an executive session Wednesday (Feb. 6) but was cancelled due to Rep. Kevin Van De Wege’s (D-24th District, Sequim) absence, said Rep.
Sam Hunt (D-22nd District, Olympia), House Government Operations and Elections chairman. It is being re-set for further consideration.

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