



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2917

by Rep. Mike Fortner

SYNOPSIS AS INTRODUCED:

New Act

Creates the Local Government Voting Rights Act. Provides that neither an at-large method of election nor a district-based method of election may be imposed or applied in a manner that impairs the ability of a protected group or class to elect candidates of its choice as a result of the dilution or the abridgment of the rights of voters who are members of a protected group or class. Sets forth procedures and evidentiary burdens for proving a violation of the Act. Sets forth certain remedies for violations of the Act and provisions concerning standing and notice. Allows the recovery of attorney's fees. Contains severability provisions.

LRB100 10236 MLM 20419 b

1 AN ACT concerning elections.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Local
5 Government Voting Rights Act.

6 Section 5. Findings and policy. The General Assembly finds
7 and hereby declares that the purpose of this Act is to address
8 ongoing vote dilution and discrimination in voting as matters
9 of statewide concern, in order to enforce the fundamental
10 rights guaranteed by Sections 1 and 2 of Article I and Sections
11 1 and 8 of Article III of the Illinois Constitution.

12 Section 10. Definitions. As used in this Act:

13 "At-large method of election" means any of the following
14 methods of electing members to the governing body of a
15 political subdivision:

16 (1) one in which the voters of the entire jurisdiction
17 elect candidates to the governing body, including, but not
18 limited to, alternative vote arrangements, transferable
19 voting, ranked-choice voting, or preferential voting;

20 (2) one in which candidates are required to reside
21 within particular areas of the jurisdiction and the voters
22 of the entire jurisdiction elect candidates to the

1 governing body; or

2 (3) one which combines at-large elections with a
3 district-based method of election.

4 "District-based method of election" means a method of
5 electing members to the governing body of a political
6 subdivision in which the candidate must reside within an
7 election district that is a divisible part of the political
8 subdivision and is elected only by voters residing within that
9 election district.

10 "Political subdivision" means a geographic area of
11 representation created for the provision of government
12 services, including, but not limited to a county, township,
13 city, municipality, school district, community college
14 district, special district, or other district organized
15 pursuant to State law.

16 "Protected group" and "protected class" under this Act
17 shall mean a group or class of voters who are members of a
18 race, color, or language minority group, as referenced and
19 defined in the federal Voting Rights Act (52 U.S.C. 10301 et
20 seq.).

21 "Racially-polarized voting" means voting in which there is
22 a difference, as defined in case law regarding enforcement of
23 the federal Voting Rights Act (52 U.S.C. 10301 et seq.), in the
24 choice of candidates or other electoral choices that are
25 preferred by voters in a protected class, and in the choice of
26 candidates and electoral choices that are preferred by voters

1 in the rest of the electorate. The methodologies for estimating
2 group voting behavior as approved in applicable federal cases
3 to enforce the federal Voting Rights Act to establish
4 racially-polarized voting, as well as other valid
5 methodologies admissible pursuant to Illinois Rule of Evidence
6 702, may be used for purposes of this Section to prove that
7 elections are characterized by racially-polarized voting.

8 Section 15. Vote dilution and discrimination. Neither an
9 at-large method of election nor a district-based method of
10 election may be imposed or applied in a manner that impairs the
11 ability of a protected group or class to elect candidates of
12 its choice as a result of the dilution or the abridgment of the
13 rights of voters who are members of a protected group or class.

14 Section 20. Violations.

15 (a) To establish a violation of Section 15 of this Act, a
16 plaintiff or plaintiffs must show that racially-polarized
17 voting occurs in elections for members of the governing body of
18 the political subdivision or in elections incorporating other
19 electoral choices by the voters of the political subdivision.

20 (b) The occurrence of racially-polarized voting shall be
21 determined from examining results of elections in which at
22 least one candidate is a member of the protected class or the
23 preferred candidate of the protected class involved in the
24 challenge, or elections involving ballot measures or other

1 electoral choices. In multi-seat at-large election districts,
2 where the number of candidates who are members of the protected
3 class or preferred candidates of the protected class involved
4 in the challenge is fewer than the number of seats available,
5 the relative group-wide support received by candidates from
6 members of the protected class shall be the basis for the
7 racial polarization analysis. Elections conducted prior to the
8 filing of an action for a violation of Section 15 of this Act
9 are more probative to establish the existence of
10 racially-polarized voting than elections conducted after the
11 filing of the action.

12 (c) Other factors such as the history of discrimination,
13 the use of electoral devices or other voting practices or
14 procedures that may enhance the dilutive effects of at-large
15 elections, denial of access to those processes determining
16 which groups of candidates will receive financial or other
17 support in a given election, the extent to which members of a
18 protected class bear the effects of past discrimination in
19 areas such as education, employment, and health, which hinder
20 their ability to participate effectively in the political
21 process, and the use of overt or subtle racial appeals in
22 political campaigns are probative, but not necessary, factors
23 to establish a violation of Section 15 of this Act.

24 (d) The fact that members of a protected class are not
25 geographically compact or concentrated shall not preclude a
26 finding of racially-polarized voting, or a violation of Section

1 15 of this Act, but may be a factor in determining an
2 appropriate remedy.

3 (e) Proof of intent on the part of the voters or elected
4 officials to discriminate against a protected class is not
5 required.

6 (f) The fact that a single-member district-based method of
7 election election was imposed on the political subdivision as a
8 result of a prior action under this Act shall not be a defense
9 to a violation of Section 15 of this Act, except that if a
10 court orders a political subdivision to adopt, and subsequently
11 approves, a single-member district-based method of election as
12 a result of an action under this Act, there shall be a
13 rebuttable presumption that the election system does not
14 violate Section 15 of this Act. The presumption shall apply
15 only to the exact single-member district-based method of
16 election that was approved by the court and shall not apply if
17 the boundaries of the single-member districts of the political
18 subdivision are subsequently adjusted for any reason.

19 Section 25. Standing. Any eligible voter who is a member of
20 a protected class and who resides in a political subdivision
21 where a violation of Section 15 of this Act is alleged may file
22 an action for a violation of that Section in the circuit court
23 of any county in which the political subdivision is located.

24 Section 30. Notice. Prior to filing an action pursuant to

1 this Act, a prospective plaintiff shall first notify the
2 political subdivision's principal executive officer, in
3 writing, that the prospective plaintiff intends to challenge
4 the political subdivision's electoral system under this Act.

5 Section 35. Remedies.

6 (a) Upon a determination that there is a violation of
7 Section 15 of this Act, the circuit court shall implement
8 appropriate remedies that are tailored to remedy the violation,
9 based on submissions by the plaintiff or plaintiffs.

10 (b) Notwithstanding any State law to the contrary, upon
11 finding a violation of Section 15 of this Act, the court may
12 order the political subdivision to adopt, alter, or repeal its
13 forms of government or manner of electing the members of its
14 governing body in order to remedy the violation.

15 (c) To the extent possible, the court shall give preference
16 to the implementation of an effective district-based method of
17 election that provides the protected class the opportunity to
18 elect candidates of its choice from single member districts.
19 Single-member districts under this subsection (c) shall be
20 drawn in a manner consistent with the following:

21 (1) district boundaries may not be drawn or maintained
22 in a manner that denies an equal opportunity of a protected
23 class to elect candidates of its choice or an equal
24 opportunity to influence the outcome of an election;

25 (2) each district shall be as nearly equal in

1 population as practicable to each and every other such
2 district comprising the political subdivision;

3 (3) each district shall consist of a geographically
4 contiguous area; and

5 (4) each district shall be reasonably compact.

6 (d) If the implementation of effective single-member
7 districts under subsection (c) of this Section is not possible
8 or will not provide an appropriate remedy, the court may order
9 additional remedies, including, but not limited to, any of the
10 following:

11 (1) implementing an alternative election system, such
12 as cumulative voting and ranked-choice voting;

13 (2) approving a single-member district-based method of
14 election that provides the protected class the opportunity
15 to join in a coalition of 2 or more protected classes to
16 elect candidates of their choice if there is demonstrated
17 political cohesion among the protected classes;

18 (3) incrementally increasing the size of the governing
19 body;

20 (4) requiring elections of the governing body to be
21 held on the same day as a statewide election in accordance
22 with Article 2A of the Election Code; or

23 (5) issuing an injunction to delay an election.

24 Section 40. Fees.

25 (a) In any action to enforce Section 15 of this Act, the

1 circuit court shall allow the prevailing party to collect from
2 the defendant reasonable attorney's fees and litigation
3 expenses including, but not limited to, expert witness fees and
4 expenses as part of the costs. A prevailing defendant party
5 shall not recover any costs or attorney's fees, unless the
6 court finds the action to be frivolous, unreasonable, or
7 groundless.

8 (b) If, in response to a notice from a prospective
9 plaintiff or plaintiffs as described in Section 30 of this Act,
10 a political subdivision changes its method of election in a
11 manner that might have been ordered had litigation been filed,
12 or adopts an ordinance or resolution establishing a specific
13 plan to effect the transition and an estimated time frame for
14 doing so, then the prospective plaintiff or plaintiffs who sent
15 the notice may demand reimbursement for the fees and costs to
16 support the notice. Within 45 days of receiving the demand for
17 reimbursement, the political subdivision shall reimburse the
18 prospective plaintiff or plaintiffs for reasonable costs
19 claimed.

20 Section 45. Conflict of Laws. Nothing in this Act shall be
21 construed, applied, or implemented in a way that conflicts with
22 the United States Constitution, the federal Voting Rights Act
23 (52 U.S.C. 10301 et seq.), or the Illinois Constitution.

24 Section 97. Severability. The provisions of this Act are

1 severable under Section 1.31 of the Statute on Statutes.