SENATE BILL 413

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EMERGENCY BILL

By: Senator Sydnor

Introduced and read first time: January 26, 2022
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

AN ACT concerning

Voting Rights Act of 2022 – Counties and Municipalities

FOR the purpose of prohibiting the imposition or application of a method for electing the
governing body of a county or municipality that impairs the ability of members of a
protected class to elect candidates of the members’ choice or influence the outcome
of an election by diluting or abridging the rights of voters who are members of a
protected class; and generally relating to voting rights of members of protected
classes in counties and municipalities.

BY adding to

Article – Election Law

Section 8–901 through 8–905 to be under the new subtitle “Subtitle 9. Voting Rights
– Counties”

Annotated Code of Maryland

(2017 Replacement Volume and 2021 Supplement)

BY adding to

Article – Local Government

Section 4–601 through 4–605 to be under the new subtitle “Subtitle 6. Voting Rights
– Municipalities”

Annotated Code of Maryland

(2013 Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Election Law

SUBTITLE 9. VOTING RIGHTS – COUNTIES.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.
IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “POLARIZED VOTING” MEANS VOTING IN WHICH THERE IS A DIFFERENCE, AS DEFINED IN FEDERAL CASE LAW REGARDING ENFORCEMENT OF THE FEDERAL VOTING RIGHTS ACT OF 1965, IN THE CHOICE OF CANDIDATES OR OTHER ELECTORAL CHOICES THAT ARE PREFERRED BY VOTERS IN A PROTECTED CLASS, AND IN THE CHOICE OF CANDIDATES AND ELECTORAL CHOICES THAT ARE PREFERRED BY VOTERS IN THE REST OF THE ELECTORATE.

(C) “PROTECTED CLASS” MEANS A CLASS OF VOTERS WHO ARE MEMBERS OF A RACE, COLOR, OR LANGUAGE MINORITY GROUP, AS THIS CLASS IS REFERENCED AND DEFINED IN THE FEDERAL VOTING RIGHTS ACT OF 1965, AND RELATED FEDERAL CASE LAW.

8–902.

(A) THIS SUBTITLE APPLIES ONLY TO ELECTIONS IN A COUNTY.

(B) THIS SUBTITLE DOES NOT APPLY TO STATEWIDE ELECTIONS.

8–903.

(A) A METHOD FOR ELECTING THE GOVERNING BODY OF A COUNTY MAY NOT BE IMPOSED OR APPLIED IN A MANNER THAT IMPAIRS THE ABILITY OF MEMBERS OF A PROTECTED CLASS TO ELECT CANDIDATES OF THE MEMBERS’ CHOICE, OR THE MEMBERS’ ABILITY TO INFLUENCE THE OUTCOME OF AN ELECTION, AS A RESULT OF THE DILUTION OR THE ABRIDGEMENT OF THE RIGHTS OF VOTERS WHO ARE MEMBERS OF A PROTECTED CLASS.

(B) A VIOLATION OF SUBSECTION (A) OF THIS SECTION IS ESTABLISHED IF:

(1) ELECTIONS IN A COUNTY EXHIBIT POLARIZED VOTING; AND

(2) THE METHOD OF ELECTION DILUTES OR ABRIDGES THE VOTING STRENGTH OF MEMBERS OF A PROTECTED CLASS TO ELECT A CANDIDATE OF THE MEMBERS’ CHOICE OR THE MEMBERS’ ABILITY TO INFLUENCE THE OUTCOME OF AN ELECTION.

(C) PROOF OF INTENT ON THE PART OF THE VOTERS OR ELECTED OFFICIALS TO DISCRIMINATE AGAINST MEMBERS OF A PROTECTED CLASS IS NOT
REQUIRED TO ESTABLISH A VIOLATION OF SUBSECTION (A) OF THIS SECTION.

(D) THE FOLLOWING FACTORS ARE PROBATIVE, BUT NOT REQUIRED TO ESTABLISH A VIOLATION OF SUBSECTION (A) OF THIS SECTION:

(1) THE HISTORY OF DISCRIMINATION;

(2) THE USE OF ELECTORAL DEVICES OR OTHER VOTING PRACTICES OR PROCEDURES THAT MAY ENHANCE THE DILUTIVE EFFECTS OF A METHOD OF ELECTION, INCLUDING AT LARGE ELECTIONS;

(3) THE DENIAL OF ACCESS TO THE PROCESSES DETERMINING WHICH GROUPS OF CANDIDATES WILL RECEIVE FINANCIAL OR OTHER SUPPORT IN A GIVEN ELECTION;

(4) THE EXTENT TO WHICH MEMBERS OF A PROTECTED CLASS BEAR THE EFFECTS OF PAST DISCRIMINATION IN AREAS SUCH AS EDUCATION, EMPLOYMENT, AND HEALTH THAT HINDERS THE ABILITY TO PARTICIPATE EFFECTIVELY IN THE POLITICAL PROCESS; AND

(5) THE USE OF OVERT OR SUBTLE RACIAL APPEALS IN POLITICAL CAMPAIGNS.

8–904.

(A) TO DETERMINE WHETHER THERE IS POLARIZED VOTING UNDER § 8–903(B)(1) OF THIS SUBTITLE, THE COURT SHALL CONSIDER:

(1) THE METHODOLOGIES FOR ESTIMATING GROUP VOTING BEHAVIOR, AS APPROVED IN FEDERAL CASE LAW, TO ENFORCE THE FEDERAL VOTING RIGHTS ACT OF 1965;

(2) ELECTIONS OF THE GOVERNING BODY OF THE COUNTY;

(3) BALLOT QUESTION ELECTIONS;

(4) ELECTIONS WHERE AT LEAST ONE CANDIDATE IS A MEMBER OF A PROTECTED CLASS; AND

(5) OTHER ELECTORAL CHOICES THAT AFFECT THE RIGHTS AND PRIVILEGES OF MEMBERS OF A PROTECTED CLASS.

(B) (1) ELECTIONS THAT ARE CONDUCTED BEFORE THE FILING OF AN
ACTION TO ENFORCE § 8–903(A) OF THIS SUBTITLE ARE MORE PROBATIVE TO
ESTABLISH THE EXISTENCE OF POLARIZED VOTING THAN ELECTIONS CONDUCTED
AFTER THE FILING OF AN ACTION.

(2) THE ELECTION OF CANDIDATES WHO ARE MEMBERS OF A
PROTECTED CLASS AND WHO WERE ELECTED BEFORE THE FILING OF AN ACTION TO
ENFORCE § 8–903(A) OF THIS SUBTITLE MAY NOT PRECLUDE A FINDING OF
POLARIZED VOTING THAT RESULTS IN AN UNEQUAL OPPORTUNITY FOR A
PROTECTED CLASS TO ELECT CANDIDATES OF ITS CHOICE.

(C) THE FACT THAT MEMBERS OF A PROTECTED CLASS ARE NOT
GEOGRAPHICALLY COMPACT OR CONCENTRATED MAY NOT PRECLUDE A FINDING OF
POLARIZED VOTING OR A VIOLATION OF § 8–903(A) OF THIS SUBTITLE, BUT IT MAY
BE A FACTOR THAT IS CONSIDERED.

8–905.

THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENFORCE § 8–903 OF
THIS SUBTITLE IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED FOR
INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.

Article – Local Government

SUBTITLE 6. VOTING RIGHTS – MUNICIPALITIES.

4–601.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.

(B) “POLARIZED VOTING” MEANS VOTING IN WHICH THERE IS A
DIFFERENCE, AS DEFINED IN FEDERAL CASE LAW REGARDING ENFORCEMENT OF
THE FEDERAL VOTING RIGHTS ACT OF 1965, IN THE CHOICE OF CANDIDATES OR
OTHER ELECTORAL CHOICES THAT ARE PREFERRED BY VOTERS IN A PROTECTED
CLASS, AND IN THE CHOICE OF CANDIDATES AND ELECTORAL CHOICES THAT ARE
PREFERRED BY VOTERS IN THE REST OF THE ELECTORATE.

(C) “PROTECTED CLASS” MEANS A CLASS OF VOTERS WHO ARE MEMBERS
OF A RACE, COLOR, OR LANGUAGE MINORITY GROUP, AS THIS CLASS IS REFERENCED
AND DEFINED IN THE FEDERAL VOTING RIGHTS ACT OF 1965, AND RELATED
FEDERAL CASE LAW.

4–602.
THIS SUBTITLE APPLIES ONLY TO ELECTIONS IN A MUNICIPALITY.

4–603.

(A) A METHOD FOR ELECTING THE GOVERNING BODY OF A MUNICIPALITY
MAY NOT BE IMPOSED OR APPLIED IN A MANNER THAT IMPAIRS THE ABILITY OF
MEMBERS OF A PROTECTED CLASS TO ELECT CANDIDATES OF THE MEMBERS’
CHOICE, OR THE MEMBERS’ ABILITY TO INFLUENCE THE OUTCOME OF AN ELECTION,
AS A RESULT OF THE DILUTION OR THE ABRIDGEMENT OF THE RIGHTS OF VOTERS
WHO ARE MEMBERS OF A PROTECTED CLASS.

(B) A VIOLATION OF SUBSECTION (A) OF THIS SECTION IS ESTABLISHED IF:

(1) ELECTIONS IN A MUNICIPALITY EXHIBIT POLARIZED VOTING; AND

(2) THE METHOD OF ELECTION DILUTES OR ABRIDGES THE VOTING
STRENGTH OF MEMBERS OF A PROTECTED CLASS TO ELECT A CANDIDATE OF THE
MEMBERS’ CHOICE OR THE MEMBERS’ ABILITY TO INFLUENCE THE OUTCOME OF AN
ELECTION.

(C) PROOF OF INTENT ON THE PART OF THE VOTERS OR ELECTED
OFFICIALS TO DISCRIMINATE AGAINST MEMBERS OF A PROTECTED CLASS IS NOT
REQUIRED TO ESTABLISH A VIOLATION OF SUBSECTION (A) OF THIS SECTION.

(D) THE FOLLOWING FACTORS ARE PROBATIVE, BUT NOT REQUIRED TO
ESTABLISH A VIOLATION OF SUBSECTION (A) OF THIS SECTION:

(1) THE HISTORY OF DISCRIMINATION;

(2) THE USE OF ELECTORAL DEVICES OR OTHER VOTING PRACTICES
OR PROCEDURES THAT MAY ENHANCE THE DILUTIVE EFFECTS OF A METHOD OF
ELECTION, INCLUDING AT LARGE ELECTIONS;

(3) THE DENIAL OF ACCESS TO THE PROCESSES DETERMINING WHICH
GROUPS OF CANDIDATES WILL RECEIVE FINANCIAL OR OTHER SUPPORT IN A GIVEN
ELECTION;

(4) THE EXTENT TO WHICH MEMBERS OF A PROTECTED CLASS BEAR
THE EFFECTS OF PAST DISCRIMINATION IN AREAS SUCH AS EDUCATION,
EMPLOYMENT, AND HEALTH THAT HINDERS THE ABILITY TO PARTICIPATE
EFFECTIVELY IN THE POLITICAL PROCESS; AND
(5) THE USE OF OVERT OR SUBTLE RACIAL APPEALS IN POLITICAL CAMPAIGNS.

4–604.

(A) TO DETERMINE WHETHER THERE IS POLARIZED VOTING UNDER § 4–603(B)(1) OF THIS SUBTITLE, THE COURT SHALL CONSIDER:

(1) THE METHODOLOGIES FOR ESTIMATING GROUP VOTING BEHAVIOR, AS APPROVED IN FEDERAL CASE LAW, TO ENFORCE THE FEDERAL VOTING RIGHTS ACT OF 1965;

(2) ELECTIONS OF THE GOVERNING BODY OF THE MUNICIPALITY;

(3) BALLOT QUESTION ELECTIONS;

(4) ELECTIONS WHERE AT LEAST ONE CANDIDATE IS A MEMBER OF A PROTECTED CLASS; AND

(5) OTHER ELECTORAL CHOICES THAT AFFECT THE RIGHTS AND PRIVILEGES OF MEMBERS OF A PROTECTED CLASS.

(B) (1) ELECTIONS THAT ARE CONDUCTED BEFORE THE FILING OF AN ACTION TO ENFORCE § 4–603(A) OF THIS SUBTITLE ARE MORE PROBATIVE TO ESTABLISH THE EXISTENCE OF POLARIZED VOTING THAN ELECTIONS CONDUCTED AFTER THE FILING OF AN ACTION.

(2) THE ELECTION OF CANDIDATES WHO ARE MEMBERS OF A PROTECTED CLASS AND WHO WERE ELECTED BEFORE THE FILING OF AN ACTION TO ENFORCE § 4–603(A) OF THIS SUBTITLE MAY NOT PRECLUDE A FINDING OF POLARIZED VOTING THAT RESULTS IN AN UNEQUAL OPPORTUNITY FOR A PROTECTED CLASS TO ELECT CANDIDATES OF ITS CHOICE.

(C) THE FACT THAT MEMBERS OF A PROTECTED CLASS ARE NOT GEOGRAPHICALLY COMPACT OR CONCENTRATED MAY NOT PRECLUDE A FINDING OF POLARIZED VOTING OR A VIOLATION OF § 4–603(A) OF THIS SUBTITLE, BUT IT MAY BE A FACTOR THAT IS CONSIDERED.

4–605.

THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENFORCE § 4–603 OF THIS SUBTITLE IN THE MUNICIPALITY WHERE THE VIOLATION ALLEGEDLY OCCURRED FOR INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.
SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.