

# SENATE BILL REPORT

## SB 6381

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As Reported by Senate Committee On:  
Government Operations, Tribal Relations & Elections, February 2, 2012

**Title:** An act relating to the Washington voting rights act.

**Brief Description:** Enacting the Washington voting rights act of 2012.

**Sponsors:** Senators Prentice, Pridemore, Nelson, Chase, Murray, Conway, Kline, Harper, Keiser and McAuliffe.

**Brief History:**

**Committee Activity:** Government Operations, Tribal Relations & Elections: 1/24/12, 2/02/12 [DPS, DNP, w/oRec].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 6381 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Chase and Nelson.

**Minority Report:** Do not pass.

Signed by Senator Swecker, Ranking Minority Member.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Benton.

**Staff:** Sharon Swanson (786-7447)

**Background:** The Voting Rights Act of 1965 was enacted by Congress in 1965. The act was passed to enforce the fifteenth amendment of the United States Constitution to prohibit states from imposing any voting qualifications or prerequisite to voting, or standard, practice, or procedure to deny or abridge the right of any citizen of the United States to vote on account of race or color. The act was extended in 1970, 1975, 1982, and 2006.

**Summary of Bill (Recommended Substitute):** At-large elections and district-based elections may not be drawn or maintained in a manner that denies an equal opportunity of a protected class to elect candidates of its choice or an equal opportunity to influence the

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outcome of an election as a result of the vote dilution of voters who are members of a protected class.

An at-large election district or a district-based election district is dilutive, and in violation of the act when it is show that:

- a political subdivision utilizes an at-large or district-based election district;
- the elections in the political subdivisions are racially polarized;
- the racially polarized voting in the political subdivision results in vote dilution where the protected class members do not have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election; and
- a remedy exists that provides members of the protected class with an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election.

The fact that members of a protected class are not geographically compact or concentrated to constitute a numerical majority in a proposed district-based election district must not preclude a finding of racially polarized voting that results in vote dilution. Racially polarized voting that results in vote dilution is shown by demonstrating that there is a difference in voting preferences between members of a protected class and the rest of the electorate.

The occurrence of racially polarized voting that results in vote dilution will be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class who are voters of the political subdivision which is the subject of an action filed.

Proof of an intent on the voters or elected officials to discriminate against a protected class is not required.

Upon a finding of a violation of the Voting Rights Act of 2012, a court must implement appropriate remedies, including the imposition of a district-based election district that is tailored to remedy the violation. The court may direct the affected jurisdiction to draw or redraw district boundaries or appoint an individual or panel to draw or redraw district lines. In tailoring a remedy after a finding of a violation of the act, the court must order new elections to be scheduled at the next date authorized by state law for conducting elections. All of the positions that were elected pursuant to the at-large or district-based election district election district that was the subject of the action and have at least two years remaining in their terms of office must be subject to new elections in order to continue their term in office.

An at-large method of election means any of the following methods of electing members of the governing body of a political subdivision:

- one in which the voters of the entire jurisdiction elected the members to the governing body;
- one in which the candidates must reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members of the governing body; or
- one which combines at-large elections with district-based elections.

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

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 42 U.S.C. Sec. 1973 etc seq.

**EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Substitute):** The definition of political subdivision is amended to remove a reference to the state. The definition of racially polarized voting is amended to remove a reference to federal case law. Various other grammatical and technical changes are made.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: Minorities in Washington are not equally or fairly represented in elections because of racially polarized voting. At-large elections polarize minority voters. Yakima County is 44 percent Latino in population but 0 percent of countywide representatives are Latino. The remedy for this disproportionate outcome is district based elections. Local control is the solution. The federal voting rights act is too costly and time consuming to pursue. Washington needs to enact the voting rights act at a state level. Minority candidates have shown time and again that they cannot get elected through the at large election system.

OTHER: The fee shifting aspect of this bill is the most one sided and onerous I have ever seen. State and local governments carry all the cost burden. Not only does the government entity pay attorney's fees, the government must also pay the costs for the expert witnesses and administrative costs of the plaintiffs. The government, even if they win the suit, cannot recover their own costs. Under the bill, even if candidates who are members of protected classes get elected, this is not a defense to a charge of racially polarized voting or vote dilution. The state is already covered by the voting rights act – why do we need this legislation?

**Persons Testifying:** PRO: Matt Baretto, University of Washington; Paul Apostolidis, Seth Dawson, Zach Duffy, Whitman College; David Perez, Seattle University School of Law; Cherry Cayabyab, Asian Pacific Americans for Civic Empowerment; Fe Lopez, Latino/Latina Bar Association; Pat Dickason, League of Women Voters; Toby Guevin, One America; Tom Hilyard, Black Collective.

OTHER: Jeffrey Even, Attorney General's office.