HOUSE BILL REPORT
HB 1745

As Reported by House Committee On:
State Government

Title: An act relating to establishing a voting rights act to promote equal voting opportunity in certain political subdivisions by authorizing district-based elections, requiring redistricting and new elections in certain circumstances, and establishing a cause of action to redress lack of voter opportunity.

Brief Description: Enacting the Washington voting rights act.

Sponsors: Representatives Moscoso, Bergquist, S. Hunt, Haler, Orwall, Sawyer, Stanford, Walkinshaw, Appleton, Reykdal, Fitzgibbon, Tharinger, Fey, Jinkins, Wylie, Goodman, Ormsby, Farrell, Riccelli, Sells, Hudgins, Lytton, McBride and Santos.

Brief History:
Committee Activity:
   State Government: 2/5/15, 2/11/15, 2/18/15 [DPS].

Brief Summary of Substitute Bill

- Creates a state voting rights act that protects the equal opportunity to participate in election for minority groups.

- Creates a cause of action and authorizes courts to order appropriate remedies for a violation of the act, including redistricting with a political subdivision.

- Authorizes local governments to change their election system to remedy violations of the act.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Appleton and Gregory.

Minority Report: Do not pass. Signed by 3 members: Representatives Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Hawkins.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Sean Flynn (786-7124).

Background:

Voting Rights Act of 1965.

The federal Voting Rights Act of 1965 (federal Act) prohibits discriminatory practices in state and local elections, based on the protections provided under the Fifteenth Amendment to the United States Constitution. Special protections extend to members of a racial, color, or certain language minority group.

Section 2 of the federal Act (Section 2) broadly prohibits any voting practice or procedure that has the effect of impairing the equal opportunity for members of a minority group to participate in the nomination and election of candidates. A violation may be shown based on the totality of circumstances of the election process that resulted in a discriminatory impact on a minority group. Intentional discrimination is not a requirement to show a violation. While Section 2 protects the equal opportunity to participate in elections, it does not create a right to have minority groups proportionally represented in elected offices.

Courts have considered cases under Section 2 that raise claims of minority voter dilution based on the method of how voting districts were drawn. The discriminatory effect under a voter dilution claim is that minority votes are dispersed throughout the districts, which weakens their ability to influence the election. Voter dilution claims also occur in at-large general elections held to elect members for multiple districts.

In *Thornburg v. Gingles* (1986) the Supreme Court imposed three elements that must be established to make a claim of voter dilution under Section 2. First, the minority group must be sufficiently large and geographically compact to be a majority within a district. Second, the minority group must be politically cohesive. Third, the majority generally votes as a bloc, which usually defeats the election of the minority group's preferred candidate. In addition to these three prerequisites, courts also consider a list of factors in determining the totality of circumstances regarding discriminatory impact.

Local Elections.

Local governments are responsible for periodically changing their voting districts to account for population shifts. Within eight months after receiving the 10-year federal census data, a local government must prepare a plan for redistricting its election districts. Each district must be relatively equal in population, compact, and geographically contiguous. Also, the plan should try to preserve existing communities of related and mutual interest. The census data may not be used to favor any racial or political group.

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Summary of Substitute Bill:

A Voting Rights Act (Act) is created for the state. The Act creates a legal cause of action where local and district elections exhibit polarized voting between voters in a protected class

and other voters, and where members of the protected class do not have an equal opportunity to elect their preferred candidate or influence the election.

The Act applies to elections held within certain political subdivisions including: counties; cities; towns; school districts; fire protection districts; port districts; and public utility districts. It does not apply to state elections, elections in a city or town under 1,000, or school districts under 250 students.

Redistricting.

Any political subdivision may take corrective action to change its election system in order to remedy a violation of the Act. The remedy may include implementation of a district-based election, which includes a method of electing candidates from within a district that is a divisible part of the subdivision.

Districts must be reasonably equal in population, compact, geographically contiguous, coincide with natural boundaries, and must preserve communities of related and mutual interest as much as possible.

If the subdivision adopts a new election plan between the date of the general election and January 15 of the following year, it must implement the plan at the next general election. If the plan is adopted during the remaining period of the year, the plan must be implemented at the general election of the following year. Any subdivision that implemented a district-based election system must prepare redistricting plan within eight months of receiving federal census data.

The adopted plan must apply to any elected officer who has at least two years remaining in his or her term of office. Such positions are subject to new elections, pursuant to the implementation of the plan.

Making a Claim.

Any voter who is a member of a protected class within a particular political subdivision may file a legal action alleging a violation under the Act within that subdivision. A protected class includes voters who are members of a race, color, or language minority group. The class does not have to be geographically compact or concentrated to constitute a majority in any proposed or existing district.

To make a claim, a person must demonstrate that:
- the subdivision's elections show polarized voting, meaning a difference of choice between voters of a protected class and other voters in the election; and
- members of the protected class do not have an equal opportunity to elect members of their choice or influence the outcome of an election.

Intent is not required to show a violation under the Act.

To determine the existence of polarized voting, the court may only analyze the elections conducted prior to the legal action, including the election of candidates, ballot measure elections, and elections that affect the rights and privileges of the protected class. The

election of candidates who are in the protected class does not preclude a court from finding the existence of polarized voting that resulted in unequal election participation.

Members of different protected classes may jointly demonstrate polarized voting by showing that their combined voting preferences differ from the rest of the electorate.

Notice Procedures.

Before filing a legal action, a person must notify the political subdivision that he or she intends to challenge the election system. The notice must provide information, including the protected class impacted, a reasonable analysis of the data regarding vote dilution and polarized voting, as well as proposed remedies.

The subdivision has 180 days to implement the person's remedy. If the subdivision adopts the proposed remedy in the notice, no legal action may be brought against the subdivision for four years. After 90 days, any person may file an action under the Act. The subdivision also may propose a different remedy to comply with the Act, which it submits to a court to acknowledge compliance.

If the subdivision receives a different notice within the initial 90-day period, it has an additional 90 days to respond from the date the second notice was received. If the multiple notices propose different remedies, the subdivision must work in good faith to implement a remedy that addresses both concerns. The subdivision may seek a court order approving any chosen remedy, with opportunity for the notice providers to support of oppose the remedy.

Remedies.

The court may order appropriate remedies for a violation, including requiring the subdivision to redistrict or create a district-based election system. If the court issues an order between the date of the general election and January 15 of the following year, the order will apply to the next general election. If the court issues an order between January 16 and the next general election date, the order will only apply starting from the general election of the following year.

The court's order applies to any elected officer who has at least two years remaining in his or her term of office. Such positions are subject to new elections, pursuant to the implementation of the court's order.

Substitute Bill Compared to Original Bill:

The substitute bill extends the notice period to 180 days before legal action may be initiated, and allows subdivisions to propose a different remedy that complies with the Act. Any special candidate filing period required under the Act is limited to three days. Courts are directed to use federal case law for guidance in interpreting provisions of the Act. Fees may not be awarded where no action is filed.

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Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Every person should be represented in the decision-making process of our democracy. This bill ensures fair process in local elections in a more efficient manner than through expensive time consuming federal litigation. The process developed in this bill provides more clarity and guidance than the federal Act. It protects local governments from litigation by providing opportunities to remedy problems before being sued. It also provides governments with a four-year safe harbor after affirmatively remedying their election system. The stakeholders worked with local government interests on many of these provisions.

The provisions of the bill give robust procedures that are not available under federal law, and empowers local governments to administer their own election systems. Local control over election reform is in the public's best interest. This bill allows code cities outside of first class cities to adopt district-based elections, which they are currently prohibited from doing.

This is intended as a workable collaborative process to improve election systems. It is not intended as a litigation bill. The remedy is flexible and leaves it up to locals to determine what works best. It avoids expensive and high stakes litigation in federal court. The notice provision requires a claimant to come forward with data in order to support a claim, and can be used by the local jurisdiction.

(With concerns) This bill reflects many concerns raised through work with the sponsors, however some concerns still exist. This bill creates a new cause of action that exposes local governments to litigation costs, even if those costs may be difficult to quantify. Costs also include gathering and analyzing the appropriate data. The timing for ordering a new election is too short and does not contemplate the timing for candidate filing. A government only has 90 days to assess, respond, and implement a new election process in order to avoid litigation. This time frame is not practical and therefore will ultimately lead to litigation. It also would overturn elections that would require a person elected to office to go through the whole election process again within two years of being elected.

It will be difficult to defend against a claim where the plaintiffs do not have to show minority voters are in compact cohesive districts, and allows a suit where there is the mere presence of a protected class within a jurisdiction even where no violation has occurred. Many different groups would be covered and there is no threshold for stating a claim. This is not the solution to address the problem of minority representation. There are no standards in the bill and no guidance for judges on how a claim must be adjudicated. This should be narrowed and clarified to protect against unintended liability.

(Opposed) This bill is overbroad and has bad unintended consequences. While the purpose is important, this bill will just create a litigation machine. Many language groups would be included in a protected class under this bill.

Persons Testifying: (In support) Representative Moscoso, prime sponsor; Shankar Narayan, American Civil Liberties Union of Washington State; Dave Asher; Eric Gonzalez, One America; and Daniel Dunne, Liberty Lake Council Member.

(With concerns) Jennifer Ziegler, Washington State Association of Counties; Victoria Lincoln, Association of Washington Cities; Alex Soldano, City of Pasco; and Monty Cobb, Washington Association of County Officials.

(Opposed) Bob Douthitt, Spokane Public Schools and Washington State School Directors' Association.

Persons Signed In To Testify But Not Testifying: Ginger Eagle, Washington Public Ports Association; Jerry Pettit, Kittitas County Auditor; Liz Anderson, Washington Public Utility Districts Association; and Arthur West.