## State Government Committee

# ESHB 1745

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

**Sponsors**:  House Committee on State Government (originally sponsored by 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).

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### Brief Summary of Bill

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

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

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

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**Hearing Date**:  1/19/16

**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 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

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*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.*

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.

**Summary of 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 people, or school districts under 250 students.

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 before a legal action may be filed. If the subdivision adopts the proposed remedy in the notice, then no legal action may be brought against the subdivision for four years. 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 180-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 or 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.

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 a 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.

**Appropriation**:  None.

**Fiscal Note**:  Available on original bill.

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