

SENATE BILL REPORT

E2SHB 1745

As Reported by Senate Committee On:
Government Operations & Security, February 25, 2016

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: 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).

Brief History: Passed House: 3/05/15, 52-46; 2/04/16, 50-47.

Committee Activity: Government Operations & Security: 2/25/16, 2/25/16 [DPA, DNP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

Majority Report: Do pass as amended.

Signed by Senators Roach, Chair; Benton, Vice Chair; Habib, McCoy and Takko.

Minority Report: Do not pass.

Signed by Senator Dansel.

Minority Report: That it be referred without recommendation.

Signed by Senator Pearson, Vice Chair.

Staff: Samuel Brown (786-7470)

Background: Section 2 of the Federal Voting Rights Act of 1965 (VRA). The VRA prohibits discriminatory practices in state and local elections, based on the protections provided under the Fifteenth Amendment to the Constitution. Special protections extend to members of a racial, color, or certain language minority group.

Section 2 of the VRA (Section 2) prohibits any voting practice or procedure that effectively impairs the equal opportunity for members of a minority group to participate in the

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.

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. Proof of intentional discrimination is not required to show a violation. While Section 2 protects the equal opportunity to participate in elections, it does not create a right for minority groups to be proportionally represented in elected offices.

Courts have considered cases under Section 2 that raise claims of minority voter dilution based on the method of drawing voting districts. In a voter dilution claim, the discriminatory effect is that minority votes are dispersed throughout the districts, weakening the minority group's ability to influence the election. Voter dilution claims have also been raised in jurisdictions holding at-large general elections for bodies with multiple positions.

In *Thornburg v. Gingles* (1986), the Supreme Court defined three elements that must be established to make a claim of voter dilution under Section 2:

- the minority group is sufficiently large and geographically compact to be a majority within a district;
- the minority group is politically cohesive; and
- 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 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. The plan should also try to preserve existing communities of related and mutual interest. The census data may not be used to favor any racial or political group in redistricting.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Amendments): The Washington Voting Rights Act (Act) is established, creating a 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. A protected class is a class of voters who are members of a race, color, or language minority group.

The Act applies to elections held within certain political subdivisions including counties, cities, towns, and school districts. It does not apply to state elections, elections in a city or town with a population under 2000, or school districts under 500 students.

Making a Claim. Any voter who is a member of a protected class and resides within a particular political subdivision may file a legal action alleging that the subdivision has violated the Act. To make a claim, a person must allege the following:

- 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.

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, but courts may consider whether the proportion of the jurisdiction's legislative body who are members of the protected class is the same as the proportion of the jurisdiction's population who are members of the protected class.

Proof of intent to discriminate against the protected class is not required to show a violation under the Act. Courts may consider whether there is a cohesive minority population that, when combined with other voters, would be large enough to elect candidates of choice in a possible single-member election district. Members of different protected classes may jointly demonstrate polarized voting by showing that their combined voting preferences differ from the rest of the electorate.

No lawsuit may be filed alleging a violation of the Act before January 15, 2017.

Notice Procedures. Before filing a legal action, a person must notify the political subdivision that the person 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 underlying the person's claim, and proposed remedies. The subdivision must work in good faith with any person providing notice to implement a remedy that provides members of the protected class or classes equal opportunity to elect candidates of their choice or influence electoral outcomes.

Any person may file an action against the subdivision under the Act if the subdivision does not adopt a remedy within 180 days. 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.

Court Procedures. The action may be filed in the superior court of the county in which the political subdivision is located. If the action is against a county, it may instead be filed in the superior court of either of the two nearest judicial districts. The trial must be set for no later than one year after the filing of a complaint, with a corresponding discovery and motions calendar. For purposes of the statute of limitations, a cause of action under the Act arises every time there is an election under a districting method that is the subject of the court action. Courts may look to federal case law for guidance in applying the terms of the Act.

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 system, which includes a method of electing candidates from within a district that is a divisible part of the subdivision. The remedy may also include an alternative proportional voting method, such as limited voting, cumulative voting, or single transferrable voting. Districts must be reasonably equal in population, compact, and

geographically contiguous, must 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.

In a subdivision voluntarily adopting a new election plan, any elected officer who has at least two years remaining in the officer's term of office may be, but is not required to be, subject to a new election.

Remedies. The court may order appropriate remedies for a violation, including requiring the subdivision to redistrict, create a district-based election system, or an alternative proportional voting system.

If the court issues a final order between the date of the general election and January 15 of the following year, the order applies to the next general election. If the court issues a final order between January 16 and the next general election date, the order only applies 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 the officer's term of office. Such positions are subject to new elections, pursuant to the implementation of the court's order.

A court may allow a prevailing plaintiff to recover reasonable attorneys' fees, all non-attorney fee costs, and all reasonable expert witness fees. A prevailing defendant may recover fees or costs if the judge finds that the claim was frivolous and without reasonable cause.

Immunity From Suit. If the subdivision adopts the proposed remedy in the notice within 180 days of receipt, no legal action may be brought against the subdivision for four years alleging a violation of the Act if the subdivision does not modify the scheme in the remedy. The subdivision may propose a different remedy in response to a notice of potential claim and seek a court order approving the remedy and providing that no legal action may be brought against the subdivision for four years alleging a violation of the Act if the subdivision does not modify the scheme in the remedy. If the jurisdiction adopts a remedy either after a suit is filed or in response to a court order, the same plaintiff may not bring a suit alleging a violation of the Act against the jurisdiction for four years if the subdivision does not modify the scheme in the remedy. If a person files an unsuccessful Section 2 claim against a subdivision, that person may not bring a suit under the Act against the subdivision for four years from the beginning of the Section 2 claim.

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: PRO: Smaller steps implemented in the striking amendment will help move the bill forward. Many people have weighed in on the discussions and improved the bill.

Persons Testifying: PRO: Representative Moscoso, prime sponsor.

Persons Signed In To Testify But Not Testifying:

PRO: Alex Hur, OneAmerica; Sharonne Navas, Equity in Education Coalition; Marsha Chien, Attorney General's Office ; Shankar Narayan, ACLU of Washington; Stuart Halsan, Fair Vote.

CON: Josh Weiss, Washington State Association of Counties.

OTHER: Alex Soldano, City of Pasco.