

HOUSE BILL REPORT

HB 1800

As Reported by House Committee On:
State Government, Elections & Information Technology

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 Gregerson, Hudgins, Ortiz-Self, Peterson, Orwall, Springer, Lovick, Sells, Stonier, Clibborn, Dolan, McBride, Ryu, Goodman, Macri, Senn, Cody, Hansen, Bergquist, Slatter, Frame, Sawyer, Kloba, Stanford, Pollet, Doglio, Robinson, Wylie, Kagi, Jinkins, Sullivan, Appleton, Fitzgibbon, Ormsby, Reeves, Morris, Tharinger, Fey, Pellicciotti, Pettigrew, Haler, Kilduff and Farrell.

Brief History:

Committee Activity:

State Government, Elections & Information Technology: 1/9/18, 1/16/18 [DPS].

Brief Summary of Substitute Bill

- Creates a state voting rights act to protect 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.

HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Appleton, Gregerson and Pellicciotti.

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.

Minority Report: Do not pass. Signed by 4 members: Representatives McDonald, Ranking Minority Member; Kraft, Assistant Ranking Minority Member; Irwin and Johnson.

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 United States Constitution. The federal Act extends special protections to members of a racial, color, or certain language minority group.

Section 2 of the federal Act 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 occurs when the election system of a jurisdiction has a discriminatory impact on a minority group's participation in the election process. Discriminatory intent 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 recognized claims of minority voter dilution under Section 2 based on 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 within any district. Voter dilution claims also occur in at-large general elections for multi-member boards or commissions.

The United States Supreme Court has required three elements that must be established to raise 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 must generally vote 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 jurisdictions conduct elections in a variety of ways for local boards, commissions, and other multi-member bodies. Some common voting methods include, at-large, district-based, and hybrid election systems. In an at-large election, candidates are elected from the entire jurisdiction. In a district-based election, the jurisdiction is divided into separate districts and each candidate is elected by the voters of a district. A hybrid system has elements of both at-large and district-based election systems. For example, a primary may be district-based, with candidates facing off in an at-large general election. Certain counties and cities are required to use such a hybrid system for electing the governing body of the jurisdiction. The requirement applies to noncharter counties, second-class cities, noncharter optional municipal code cities (code cities), and towns. There is an exception to this restriction for second-class cities, code cities, and towns that had adopted a district-based election system prior to 1994.

Summary of Substitute Bill:

A voting rights act (Act) is created. The Act prohibits a local election system for the governing body of a political subdivision that impairs the ability of members of a protected class to have an equal opportunity to elect their preferred candidate or influence the outcome of an election as a result of the dilution or abridgement of the rights of those voters.

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.

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 with a population under 1,000 people, or school districts with under 250 students.

Authority to Change Election System.

Any political subdivision may take corrective action on its own initiative to change its election system in order to remedy a violation of the Act. Before adopting a remedy, the subdivision must provide public notice and hold at least one public hearing at least one week before adopting the remedy. Notice must be posted in other languages where a significant segment of a community has limited proficiency in English.

The remedy may include implementing a district-based election, which includes 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 up to the general election, 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.

Voter-Initiated Change to Election System.

Any voter who resides within a particular political subdivision may file a legal action alleging a violation against that subdivision. To claim a violation of this Act, a person must demonstrate that the subdivision's elections show polarized voting that dilutes or abridges the right to vote. Intent to discriminate is not required to show a violation under the Act.

Before filing a legal action, a person first 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.

Until 2021, the subdivision has 180 days to implement the person's remedy before a legal action may be filed. Starting in 2021, the subdivision has 90 days to implement a remedy. If the subdivision receives a different notice within the initial period, it has an additional 270 days to respond from the date the second notice was received. Starting in 2021, that period drops to 180 days. The subdivision must work in good faith with the person or persons filing notice to implement a remedy.

If the subdivision adopts a remedy, it must seek a court order acknowledging that the remedy is reasonably necessary to avoid a violation of the Act. The person filing the notice may support or oppose the proposed remedy, and is entitled to the subdivision's data used to develop its proposed remedy. The court must view all facts and reasonable inferences in favor of any opposition to the proposed remedy and the court will apply a rebuttable presumption against approving the proposed remedy. If the court determines that the remedy is reasonably necessary to avoid a violation, then no legal action may be brought against the subdivision for four years, so long as the subdivision does not change or deviate from such remedy during that period.

Legal Challenge to Voting System.

After the notice period is exhausted, any voter who resides within the relevant subdivision may file an action in superior court. Members of different protected classes may file an action jointly if their combined voting preferences are different from the remainder of the electorate. The court must set a trial within one year of the filing.

To determine the existence of polarized voting, the court must analyze 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 is a factor a court may consider. Elections conducted prior to the filing of an action are more probative to establish the existence of polarized voting. Other factors probative of a violation may include the history and effects of discrimination, voting practices that diluted protected class votes, denial of access to election processes, and the use of overt or subtle racial appeals in political campaigns.

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 may award attorney's fees, expert witness fees, and costs to a plaintiff, except a political subdivision, who prevails on a claim to enforce the Act. Prevailing defendants may be awarded certain fees and costs for frivolous actions.

Substitute Bill Compared to Original Bill:

The substitute bill removes the definition and all references to alternative proportional voting. An element is added to the required showing of a violation, that the polarized voting dilutes or abridges the right to vote.

The notice that political subdivisions must provide before adopting a remedy must be posted in other languages where a significant segment of a community has limited proficiency in English. The notice period for a subdivision to adopt a remedy is reduced to 90 days starting in 2021. An additional 270 days is added for subdivisions if the subdivision receives a second notice within the initial 180 notice period, however, starting in 2021, the period after a second violation is filed is reduced to 180 days.

A subdivision submitting a proposed remedy must acknowledge that the proposal is reasonably necessary to avoid a violation. A court is not limited to consider only elections conducted prior to filing an action, and other factors are listed for a court to consider that may be probative of violation. The party providing notice is entitled to the subdivision's data used to develop the remedy when submitted for approval in court. A court must apply a rebuttable presumption for a court to decline a subdivision's proposed remedy of a violation based on a notice of violation.

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) Elections should be gauged on how well they promote accountability and increase participation in the election process. Voters feel disenfranchised when elected bodies do not reflect the interests of all communities. At-large voting can favor majority voting blocs that are able to elect all members of a governing board. The lack of diversity of representation and election results leads to decreased interest and participation in government.

District-based elections help to increase participation in government through greater representation in elections. People feel a greater vested interest in their government when government is held accountable to community interests. This is particularly important for groups who are often underrepresented in local government. Greater representation is better for any local jurisdiction, especially for those with diverse populations. Voter participation is important for young voters who are just beginning their adult interactions with government. The ability to participate in government also is a fundamental right that is supported by faith communities as an issue of morality and justice. A healthy election system does not only benefit party politics, but also is important to ensure that elected officials are accountable to constituent concerns.

Some local governments do not have the tools necessary to implement positive changes in their election systems, and currently risk liability for voting rights violations without being able to make effective election changes to remedy the problems. This bill provides a framework for protecting subdivisions from being exposed to liability before having the opportunity to address and remedy a problem with their elections. The bill sets out two paths to promote changes in an election system that has polarized voting. The first procedure includes a notice period that promotes dialogue and cooperation between governments and their constituents to provide fair elections. The notice period is a new procedure from the federal and California voting rights acts. The second path authorizes legal action, which creates more incentive for governments to cooperate with constituents during the notice period before being sued.

The original version of the bill was modeled after the California voting rights act, which was enacted and has allowed many local jurisdictions to implement district elections and increase voter participation for many communities. There has been much work and attention over the years to address concerns and to improve the process of this bill. The current version is a reflection of extensive outreach and input from stakeholders. That process has improved the ultimate product and has made this policy ready to be enacted and implemented.

Alternative voting is only one option provided in the bill. Including such voting methods provides the greatest flexibility for local governments to decide how best to address issues of polarized voting. Ranked choice voting has been used successfully in other jurisdictions and has led to increased representation of minority groups in elected positions, such as in Minnesota. Software products already exist to administer alternative voting methods and some of those companies and products are already used in the state.

(Opposed) None.

(Other) Alternative voting methods can be confusing for voters and lead to low voter turnout and turning people away from the election process, which can threaten our democracy. Alternative voting methods are problematic because there is no existing mechanism or resources to tabulate alternative voting methods. There is also no federally certified equipment to use for an alternative voting system.

These voting methods do not track current law and would require the development of a separate regulatory framework in order to implement such alternative election systems. Past experience with alternative voting methods proved to be expensive and unpopular with voters and required a large amount of preparation. Alternative voting methods should be addressed as a separate policy issue and not conflated with the purpose and goals for voting rights.

The bill should more clearly identify when a violation occurs. The remedy mechanism should not create a presumption that a violation has occurred when a subdivision seeks approval of a remedy. The bill should be scaled back to exclude smaller jurisdictions.

Persons Testifying: (In support) Representative Gregerson, prime sponsor; Representative Haler; Julie Wise, King County Auditors Office; Mary Hall and Dolores Gilmore, Washington State Association of County Auditors; Elisabeth Smith, American Civil Liberties Union of Washington; Eric Gonzalez, Washington State Labor Council, AFL-CIO; Alex Hur,

One America; Kathy Sakahara, League of Women Voters of Washington; RaShelle Davis, Office of the Governor; Seth Goldstein, Temple Beth Hatfiloh; Cindy Black, Fix Democracy First; Jesse Piedfort, Sierra Club; Arne Nelson, Washington Students Association; Salvador Salazar Cano, University of Washington Bothell; Tobias Gurl; and George Cheung, Stuart Halsan, and Colin Cole, Fair Vote Washington.

(Other) Kim Wyman and Lori Augino, Office of the Secretary of State; Julie Anderson, Washington State Auditors Association of County Auditors; Jessica Vavrus, Washington State School Directors' Association; and David Williams, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.