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**State Government, Elections &  
Information Technology Committee**

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**HB 1934**

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

**Sponsors:** Representative Haler.

**Brief Summary of Bill**

- Creates a state voting rights act to protect the equal opportunity for minority groups to participate in county or city elections.
- Creates a cause of action and authorizes courts to order appropriate remedies for a violation of the act, including redistricting.
- Authorizes counties or cities to change their election system to remedy violations of the act.

**Hearing Date:** 2/8/17

**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 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 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

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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.*

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. Voter dilution claims also occur in at-large general elections for multi-member boards or commissions.

The United States Supreme Court imposed 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 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 jurisdictions conduct elections in a variety of ways for local boards, commission, 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, non-charter 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 Bill:**

A voting rights act (Act) is created. The Act provides a legal cause of action where local 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 counties, and cities or towns with a population over 30,000.

#### 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:

(1) 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

(2) by a totality of the circumstances, voters of the protected class have less opportunity to participate in the election process and elect candidates of their choice. Intent to discriminate 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 a violation. Court also may consider whether the proportion of elected officials from a protected class is equivalent to the proportion of protected class members in the general population. Members of different protected classes may jointly demonstrate polarized voting by showing that their combined voting preferences differ from the rest of the electorate.

In determining whether voters of the voters of the protected class have less opportunity to participate in the political process by a totality of the circumstances, courts must consider the following factors:

- The history of voter discrimination;
- The extent to which voting is racially polarized;
- Whether voting practices tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority voting requirements, and prohibitions against bullet voting;
- The exclusion of members of the protected class from the candidate slating process;
- Whether protected class members bear the effects of past discrimination in other social areas, which hinder their ability to participate effectively in the political process;
- The use of racial appeals in political campaigns;
- The extent to which members of the protected class have been elected to public office in the political subdivision; and
- Any significant lack of responsiveness on the part of elected officials to members of the protected class.

#### Remedies.

The court may order appropriate remedies for a violation, including requiring the subdivision to redistrict or create a district-based election system. The court may award attorney's fees and costs to any prevailing party, including reasonable attorney's fees and nonattorney fee costs.

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.

#### 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 12 months to implement the person's remedy before a legal action may be filed. The claimant and the subdivision must work in good faith to implement a remedy. The subdivision must facilitate meetings with the claimant at least once a month. The subdivision also may propose a different remedy to comply with the Act, and may seek a court order acknowledging that the remedy complies with the Act.

If the subdivision adopts the proposed remedy in the notice, or adopts a court-acknowledged remedy, then no legal action may be brought against the subdivision for four years. A person who has filed an unsuccessful claim under the federal Act may not bring an action under this Act for two years.

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 may seek a court order approving any chosen remedy, with opportunity for the notice providers to support or oppose the remedy.

#### Redistricting.

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. The remedy may include implementing 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. The Act expressly authorizes other types of alternative proportional voting methods as well.

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:** Not requested.

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