

SENATE BILL REPORT

HB 1800

As of March 22, 2017

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: Passed House: 2/27/17, 51-46.

Committee Activity: State Government: 3/22/17.

Brief Summary of Bill

- Creates a state voting rights act to protect the equal opportunity for minority groups to participate in local elections and elect candidates of choice.
- Creates a cause of action and authorizes courts to order appropriate remedies for a violation of the voting rights act, including redistricting within a political subdivision.
- Authorizes local governments to change their election systems to remedy potential violations of the act.

SENATE COMMITTEE ON STATE GOVERNMENT

Staff: Samuel Brown (786-7470)

Background: Federal Voting Rights Act of 1965 (VRA) - Section 2. The VRA prohibits discriminatory practices in state and local elections, based on the protections provided under

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

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.

Alternative Proportional Voting Systems. Several jurisdictions have adopted alternative systems for allocating votes to voters to determine the winner of an election. These systems are known as alternative proportional voting systems, and include:

- limited voting, where a voter receives fewer votes than there are candidates to elect;
- cumulative voting, where a voter receives as many votes as there are candidates to elect, but may cast multiple votes for a single candidate; and
- single transferrable or ranked choice voting, where a voter ranks candidates in order of preference, and votes are transferred to lower-ranked candidates who are not elected on first-place votes if a majority is not reached.

Summary of Bill: The Washington Voting Rights Act (Act) is established, creating a cause of action where elections exhibit polarized voting and where members of a protected class do not have an equal opportunity to participate in the political process or elect their preferred candidate or influence electoral outcomes. 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 1000 people, or school districts under 250 students.

Making a Claim. Any voter who resides 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 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. Election of candidates who are members of the protected class does not preclude a court from finding the existence of polarized voting. 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, 2018.

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 person bringing the notice and subdivision must work in good faith to implement a remedy that provides members of the protected class or classes equal opportunity to elect candidates of their choice. Representatives of the subdivision must facilitate and participate in meetings at least once a month with the person bringing notice to work toward a solution.

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.

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 15th 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 15th of the following year, the order applies to the next general election. If the court issues a final order between January 16th 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.

The court may award attorneys' fees and costs to a prevailing plaintiff. Prevailing defendants may be awarded certain costs, but not attorney's fees.

Immunity From Suit. If the subdivision adopts the proposed remedy in the notice, 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.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There are barriers in making sure that leaders look like the constituents they serve. I was told never to use my middle name, Su-Ling, in campaign materials, because it would cause me to lose ten points. This is a well-worked bill and the result of a lot of compromise. District-based election systems work better than at-large systems. People who live in the center of town don't get responses from the city council or staff in Richland because under the at-large system, no city councilmembers live there. At every level of government, people of color are underrepresented. This ensures that local elected officials are held accountable. People may hesitate to run for office because they don't feel comfortable representing a large constituency, but would feel more comfortable just representing their neighborhood. California passed similar legislation in 2002, and the number of cities using district-based elections has risen 155 percent since then. Elections have failed to keep up with rapidly changing demographics. Yakima saw increases in voter turnout after switching to district-based elections as turnout elsewhere dropped. This allows local solutions to problems rather than expensive federal litigation. Fairer elections make our communities healthier, safer, and more economically vibrant. This bill will make sure everyone has a seat at the table. This is similar to interpleader and not really a new cause of action. It's up to the local community to work with election officials to see if alternative proportional voting methods are feasible. Such methods are used by over 1000 jurisdictions nationally, and jurisdictions here should have that flexibility based on their circumstances. Resolution of claims costs less when it is collaborative, and this bill encourages concerned individuals to work with the jurisdiction before filing suit. This is consistent with the state's commitment to equal access in a fundamental civic process. The educational opportunity gap is a structural problem that can be solved by providing equitable representation in school board membership. This provides a proactive method for resolving representation problems. Yakima's experience proves that districting works for minority communities.

CON: Fire districts have issues getting candidates to run in at-large elections, as positions are not well compensated. Fire districts are diverse, not compact, and do not face allegations of disenfranchisement. This bill places county officials between a rock and a hard place, because they have no authority under the state constitution to implement district-based elections if ordered to do so. Including counties in the bill likely violates the state constitution's requirement of a uniform system of county government.

OTHER: School directors have concerns about the vagueness of definitions, the removal of factors used to analyze federal vote dilution claims, and that requirements for restructuring governing bodies could serve as a disincentive to voluntarily implement a remedy. There are also concerns about the use of alternative proportional voting methods—not all voting systems are capable of tabulating elections conducted by those methods, and such methods might confuse voters.

Persons Testifying: PRO: Representative Mia Gregerson, Prime Sponsor; Representative Larry Haler, 8th Legislative District; Alex Hur, OneAmerica; Elisabeth Smith, ACLU of Washington; Eric Gonzalez, Washington State Labor Council; Kathy Sakahara, League of Women Voters of Washington; Yuriy Rudensky, Columbia Legal Services; Cindy Black, Fix Democracy First; Stuart Halsan, FairVote; Krist Novoselic, FairVote; Scott Nelson, State Auditor; RaShelle Davis, Governor's Office; Marsha Chien, Attorney General's Office; Maria Flores, Office of the Superintendent of Public Instruction; Maia Espinoza, Commission on

Hispanic Affairs; John Schochet, Lieutenant Governor's Office.

CON: Roger Ferris, Washington Fire Commissioners Association; Josh Weiss, Washington State Association of Counties.

OTHER: Jessica Vavrus, Washington State School Directors' Association; Monty Cobb, Washington Association of County Officials; David Elliott, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: No one.