

SENATE BILL REPORT

ESHB 1048

As Reported by Senate Committee On:
State Government & Elections, March 24, 2023

Title: An act relating to enhancing the Washington voting rights act.

Brief Description: Enhancing the Washington voting rights act.

Sponsors: House Committee on State Government & Tribal Relations (originally sponsored by Representatives Mena, Simmons, Goodman, Berry, Ramel, Peterson, Pollet, Doglio, Macri, Morgan, Wylie, Gregerson, Bergquist, Street, Cortes, Santos, Ormsby and Farivar).

Brief History: Passed House: 3/4/23, 57-38.

Committee Activity: State Government & Elections: 3/14/23, 3/24/23 [DP, DNP].

Brief Summary of Bill

- Allows recovery of costs incurred by claimants who file a notice of intent to challenge a political subdivision's election system under the Washington Voting Rights Act (WVRA) to conduct research supporting the notice if the political subdivision alters its behavior.
- Grants standing to organizations and tribes to challenge election systems under the WVRA on behalf of their members.
- Authorizes increasing the number of county commissioners to remedy a violation of the WVRA on the basis of Indian tribal status.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: Do pass.

Signed by Senators Hunt, Chair; Valdez, Vice Chair; Hasegawa and Kuderer.

Minority Report: Do not pass.

Signed by Senators Wilson, J., Ranking Member; Dozier and Fortunato.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Samuel Brown (786-7470)

Background: Washington Voting Rights Act. In 2018, the Legislature passed ESSB 6002 creating the Washington Voting Rights Act (WVRA). A violation of WVRA is established where a jurisdiction's elections exhibit polarized voting and where there is a significant risk members of a protected class do not have an equal opportunity to elect candidates of choice as a result of dilution or abridgement of their rights. WVRA applies to elections held within counties, cities, towns, school districts, fire protection districts, port districts, and public utility districts (political subdivisions). Any voter in an affected political subdivision may challenge the electoral system. The political subdivision has 90 days to adopt a remedy to the alleged violation; if it fails to do so, it is subject to a lawsuit.

Corrective Action. Political subdivisions may take corrective action to change election systems to remedy a potential violation of WVRA, including through implementation of a district-based election system. The political subdivision must obtain a court order certifying that its remedy complies with WVRA and was prompted by a plausible violation. Courts apply a rebuttable presumption against adopting a political subdivision's proposed remedy, and all facts and reasonable inferences must be viewed in favor of those opposing the proposed remedy. If the court approves the remedy, it may not be challenged by lawsuit for at least four years.

Assessing a Claim. To determine whether voting is polarized, the court assesses the elections pragmatically based on local election conditions. The court may consider factors such as a history of discrimination or the use of racial appeals in political campaigns.

Remedies. If a violation is found, the court may order appropriate remedies, including requiring the political subdivision to redistrict or create a district-based election system. The court may award attorneys' fees and costs to a prevailing plaintiff. Prevailing defendants may be awarded certain costs, but not attorney's fees. No fees and costs are awarded if no lawsuit is filed.

Summary of Bill: Cost Recovery. A claimant who alleged a violation of WVRA may recover costs incurred conducting research to support the notice of the alleged violation if the political subdivision adopts a remedy that is subsequently approved by a court. The request for cost recovery must be made in writing within 30 days of adoption of the new electoral system and include financial documentation. The political subdivision must reimburse the costs incurred in conducting the research necessary to send the notice, up to \$50,000, within 60 days.

Prevailing plaintiffs in a WVRA lawsuit may recover all reasonable fees and costs incurred before filing the action. Costs may be recovered, even if the claimant does not achieve court relief or a favorable judgment, if the court finds the political subdivision altered its behavior to correct a claimed WVRA violation.

Standing. Organizations whose membership includes a voter who resides in the political subdivision and tribes located at least partially in the political subdivision may allege a violation of WVRA and challenge the political subdivision's electoral system. Cohesive coalitions of members of different racial, ethnic, or language-minority groups are protected by the WVRA and may file notices or claims to enforce its provisions.

Establishing a Violation. No single factor is dispositive or necessary to establish a violation of WVRA. The claimant and political subdivision may stipulate that a violation of WVRA has occurred.

Remedies. The number of county commissioners may be reasonably increased to remedy a violation of WVRA on the basis of Indian tribal status.

In tailoring a remedy, courts may not give deference to a proposed remedy solely because it was proposed by the political subdivision. Courts may not approve a remedy that violates WVRA. Courts are not required to consider explanations for why polarized voting exists in determining whether polarized voting exists.

Other Provisions. State and local laws related to the right to vote must be construed liberally in favor of protecting the right to vote, and ensuring that all voters have equitable access to register and participate in elections. The bill contains a severability clause.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on January 1, 2024.

Staff Summary of Public Testimony: PRO: This lowers the barrier to access the WVRA's protections for communities across the state, keeping elections more fair and just. A 2012 Whitman College study showed that Latinos are underrepresented on governing bodies by a factor of 10. While changes to maps have made some progress, more remains. Many of the goals and visions of the WVRA haven't been realized yet. The information gap between communities and governing bodies continues to grow. Cost recovery provisions will give community groups the power to find advocates and be compensated for the experts needed in these cases. The process currently is costly, time-intensive, and requires legal experts, census experts, demographers to determine whether a problem exists and what the remedy should look like. Very few experts do this analysis. This legislation makes it clear that communities and local governments have the ability to imagine new arrangements beyond what's been previously available.

This is common sense legislation that follows best practices in other states, is based on real-

world experience, and meets an urgent need. This legislation ensures community access to and use of the WVRA in a fair and collaborative process with local governments. This makes it easier for courts to interpret the WVRA with its rule of interpretation. It will help parties avoid costly, unnecessary legal battles by providing guidance around other legal issues such as standing and promoting settlement both before and after a lawsuit is filed. The dollar cap on cost recovery is in line with what communities incur and other state limits. Technical updates in this bill will increase the efficiency and equity in our electoral systems. Challenges to the Yakima County electoral system, which kept BIPOC voters from electing candidates of choice, gave us insight into the changes needed to WVRA in this bill.

This bill doesn't go far enough. Leaving it to the courts is an insufficient solution to fixing systems in the state. There should be more specific solutions, such as proportional election systems and ranked choice voting.

OTHER: Cities support the WVRA and the goals of this legislation, but request amendments to address technical concerns regarding when a prevailing plaintiff does not to achieve relief or favorable judgment, but still succeeds in modifying the electoral system, to be entitled to fees and costs. Cities also request an amendment to cap recovery of fees incurred before filing an action at \$50,000 if a lawsuit is filed.

Persons Testifying: PRO: Representative Sharlett Mena, Prime Sponsor; Alex Hur, OneAmerica; Carol Sullivan, League of Women Voters of WA; Maxwell Brooke; David Morales, South Central Coalition of People of Color for Redistricting; Alex Hur, OneAmerica; Colin Cole, More Equitable Democracy; Aseem Mulji, Campaign Legal Center; Denisse Guerrero, WA Community Alliance; Soumyo Lahiri-Gupta, OneAmerica.

OTHER: Candice Bock, Association of Washington Cities.

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