

SENATE BILL REPORT

SB 5047

As Reported by Senate Committee On:
State Government & Elections, January 27, 2023

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

Brief Description: Enhancing the Washington voting rights act.

Sponsors: Senators Saldaña, Trudeau, Nguyen, Wilson, C., Dhingra, Conway, Frame, Hasegawa, Hunt, Kuderer, Lias, Lovelett, Nobles, Pedersen, Randall, Stanford and Valdez.

Brief History:

Committee Activity: State Government & Elections: 1/20/23, 1/27/23 [DPS, DNP].

Brief Summary of First Substitute 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 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: That Substitute Senate Bill No. 5047 be substituted therefor, and the substitute bill 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 the 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. The 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 the WVRA, including through implementation of a district-based election system. The political subdivision must obtain a court order certifying that its remedy complies with the 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 (First Substitute): Cost Recovery. A claimant who alleged a violation of the 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. Costs may be recovered, even if the claimant does not file a lawsuit or achieve court relief or a favorable judgment, if the court finds that the notice altered the political subdivision's behavior to correct a claimed WVRA violation.

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 reasonable fees and costs incurred before filing the action.

Standing. An organization whose membership includes a voter who resides 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 the WVRA. The claimant and political subdivision may stipulate that a violation of the WVRA has occurred.

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

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

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.

EFFECT OF CHANGES MADE BY STATE GOVERNMENT & ELECTIONS COMMITTEE (First Substitute):

Organizations must demonstrate that their membership includes a voter who resides in the political subdivision to have standing to file a WVRA claim. Indian tribes may file WVRA notices or claims.

Appropriation: None.

Fiscal Note: Requested on January 18, 2023.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill improves upon the WVRA. It is a much narrower version of legislation that was heard last year, reflecting the feedback of local jurisdictions with more targeted policies. This will allow community

members to raise challenges in a timely manner and propose remedies. Strengthening WVRA makes sure all communities have fair and equal access to the electoral process. People feel local governments doesn't work for them, and this will increase their confidence. This is a common-sense improvement, following best practices from California, Oregon, Virginia, and New York. This will make it easier for courts to interpret the WVRA, reducing costly legal battles. This clarifies how to establish a coalition. It will ensure laws are construed in a way to fulfill the purpose of equitable access to voting rights.

CON: Any changes to the process should be stringent and narrow. This bill proposes extra protections for protected class members, granting special rights and protections, which is unconstitutional and discriminatory. This perpetuates division rather than unity. It's based on the false premise that we need to have candidates elected from each group to fulfill some quota. This is an attempt to turn protected classes into privileged classes. Terms should be better defined.

OTHER: Fee provisions in the bill could make it so counties and cities are afraid to act, which does not seem to be the intent behind the bill. Organizational status should be defined to require the organization have a community member, not be likely to include one. Allowing claimants to recover costs even if they don't prevail in court disincentivizes jurisdictions from cooperating. The bill should be amended to make sure courts don't give deference to a remedy proposed by either part. It's important to get the details right.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Carol Sullivan, League of Women Voters of WA; Alex Hur, OneAmerica; Lata Nott, Campaign Legal Center; Denisse Guerrero, WA Community Alliance; Melissa Rubio, OneAmerica; Colin Cole, More Equitable Democracy.

CON: Jessica Hargin, Conservative Ladies of Washington; Richard Grunewald; Suzanne Rohner.

OTHER: Mike Hoover, Washington State Association of Counties; Candice Bock, Association of Washington Cities; Blanche Barajas, Mayor of the City of Pasco; Briahna Murray, Lobbyist for City of Pasco; Eric Fitch, Washington Public Ports Association.

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