

HOUSE BILL REPORT

HB 2612

As Reported by House Committee On:
State Government & Tribal Affairs
General Government Appropriations & Oversight

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

Brief Description: Enacting the Washington voting rights act of 2012.

Sponsors: Representatives Kenney, Hunt, Appleton, Hasegawa, Reykdal, Moscoso, Ladenburg, Ryu, Jinkins, Upthegrove, Pettigrew, Ormsby, McCoy, Roberts and Hudgins.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/26/12, 1/30/12 [DP];

General Government Appropriations & Oversight: 2/2/12 [DPS].

Brief Summary of Substitute Bill

- Enacts the Washington Voting Rights Act of 2012.
- Prohibits at-large elections and district-based elections that are drawn or maintained in a manner that denies an equal opportunity for a protected class to elect candidates of its choice or an equal opportunity to influence the outcome of an election as a result of the vote dilution of voters who are members of a protected class.
- Establishes procedures for filing suit and remedies for violation.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 6 members: Representatives Hunt, Chair; Appleton, Vice Chair; Darneille, Dunshee, McCoy and Miloscia.

Minority Report: Do not pass. Signed by 5 members: Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander, Condotta and Hurst.

Staff: Cece Clynch (786-7195).

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.

Background:

Federal Voting Rights Act.

The Voting Rights Act of 1965 (VRA) prohibits discrimination in elections. The VRA contains several sections, some of which impact all states and localities and some which do not. For instance, all states and localities are prohibited from using practices or procedures that impair the ability of a protected class to elect its candidate of choice on an equal basis with other voters. States and political subdivisions are prohibited from conditioning the right to vote on the voter's ability to pass a literacy, subject matter, or morals test. All states and localities must also allow voters who need assistance because of a disability to receive assistance by someone of the voter's choice. Some states, not including Washington, must receive advance clearance for any changes in voting practices or regulations. Private citizens, as well as the United States Attorney General, may sue to enforce the VRA.

California Voting Rights Act.

The California Voting Rights Act of 2001 prohibits at-large methods of election that impair the ability of a protected class to elect candidates of its choice or limit its ability to influence the outcome of an election as a result of the dilution or the abridgment of the rights of voters who are members of a protected class. A violation is established if it is shown that racially polarized voting occurs in elections for members of the governing body. The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, but may be a factor in determining an appropriate remedy. Proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required.

Summary of Bill:

The Washington Voting Rights Act of 2012 (WVRA) prohibits at-large elections and district-based elections that are drawn or maintained in a manner that denies an equal opportunity for a protected class to elect candidates of its choice or an equal opportunity to influence the outcome of an election as a result of the vote dilution of voters who are members of a protected class. "Protected class" means a class of voters who are members of a race, color, or language minority group, as this class is defined in the VRA.

An "at-large method of election" means any of the following methods of electing members of the governing body of a political subdivision:

- one in which the voters of the entire jurisdiction elect the members to the governing body;
- one in which the candidates must reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members of the governing body; or
- one which combines at-large elections with district-based elections.

"District-based election" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a

divisible part of the political subdivision and is elected only by voters residing within that election district.

An at-large election district or a district-based election district is dilutive, and in violation of the act, when it is shown that:

- a political subdivision utilizes an at-large or district-based election district;
- the elections in the political subdivisions are racially polarized;
- the racially polarized voting in the political subdivision results in vote dilution where the protected class members do not have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election; and
- a remedy exists that provides members of the protected class with an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election.

The fact that members of a protected class are not geographically compact or concentrated to constitute a numerical majority in a proposed district-based election district does not preclude a finding of racially polarized voting that results in vote dilution. Racially polarized voting that results in vote dilution is shown by demonstrating that there is a difference in voting preferences between members of a protected class and the rest of the electorate. The occurrence of racially polarized voting that results in vote dilution may be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class who are voters of the political subdivision which is the subject of an action filed.

Proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required.

Upon a finding a violation, a court must implement appropriate remedies, including the imposition of a district-based election district that is tailored to remedy the violation, but it must be geographically compact. The court may direct the affected jurisdiction to draw or redraw district boundaries, or appoint an individual or panel to draw or redraw district lines. In tailoring a remedy after a finding of a violation of the WVRA, the court must order new elections to be scheduled at the next date authorized by state law for conducting elections. All of the positions that were elected pursuant to the at-large or district-based election that was the subject of the action and have at least two years remaining in their terms of office must be subject to new elections in order to continue their term in office.

Prevailing plaintiffs, but not defendants, are entitled to recover attorneys' fees, as well as a fees multiplier. Plaintiffs are also entitled to recover attorneys' fees and fees multiplier awarded for work performed in any ancillary administrative, legislative, or citizen redistricting commission proceeding where the prevailing plaintiff sought to secure a district-based election district that was different from the one adopted and that was ultimately declared by a court to violate the WVRA. Prevailing defendants may recover costs, but only if the action is frivolous, unreasonable, or without foundation.

There is no prior claim filing requirement, nor is the plaintiff required to file a bond. A cause of action arises every time there is an election. There is no right to a jury trial. An action is

to be filed in the superior court of the county where the political subdivision is located, except if the action is against a county, in which case it may be filed in either of the two nearest counties.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The state needs this bill. There have been significant population changes in this state. Without the growth in Latino and Asian populations, Washington would not have gotten the new tenth district. There are seven counties with more than a 20 percent Latino population. There are two with over a 50 percent Latino population. The term "racially polarized voting" refers to outcomes; it does not describe the motives of voters. Different patterns in voting can be easily shown. In order to prevail in a suit brought under the WVRA, this must be coupled with an election system that dilutes the ability of one group to elect candidates they prefer. One example that might illustrate this issue is to imagine that Washington was divided, as it is now, into legislative districts and that the candidates for a legislative district had to live within that district, but that, rather than be a district-based election system in which only voters in that legislative district could vote, the population of the entire state got to vote for the office-holder for each legislative district. It is probable that the people of King County would determine the outcome of every single election. Racially polarized voting is a standard used under the federal VRA. An at-large election district is not automatically violative. There would have to be a lawsuit filed under the WVRA, the plaintiff would have to prove there was racially polarized voting that was dilutive, and only then would the remedies be available.

OneAmerica has registered more than 25,000 new Americans to vote. People need to know that their votes count, and if they do not believe that, they do not participate. Representative democracy only works if people participate. It is possible to analyze voting to determine if there is racially polarized voting by analyzing those races in which there are quality candidates, because it is to be expected that quality candidates will win some elections. The City of Yakima is 45 percent Latino, but no Latinos have ever been elected to the City Council. Recently, a Latina was appointed to fill a vacancy on the City Council. Despite the fact that she was the incumbent, very qualified, the local newspaper spoke highly of her, and meanwhile her opponent had bad publicity, she lost the election by 5 percent when ordinarily an incumbent wins by 15 percent. People need to know that their votes matter. There is a need to promote representativeness. With this bill voters can move their governments to change to district-based elections. In analyzing voting, the voters' motives are unknown. The analysis is done by looking at data. It is time to restore democracy and local control. The current numbers paint a grim picture. This does not criminalize at-large election

systems. Rather, there must be proof that there is racially polarized voting and that an at-large system prevents the minority candidate from winning.

(Information only) There have been studies done in eastern Washington that have shown that Latino candidates lose due to racially polarized voting. This is a statewide issue. Ninety-nine percent of elections in Washington are at-large. Latinos are dramatically under-represented in every office and in every place analyzed across 10 counties in eastern Washington. While there is a federal VRA, it is costly for plaintiffs and this discourages suits. The WVRA will enable the use of state courts. In most cases, state law prevents a fix because the current RCWs limit the ability of political subdivisions to employ a district-based election. Many of the RCWs require at-large election systems. There is almost a complete lack of Latino representation in eastern Washington. It stands at 6 percent if one includes Yakima County, and only 2 percent if Yakima County is excluded. If district-based elections were adopted all across the state, there would be more Latino representation.

(Opposed) None.

Persons Testifying: (In support) Representative Kenney, prime sponsor; Matt Barreto, University of Washington; Pramila Jayapal, Jaszmin Santa Cruz; Toby Guevin, OneAmerica; Kim Abel, League of Women Voters of Washington; and David Perez, Korematsu Center of Seattle University.

(Information only) Paul Apostolidis, Seth Dawson, and Zach Duffy, Whitman College.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; Moscoso, Vice Chair; Blake, Fitzgibbon, Ladenburg, Pedersen and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern and Wilcox.

Staff: Wendy Polzin (786-7137).

Summary of Recommendation of Committee On General Government Appropriations & Oversight Compared to Recommendation of Committee On State Government & Tribal Affairs:

The Committee on General Government Appropriations and Oversight recommended that the provisions of the act not be applicable to cities and towns with populations under 1,000.

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) This bill has widespread support, as demonstrated at the hearing before the State Government and Tribal Affairs Committee. Numerous people spoke in favor of the bill, many people travelled to Olympia from eastern Washington to attend the hearing, and there were no opponents. The fiscal note indicates that there will be costs only if one or more court challenges under the Washington Voting Rights Act are successful. This is a small price to pay for democracy. Voters challenging elections in a political subdivision must show that the elections are racially polarized and that the racially polarized voting results in vote dilution. For instance, voters might challenge the at-large system of elections for the Yakima City Council, where there are large numbers of Latino voters but no Latinos on the city council.

(With concerns) The Washington Association of Cities (Association) just became aware of the bill and, thus, this is the first time it has offered testimony. The Association has a couple of concerns with this bill. The bill will apply to all 281 cities and towns across the state. Many of these are very small towns with few people and yet the bill would require them to divide into wards. Additionally, state law requires at-large elections and would not permit division into wards. This poses a huge liability for cities.

(Opposed) None.

Persons Testifying: (In support) Representative Kenney, prime sponsor; Toby Guerin, One America; and David Perez, Korematsu Center for Law and Equality.

(With concerns) Victoria Lincoln, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.