

HOUSE BILL REPORT

ESHB 1745

As Reported by House Committee On: State Government

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: House Committee on State Government (originally sponsored by Representatives Moscoso, Bergquist, S. Hunt, Haler, Orwall, Sawyer, Stanford, Walkinshaw, Appleton, Reykdal, Fitzgibbon, Tharinger, Fey, Jinkins, Wylie, Goodman, Ormsby, Farrell, Riccelli, Sells, Hudgins, Lytton, McBride and Santos).

Brief History:

Committee Activity:

State Government: 2/5/15, 2/11/15, 2/18/15 [DPS], 1/19/16, 1/20/16 [DP2S].

Brief Summary of Second Substitute Bill

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

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 4 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Frame and Moscoso.

Minority Report: Do not pass. Signed by 2 members: Representatives Van Werven, Assistant Ranking Minority Member; Hawkins.

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.

Minority Report: Without recommendation. Signed by 1 member: Representative Holy, Ranking Minority Member.

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 15th Amendment to the United States Constitution. Special protections extend 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 may be shown based on the totality of circumstances of the election process that resulted in a discriminatory impact on a minority group. Intentional discrimination is not a requirement to show a violation. While section 2 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 considered cases under section 2 that raise claims of minority voter dilution based on the method of 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 held to elect members for multiple districts.

In *Thornburg v. Gingles* (1986) the United States Supreme Court imposed three elements that must be established to make 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 governments are responsible for periodically changing their voting districts to account for population shifts. Within eight months after receiving the 10-year 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. Also, the plan should try to preserve existing communities of related and mutual interest. The census data may not be used to favor any racial or political group.

Summary of Second Substitute Bill:

A voting rights act (Act) is created for the state. The Act creates a legal cause of action where local and district 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 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 1,000 people, or school districts under 250 students.

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:

- 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 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 the existence of polarized voting that resulted in unequal election participation.

Members of different protected classes may jointly demonstrate polarized voting by showing that their combined voting preferences differ from the rest of the electorate.

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 180 days to implement the person's remedy before a legal action may be filed. If the subdivision adopts the proposed remedy in the notice, then no legal action may be brought against the subdivision for four years. The subdivision also may propose a different remedy to comply with the Act, which it submits to a court to acknowledge compliance.

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 must work in good faith to implement a

remedy that addresses both concerns. The subdivision may seek a court order approving any chosen remedy, with opportunity for the notice providers to support or oppose the remedy.

Remedies.

The court may order appropriate remedies for a violation, including requiring the subdivision to redistrict or create a district-based election system. 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.

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, 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.

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.

Second Substitute Bill Compared to Engrossed Substitute Bill:

The substitute updates date references and extends the starting date when a claim may be filed to January 15, 2017. Permissive authority is provided to change the election districts for council members of a port district with the same election districts as a three member county legislative authority.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second 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 provides statutory tools for local jurisdictions to avoid divisive and costly federal litigation. Anyone who brings a claim must first give notice to the jurisdiction before a legal action is allowable. The notice requirements protect against frivolous claims because the claimant must provide proof of biased elections and proposed solutions. It also provides a four-year safe harbor from additional claims after the jurisdiction has adopted an election change. This gives the jurisdiction the opportunity to avoid litigation and address problems with its election system through dialogue and cooperation.

It does not force local jurisdictions to hold district elections, but grants local decision-making power at the local level. The bill allows local communities to conduct elections that fairly and adequately reflect the desires of the community and increase opportunities for minority candidates. District elections allow candidates to directly focus on the problems and issues facing their own neighborhoods.

Diversity in the state population has been growing. Voters want more choices in their elections. At-large elections often produce representatives that do not represent the diversity with the jurisdiction. This bill would increase the choices voters have in election representation and give voice to voters who have been under-represented in elections.

(Opposed) Fire protection districts should be exempted from the bill because of their unique and non-discretionary function. Fire district board members are mostly volunteer positions and most election candidates are unopposed. The governance structure of fire districts has not been challenged.

The bill conflicts with the goals of keeping school districts under local control, including the ability to set their own boundaries. The effect of this bill on litigation is unknown.

(Other) The bill creates a statutory conflict with port districts that are required to use the same districts as county council members.

Persons Testifying: (In support) Representative Moscoso, prime sponsor; Alex Hur, OneAmerica; Avina Gutierrez, City of Yakima; Carmen Mendez and Holly Cousens, City of Yakima; Ben Stuckart, City of Spokane; Shankar Narayan, American Civil Liberties Union; and Marsha Chien, Office of the Attorney General.

(Opposed) Alan Burke, Washington State School Directors' Association.

(Other) Ginger Eagle, Washington Public Ports Association; and Roger Ferris, Washington Fire Commissioners Association.

Persons Signed In To Testify But Not Testifying: None.