

# HOUSE BILL REPORT

## HB 1800

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**As Passed House:**  
February 27, 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:**

**Committee Activity:**

State Government, Elections & Information Technology: 2/8/17, 2/14/17 [DP].

**Floor Activity:**

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

**Brief Summary of Bill**

- Creates a state voting rights act to protect 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.

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**HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY**

*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.*

**Majority Report:** Do pass. Signed by 5 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Appleton, Gregerson and Pellicciotti.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Koster, Ranking Minority Member; Volz, Assistant Ranking Minority Member; Irwin and Kraft.

**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 United States Constitution. The federal Act extends special protections 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 occurs when the election system of a jurisdiction has a discriminatory impact on a minority group's participation in the election process. Discriminatory intent 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 recognized claims of minority voter dilution under Section 2 based on 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 for multi-member boards or commissions.

The United States Supreme Court imposed three elements that must be established to raise 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 jurisdictions conduct elections in a variety of ways for local boards, commissions, and other multi-member bodies. Some common voting methods include, at-large, district-based, and hybrid election systems. In an at-large election, candidates are elected from the entire jurisdiction. In a district-based election, the jurisdiction is divided into separate districts and each candidate is elected by the voters of a district. A hybrid system has elements of both at-large and district-based election systems. For example, a primary may be district-based, with candidates facing off in an at-large general election. Certain counties and cities are required to use such a hybrid system for electing the governing body of the jurisdiction. The requirement applies to noncharter counties, second-class cities, noncharter optional

municipal code cities (code cities), and towns. There is an exception to this restriction for second-class cities, code cities, and towns that had adopted a district-based election system prior to 1994.

### **Summary of Bill:**

A voting rights act (Act) is created. The Act provides a legal cause of action where local 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 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:

1. The subdivision's elections show polarized voting, meaning a difference of choice between voters of a protected class and other voters in the election.
2. 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. 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.

### Remedies.

The court may order appropriate remedies for a violation, including requiring the subdivision to redistrict or create a district-based election system. The court may award attorney's fees and costs to a plaintiff who prevails on a claim to enforce the Act. Prevailing defendants may be awarded certain costs, but not attorney's fees.

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.

#### 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 proposes a different remedy to comply with the Act, it must seek a court order acknowledging that the remedy complies with the Act. If the subdivision adopts the proposed remedy in the notice, or adopts a court-acknowledged remedy, then no legal action may be brought against the subdivision for four years.

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.

#### Redistricting.

Any political subdivision may take corrective action on its own initiative to change its election system in order to remedy a violation of the Act. The remedy may include implementing 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. The Act expressly authorizes other types of alternative proportional voting methods as well.

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.

**Appropriation:** None.

**Fiscal Note:** Preliminary 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) This voting rights act was drafted with broad stakeholder input, has wide support around the state, and is modeled after the California Voting Rights Act, which has been successfully implemented in that state. The stakeholder input has improved this version from previous versions by including clear standards regarding the proof required to make a claim, and by including manageable and realistic timelines.

The notice and remedy provisions provide a flexible mechanism to allow local governments and communities to come together to focus on collaboration and agreements regarding fair elections that are representative of all communities. The collaboration model will help to avoid litigation and unnecessary costs when people agree on solutions. Also, better decisions are made when more people are part of the process. The flexibility gives locals options to discuss how to best address issues of discrimination in the election system. Existing technology is available to implement alternative voting methodologies referred to in the bill.

Communities of color make up a growing portion of the state, and government must be accountable to all communities. Equal opportunities for representation in elections will allow for greater representation of minority groups in government. Increasing minority participation in the election system will have a particularly positive effect on children and college students, to help them become engaged in civic life. The new district-based elections held in Yakima in 2015 demonstrate the success of increasing participation by minorities in the election system. Fair local representation will lead to greater participation of minorities at the state and national political level. Creating a fair mechanism to protect voting rights is even more important in light of the recent decision to eliminate the national election commission.

Promoting fair representation is a matter of economic justice, in sharing the responsibilities of determining how to allocate public resources and who is served. Lack of diverse representation in these decisions leads to disparities in education and other social services, and marginalizes communities. Funding decisions and investments require broad participation and perspectives, and outcomes improve when decision-making reflects the community being served.

(Opposed) Counties are in a different situation from other local jurisdictions because the state Constitution requires the Legislature to provide a uniform form of county elections. There will be serious technical problems with attempting to implement parts of this bill, including the alternative voting system. County auditors currently do not have the capability of conducting rank-choice or other alternative voting methods.

(Other) The intention of the bill is good, but there are concerns regarding the current ability of counties to successfully conduct the kinds of alternative at-large elections that are permitted in the bill.

**Persons Testifying:** (In support) Representative Gregerson, prime sponsor; Chris Reykdal, Office of Superintendent of Public Instruction; Elizabeth Smith, American Civil Liberties Union; Alex Hur, OneAmerica; Elissa Goss, Washington Student Association; April Putney, King County; Yurji Redensky, Columbia Legal Services; Gregory Christopher, Tacoma Ministerial Alliance and Tacoma National Association for the Advancement of Colored People; Jessica Koski, The Sierra Club; Russ Hanscom; Orson Williamson; David Morales,

Commission on Hispanic Affairs; Krist Novoselic and Stuart Halsan, FairVote; RaShelle Davis, Office of the Governor; Marsha Chien, Washington State Office of the Attorney General; and Eric Gonzales, Washington State Labor Council.

(Opposed) Josh Weiss, Washington State Association of Counties; and Monty Cobb, Washington Association of County Auditors.

(Other) Lori Augino, Office of the Secretary of State.

**Persons Signed In To Testify But Not Testifying:** None.