
**State Government, Elections &
Information Technology Committee**

ESSB 6002

Brief Description: Enacting the Washington voting rights act of 2018.

Sponsors: Senate Committee on State Government, Tribal Relations & Elections (originally sponsored by Senators Saldaña, Billig, Palumbo, Frockt, Rolfes, Van De Wege, Liias, Ranker, Keiser, Pedersen, Hunt, Wellman, Conway, Chase, McCoy, Dhingra, Kuderer, Hasegawa, Nelson, Carlyle and Mullet).

Brief Summary of Engrossed Substitute 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.

Hearing Date: 1/26/18

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 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

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.

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 within any district. Voter dilution claims also occur in at-large general elections for multi-member boards or commissions.

The United States Supreme Court has required 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 must generally vote 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 prohibits a local election system for the governing body of a political subdivision that impairs the ability of members of a protected class to have an equal opportunity to elect their preferred candidate that dilutes or abridges the rights of those voters. 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.

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 with a population under 1,000 people, or school districts with under 250 students.

Authority to Change Election System.

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. Before adopting a remedy, the subdivision must provide public notice and hold at least one public hearing at least one week before adopting the remedy. Notice must be posted and announced on radio or television advertisements in other languages where a significant segment of a community has limited proficiency in English.

The remedy may include implementing a district-based election, which includes 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 up to the general election, 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.

Voter-Initiated Change to Election System.

Any voter who resides within a particular political subdivision may file a legal action alleging a violation against that subdivision. To claim a violation of this Act, a person must demonstrate that the subdivision's elections show polarized voting that dilutes or abridges the right to vote. Intent to discriminate is not required to show a violation under the Act.

Before filing a legal action, a person first must have notified the political subdivision of the intent 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. The subdivision must work in good faith with the person filing notice to implement a remedy.

If the subdivision adopts a remedy, it must seek a court order acknowledging that the remedy is reasonably necessary to avoid a violation of the Act. The person filing the notice may support or oppose the proposed remedy, and is entitled to the subdivision's data used to develop its proposed remedy. If the court determines that the remedy is reasonably necessary to avoid a violation, then no legal action may be brought against the subdivision for four years, so long as the subdivision does not change or deviate from such remedy during that period.

Legal Challenge to Voting System.

After the notice period is exhausted, any voter who resides within the relevant subdivision may file an action in superior court. Members of different protected classes may file an action jointly if their combined voting preferences are different from the remainder of the electorate. The court must set a trial within one year of the filing.

To determine the existence of polarized voting, the court must analyze 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 is a factor a court may consider. Only elections conducted prior to the filing of an action may be considered to establish the existence

of polarized voting. Other factors probative of a violation may include the history and effects of discrimination, voting practices that diluted protected class votes, denial of access to election processes, and the use of overt or subtle racial appeals in political campaigns.

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. A court order is subject to mandatory direct appeal to the state supreme court.

The court may award attorney's fees, expert witness fees, and costs to a plaintiff, except a political subdivision, who prevails on a claim to enforce the Act. Prevailing defendants may be awarded certain fees and costs for frivolous actions.

Appropriation: None.

Fiscal Note: Available.

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