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## State Government & Tribal Relations Committee

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### HB 1048

**Brief Description:** Enhancing the Washington voting rights act.

**Sponsors:** Representatives Mena, Simmons, Goodman, Berry, Ramel and Peterson.

#### Brief Summary of Bill

- Provides that persons or organizations who file a notice of intent to challenge an election system under the Washington Voting Rights Act (WVRA) may recover costs incurred in conducting the necessary research, if the notice causes the political subdivision to adopt a remedy that is approved by the court.
- Grants standing to organizations to challenge election systems under the WVRA on behalf of their members.
- Permits counties to increase the number of county commissioners to prevent a violation of the WVRA against members of an Indian tribe.
- Makes several language changes to other aspects of the WVRA.

**Hearing Date:** 1/13/23

**Staff:** Jason Zolle (786-7124).

#### **Background:**

##### Federal Voting Rights Act of 1965.

The federal Voting Rights Act (VRA) prohibits racial discrimination in state and local elections in order to enforce the provisions of the Fifteenth Amendment to the United States Constitution.

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*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.*

*Vote Dilution.* Section 2 of the VRA (Section 2) prohibits any voting practice or procedure that results in the denial or abridgment of the right to vote on account of race, color, or language-minority status. Intentional discrimination based on race or color is prohibited. Also prohibited are practices that have the effect of impairing the ability of members of a racial group to participate equally in the nomination and election of candidates. In these cases, proof of intentional discrimination is not required to show a violation; instead, a violation is established when the totality of circumstances of the election process demonstrates a racially discriminatory impact. A court considers multiple factors in making this determination. Vote dilution claims under Section 2 often allege that the method of drawing voting districts spreads minority votes throughout the districts ("cracking"), or concentrates minority votes into a small number of districts ("packing"), or both, effectively weakening the minority group's ability to elect its candidates of choice.

#### Washington Voting Rights Act.

In 2018 the state enacted the Washington Voting Rights Act (WVRA) to regulate elections in counties, cities, towns, school districts, fire protection districts, port districts, and public utility districts (all together, "political subdivisions"). A violation of the WVRA is established when a political subdivision's elections exhibit polarized voting and there is a significant risk that 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.

Any voter who resides in a political subdivision may challenge its electoral system by filing a notice of intent. The political subdivision has 90 days to adopt a remedy to the alleged violation; if it fails to do so, the challenger may sue. 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. 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 or costs may be awarded if no lawsuit is filed.

Political subdivisions may take corrective action to change election systems in order to remedy a potential violation of the WVRA, including through implementation of a district-based election system. If corrective action is taken in response to a notice of intent to challenge, the political subdivision must obtain a court order certifying that the 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. If the court approves the remedy, it may not be challenged by lawsuit for at least four years.

#### **Summary of Bill:**

The bill makes several changes to various aspects of the WVRA.

*Standing.* An organization whose membership includes or is likely to include a voter who resides in the political subdivision is given the ability to challenge the political subdivision's electoral system. Language is added to clarify that a class of citizens protected by the WVRA may include a cohesive coalition of members of different racial, ethnic, or language-minority groups.

*Establishing a Violation.* Language is added to specify that no single factor is dispositive or necessary to establish a violation of the WVRA. Language is added to specify that the parties may stipulate to a violation of the WVRA.

*Remedies for Violations.* In tailoring a remedy, the court may not give deference to a proposed remedy just because it was proposed by the political subdivision. The court may not approve a remedy that violates the WVRA. Language is added to specify that a court is not required to consider explanations for why polarized voting exists in determining whether it exists. Counties are authorized to increase the number of commissioners in order to prevent a violation of the WVRA against members of an Indian tribe.

*Cost Recovery.* A person or organization who files a notice of intent to challenge an election system under the WVRA may recover certain costs if the notice causes the political subdivision to adopt a remedy that is approved by the court. The request must include financial documentation and be filed within 30 days of the adoption of the new electoral system. The political subdivision must reimburse the costs incurred in conducting the research necessary to send the notice, up to \$50,000, within 60 days.

A person or organization may recover attorney's fees and costs even if they do not achieve court relief or a favorable judgment if the lawsuit altered the political subdivision's behavior to correct a claimed harm. A person or organization who prevails in a WVRA lawsuit may recover reasonable fees and costs incurred before filing the action.

*Right to Vote Construed Liberally.* 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 act contains a severability clause.

**Appropriation:** None.

**Fiscal Note:** Requested on January 4, 2023.

**Effective Date:** The bill takes effect on January 1, 2024.