

# HOUSE BILL REPORT

## ESSB 6002

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**As Reported by House Committee On:**  
State Government, Elections & Information Technology

**Title:** An act relating to establishing a voting rights act to promote equal voting opportunity in certain political subdivisions and establishing a cause of action to redress lack of voter opportunity.

**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, Lias, Ranker, Keiser, Pedersen, Hunt, Wellman, Conway, Chase, McCoy, Dhingra, Kuderer, Hasegawa, Nelson, Carlyle and Mullet).

**Brief History:**

**Committee Activity:**

State Government, Elections & Information Technology: 1/26/18, 2/15/18 [DPA].

**Brief Summary of Engrossed Substitute Bill**  
**(As Amended by Committee)**

- 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 a violation of the act.

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

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

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

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

**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 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 Amended 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 after receiving notice to implement the person's remedy before a legal action may be filed, but after July 1, 2021, that deadline drops to 90 days. The subdivision must work in good faith with the

person filing notice to implement a remedy, including consideration of relevant election and demographic data, and other information relevant to implementing 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. All facts and reasonable inferences must be viewed in the light most favorable to the opposing party, and the court must apply a rebuttable presumption that reject a 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.

#### **Amended Bill Compared to Engrossed Substitute Bill:**

The amended engrossed substitute bill provides that elections conducted prior to filing an action are more probative to show polarized voting than elections after filing an order. The amendment also provides that a subdivision's good faith work with the person filing notice on implementing a remedy may include relevant election data, demographic and census data, and other information relevant in implementing a remedy. A political subdivision must provide data and analysis used in developing its proposed remedy submitted for court approval. Courts must apply a rebuttable presumption for declining a subdivision's proposed

remedy, and all facts and reasonable inferences must be viewed in favor of those opposing the proposed remedy.

Beginning July 1, 2021, the political subdivision's notice period for proposing a remedy is reduced from 180 to 90 days. The amendment removes the mandatory supreme court appellate jurisdiction of a court order on a subdivision's proposed remedy.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended 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 local subdivisions with the ability to make changes in their election systems, while remaining flexible to give those jurisdictions options on how to choose the right method. This provides a cost-effective and timely solution to local jurisdictions faced with the need for election reform.

Old election systems have failed to keep up with changing demographics, which has left minority communities feeling disenfranchised. Elected positions have power to shape the well-being and prosperity of residents, so it is important for minority residents to become involved and leaders within their communities to represent their communities. However, minority candidates have a disadvantage when running in some election systems that favor the majority class. This disadvantage is so great that in some circumstances a minority candidate lost to an opponent who had withdrawn from an election race.

Improved election systems will provide full, equal access to democracy and allow more voices to be involved in decision making. This equality will help to engage minority groups that feel disenfranchised and disconnected with their government.

(Opposed) None.

(Other) The bill only allows subdivisions to create district elections to remedy a potential voting rights violation. The bill should be expanded to allow cities the option to create district elections for other permissive purposes, not just voting rights. There should be more flexibility on how to provide notice to limited-English speaking communities. The population threshold for cities should be raised. The standard for establishing a violation could be confusing to understand and implement and should require the notice to provide a specific description of the alleged violation. The bill should permit a subdivision to recover attorney's fees.

**Persons Testifying:** (In support) Senator Seldana, prime sponsor; Cindy Black, Fix Democracy First; Kathy Sakahara, League of Women Voters of Washington; Lori Augino, Office of the Secretary of State; Eric Gonzalez, Washington State Labor Council, AFL-CIO; and Alex Hur, OneAmerica.

(Other) David Williams, Association of Washington Cities; and Jessica Vavrus, Washington State School Directors' Association.

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