

SENATE BILL REPORT

ESSB 6002

As Amended by House, February 27, 2018

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, Tribal Relations & Elections: 1/10/18, 1/12/18 [DPS, w/oRec].

Floor Activity:

Passed Senate: 1/19/18, 29-19.

Passed House: 2/27/18, 52-46.

Brief Summary of Engrossed First Substitute Bill

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

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6002 be substituted therefor, and the substitute bill do pass.

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.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Saldaña.

Minority Report: That it be referred without recommendation.

Signed by Senator Miloscia, Ranking Member.

Staff: Samuel Brown (786-7470)

Background: Federal Voting Rights Act of 1965 (VRA) - Section 2. The VRA prohibits discriminatory practices in state and local elections, based on the protections provided under the Fifteenth Amendment to the Constitution. Special protections extend to members of a racial, color, or certain language minority group.

Section 2 of the VRA (Section 2) prohibits any voting practice or procedure that effectively impairs 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. Proof of intentional discrimination is not required to show a violation. Section 2 does not create a right for minority groups to be proportionally represented in elected offices.

Vote dilution claims under Section 2 allege that the method of drawing voting districts has the discriminatory effect of dispersing minority votes throughout the districts, weakening the minority group's ability to influence the election. Vote dilution claims have also been raised in jurisdictions holding at-large general elections for bodies with multiple positions.

Local Elections. Local governments are responsible for periodically changing their voting districts to account for population shifts. Within eight months after receiving 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. The plan should also try to preserve existing communities of related and mutual interest. The census data may not be used to favor any racial or political group in redistricting.

Alternative Proportional Voting Systems. Several jurisdictions have adopted alternative systems for allocating votes to voters to determine the winner of an election. These systems are known as alternative proportional voting systems, and include:

- limited voting, where a voter receives fewer votes than there are candidates to elect;
- cumulative voting, where a voter receives as many votes as there are candidates to elect, but may cast multiple votes for a single candidate; and
- single transferrable or ranked choice voting, where a voter ranks candidates in order of preference, and votes are transferred to lower-ranked candidates who are not elected on first-place votes if a majority is not reached.

Summary of Engrossed First Substitute Bill: The Washington Voting Rights Act (Act) is established. A jurisdiction violates the Act when elections exhibit polarized voting and where there is a significant risk 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.

Definitions and Scope. A protected class includes voters who are members of a race, color, or language minority group. The Act applies to elections held within counties, cities, towns,

school districts, fire protection districts, port districts, and public utility districts (political subdivisions). Cities or towns with fewer than 1000 people and school districts with fewer than 250 students may not be sued for violations of the Act.

Redistricting. Any political subdivision may take corrective action to change its election system in order to remedy a potential violation of the Act. The remedy may include implementation of a district-based election system, 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, and geographically contiguous, must coincide with natural boundaries, and must preserve communities of related and mutual interest as much as possible.

The political subdivision must provide notice to the community of its proposed change to its election system. If 5 percent or more of residents, or 500 or more residents, whichever is fewer, are of limited English proficiency, the notice must be provided in languages residents can understand.

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. The subdivision must obtain a court order, subject to mandatory direct appeal to the state supreme court, certifying that the remedy complies with the Act and was prompted by a plausible violation of the Act. Any subdivision that implemented a district-based election system must prepare a redistricting plan within eight months of receiving federal census data.

Notice of Potential Violation. Any person may notify the political subdivision of their intent to challenge the election system. The notice must describe the alleged violation and a possible remedy. The person bringing the notice and subdivision must work in good faith to implement a remedy that provides members of the protected class or classes equal opportunity to elect candidates of their choice.

Any person may file an action against the subdivision under the Act if the subdivision does not adopt a remedy within 180 days. No notice of a potential violation of the Act may be submitted before July 19, 2018.

Legal Action. If no remedy is adopted, any person may file a lawsuit alleging a violation of the Act within that subdivision. The claim has two elements:

- 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.

The protected class does not have to be geographically compact or concentrated to constitute a majority in any proposed or existing district. Intent to discriminate is not required to show a violation under the Act. Members of different protected classes may file an action jointly if their combined electoral preferences differ from the rest of the electorate.

Court Procedures and Process. The action may be filed in the superior court of the county in which the political subdivision is located. If the action is against a county, it may instead be filed in the superior court of either of the two nearest judicial districts. The trial must be set for no later than one year after the filing of a complaint, with a corresponding discovery and motions calendar. For purposes of the statute of limitations, a cause of action under the Act arises every time there is an election under a districting method that is the subject of the court action.

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. Election of candidates who are members of the protected class does not preclude a court from finding the existence of polarized voting.

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 order the subdivision to hold elections for its governing body in the same year as elections for federal or statewide elected offices.

If the court issues a final order between the date of the general election and January 15 of the following year, the order applies to the next general election. If the court issues a final order between January 16 and the next general election date, the order only applies starting from the general election of the following year.

The court may award attorneys' fees and costs to a prevailing plaintiff. Prevailing defendants may be awarded certain costs, but not attorney's fees.

Immunity From Suit. If the subdivision modifies its electoral system and obtains a court order that the remedy is in compliance with the Act, or if the jurisdiction implements a court-ordered remedy, no legal action may be brought against the subdivision for four years alleging a violation of the Act so long as the subdivision does not modify the system in the remedy.

Political subdivisions which have modified their electoral systems in the previous decade in response to a federal VRA claim may not be sued under the Act until redistricting after the 2020 census is completed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Some localities recognize they could do better in ensuring representation for all, and this bill eliminates barriers to making those

changes. This allows jurisdictions to take the lead and provides a process for working in good faith from the same set of data toward a remedy. This will improve democratic participation, particularly in cities with demonstrable racially polarized voting. This is a better bill than past years that is more inclusive of stakeholder feedback. Notice provisions will ensure that everyone in communities know what proposed solutions are before they are implemented. The bill provides a roadmap and timetable for collaboration on solutions and does not mandate one particular system. This creates a pathway around litigation. I lost an election to a candidate who dropped off the ballot as a result of polarized voting, which would be rectified under this bill. After living under dictatorship, watching people vote and exercise their voice was exciting, but the makeup of elected bodies has not kept pace with community changes. Districting would give communities the opportunity to elect candidates who understand their needs and build trust in local governments.

Alternative proportional voting methods are important because there can be wide discrepancies in district election participation. Ranked choice voting leads to increased turnout. Multiple counties use vendors for their election systems that can process ranked choice voting elections. Ranked choice voting has led to the breaking of numerous glass ceilings for representation in other jurisdictions.

When elected officials authentically understand and represent their communities, voters feel more connected to their government. This bill is necessary to protect the rights of Washington voters. This bill is consistent with the state's longstanding commitment to provide everyone an equal opportunity to participate in our civil processes. This will inspire more students, who are the next generation of leaders, to get involved in politics.

OTHER: County auditors are committed to remedying civil rights violations and underrepresentation, but have concerns about the inclusion of alternative proportional voting methods. A requirement that an alternative proportional voting method is the only way to solve the problem in the jurisdiction is requested. The Secretary of State supports the goals of the bill, but is concerned that ranked choice voting would be costly, confusing, and unpopular with voters.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Dulce Gutierrez, Deputy Mayor, City of Yakima; Alex Hur, OneAmerica; Elisabeth Smith, ACLU; Eric Gonzalez, Washington State Labor Council; Graciella Villanueva, citizen; Ubah Aden, citizen; Alma Chacon, citizen; Gregory Christopher, Tacoma/Pierce County NAACP and Tacoma Ministerial Alliance; Krist Novoselic, FairVote; Colin Cole, FairVote Washington; George Cheung, FairVote Washington; Rosa Rice-Pelepko, Associated Students of Western Washington University; RaShelle Davis, Governor's Office; Marsha Chien, Office of the Attorney General; Oskar Zambrano, Progreso.

OTHER: Dolores Gilmore, Kitsap County Auditor; Julie Anderson, Washington Association of County Auditors; Lori Augino, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: PRO: Stuart Halsan, FairVote; Pastor Arthur Banks, Political Destiny & Tacoma Ministerial Alliance; Cindy Black, Fix Democracy First; Jessica Vavrus, Washington State School Directors' Association; Salvador Salazar Cano, University of Washington, Bothell; David Morales, Commission on Hispanic Affairs.

OTHER: David Williams, Association of Washington Cities.

EFFECT OF HOUSE AMENDMENT(S): Redistricting. 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. The mandatory supreme court appellate jurisdiction of a court order on a subdivision's proposed remedy is removed.

Notice of Potential Violation. 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. Beginning July 1, 2021, the political subdivision's notice period for proposing a remedy is reduced from 180 to 90 days.

Court Procedures and Process. Elections conducted prior to filing an action are more probative to show polarized voting than elections after filing an order.

Legal Action. Only a voter who resides within an affected subdivision may file an action under the Act. A subdivision must publish the outcome, summary, and legal costs of any court action online.