

FINAL BILL REPORT

ESHB 1048

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Synopsis as Enacted

Brief Description: Enhancing the Washington voting rights act.

Sponsors: House Committee on State Government & Tribal Relations (originally sponsored by Representatives Mena, Simmons, Goodman, Berry, Ramel, Peterson, Pollet, Doglio, Macri, Morgan, Wylie, Gregerson, Bergquist, Street, Cortes, Santos, Ormsby and Farivar).

House Committee on State Government & Tribal Relations
Senate Committee on State Government & Elections

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.

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 regarding the jurisdiction's 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 voting districts have been drawn in a manner that spreads minority votes throughout the districts ("cracking"), or concentrates minority votes into a small number of districts ("packing"), or both, effectively weakening a minority group's ability to elect its candidates of choice.

Washington Voting Rights Act.

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.

Enacted in 2018, the Washington Voting Rights Act (WVRA) regulates 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 does not, 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 attorneys' 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 a lawsuit for at least four years.

Summary:

Standing Under the Washington Voting Rights Act. An organization whose roster of members and volunteers includes a voter who resides in the political subdivision is given the ability to challenge the political subdivision's electoral system. A tribe that is located at least in part of the political subdivision is also given such an ability. However, these changes may not be interpreted to relieve a party of the requirement to establish standing as provided in Washington case law when filing a lawsuit under the WVRA. 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 solely because it was proposed by the political subdivision. The court may not approve a remedy that violates the WVRA. 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 attorneys' 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.

Votes on Final Passage:

House	57	38
Senate	27	21

Effective: January 1, 2024