

HOUSE BILL REPORT

ESHB 1048

As Passed House:

March 4, 2023

Title: An act relating to enhancing the Washington voting rights act.

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).

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/13/23, 1/20/23 [DPS].

Floor Activity:

Passed House: 3/4/23, 57-38.

Brief Summary of Engrossed Substitute 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 and tribes 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.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Ramos, Chair; Stearns, Vice Chair; Gregerson and Mena.

Minority Report: Do not pass. Signed by 3 members: Representatives Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Low.

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.

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 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 of Engrossed Substitute Bill:

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

Standing. 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 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 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.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill lowers barriers for communities to access the promise of the WVRA. The goal of the WVRA is to find less costly and more efficient remedies than long drawn-out lawsuits, and the technical fixes in this bill help make it accessible to all. Awarding \$50,000 to a group that brings a successful notice is preferable than the millions of dollars it will cost to litigate a case in the courtroom. The changes in this bill also promote settlements. It is important to liberally construe the right to vote to ensure that the WVRA is interpreted in a way to fulfill its purpose. The bill follows best practices and experiences with the WVRA and similar legislation in other states.

(Opposed) This bill is confusing and the language doesn't make sense in many places. It takes hours and days to comprehend it. There is a mistrust of the election process. Language throughout the bill, such as "including but not limited to," allows election officials to make up any limits they want. The bill grants special rights to certain groups and individuals, and will destroy any sense of election integrity the state may still have.

(Other) There is support for enhancing voting rights and access to voting to ensure governing bodies represent their voters. This version of the bill removes difficult language from last year's bill that created confusion and a burden on local governments. There are still some technical concerns though about certain provisions, such as allowing organizational standing if the membership "is likely to" include a voter. It is unclear how that would be determined. Also, the notice cost recovery provisions create a financial disincentive for a jurisdiction to change its voting system.

Persons Testifying: (In support) Representative Sharlett Mena, prime sponsor; Carol Sullivan, League of Women Voters of Washington; Alex Hur and Melissa Rubio, OneAmerica; Lata Nott, Campaign Legal Center; Denisse Guerrero, Washington

Community Alliance; Colin Cole, More Equitable Democracy; and Arlette Lopez, Rural Peoples Voice.

(Opposed) Julie Barrett, Conservative Ladies of Washington.

(Other) Eric Pratt; Mike Hoover, Washington State Association of Counties; Candice Bock, Association of Washington Cities; Briahna Murray and Blanche Barajas, City of Pasco; and Marian Dacca, Washington Public Ports Association.

Persons Signed In To Testify But Not Testifying: None.