

SENATE BILL REPORT

ESHB 1048

As of March 9, 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: Passed House: 3/4/23, 57-38.

Committee Activity: State Government & Elections: 3/14/23.

Brief Summary of Bill

- Allows recovery of costs incurred by claimants who file a notice of intent to challenge a political subdivision's election system under the Washington Voting Rights Act (WVRA) to conduct research supporting the notice if the political subdivision alters its behavior.
- Grants standing to organizations and tribes to challenge election systems under the WVRA on behalf of their members.
- Authorizes increasing the number of county commissioners to remedy a violation of the WVRA on the basis of Indian tribal status.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Staff: Samuel Brown (786-7470)

Background: Washington Voting Rights Act. In 2018, the Legislature passed ESSB 6002 creating the Washington Voting Rights Act (WVRA). A violation of WVRA is established where a jurisdiction's 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

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as a result of dilution or abridgement of their rights. WVRA applies to elections held within counties, cities, towns, school districts, fire protection districts, port districts, and public utility districts (political subdivisions). Any voter in an affected political subdivision may challenge the electoral system. The political subdivision has 90 days to adopt a remedy to the alleged violation; if it fails to do so, it is subject to a lawsuit.

Corrective Action. Political subdivisions may take corrective action to change election systems to remedy a potential violation of WVRA, including through implementation of a district-based election system. The political subdivision must obtain a court order certifying that its remedy complies with WVRA and was prompted by a plausible violation. Courts apply a rebuttable presumption against adopting a political subdivision's proposed remedy, and all facts and reasonable inferences must be viewed in favor of those opposing the proposed remedy. If the court approves the remedy, it may not be challenged by lawsuit for at least four years.

Assessing a Claim. 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.

Remedies. 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 and costs are awarded if no lawsuit is filed.

Summary of Bill: Cost Recovery. A claimant who alleged a violation of WVRA may recover costs incurred conducting research to support the notice of the alleged violation if the political subdivision adopts a remedy that is subsequently approved by a court. The request for cost recovery must be made in writing within 30 days of adoption of the new electoral system and include financial documentation. The political subdivision must reimburse the costs incurred in conducting the research necessary to send the notice, up to \$50,000, within 60 days.

Prevailing plaintiffs in a WVRA lawsuit may recover all reasonable fees and costs incurred before filing the action. Costs may be recovered, even if the claimant does not achieve court relief or a favorable judgment, if the court finds the political subdivision altered its behavior to correct a claimed WVRA violation.

Standing. Organizations whose membership includes a voter who resides in the political subdivision and tribes located at least partially in the political subdivision may allege a violation of WVRA and challenge the political subdivision's electoral system. Cohesive coalitions of members of different racial, ethnic, or language-minority groups are protected by the WVRA and may file notices or claims to enforce its provisions.

Establishing a Violation. No single factor is dispositive or necessary to establish a violation of WVRA. The claimant and political subdivision may stipulate that a violation of WVRA has occurred.

Remedies. The number of county commissioners may be reasonably increased to remedy a violation of WVRA on the basis of Indian tribal status.

In tailoring a remedy, courts may not give deference to a proposed remedy solely because it was proposed by the political subdivision. Courts may not approve a remedy that violates WVRA. Courts are not required to consider explanations for why polarized voting exists in determining whether polarized voting exists.

Other Provisions. 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 bill contains a severability clause.

Appropriation: None.

Fiscal Note: Available.

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

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