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## State Government & Tribal Relations Committee

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### HB 1710

**Brief Description:** Concerning compliance with the Washington voting rights act of 2018.

**Sponsors:** Representatives Mena, Salahuddin, Gregerson, Berg, Reeves, Cortes, Stonier, Timmons, Thomas, Reed, Hill, Berry, Simmons, Parshley, Farivar, Zahn, Fosse, Peterson, Goodman, Street, Doglio, Scott, Pollet, Nance, Ormsby, Ryu, Macri, Ramel and Obras.

#### Brief Summary of Bill

- Requires certain jurisdictions to obtain preclearance that certain proposed changes to their election systems will not diminish the ability of a protected class to participate in the political process or elect their preferred candidates to office, and does not violate the Washington Voting Rights Act, federal Voting Rights Act, or other provisions of state or federal law, before those changes may take effect.

**Hearing Date:** 2/5/25

**Staff:** Desiree Omli (786-7105).

#### 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 (US) Constitution. The Fifteenth Amendment states that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

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

*Preclearance.* Section 5 of the VRA (Section 5) prohibits covered jurisdictions from changing their voting laws, practices, or procedures until they have first obtained a determination from a federal court or the US Attorney General that the change does not have the purpose or effect of discriminating on the basis of race or language-minority status. The coverage formula to determine which jurisdictions are covered by the preclearance requirement considers: (1) whether, in the elections of 1964, 1968, and 1972, the jurisdiction used a test or device restricting the opportunity to register and vote, such as literacy tests or proof of good and moral character; and (2) whether fewer than half of the jurisdiction's eligible citizens were registered to vote or participated in the elections of 1964, 1968, and 1972.

In a 2013 case, *Shelby County v. Holder*, the US Supreme Court held that this coverage formula was unconstitutional because it was no longer responsive to the current environment and thus violated principles of equal state sovereignty. Because Congress has not updated the formula since the court decision, no jurisdictions are currently subject to preclearance under the VRA.

#### 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"). The WVRA does not contain any preclearance requirements. A violation of the WVRA is established when a political subdivision's method of electing its governing body exhibits polarized voting and members of a protected class do not have an equal opportunity to elect their candidates of choice as a result of dilution or abridgement of their rights. Polarized voting is shown when there is a difference in the choice of candidate or other electoral choices that are preferred by voters in a protected class or coalition of protected classes, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

Political subdivisions may take corrective action on its own to change election systems in order to remedy a potential violation of the WVRA, including through implementation of a district-based election system, so long as certain notice requirements are met. Any voter who resides in a political subdivision, an organization whose members or volunteers include a voter who resides in the political subdivision, or a tribe located at least in part in the political subdivision may challenge the political subdivision's electoral system by filing a notice of intent to sue that identifies the protected class(es) who are affected because of alleged vote dilution and polarized voting. If corrective action is taken in response to such notice, the political subdivision must obtain a court order certifying that the remedy complies with the WVRA.

If, after the political subdivision receives a notice of intent to challenge the electoral system because of alleged vote dilution and polarized voting, the political subdivision does not remedy the alleged violation within 90 days, a party may file an action against the political subdivision in superior court. To determine whether voting is polarized in a vote dilution claim, the court assesses the elections pragmatically based on local election conditions. 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.

## Summary of Bill:

### Preclearance - Washington.

A preclearance requirement is instituted for covered jurisdictions seeking to adopt or implement a covered practice. Covered jurisdictions are a political subdivision, defined as a county, city, town, school district, fire protection district, port district, or public utility district, which meet one of the following criteria:

- Within the previous 25 years, the political subdivision was subject to a government enforcement action or settlement based upon:
  - a violation of the state or federal VRA, the Fifteenth Amendment of the US Constitution, or any voting-related violation of the Fourteenth Amendment of the US Constitution or state Constitution, or
  - a finding or concession that the political subdivision engaged in a pattern, policy, or practice of discrimination against members of a protected class in violation of state or federal law.
- The political subdivision contains at least 6,000 citizens of voting age that are members of a protected class or whose members comprise at least 15 percent of the citizen voting population and where, at any point in the previous 10 years:
  - the percentage of citizen voting age population of the protected class that is registered to vote is at least 10 percentage points lower than the percentage of all voting age citizens who are registered to vote, or
  - the percentage of the citizen voting age population of the protected class within the political subdivision that participated in any general election is at least 10 percentage points lower than the percentage of all citizens of voting age that participated in the election.
- The political subdivision contains a protected class whose members consist of at least 6,000 citizens of voting age or whose members comprise at least 15 percent of the citizen voting age population, and, at any point during the previous 10 years:
  - that protected class had a combined misdemeanor and felony arrest rate more than twice that of the whole population of the political subdivision; or
  - the poverty rate of that protected class exceeded the poverty rate of the whole population of the political subdivision by at least 10 percentage points.
- During the previous 25 years, the political subdivision, was found to have enacted or implemented a covered policy without obtaining preclearance for such covered policy while designated as a covered jurisdiction.

By July 1 of each even-numbered year, the Secretary of State must, by rule and in consultation with the Attorney General, the Office of Financial Management, and any other relevant agency, determine which political subdivisions qualify as covered jurisdictions and notify them in writing. The Attorney General must maintain a website that lists all covered jurisdictions, submissions for preclearance and any supporting documents, and the status and disposition of each submission.

Preclearance must be obtained any time a covered jurisdiction seeks to adopt or implement a

covered practice. Covered practices include:

- any change to the election method of members of a governing body;
- any change to the boundaries of the covered jurisdiction that reduces, by more than five percentage points, the proportion of the jurisdiction's citizen voting age population that is composed of members of any protected class that is a basis for that political subdivision's designation as a covered jurisdiction;
- any change to the boundaries of election districts or wards;
- any change to that jurisdiction's plan of government;
- the method of election or district plans if, after the Census, a covered jurisdiction maintains an at-large method of election;
- the method of election or district plans of a covered jurisdiction that implemented a district-based election if, after the census, the jurisdiction makes no revisions to its districting plans;
- an annexation or deannexation of a political subdivision or the consolidation or division of a political subdivision;
- any change in the number, location, or hours of any election day or early voting site or ballot drop boxes; or
- any change that may have the effect of denying, abridging, or diluting the right to vote on account of race, color, or membership in a language minority group, as determined by the Attorney General by rule.

Preclearance may be obtained by filing an action in Thurston County Superior Court, or King County Superior Court for a political subdivision located within Thurston County, for a declaratory judgment or by submitting a request to the Attorney General for a certification of no objection. Preclearance must be granted if the covered practice: (1) will not diminish the ability of the protected class(es) that are the basis for the political subdivision's designation as a covered jurisdiction to participate in the political process or to elect their preferred candidates to office; and (2) does not violate the state VRA, federal VRA, or other provisions of state or federal law.

The Attorney General or an aggrieved party may sue the covered jurisdiction in superior court to compel it to comply with preclearance requirements and enjoin it from implementing a covered practice until it complies.

If the Attorney General does not grant preclearance, only the covered jurisdiction may appeal to the superior court. These appeals may be subject to expedited proceedings and the court may stay the implementation of the covered practice until a final order is issued.

An aggrieved person may file an action in superior court if:

- the Attorney General issued a certificate of no objection to the covered policy without meeting the standard to grant preclearance; or
- the Secretary of State identifies a list of covered jurisdictions that is inconsistent with the criteria for designating political subdivisions as covered jurisdictions, including the failure to designate a covered jurisdiction that meets the criteria as a covered jurisdiction.

An organization may be considered an "aggrieved person" if its membership includes individuals aggrieved by an act for which an aggrieved person may file an action in superior court, or if its mission would be frustrated by such an act.

**Appropriation:** None.

**Fiscal Note:** Requested on January 29, 2025.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.