

HOUSE BILL REPORT

HB 1710

As Reported by House Committee On:
State Government & Tribal Relations

Title: An act relating to compliance with the Washington voting rights act of 2018.

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 History:

Committee Activity:

State Government & Tribal Relations: 2/5/25, 2/11/25 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

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

Minority Report: Do not pass. Signed by 3 members: Representatives Waters, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Chase.

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.

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."

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 to restrict 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.

A political subdivision 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 Substitute 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 WVRA 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 WVRA, 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.

Once a covered practice is approved by the Attorney General or a court, an action against the political subdivision based on the same covered practice may not be brought within four years of the approval of that covered practice so long as the political subdivision does not enact a change to or deviation from the approved covered practice during the four-year period that would otherwise give rise to an action under the bill or the WVRA.

Substitute Bill Compared to Original Bill:

The substitute bill provides a four-year safe harbor from challenges to a political subdivision's covered practice that was approved by a court or the Attorney General, unless the political subdivision alters the covered practice during the four-years that would give rise to an action under the bill or the WVRA.

Appropriation: None.

Fiscal Note: Requested on January 29, 2025.

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

Staff Summary of Public Testimony:

(In support) The effect of this preclearance requirement is simple—it will prevent vote dilution and the abridgment of voting right by requiring covered jurisdictions with a history of discrimination to obtain the preapproval of a court or the Attorney General for election policies prior to their implementation. With the rise of enfranchisement for groups of people who were historically discriminated against and denied the right to vote, many jurisdictions are finding ways to keep meaningful participation out of the hands of historically marginalized groups.

Preclearance is widely regarded as the crown jewel of protecting against discrimination in voting and has been used in nonslave states like California. It was required under the federal VRA for 50 years until the coverage formula was struck down by the Supreme Court. Even though preclearance is still allowed under federal law, it is effectively an unusable tool because Congress has not adopted a new coverage formula. The impact of this is that jurisdictions with a history of discrimination now have the ability to enact discriminatory practices and force marginalized groups to challenge these practices by lengthy and costly law suits. This bill is cost efficient as it saves local jurisdictions on the costs of defending these law suits.

The coverage formula in this bill is modernized and updated so that it is not based on out-of-date and therefore irrelevant data. The coverage formula is designed to identify jurisdictions in the state that have a history of discrimination or ongoing conditions of racial disparities that can impede on the ability of an impacted community to participate effectively in the political process. In addition, the coverage formula is designed to have a built-in exit process because it looks only at the previous 10 years or 25 years. New York and Connecticut have adopted their own preclearance requirement.

(Opposed) It is unclear from the coverage formula which jurisdictions will be subject to these preclearance requirements. The population threshold in the coverage formula is not helpful and assumes that those jurisdictions are not acting properly simply because it contains a certain population size of minority groups. It seems to be arbitrarily chosen and based on questionable data. Washington is not a historically pervasive racist place and is not the type of state that was contemplated when preclearance was adopted on the federal level.

Implementation of this bill should be pushed out to give jurisdictions time to comply before being punished. There should also be a safe harbor against challenges to covered practices that received court or Attorney General approval. In addition, the 25-year lookback in the coverage formula seems excessive and punitive and should therefore be reduced. The timeframes afforded to the Attorney General, including the extensions allowed, when determining whether to grant a certificate of no objection can halt the business of the jurisdiction by six months or more. In addition, some covered practices are too broad, such as the annexation provisions. Annexation has nothing to do with voting or population. Most of the time jurisdictions are annexing little areas or places that do not change the population size of the jurisdiction. It would be burdensome and costly for jurisdictions to

go through preclearance each time they want to annex small pieces of land. This is especially true if a jurisdiction has to file an action in Thurston County Superior Court for each preclearance.

Persons Testifying: (In support) Representative Sharlett Mena, prime sponsor; Roxana Norouzi, OneAmerica; Aseem Mulji, Campaign Legal Center; and Michael Pernick, Legal Defense Fund.

(Opposed) Candice Bock, Association of Washington Cities; Paul Jewell, Washington State Association of Counties; Lorilee Gates; and Richa Sigdel, City of Pasco.

Persons Signed In To Testify But Not Testifying: None.