

HOUSE BILL REPORT

HB 1750

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

Title: An act relating to creating guidelines for voter suppression and vote dilution claims under the Washington voting rights act.

Brief Description: Creating guidelines for voter suppression and vote dilution claims under the Washington voting rights act.

Sponsors: Representatives Hill, Gregerson, Simmons, Street, Fosse, Obras, Reed, Ormsby, Farivar, Mena, Parshley, Nance, Scott, Pollet, Macri, Ryu and Ramel.

Brief History:

Committee Activity:

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

Brief Summary of Substitute Bill

- Prohibits certain political subdivisions from implementing and enforcing any election policy or practice, or to take any action or fail to take any action, that results in, is likely to result in, or is intended to result in a material disparate burden on the ability or opportunity of members of a protected class to vote or participate in any stage of the political process.
- Provides a four-year safe harbor from challenges brought under an abridgment claim for any subsequent actions based on the same election policy or practice for which a court has concluded that the political subdivision's remedy complies with the Washington Voting Rights Act.

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.

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.

Minority Report: Do not pass. Signed by 2 members: Representatives Waters, Ranking Minority Member; Walsh, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 1 member: Representative Chase.

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. 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, but 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 show that the political process leading to nomination or election in the jurisdiction are not equally open to participation by members of a protected class in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. Section 2 prohibits both vote dilution and the abridgment of the right to vote.

Vote Dilution. Federal courts have recognized two primary forms of vote dilution. First, vote dilution can be caused by the use of at-large voting methods where voters of the entire jurisdiction elect the members to the governing body; the majority by virtue of its numerical superiority will regularly defeat the choices of minority voters. Second, vote dilution can occur in district-based elections through a method of drawing voting districts that 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.

Abridgment of Voting Rights. Federal courts have described an "abridgment" of the right to vote as an electoral system or practice that impairs voting rights on the basis of race, color, or language-minority group. Some examples have historically included a poll tax or discriminatory literacy tests. Abridgment of the right to vote can occur regardless of which racial group is in the majority. Abridgment may also be commonly referred to as vote suppression or vote denial.

Washington Voting Rights Act.

In 2018 the state enacted the Washington Voting Rights Act (WVRA) to regulate elections in certain 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 method of electing its governing body exhibits polarized voting and 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. 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 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 by the political subdivision by its own accord, it must provide public notice to its residents about the proposed change to remedy the potential violation and hold a hearing.

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 (all together, "party") may challenge the political subdivision's electoral system by filing a notice of intent 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 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. The party filing the notice may make a demand to the political subdivision for reimbursement of the costs incurred in conducting the research necessary to file the notice. Upon receiving such demand, the political subdivision has 60 days to reimburse the party for reasonable costs up to \$50,000.

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. The court may award attorneys' fees and costs to a prevailing plaintiff. Prevailing defendants may be awarded certain costs and fees.

Cities and towns with a population of under 1,000 and school districts with enrollment under 250 students are exempt from the WVRA but may still voluntarily change their election system to remedy a potential violation.

Summary of Substitute Bill:

Washington Voting Rights Act.

Abridgment of voting rights. Political subdivisions are prohibited from implementing and enforcing any election policy or practice, or to take any action or fail to take any action, that results in, is likely to result in, or is intended to result in a material disparate burden on the ability or opportunity of members of a protected class to vote or participate in any state of the political process. An election policy or practice includes any prerequisite to voting, method of election, or any other law or action with respect to voting or the administration of elections. A political subdivision is not in violation of the prohibition on the abridgment of voting rights if the political subdivision demonstrates by clear and convincing evidence that the election policy or practice is necessary to significantly further a compelling particularized interest, and there is no alternative election policy or practice that would result in less of a disparate burden on members of a protected class.

Proof of intent to discriminate against a protected class is not required to bring a cause of action against a political subdivision for violation of the prohibition on abridgment of voting rights. Circumstances not relevant to, and which may not be considered when, determining a violation include:

- the total number or share of protected class members not materially burdened by the election policy or practice;
- the degree to which the election policy or practice has a long pedigree or was in widespread use at an earlier date;
- the use of an identical or similar election policy or practice in other jurisdictions;
- the availability of other forms of voting unimpacted by the election policy or practice; and
- defenses that the election policy or practice is necessary to address criminal activity, including voter fraud, or to bolster voter confidence in election integrity that is not supported by substantial evidence.

Various provisions of the WVRA that apply to remedying an electoral system in vote dilution claims also apply to, or are amended to also apply to, provisions related to election policies or practices for abridgment claims. For example, notice requirements and demands for reimbursement apply to abridgment claims and the four-year safe harbor is extended to protect jurisdictions against subsequent challenges to election policies and practices that are the same as those policies and practices that were remedied as a result of a violation or potential violation of the prohibition on vote suppression. However, certain provisions are amended to apply only in vote dilution cases.

A party does not have to meet the notice requirement or wait 90 days to bring an action for a violation of the WVRA, for either a vote dilution or abridgment claim, if:

- the party is seeking preliminary relief with respect to an upcoming election;
- the party is seeking to intervene in or join an existing action; or
- following the party's notice to the political subdivision, the political subdivision

enacted a change that would not remedy the violation identified in the notice.

In an action filed, for either a vote dilution or abridgment claim, in which the plaintiff seeks a temporary restraining order or a preliminary injunction with respect to an upcoming election, the court must grant relief if it determines that the plaintiff is more likely than not to succeed on the merits, and it is possible to implement an appropriate remedy that would resolve the alleged violation in the upcoming election.

Substitute Bill Compared to Original Bill:

The substitute bill provides a four-year safe harbor from challenges brought under an abridgment claim for any subsequent actions based on the same election policy or practice for which a court has concluded that the political subdivision's remedy complies with the WVRA. The current exemption from requirements under the WVRA for cities and towns with a population of under 1,000 and school districts with enrollment under 250 students is extended to apply to the new provisions that provide a standard for abridgment claims. The substitute bill also makes technical corrections such as correcting an internal reference and aligning language in provisions related to vote dilution claims for consistency.

Appropriation: None.

Fiscal Note: Requested on February 12, 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) Voting is the most important civic duty individuals have. The bill provides a technical update to the WVRA that provides clear standards for courts to decide vote suppression claims. The state Supreme Court recently recognized that the current WVRA already does prohibit the abridgment of the right to vote, also known as vote suppression. However, there is a gap in the law because the current standards in the WVRA are geared towards vote dilution claims. This bill would give courts and local jurisdictions guidance on how to assess and appropriately address vote suppression claims. This bill also makes it clear that courts are not to consider the flawed guideposts that were provided by the US Supreme Court in a recent vote suppression case which makes it harder to challenge vote suppression and will lead to profound injustice. This update to the WVRA further strengthens and reinforces voting rights and ensures that policies will take into consideration all people of the state.

In recent years, federal courts have attempted to weaken and narrow the protections under the federal Voting Rights Act. In response, states must step in to ensure their voters have

the legal tools necessary to defend their freedom to vote and this policy offers a critical tool. A growing number of states have adopted their own policies as part of their state's voting rights act in response to recent federal court decisions. This update to the WVRA will bring it in alignment with statutes in other states such as New York, Connecticut, Minnesota, and Colorado. This makes the WVRA stronger and makes sure that last-minute changes to a jurisdictions voting requirements that interfere with a person's ability to vote can be challenged even if there is not enough time to file a suit.

(Opposed) Characterizing this bill as a technical fix is a mischaracterization. This bill is a declaration that Washington is a state with a history of pervasive racism which is not the case. The legislation offers legal tools to force proportional representation into a democratic process. Other concerns includes the mention of a standard of "material disparate burden" which seems to be arbitrarily chosen without any basis and it bans judges from considering entire categories of evidence which runs afoul of the requirement that courts consider the totality of the circumstances. In addition, the policy allows coalition claims which are still an open question in the ninth circuit and was recently struck down in the fifth circuit in the Galveston case. Provisions in this bill acknowledge there does not need to be intent for a jurisdiction to violate the WVRA, but the penalty is the same for intentional acts of discrimination and acts that result in unintentional discrimination which is a concern. The four-year safe harbor under the WVRA should still apply to any changes a jurisdiction makes in response to a WVRA violation or potential violation.

Persons Testifying: (In support) Representative Natasha Hill, prime sponsor; Roxana Norouzi, OneAmerica; Lorena Gonzalez, ACLU of Washington; Marisa Wright, Campaign Legal Center; and Michael Pernick, Legal Defense Fund.

(Opposed) Candice Bock, Association of Washington Cities; and Lorilee Gates.

Persons Signed In To Testify But Not Testifying: None.