

FINAL BILL REPORT

ESSB 6002

C 113 L 18
Synopsis as Enacted

Brief Description: Enacting the Washington voting rights act of 2018.

Sponsors: Senate Committee on State Government, Tribal Relations & Elections (originally sponsored by Senators Saldaña, Billig, Palumbo, Frockt, Rolfes, Van De Wege, Liias, Ranker, Keiser, Pedersen, Hunt, Wellman, Conway, Chase, McCoy, Dhingra, Kuderer, Hasegawa, Nelson, Carlyle and Mullet).

Senate Committee on State Government, Tribal Relations & Elections
House Committee on State Government, Elections & Information Technology

Background: Federal Voting Rights Act of 1965 (VRA) - Section 2. The VRA prohibits discriminatory practices in state and local elections, based on the protections provided under the Fifteenth Amendment to the Constitution. Special protections extend to members of a racial, color, or certain language minority group.

Section 2 of the VRA (Section 2) prohibits any voting practice or procedure that effectively impairs the equal opportunity for members of a minority group to participate in the nomination and election of candidates. A violation may be shown based on the totality of circumstances of the election process that resulted in a discriminatory impact on a minority group. Proof of intentional discrimination is not required to show a violation. Section 2 does not create a right for minority groups to be proportionally represented in elected offices.

Vote dilution claims under Section 2 allege that the method of drawing voting districts has the discriminatory effect of dispersing minority votes throughout the districts, weakening the minority group's ability to influence the election. Vote dilution claims have also been raised in jurisdictions holding at-large general elections for bodies with multiple positions.

Local Elections. Local governments are responsible for periodically changing their voting districts to account for population shifts. Within eight months after receiving federal census data, a local government must prepare a plan for redistricting its election districts. Each district must be relatively equal in population, compact, and geographically contiguous. The plan should also try to preserve existing communities of related and mutual interest. The census data may not be used to favor any racial or political group in redistricting.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Alternative Proportional Voting Systems. Several jurisdictions have adopted alternative systems for allocating votes to voters to determine the winner of an election. These systems are known as alternative proportional voting systems, and include:

- limited voting, where a voter receives fewer votes than there are candidates to elect;
- cumulative voting, where a voter receives as many votes as there are candidates to elect, but may cast multiple votes for a single candidate; and
- single transferrable or ranked choice voting, where a voter ranks candidates in order of preference, and votes are transferred to lower-ranked candidates who are not elected on first-place votes if a majority is not reached.

Summary: The Washington Voting Rights Act (Act) is established. A jurisdiction violates the Act when 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 as a result of dilution or abridgement of their rights.

Definitions and Scope. A protected class includes voters who are members of a race, color, or language minority group. The Act applies to elections held within counties, cities, towns, school districts, fire protection districts, port districts, and public utility districts (political subdivisions). Cities or towns with fewer than 1000 people and school districts with fewer than 250 students may not be sued for violations of the Act.

Redistricting. Any political subdivision may take corrective action to change its election system in order to remedy a potential violation of the Act. The remedy may include implementation of a district-based election system, which includes a method of electing candidates from within a district that is a divisible part of the political subdivision. Districts must be reasonably equal in population, compact, and geographically contiguous, must coincide with natural boundaries, and must preserve communities of related and mutual interest as much as possible.

The political subdivision must provide notice to the community of its proposed change to its election system. If 5 percent or more of residents, or 500 or more residents, whichever is fewer, are of limited English proficiency, the notice must be provided in languages residents can understand.

If the political subdivision adopts a new election plan between the date of the general election and January 15 of the following year, it must implement the plan at the next general election. If the plan is adopted during the remaining period of the year, the plan must be implemented at the general election of the following year.

The political subdivision must obtain a court order certifying that the remedy complies with the Act and was prompted by a plausible violation of the Act. A political subdivision must provide data and analysis used in developing its proposed remedy submitted for court approval. Courts must apply a rebuttable presumption for declining a political subdivision's proposed remedy, and all facts and reasonable inferences must be viewed in favor of those opposing the proposed remedy. Any political subdivision that implemented a district-based election system must prepare a redistricting plan within eight months of receiving federal census data.

Notice of Potential Violation. Any voter who resides in the political subdivision may notify the political subdivision of the voter's intent to challenge the election system. The notice must describe the alleged violation and a possible remedy. The person bringing the notice and the political subdivision must work in good faith to implement a remedy that provides members of the protected class or classes equal opportunity to elect candidates of their choice.

Any person may file an action against the political subdivision under the Act if the political subdivision does not adopt a remedy within 180 days or, if after July 1, 2021, within 90 days. No notice of a potential violation of the Act may be submitted before July 19, 2018.

Legal Action. If no remedy is adopted, any voter who resides in the political subdivision may file a lawsuit alleging a violation of the Act within that political subdivision. The claim has two elements:

- the political subdivision's elections show polarized voting, meaning a difference of choice between voters of a protected class and other voters in the election; and
- members of the protected class do not have an equal opportunity to elect members of their choice or influence the outcome of an election.

The protected class does not have to be geographically compact or concentrated to constitute a majority in any proposed or existing district. Intent to discriminate is not required to show a violation under the Act. Members of different protected classes may file an action jointly if their combined electoral preferences differ from the rest of the electorate.

Court Procedures and Process. The action may be filed in the superior court of the county in which the political subdivision is located. If the action is against a county, it may instead be filed in the superior court of either of the two nearest judicial districts. The trial must be set for no later than one year after the filing of a complaint, with a corresponding discovery and motions calendar. For purposes of the statute of limitations, a cause of action under the Act arises every time there is an election under a districting method that is the subject of the court action.

To determine the existence of polarized voting, the court may analyze elections in the political subdivision, including the election of candidates, ballot measure elections, and elections that affect the rights and privileges of the protected class. Elections conducted prior to the filing of the action are more probative. Election of candidates who are members of the protected class does not preclude a court from finding the existence of polarized voting.

Remedies. The court may order appropriate remedies for a violation, including requiring the political subdivision to redistrict or create a district-based election system. The court may order the political subdivision to hold elections for its governing body in the same year as elections for federal or statewide elected offices.

If the court issues a final order between the date of the general election and January 15 of the following year, the order applies to the next general election. If the court issues a final order between January 16 and the next general election date, the order only applies starting from the general election of the following year.

The court may award attorneys' fees and costs to a prevailing plaintiff. Prevailing defendants may be awarded certain costs, but not attorney's fees.

Immunity From Suit. If the political subdivision modifies its electoral system and obtains a court order that the remedy is in compliance with the Act, or if the jurisdiction implements a court-ordered remedy, no legal action may be brought against the political subdivision for four years alleging a violation of the Act so long as the political subdivision does not modify the system in the remedy.

Political subdivisions which have modified their electoral systems in the previous decade in response to a federal VRA claim may not be sued under the Act until redistricting after the 2020 census is completed.

Other Provisions. A political subdivision must publish online the outcome, summary, and legal costs of any court action.

Votes on Final Passage:

Senate	29	19	
House	52	46	(House amended)
Senate	29	20	(Senate concurred)

Effective: June 7, 2018