



# Washington State Conservation Commission

## Conservation District Elections

### Issue Advisory 02-18

## The Washington Voting Rights Act of 2018 and Conservation District Elections

*Date:* June 25, 2018

*Re:* The effect of the Washington Voting Rights Act of 2018 (ESSB 6002) on conservation district elections.

#### **Question:**

What effect does the Washington Voting Rights Act of 2018 (ESSB 6002) have on conservation district elections?<sup>1</sup>

#### **Short Answer:**

None at this time, but a CD could choose to take corrective action or be challenged to take corrective action.

#### **Background:**

During the 2018 legislative session, the Washington State Legislature passed ESSB 2006, The Washington Voting Rights Act of 2018 (WVRA).<sup>2</sup>

The WVRA allows political subdivisions of the state to remedy potential electoral issues so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election.<sup>3</sup> This is done by the political subdivision in one of two ways, either:

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<sup>1</sup> [ESSB 6002](#), effective June 7, 2018

<sup>2</sup> [Ibid.](#)

<sup>3</sup> [Ibid.](#), Section 102

1. Voluntarily, by adopting changes on their own, in collaboration with affected community members, or
2. When challenged by a voter who resides in the political subdivision.

A conservation district (CD) violates the WVRA 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 their choice as a result of dilution or abridgement of their rights.<sup>4</sup>

A protected class includes voters who are members of a race, color, or language minority group.<sup>5</sup>

A CD may take corrective action to change its election system in order to remedy a potential violation of the WVRA. 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.<sup>6</sup> CDs already have the ability divide the CD boundary into districts.<sup>7</sup>

A CD may also be challenged on its election system by a voter who resides within the CD boundary.<sup>8</sup> The voter must provide notice to the CD.<sup>9</sup> The notice must describe the alleged violation and a possible remedy.<sup>10</sup> The CD must make the notice public.<sup>11</sup> 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 equal opportunity to elect candidates of their choice.<sup>12</sup> Until June 30, 2021, the CD would have 180 days to adopt a remedy. After June 30, 2021, the CD would have 90 days to adopt a remedy.

The process to propose a change in the election system includes

1. Notice to the community (including to those of limited English proficiency, if 5 percent or more of the residents in the CD's boundary, or 500 or more residents in the CD's boundary, whichever is fewer, are of limited English proficiency), which shall include radio or television public service announcements,
2. Hold at least one public hearing on the plan,
3. Creating, adopting and implementing a corrective plan,

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<sup>4</sup> [ESSB 6002](#), Section 104

<sup>5</sup> [Ibid](#), Section 103(5)

<sup>6</sup> [Ibid](#), Section 201

<sup>7</sup> See [RCW 89.08.190](#)

<sup>8</sup> [ESSB 6002](#), Section 301

<sup>9</sup> [Ibid](#), Section 301(1)

<sup>10</sup> [Ibid](#), Section 301(2)

<sup>11</sup> [Ibid](#), Section 301(1)

<sup>12</sup> [Ibid](#).

4. Obtaining a court order that certifies the remedy complies with the WVRA and was prompted by a plausible violation of the WVRA, and
5. Publishing the outcome of the court order and legal costs online.

Proof of intent on the part of elected officials to discriminate against a protected class is not required.<sup>13</sup> Certain extremely small municipalities are exempt from the legislation (those with populations under 1,000).<sup>14</sup>

## **Analysis:**

Though conservation district elections do not fall under the state statute for general elections,<sup>15</sup> conservation districts are governmental subdivisions of the state exercising public powers,<sup>16</sup> and as such they are covered under the WVRA.<sup>17</sup>

So, unless challenged, the CD's don't have to take any action under the WVRA. But, a CD could if it wanted to, using the procedure outlined above as a guide.

If challenged (or if they want to), the CD must work with the challenger to implement a remedy and have that remedy in place within six months (or 90 days if after June 30, 2021). If no remedy can be agreed upon within six months, the issue goes to the courts and a court can order, among other things, that a new election take place at the same time as the general election.

While certain extremely small municipalities are exempt from the legislation (those with populations under 1,000), that exemption would not apply to CDs.

## **For More Information:**

Please see [this article at the Municipal Research and Services Center \(MRSC\)](#) for more.

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<sup>13</sup> [ESSB 6002](#), Section 302(5)

<sup>14</sup> [Ibid.](#), Section 501

<sup>15</sup> See generally [Title 29A RCW](#) and specifically [RCW 29A.04.330 \(1\) \(b\)](#).

<sup>16</sup> [RCW 89.08.220](#)

<sup>17</sup> [ESSB 6002](#), Section 103(4)