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SENATE BILL 6381

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State of Washington

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By Senators Prentice, Pridemore, Nelson, Chase, Murray, Conway, Kline, Harper, Keiser, and McAuliffe

Read first time 01/19/12. Referred to Committee on Government Operations, Tribal Relations & Elections.

1 AN ACT Relating to the Washington voting rights act; and adding a  
2 new chapter to Title 29A RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
5 Washington voting rights act of 2012.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply  
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "At-large method of election" means any of the following  
9 methods of electing members of the governing body of a political  
10 subdivision:

11 (a) One in which the voters of the entire jurisdiction elect the  
12 members to the governing body;

13 (b) One in which the candidates are required to reside within given  
14 areas of the jurisdiction and the voters of the entire jurisdiction  
15 elect the members to the governing body; or

16 (c) One which combines at-large elections with district-based  
17 elections.

1 (2) "District-based elections" means a method of electing members  
2 to the governing body of a political subdivision in which the candidate  
3 must reside within an election district that is a divisible part of the  
4 political subdivision and is elected only by voters residing within  
5 that election district. District-based elections shall include  
6 elections where only one official is elected in a district-based  
7 election district and shall include the election districts within  
8 existing boundaries of a city, a school district, or other district  
9 organized pursuant to state, county, or local law.

10 (3) "Political subdivision" means a geographic area of  
11 representation created for the provision of government services  
12 including, but not limited to, a state, a county, a city, a school  
13 district, or other district organized pursuant to state law.

14 (4) "Protected class" means a class of voters who are members of a  
15 race, color, or language minority group, as this class is referenced  
16 and defined in the federal voting rights act 42 U.S.C. Sec. 1973 et  
17 seq.

18 (5) "Racially polarized voting" means voting in which there is a  
19 difference, as defined in case law regarding enforcement of the federal  
20 voting rights act, 42 U.S.C. Sec. 1973 et seq., in the choice of  
21 candidates or other electoral choices that are preferred by voters in  
22 a protected class, and in the choice of candidates and electoral  
23 choices that are preferred by voters in the rest of the electorate.  
24 The methodologies for estimating group voting behavior as approved in  
25 applicable federal cases to enforce the federal voting rights act, 42  
26 U.S.C. Sec. 1973 et seq., to establish racially polarized voting or  
27 other evidence and methodologies which a court finds relevant and  
28 admissible may be used for purposes of this section to prove that  
29 elections are characterized by racially polarized voting.

30 NEW SECTION. **Sec. 3.** (1) At-large elections and district-based  
31 elections may not be drawn or maintained in a manner that denies an  
32 equal opportunity of a protected class to elect candidates of its  
33 choice or an equal opportunity to influence the outcome of an election,  
34 as a result of the vote dilution of voters who are members of a  
35 protected class.

36 (2) An at-large election district or a district-based election

1 district is dilutive, and in violation of this section, when it is  
2 shown that:

3 (a) A political subdivision utilizes an at-large or district-based  
4 election district;

5 (b) The elections in the political subdivision are racially  
6 polarized;

7 (c) The racially polarized voting in the political subdivision  
8 results in vote dilution where the protected class members do not have  
9 an equal opportunity to elect candidates of their choice or an equal  
10 opportunity to influence the outcome of an election; and

11 (d) A remedy exists that will provide members of the protected  
12 class with an equal opportunity to elect candidates of their choice or  
13 an equal opportunity to influence the outcome of an election. Such a  
14 remedy will not adversely affect or diminish the impact of those  
15 district-based election districts that are protected by the federal  
16 voting rights act, 42 U.S.C. Sec. 1973, et seq.

17 (3) The fact that members of a protected class are not  
18 geographically compact or concentrated to constitute a numerical  
19 majority in a proposed district-based election district shall not  
20 preclude a finding of racially polarized voting that results in vote  
21 dilution.

22 (4) Racially polarized voting that results in vote dilution is  
23 shown by demonstrating that there is a difference in voting preferences  
24 between members of a protected class and the rest of the electorate.  
25 Such a difference in voting preferences may be demonstrated by the  
26 methodologies specified in section 2(5) of this act or other evidence  
27 and methodologies that a court finds relevant and admissible.

28 (5) In determining whether there is racially polarized voting that  
29 results in vote dilution under this section, elections for members of  
30 the governing body of the political subdivision or in elections  
31 incorporating other electoral choices by the voters of the political  
32 subdivision shall be analyzed. Only elections conducted prior to the  
33 filing of an action pursuant to this chapter shall be used to establish  
34 or rebut the existence of racially polarized voting that results in  
35 vote dilution.

36 (6) The occurrence of racially polarized voting that results in  
37 vote dilution will be determined from examining results of elections in  
38 which at least one candidate is a member of a protected class or

1 elections involving ballot measures, or other electoral choices that  
2 affect the rights and privileges of members of a protected class who  
3 are voters of the political subdivision which is the subject of an  
4 action filed pursuant to this chapter.

5 (7) The election of candidates who are members of a protected class  
6 and who are preferred by voters of the protected class and who were  
7 elected prior to the filing of this action pursuant to this chapter, as  
8 determined by an analysis of voting behavior, shall not preclude a  
9 finding of racially polarized voting that results in vote dilution.

10 (8) Members of different protected classes may file an action  
11 jointly pursuant to this chapter if they demonstrate that their  
12 combined voting preferences as a group are different from the rest of  
13 the electorate and demonstrate that there is racially polarized voting  
14 that results in vote dilution consistent with the standards established  
15 in this section.

16 (9) In an action filed pursuant to this section, ninety days after  
17 the defendant or defendants file an answer, the plaintiff shall  
18 disclose to the other parties the identity of any expert witness  
19 retained to testify regarding the existence of racially polarized  
20 voting that results in vote dilution in elections occurring within the  
21 political subdivision that is the subject of the action. This time  
22 period may be adjusted by the court for good cause.

23 (10) Ninety days after the defendant or defendants have been served  
24 with the identity and written report of the expert witness retained by  
25 the plaintiff or plaintiffs, the defendant or defendants shall disclose  
26 to the plaintiffs the identity of any expert witness retained to  
27 testify regarding the existence of racially polarized voting.

28 (11) Disclosure and written reports shall not be required for an  
29 expert that is retained as a nontestifying consultant.

30 (12) The fact that members of a protected class are not  
31 geographically compact or concentrated to constitute a majority within  
32 an existing district-based election may not preclude a finding of  
33 racially polarized voting that results in vote dilution.

34 (13) Proof of an intent on the part of the voters or elected  
35 officials to discriminate against a protected class is not required.

36 (14) For purposes of any applicable statute of limitations, a cause  
37 of action under this section arises every time there is an election

1 pursuant to an at-large method of election or a district-based election  
2 district that is the subject of an action pursuant to this section.

3 (15) A plaintiff initiating an action under this section shall not  
4 be required to disclose pursuant to any discovery request or judicial  
5 proceeding under this section whether the plaintiff voted in favor of  
6 a candidate or did not vote in favor of a candidate. A plaintiff  
7 initiating an action under this section shall not be required to  
8 disclose pursuant to any discovery request or proceeding under this  
9 section whether the plaintiff voted in favor or in opposition of any  
10 state propositions and referenda, state initiatives, local measures and  
11 referenda, or local initiatives. The plaintiff's right to the secrecy  
12 of the plaintiff's vote is preserved and is not waived by the filing of  
13 an action pursuant to this section.

14 (16) In seeking a temporary restraining order or a preliminary  
15 injunction a plaintiff shall not be required to post a bond or any  
16 other security in order to secure such equitable relief.

17 (17) An action filed pursuant to this section is a suit based in  
18 equity. As a suit in equity, there is no right to trial by jury.

19 NEW SECTION. **Sec. 4.** (1) Upon a finding of a violation of section  
20 3 of this act, the court shall implement appropriate remedies,  
21 including the imposition of a district-based election district that is  
22 tailored to remedy the violation. The court may direct the affected  
23 jurisdiction to draw or redraw district boundaries or appoint an  
24 individual or panel to draw or redraw district lines.

25 (2) In tailoring a remedy consisting of district-based elections,  
26 the court shall implement a district-based election district that is  
27 geographically compact. The fact that members of a protected class do  
28 not constitute a numerical majority within a proposed district-based  
29 election district shall not preclude the implementation of such a  
30 district-based election district. In tailoring a remedy, the court  
31 shall order the implementation of a district-based election district  
32 where the members of the protected class are not a numerical majority  
33 in order to provide the protected class an equal opportunity to elect  
34 candidates of their choice or an equal opportunity to influence the  
35 outcome of an election.

36 (3) In tailoring a remedy after a finding of a violation of section  
37 3 of this act, the court shall order new elections to be scheduled at

1 the next date authorized by state law for conducting elections. All of  
2 the positions that were elected pursuant to the at-large or  
3 district-based election district that was the subject of the action  
4 filed pursuant to this chapter and have at least two years remaining in  
5 their terms of office shall be subject to new elections in order to  
6 continue their term of office.

7 NEW SECTION. **Sec. 5.** (1) In any action to enforce this chapter,  
8 the court shall allow the prevailing plaintiff, other than the state or  
9 political subdivision thereof, reasonable attorneys' fees and a fees  
10 multiplier that takes into account the contingency, the novelty and  
11 complexity of the filed action, and litigation expenses including, but  
12 not limited to, expert witness fees and expenses as part of the costs.

13 (2) Prevailing defendants shall not recover any award of attorneys'  
14 fees.

15 (3) Prevailing defendants shall not recover any costs, unless the  
16 court finds the action to be frivolous, unreasonable, or without  
17 foundation.

18 (4) A fees multiplier is determined by the court by multiplying a  
19 numerical value and the fees lodestar. The fees lodestar is determined  
20 by multiplying the number of reasonable hours expended by an attorney  
21 or support personnel, such as law clerks, paralegals, and legal  
22 assistants in the action filed pursuant to this chapter, times a  
23 reasonable hourly rate that is consistent with the rates charged by  
24 attorneys and firms located within a city or an area where the  
25 attorneys and firms filing the action are located.

26 (5) A prevailing plaintiff shall not be required to first notify a  
27 political subdivision prior to the filing of an action pursuant to this  
28 chapter that such an action will be filed against the political  
29 subdivision in order for a prevailing plaintiff to be awarded  
30 reasonable attorneys' fees, a fees multiplier, and costs pursuant to  
31 this section.

32 (6) A plaintiff shall be deemed to be a prevailing party for  
33 purposes of this section if the political subdivision which is the  
34 subject of an action filed pursuant to this chapter adopts or  
35 implements a district-based election district after the action is filed  
36 that is different from the district-based election district that is the  
37 subject of the action filed.

1 (7) A prevailing plaintiff shall recover, as part of reasonable  
2 attorneys' fees and fees multiplier award, work performed in any  
3 ancillary administrative, legislative, or citizen redistricting  
4 commission proceeding where the prevailing plaintiff party sought to  
5 secure a district-based election district that was different from the  
6 district-based election district ultimately adopted by a governing body  
7 or a citizen's redistricting commission and that was ultimately  
8 declared by a court to be in violation of section 3 of this act in an  
9 action filed by the prevailing plaintiff.

10 NEW SECTION. **Sec. 6.** Any voter who is a member of a protected  
11 class and who resides in a political subdivision where a violation of  
12 section 3 of this act is alleged may file an action in the superior  
13 court of the county in which the political subdivision is located. If  
14 the action is against a county, the action may be filed in the superior  
15 court of such county, or in the superior court of either of the two  
16 nearest judicial districts as determined pursuant to RCW 36.01.050(2).  
17 There is no requirement that an action filed pursuant to this chapter  
18 be filed as a class action.

19 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute  
20 a new chapter in Title 29A RCW.

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