

HB 1800 - H AMD 72

By Representative Haler

NOT ADOPTED 02/27/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This act may be known and cited as the
4 Washington voting rights act of 2017.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise. In applying these definitions and other terms in this
8 chapter, the legislature intends that courts rely on relevant federal
9 case law for guidance.

10 (1) "Alternative proportional voting method" means any at-large
11 election that includes one of the following methods of voting for
12 multiple members of the governing body of a political subdivision:

13 (a) Limiting the number of votes a voter is entitled to cast to
14 fewer than there are positions to elect;

15 (b) Cumulating the number of votes a voter is entitled to cast
16 for each position, and allowing the voter to cast the total number of
17 votes in favor of a single candidate or to distribute the total
18 number of votes among multiple candidates; or

19 (c) Voting in a single transferable vote where voters rank each
20 candidate in order of preference, with their vote counting towards
21 the highest ranked candidate, and preferences allocated among other
22 candidates who are not elected on first place votes.

23 (2) "At-large election" means any of the following methods of
24 electing members of the governing body of a political subdivision:

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

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

30 (c) One that combines the criteria in (a) and (b) of this
31 subsection.

1 (3) "District-based elections" means a method of electing members
2 to the governing body of a political subdivision in which the
3 candidate must reside within an election district that is a divisible
4 part of the political subdivision and is elected only by voters
5 residing within that election district.

6 (4) "Polarized voting" means voting in which there is a
7 difference in the choice of candidates or other electoral choices
8 that are preferred by voters in a protected class, and in the choice
9 of candidates and electoral choices that are preferred by voters in
10 the rest of the electorate.

11 (5) "Political subdivision" means any county, city, or town, but
12 does not include the state.

13 (6) "Protected class" means a class of voters who are members of
14 a race, color, or language minority group.

15 NEW SECTION. **Sec. 3.** (1) A political subdivision is in
16 violation of this section when:

17 (a) It established by prima facie evidence that elections in the
18 political subdivision exhibit polarized voting; and

19 (b) It is established that, by the totality of circumstances, the
20 voters of the protected class have less opportunity than members of
21 the majority group to participate in the political process and to
22 elect representatives of their choice.

23 (2) In determining whether there is a violation of this section,
24 the court shall analyze elections of the governing body of the
25 political subdivision, ballot measure elections, elections in which
26 at least one candidate is a member of a protected class, and other
27 electoral choices that affect the rights and privileges of members of
28 a protected class. Elections conducted prior to the filing of an
29 action pursuant to this chapter may be used to establish or rebut the
30 existence of a violation. In determining whether, by the totality of
31 the circumstances, the voters of the protected class have less
32 opportunity than members of the majority group to participate in the
33 political process and to elect representatives of their choice, the
34 court shall consider, at a minimum, the following factors:

35 (a) The history of voter-related discrimination in the political
36 subdivision;

37 (b) The extent to which voting in elections of the political
38 subdivision is racially polarized;

1 (c) The extent to which the political subdivision has used voting
2 practices or procedures that tend to enhance the opportunity for
3 discrimination against the minority group, such as unusually large
4 election districts, majority voting requirements, and prohibitions
5 against bullet voting;

6 (d) The exclusion of members of the protected class from the
7 candidate slating process;

8 (e) The extent to which protected class members bear the effects
9 of past discrimination in areas such as education; employment; and
10 health, which hinder their ability to participate effectively in the
11 political process;

12 (f) The use of overt or subtle racial appeals in political
13 campaigns;

14 (g) The extent to which members of the protected class have been
15 elected to public office in the political subdivision; and

16 (h) Whether there is a significant lack of responsiveness on the
17 part of elected officials to the particularized needs of the members
18 of the protected class.

19 (3) Members of different protected classes may file an action
20 jointly pursuant to this act if they demonstrate that their combined
21 voting preferences as a group are different from the rest of the
22 electorate.

23 (4) In determining whether there is a violation of this section,
24 the court shall analyze elections of the governing body of the
25 political subdivision, ballot measure elections, elections in which
26 at least one candidate is a member of a protected class, and other
27 electoral choices that affect the rights and privileges of members of
28 a protected class. The court may also consider whether the proportion
29 of elected officials serving on the political subdivision's
30 legislative body who are members of the protected class is equivalent
31 to the proportion of the population who are members of the protected
32 class.

33 (5) The election of candidates who are members of a protected
34 class and who were elected prior to the filing of an action pursuant
35 to this chapter shall not preclude a finding of a violation of this
36 section.

37 NEW SECTION. **Sec. 4.** (1) In an action filed pursuant to this
38 act, the trial court shall set a trial to be held no later than one

1 year after the filing of a complaint, and shall set a discovery and
2 motions calendar accordingly.

3 (2) Proof of intent on the part of the voters or elected
4 officials to discriminate against a protected class is not required
5 for a cause of action to be sustained.

6 (3) For purposes of any applicable statute of limitations, a
7 cause of action under this act arises every time there is an election
8 pursuant to an at-large election or a district-based election.

9 (4) The plaintiff's constitutional right to the secrecy of the
10 plaintiff's vote is preserved and is not waived by the filing of an
11 action pursuant to this section, and is not subject to discovery or
12 disclosure.

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

16 (6) No action may be filed pursuant to this act before January
17 15, 2018.

18 NEW SECTION. **Sec. 5.** (1) A political subdivision that conducts
19 an election pursuant to state, county, or local law, is authorized to
20 change its electoral system including, but not limited to,
21 implementing a district-based election system or an alternative
22 proportional voting method to remedy a potential violation of section
23 3 of this act. If a political subdivision invokes its authority under
24 this section to implement a district-based election system, the
25 districts shall be drawn in a manner consistent with section 6 of
26 this act.

27 (2) If a political subdivision implements a district-based
28 election system, the plan shall be consistent with the following
29 criteria:

30 (a) Each district shall be as reasonably equal in population as
31 possible to each and every other such district in the political
32 subdivision. This requirement shall not apply to any positions
33 allocated on an at-large basis.

34 (b) Each district shall be reasonably compact.

35 (c) Each district shall consist of geographically contiguous
36 area.

37 (d) To the extent feasible, the district boundaries shall
38 coincide with existing recognized natural boundaries and shall, to

1 the extent possible, preserve existing communities of related and
2 mutual interest.

3 (e) District boundaries may not be drawn or maintained in a
4 manner that denies a protected class an equal opportunity to elect
5 candidates of its choice.

6 (3) During the adoption of its plan, the political subdivision
7 shall ensure that full and reasonable public notice of its actions is
8 provided. The political subdivision shall hold at least one public
9 hearing on the redistricting plan at least one week before adoption
10 of the plan.

11 (4)(a) If the political subdivision invokes its authority under
12 this section and the plan is adopted during the period of time
13 between the first Tuesday after the first Monday of November and on
14 or before January 15th of the following year, the political
15 subdivision shall order new elections to occur at the next succeeding
16 general election.

17 (b) If the political subdivision invokes its authority under this
18 section and the plan is adopted during the period of time between
19 January 16th and on or before the first Monday of November, the next
20 election will occur as scheduled and organized under the current
21 electoral system, but the political subdivision shall order new
22 elections to occur pursuant to the remedy at the general election the
23 following calendar year.

24 (c) All of the positions that were elected pursuant to the
25 previous electoral system and have at least two years remaining in
26 their terms of office from the date the plan was adopted may, at the
27 legislative authority's discretion, be subject to new elections in
28 order to continue their term of office.

29 (5) Within forty-five days after receipt of federal decennial
30 census information applicable to a specific local area, the
31 commission established in RCW 44.05.030 shall forward the census
32 information to each political subdivision that has invoked its
33 authority under this section to implement a district-based election
34 system, or that is charged with redistricting under section 6 of this
35 act.

36 (6) No later than eight months after its receipt of federal
37 decennial census data, the governing body of the political
38 subdivision that had previously invoked its authority under this
39 section to implement a district-based election system, or that was
40 previously charged with redistricting under section 6 of this act,

1 shall prepare a plan for redistricting its districts, pursuant to RCW
2 29A.76.010, and in a manner consistent with this act.

3 (7) A political subdivision may eliminate the staggered terms of
4 any position in order to implement an alternative proportional voting
5 method.

6 NEW SECTION. **Sec. 6.** (1) Upon a finding of a violation of
7 section 3 of this act, the court shall order appropriate remedies
8 that are tailored to remedy the violation. The remedies may include,
9 but are not limited to, the imposition of a district-based election
10 system or an alternative proportional voting method. The court may
11 order the affected jurisdiction to draw or redraw district boundaries
12 or appoint an individual or panel to draw or redraw district lines.
13 The proposed districts must be approved by the court prior to their
14 implementation.

15 (2) In tailoring a remedy after a finding of a violation of
16 section 3 of this act:

17 (a) If the court's order providing a remedy or approving proposed
18 districts, whichever is later, is issued during the period of time
19 between the first Tuesday after the first Monday of November and on
20 or before January 15th of the following year, the court shall order
21 new elections, conducted pursuant to the remedy, to occur at the next
22 succeeding general election. If a special filing period is required,
23 filings for that office shall be reopened for a period of three
24 business days, such three-day period to be fixed by the filing
25 officer.

26 (b) If the court's order providing a remedy or approving proposed
27 districts, whichever is later, is issued during the period of time
28 between January 16th and on or before the first Monday of November,
29 the next election will occur as scheduled and organized under the
30 current electoral system, but the court shall order new elections to
31 occur pursuant to the remedy at the general election the following
32 calendar year.

33 (c) All of the positions that were elected pursuant to the at-
34 large or district-based election system that was the subject of the
35 action filed pursuant to this chapter and have at least two years
36 remaining in their terms of office from the date the plan was
37 adopted, including those elected pursuant to (b) of this subsection,
38 shall be subject to new elections, pursuant to the remedy implemented
39 under subsection (1) of this section.

1 (d) The remedy may provide for a political subdivision to
2 eliminate the staggered terms of any position in order to implement
3 an alternative proportional voting method.

4 NEW SECTION. **Sec. 7.** In any action to enforce this chapter, the
5 court may allow the prevailing party or parties reasonable attorneys'
6 fees, all nonattorney fee costs as defined in RCW 4.84.010, and all
7 reasonable expert witness fees. No fees or costs may be awarded if no
8 action is filed.

9 NEW SECTION. **Sec. 8.** Any voter who is a member of a protected
10 class and who resides in a political subdivision where a violation of
11 section 3 of this act is alleged may file an action in the superior
12 court of the county in which the political subdivision is located. If
13 the action is against a county, the action may be filed in the
14 superior court of such county, or in the superior court of either of
15 the two nearest judicial districts as determined pursuant to RCW
16 36.01.050(2). An action filed pursuant to this chapter does not need
17 to be filed as a class action.

18 NEW SECTION. **Sec. 9.** (1) Prior to filing an action pursuant to
19 this act, a person shall first notify the political subdivision that
20 he or she intends to challenge the political subdivision's electoral
21 system under this act. If the political subdivision does not invoke
22 its authority under section 5 of this act to implement the person's
23 proposed remedy within twelve months after receiving notice, any
24 person may file an action under this act.

25 (2) The notice provided shall identify the person or persons who
26 intend to file an action, and the protected class or classes whose
27 members do not have an equal opportunity to elect candidates of their
28 choice. The notice shall also include a reasonable analysis of the
29 person's data concerning the alleged vote dilution and racially
30 polarized voting, and a proposed remedy or remedies, based on that
31 data, which would address the alleged violation of section 3 of this
32 act.

33 (3)(a) The person bringing the notice and the political
34 subdivision shall work in good faith to implement a remedy that
35 provides the protected class or classes identified in the notice an
36 equal opportunity to elect candidates of their choice.

1 (b) During the twelve months prior to an action being filed in
2 state court, the political subdivision shall work collaboratively
3 with the person bringing the notice to implement a solution that
4 provides a remedy for all parties without resorting to litigation. At
5 a minimum, representatives of the political subdivision must
6 facilitate and participate in meetings with the person or persons at
7 least once per month to address identified concerns and work towards
8 a solution.

9 (c) If, after twelve months have passed from the date of the
10 person first providing notice and no mutually agreed solution has
11 been reached, the person or persons may file an action in state court
12 pursuant to this chapter. If, within twelve months after receiving a
13 person's notice, a political subdivision receives another notice
14 containing a materially different proposed remedy than the first
15 notice, the political subdivision shall have an additional three
16 months from the date of the subsequent notice before an action may be
17 filed under this act.

18 (d) Nothing in this section is intended to limit the ability of a
19 party to initiate, pursue, or defend against a claim made pursuant to
20 the federal voting rights act.

21 (4) If, after considering the person's notice, the political
22 subdivision adopts the proposed remedy offered by the person in the
23 notice, an action under this act by any person may not be brought
24 against that political subdivision for four years; provided, however,
25 that the political subdivision does not enact a change to or
26 deviation from the remedy during this four-year period that would
27 otherwise give rise to an action under this act. In agreeing to adopt
28 the person's proposed remedy, the political subdivision may do so by
29 stipulation, which shall become a public document.

30 (5) Should the political subdivision adopt a different remedy
31 that takes the notice into account, the political subdivision may
32 seek a court order acknowledging that the political subdivision's
33 remedy complies with section 3 of this act. The person who submitted
34 the notice may support or oppose such an order. If the court
35 concludes that the political subdivision's remedy complies with
36 section 3 of this act, an action under this act by any party may not
37 be brought against that political subdivision for four years;
38 provided, however, that the political subdivision does not enact a
39 change to or deviation from the remedy during this four-year period
40 that would otherwise give rise to an action under this act.

1 (6) If a political subdivision has received two or more notices
2 containing materially different proposed remedies, the persons and
3 political subdivision shall work in good faith to implement a remedy
4 that complies with section 3 of this act. Should the political
5 subdivision adopt one of the remedies offered, or a different remedy
6 that takes multiple notices into account, the political subdivision
7 may seek a court order acknowledging that the political subdivision's
8 remedy complies with section 3 of this act. The persons who submitted
9 notices may support or oppose such an order. If the court concludes
10 that the political subdivision's remedy complies with section 3 of
11 this act, an action under this act by any party may not be brought
12 against that political subdivision for four years; provided, however,
13 that the political subdivision does not enact a change to or
14 deviation from the remedy during this four-year period that would
15 otherwise give rise to an action under this act.

16 (7) An individual who has filed an unsuccessful action against a
17 political subdivision under the federal voting rights act may not
18 file a separate action against the same political subdivision under
19 this act within two years of filing the action under the federal
20 voting rights act.

21 NEW SECTION. **Sec. 10.** If, after an action is filed, the
22 political subdivision adopts the person's proposed remedy, or a
23 court-ordered remedy, an action under this act by any party may not
24 be brought against that political subdivision for four years;
25 provided, however, that the political subdivision does not enact a
26 change to or deviation from the remedy during this four-year period
27 that would otherwise give rise to an action under the provisions of
28 this act.

29 NEW SECTION. **Sec. 11.** The provisions of this act are not
30 applicable to cities and towns with populations under thirty
31 thousand.

32 **Sec. 12.** RCW 36.32.020 and 1982 c 226 s 4 are each amended to
33 read as follows:

34 The board of county commissioners of each county shall divide
35 their county into three commissioner districts so that each district
36 shall comprise as nearly as possible one-third of the population of
37 the county: PROVIDED, That the territory comprised in any voting

1 precincts of such districts shall remain compact, and shall not be
2 divided by the lines of said districts.

3 However, the commissioners of any county composed entirely of
4 islands and with a population of less than thirty-five thousand may
5 divide their county into three commissioner districts without regard
6 to population, except that if any single island is included in more
7 than one district, the districts on such island shall comprise, as
8 nearly as possible, equal populations.

9 Except where necessary to comply with a court order issued
10 pursuant to sections 3 and 6 of this act, the lines of the districts
11 shall not be changed ((oftener)) more often than once in four years
12 and only when a full board of commissioners is present. The districts
13 shall be designated as districts numbered one, two and three.

14 NEW SECTION. Sec. 13. A new section is added to chapter 35.21
15 RCW to read as follows:

16 The legislative authority of a city or town may authorize a
17 change to its electoral system, including the implementation of a
18 district-based election system or an alternative proportional voting
19 method as defined in section 2 of this act, to remedy a potential
20 violation of section 3 of this act. If the legislative authority of a
21 city or town invokes its authority under this section to implement a
22 district-based election system, the districts shall be drawn in a
23 manner consistent with sections 5 and 6 of this act. The legislative
24 authority of a city or town shall order new elections to be scheduled
25 pursuant to section 5(4) of this act. All of the positions that were
26 elected pursuant to the previous method of election and have at least
27 two years remaining in their terms of office shall be subject to new
28 elections in order to continue their terms of office at the
29 legislative authority's discretion.

30 NEW SECTION. Sec. 14. A new section is added to chapter 35A.21
31 RCW to read as follows:

32 The legislative authority of a code city or town may authorize a
33 change to its electoral system, including the implementation of a
34 district-based election system or an alternative proportional voting
35 method as defined in section 2 of this act, to remedy a potential
36 violation of section 3 of this act. If the legislative authority of a
37 code city or town invokes its authority under this section to
38 implement a district-based election system, the districts shall be

1 drawn in a manner consistent with sections 5 and 6 of this act. The
2 legislative authority of a code city or town shall order new
3 elections to be scheduled pursuant to section 5(4) of this act. All
4 of the positions that were elected pursuant to the previous method of
5 election and have at least two years remaining in their terms of
6 office shall be subject to new elections in order to continue their
7 terms of office at the legislative authority's discretion.

8 **Sec. 15.** RCW 29A.76.010 and 2011 c 349 s 26 are each amended to
9 read as follows:

10 (1) It is the responsibility of each county, municipal
11 corporation, and special purpose district with a governing body
12 comprised of internal director, council, or commissioner districts
13 not based on statutorily required land ownership criteria to
14 periodically redistrict its governmental unit, based on population
15 information from the most recent federal decennial census.

16 (2) Within forty-five days after receipt of federal decennial
17 census information applicable to a specific local area, the
18 commission established in RCW 44.05.030 shall forward the census
19 information to each municipal corporation, county, and district
20 charged with redistricting under this section.

21 (3) No later than eight months after its receipt of federal
22 decennial census data, the governing body of the municipal
23 corporation, county, or district shall prepare a plan for
24 redistricting its internal or director districts.

25 (4) The plan shall be consistent with the following criteria:

26 (a) Each internal director, council, or commissioner district
27 shall be as nearly equal in population as possible to each and every
28 other such district comprising the municipal corporation, county, or
29 special purpose district.

30 (b) Each district shall be as compact as possible.

31 (c) Each district shall consist of geographically contiguous
32 area.

33 (d) Population data may not be used for purposes of favoring or
34 disfavoring any racial group or political party, except to the extent
35 necessary to ensure compliance with this act.

36 (e) To the extent feasible and if not inconsistent with the basic
37 enabling legislation for the municipal corporation, county, or
38 district, the district boundaries shall coincide with existing

1 recognized natural boundaries and shall, to the extent possible,
2 preserve existing communities of related and mutual interest.

3 (5) During the adoption of its plan, the municipal corporation,
4 county, or district shall ensure that full and reasonable public
5 notice of its actions is provided. The municipal corporation, county,
6 or district shall hold at least one public hearing on the
7 redistricting plan at least one week before adoption of the plan.

8 (6)(a) Any registered voter residing in an area affected by the
9 redistricting plan may request review of the adopted local plan by
10 the superior court of the county in which he or she resides, within
11 fifteen days of the plan's adoption. Any request for review must
12 specify the reason or reasons alleged why the local plan is not
13 consistent with the applicable redistricting criteria. The municipal
14 corporation, county, or district may be joined as respondent. The
15 superior court shall thereupon review the challenged plan for
16 compliance with the applicable redistricting criteria set out in
17 subsection (4) of this section.

18 (b) If the superior court finds the plan to be consistent with
19 the requirements of this section, the plan shall take effect
20 immediately.

21 (c) If the superior court determines the plan does not meet the
22 requirements of this section, in whole or in part, it shall remand
23 the plan for further or corrective action within a specified and
24 reasonable time period.

25 (d) If the superior court finds that any request for review is
26 frivolous or has been filed solely for purposes of harassment or
27 delay, it may impose appropriate sanctions on the party requesting
28 review, including payment of attorneys' fees and costs to the
29 respondent municipal corporation, county, or district.

30 NEW SECTION. **Sec. 16.** This act supersedes other state laws and
31 local ordinances to the extent that those state laws or ordinances
32 would otherwise restrict a jurisdiction's ability to implement a
33 remedy pursuant to this act.

34 NEW SECTION. **Sec. 17.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the
36 remainder of the act or the application of the provision to other
37 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 18.** Sections 1 through 11 and 17 of this act
2 constitute a new chapter in Title 29A RCW."

3 Correct the title.

EFFECT: (1) Makes the act applicable only to cities or towns over
30,000 and counties, and no other subdivisions.

 (2) Includes additional factors courts must consider in
determining whether there is a violation of the act.

 (3) Provides for attorneys' fees to any prevailing party in any
action filed under this act.

 (4) Requires a twelve-month waiting period after notice to a
subdivision before an action can be filed in court.

 (5) Provides a two-year prohibition on any action filed in court
under this act after a claim has failed against the subdivision under
the federal Voting Rights Act.

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