

ESSB 6002 - H AMD 1188

By Representative Manweller

OUT OF ORDER 02/27/2018

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

3 **"PART I - GENERAL PROVISIONS**

4 NEW SECTION. **Sec. 101.** This act may be known and cited as the
5 Washington voting rights act of 2018.

6 NEW SECTION. **Sec. 102.** The legislature finds that local
7 government subdivisions are often prohibited from addressing these
8 challenges because of Washington laws that narrowly prescribe the
9 methods by which they may elect members of their legislative bodies.
10 The legislature intends to modify existing prohibitions in state laws
11 so that these jurisdictions may voluntarily adopt changes on their
12 own, in collaboration with affected community members, to remedy
13 potential electoral issues.

14 The legislature also intends for this act to be consistent with
15 legal precedent from *Mt. Spokane Skiing Corp. v. Spokane Co.* (86 Wn.
16 App. 165, 1997) that found that noncharter counties need not adhere
17 to a single uniform county system of government, but that each county
18 have the same "authority available" in order to be deemed uniform.

19 NEW SECTION. **Sec. 103.** The definitions in this section apply
20 throughout this chapter unless the context clearly requires
21 otherwise.

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

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

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

1 (c) One that combines the criteria in (a) and (b) of this
2 subsection or one that combines at-large with district-based
3 elections.

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

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

14 (4) "Political subdivision" means any county, city, town, school
15 district, fire protection district, port district, or public utility
16 district, but does not include the state.

17 (5) "Protected class" means a class of voters who are members of
18 a race, color, or language minority group.

19 NEW SECTION. **Sec. 104.** As provided in section 302 of this act,
20 no method of electing the governing body of a political subdivision
21 may be imposed or applied in a manner that favors or disfavors any
22 racial group or political party.

23 **PART II - VOLUNTARY CHANGES TO ELECTORAL PROCESSES**

24 NEW SECTION. **Sec. 201.** (1) A political subdivision that
25 conducts an election pursuant to state, county, or local law, is
26 authorized to change its electoral system including, but not limited
27 to, implementing a district-based election system to remedy a
28 potential violation of section 104 of this act.

29 (2) If a political subdivision invokes its authority under this
30 section to implement a district-based election system, the districts
31 shall be drawn in a manner consistent with section 202 of this act.

32 NEW SECTION. **Sec. 202.** (1) Prior to the adoption of its
33 proposed plan, the political subdivision shall provide full and
34 reasonable public notice of its actions. The political subdivision
35 shall hold at least one public hearing on the proposed plan at least
36 one week before adoption.

1 (a) Political subdivisions shall provide such notices and
2 information in the languages of any community or area where a
3 significant segment of the community speaks a language other than
4 English and has limited proficiency in English.

5 (b) Political subdivisions must provide accurate written and
6 verbal notices in the languages represented by their communities who
7 speak a language other than English. Political subdivisions must air
8 public service announcements by radio or television broadcast in the
9 languages represented by their communities who speak a language other
10 than English.

11 (c) "Significant segment," for purposes of this section, means
12 five percent or more of residents, or five hundred residents,
13 whichever is fewer, residing in the affected political subdivision
14 who are of limited English proficiency.

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

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

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

31 (a) Each district shall be as reasonably equal in population as
32 possible to each and every other such district comprising the
33 political subdivision.

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
39 the extent possible, preserve existing communities of related and
40 mutual interest.

1 (4) Within forty-five days after receipt of federal decennial
2 census information applicable to a specific local area, the
3 commission established in RCW 44.05.030 shall forward the census
4 information to each political subdivision that has invoked its
5 authority under this section to implement a district-based election
6 system, or that is charged with redistricting under section 403 of
7 this act.

8 (5) No later than eight months after its receipt of federal
9 decennial census data, the governing body of the political
10 subdivision that had previously invoked its authority under this
11 section to implement a district-based election system, or that was
12 previously charged with redistricting under section 403 of this act,
13 shall prepare a plan for redistricting its districts, pursuant to RCW
14 29A.76.010, and in a manner consistent with this act.

15 NEW SECTION. **Sec. 203.** A new section is added to chapter
16 28A.343 RCW to read as follows:

17 The school board of directors may authorize a change to its
18 electoral system pursuant to section 201 of this act. Any staggering
19 of directors' terms shall be accomplished as provided in RCW
20 28A.343.030 and 28A.343.600 through 28A.343.650.

21 **Sec. 204.** RCW 36.32.020 and 1982 c 226 s 4 are each amended to
22 read as follows:

23 The board of county commissioners of each county shall divide
24 their county into three commissioner districts so that each district
25 shall comprise as nearly as possible one-third of the population of
26 the county: PROVIDED, That the territory comprised in any voting
27 precincts of such districts shall remain compact, and shall not be
28 divided by the lines of said districts.

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

35 The commissioners of any county may authorize a change to their
36 electoral system pursuant to section 201 of this act. Except where
37 necessary to comply with a court order issued pursuant to section 403
38 of this act, the lines of the districts shall not be changed

1 (~~often~~) more often than once in four years and only when a full
2 board of commissioners is present. The districts shall be designated
3 as districts numbered one, two and three.

4 **Sec. 205.** RCW 36.32.040 and 1982 c 226 s 5 are each amended to
5 read as follows:

6 (1) Except as provided in subsection (2) of this section, the
7 qualified electors of each county commissioner district, and they
8 only, shall nominate from among their own number, candidates for the
9 office of county commissioner of such commissioner district to be
10 voted for at the following general election. Such candidates shall be
11 nominated in the same manner as candidates for other county and
12 district offices are nominated in all other respects.

13 (2) Where the commissioners of a county composed entirely of
14 islands with a population of less than thirty-five thousand have
15 chosen to divide the county into unequal-sized commissioner districts
16 pursuant to the exception provided in RCW 36.32.020, the qualified
17 electors of the entire county shall nominate from among their own
18 number who reside within a commissioner district, candidates for the
19 office of county commissioner of such commissioner district to be
20 voted for at the following general election. Such candidates shall be
21 nominated in the same manner as candidates for other county offices
22 are nominated in all other respects.

23 (3) The commissioners of any county may authorize a change to
24 their electoral system pursuant to section 201 of this act.

25 NEW SECTION. **Sec. 206.** A new section is added to chapter 35.21
26 RCW to read as follows:

27 The legislative authority of a city or town may authorize a
28 change to its electoral system pursuant to section 201 of this act.

29 NEW SECTION. **Sec. 207.** A new section is added to chapter 35A.21
30 RCW to read as follows:

31 The legislative authority of a code city or town may authorize a
32 change to its electoral system pursuant to section 201 of this act.

33 NEW SECTION. **Sec. 208.** A new section is added to chapter 53.12
34 RCW to read as follows:

35 The port commission may authorize a change to its electoral
36 system pursuant to section 201 of this act.

1 **PART III - CITIZEN-INITIATED CHANGES TO ELECTORAL PROCESSES**

2 NEW SECTION. **Sec. 301.** (1) A person who intends to challenge a
3 political subdivision's electoral system under this act shall first
4 notify the political subdivision in writing. The political
5 subdivision shall promptly make such notice public.

6 (2) The notice provided shall identify and provide contact
7 information for the person or persons who intend to file an action,
8 and shall identify the protected class or classes whose members do
9 not have an equal opportunity to participate in elections. The notice
10 shall also include a type of remedy the person believes may address
11 the alleged violation of section 302 of this act.

12 NEW SECTION. **Sec. 302.** (1) A political subdivision is in
13 violation of this act when:

14 (a) It is established by prima facie evidence that:

15 (i) The protected class is sufficiently large and geographically
16 compact enough to constitute a majority in a single member voting
17 district;

18 (ii) The protected class is politically cohesive; and

19 (iii) The majority votes sufficiently as a bloc to enable it to
20 defeat the protected class' preferred candidate; and

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

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

37 (a) The history of voter-related discrimination in the political
38 subdivision;

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

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

8 (d) The exclusion of members of the protected class from the
9 candidate slating process;

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

14 (f) The use of overt or subtle racial appeals in political
15 campaigns;

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

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

21 (3) In determining whether there is a violation of this act, the
22 court shall analyze elections of the governing body of the political
23 subdivision, ballot measure elections, elections in which at least
24 one candidate is a member of a protected class, and other electoral
25 choices that affect the rights and privileges of members of a
26 protected class. The court shall also consider whether the proportion
27 of elected officials serving on the political subdivision's
28 legislative body who are members of the protected class is equivalent
29 to the proportion of the population who are members of the protected
30 class. Only elections conducted prior to the filing of an action
31 pursuant to this chapter shall be used to establish or rebut the
32 existence of a violation.

33 (4) 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 act."

37 NEW SECTION. **Sec. 303.** (1) The political subdivision shall work
38 in good faith with the person providing the notice to implement a

1 remedy that provides the protected class or classes identified in the
2 notice an equal opportunity to participate in elections.

3 (2) If the political subdivision adopts a remedy after receiving
4 notice, the political subdivision shall seek a court order
5 acknowledging that the political subdivision's remedy complies with
6 section 104 of this act, and shall notify the person who submitted
7 the notice about the attempt to obtain a court order. The person who
8 submitted the notice may support or oppose such an order, and may
9 obtain public records to do so. The political subdivision must
10 provide all political, census, and demographic data and any analysis
11 of that data used to develop the remedy in its filings seeking the
12 court order and with any documents made public.

13 (3) If the court concludes that the political subdivision's
14 remedy complies with section 104 of this act, an action under this
15 act may not be brought against that political subdivision for four
16 years by any party so long as the political subdivision does not
17 enact a change to or deviation from the remedy during this four-year
18 period.

19 (4) In agreeing to adopt the person's proposed remedy, the
20 political subdivision may do so by stipulation, which shall become a
21 public document.

22 NEW SECTION. **Sec. 304.** (1) Any person may file an action under
23 this act if, one hundred eighty days after a political subdivision
24 receives notice of a challenge to its electoral system under section
25 301 of this act, the political subdivision has not obtained a court
26 order stating that it has adopted a remedy in compliance with section
27 104 of this act.

28 (2) If, within one hundred eighty days after receiving the
29 person's notice, a political subdivision receives any other notice
30 containing a materially different proposed remedy than the first
31 notice, no action may be filed under this act within two hundred
32 seventy days after receiving the initial notice.

33 (3) If a political subdivision has received two or more notices
34 containing materially different proposed remedies, the political
35 subdivision shall work in good faith with the persons to implement a
36 remedy that provides the protected class or classes identified in the
37 notices an equal opportunity to participate in elections. If the
38 political subdivision adopts one of the remedies offered, or a
39 different remedy that takes multiple notices into account, the

1 political subdivision shall seek a court order acknowledging that the
2 political subdivision's remedy complies with section 104 of this act.
3 The persons who submitted the notice may support or oppose such an
4 order, and may obtain public records to do so. The political
5 subdivision must provide all political, census, and demographic data
6 and any analysis of that data used to develop the remedy in its
7 filings seeking the court order and with any documents made public.

8 (4) If the court concludes that the political subdivision's
9 remedy complies with section 104 of this act, an action under this
10 act may not be brought against that political subdivision for four
11 years; provided, however, that the political subdivision does not
12 enact a change to or deviation from the remedy during this four-year
13 period that would otherwise give rise to an action under this act.

14 **PART IV - SAFE HARBOR AND LEGAL ACTION UNDER THIS ACT**

15 NEW SECTION. **Sec. 401.** (1) After exhaustion of the time period
16 in section 304 of this act, any voter who resides in a political
17 subdivision where a violation of section 104 of this act is alleged
18 may file an action in the superior court of the county in which the
19 political subdivision is located. If the action is against a county,
20 the action may be filed in the superior court of such county, or in
21 the superior court of either of the two nearest judicial districts as
22 determined pursuant to RCW 36.01.050(2). An action filed pursuant to
23 this chapter does not need to be filed as a class action.

24 (2) Members of different protected classes are encouraged to file
25 an action jointly pursuant to this act if they demonstrate that their
26 combined voting preferences as a group are different from the rest of
27 the electorate.

28 NEW SECTION. **Sec. 402.** (1) In an action filed pursuant to this
29 act, the trial court shall set a trial to be held no later than one
30 year after the filing of a complaint, and shall set a discovery and
31 motions calendar accordingly.

32 (2) The plaintiff's constitutional right to the secrecy of the
33 plaintiff's vote is preserved and is not waived by the filing of an
34 action pursuant to this act.

35 (3) No notice may be submitted to any political subdivision
36 pursuant to this act before July 19, 2020.

1 NEW SECTION. **Sec. 403.** (1) The court may order appropriate
2 remedies including, but not limited to, the imposition of a district-
3 based election. The court may order the affected jurisdiction to draw
4 or redraw district boundaries. The proposed districts must be
5 approved by the court prior to their implementation.

6 (2) In tailoring a remedy after a finding of a violation of
7 section 104 of this act:

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

17 (b) 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 January 16th and on or before the first Monday of November,
20 the next election will occur as scheduled and organized under the
21 current electoral system, but the court shall order new elections to
22 occur pursuant to the remedy at the general election the following
23 calendar year.

24 NEW SECTION. **Sec. 404.** (1) No action under this act may be
25 brought by any person against a political subdivision that has
26 adopted a remedy to its electoral system after an action is filed
27 that is approved by a court pursuant to section 303 of this act or
28 implemented a court-ordered remedy pursuant to section 403 of this
29 act for four years after adoption of the remedy if the political
30 subdivision does not enact a change to or deviation from the remedy
31 during this four-year period that would otherwise give rise to an
32 action under this act.

33 (2) No action under this act may be brought by any person against
34 a political subdivision that has adopted a remedy to its electoral
35 system in the previous decade before the effective date of this
36 section as a result of a claim under the federal voting rights act
37 until after the political subdivision completes redistricting
38 pursuant to RCW 29A.76.010 for the 2020 decennial census.

(13) Requires a violation to show the protected class: (a) Is large and compact enough to be a majority in a district; (b) is politically cohesive; and (c) prefers candidates that are defeated by a majority voting bloc.

(14) Requires courts to analyze elections with at least one candidate who is a member of a protected class and limits consideration to elections prior to filing court action.

(15) Provides consideration of factors by a totality of circumstances standard.

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