
HOUSE BILL 1934

State of Washington

65th Legislature

2017 Regular Session

By Representative Haler

Read first time 02/03/17. Referred to Committee on State Govt,
Elections & IT.

1 AN ACT Relating to establishing a voting rights act to promote
2 equal voting opportunity in certain political subdivisions by
3 authorizing district-based elections, requiring redistricting and new
4 elections in certain circumstances, and establishing a cause of
5 action to redress lack of voter opportunity; amending RCW 36.32.020
6 and 29A.76.010; adding a new section to chapter 35.21 RCW; adding a
7 new section to chapter 35A.21 RCW; and adding a new chapter to Title
8 29A RCW.

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

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

12 NEW SECTION. **Sec. 2.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires
14 otherwise. In applying these definitions and other terms in this
15 chapter, the legislature intends that courts rely on relevant federal
16 case law for guidance.

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

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

3 (b) Cumulating the number of votes a voter is entitled to cast
4 for each position, and allowing the voter to cast the total number of
5 votes in favor of a single candidate or to distribute the total
6 number of votes among multiple candidates; or

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

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

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

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

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

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

25 (4) "Polarized voting" means voting in which there is a
26 difference in the choice of candidates or other electoral choices
27 that are preferred by voters in a protected class, and in the choice
28 of candidates and electoral choices that are preferred by voters in
29 the rest of the electorate.

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

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

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

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

38 (b) It is established that, by the totality of circumstances, the
39 voters of the protected class have less opportunity than members of

1 the majority group to participate in the political process and to
2 elect representatives of their choice.

3 (2) In determining whether there is a violation of this section,
4 the court shall analyze elections of the governing body of the
5 political subdivision, ballot measure elections, elections in which
6 at least one candidate is a member of a protected class, and other
7 electoral choices that affect the rights and privileges of members of
8 a protected class. Elections conducted prior to the filing of an
9 action pursuant to this chapter may be used to establish or rebut the
10 existence of a violation. In determining whether, by the totality of
11 the circumstances, the voters of the protected class have less
12 opportunity than members of the majority group to participate in the
13 political process and to elect representatives of their choice, the
14 court shall consider, at a minimum, the following factors:

15 (a) The history of voter-related discrimination in the political
16 subdivision;

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

19 (c) The extent to which the political subdivision has used voting
20 practices or procedures that tend to enhance the opportunity for
21 discrimination against the minority group, such as unusually large
22 election districts, majority voting requirements, and prohibitions
23 against bullet voting;

24 (d) The exclusion of members of the protected class from the
25 candidate slating process;

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

30 (f) The use of overt or subtle racial appeals in political
31 campaigns;

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

34 (h) Whether there is a significant lack of responsiveness on the
35 part of elected officials to the particularized needs of the members
36 of the protected class.

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

1 (4) In determining whether there is a violation of this section,
2 the court shall analyze elections of the governing body of the
3 political subdivision, ballot measure elections, elections in which
4 at least one candidate is a member of a protected class, and other
5 electoral choices that affect the rights and privileges of members of
6 a protected class. The court may also consider whether the proportion
7 of elected officials serving on the political subdivision's
8 legislative body who are members of the protected class is equivalent
9 to the proportion of the population who are members of the protected
10 class.

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

15 NEW SECTION. **Sec. 4.** (1) In an action filed pursuant to this
16 act, the trial court shall set a trial to be held no later than one
17 year after the filing of a complaint, and shall set a discovery and
18 motions calendar accordingly.

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

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

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

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

32 (6) No action may be filed pursuant to this act before January
33 15, 2018.

34 NEW SECTION. **Sec. 5.** (1) A political subdivision that conducts
35 an election pursuant to state, county, or local law, is authorized to
36 change its electoral system including, but not limited to,
37 implementing a district-based election system or an alternative
38 proportional voting method to remedy a potential violation of section

1 3 of this act. If a political subdivision invokes its authority under
2 this section to implement a district-based election system, the
3 districts shall be drawn in a manner consistent with section 6 of
4 this act.

5 (2) If a political subdivision implements a district-based
6 election system, the plan shall be consistent with the following
7 criteria:

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

12 (b) Each district shall be reasonably compact.

13 (c) Each district shall consist of geographically contiguous
14 area.

15 (d) To the extent feasible, the district boundaries shall
16 coincide with existing recognized natural boundaries and shall, to
17 the extent possible, preserve existing communities of related and
18 mutual interest.

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

22 (3) During the adoption of its plan, the political subdivision
23 shall ensure that full and reasonable public notice of its actions is
24 provided. The political subdivision shall hold at least one public
25 hearing on the redistricting plan at least one week before adoption
26 of the plan.

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

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

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

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

13 (6) No later than eight months after its receipt of federal
14 decennial census data, the governing body of the political
15 subdivision that had previously invoked its authority under this
16 section to implement a district-based election system, or that was
17 previously charged with redistricting under section 6 of this act,
18 shall prepare a plan for redistricting its districts, pursuant to RCW
19 29A.76.010, and in a manner consistent with this act.

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

23 NEW SECTION. **Sec. 6.** (1) Upon a finding of a violation of
24 section 3 of this act, the court shall order appropriate remedies
25 that are tailored to remedy the violation. The remedies may include,
26 but are not limited to, the imposition of a district-based election
27 system or an alternative proportional voting method. The court may
28 order the affected jurisdiction to draw or redraw district boundaries
29 or appoint an individual or panel to draw or redraw district lines.
30 The proposed districts must be approved by the court prior to their
31 implementation.

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

34 (a) If the court's order providing a remedy or approving proposed
35 districts, whichever is later, is issued during the period of time
36 between the first Tuesday after the first Monday of November and on
37 or before January 15th of the following year, the court shall order
38 new elections, conducted pursuant to the remedy, to occur at the next
39 succeeding general election. If a special filing period is required,

1 filings for that office shall be reopened for a period of three
2 business days, such three-day period to be fixed by the filing
3 officer.

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

11 (c) All of the positions that were elected pursuant to the at-
12 large or district-based election system that was the subject of the
13 action filed pursuant to this chapter and have at least two years
14 remaining in their terms of office from the date the plan was
15 adopted, including those elected pursuant to (b) of this subsection,
16 shall be subject to new elections, pursuant to the remedy implemented
17 under subsection (1) of this section.

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

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

26 NEW SECTION. **Sec. 8.** Any voter who is a member of a protected
27 class and who resides in a political subdivision where a violation of
28 section 3 of this act is alleged may file an action in the superior
29 court of the county in which the political subdivision is located. If
30 the action is against a county, the action may be filed in the
31 superior court of such county, or in the superior court of either of
32 the two nearest judicial districts as determined pursuant to RCW
33 36.01.050(2). An action filed pursuant to this chapter does not need
34 to be filed as a class action.

35 NEW SECTION. **Sec. 9.** (1) Prior to filing an action pursuant to
36 this act, a person shall first notify the political subdivision that
37 he or she intends to challenge the political subdivision's electoral

1 system under this act. If the political subdivision does not invoke
2 its authority under section 5 of this act to implement the person's
3 proposed remedy within twelve months after receiving notice, any
4 person may file an action under this act.

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

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

17 (b) During the twelve months prior to an action being filed in
18 state court, the political subdivision shall work collaboratively
19 with the person bringing the notice to implement a solution that
20 provides a remedy for all parties without resorting to litigation. At
21 a minimum, representatives of the political subdivision must
22 facilitate and participate in meetings with the person or persons at
23 least once per month to address identified concerns and work towards
24 a solution.

25 (c) If, after twelve months have passed from the date of the
26 person first providing notice and no mutually agreed solution has
27 been reached, the person or persons may file an action in state court
28 pursuant to this chapter. If, within twelve months after receiving a
29 person's notice, a political subdivision receives another notice
30 containing a materially different proposed remedy than the first
31 notice, the political subdivision shall have an additional three
32 months from the date of the subsequent notice before an action may be
33 filed under this act.

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

37 (4) If, after considering the person's notice, the political
38 subdivision adopts the proposed remedy offered by the person in the
39 notice, an action under this act by any person may not be brought
40 against that political subdivision for four years; provided, however,

1 that the political subdivision does not enact a change to or
2 deviation from the remedy during this four-year period that would
3 otherwise give rise to an action under this act. In agreeing to adopt
4 the person's proposed remedy, the political subdivision may do so by
5 stipulation, which shall become a public document.

6 (5) Should the political subdivision adopt a different remedy
7 that takes the notice into account, the political subdivision may
8 seek a court order acknowledging that the political subdivision's
9 remedy complies with section 3 of this act. The person who submitted
10 the notice may support or oppose such an order. If the court
11 concludes that the political subdivision's remedy complies with
12 section 3 of this act, an action under this act by any party may not
13 be brought against that political subdivision for four years;
14 provided, however, that the political subdivision does not enact a
15 change to or deviation from the remedy during this four-year period
16 that would otherwise give rise to an action under this act.

17 (6) If a political subdivision has received two or more notices
18 containing materially different proposed remedies, the persons and
19 political subdivision shall work in good faith to implement a remedy
20 that complies with section 3 of this act. Should the political
21 subdivision adopt one of the remedies offered, or a different remedy
22 that takes multiple notices into account, the political subdivision
23 may seek a court order acknowledging that the political subdivision's
24 remedy complies with section 3 of this act. The persons who submitted
25 notices may support or oppose such an order. If the court concludes
26 that the political subdivision's remedy complies with section 3 of
27 this act, an action under this act by any party may not be brought
28 against that political subdivision for four years; provided, however,
29 that the political subdivision does not enact a change to or
30 deviation from the remedy during this four-year period that would
31 otherwise give rise to an action under this act.

32 (7) An individual who has filed an unsuccessful action against a
33 political subdivision under the federal voting rights act may not
34 file a separate action against the same political subdivision under
35 this act within two years of filing the action under the federal
36 voting rights act.

37 NEW SECTION. **Sec. 10.** If, after an action is filed, the
38 political subdivision adopts the person's proposed remedy, or a
39 court-ordered remedy, an action under this act by any party may not

1 be brought against that political subdivision for four years;
2 provided, however, that the political subdivision does not enact a
3 change to or deviation from the remedy during this four-year period
4 that would otherwise give rise to an action under this act.

5 NEW SECTION. **Sec. 11.** The provisions of this act are not
6 applicable to cities and towns with populations under thirty
7 thousand.

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

10 The board of county commissioners of each county shall divide
11 their county into three commissioner districts so that each district
12 shall comprise as nearly as possible one-third of the population of
13 the county: PROVIDED, That the territory comprised in any voting
14 precincts of such districts shall remain compact, and shall not be
15 divided by the lines of said districts.

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

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

27 NEW SECTION. **Sec. 13.** A new section is added to chapter 35.21
28 RCW to read as follows:

29 The legislative authority of a city or town may authorize a
30 change to its electoral system, including the implementation of a
31 district-based election system or an alternative proportional voting
32 method as defined in section 2 of this act, to remedy a potential
33 violation of section 3 of this act. If the legislative authority of a
34 city or town invokes its authority under this section to implement a
35 district-based election system, the districts shall be drawn in a
36 manner consistent with sections 5 and 6 of this act. The legislative
37 authority of a city or town shall order new elections to be scheduled

1 pursuant to section 5(4) of this act. All of the positions that were
2 elected pursuant to the previous method of election and have at least
3 two years remaining in their terms of office shall be subject to new
4 elections in order to continue their terms of office at the
5 legislative authority's discretion.

6 NEW SECTION. **Sec. 14.** A new section is added to chapter 35A.21
7 RCW to read as follows:

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

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

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

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

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

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

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

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

7 (c) Each district shall consist of geographically contiguous
8 area.

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

12 (e) To the extent feasible and if not inconsistent with the basic
13 enabling legislation for the municipal corporation, county, or
14 district, the district boundaries shall coincide with existing
15 recognized natural boundaries and shall, to the extent possible,
16 preserve existing communities of related and mutual interest.

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

22 (6)(a) Any registered voter residing in an area affected by the
23 redistricting plan may request review of the adopted local plan by
24 the superior court of the county in which he or she resides, within
25 fifteen days of the plan's adoption. Any request for review must
26 specify the reason or reasons alleged why the local plan is not
27 consistent with the applicable redistricting criteria. The municipal
28 corporation, county, or district may be joined as respondent. The
29 superior court shall thereupon review the challenged plan for
30 compliance with the applicable redistricting criteria set out in
31 subsection (4) of this section.

32 (b) If the superior court finds the plan to be consistent with
33 the requirements of this section, the plan shall take effect
34 immediately.

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

39 (d) If the superior court finds that any request for review is
40 frivolous or has been filed solely for purposes of harassment or

1 delay, it may impose appropriate sanctions on the party requesting
2 review, including payment of attorneys' fees and costs to the
3 respondent municipal corporation, county, or district.

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

8 NEW SECTION. **Sec. 17.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

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

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