
SENATE BILL 5067

State of Washington

65th Legislature

2017 Regular Session

By Senator Miloscia

Read first time 01/11/17. Referred to Committee on State Government.

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 28A.343 RCW; adding a
7 new section to chapter 35.21 RCW; adding a new section to chapter
8 35A.21 RCW; and adding a new chapter to Title 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) "Political subdivision" means any county, city, town, or
26 school district, but does not include the state.

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

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

31 (a) It established by prima facie evidence that:

32 (i) The protected class is sufficiently large and geographically
33 compact enough to constitute a majority in a single member voting
34 district;

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

36 (iii) The majority votes sufficiently as a bloc to enable it to
37 defeat the protected class' preferred candidate; 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. Only elections conducted prior to the filing of an
9 action pursuant to this chapter shall be used to establish or rebut
10 the existence of a violation. In determining whether, by the totality
11 of 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) In determining whether there is a violation of this section,
38 the court shall analyze elections of the governing body of the
39 political subdivision, ballot measure elections, elections in which
40 at least one candidate is a member of a protected class, and other

1 electoral choices that affect the rights and privileges of members of
2 a protected class. The court shall also consider whether the
3 proportion of elected officials serving on the political
4 subdivision's legislative body who are members of the protected class
5 is equivalent to the proportion of the population who are members of
6 the protected class. Only elections conducted prior to the filing of
7 an action pursuant to this chapter shall be used to establish or
8 rebut the existence of a violation.

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

13 NEW SECTION. **Sec. 4.** (1) Members of different protected classes
14 may file an action jointly pursuant to this chapter if they
15 demonstrate that:

16 (a) It established by prima facie evidence that:

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

20 (ii) The joint protected class is politically cohesive; and

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

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

27 (2) In an action filed pursuant to this section, the trial court
28 shall set a trial to be held no later than one year after the filing
29 of a complaint, and shall set a discovery and motions calendar
30 accordingly.

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

34 (4) For purposes of any applicable statute of limitations, a
35 cause of action under this section arises every time there is an
36 election pursuant to an at-large election or a district-based
37 election.

38 (5) The plaintiff's constitutional right to the secrecy of the
39 plaintiff's vote is preserved and is not waived by the filing of an

1 action pursuant to this section, and is not subject to discovery or
2 disclosure.

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

6 (7) No action may be filed pursuant to this act before January
7 15, 2018.

8 NEW SECTION. **Sec. 5.** (1) A political subdivision that conducts
9 an election pursuant to state, county, or local law, is authorized to
10 change its electoral system including, but not limited to,
11 implementing a district-based election system or an alternative
12 proportional voting method to remedy a potential violation of section
13 3 of this act. If a political subdivision invokes its authority under
14 this section to implement a district-based election system, the
15 districts shall be drawn in a manner consistent with section 6 of
16 this act.

17 (2) If a political subdivision implements a district-based
18 election system, the plan shall be consistent with the following
19 criteria:

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

24 (b) Each district shall be reasonably compact.

25 (c) Each district shall consist of geographically contiguous
26 area.

27 (d) To the extent feasible, the district boundaries shall
28 coincide with existing recognized natural boundaries and shall, to
29 the extent possible, preserve existing communities of related and
30 mutual interest.

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

34 (3) During the adoption of its plan, the political subdivision
35 shall ensure that full and reasonable public notice of its actions is
36 provided. The political subdivision shall hold at least one public
37 hearing on the redistricting plan at least one week before adoption
38 of the plan.

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

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

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

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

26 (6) No later than eight months after its receipt of federal
27 decennial census data, the governing body of the political
28 subdivision that had previously invoked its authority under this
29 section to implement a district-based election system, or that was
30 previously charged with redistricting under section 6 of this act,
31 shall prepare a plan for redistricting its districts, pursuant to RCW
32 29A.76.010, and in a manner consistent with this act.

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

36 NEW SECTION. **Sec. 6.** (1) Upon a finding of a violation of
37 section 3 of this act, the court shall order appropriate remedies
38 that are tailored to remedy the violation. The remedies may include,
39 but are not limited to, the imposition of a district-based election

1 system or an alternative proportional voting method. The court may
2 order the affected jurisdiction to draw or redraw district boundaries
3 or appoint an individual or panel to draw or redraw district lines.
4 The proposed districts must be approved by the court prior to their
5 implementation.

6 (2) In tailoring a remedy after a finding of a violation of
7 section 3 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 (c) All of the positions that were elected pursuant to the at-
25 large or district-based election system that was the subject of the
26 action filed pursuant to this chapter and have at least two years
27 remaining in their terms of office from the date the plan was
28 adopted, including those elected pursuant to (b) of this subsection,
29 shall be subject to new elections, pursuant to the remedy implemented
30 under subsection (1) of this section.

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

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

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

10 NEW SECTION. **Sec. 9.** (1) Prior to filing an action pursuant to
11 this act, a person shall first notify the political subdivision that
12 he or she intends to challenge the political subdivision's electoral
13 system under this act. If the political subdivision does not invoke
14 its authority under section 5 of this act to implement the person's
15 proposed remedy within eighteen months after receiving notice, any
16 person may file an action under this act.

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

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

29 (b) During the eighteen months prior to an action being filed in
30 state court, the political subdivision shall work collaboratively
31 with the person bringing the notice to implement a solution that
32 provides a remedy for all parties without resorting to litigation. At
33 a minimum, representatives of the political subdivision must
34 facilitate and participate in meetings with the person or persons at
35 least once per month to address identified concerns and work towards
36 a solution.

37 (c) If, after eighteen months have passed from the date of the
38 person first providing notice and no mutually agreed solution has
39 been reached, the person or persons may file an action in state court

1 pursuant to this chapter. If, within eighteen months after receiving
2 a person's notice, a political subdivision receives another notice
3 containing a materially different proposed remedy than the first
4 notice, the political subdivision shall have an additional six months
5 from the date of the subsequent notice before an action may be filed
6 under this act.

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

10 (4) If, after considering the person's notice, the political
11 subdivision adopts the proposed remedy offered by the person in the
12 notice, an action under this act by any person may not be brought
13 against that political subdivision for four years; provided, however,
14 that the political subdivision does not enact a change to or
15 deviation from the remedy during this four-year period that would
16 otherwise give rise to an action under this act. In agreeing to adopt
17 the person's proposed remedy, the political subdivision may do so by
18 stipulation, which shall become a public document.

19 (5) Should the political subdivision adopt a different remedy
20 that takes the notice into account, the political subdivision may
21 seek a court order acknowledging that the political subdivision's
22 remedy complies with section 3 of this act. The person who submitted
23 the notice may support or oppose such an order. If the court
24 concludes that the political subdivision's remedy complies with
25 section 3 of this act, an action under this act by any party may not
26 be brought against that political subdivision for four years;
27 provided, however, that the political subdivision does not enact a
28 change to or deviation from the remedy during this four-year period
29 that would otherwise give rise to an action under this act.

30 (6) If a political subdivision has received two or more notices
31 containing materially different proposed remedies, the persons and
32 political subdivision shall work in good faith to implement a remedy
33 that complies with section 3 of this act. Should the political
34 subdivision adopt one of the remedies offered, or a different remedy
35 that takes multiple notices into account, the political subdivision
36 may seek a court order acknowledging that the political subdivision's
37 remedy complies with section 3 of this act. The persons who submitted
38 notices may support or oppose such an order. If the court concludes
39 that the political subdivision's remedy complies with section 3 of
40 this act, an action under this act by any party may not be brought

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

5 (7) An individual who has filed an unsuccessful action against a
6 political subdivision under the federal voting rights act may not
7 file a separate action against the same political subdivision under
8 this act within four years of filing the action under the federal
9 voting rights act.

10 NEW SECTION. **Sec. 10.** If, after an action is filed, the
11 political subdivision adopts the person's proposed remedy, or a
12 court-ordered remedy, 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 NEW SECTION. **Sec. 11.** The provisions of this act are not
18 applicable to cities and towns with populations under two thousand or
19 to school districts with K-12 full-time equivalent enrollments of
20 less than five hundred.

21 NEW SECTION. **Sec. 12.** A new section is added to chapter 28A.343
22 RCW to read as follows:

23 The school board of directors may authorize a change to a
24 district-based election system or an alternative proportional voting
25 method as defined in section 2 of this act, such districts to be
26 drawn in a manner consistent with sections 5 and 6 of this act. The
27 school board of directors shall order new elections to be scheduled
28 pursuant to section 5(4) of this act. The staggering of directors'
29 terms shall be accomplished as provided in RCW 28A.343.030 and
30 28A.343.620 through 28A.343.650.

31 **Sec. 13.** RCW 36.32.020 and 1982 c 226 s 4 are each amended to
32 read as follows:

33 The board of county commissioners of each county shall divide
34 their county into three commissioner districts so that each district
35 shall comprise as nearly as possible one-third of the population of
36 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. 14. 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. 15. 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. 16.** 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. 17.** 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. 18.** 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. 19.** Sections 1 through 11 and 17 of this act
2 constitute a new chapter in Title 29A RCW.

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