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ENGROSSED SUBSTITUTE HOUSE BILL 1048

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State of Washington

68th Legislature

2023 Regular Session

**By** House State Government & Tribal Relations (originally sponsored by Representatives Mena, Simmons, Goodman, Berry, Ramel, Peterson, Pollet, Doglio, Macri, Morgan, Wylie, Gregerson, Bergquist, Street, Cortes, Santos, Ormsby, and Farivar)

READ FIRST TIME 01/24/23.

1 AN ACT Relating to enhancing the Washington voting rights act;  
2 amending RCW 29A.92.010, 29A.92.030, 29A.92.040, 29A.92.060,  
3 29A.92.090, 29A.92.110, 29A.92.070, 29A.92.080, 29A.92.130, and  
4 36.32.020; adding new sections to chapter 29A.92 RCW; and providing  
5 an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 29A.92  
8 RCW to read as follows:

9 In further recognition of the protections for the right to vote  
10 provided by the Constitution of the state of Washington, statutes,  
11 rules and regulations, and local laws, town charters, and ordinances  
12 related to the right to vote shall be construed liberally in favor  
13 of:

- 14 (1) Protecting the right to cast an effective ballot;  
15 (2) Ensuring that eligible voters are not impaired in registering  
16 to vote or voting including having their votes counted; and  
17 (3) Ensuring that voters of race, color, and language minority  
18 groups have equitable access to fully participate in the electoral  
19 process in registering to vote and voting free from improper dilution  
20 or abridgement of voting power.

1       **Sec. 2.** RCW 29A.92.010 and 2018 c 113 s 103 are each amended to  
2 read as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise. In applying these  
5 definitions and other terms in this chapter, courts may rely on  
6 relevant federal case law for guidance.

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

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

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

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

17       (2) "Cohesive" means that members of a group tend to prefer the  
18 same candidates or other electoral choices.

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

24       ~~((3))~~ (4) "Polarized voting" means voting in which there is a  
25 difference~~(, as defined in case law regarding enforcement of the~~  
26 ~~federal voting rights act, 52 U.S.C. 10301 et seq.,)~~ in the choice  
27 of candidates or other electoral choices that are preferred by voters  
28 in a protected class or a coalition of protected classes, and in the  
29 choice of candidates and electoral choices that are preferred by  
30 voters in the rest of the electorate.

31       ~~((4))~~ (5) "Political subdivision" means any county, city, town,  
32 school district, fire protection district, port district, or public  
33 utility district, but does not include the state.

34       ~~((5))~~ (6) "Protected class" means a class of voters who are  
35 members of a race, color, or language minority group in the state of  
36 Washington, as this class is referenced and defined in the federal  
37 voting rights act, 52 U.S.C. 10301 et seq.

38       **Sec. 3.** RCW 29A.92.030 and 2019 c 64 s 7 are each amended to  
39 read as follows:

1 (1) A political subdivision is in violation of this chapter when  
2 it is shown that:

3 (a) Elections in the political subdivision exhibit polarized  
4 voting; and

5 (b) Members of a protected class or classes do not have an equal  
6 opportunity to elect candidates of their choice as a result of the  
7 dilution or abridgment of the rights of members of that protected  
8 class or classes.

9 ~~(2) ((The fact that members of a protected class are not  
10 geographically compact or concentrated to constitute a majority in a  
11 proposed or existing district-based election district shall not  
12 preclude a finding of a violation under this chapter, but may be a  
13 factor in determining a remedy. The equal opportunity to elect shall  
14 be assessed pragmatically, based on local election conditions, and  
15 may include crossover districts.~~

16 ~~(3))~~ In determining whether there is polarized voting under this  
17 chapter, the court shall analyze election results including, but not  
18 limited to, elections of the governing body of the political  
19 subdivision, ballot measure elections, elections in which at least  
20 one candidate is a member of a protected class, and other electoral  
21 choices that affect the rights and privileges of members of a  
22 protected class. The court is not required to consider explanations,  
23 including partisanship, for why polarized voting under this chapter  
24 exists in the political subdivision to determine whether polarized  
25 voting under this chapter exists in the political subdivision.  
26 Elections conducted prior to the filing of an action pursuant to this  
27 chapter are more probative to establish the existence of ~~((racially))~~  
28 polarized voting than elections conducted after the filing of an  
29 action.

30 ~~((4))~~ (3) The election of candidates who are members of a  
31 protected class and who were elected prior to the filing of an action  
32 pursuant to this chapter shall not preclude a finding of polarized  
33 voting that results in an unequal opportunity for a protected class  
34 to elect candidates of their choice.

35 (4) The equal opportunity to elect shall be assessed  
36 pragmatically, based on local election conditions, and may include  
37 crossover districts. No single factor is dispositive or necessary to  
38 establish a violation of this section.

39 (5) The fact that members of a protected class are not  
40 geographically compact or concentrated to constitute a majority in a

1 proposed or existing district-based election district shall not  
2 preclude a finding of a violation under this chapter, but may be a  
3 factor in determining a remedy.

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

7 ~~((6))~~ (7) Other factors such as the history of discrimination,  
8 the use of electoral devices or other voting practices or procedures  
9 that may enhance the dilutive effects of at large elections, denial  
10 of access to those processes determining which groups of candidates  
11 will receive financial or other support in a given election, the  
12 extent to which members of a protected class bear the effects of past  
13 discrimination in areas such as education, employment, and health,  
14 which hinder their ability to participate effectively in the  
15 political process, and the use of overt or subtle racial appeals in  
16 political campaigns are probative, but not necessary factors, to  
17 establish a violation of this chapter.

18 (8) A class of people protected by this section may include a  
19 coalition of members of different racial, color, or language minority  
20 groups. A coalition of members of different protected classes is not  
21 required to demonstrate that each individual racial, color, or  
22 language minority group which comprises the coalition is cohesive,  
23 only that the coalition as a whole is cohesive.

24 **Sec. 4.** RCW 29A.92.040 and 2018 c 113 s 201 are each amended to  
25 read as follows:

26 (1) A political subdivision that conducts an election pursuant to  
27 state, county, or local law, is authorized to change its electoral  
28 system, including, but not limited to, implementing a district-based  
29 election system, or increasing the number of elected officials on a  
30 county commission as authorized by section 12 of this act, to remedy  
31 a potential violation of RCW 29A.92.020.

32 (2) If a political subdivision invokes its authority under this  
33 section to implement a district-based election system, the districts  
34 shall be drawn in a manner consistent with RCW 29A.92.050.

35 **Sec. 5.** RCW 29A.92.060 and 2019 c 64 s 9 are each amended to  
36 read as follows:

37 (1) A voter who resides in the political subdivision, an  
38 organization whose roster of members and volunteers includes a voter

1 who resides in the political subdivision, or a tribe located at least  
2 in part in the political subdivision who intends to challenge a  
3 political subdivision's electoral system under this chapter shall  
4 first notify the political subdivision. The political subdivision  
5 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 elect candidates of their choice or  
10 an equal opportunity to influence the outcome of an election because  
11 of alleged vote dilution and polarized voting. The notice shall also  
12 include a type of remedy the person believes may address the alleged  
13 violation of RCW 29A.92.030.

14 **Sec. 6.** RCW 29A.92.090 and 2019 c 64 s 12 are each amended to  
15 read as follows:

16 (1) After exhaustion of the time period in RCW 29A.92.080, any  
17 voter who resides in a political subdivision, organization whose  
18 roster of members and volunteers includes a voter who resides in the  
19 political subdivision, or tribe located at least in part in the  
20 political subdivision where a violation of RCW 29A.92.020 is alleged  
21 may file an action in the superior court of the county in which the  
22 political subdivision is located. If the action is against a county,  
23 the action may be filed in the superior court of such county, or in  
24 the superior court of either of the two nearest judicial districts as  
25 determined pursuant to RCW 36.01.050(2). An action filed pursuant to  
26 this chapter does not need to be filed as a class action.

27 (2) (~~Members~~) A coalition of members of different protected  
28 classes may file an action jointly pursuant to this chapter if they  
29 demonstrate that the combined voting preferences of the multiple  
30 protected classes are polarized against the rest of the electorate. A  
31 coalition of members of different protected classes is not required  
32 to demonstrate that each individual racial, color, or language  
33 minority group which comprises the coalition is cohesive.

34 (3) Nothing in this section shall be interpreted to relieve a  
35 party of the requirement to establish standing as provided in  
36 Washington case law when commencing an action under this title.

37 **Sec. 7.** RCW 29A.92.110 and 2019 c 454 s 2 are each amended to  
38 read as follows:

1           (1) ~~((The))~~ After finding a violation of RCW 29A.92.020 or upon  
2 stipulation of the parties, the court may order appropriate remedies  
3 including, but not limited to, the imposition of a district-based  
4 election system or expansion of the number of elected county  
5 commissioners if authorized by section 12 of this act. ~~((The court~~  
6 may order the affected jurisdiction to draw or redraw district  
7 boundaries or appoint an individual or panel to draw or redraw  
8 district lines. The proposed districts must be approved by the court  
9 prior to their implementation.)) In tailoring a remedy, the court  
10 shall consider proposed remedies by the parties and may not give  
11 deference to a proposed remedy only because it is proposed by the  
12 political subdivision. The court may not approve a remedy that  
13 violates this chapter.

14           (2) If the court orders a district-based remedy, the court must  
15 approve proposed district boundaries prior to their implementation.  
16 The court must determine that the proposed district boundaries will  
17 not violate this chapter.

18           (3) Implementation of a district-based remedy is not precluded by  
19 the fact that members of a protected class do not constitute a  
20 numerical majority within a proposed district-based election  
21 district. If, in tailoring a remedy, the court orders the  
22 implementation of a district-based election district where the  
23 members of the protected class are not a numerical majority, the  
24 court shall do so in a manner that provides the protected class an  
25 equal opportunity to elect candidates of their choice. The court may  
26 also approve a district-based election system that provides the  
27 protected class the opportunity to join in a coalition of two or more  
28 protected classes to elect candidates of their choice if there is  
29 demonstrated political cohesion among the protected classes.

30           ~~((3))~~ (4) In tailoring a remedy after a finding of a violation  
31 of RCW 29A.92.020 or upon stipulation of the parties:

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

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

8 (c) The remedy may provide for the political subdivision to hold  
9 elections for the members of its governing body at the same time as  
10 regularly scheduled elections for statewide or federal offices. All  
11 positions on the governing body must stand for election at the next  
12 election for the governing body, scheduled pursuant to this  
13 subsection (~~((3))~~) (4). The governing body may subsequently choose to  
14 stagger the terms of its positions.

15 (~~((4))~~) (5) Within thirty days of the conclusion of any action  
16 filed under RCW 29A.92.100, the political subdivision must publish on  
17 the subdivision's website, the outcome and summary of the action, as  
18 well as the legal costs incurred by the subdivision. If the political  
19 subdivision does not have its own website, then it may publish on the  
20 county website.

21 **Sec. 8.** RCW 29A.92.070 and 2019 c 64 s 10 are each amended to  
22 read as follows:

23 (1) The political subdivision shall work in good faith with the  
24 person, organization, or tribe providing the notice to implement a  
25 remedy that provides the protected class or classes identified in the  
26 notice an equal opportunity to elect candidates of their choice. Such  
27 work in good faith to implement a remedy may include, but is not  
28 limited to consideration of: (a) Relevant electoral data; (b)  
29 relevant demographic data, including the most recent census data  
30 available; and (c) any other information that would be relevant to  
31 implementing a remedy.

32 (2) If the political subdivision adopts a remedy that takes the  
33 notice into account, or adopts the notice's proposed remedy, the  
34 political subdivision shall seek a court order acknowledging that the  
35 political subdivision's remedy complies with RCW 29A.92.020 and was  
36 prompted by a plausible violation. The person who submitted the  
37 notice may support or oppose such an order, and may obtain public  
38 records to do so. The political subdivision must provide all  
39 political, census, and demographic data and any analysis of that data

1 used to develop the remedy in its filings seeking the court order and  
2 with any documents made public. All facts and reasonable inferences  
3 shall be viewed in the light most favorable to those opposing the  
4 political subdivision's proposed remedy at this stage. There shall be  
5 a rebuttable presumption that the court will decline to approve the  
6 political subdivision's proposed remedy at this stage.

7 (3) If the court concludes that the political subdivision's  
8 remedy complies with RCW 29A.92.020, an action under this chapter may  
9 not be brought against that political subdivision for four years by  
10 any party so long as the political subdivision does not enact a  
11 change to or deviation from the remedy during this four-year period  
12 that would otherwise give rise to an action under this chapter.

13 (4) In agreeing to adopt the person's, organization's, or tribe's  
14 proposed remedy, the political subdivision may do so by stipulation,  
15 which shall become a public document.

16 (5) (a) If the court issues an order under subsection (2) of this  
17 section, the person, organization, or tribe who sent the notice may  
18 make a demand to the political subdivision for reimbursement of the  
19 costs incurred in conducting the research necessary to send the  
20 notice. A demand made under this subsection must:

21 (i) Be in writing;

22 (ii) Be received by the political subdivision within 30 days of  
23 the adoption of the new electoral system; and

24 (iii) Include financial documentation, such as a detailed invoice  
25 for demographic services, that supports the demand. The political  
26 subdivision may request additional documentation if the documentation  
27 provided is insufficient for the political subdivision to corroborate  
28 the claimed costs.

29 (b) The political subdivision shall, within 60 days of receiving  
30 the demand, reimburse the reasonable costs of the person,  
31 organization, or tribe who sent the notice, not to exceed \$50,000.

32 **Sec. 9.** RCW 29A.92.080 and 2019 c 64 s 11 are each amended to  
33 read as follows:

34 (1) Any voter who resides in the political subdivision,  
35 organization whose roster of members and volunteers includes a voter  
36 who resides in the political subdivision, or tribe located at least  
37 in part in the political subdivision may file an action under this  
38 chapter if, (~~one hundred eighty~~) 90 days after a political  
39 subdivision receives notice of a challenge to its electoral system



1 under RCW 29A.92.060, the political subdivision has not obtained a  
2 court order stating that it has adopted a remedy in compliance with  
3 RCW 29A.92.020. (~~However, if notice is received after July 1, 2021,~~  
4 ~~then the political subdivision shall have ninety days to obtain a~~  
5 ~~court order before an action may be filed.~~)

6 (2) If a political subdivision has received two or more notices  
7 containing materially different proposed remedies, the political  
8 subdivision shall work in good faith with the persons to implement a  
9 remedy that provides the protected class or classes identified in the  
10 notices an equal opportunity to elect candidates of their choice. If  
11 the political subdivision adopts one of the remedies offered, or a  
12 different remedy that takes multiple notices into account, the  
13 political subdivision shall seek a court order acknowledging that the  
14 political subdivision's remedy is reasonably necessary to avoid a  
15 violation of RCW 29A.92.020. The persons, organizations, or tribes  
16 who submitted the notice may support or oppose such an order, and may  
17 obtain public records to do so. The political subdivision must  
18 provide all political, census, and demographic data and any analysis  
19 of that data used to develop the remedy in its filings seeking the  
20 court order and with any documents made public. All facts and  
21 reasonable inferences shall be viewed in the light most favorable to  
22 those opposing the political subdivision's proposed remedy at this  
23 stage. There shall be a rebuttable presumption that the court will  
24 decline to approve the political subdivision's proposed remedy at  
25 this stage.

26 (3) If the court concludes that the political subdivision's  
27 remedy complies with RCW 29A.92.020, an action under this chapter may  
28 not be brought against that political subdivision for four years by  
29 any party so long as the political subdivision does not enact a  
30 change to or deviation from the remedy during this four-year period  
31 that would otherwise give rise to an action under this chapter.

32 (4) (a) If the court issues an order under subsection (2) of this  
33 section, the persons, organizations, or tribes who sent notices may  
34 make a demand to the political subdivision for reimbursement of the  
35 costs incurred in conducting the research necessary to send the  
36 notices. A demand made under this subsection must:

- 37 (i) Be in writing;  
38 (ii) Be received by the political subdivision within 30 days of  
39 the adoption of the new electoral system; and

1 (iii) Include financial documentation, such as a detailed invoice  
2 for demographic services, that supports the demand. The political  
3 subdivision may request additional documentation if the documentation  
4 provided is insufficient for the political subdivision to corroborate  
5 the claimed costs.

6 (b) The political subdivision shall, within 60 days of receiving  
7 the demand, reimburse the reasonable costs of the persons,  
8 organizations, or tribes who sent the notices, not to exceed \$50,000.

9 **Sec. 10.** RCW 29A.92.130 and 2018 c 113 s 405 are each amended to  
10 read as follows:

11 (1) In any action to enforce this chapter, the court may allow  
12 the prevailing plaintiff or plaintiffs, other than the state or  
13 political subdivision thereof, reasonable attorneys' fees, all  
14 nonattorney fee costs as defined by RCW 4.84.010, and all reasonable  
15 expert witness fees, including all such reasonable fees and costs  
16 incurred before filing the action. (~~No fees or costs may be awarded~~  
17 ~~if no action is filed.~~)

18 (2)(a) A prevailing plaintiff does not need to achieve relief or  
19 favorable judgment if the plaintiff demonstrates that they succeeded  
20 in altering the political subdivision's behavior to correct a claimed  
21 harm.

22 (b) For purposes of this section, "altering the political  
23 subdivision's behavior" includes, but is not limited to, adopting a  
24 new method of electing a governing body, modifying district  
25 boundaries, or amending a voting rule or qualification.

26 (3) Prevailing defendants may recover an award of fees or costs  
27 pursuant to RCW 4.84.185.

28 **Sec. 11.** RCW 36.32.020 and 2018 c 113 s 204 are each amended to  
29 read as follows:

30 The board of county commissioners of each county shall divide  
31 their county into three commissioner districts so that each district  
32 shall comprise as nearly as possible one-third of the population of  
33 the county: PROVIDED, That the territory comprised in any voting  
34 precincts of such districts shall remain compact, and shall not be  
35 divided by the lines of said districts.

36 However, the commissioners of any county composed entirely of  
37 islands and with a population of less than thirty-five thousand may  
38 divide their county into three commissioner districts without regard

1 to population, except that if any single island is included in more  
2 than one district, the districts on such island shall comprise, as  
3 nearly as possible, equal populations.

4 The commissioners of any county may authorize a change to their  
5 electoral system pursuant to RCW 29A.92.040. Except where necessary  
6 to comply with a court order issued pursuant to RCW 29A.92.110, and  
7 except in the case of an intervening census, the lines of the  
8 districts shall not be changed more often than once in four years and  
9 only when a full board of commissioners is present. ((The)) Except  
10 when authorized under section 12 of this act, the districts shall be  
11 designated as districts numbered one, two, and three.

12 NEW SECTION. **Sec. 12.** A new section is added to chapter 29A.92  
13 RCW to read as follows:

14 (1) A county may reasonably increase the number of elected  
15 commissioners to remedy a potential violation of RCW 29A.92.020 if  
16 the protected class or one of the protected classes subject to  
17 alleged vote dilution is Indian tribal status.

18 (2) After finding a violation of RCW 29A.92.020 or upon  
19 stipulation of the parties, the court may order a reasonable increase  
20 in the number of elected officials on a county commission if the  
21 defendant political subdivision is a county and the protected class  
22 or one of the protected classes subject to alleged vote dilution is  
23 Indian tribal status.

24 NEW SECTION. **Sec. 13.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 14.** This act takes effect January 1, 2024.

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