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**SENATE BILL 5067**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senator Miloscia

AN ACT Relating to establishing a voting rights act to promote equal voting opportunity in certain political subdivisions by authorizing district-based elections, requiring redistricting and new elections in certain circumstances, and establishing a cause of action to redress lack of voter opportunity; amending RCW 36.32.020 and 29A.76.010; adding a new section to chapter 28A.343 RCW; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; and adding a new chapter to Title 29A RCW.

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

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

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

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

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

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

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

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

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

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

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

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

(4) "Political subdivision" means any county, city, town, or school district, but does not include the state.

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

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

(a) It established by prima facie evidence that:

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

(ii) The protected class is politically cohesive; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) It established by prima facie evidence that:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Each district shall be reasonably compact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  The provisions of this act are not applicable to cities and towns with populations under two thousand or to school districts with K-12 full-time equivalent enrollments of less than five hundred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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