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**SUBSTITUTE HOUSE BILL 1156**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House State Government & Tribal Relations (originally sponsored by Representatives Harris-Talley, Gregerson, Shewmake, Ormsby, Chopp, Lekanoff, Davis, Frame, Macri, Duerr, Pollet, Goodman, Berg, Taylor, Walsh, Rule, Ortiz-Self, Berry, Peterson, Thai, Wicks, Bateman, J. Johnson, Simmons, Fitzgibbon, Ramel, and Dolan)

AN ACT Relating to increasing representation and voter participation in local elections; amending RCW 29A.60.221, 29A.52.112, 29A.52.210, 29A.52.220, 29A.24.010, 36.32.040, 36.32.050, 35A.12.040, 28A.343.320, 29A.92.070, 29A.92.080, and 29A.92.130; reenacting and amending RCW 29A.36.170; adding a new section to chapter 29A.52 RCW; adding a new section to chapter 29A.04 RCW; adding a new section to chapter 52.14 RCW; adding a new section to chapter 53.12 RCW; creating new sections; repealing RCW 29A.04.127; and providing an expiration date.

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

**PART I**

**RANKED CHOICE VOTING**

NEW SECTION. **Sec.**  A new section is added to chapter 29A.52 RCW to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, a county, city, town, school district, fire district, or port district may conduct its elections using ranked choice voting. A county, city, town, school district, fire district, or port district that adopts ranked choice voting may, but need not, use ranked choice voting for all offices in an election.

(2) A city, town, school district, fire district, or port district that has voters in more than one county may conduct an election using ranked choice voting only if:

(a) Another city, town, or district that lies entirely within at least two of the counties in which the city, town, or district has voters uses ranked choice voting; or

(b) A court orders the use of ranked choice voting as provided in this section as a remedy under RCW 29A.92.110.

(3) Ranked choice voting may not be used in an election for an office for which two or fewer candidates are competing.

(4) An election using ranked choice voting must meet the following requirements:

(a) The county auditor shall design the ballot to allow a voter to rank the candidates for a particular office in order of preference, including one write-in candidate;

(b) The county auditor must allow a voter to rank at least five candidates per office. The secretary of state must adopt rules that determine the maximum number of candidates per office that a voter is allowed to rank on a ballot;

(c) A voter does not need to rank the maximum number of candidates. The county auditor shall count a ballot regardless of how many candidates the voter has ranked. The county auditor shall not assign votes for rankings made by a voter that are greater than the maximum number of rankings allowed for each office;

(d) If a voter skips one or more numbers in ranking candidates, or ranks an invalid write-in candidate, the county auditor shall assign any votes after the skipped number to the voter's next-highest ranked candidates as if the voter had not skipped the number;

(e) If a voter provides the same number ranking to more than one candidate, the county auditor may not assign that vote ranking to any candidate and may not assign a vote for any subsequent number ranking for that office;

(f) If the election is a single-winner contest, including an election in which multiple positions with the same name, district number, or title are dealt with as separate offices, the winner of each contest must be determined using the instant runoff voting method, as defined in this section and further provided in secretary of state rules. If the election is a multiple-winner contest in which the positions are not dealt with as separate offices, the winners must be determined using the single transferable vote method, as defined in this section and further provided in secretary of state rules;

(g) If the requisite number of officers have not been elected, or selected to continue to further rounds of vote tabulation, by reason of two or more persons having an equal and highest number of votes for the same office, the official empowered by state law to issue the original certificate of election shall resolve the tie using the tie-breaking method selected by the county, city, town, or district as provided in RCW 29A.60.221.

(5) A county, city, town, or district that conducts an election using ranked choice voting must either:

(a) Eliminate the primary for the election; or

(b) Hold a primary using the single transferable vote method to winnow candidates for the election to a final list of five candidates.

(6) A county, city, town, or district that adopts ranked choice voting before 2022 shall implement ranked choice voting for elections beginning in 2024. A county, city, town, or district that adopts ranked choice voting during or after 2022 must implement ranked choice voting within two years following its adoption.

(7) The county auditor whose county encompasses a county, city, town, or district that adopts ranked choice voting shall assist with the implementation of the system. If a city, town, or district has voters in two or more counties, each county auditor in which the city, town, or district has voters shall assist with implementation.

(8) The secretary of state, before July 1, 2023, and in consultation with the ranked choice voting work group created in section 15 of this act, shall adopt rules to administer this section. The secretary's rules must address, at minimum:

(a) Procedures for administering an election that includes voters in more than one county as provided in subsection (2) of this section;

(b) Procedures for tabulating votes under the instant runoff voting method and single transferable vote method as provided in subsection (4) of this section; and

(c) The maximum number of candidates a voter is allowed to rank for each office as provided in subsection (4) of this section.

(9) The secretary of state shall develop educational materials for the public and provide training for county auditors to implement ranked choice voting.

(10) As used in this section:

(a) "Ranked choice voting" means a system of counting votes in which votes are tabulated based on a voter's ranking of candidates in order of preference as provided in this section.

(b) "Instant runoff voting method" means a system of counting votes in which the ballots are counted in rounds simulating a series of runoffs until two candidates remain or until one candidate has a majority of all votes counting in that round. The candidate having the greatest number of votes is declared the winner.

(c) "Single transferable vote method" means a system of counting votes in which a winning threshold is calculated based on the number of seats to be filled and the number of votes cast so that no more than the correct number of candidates can win. The ballots must be counted in rounds, with surplus votes transferred from winning candidates and candidates with the fewest votes eliminated according to the methodology established by the secretary of state in rules adopted under subsection (8) of this section, until the number of candidates remaining equals the number of seats to be filled.

**Sec.**  RCW 29A.60.221 and 2004 c 271 s 176 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, if the requisite number of any federal, state, county, city, or district offices have not been nominated in a primary by reason of two or more persons having an equal and requisite number of votes for being placed on the general election ballot, the official empowered by state law to certify candidates for the general election ballot shall give notice to the several persons so having the equal and requisite number of votes to attend at the appropriate office at the time designated by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared nominated and placed on the general election ballot.

(2) Except as provided in subsection (3) of this section, if the requisite number of any federal, state, county, city, district, or precinct officers have not been elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the official empowered by state law to issue the original certificate of election shall give notice to the several persons so having the highest and equal number of votes to attend at the appropriate office at the time to be appointed by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared duly elected, and the official shall make out and deliver to the person thus duly declared elected a certificate of election.

(3) The secretary of state may adopt rules to provide for at least three methods to resolve a tie occurring at any point during an election conducted using ranked choice voting as provided in section 1 of this act, including the lot method described in this section. A county, city, town, or district conducting an election as provided in section 1 of this act shall choose in advance of the election which method of resolving a tie will be used. If the secretary of state does not adopt rules under this section, the county, city, town, or district shall resolve any tie using the lot method described in this section.

NEW SECTION. **Sec.**  A new section is added to chapter 29A.04 RCW to read as follows:

"Primary" or "primary election" means a procedure for winnowing candidates for public office to a final list of two as part of a special or general election, or to a final list of five in a county, city, town, or district election that uses ranked choice voting as provided in section 1 of this act. Each voter has the right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate.

**Sec.**  RCW 29A.36.170 and 2013 c 143 s 1 and 2013 c 11 s 45 are each reenacted and amended to read as follows:

For any office for which a primary was held, only the names of the top two candidates will appear on the general election ballot, unless the election will be conducted using ranked choice voting as provided in section 1 of this act, in which case only the names of the top five candidates will appear on the general election ballot; the name of the candidate who received the greatest number of votes will appear first and the candidate who received the next greatest number of votes will appear second. No candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary, if a primary was conducted. On the ballot at the general election for an office for which no primary was held, the names of the candidates shall be listed in the order determined pursuant to RCW 29A.36.131.

**Sec.**  RCW 29A.52.112 and 2014 c 7 s 1 are each amended to read as follows:

(1) A primary is a first stage in the public process by which voters elect candidates to public office.

(2) Whenever candidates for a partisan office are to be elected, the general election must be preceded by a primary conducted under this chapter, unless the county, city, town, or district is conducting the general election using ranked choice voting as provided in section 1 of this act and has chosen not to use a primary. Based upon votes cast at the primary, the top two candidates, or the top five candidates in a primary for a general election conducted using ranked choice voting as provided in section 1 of this act, will be certified as qualified to appear on the general election ballot((~~, unless only one candidate qualifies as provided in RCW 29A.36.170~~)).

(3) No primary may be held for any single county partisan office to fill an unexpired term if, after the last day allowed for candidates to withdraw((~~,~~)):

(a) Only one candidate has filed for the position; or

(b) In a primary for a general election conducted using ranked choice voting as provided in section 1 of this act, five or fewer candidates have filed for the position.

(4) For partisan office, if a candidate has expressed a party preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots as set forth in rules of the secretary of state. A candidate may choose to express no party preference. Any party preferences are shown for the information of voters only and may in no way limit the options available to voters.

**Sec.**  RCW 29A.52.210 and 2013 c 11 s 51 are each amended to read as follows:

All city and town primaries shall be nonpartisan. Primaries for special purpose districts, except those districts that require ownership of property within the district as a prerequisite to voting, shall be nonpartisan. City, town, and district primaries shall be held as provided in RCW 29A.04.311.

The purpose of this section is to establish the holding of a primary, subject to the exemptions in RCW 29A.52.220, as a uniform procedural requirement to the holding of city, town, and district elections. However, a city, town, or district that conducts an election using ranked choice voting as provided in section 1 of this act may choose not to use a primary. These provisions supersede any and all other statutes, whether general or special in nature, having different election requirements.

**Sec.**  RCW 29A.52.220 and 2013 c 195 s 1 are each amended to read as follows:

(1) No primary may be held for any single position in any nonpartisan office if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position, or in a primary for a general election conducted using ranked choice voting as provided in section 1 of this act, there are no more than five candidates filed for the position. The county auditor shall as soon as possible notify all the candidates so affected that the office for which they filed will not appear on the primary ballot.

(2) No primary may be held for an office in a county, city, town, or district that is conducting the general election using ranked choice voting as provided in section 1 of this act and has chosen not to use a primary.

(3) No primary may be held for the office of commissioner of a park and recreation district or for the office of cemetery district commissioner.

((~~(3)~~)) (4) Names of candidates for offices that do not appear on the primary ballot shall be printed upon the general election ballot in the manner specified by RCW 29A.36.131.

**Sec.**  RCW 29A.24.010 and 2003 c 111 s 601 are each amended to read as follows:

(1) Not less than thirty days before the first day for filing declarations of candidacy under RCW 29A.24.050 for legislative, judicial, county, city, town, or district office, where more than one position with the same name, district number, or title will be voted upon at the succeeding election, the filing officer shall designate the positions to be filled by number, except as provided in subsection (3) of this section.

(2) The positions so designated shall be dealt with as separate offices for all election purposes. With the exception of the office of justice of the supreme court, the position numbers shall be assigned, whenever possible, to reflect the position numbers that were used to designate the same positions at the last full-term election for those offices.

(3) In an election conducted using ranked choice voting as provided in section 1 of this act in which there is more than one position with the same name, district number, or title, the county, city, town, or district shall choose whether the filing officer will designate the positions to be filled by number and deal with positions as separate offices.

**Sec.**  RCW 36.32.040 and 2018 c 113 s 205 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, the qualified electors of each county commissioner district, and they only, shall nominate from among their own number, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election. Such candidates shall be nominated in the same manner as candidates for other county and district offices are nominated in all other respects.

(2) Except as provided in subsection (3) of this section, where the commissioners of a county composed entirely of islands with a population of less than thirty-five thousand have chosen to divide the county into unequal-sized commissioner districts pursuant to the exception provided in RCW 36.32.020, the qualified electors of the entire county shall nominate from among their own number who reside within a commissioner district, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election. Such candidates shall be nominated in the same manner as candidates for other county offices are nominated in all other respects.

(3) A county may conduct an election for county commissioners using ranked choice voting as defined in section 1 of this act.

(4) The commissioners of any county may authorize a change to their electoral system pursuant to RCW 29A.92.040.

**Sec.**  RCW 36.32.050 and 2018 c 301 s 7 are each amended to read as follows:

(1) Except as provided otherwise in subsection (2) of this section or this chapter, county commissioners shall be elected by the qualified voters of the county and the person receiving the highest number of votes for the office of commissioner for the district in which he or she resides shall be declared duly elected from that district.

(2) Beginning in 2022, in any noncharter county with a population of four hundred thousand or more, county commissioners must be nominated and elected by the qualified electors of the commissioner district in which he or she resides. The person receiving the highest number of votes at a general election for the office of commissioner for the district in which he or she resides must be declared duly elected from that district.

(3) A county may conduct an election for county commissioners using ranked choice voting as provided in section 1 of this act. A county that uses district nominations and district elections and adopts ranked choice voting as provided in section 1 of this act shall hold a primary to winnow the list of candidates in the district to five, unless the county has chosen under section 1 of this act not to use a primary. If no more than five candidates have filed for a position after the last day allowed for candidates to withdraw, the county may not hold a primary for that position.

**Sec.**  RCW 35A.12.040 and 2015 c 53 s 52 are each amended to read as follows:

(1) Officers shall be elected at biennial municipal elections to be conducted as provided in chapter 35A.29 RCW. The mayor and the councilmembers shall be elected for four-year terms of office and until their successors are elected and qualified and assume office in accordance with RCW 29A.60.280. At any first election upon reorganization, councilmembers shall be elected as provided in RCW 35A.02.050. Thereafter the requisite number of councilmembers shall be elected biennially as the terms of their predecessors expire and shall serve for terms of four years. Except as provided in subsection (2) of this section, the positions to be filled on the city council shall be designated by consecutive numbers and shall be dealt with as separate offices for all election purposes. Election to positions on the council shall be by majority vote from the city at large, unless provision is made by charter or ordinance for election by wards. The mayor and councilmembers shall qualify by taking an oath or affirmation of office and as may be provided by law, charter, or ordinance.

(2) If a city or town uses ranked choice voting as provided in section 1 of this act, the city or town shall choose whether the council positions to be filled will be designated by number and dealt with as separate offices.

**Sec.**  RCW 28A.343.320 and 2015 c 53 s 11 are each amended to read as follows:

(1) Candidates for the position of school director shall file their declarations of candidacy as provided in Title 29A RCW.

(2) Except as provided in subsection (3) of this section, the positions of school directors in each district shall be dealt with as separate offices for all election purposes, and where more than one position is to be filled, each candidate shall file for one of the positions so designated: PROVIDED, That in school districts containing director districts, or a combination of director districts and director at large positions, candidates shall file for such director districts or at large positions. Position numbers shall be assigned to correspond to director district numbers to the extent possible.

(3) If the school board uses ranked choice voting as provided in section 1 of this act, the school board shall choose whether to deal with the positions of school directors as separate offices for elections purposes.

NEW SECTION. **Sec.**  A new section is added to chapter 52.14 RCW to read as follows:

A board of fire commissioners may conduct an election for fire commissioner using ranked choice voting as provided in section 1 of this act.

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

A port commission may conduct an election for port commissioner using ranked choice voting as provided in section 1 of this act.

NEW SECTION. **Sec.**  (1) A ranked choice voting work group is created.

(2) The work group shall consist of:

(a) A member from the office of the secretary of state, chosen by the secretary;

(b) A member from the Washington state association of county auditors, chosen by the association; and

(c) A member from an organization with expertise in ranked choice voting. The governor shall solicit applications and choose the organization for the work group. The organization shall choose its member for the work group.

(3) The work group shall advise and aid the secretary of state in drafting rules to implement this act, as provided in section 1 of this act.

(4) This section expires December 1, 2023.

NEW SECTION. **Sec.**  RCW 29A.04.127 (Primary) and 2005 c 2 s 5 & 2003 c 111 s 122 are each repealed.

**PART II**

**VOTING RIGHTS ACT NOTICE COST RECOVERY**

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

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

(2) If the political subdivision adopts a remedy that takes the notice into account, or adopts the notice's proposed remedy, the political subdivision shall seek a court order acknowledging that the political subdivision's remedy complies with RCW 29A.92.020 and was prompted by a plausible violation. The person who submitted the notice may support or oppose such an order, and may obtain public records to do so. The political subdivision must provide all political, census, and demographic data and any analysis of that data used to develop the remedy in its filings seeking the court order and with any documents made public. All facts and reasonable inferences shall be viewed in the light most favorable to those opposing the political subdivision's proposed remedy at this stage. There shall be a rebuttable presumption that the court will decline to approve the political subdivision's proposed remedy at this stage.

(3) If the court concludes that the political subdivision's remedy complies with RCW 29A.92.020, an action under this chapter may not be brought against that political subdivision for four years by any party so long as 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 chapter.

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

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

(i) Be in writing;

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

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

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

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

(1) Any voter who resides in the political subdivision may file an action under this chapter if, one hundred eighty days after a political subdivision receives notice of a challenge to its electoral system under RCW 29A.92.060, the political subdivision has not obtained a court order stating that it has adopted a remedy in compliance with RCW 29A.92.020. However, if notice is received after July 1, 2021, then the political subdivision shall have ninety days to obtain a court order before an action may be filed.

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

(3) If the court concludes that the political subdivision's remedy complies with RCW 29A.92.020, an action under this chapter may not be brought against that political subdivision for four years by any party so long as 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 chapter.

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

(i) Be in writing;

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

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

(b) The political subdivision shall, within 60 days of receiving the demand, reimburse the reasonable costs of the persons who sent the notices, not to exceed $30,000.

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

(1) In any action to enforce this chapter, the court may allow the prevailing plaintiff or plaintiffs, other than the state or political subdivision thereof, reasonable attorneys' fees, all nonattorney fee costs as defined by RCW 4.84.010, and all reasonable expert witness fees. ((~~No~~)) Except as provided in RCW 29A.92.070(5) and 29A.92.080(4), no fees or costs may be awarded if no action is filed.

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

**PART III**

**FUNDS FOR IMPLEMENTATION**

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, the secretary of state may provide grants to county auditors and local governments to adopt ranked choice voting as provided in part I of this act.

(2) Subject to the availability of amounts appropriated for this specific purpose, the secretary of state may provide grants to a political subdivision to make changes to its electoral system as a remedy in response to one or more notices submitted under chapter 29A.92 RCW.

**--- END ---**