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**SUBSTITUTE SENATE BILL 5047**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate State Government & Elections (originally sponsored by Senators Saldaña, Trudeau, Nguyen, C. Wilson, Dhingra, Conway, Frame, Hasegawa, Hunt, Kuderer, Liias, Lovelett, Nobles, Pedersen, Randall, Stanford, and Valdez)

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

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

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

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

(1) Protecting the right to cast an effective ballot;

(2) Ensuring that eligible voters are not impaired in registering to vote or voting including having their votes counted; and

(3) Ensuring that voters of race, color, and language minority groups have equitable access to fully participate in the electoral process in registering to vote and voting free from improper dilution or abridgement of voting power.

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

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, courts may rely on relevant federal case law for guidance.

(1) "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 or one that combines at large with district-based elections.

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

(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.

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

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

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

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

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

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

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

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

~~(3)~~)) In determining whether there is polarized voting under this chapter, the court shall analyze election results including, but not limited to, 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 is not required to consider explanations, including partisanship, for why polarized voting under this chapter exists in the political subdivision to determine whether polarized voting under this chapter exists in the political subdivision. Elections conducted prior to the filing of an action pursuant to this chapter are more probative to establish the existence of ((~~racially~~)) polarized voting than elections conducted after the filing of an action.

((~~(4)~~)) (3) 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 polarized voting that results in an unequal opportunity for a protected class to elect candidates of their choice.

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

(5) The fact that members of a protected class are not geographically compact or concentrated to constitute a majority in a proposed or existing district-based election district shall not preclude a finding of a violation under this chapter, but may be a factor in determining a remedy.

(6) 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.

((~~(6)~~)) (7) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class 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, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors, to establish a violation of this chapter.

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

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

(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 increasing the number of elected officials on a county commission as authorized by section 12 of this act, to remedy a potential violation of RCW 29A.92.020.

(2) 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 RCW 29A.92.050.

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

(1) A voter who resides in the political subdivision, an organization whose roster of members and volunteers includes a voter who resides in the political subdivision, or a tribe located at least in part in the political subdivision who intends to challenge a political subdivision's electoral system under this chapter shall first notify the political subdivision. The political subdivision shall promptly make such notice public.

(2) The notice provided shall identify and provide contact information for the person or persons who intend to file an action, and shall identify the protected class or classes whose members do not have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election because of alleged vote dilution and polarized voting. The notice shall also include a type of remedy the person believes may address the alleged violation of RCW 29A.92.030.

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

(1) After exhaustion of the time period in RCW 29A.92.080, any voter who resides in a political subdivision, organization whose roster of members and volunteers includes a voter who resides in the political subdivision, or tribe located at least in part in the political subdivision where a violation of RCW 29A.92.020 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.

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

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

(1) ((~~The~~)) After finding a violation of RCW 29A.92.020 or upon stipulation of the parties, the court may order appropriate remedies including, but not limited to, the imposition of a district-based election system or expansion of the number of elected county commissioners if authorized by section 12 of this act. ((~~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.~~)) In tailoring a remedy, the court shall consider proposed remedies by the parties and may not give deference to a proposed remedy only because it is proposed by the political subdivision. The court may not approve a remedy that violates this chapter.

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

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

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

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

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

**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, organization, or tribe 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, organization's, or tribe'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, organization, or tribe 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 supports 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, organization, or tribe who sent the notice, not to exceed $50,000.

**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, organization whose roster of members and volunteers includes a voter who resides in the political subdivision, or tribe located at least in part in the political subdivision may file an action under this chapter if, ((~~one hundred eighty~~)) 90 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, organizations, or tribes 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, organizations, or tribes 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 supports 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, organizations, or tribes who sent the notices, not to exceed $50,000.

**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, including all such reasonable fees and costs incurred before filing the action. ((~~No fees or costs may be awarded if no action is filed.~~))

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

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

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

**Sec.**  RCW 36.32.020 and 2018 c 113 s 204 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.

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

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

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

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

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.**  This act takes effect January 1, 2024.

**--- END ---**