

**SHB 2612 - H AMD 1098**

By Representative Kenney

1       Strike everything after the enacting clause and insert the  
2 following:

3       "NEW SECTION.   **Sec. 1.** This act may be known and cited as the  
4 Washington voting rights act of 2012.

5       NEW SECTION.   **Sec. 2.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires otherwise.

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

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

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

15       (c) One which combines at-large elections with district-based  
16 elections.

17       (2) "District-based elections" means a method of electing members  
18 to the governing body of a political subdivision in which the candidate  
19 must reside within an election district that is a divisible part of the  
20 political subdivision and is elected only by voters residing within  
21 that election district. District-based elections shall include  
22 elections where only one official is elected in a district-based  
23 election district and shall include the election districts within  
24 existing boundaries of a political subdivision.

25       (3) "Political subdivision" means any county, city, town, district,  
26 or other municipal or quasi-municipal corporation organized pursuant to  
27 state, county, or local law.

28       (4) "Protected class" means a class of voters who are members of a

1 race, color, or language minority group, as this class is referenced  
2 and defined in the federal voting rights act 42 U.S.C. Sec. 1973 et  
3 seq.

4 (5) "Racially polarized voting" means voting in which there is a  
5 difference in the choice of candidates or other electoral choices that  
6 are preferred by voters in a protected class, and in the choice of  
7 candidates and electoral choices that are preferred by voters in the  
8 rest of the electorate. A plaintiff may establish and a court may find  
9 that elections are characterized by racially polarized voting based on  
10 relevant and admissible evidence, including bivariate ecological  
11 inference and ecological regression analysis, homogenous precinct  
12 analysis, and other evidence and methodologies which a court finds  
13 relevant and admissible to prove that elections are characterized by  
14 racially polarized voting.

15 NEW SECTION. **Sec. 3.** (1) At-large elections and district-based  
16 elections may not be drawn or maintained in a manner that denies an  
17 equal opportunity of a protected class to elect candidates of its  
18 choice or an equal opportunity to influence the outcome of an election,  
19 as a result of the vote dilution of voters who are members of a  
20 protected class.

21 (2) An at-large election district or a district-based election  
22 district is dilutive, and in violation of this section, when it is  
23 shown that:

24 (a) A political subdivision utilizes an at-large or district-based  
25 election district;

26 (b) The elections in the political subdivision are racially  
27 polarized;

28 (c) The racially polarized voting in the political subdivision  
29 results in vote dilution where the protected class members do not have  
30 an equal opportunity to elect candidates of their choice or an equal  
31 opportunity to influence the outcome of an election; and

32 (d) A remedy exists that will provide members of the protected  
33 class with an equal opportunity to elect candidates of their choice or  
34 an equal opportunity to influence the outcome of an election. Such a  
35 remedy will not adversely affect or diminish the impact of those  
36 district-based election districts that are protected by the federal  
37 voting rights act, 42 U.S.C. Sec. 1973, et seq.

1 (3) The fact that members of a protected class are not  
2 geographically compact or concentrated to constitute a numerical  
3 majority in a proposed district-based election district shall not  
4 preclude a finding of racially polarized voting that results in vote  
5 dilution.

6 (4) Racially polarized voting that results in vote dilution is  
7 shown by demonstrating that there is a difference in voting preferences  
8 between members of a protected class and the rest of the electorate.  
9 Such a difference in voting preferences may be demonstrated by the  
10 methodologies specified in section 2(5) of this act or other evidence  
11 and methodologies that a court finds relevant and admissible.

12 (5) In determining whether there is racially polarized voting that  
13 results in vote dilution under this section, the court shall analyze  
14 elections for members of the governing body of the political  
15 subdivision or in elections incorporating other electoral choices by  
16 the voters of the political subdivision. Only elections conducted  
17 prior to the filing of an action pursuant to this chapter shall be used  
18 to establish or rebut the existence of racially polarized voting that  
19 results in vote dilution.

20 (6) The court shall determine whether racially polarized voting  
21 that results in vote dilution has occurred by examining results of  
22 elections in which at least one candidate is a member of a protected  
23 class or elections involving ballot measures, or other electoral  
24 choices that affect the rights and privileges of members of a protected  
25 class who are voters of the political subdivision which is the subject  
26 of an action filed pursuant to this chapter.

27 (7) The election of candidates who are members of a protected class  
28 and who are preferred by voters of the protected class and who were  
29 elected prior to the filing of this action pursuant to this chapter, as  
30 determined by an analysis of voting behavior, shall not preclude a  
31 finding of racially polarized voting that results in vote dilution.

32 (8) Members of different protected classes may file an action  
33 jointly pursuant to this chapter if they demonstrate to the court that  
34 their combined voting preferences as a group are different from the  
35 rest of the electorate and demonstrate that there is racially polarized  
36 voting that results in vote dilution consistent with the standards  
37 established in this section.

1 (9) In an action filed pursuant to this section, ninety days after  
2 the defendant or defendants file an answer, the plaintiff shall  
3 disclose to the other parties the identity and written report of any  
4 expert witness retained to testify regarding the existence of racially  
5 polarized voting that results in vote dilution in elections occurring  
6 within the political subdivision that is the subject of the action.  
7 This time period may be adjusted by the court for good cause, or by  
8 written agreement of the parties.

9 (10) Ninety days after the defendant or defendants have been served  
10 with the identity and written report of the expert witness retained by  
11 the plaintiff or plaintiffs, the defendant or defendants shall disclose  
12 to the plaintiffs the identity of any expert witness retained to  
13 testify regarding the existence of racially polarized voting.

14 (11) Disclosure and written reports shall not be required for an  
15 expert that is retained as a nontestifying consultant.

16 (12) The fact that members of a protected class are not  
17 geographically compact or concentrated to constitute a majority within  
18 an existing district-based election may not preclude a finding of  
19 racially polarized voting that results in vote dilution.

20 (13) Proof of an intent on the part of the voters or elected  
21 officials to discriminate against a protected class is not required.

22 (14) For purposes of any applicable statute of limitations, a cause  
23 of action under this section arises every time there is an election  
24 pursuant to an at-large method of election or a district-based method  
25 of election, or the creation of a district-based election district that  
26 is the subject of an action pursuant to this section.

27 (15) The plaintiff's right to the secrecy of the plaintiff's vote  
28 is preserved and is not waived by the filing of an action pursuant to  
29 this section.

30 (16) In seeking a temporary restraining order or a preliminary  
31 injunction, the court shall not require a plaintiff to post a bond or  
32 any other security in order to secure such equitable relief.

33 (17) An action filed pursuant to this section is a suit based in  
34 equity. There is no right to trial by jury.

35 NEW SECTION. **Sec. 4.** (1) Upon a finding of a violation of section  
36 3 of this act, the court shall implement appropriate remedies,  
37 including the imposition of a district-based election district that is

1 tailored to remedy the violation. The court may direct the affected  
2 jurisdiction to draw or redraw district boundaries or appoint an  
3 individual or panel to draw or redraw district lines.

4 (2) In tailoring a remedy consisting of district-based elections,  
5 the court shall implement a district-based election district that is  
6 geographically compact. The fact that members of a protected class do  
7 not constitute a numerical majority within a proposed district-based  
8 election district shall not preclude the implementation of such a  
9 district-based election district. In tailoring a remedy, the court  
10 shall order the implementation of a district-based election district  
11 where the members of the protected class are not a numerical majority  
12 in order to provide the protected class an equal opportunity to elect  
13 candidates of their choice or an equal opportunity to influence the  
14 outcome of an election.

15 (3) In tailoring a remedy after a finding of a violation of section  
16 3 of this act, the court shall order new elections to be scheduled at  
17 the next date authorized by state law for conducting elections. All of  
18 the positions that were elected pursuant to the at-large or  
19 district-based election district that was the subject of the action  
20 filed pursuant to this chapter and have at least two years remaining in  
21 their terms of office shall be subject to new elections in order to  
22 continue their term of office.

23 NEW SECTION. **Sec. 5.** (1) In any action to enforce this chapter,  
24 the court shall allow the prevailing plaintiff reasonable attorneys'  
25 fees and litigation expenses including, but not limited to, expert  
26 witness fees and expenses as part of the costs.

27 (2) Prevailing defendants may recover costs only if the court finds  
28 the action to be frivolous, unreasonable, or without foundation,  
29 pursuant to RCW 4.84.185.

30 (3) A plaintiff shall be deemed to be a prevailing party for  
31 purposes of this section if the political subdivision which is the  
32 subject of an action filed pursuant to this chapter adopts or  
33 implements a district-based election district after the action is filed  
34 that is different from the district-based election district that is the  
35 subject of the action filed.

36 (4) A prevailing plaintiff may recover, as part of reasonable  
37 attorneys' fees, work performed in any ancillary administrative,

1 legislative, or citizen redistricting commission proceeding where the  
2 prevailing plaintiff party sought to secure a district-based election  
3 district.

4 NEW SECTION. **Sec. 6.** Any voter who is a member of a protected  
5 class and who resides in a political subdivision where a violation of  
6 section 3 of this act is alleged may file an action in the superior  
7 court of the county in which the political subdivision is located. If  
8 the action is against a county, the action may be filed in the superior  
9 court of such county, or in the superior court of either of the two  
10 nearest judicial districts as determined pursuant to RCW 36.01.050(2).  
11 There is no requirement that an action filed pursuant to this chapter  
12 be filed as a class action.

13 NEW SECTION. **Sec. 7.** (1) Prior to filing an action pursuant to  
14 this chapter, a plaintiff must first notify the political subdivision  
15 that the plaintiff intends to challenge the political subdivision's  
16 electoral system under this chapter, and provide the political  
17 subdivision ninety days to make changes to its electoral system.

18 (2) The provisions of this chapter are not applicable to the  
19 following:

20 (a) Cities and towns with populations under one thousand;

21 (b) Political subdivisions that are required, under state law, to  
22 maintain an at-large method of election as defined in section 2(1) of  
23 this act and state law provides no mechanism for changing to a  
24 district-based method of election as defined in section 2(2) of this  
25 act.

26 NEW SECTION. **Sec. 8.** A new section is added to chapter 28A.343  
27 RCW to read as follows:

28 The school board of directors may authorize a change to district-  
29 based elections, meaning a method of electing members in which a  
30 candidate must reside within an election district that is a divisible  
31 part of the school district and is elected only by voters residing  
32 within that election district. If so authorized, the election  
33 districts must be drawn in a manner that is consistent with the  
34 Washington voting rights act of 2012, chapter . . . , Laws of 2012 and  
35 new elections scheduled at the next date authorized by state law for

1 conducting elections. All of the positions that were elected pursuant  
2 to the previous method of election and have at least two years  
3 remaining in their terms of office shall be subject to new elections in  
4 order to continue their terms of office.

5 NEW SECTION. **Sec. 9.** A new section is added to chapter 36.32 RCW  
6 to read as follows:

7 The legislative authority of a county may authorize a change to  
8 district-based elections, meaning a method of electing members in which  
9 a candidate must reside within an election district that is a divisible  
10 part of the county and is elected only by voters residing within that  
11 election district. If so authorized, the election districts must be  
12 drawn in a manner that is consistent with the Washington voting rights  
13 act of 2012, chapter . . . , Laws of 2012 and new elections scheduled at  
14 the next date authorized by state law for conducting elections. All of  
15 the positions that were elected pursuant to the previous method of  
16 election and have at least two years remaining in their terms of office  
17 shall be subject to new elections in order to continue their terms of  
18 office.

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 35.21 RCW  
20 to read as follows:

21 The legislative authority of a city or town may authorize a change  
22 to district-based elections, meaning a method of electing members in  
23 which a candidate must reside within an election district that is a  
24 divisible part of the city or town and is elected only by voters  
25 residing within that election district. If so authorized, the election  
26 districts must be drawn in a manner that is consistent with the  
27 Washington voting rights act of 2012, chapter . . . , Laws of 2012 and  
28 new elections scheduled at the next date authorized by state law for  
29 conducting elections. All of the positions that were elected pursuant  
30 to the previous method of election and have at least two years  
31 remaining in their terms of office shall be subject to new elections in  
32 order to continue their terms of office.

33 NEW SECTION. **Sec. 11.** A new section is added to chapter 35A.21  
34 RCW to read as follows:

35 The legislative authority of a city or town may authorize a change

1 to district-based elections, meaning a method of electing members in  
2 which a candidate must reside within an election district that is a  
3 divisible part of the city or town and is elected only by voters  
4 residing within that election district. If so authorized, the election  
5 districts must be drawn in a manner that is consistent with the  
6 Washington voting rights act of 2012, chapter . . . , Laws of 2012 and  
7 new elections scheduled at the next date authorized by state law for  
8 conducting elections. All of the positions that were elected pursuant  
9 to the previous method of election and have at least two years  
10 remaining in their terms of office shall be subject to new elections in  
11 order to continue their terms of office.

12 NEW SECTION. **Sec. 12.** Sections 1 through 7 of this act constitute  
13 a new chapter in Title 29A RCW."

14 Correct the title.

EFFECT: Strikes the underlying bill and replaces it with the same provisions except that the following changes are made:

Edits the definition of racially polarized voting to refer specifically by name to statistical techniques used to determine racially polarized voting rather than to refer generally to techniques approved in federal case law.

Allows the time period for disclosure of witnesses by the plaintiff to be adjusted by agreement of the parties.

Strikes provisions that allowed prevailing plaintiffs to recover a fees multiplier.

Strikes provisions that disallowed prevailing defendants from ever recovering attorneys' fees and allows defendants to recover costs, including fees of attorneys, if the court finds the action was frivolous, unreasonable, or without foundation.

Provides that a prevailing plaintiff "may" rather than "shall" recover attorneys' fees for work done in ancillary proceedings prior to suit.

Requires that a plaintiff, prior to filing suit, notify the political subdivision that the plaintiff intends to challenge the electoral system and provide the political subdivision 90 days to make changes to its electoral system.

Provides that the act is not applicable to:

Cities and towns with populations under one thousand.

Political subdivisions that are required, under state law, to maintain an at-large method of election and state law provides no mechanism for changing to a district-based method.



Includes new provisions that allow a school board of directors and the legislative authorities of cities, towns, and counties, to authorize a change to district-based elections as the term is defined in the act. If so authorized, the districts must be drawn in a manner that is consistent with the act and new elections scheduled at the next date authorized by state law for conducting elections. All of the positions that were elected pursuant to the previous method and have at least two years remaining in the term are subject to new elections.

--- END ---