1745-S AMH MOSC H2238.1

<u>SHB 1745</u> - H AMD 155 By Representative Moscoso

ADOPTED 3/5/2015

- 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 2015.
- 5 Sec. 2. It is the intent of the legislature to NEW SECTION. create and encourage the use of a flexible and collaborative process 6 individuals concerned 7 between political subdivisions and electoral fairness, in order to remedy potential electoral issues 8 9 defined in this act without resorting to expensive litigation. The 10 legislature intends that in order to avoid litigation: (1) Political 11 subdivisions review their electoral systems and consider voluntarily 12 changing them to address electoral issues; (2) political subdivisions 13 voluntarily adopt electoral changes proposed by individuals concerned 14 with electoral fairness to address electoral issues; or (3) political 15 subdivisions and individuals concerned with electoral fairness 16 collaborate to define and agree upon electoral changes to address electoral issues that are then voluntarily adopted by political 17 subdivisions. The legislature intends that political subdivisions and 18 19 individuals concerned with electoral fairness consider all of the 20 foregoing courses of action prior to any litigation being filed, and 21 that any political subdivision adopting any one of the foregoing courses of action in accordance with the provisions of this act, 22 23 receive four years of safe harbor from litigation.
- NEW SECTION. Sec. 3. 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.
- 28 (1) "At-large method of election" means any of the following 29 methods of electing members of the governing body of a political 30 subdivision:

1 (a) One in which the voters of the entire jurisdiction elect the 2 members to the governing body;

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- (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
- 6 (c) One that combines the criteria in (a) and (b) of this 7 subsection.
 - (2) "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.
- 13 (3) "Polarized voting" means voting in which there is a 14 difference in the choice of candidates or other electoral choices 15 that are preferred by voters in a protected class, and in the choice 16 of candidates and electoral choices that are preferred by voters in 17 the rest of the electorate.
- 18 (4) "Political subdivision" means any county, city, town, school 19 district, fire protection district, port district, or public utility 20 district, but does not include the state.
- 21 (5) "Protected class" means a class of voters who are members of 22 a race, color, or language minority group.
- NEW SECTION. Sec. 4. (1) A political subdivision is in violation of this section when it is shown that:
- 25 (a) Elections in the political subdivision exhibit polarized voting; and
- (b) Members of a protected class do not have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election.
 - (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 section.
- 34 (3) In determining whether there is polarized voting under this 35 section, the court shall analyze elections of the governing body of 36 the political subdivision, ballot measure elections, elections in 37 which at least one candidate is a member of a protected class, and 38 other electoral choices that affect the rights and privileges of 39 members of a protected class. Only elections conducted prior to the

1 filing of an action pursuant to this chapter shall be used to 2 establish or rebut the existence of polarized voting.

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- (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 polarized voting that results in an unequal opportunity for a protected class to elect candidates of their choice or influence the outcome of an election.
- NEW SECTION. Sec. 5. (1) Members of different protected classes may file an action jointly pursuant to this chapter if they demonstrate that their combined voting preferences as a group are different from the rest of the electorate and demonstrate that there is polarized voting that results in an unequal opportunity for these protected classes to elect candidates of their choice or influence the outcome of an election.
- 15 (2) In an action filed pursuant to this section, the trial court
 16 shall set a trial to be held no later than one year after the filing
 17 of a complaint, and shall set a discovery and motions calendar
 18 accordingly.
- 19 (3) Proof of intent on the part of the voters or elected 20 officials to discriminate against a protected class is not required 21 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 method of election or a districtbased 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.
- 30 (6) In seeking a temporary restraining order or a preliminary 31 injunction, a plaintiff shall not be required to post a bond or any 32 other security in order to secure such equitable relief.
- 33 (7) No action may be filed pursuant to this act before January 34 15, 2016.
- NEW SECTION. Sec. 6. (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 to remedy a potential

- violation of section 4 of this act. If a political subdivision invokes its authority under this section to implement a districtbased election system, the districts shall be drawn in a manner consistent with section 7 of this act.
 - (2) If a political subdivision implements a district-based election system, the plan shall be consistent with the following criteria:
- 8 (a) Each district shall be as reasonably equal in population as 9 possible to each and every other such district comprising the 10 political subdivision.
 - (b) Each district shall be reasonably compact.

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- 12 (c) Each district shall consist of geographically contiguous 13 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 or an equal opportunity to influence the outcome of an election.
 - (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.
- 33 (b) If the political subdivision invokes its authority under this 34 section and the plan is adopted during the period of time between 35 January 16th and on or before the first Monday of November, the next 36 election will occur as scheduled and organized under the current 37 electoral system, but the political subdivision shall order new 38 elections to occur pursuant to the remedy at the general election the 39 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 shall be subject to new elections, pursuant to the adopted plan, 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 7 of this act.
- 13 (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 7 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.
- NEW SECTION. Sec. 7. (1) Upon a finding of a violation of section 4 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. 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) 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 or an equal opportunity to influence the outcome of an election.
- 37 (3) In tailoring a remedy after a finding of a violation of 38 section 4 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 atlarge 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.
- NEW SECTION. Sec. 8. (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 fees or costs may be awarded if no action is filed.
- 30 (2) Prevailing defendants may recover an award of fees or costs 31 pursuant to RCW 4.84.185.
- NEW SECTION. Sec. 9. Any voter who is a member of a protected class and who resides in a political subdivision where a violation of section 4 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

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- 36.01.050(2). An action filed pursuant to this chapter does not need
- 2 to be filed as a class action.

- NEW SECTION. Sec. 10. (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 6 of this act to implement the person's proposed remedy within one hundred eighty days 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 or an equal opportunity to influence the outcome of an election. The notice shall also include a reasonable analysis of the person's data concerning the alleged vote dilution and polarized voting, and a proposed remedy or remedies, based on that data, which would address the alleged violation of section 4 of this act.
 - (3) If, within one hundred eighty days 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 ninety days from the date of this subsequent notice before an action may be filed under this act.
 - (4) 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 or influence the outcome of an election.
 - (5) 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.
- (6) 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 4 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 4 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.

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(7) 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 or influence the outcome of an election. 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 4 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 4 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.

NEW SECTION. Sec. 11. 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. 12. The provisions of this act are not applicable to cities and towns with populations under one thousand or to school districts with K-12 full-time equivalent enrollments of less than two hundred fifty.

NEW SECTION. Sec. 13. 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 as defined in section 3(2) of this act, such districts to be drawn in a manner consistent with sections 6 and 7 of this act. The school board of directors shall order new elections to be scheduled pursuant to section 6(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. 14. RCW 36.32.020 and 1982 c 226 s 4 are each amended to 11 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 4 and 7 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. 15. 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 as defined in section 3(2) of this act, to remedy a potential violation of section 4 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 6 and 7 of this act. The legislative authority of a city or town shall order

- 1 new elections to be scheduled pursuant to section 6(4) of this act.
- 2 All of the positions that were elected pursuant to the previous
- 3 method of election and have at least two years remaining in their
- 4 terms of office shall be subject to new elections in order to
- 5 continue their terms of office.

continue their terms of office.

- 6 <u>NEW SECTION.</u> **Sec. 16.** A new section is added to chapter 35A.21 7 RCW to read as follows:
- The legislative authority of a code city or town may authorize a 8 change to its electoral system, including the implementation of a 9 10 district-based election system as defined in section 3(2) of this act, to remedy a potential violation of section 4 of this act. If the 11 legislative authority of a code city or town invokes its authority 12 under this section to implement a district-based election system, the 13 districts shall be drawn in a manner consistent with sections 6 and 7 14 of this act. The legislative authority of a code city or town shall 15 order new elections to be scheduled pursuant to section 6(4) of this 16 17 act. All of the positions that were elected pursuant to the previous method of election and have at least two years remaining in their 18 19 terms of office shall be subject to new elections in order to
- NEW SECTION. Sec. 17. A new section is added to chapter 52.14 22 RCW to read as follows:
- Where the board of fire commissioners of a fire protection district exercises its authority pursuant to RCW 52.14.013 to create commissioner districts, such districts shall be drawn in a manner consistent with section 6 of this act.
- 27 **Sec. 18.** RCW 54.12.010 and 2004 c 113 s 1 are each amended to 28 read as follows:
- A public utility district that is created as provided in RCW 54.08.010 shall be a municipal corporation of the state of Washington, and the name of such public utility district shall be Public Utility District No. . . . of County.
- The powers of the public utility district shall be exercised through a commission consisting of three members in three commissioner districts, and five members in five commissioner districts.

(1) If the public utility district is countywide and the county has three county legislative authority districts, then, at the first election of commissioners and until any change is made in the boundaries of public utility district commissioner districts, one public utility district commissioner shall be chosen from each of the three county legislative authority districts.

- (2) If the public utility district comprises only a portion of the county, with boundaries established in accordance with chapter 54.08 RCW, or if the public utility district is countywide and the county does not have three county legislative authority districts, three public utility district commissioner districts, numbered consecutively, each with approximately equal population and following precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, subject to appropriate change by the county legislative authority if and when it changes the boundaries of the proposed public utility district. One commissioner shall be elected as a commissioner of each of the public utility district commissioner districts.
- (3) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district. Only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire public utility district may vote at a general election to elect a person as a commissioner of the commissioner district.
- (4) The term of office of each public utility district commissioner other than the commissioners at large shall be six years, and the term of each commissioner at large shall be four years. Each term shall be computed in accordance with RCW ((29A.20.040)) 29A.60.280 following the commissioner's election. All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with RCW ((29A.20.040)) 29A.60.280.
- (5) A vacancy in the office of public utility district commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the public utility district commission for a period of sixty days unless excused by the public utility district commission. Vacancies on a board of public utility district commissioners shall be filled as provided in chapter 42.12 RCW.

- 1 (6) The boundaries of the public utility district commissioner districts may be changed only by the public utility district 2 commission or by a court order issued pursuant to section 7 of this 3 act, and shall be examined every ten years to determine substantial 4 equality of population in accordance with chapter 29A.76 RCW. Except 5 6 as provided in this section, section 7 of this act, or RCW 54.04.039, 7 the boundaries shall not be changed ((oftener)) more often than once in four years. Boundaries may only be changed when all members of the 8 commission are present. Whenever territory is added to a public 9 utility district under RCW 54.04.035, or added or withdrawn under RCW 10 54.04.039, the boundaries of the public utility commissioner 11 12 districts shall be changed to include the additional or exclude the withdrawn territory. Unless the boundaries are changed pursuant to 13 14 RCW 54.04.039, the proposed change of the boundaries of the public utility district commissioner district must be made by resolution and 15 16 after public hearing. Notice of the time of the public hearing shall 17 be published for two weeks before the hearing. Upon a referendum petition signed by ten percent of the qualified voters of the public 18 utility district being filed with the county auditor, the county 19 legislative authority shall submit the proposed change of boundaries 20 21 to the voters of the public utility district for their approval or rejection. The petition must be filed within ninety days after the 22 adoption of resolution of the proposed action. The validity of the 23 petition is governed by the provisions of chapter 54.08 RCW. 24
 - Sec. 19. 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.
- 38 (3) No later than eight months after its receipt of federal 39 decennial census data, the governing body of the municipal

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1 corporation, county, or district shall prepare a plan for 2 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.

- 9 (c) Each district shall consist of geographically contiguous 10 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.
- 37 (c) If the superior court determines the plan does not meet the 38 requirements of this section, in whole or in part, it shall remand 39 the plan for further or corrective action within a specified and 40 reasonable time period.

- 1 (d) If the superior court finds that any request for review is 2 frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting 3 review, including payment of attorneys' fees and costs to the 4 respondent municipal corporation, county, or district. 5
- NEW SECTION. Sec. 20. This act supersedes other state laws and 6 local ordinances to the extent that those state laws or ordinances 7 would otherwise restrict a jurisdiction's ability to implement a 8 remedy pursuant to this act. 9
- NEW SECTION. Sec. 21. If any provision of this act or its 10 application to any person or circumstance is held invalid, the 11 12 remainder of the act or the application of the provision to other persons or circumstances is not affected. 13
- 14 NEW SECTION. Sec. 22. Sections 1 through 12 and 20 of this act constitute a new chapter in Title 29A RCW." 15
- 16 Correct the title.

EFFECT: Corrects internal reference citations.

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