**6002-S.E AMH MANW H4334.2 - NOT FOR FLOOR USE**

**ESSB 6002** - H AMD **1188**

By Representative Manweller

**OUT OF ORDER 02/27/2018**

Strike everything after the enacting clause and insert the following:

**"PART I - GENERAL PROVISIONS**

NEW SECTION. **Sec.**  This act may be known and cited as the Washington voting rights act of 2018.

NEW SECTION. **Sec.**  The legislature finds that local government subdivisions are often prohibited from addressing these challenges because of Washington laws that narrowly prescribe the methods by which they may elect members of their legislative bodies. The legislature intends to modify existing prohibitions in state laws so that these jurisdictions may voluntarily adopt changes on their own, in collaboration with affected community members, to remedy potential electoral issues.

The legislature also intends for this act to be consistent with legal precedent from *Mt. Spokane Skiing Corp. v. Spokane Co.* (86 Wn. App. 165, 1997) that found that noncharter counties need not adhere to a single uniform county system of government, but that each county have the same "authority available" in order to be deemed uniform.

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

(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) "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) "Polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

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

NEW SECTION. **Sec.**  As provided in section 302 of this act, no method of electing the governing body of a political subdivision may be imposed or applied in a manner that favors or disfavors any racial group or political party.

**PART II - VOLUNTARY CHANGES TO ELECTORAL PROCESSES**

NEW SECTION. **Sec.**  (1) A political subdivision that conducts an election pursuant to state, county, or local law, is authorized to change its electoral system including, but not limited to, implementing a district-based election system to remedy a potential violation of section 104 of this act.

(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 section 202 of this act.

NEW SECTION. **Sec.**  (1) Prior to the adoption of its proposed plan, the political subdivision shall provide full and reasonable public notice of its actions. The political subdivision shall hold at least one public hearing on the proposed plan at least one week before adoption.

(a) Political subdivisions shall provide such notices and information in the languages of any community or area where a significant segment of the community speaks a language other than English and has limited proficiency in English.

(b) Political subdivisions must provide accurate written and verbal notices in the languages represented by their communities who speak a language other than English. Political subdivisions must air public service announcements by radio or television broadcast in the languages represented by their communities who speak a language other than English.

(c) "Significant segment," for purposes of this section, means five percent or more of residents, or five hundred residents, whichever is fewer, residing in the affected political subdivision who are of limited English proficiency.

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

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

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

(a) Each district shall be as reasonably equal in population as possible to each and every other such district comprising the political subdivision.

(b) Each district shall be reasonably compact.

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

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

(4) 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 403 of this act.

(5) 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 403 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.**  A new section is added to chapter 28A.343 RCW to read as follows:

The school board of directors may authorize a change to its electoral system pursuant to section 201 of this act. Any staggering of directors' terms shall be accomplished as provided in RCW 28A.343.030 and 28A.343.600 through 28A.343.650.

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

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

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

The commissioners of any county may authorize a change to their electoral system pursuant to section 201 of this act. Except where necessary to comply with a court order issued pursuant to section 403 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.

**Sec.**  RCW 36.32.040 and 1982 c 226 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) 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) 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) The commissioners of any county may authorize a change to their electoral system pursuant to section 201 of this act.

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

The legislative authority of a city or town may authorize a change to its electoral system pursuant to section 201 of this act.

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

The legislative authority of a code city or town may authorize a change to its electoral system pursuant to section 201 of this act.

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

The port commission may authorize a change to its electoral system pursuant to section 201 of this act.

**PART III - CITIZEN-INITIATED CHANGES TO ELECTORAL PROCESSES**

NEW SECTION. **Sec.**  (1) A person who intends to challenge a political subdivision's electoral system under this act shall first notify the political subdivision in writing. 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 participate in elections. The notice shall also include a type of remedy the person believes may address the alleged violation of section 302 of this act.

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

(a) It is established by prima facie evidence that:

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

(ii) The protected class is politically cohesive; and

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  (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 participate in elections.

(2) If the political subdivision adopts a remedy after receiving notice, the political subdivision shall seek a court order acknowledging that the political subdivision's remedy complies with section 104 of this act, and shall notify the person who submitted the notice about the attempt to obtain a court order. 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.

(3) If the court concludes that the political subdivision's remedy complies with section 104 of this act, an action under this act 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.

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

NEW SECTION. **Sec.**  (1) Any person may file an action under this act if, one hundred eighty days after a political subdivision receives notice of a challenge to its electoral system under section 301 of this act, the political subdivision has not obtained a court order stating that it has adopted a remedy in compliance with section 104 of this act.

(2) If, within one hundred eighty days after receiving the person's notice, a political subdivision receives any other notice containing a materially different proposed remedy than the first notice, no action may be filed under this act within two hundred seventy days after receiving the initial notice.

(3) 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 participate in elections. 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 complies with section 104 of this act. 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.

(4) If the court concludes that the political subdivision's remedy complies with section 104 of this act, an action under this act 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.

**PART IV - SAFE HARBOR AND LEGAL ACTION UNDER THIS ACT**

NEW SECTION. **Sec.**  (1) After exhaustion of the time period in section 304 of this act, any voter who resides in a political subdivision where a violation of section 104 of this act is alleged may file an action in the superior court of the county in which the political subdivision is located. If the action is against a county, the action may be filed in the superior court of such county, or in the superior court of either of the two nearest judicial districts as determined pursuant to RCW 36.01.050(2). An action filed pursuant to this chapter does not need to be filed as a class action.

(2) Members of different protected classes are encouraged to file an action jointly pursuant to this act if they demonstrate that their combined voting preferences as a group are different from the rest of the electorate.

NEW SECTION. **Sec.**  (1) In an action filed pursuant to this act, the trial court shall set a trial to be held no later than one year after the filing of a complaint, and shall set a discovery and motions calendar accordingly.

(2) 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 act.

(3) No notice may be submitted to any political subdivision pursuant to this act before July 19, 2020.

NEW SECTION. **Sec.**  (1) The court may order appropriate remedies including, but not limited to, the imposition of a district-based election. The court may order the affected jurisdiction to draw or redraw district boundaries. The proposed districts must be approved by the court prior to their implementation.

(2) In tailoring a remedy after a finding of a violation of section 104 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.

NEW SECTION. **Sec.**  (1) No action under this act may be brought by any person against a political subdivision that has adopted a remedy to its electoral system after an action is filed that is approved by a court pursuant to section 303 of this act or implemented a court-ordered remedy pursuant to section 403 of this act for four years after adoption of the remedy if 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.

(2) No action under this act may be brought by any person against a political subdivision that has adopted a remedy to its electoral system in the previous decade before the effective date of this section as a result of a claim under the federal voting rights act until after the political subdivision completes redistricting pursuant to RCW 29A.76.010 for the 2020 decennial census.

NEW SECTION. **Sec.**  In any action to enforce this chapter, the court may allow the prevailing party 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.

**PART V - MISCELLANEOUS PROVISIONS**

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

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the entire act is null and void.

NEW SECTION. **Sec.**  Sections 101 through 202 and 301 through 501 of this act constitute a new chapter in Title 29A RCW."

Correct the title.

EFFECT: (1) Removes references to federal law.

(2) Removes provision that proof of intent to discriminate is not required to find a violation.

(3) Removes rebuttable presumption and inferences against a subdivision where a remedy is submitted for court approval.

(4) Changes standard of a violation to prohibit election methods that favor or disfavor a racial group or political party.

(5) Removes reference to certain factors used to determine a violation, including consideration of ballot measures, elections that included protected class members, and list of factors related to historical treatment of protected classes.

(6) Removes the reduced notice period that begins in 2021. Removes the statute of limitations.

(7) Removes direction to a court that consideration of a district-based election system is not precluded if the protected class does not constitute a majority within a proposed district.

(8) Increases the population thresholds for exempting cities and towns from one thousand to two thousand people.

(9) Increases the student threshold for exempting school districts from two hundred fifty to five hundred students.

(10) Removes reference to the act in other specific statutory sections dealing with local elections, regarding counties, cities, and school, fire, port, and public utility districts.

(11) Removes provision that the act supersedes other state laws that would restrict compliance with the act.

(12) Changes the null and void clause to provide that the entire act is null and void if any provision is held to be invalid.

(13) Requires a violation to show the protected class: (a) Is large and compact enough to be a majority in a district;(b) is politically cohesive; and (c) prefers candidates that are defeated by a majority voting bloc.

(14) Requires courts to analyze elections with at least one candidate who is a member of a protected class and limits consideration to elections prior to filing court action.

(15) Provides consideration of factors by a totality of circumstances standard.