

**E2SHB 1745** - S COMM AMD

By Committee on Government Operations & Security

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 2016.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires  
7 otherwise. In applying these definitions and other terms in this  
8 chapter, courts may rely on relevant federal case law for guidance.

9 (1) "Alternative proportional voting method" means any at-large  
10 election that includes one of the following methods of voting for  
11 multiple members of the governing body of a political subdivision:

12 (a) Limiting the number of votes a voter is entitled to cast to  
13 fewer than there are positions to elect;

14 (b) Cumulating the number of votes a voter is entitled to cast  
15 for each position, and allowing the voter to cast the total number of  
16 votes in favor of a single candidate or to distribute the total  
17 number of votes among multiple candidates; or

18 (c) Voting in a single transferable vote where voters rank each  
19 candidate in order of preference, with their vote counting towards  
20 the highest ranked candidate, and preferences allocated among other  
21 candidates who are not elected on first place votes.

22 (2) "At-large election" means any of the following methods of  
23 electing members of the governing body of a political subdivision:

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

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

29 (c) One that combines the criteria in (a) and (b) of this  
30 subsection.

1 (3) "District-based elections" means a method of electing members  
2 to the governing body of a political subdivision in which the  
3 candidate must reside within an election district that is a divisible  
4 part of the political subdivision and is elected only by voters  
5 residing within that election district.

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

11 (5) "Political subdivision" means any county, city, town, or  
12 school district, but does not include the state.

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

15 NEW SECTION. **Sec. 3.** (1) A political subdivision is in  
16 violation of this section when it is shown that:

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

19 (b) Members of a protected class do not have an equal opportunity  
20 to elect candidates of their choice or an equal opportunity to  
21 influence the outcome of an election.

22 (2) A court may find a violation under this section where a  
23 cohesive minority population is large enough to elect its chosen  
24 candidate when combined with other voters in a proposed or existing  
25 district-based election district. In such instances, this shall be a  
26 factor in determining the appropriate remedy.

27 (3) In determining whether there is polarized voting under this  
28 section, the court shall analyze elections of the governing body of  
29 the political subdivision, ballot measure elections, and elections in  
30 which at least one candidate is a member of a protected class. The  
31 court shall also consider whether the proportion of elected officials  
32 serving on the political subdivision's legislative body who are  
33 members of the protected class is equivalent to the proportion of the  
34 population who are members of the protected class. Only elections  
35 conducted prior to the filing of an action pursuant to this chapter  
36 shall be used to establish or rebut the existence of polarized  
37 voting.

38 (4) The election of candidates who are members of a protected  
39 class and who were elected prior to the filing of an action pursuant

1 to this chapter shall not preclude a finding of polarized voting that  
2 results in an unequal opportunity for a protected class to elect  
3 candidates of their choice or influence the outcome of an election.

4 NEW SECTION. **Sec. 4.** (1) Members of different protected classes  
5 may file an action jointly pursuant to this chapter if they  
6 demonstrate that their combined voting preferences as a group are  
7 different from the rest of the electorate and demonstrate that there  
8 is polarized voting that results in an unequal opportunity for these  
9 protected classes to elect candidates of their choice or influence  
10 the outcome of an election.

11 (2) In an action filed pursuant to this section, the trial court  
12 shall set a trial to be held no later than one year after the filing  
13 of a complaint, and shall set a discovery and motions calendar  
14 accordingly.

15 (3) Proof of intent on the part of the voters or elected  
16 officials to discriminate against a protected class is not required  
17 for a cause of action to be sustained.

18 (4) For purposes of any applicable statute of limitations, a  
19 cause of action under this section arises every time there is an  
20 election pursuant to an at-large election or a district-based  
21 election.

22 (5) The plaintiff's constitutional right to the secrecy of the  
23 plaintiff's vote is preserved and is not waived by the filing of an  
24 action pursuant to this section, and is not subject to discovery or  
25 disclosure.

26 (6) In seeking a temporary restraining order or a preliminary  
27 injunction, a plaintiff shall not be required to post a bond or any  
28 other security in order to secure such equitable relief.

29 (7) No action may be filed pursuant to this act before January  
30 15, 2017.

31 NEW SECTION. **Sec. 5.** (1) A political subdivision that conducts  
32 an election pursuant to state, county, or local law, is authorized to  
33 change its electoral system including, but not limited to,  
34 implementing a district-based election system or an alternative  
35 proportional voting method to remedy a potential violation of section  
36 3 of this act. If a political subdivision invokes its authority under  
37 this section to implement a district-based election system, the

1 districts shall be drawn in a manner consistent with section 6 of  
2 this act.

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

6 (a) Each district shall be as reasonably equal in population as  
7 possible to each and every other such district in the political  
8 subdivision. Any positions allocated on an at-large basis are exempt  
9 from this requirement.

10 (b) Each district shall be reasonably compact.

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

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

17 (e) District boundaries may not be drawn or maintained in a  
18 manner that denies a protected class an equal opportunity to elect  
19 candidates of its choice or an equal opportunity to influence the  
20 outcome of an election.

21 (3) During the adoption of its plan, the political subdivision  
22 shall ensure that full and reasonable public notice of its actions is  
23 provided. The political subdivision shall hold at least one public  
24 hearing on the redistricting plan at least one week before adoption  
25 of the plan.

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

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

39 (c) All of the positions that were elected pursuant to the  
40 previous electoral system and have at least two years remaining in

1 their terms of office from the date the plan was adopted may, at the  
2 legislative authority's discretion, be subject to new elections in  
3 order to continue their term of office.

4 (5) Within forty-five days after receipt of federal decennial  
5 census information applicable to a specific local area, the  
6 commission established in RCW 44.05.030 shall forward the census  
7 information to each political subdivision that has invoked its  
8 authority under this section to implement a district-based election  
9 system, or that is charged with redistricting under section 6 of this  
10 act.

11 (6) No later than eight months after its receipt of federal  
12 decennial census data, the governing body of the political  
13 subdivision that had previously invoked its authority under this  
14 section to implement a district-based election system, or that was  
15 previously charged with redistricting under section 6 of this act,  
16 shall prepare a plan for redistricting its districts, pursuant to RCW  
17 29A.76.010, and in a manner consistent with this act.

18 (7) A political subdivision may eliminate the staggered terms of  
19 any position in order to implement an alternative proportional voting  
20 method.

21 NEW SECTION. **Sec. 6.** (1) Upon a finding of a violation of  
22 section 3 of this act, the court shall order appropriate remedies  
23 that are tailored to remedy the violation. The remedies may include,  
24 but are not limited to, the imposition of a district-based election  
25 system or an alternative proportional voting method. The court may  
26 order the affected jurisdiction to draw or redraw district boundaries  
27 or appoint an individual or panel to draw or redraw district lines.  
28 The proposed districts must be approved by the court prior to their  
29 implementation.

30 (2) Implementation of a district-based remedy is not precluded by  
31 the fact that members of a protected class do not constitute a  
32 numerical majority within a proposed district-based election  
33 district. If, in tailoring a remedy, the court orders the  
34 implementation of a district-based election district where the  
35 members of the protected class are not a numerical majority, the  
36 court shall do so in a manner that provides the protected class an  
37 equal opportunity to elect candidates of their choice or an equal  
38 opportunity to influence the outcome of an election.

1 (3) In tailoring a remedy after a finding of a violation of  
2 section 3 of this act:

3 (a) If the court's order providing a remedy or approving proposed  
4 districts, whichever is later, is issued during the period of time  
5 between the first Tuesday after the first Monday of November and on  
6 or before January 15th of the following year, the court shall order  
7 new elections, conducted pursuant to the remedy, to occur at the next  
8 succeeding general election. If a special filing period is required,  
9 filings for that office shall be reopened for a period of three  
10 business days, such three-day period to be fixed by the filing  
11 officer.

12 (b) If the court's order providing a remedy or approving proposed  
13 districts, whichever is later, is issued during the period of time  
14 between January 16th and on or before the first Monday of November,  
15 the next election will occur as scheduled and organized under the  
16 current electoral system, but the court shall order new elections to  
17 occur pursuant to the remedy at the general election the following  
18 calendar year.

19 (c) All of the positions that were elected pursuant to the at-  
20 large or district-based election system that was the subject of the  
21 action filed pursuant to this chapter and have at least two years  
22 remaining in their terms of office from the date the plan was  
23 adopted, including those elected pursuant to (b) of this subsection,  
24 shall be subject to new elections, pursuant to the remedy implemented  
25 under subsection (1) of this section.

26 (d) The remedy may provide for a political subdivision to  
27 eliminate the staggered terms of any position in order to implement  
28 an alternative proportional voting method.

29 NEW SECTION. **Sec. 7.** (1) In any action to enforce this chapter,  
30 the court may allow a prevailing party, other than a governmental  
31 entity, reasonable attorneys' fees as part of the costs, including  
32 reasonable expert witness fees. No fees or costs may be awarded if no  
33 action is filed.

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

36 NEW SECTION. **Sec. 8.** Any voter who is a member of a protected  
37 class and who resides in a political subdivision where a violation of  
38 section 3 of this act is alleged may file an action in the superior

1 court of the county in which the political subdivision is located. If  
2 the action is against a county, the action may be filed in the  
3 superior court of such county, or in the superior court of either of  
4 the two nearest judicial districts as determined pursuant to RCW  
5 36.01.050(2). An action filed pursuant to this chapter does not need  
6 to be filed as a class action.

7 NEW SECTION. **Sec. 9.** (1) Prior to filing an action pursuant to  
8 this act, a person shall first notify the political subdivision that  
9 he or she intends to challenge the political subdivision's electoral  
10 system under this act. If the political subdivision does not invoke  
11 its authority under section 5 of this act to implement the person's  
12 proposed remedy within one hundred eighty days after receiving  
13 notice, any person may file an action under this act.

14 (2) The notice provided shall identify the person or persons who  
15 intend to file an action, and the protected class or classes whose  
16 members do not have an equal opportunity to elect candidates of their  
17 choice or an equal opportunity to influence the outcome of an  
18 election. The notice shall also include a reasonable analysis of the  
19 person's data concerning the alleged vote dilution and polarized  
20 voting, and a proposed remedy or remedies, based on that data, which  
21 would address the alleged violation of section 3 of this act.

22 (3) If, within one hundred eighty days after receiving a person's  
23 notice, a political subdivision receives another notice containing a  
24 materially different proposed remedy than the first notice, the  
25 political subdivision shall have an additional ninety days from the  
26 date of this subsequent notice before an action may be filed under  
27 this act.

28 (4) The political subdivision shall work in good faith with the  
29 person providing the notice to implement a remedy that provides the  
30 protected class or classes identified in the notice an equal  
31 opportunity to elect candidates of their choice or influence the  
32 outcome of an election.

33 (5) If, after considering the person's notice, the political  
34 subdivision adopts the proposed remedy offered by the person in the  
35 notice, an action under this act by any person may not be brought  
36 against that political subdivision for four years; provided, however,  
37 that the political subdivision does not enact a change to or  
38 deviation from the remedy during this four-year period that would  
39 otherwise give rise to an action under this act. In agreeing to adopt

1 the person's proposed remedy, the political subdivision may do so by  
2 stipulation, which shall become a public document.

3 (6) Should the political subdivision adopt a different remedy  
4 that takes the notice into account, the political subdivision may  
5 seek a court order acknowledging that the political subdivision's  
6 remedy complies with section 3 of this act. The person who submitted  
7 the notice may support or oppose such an order. If the court  
8 concludes that the political subdivision's remedy complies with  
9 section 3 of this act, an action under this act by any party may not  
10 be brought against that political subdivision for four years;  
11 provided, however, that the political subdivision does not enact a  
12 change to or deviation from the remedy during this four-year period  
13 that would otherwise give rise to an action under this act.

14 (7) If a political subdivision has received two or more notices  
15 containing materially different proposed remedies, the political  
16 subdivision shall work in good faith with the persons to implement a  
17 remedy that provides the protected class or classes identified in the  
18 notices an equal opportunity to elect candidates of their choice or  
19 influence the outcome of an election. Should the political  
20 subdivision adopt one of the remedies offered, or a different remedy  
21 that takes multiple notices into account, the political subdivision  
22 may seek a court order acknowledging that the political subdivision's  
23 remedy complies with section 3 of this act. The persons who submitted  
24 notices may support or oppose such an order. If the court concludes  
25 that the political subdivision's remedy complies with section 3 of  
26 this act, an action under this act by any party may not be brought  
27 against that political subdivision for four years; provided, however,  
28 that the political subdivision does not enact a change to or  
29 deviation from the remedy during this four-year period that would  
30 otherwise give rise to an action under this act.

31 NEW SECTION. **Sec. 10.** An individual who has filed an  
32 unsuccessful action against a political subdivision under the federal  
33 voting rights act may not file a separate action against the same  
34 political subdivision under this act within four years of filing the  
35 action under the federal voting rights act.

36 NEW SECTION. **Sec. 11.** If, after an action is filed, the  
37 political subdivision adopts the person's proposed remedy, or a  
38 court-ordered remedy, an action under this act by any party may not

1 be brought against that political subdivision for four years;  
2 provided, however, that the political subdivision does not enact a  
3 change to or deviation from the remedy during this four-year period  
4 that would otherwise give rise to an action under this act.

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

9 NEW SECTION. **Sec. 13.** A new section is added to chapter 28A.343  
10 RCW to read as follows:

11 The school board of directors may authorize a change to a  
12 district-based election system or an alternative proportional voting  
13 method as defined in section 2 of this act, such districts to be  
14 drawn in a manner consistent with sections 5 and 6 of this act. The  
15 school board of directors shall order new elections to be scheduled  
16 pursuant to section 5(4) of this act. The staggering of directors'  
17 terms shall be accomplished as provided in RCW 28A.343.030 and  
18 28A.343.620 through 28A.343.650.

19 **Sec. 14.** RCW 36.32.020 and 1982 c 226 s 4 are each amended to  
20 read as follows:

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

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

33 Except where necessary to comply with a court order issued  
34 pursuant to sections 3 and 6 of this act, the lines of the districts  
35 shall not be changed (~~often~~) more often than once in four years  
36 and only when a full board of commissioners is present. The districts  
37 shall be designated as districts numbered one, two and three.

1        NEW SECTION.    **Sec. 15.**    A new section is added to chapter 35.21  
2    RCW to read as follows:

3        The legislative authority of a city or town may authorize a  
4    change to its electoral system, including the implementation of a  
5    district-based election system or an alternative proportional voting  
6    method as defined in section 2 of this act, to remedy a potential  
7    violation of section 3 of this act. If the legislative authority of a  
8    city or town invokes its authority under this section to implement a  
9    district-based election system, the districts shall be drawn in a  
10   manner consistent with sections 5 and 6 of this act. The legislative  
11   authority of a city or town shall order new elections to be scheduled  
12   pursuant to section 5(4) of this act. All of the positions that were  
13   elected pursuant to the previous method of election and have at least  
14   two years remaining in their terms of office shall be subject to new  
15   elections in order to continue their terms of office.

16       NEW SECTION.    **Sec. 16.**    A new section is added to chapter 35A.21  
17    RCW to read as follows:

18       The legislative authority of a code city or town may authorize a  
19    change to its electoral system, including the implementation of a  
20    district-based election system or an alternative proportional voting  
21    method as defined in section 2 of this act, to remedy a potential  
22    violation of section 3 of this act. If the legislative authority of a  
23    code city or town invokes its authority under this section to  
24    implement a district-based election system, the districts shall be  
25    drawn in a manner consistent with sections 5 and 6 of this act. The  
26    legislative authority of a code city or town shall order new  
27    elections to be scheduled pursuant to section 5(4) of this act. All  
28    of the positions that were elected pursuant to the previous method of  
29    election and have at least two years remaining in their terms of  
30    office shall be subject to new elections in order to continue their  
31    terms of office.

32       **Sec. 17.**    RCW 29A.76.010 and 2011 c 349 s 26 are each amended to  
33    read as follows:

34       (1) It is the responsibility of each county, municipal  
35    corporation, and special purpose district with a governing body  
36    comprised of internal director, council, or commissioner districts  
37    not based on statutorily required land ownership criteria to

1 periodically redistrict its governmental unit, based on population  
2 information from the most recent federal decennial census.

3 (2) Within forty-five days after receipt of federal decennial  
4 census information applicable to a specific local area, the  
5 commission established in RCW 44.05.030 shall forward the census  
6 information to each municipal corporation, county, and district  
7 charged with redistricting under this section.

8 (3) No later than eight months after its receipt of federal  
9 decennial census data, the governing body of the municipal  
10 corporation, county, or district shall prepare a plan for  
11 redistricting its internal or director districts.

12 (4) The plan shall be consistent with the following criteria:

13 (a) Each internal director, council, or commissioner district  
14 shall be as nearly equal in population as possible to each and every  
15 other such district comprising the municipal corporation, county, or  
16 special purpose district.

17 (b) Each district shall be as compact as possible.

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

20 (d) Population data may not be used for purposes of favoring or  
21 disfavoring any racial group or political party, except to the extent  
22 necessary to ensure compliance with this act.

23 (e) To the extent feasible and if not inconsistent with the basic  
24 enabling legislation for the municipal corporation, county, or  
25 district, the district boundaries shall coincide with existing  
26 recognized natural boundaries and shall, to the extent possible,  
27 preserve existing communities of related and mutual interest.

28 (5) During the adoption of its plan, the municipal corporation,  
29 county, or district shall ensure that full and reasonable public  
30 notice of its actions is provided. The municipal corporation, county,  
31 or district shall hold at least one public hearing on the  
32 redistricting plan at least one week before adoption of the plan.

33 (6)(a) Any registered voter residing in an area affected by the  
34 redistricting plan may request review of the adopted local plan by  
35 the superior court of the county in which he or she resides, within  
36 fifteen days of the plan's adoption. Any request for review must  
37 specify the reason or reasons alleged why the local plan is not  
38 consistent with the applicable redistricting criteria. The municipal  
39 corporation, county, or district may be joined as respondent. The  
40 superior court shall thereupon review the challenged plan for

1 compliance with the applicable redistricting criteria set out in  
2 subsection (4) of this section.

3 (b) If the superior court finds the plan to be consistent with  
4 the requirements of this section, the plan shall take effect  
5 immediately.

6 (c) If the superior court determines the plan does not meet the  
7 requirements of this section, in whole or in part, it shall remand  
8 the plan for further or corrective action within a specified and  
9 reasonable time period.

10 (d) If the superior court finds that any request for review is  
11 frivolous or has been filed solely for purposes of harassment or  
12 delay, it may impose appropriate sanctions on the party requesting  
13 review, including payment of attorneys' fees and costs to the  
14 respondent municipal corporation, county, or district.

15 NEW SECTION. **Sec. 18.** This act supersedes other state laws and  
16 local ordinances to the extent that those state laws or ordinances  
17 would otherwise restrict a jurisdiction's ability to implement a  
18 remedy pursuant to this act.

19 NEW SECTION. **Sec. 19.** If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 20.** Sections 1 through 12 and 18 of this act  
24 constitute a new chapter in Title 29A RCW."

**E2SHB 1745** - S COMM AMD

By Committee on Government Operations & Security

25 On page 1, line 1 of the title, after "Relating to" strike the  
26 remainder of the title and insert "establishing a voting rights act  
27 to promote equal voting opportunity in certain political subdivisions  
28 by authorizing district-based elections, requiring redistricting and  
29 new elections in certain circumstances, and establishing a cause of  
30 action to redress lack of voter opportunity; amending RCW 36.32.020  
31 and 29A.76.010; adding a new section to chapter 28A.343 RCW; adding a

1 new section to chapter 35.21 RCW; adding a new section to chapter  
2 35A.21 RCW; and adding a new chapter to Title 29A RCW."

EFFECT: (1) Removes statement of legislative intent.

(2) Removes fire protection districts, port districts, and public utility districts from the provisions of the act.

(3) Allows courts to find that a violation of the act has not occurred where the protected class is not compact or concentrated to constitute a majority in a single member election district.

(4) Allows, but does not require, courts to find that a violation of the act has occurred if a cohesive minority population, in combination with other voters, is large enough to elect its chosen candidate in a single member election district.

(5) Requires courts to consider whether the proportion of the subdivision's legislative authority who are protected class members is the same as the proportion of the general population who are members of the protected class in determining whether polarized voting exists.

(6) Removes requirement that all positions with at least 2 years remaining in the term be subject to new elections in jurisdictions voluntarily adopting new electoral schemes under the act.

(7) Prohibits an individual who has filed an unsuccessful federal vote dilution claim against a jurisdiction from filing a claim under the act against the same jurisdiction for 4 years from the inception of the federal claim.

(8) Limits provisions of the act to cities or towns with a population of at least 2,000.

(9) Limits provisions of the act to school districts with full-time enrollments of at least 500.

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