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SENATE BILL 5668

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State of Washington                      64th Legislature                      2015 Regular Session

By Senators Habib, Hasegawa, McCoy, Jayapal, Kohl-Welles, Lias, Chase, Pedersen, Mullet, Keiser, Darneille, Conway, and Fraser

Read first time 01/28/15.      Referred to Committee on Government Operations & Security.

1            AN ACT Relating to establishing a voting rights act to promote  
2 equal voting opportunity in certain political subdivisions by  
3 authorizing district-based elections, requiring redistricting and new  
4 elections in certain circumstances, and establishing a cause of  
5 action to redress lack of voter opportunity; amending RCW 36.32.020,  
6 54.12.010, and 29A.76.010; adding a new section to chapter 28A.343  
7 RCW; adding a new section to chapter 35.21 RCW; adding a new section  
8 to chapter 35A.21 RCW; adding a new section to chapter 52.14 RCW; and  
9 adding a new chapter to Title 29A RCW.

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

11            NEW SECTION.    **Sec. 1.**    This act may be known and cited as the  
12 Washington voting rights act of 2015.

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

16            (1) "At-large method of election" means any of the following  
17 methods of electing members of the governing body of a political  
18 subdivision:

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

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

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

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

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

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

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

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

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

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

28 (2) The fact that members of a protected class are not  
29 geographically compact or concentrated to constitute a majority in a  
30 proposed or existing district-based election district shall not  
31 preclude a finding of a violation under this section.

32 (3) In determining whether there is polarized voting under this  
33 section, the court shall analyze elections of the governing body of  
34 the political subdivision, ballot measure elections, elections in  
35 which at least one candidate is a member of a protected class, and  
36 other electoral choices that affect the rights and privileges of  
37 members of a protected class. Only elections conducted prior to the  
38 filing of an action pursuant to this chapter shall be used to  
39 establish or rebut the existence of polarized voting.

1 (4) The election of candidates who are members of a protected  
2 class and who were elected prior to the filing of an action pursuant  
3 to this chapter shall not preclude a finding of polarized voting that  
4 results in an unequal opportunity for a protected class to elect  
5 candidates of their choice or influence the outcome of an election.

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

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

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

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

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

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

31 (7) No action may be filed pursuant to this act before January  
32 15, 2016.

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

1 based election system, the districts shall be drawn in a manner  
2 consistent with section 6 of 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 comprising the  
8 political subdivision.

9 (b) Each district shall be reasonably compact.

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

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

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

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

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

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

38 (c) All of the positions that were elected pursuant to the  
39 previous electoral system and have at least two years remaining in  
40 their terms of office from the date the plan was adopted shall be

1 subject to new elections, pursuant to the adopted plan, in order to  
2 continue their term of office.

3 (5) 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 political subdivision that has invoked its  
7 authority under this section to implement a district-based election  
8 system, or that is charged with redistricting under section 6 of this  
9 act.

10 (6) No later than eight months after its receipt of federal  
11 decennial census data, the governing body of the political  
12 subdivision that had previously invoked its authority under this  
13 section to implement a district-based election system, or that was  
14 previously charged with redistricting under section 4 of this act,  
15 shall prepare a plan for redistricting its districts, pursuant to RCW  
16 29A.76.010, and in a manner consistent with this act.

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

25 (2) Implementation of a district-based remedy, pursuant to  
26 section 4 of this act, is not precluded by the fact that members of a  
27 protected class do not constitute a numerical majority within a  
28 proposed district-based election district. If, in tailoring a remedy,  
29 the court orders the implementation of a district-based election  
30 district where the members of the protected class are not a numerical  
31 majority, the court shall do so in a manner that provides the  
32 protected class an equal opportunity to elect candidates of their  
33 choice or an equal opportunity to influence the outcome of an  
34 election.

35 (3) In tailoring a remedy after a finding of a violation of  
36 section 3 of this act:

37 (a) If the court's order providing a remedy is issued during the  
38 period of time between the first Tuesday after the first Monday of  
39 November and on or before January 15th of the following year, the

1 court shall order new elections, conducted pursuant to the remedy, to  
2 occur at the next succeeding general election. If a special filing  
3 period is required, the county auditor shall establish a five-day  
4 filing period at the earliest possible date.

5 (b) If the court's order is issued during the period of time  
6 between January 16th and on or before the first Monday of November,  
7 the next election will occur as scheduled and organized under the  
8 current electoral system, but the court shall order new elections to  
9 occur pursuant to the remedy at the general election the following  
10 calendar year.

11 (c) All of the positions that were elected pursuant to the at-  
12 large or district-based election system that was the subject of the  
13 action filed pursuant to this chapter and have at least two years  
14 remaining in their terms of office from the date the plan was  
15 adopted, including those elected pursuant to (b) of this subsection,  
16 shall be subject to new elections, pursuant to the remedy implemented  
17 under subsection (1) of this section.

18 NEW SECTION. **Sec. 7.** (1) In any action to enforce this chapter,  
19 the court may allow the prevailing plaintiff or plaintiffs, other  
20 than the state or political subdivision thereof, reasonable  
21 attorneys' fees, all nonattorney fee costs as defined by RCW  
22 4.84.010, and all reasonable expert witness fees.

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

25 NEW SECTION. **Sec. 8.** Any voter who is a member of a protected  
26 class and who resides in a political subdivision where a violation of  
27 section 3 of this act is alleged may file an action in the superior  
28 court of the county in which the political subdivision is located. If  
29 the action is against a county, the action may be filed in the  
30 superior court of such county, or in the superior court of either of  
31 the two nearest judicial districts as determined pursuant to RCW  
32 36.01.050(2). An action filed pursuant to this chapter does not need  
33 to be filed as a class action.

34 NEW SECTION. **Sec. 9.** (1) Prior to filing an action pursuant to  
35 this act, a person shall first notify the political subdivision that  
36 he or she intends to challenge the political subdivision's electoral  
37 system under this act. If the political subdivision does not invoke

1 its authority under section 5 of this act to implement the person's  
2 proposed remedy within ninety days after receiving notice, any person  
3 may file an action under this act.

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

12 (3) If, within ninety days after receiving a person's notice, a  
13 political subdivision receives another notice containing a materially  
14 different proposed remedy than the first notice, the political  
15 subdivision shall have an additional ninety days from the date of  
16 this subsequent notice before an action may be filed under this act.

17 NEW SECTION. **Sec. 10.** (1) If, after considering the person's  
18 notice, the political subdivision adopts the proposed remedy offered  
19 by the person in the notice, an action under this act by any person  
20 may not be brought against that political subdivision for four years;  
21 provided, however, that the political subdivision does not enact a  
22 change to or deviation from the remedy during this four-year period  
23 that would otherwise give rise to an action under this act. In  
24 agreeing to adopt the person's proposed remedy, the political  
25 subdivision may do so by stipulation, which shall become a public  
26 document.

27 (2) If, after an action is filed, the political subdivision  
28 adopts the person's proposed remedy, or a court-ordered remedy, an  
29 action under this act by any party may not be brought against that  
30 political subdivision for four years; provided, however, that the  
31 political subdivision does not enact a change to or deviation from  
32 the remedy during this four-year period that would otherwise give  
33 rise to an action under this act.

34 (3) If a political subdivision has received two or more notices  
35 containing materially different proposed remedies, the political  
36 subdivision shall work in good faith with the persons to implement a  
37 remedy that provides the protected class or classes identified in the  
38 notices an equal opportunity to elect candidates of their choice or  
39 influence the outcome of an election. Should the political

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

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

16 NEW SECTION. **Sec. 12.** A new section is added to chapter 28A.343  
17 RCW to read as follows:

18 The school board of directors may authorize a change to a  
19 district-based election as defined in section 2(2) of this act, such  
20 districts to be drawn in a manner consistent with sections 5 and 6 of  
21 this act. The school board of directors shall order new elections to  
22 be scheduled pursuant to section 5(4) of this act. The staggering of  
23 directors' terms shall be accomplished as provided in RCW 28A.343.030  
24 and 28A.343.620 through 28A.343.650.

25 **Sec. 13.** RCW 36.32.020 and 1982 c 226 s 4 are each amended to  
26 read as follows:

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

33 However, the commissioners of any county composed entirely of  
34 islands and with a population of less than thirty-five thousand may  
35 divide their county into three commissioner districts without regard  
36 to population, except that if any single island is included in more



1 than one district, the districts on such island shall comprise, as  
2 nearly as possible, equal populations.

3 Except where necessary to comply with a court order issued  
4 pursuant to sections 4 and 6 of this act, the lines of the districts  
5 shall not be changed ((oftener)) more often than once in four years  
6 and only when a full board of commissioners is present. The districts  
7 shall be designated as districts numbered one, two and three.

8 NEW SECTION. Sec. 14. A new section is added to chapter 35.21  
9 RCW to read as follows:

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

23 NEW SECTION. Sec. 15. A new section is added to chapter 35A.21  
24 RCW to read as follows:

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

1        NEW SECTION.    **Sec. 16.**    A new section is added to chapter 52.14  
2    RCW to read as follows:

3        Where the board of fire commissioners of a fire protection  
4    district exercises its authority pursuant to RCW 52.14.013 to create  
5    commissioner districts, such districts shall be drawn in a manner  
6    consistent with section 5 of this act.

7        **Sec. 17.**    RCW 54.12.010 and 2004 c 113 s 1 are each amended to  
8    read as follows:

9        A public utility district that is created as provided in RCW  
10    54.08.010 shall be a municipal corporation of the state of  
11    Washington, and the name of such public utility district shall be  
12    Public Utility District No. . . . . of . . . . . County.

13        The powers of the public utility district shall be exercised  
14    through a commission consisting of three members in three  
15    commissioner districts, and five members in five commissioner  
16    districts.

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

23        (2) If the public utility district comprises only a portion of  
24    the county, with boundaries established in accordance with chapter  
25    54.08 RCW, or if the public utility district is countywide and the  
26    county does not have three county legislative authority districts,  
27    three public utility district commissioner districts, numbered  
28    consecutively, each with approximately equal population and following  
29    precinct lines, as far as practicable, shall be described in the  
30    petition for the formation of the public utility district, subject to  
31    appropriate change by the county legislative authority if and when it  
32    changes the boundaries of the proposed public utility district. One  
33    commissioner shall be elected as a commissioner of each of the public  
34    utility district commissioner districts.

35        (3) Only a registered voter who resides in a commissioner  
36    district may be a candidate for, or hold office as, a commissioner of  
37    the commissioner district. Only voters of a commissioner district may  
38    vote at a primary to nominate candidates for a commissioner of the  
39    commissioner district. Voters of the entire public utility district

1 may vote at a general election to elect a person as a commissioner of  
2 the commissioner district.

3 (4) The term of office of each public utility district  
4 commissioner other than the commissioners at large shall be six  
5 years, and the term of each commissioner at large shall be four  
6 years. Each term shall be computed in accordance with RCW  
7 (~~29A.20.040~~) 29A.60.280 following the commissioner's election. All  
8 public utility district commissioners shall hold office until their  
9 successors shall have been elected and have qualified and assume  
10 office in accordance with RCW (~~29A.20.040~~) 29A.60.280.

11 (5) A vacancy in the office of public utility district  
12 commissioner shall occur as provided in chapter 42.12 RCW or by  
13 nonattendance at meetings of the public utility district commission  
14 for a period of sixty days unless excused by the public utility  
15 district commission. Vacancies on a board of public utility district  
16 commissioners shall be filled as provided in chapter 42.12 RCW.

17 (6) The boundaries of the public utility district commissioner  
18 districts may be changed only by the public utility district  
19 commission or by a court order issued pursuant to section 6 of this  
20 act, and shall be examined every ten years to determine substantial  
21 equality of population in accordance with chapter 29A.76 RCW. Except  
22 as provided in this section, section 6 of this act, or RCW 54.04.039,  
23 the boundaries shall not be changed (~~more often~~) more often than once  
24 in four years. Boundaries may only be changed when all members of the  
25 commission are present. Whenever territory is added to a public  
26 utility district under RCW 54.04.035, or added or withdrawn under RCW  
27 54.04.039, the boundaries of the public utility commissioner  
28 districts shall be changed to include the additional or exclude the  
29 withdrawn territory. Unless the boundaries are changed pursuant to  
30 RCW 54.04.039, the proposed change of the boundaries of the public  
31 utility district commissioner district must be made by resolution and  
32 after public hearing. Notice of the time of the public hearing shall  
33 be published for two weeks before the hearing. Upon a referendum  
34 petition signed by ten percent of the qualified voters of the public  
35 utility district being filed with the county auditor, the county  
36 legislative authority shall submit the proposed change of boundaries  
37 to the voters of the public utility district for their approval or  
38 rejection. The petition must be filed within ninety days after the  
39 adoption of resolution of the proposed action. The validity of the  
40 petition is governed by the provisions of chapter 54.08 RCW.

1       **Sec. 18.** RCW 29A.76.010 and 2011 c 349 s 26 are each amended to  
2 read as follows:

3       (1) It is the responsibility of each county, municipal  
4 corporation, and special purpose district with a governing body  
5 comprised of internal director, council, or commissioner districts  
6 not based on statutorily required land ownership criteria to  
7 periodically redistrict its governmental unit, based on population  
8 information from the most recent federal decennial census.

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

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

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

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

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

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

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

29       (e) To the extent feasible and if not inconsistent with the basic  
30 enabling legislation for the municipal corporation, county, or  
31 district, the district boundaries shall coincide with existing  
32 recognized natural boundaries and shall, to the extent possible,  
33 preserve existing communities of related and mutual interest.

34       (5) During the adoption of its plan, the municipal corporation,  
35 county, or district shall ensure that full and reasonable public  
36 notice of its actions is provided. The municipal corporation, county,  
37 or district shall hold at least one public hearing on the  
38 redistricting plan at least one week before adoption of the plan.

39       (6)(a) Any registered voter residing in an area affected by the  
40 redistricting plan may request review of the adopted local plan by

1 the superior court of the county in which he or she resides, within  
2 fifteen days of the plan's adoption. Any request for review must  
3 specify the reason or reasons alleged why the local plan is not  
4 consistent with the applicable redistricting criteria. The municipal  
5 corporation, county, or district may be joined as respondent. The  
6 superior court shall thereupon review the challenged plan for  
7 compliance with the applicable redistricting criteria set out in  
8 subsection (4) of this section.

9 (b) If the superior court finds the plan to be consistent with  
10 the requirements of this section, the plan shall take effect  
11 immediately.

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

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

21 NEW SECTION. **Sec. 19.** This act supersedes other state laws and  
22 local ordinances to the extent that those state laws or ordinances  
23 would otherwise restrict a jurisdiction's ability to implement a  
24 remedy pursuant to this act.

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

29 NEW SECTION. **Sec. 21.** Sections 1 through 11 and 19 of this act  
30 constitute a new chapter in Title 29A RCW.

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