

*Port Commissioner
Elections
And
The Washington Voting
Rights Act*

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RCW 53.12.010 (1)

Setting Commissioner Districts

- Less than county-wide port districts in a county less than 500,000 shall be divided into commissioner positions each having approximately equal population
- Ports with three commissioners in a county of less than 500,000 where the County has three legislative districts must use the county's legislative districts
- In all other instances the port district shall be divided into commissioner districts of approximately equal population by the commission
 - King, Pierce, Snohomish, Spokane and Clark Counties
- Only registered voters in the commissioner district may vote in the primary and the voters of the entire port district vote in the general election

The Longstanding Law of Port Commissioner Elections

RCW 53.12.010 (2)

Primary & General Elections

- In a port district with five commissioners two of the districts may be port-wide
 - Done at formation or by vote
- If a port district already has five commission district, the voters may decide to change to five commissioner districts

RCW 53.12.021

**No commission
districts for less
than county wide
port districts**

- In a less than county wide port district the voters may decide to eliminate commissioner districts
- Commission resolution or 10% voter petition

RCW 53.12.135

Voluntary change to electoral system

- Added in 2023 as part of the bill entitled “Enhancing the Washington Voter Rights Act”
- The port commission may authorize a change to its electoral system pursuant to RCW [29A.92.040](#).

Chapter 29A.92 RCW

The Washington Voting Rights Act

RCW 29A.92.040

- 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, or increasing the number of elected officials on a county commission as authorized by RCW [29A.92.115](#), to remedy a *potential violation* of RCW [29A.92.020](#).
- (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 RCW [29A.92.050](#).

RCW 29A.92.010

- (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) "Cohesive" means that members of a group tend to prefer the same candidates or other electoral choices.

RCW 29A.92.010

- (3) "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.
- (4) "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 or a coalition of protected classes, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.
- (6) "Protected class" means a class of voters who are members of a race, color, or language minority group in the state of Washington, as this class is referenced and defined in the federal voting rights act, 52 U.S.C. 10301 et seq.

RCW 29A.92.030

Violations of the Law

- Elections exhibit polarized voting
- Members of a protected class do not have equal opportunity to elect candidates due to dilution or abridgement of their rights
- 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 chapter but may be a factor in determining a remedy.
- Proof of intent on the part of the voters or elected officials to discriminate against a protected class is not required for a cause of action to be sustained.
- A protected class may be a coalition of members of different racial, color, or language minority groups

RCW 29A.92.040

Voluntary Changes to Electoral System

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, or increasing the number of elected officials on a county commission as authorized by RCW [29A.92.115](#), to remedy a potential violation of RCW [29A.92.020](#).

RCW 29A.92.090

Voter Challenges

- After 90-day period a lawsuit may be filed
- One year expedited trial schedule
- Injunction without bond
- Court ordered remedies (including an increase in commissioner districts)

RCW 29A.92.070

The “Safe Harbor”

- If a person, firm or organization provides a 90 day notice to implement remedy for a protected class
- Government:
 - Works in good faith and adopts a remedy
 - Obtains court approval
 - Pay the cost of preparing the notice (including research costs) not to exceed \$50,000
 - Four-year safe harbor

Portugal v. Franklin County

Washington Supreme Court

2023

- Upheld the Washington Voting Rights Act.
- Must show:
 - Polarized voting: Polarized voting is a difference in the choice of candidates in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.
 - Members of the protected class do not have an equal opportunity to elect candidates

BEST PRACTICES

- Consider the demographics in your port district.
 - Are you providing an opportunity for protected classes to participate.
 - Is your commission “right sized”?

2025 Change to Chapter 53.12

SB 5370

- Allows a vote to change commissioner terms from 4 years to six years
- Process can be commenced either (1) by resolution of the Commission or (2) by petition of the voters
- Ballot proposition is then presented to the voters at the next general election occurring 60 or more days after the resolution or petition
- Simple majority vote to pass
- This law only applies to less than county-wide port districts with populations of less than 100,000 because RCW 53.12.221

2025 Change to Chapter 53.12

HB 1573

- All elected official assume office at 12:01 a, on January 1st following an election
- Oath taken between date of final certification and January 1st
- Does not change the rule on filing out a term of a vacated elected official

Thank You!

Questions?