

SENATE BILL REPORT

SB 5681

As Reported by Senate Committee On:
Government Operations & Elections, February 19, 2009

Title: An act relating to updating election laws with a top two primary election system.

Brief Description: Updating election laws regarding the top two primary election system.

Sponsors: Senators Hargrove, Fairley, Roach, Hatfield, Pridemore, McCaslin, Sheldon, Holmquist and Shin; by request of Secretary of State.

Brief History:

Committee Activity: Government Operations & Elections: 2/19/09 [DP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; McDermott and Pridemore.

Minority Report: That it be referred without recommendation.

Signed by Senators Roach, Ranking Minority Member; Benton.

Staff: Sharon Swanson (786-7447)

Background: Following the 9th Circuit decision finding the blanket primary unconstitutional, the Legislature passed ESB 6453 in 2004, which created two types of primaries. First, it created a qualifying primary or top two in which all candidates would be listed on the primary ballot. Voters could then vote for any candidate in each race, with the top-two vote getters advancing to the general election regardless of party affiliation.

Second, a primary system was created to be utilized in the event a court ruled that the top-two primary system was unconstitutional. Under this primary system, known as the pick-a-party primary, voters were required to affiliate with one political party for the day and could only vote for candidates from that party. The voter's choice of party remained private.

After ESB 6453 passed the Legislature, Governor Gary Locke vetoed the provisions creating the top-two primary. This left only the provisions creating the pick-a-party primary, which was used in the 2004 primary election.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 2004 the voters approved Initiative 872 (I-872). The initiative enacted a top-two primary, similar to the one the Governor vetoed in ESB 6453. Under this primary system, candidates may express a party or independent preference on the declaration of candidacy, which must be shown on the primary ballot. Voters may then vote for any candidate on the primary ballot regardless of the party preference or affiliation of either the candidate or the voter. The two candidates receiving the most votes advance to the general election as long as they each receive at least 1 percent of the votes cast for the office in question.

In 2005 I-872 was challenged by the political parties in Washington State. The parties argued that I-872 was unconstitutional because it violates the right of free association. The federal district court and the 9th Circuit agreed. The 9th Circuit decision was appealed to the U.S. Supreme Court. In March 2008 the U.S. Supreme Court issued its decision, ruling 7-2 that the top-two primary system was constitutional. On August 19, 2008, Washington held its first top-two primary.

Summary of Bill: Elections laws are updated to reflect the U.S. Supreme Court decision upholding the top-two primary system.

Provisions related to the pick-a-party primary system are repealed.

Major political party is defined as a political party whose presidential nominees received at least 1 percent of the votes cast in the state at the last presidential election.

Minor political party is defined as an organization that submitted to the Secretary of State a petition bearing the valid signatures of at least 100 registered voters. The petition must be in a form prescribed by the Secretary of State, include the name and contact information of the political party, be circulated no earlier than the first day of December in an odd-numbered year, and be submitted no later than the first Monday of March in the following even-numbered year. Once submitted, the Secretary of State must approve or reject the sufficiency of the petition within five business days. If approved as sufficient, the organization retains its status as a minor political party until March 31 of the next even-numbered year.

Primary is defined as a procedure for qualifying candidates for public office to appear on the general election ballot.

The Secretary of State must adopt, by rule, a filing fee petition.

If, after filing a valid declaration of candidacy for a partisan office, a candidate dies, that candidate's name must remain on the ballot for the primary. If the candidate receives the highest or second highest number of votes in the primary, the candidate must qualify for the general election, and the candidate's name will appear on the general election ballot. In the general election, if the candidate receives the most number of votes, the office to which the person sought election must be treated as a vacant office under the State Constitution.

The threshold for advancing from the primary to the general election is increased from 1 percent of the total votes cast for that office at the primary to 2 percent.

If a candidate files more than one declaration of candidacy for the same office with differing party preferences, the ballot must contain the preference on the last validly filed declaration.

Write-in votes need not be tallied unless the total number of write-in votes and over-votes for the office is greater than the number of votes cast for any candidate apparently qualified to appear on the general election ballot or elected.

The election of Precinct Committee Officers (PCOs) occurs at the general election. A candidate must receive at least 20 votes in order to be elected a PCO, unless there are less than 50 registered voters in the precinct.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is really a housekeeping bill allowing a clean up of the statutes to reflect the top-two primary and get pick-a-party off the books. The language relating to the death of a candidate is necessary as political parties no longer nominate or pick their candidates. It makes sense to move the precinct committee officer elections back to the general election as primary elections are no longer partisan. The PDC is fully supportive of this bill and appreciates the work of the Secretary of State. The State Grange is in support of this bill.

Persons Testifying: PRO: Sam Reed, Secretary of State; Doug Ellis, Public Disclosure Commission; Scott Dalmin, State Grange.