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**State Government Committee**

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**HB 2687**

**Brief Description:** Creating an open primary.

**Sponsors:** Representatives McDermott, Hunt, Cody and Romero.

**Brief Summary of Bill**

- Creates an "open, private choice" primary, also known as a Montana-style primary.
- Voters do not register by party, but must affiliate with a party at least for the day.
- For the partisan offices appearing on the ballot, voters may only vote for candidates of that party and may not cross over to candidates of any other party.

**Hearing Date:** 1/20/04

**Staff:** Katie Blinn (786-7114).

**Background:**

Blanket Primary:

In 1935, the Legislature approved an initiative to the Legislature establishing Washington's blanket primary for partisan elections. All eligible registered voters may participate because there is no process to register by party. Candidates for partisan office, however, may designate an affiliation with a political party when they file a declaration of candidacy in July. For each office that appears on the ballot, voters may vote for any of the candidates running, regardless of the candidate's party affiliation. In order to advance to the general election, a candidate must receive the highest number of votes cast for candidates of that party, as well as at least 1 percent of all the votes cast for that office. Consequently, the blanket primary operates as a nominating process, in that only one candidate from each political party may proceed to the general election. Partisan elections take place in even-numbered years, and the primary is held on a Tuesday in the third week of September. The partisan offices include: U.S. Senate, U.S. House of Representatives, Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Auditor, Attorney General, Commissioner of Public Lands, Insurance Commissioner, state Senate, state House of Representatives, and county offices.

Minor Parties and Independent Candidates:

Minor party and independent candidates go through a separate process to appear on the general election ballot. Minor parties and independent candidates must hold a nominating convention at

the end of June to nominate a candidate for partisan office. Nomination requires both a nominating certificate and a nominating petition. The certificate must specify the name of the minor party, the name of the candidate, and the office for which the candidate is being nominated. The nominating petition must include the signatures of at least 200 registered voters if nominating a candidate for President, U.S. Senate, or any statewide office, and the signatures of at least 25 registered voters if nominating a candidate for any other partisan office. The independent or minor party candidate must still pay the filing fee and file a declaration of candidacy in July in order to appear in the primary in September. Like major party candidates, minor party and independent candidates must receive at least 1 percent of all the votes cast for that office in order to advance to the general election.

#### Litigation:

In 1996, voters in California approved an initiative that established a blanket primary modeled after Washington's blanket primary. However, one aspect of California's previous closed primary system, party registration, was retained. Four political parties in California sued the California Secretary of State, arguing that the blanket primary system is unconstitutional because it allows voters who are not affiliated with a political party to select that party's nominees, thereby violating the political parties' right to freely associate. The system was upheld in U.S. District Court and the Ninth Circuit Court of Appeals, but struck down in June 2000 by the U.S. Supreme Court in *California Democratic Party, et al. v. Jones*, 350 U.S. 567 (2000).

The Supreme Court noted that, with the right to associate is the right *not* to associate, and that the right of association would prove meaningless if associations could not limit control over their decisions to those who share their same interests. The Supreme Court affirmed that special protection is given to the process by which political parties selects their nominees since a nominee acts as a standard bearer and spokesperson for the party, communicating the party's ideology and preferences to the general public. The Supreme Court concluded that California's blanket primary violates the political parties' right of free association because it allows voters who are not affiliated with a party to participate in that party's nominating process.

In July 2000, the three major political parties in Washington, the Democratic Party, the Republican Party, and the Libertarian Party, sued the Washington Secretary of State. The political parties sought a permanent injunction prohibiting the Secretary of State from conducting any future partisan primaries under the blanket system. Finding that Washington election law and the Washington State Constitution were sufficiently different from California to distinguish the Washington lawsuit from the *California Democratic Party, et al. v. Jones* opinion, the U.S. District Court upheld the Washington blanket primary. However, in September 2003, the Ninth Circuit Court of Appeals reversed the District Court decision and, based on the U.S. Supreme Court opinion, found the Washington blanket primary unconstitutional. *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (9th Cir. 2003). The Ninth Circuit remanded the case back to the District Court for entry of summary judgment, declaratory judgment, and an injunction in favor of the political parties.

In November 2003, the Attorney General's Office, on behalf of the Secretary of State, filed a petition for writ of certiorari seeking review of the Ninth Circuit opinion by the U.S. Supreme Court. This is a strictly discretionary appeal. If the Supreme Court accepts the petition, it will hear the case sometime during its 2004-05 term. If the Court denies the petition, the ruling of the

Ninth Circuit stands and the case will be remanded to the District Court. The Supreme Court is expected to issue its decision in March 2004.

### **Summary of Bill:**

#### Open, Private Choice Primary:

A new partisan primary election system is established, commonly known as an "open, private choice primary" or a "Montana-style primary". Voters must affiliate with one political party for the day, and may only vote for candidates of that party, "down the party line". Voters cannot cross over to another party as they move down the ballot. The primary is considered "open" because all eligible registered voters may participate and there is no party registration. The primary is considered "private" because the political party a voter selects is not public information or a public record. The partisan primary is for major party candidates only. Neither government nor political organizations may maintain any records that identify a voter with information marked on a ballot, including party affiliation. Voters cannot cast more than one vote for a given office, and the statute authorizing the blanket primary is repealed. Precinct committee officers from every district, not just those that are primarily within counties over 1 million people, must elect a legislative district chair.

#### Ballots:

County auditors have the option of using two types of ballots for a partisan primary: a consolidated ballot that lists all major party candidates and includes a party affiliation check-off box, or physically separate ballots for each major party. The order that names appear on the ballot remains at random, but county auditors no longer have to rotate the names. Instructions on how to vote the relevant type of ballot must be included in voting materials, voters' pamphlets, websites, etc.

Under the consolidated ballot format, all major party candidates appear on one ballot and voters must indicate with which major party they affiliate in a check-off box at the top of the ballot. Candidates may only be nominated by voters who affiliate themselves with that party. Votes will not be counted if cast by voters who affiliate with a different major party, failed to select a party affiliation, or selected more than one party for party affiliation. If a voter properly indicates a party affiliation but improperly votes for a candidate of a different party, the properly marked portions of the ballot will be counted and the improperly marked portions of the ballot will be ignored.

Under the physically separate ballot format, separate ballots specific to each major party are created. All separate ballots must also include the ballot measures and nonpartisan races. Voters may only vote one ballot, and if a voter votes more than one ballot, no ballots will be counted. A voter's party affiliation will be inferred from the act of voting that party's ballot.

#### Minor Parties and Independent Candidates:

Minor party and independent candidates go directly to the general election ballot once they have satisfied the nominating convention requirements. However, the number of signatures required for nomination is increased from 200 to 1000 for President, U.S. Senate, U.S. House of Representatives, or statewide office, and from 25 to 100 for a legislative or local office. A nomination for a candidate to the U.S. House of Representatives must meet the higher signature requirement. Parties that are technically major parties but did not receive more than 10 percent of the votes cast for any office can opt out of major party status.

**Appropriation:** None.

**Fiscal Note:** Requested on January 19, 2004.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.