

SENATE BILL REPORT

SB 6924

As Reported By Senate Committee On:
Government Operations & Elections, February 07, 2008

Title: An act relating to the adoption of a primary election system in which the two candidates with the most votes qualify for the general election.

Brief Description: Adopting a primary system in which the two candidates with the most votes qualify for the general election.

Sponsors: Senators Fairley, Hargrove, Hatfield, Sheldon and McCaslin.

Brief History:

Committee Activity: Government Operations & Elections: 2/07/08 [DP-WM, DNP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; Benton and Pridemore.

Minority Report: Do not pass.

Signed by Senator Kline.

Minority Report: That it be referred without recommendation.

Signed by Senator McDermott.

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.

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.

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, and continues through the present day.

In 2004 the voters approved Initiative 872 (I872). 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 I872 was challenged by the political parties in Washington State. The parties argued that I872 was unconstitutional because it violates the right of free association. The federal district court and the 9th Circuit agreed, and as a result of this legal dispute, the primary system has never been implemented.

The 9th circuit decision was appealed, and the U. S. Supreme Court heard oral arguments on the matter in October 2007 but have yet to issue a ruling on the Constitutionality of I872.

Summary of Bill: This act is conditionally effective upon the United States Supreme Court holding I872 constitutional and reinstating the initiative in its entirety.

References to "nominee" and "nomination" are removed from statute and are replaced by the terms "candidate" or "person qualified for the ballot."

Minor party or independent candidates file for office and are placed on the primary ballot. The requirements for minor party conventions are repealed.

Statutes that allow political parties to fill vacancies on the ballots are repealed.

Recount statutes are rewritten to allow a recount between the two candidates receiving the greatest number of votes or between the candidates placing second and third in a primary.

Counties return to a single ballot system with all candidates listed on the ballot. The requirement that voters check party affiliation on ballots is removed.

Appropriation: None.

Fiscal Note: Requested February 6, 2008.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect if the United States Supreme Court rules the top-two primary constitutional.

Staff Summary of Public Testimony: PRO: The top two primary allows only the top two candidates to move to the general election regardless of party. The Secretary of State supported the blanket primary and fought for it and we support this bill as well. The Supreme Court could rule at anytime and it is prudent to have something in place depending on how the court rules.

CON: This is nothing more than gross discrimination against minor parties in our state. The bill is not well thought out. Few voters pay attention to parties prior to the general election. By having the top two candidates progress harms the minor party candidates. The signature gatherers who worked to get signatures for I-872 misled the people by telling them the initiative was the blanket primary. That was not true. This bill will make the third party and independent candidate an endangered species.

Persons Testifying: PRO: Shane Hamlin, Secretary of State.

CON: Ruth Bennett, Libertarian Party of Washington; Linda Knighton, Progressive Party of Washington.