

# SENATE BILL REPORT

## E3SHB 1860

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As of February 20, 2012

**Title:** An act relating to partisan elections.

**Brief Description:** Regarding partisan elections.

**Sponsors:** House Committee on General Government Appropriations & Oversight (originally sponsored by Representative Hurst).

**Brief History:** Passed House: 2/13/12, 98-0.

**Committee Activity:** Government Operations, Tribal Relations & Elections: 2/16/12.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

**Staff:** Sam Thompson (786-7413)

**Background:** Washington voters may participate in a top two primary election in which voters may select any candidate for a partisan office listed on the ballot, regardless of party preference. The two candidates receiving the highest number of votes, regardless of party preference, advance to the general election.

Washington political parties challenged the legality of the top two primary in federal court. In January 2011, the U.S. District Court for the Western District of Washington upheld the legality of the top two primary, except with respect to election of party precinct committee officers (PCOs). The court scrutinized the primary election ballot, provided to all voters, which specified: "Precinct committee officer is a position in each major political party. For this office only: If you consider yourself a democrat or republican, you may vote for a candidate of that party." According to the court, the top two primary system enabled the electorate to participate in selecting political parties' officers "even though the parties may not prefer to associate with voters who consider themselves members in a fleeting moment" when voting, thus violating the parties' First Amendment right to identify and associate with members of their organizations. The ruling regarding PCOs was not appealed. The remainder of the ruling was appealed, and affirmed on appeal by the U.S. Ninth Circuit Court of Appeals on January 19, 2012.

On December 6, 2011, the Secretary of State adopted administrative rules repealing previous PCO election rules. The rules noted the 2011 U.S. District Court ruling and specified that

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"precinct committee officer elections are no longer conducted by state or county government. As private organizations, the political parties determine how to conduct their internal affairs, including selection of their officers." On December 22, 2011, the Washington Democratic and Republican parties sued the Secretary of State in Thurston County Superior Court, seeking a declaration that the new rules invalidly attempted to amend statutes by rule and that the Secretary of State remained obligated to conduct PCO elections. That litigation is pending.

**Summary of Bill:** The office of PCO must be voted upon at the primary election in each even-numbered year. The ballot format may be either a consolidated ballot or a physically separate ballot. If a consolidated ballot is used, the races for PCOs must be clearly delineated from other races on the ballot. If a physically separate ballot is used, it must be distinguishable from the top two primary ballot. If the ballot is returned in the return envelope provided, but outside of the security envelope, it is not grounds to invalidate the ballot.

These instructions must appear on the ballot: "In order to vote for precinct committee officer, a partisan office, you must affirm that you are a Democrat or a Republican and may vote only for one candidate from the party you select. This preference is private and will not be matched to your name or shared." Party affiliation is affirmed by including the following statement after the name of each candidate: "By voting for this candidate, I affirm that I am a Democrat." if the candidate is a Democrat, or "By voting for this candidate, I affirm that I am a Republican." if the candidate is a Republican. If a voter votes for candidates from both parties, the votes cast in the election for PCO on that ballot will not be tabulated and reported.

If no one files for office of PCO, it must be filled under the current provision for filling PCO vacancies, under which the party county central committee chair fills the vacancy by appointment. However, in legislative districts having a majority of precincts in a county with a population of 1 million or more (currently, only King County), the appointment may be made only upon the recommendation of the party legislative district chair.

Filing as a write-in candidate for PCO is prohibited.

A provision is deleted that provided that to be elected, a PCO candidate had to receive at least 10 percent of the votes cast for the candidate of the PCO candidate's party receiving the greatest number of votes in the precinct.

If a provision of the act is held invalid, the remainder of the act is not affected.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 15, 2012.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This measure has bipartisan support. Procedures for electing PCOs, originally enacted in 1907, prevent corruption in parties. The bill prohibits election of write-in candidates for PCO, lowering election costs. In addition, if a PCO position is uncontested, it will not appear on the ballot, also lowering election costs.

CON: Election of PCOs, which are non-public offices, should not be a public expense. If this bill advances, it should be amended to relieve counties of the obligation to pay for these elections. Statewide, no one files as a candidate for most PCO positions, only one person files for a PCO position in 35 percent of all cases, and contested races arise in only two percent of all cases. This bill essentially proposes an election system for PCOs that was found unconstitutional in the 2011 US District Court ruling.

OTHER: The Grange, which was involved in litigation regarding the state's top two primary election system, shares concerns about the constitutionality of this bill. The public should not be required to pay for these elections.

**Persons Testifying:** PRO: Dwight Pelz, Washington State Democratic Committee.

CON: James McMahan, Washington Association of County Officials; Katie Blinn, Office of the Secretary of State.

OTHER: Holli Johnson, Washington State Grange.