

SENATE BILL REPORT

SB 6129

As Reported by Senate Committee On:
Government Operations & Security, February 4, 2016

Title: An act relating to allowing cities, towns, code cities, and counties to choose to conduct district-based elections.

Brief Description: Allowing cities, towns, code cities, and counties to choose to conduct district-based elections.

Sponsors: Senators Roach and Warnick.

Brief History:

Committee Activity: Government Operations & Security: 6/11/15, 1/28/16, 2/04/16 [DP, DNP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

Majority Report: Do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Pearson, Vice Chair; Takko.

Minority Report: Do not pass.

Signed by Senators Dansel and McCoy.

Minority Report: That it be referred without recommendation.

Signed by Senator Habib.

Staff: Samuel Brown (786-7470)

Background: County and Municipal Voting Systems. In Washington, voters elect county and municipal legislative authorities - boards of county commissioners, county councils, and city or town councils - under a variety of voting systems. The voting system used in a particular jurisdiction depends on complex state law that authorizes varying voting systems in different categories or classes of counties and municipalities.

Certain aspects of county and municipal voting systems are uniform. In all jurisdictions, the two candidates for a legislative authority position who receive the highest number of votes in a primary election advance to the general election. In a general election, the candidate for a position who receives the highest number of votes is elected to the position.

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.

The state constitution requires the Legislature to provide for a uniform system of county government, but also allows counties to adopt home rule charters establishing differing governing systems, including varying voting systems. The uniform voting system used in the state's 32 noncharter counties, in which legislative authorities are elected on a partisan basis, and varying voting systems established in the state's seven home rule charter counties, in which legislative authorities may be elected on a nonpartisan basis, are described below.

Municipalities are not subject to constitutionally-mandated uniformity requirements, and statutes authorize municipal legislative authorities to establish, by ordinance, varying voting systems, also described below. In addition, some cities have adopted home rule charters with further variations. All municipal legislative authorities are elected on a nonpartisan basis.

Election Districts and Redistricting Plans. In all 39 counties and 23 of 281 municipalities in the state, voters elect all or some legislative authority members to represent election districts - called commissioner districts, council districts, wards, or precincts - within the county or municipality. These legislative authority members must reside in the election districts they represent.

Jurisdictions with voting systems based on election districts must adopt redistricting plans after each decennial Federal census, and may do so more frequently. Redistricting plans establish election districts that, as nearly as possible, must be equal in population, compact, and geographically contiguous; not favor or disfavor any racial group or political party; coincide with natural boundaries; and preserve communities of related and mutual interest. Jurisdictions must conduct at least one public hearing on a proposed redistricting plan. A proposed plan may be challenged in court, and a court can require a jurisdiction to revise a proposed plan if the court finds that the plan does not comply with criteria described above.

District-based voting systems may be described as set forth below.

District-Based System A: Voting Restricted in Primary Elections. This system is used by 32 non-charter counties. In these jurisdictions all legislative authority positions represent election districts. A primary election voter may vote only for candidates for a legislative authority position representing the election district in which the voter resides. In contrast, a general election voter may vote for one candidate for all legislative authority positions, regardless of the election district a position represents.

District-Based System A: Modified. This system is used by one home rule charter county, Whatcom; one first class city, Bellingham; and eight non-charter optional municipal code cities, Bainbridge Island, Blaine, Burlington, Camas, Chelan, Mount Vernon, Pasco, and Sunnyside. In these jurisdictions some legislative authority positions represent election districts and other positions are at large positions. A primary election voter may vote for candidates for positions representing the election district in which the voter resides and candidates for all at large positions. In contrast, a general election voter may vote for one candidate for all positions, regardless of whether a position represents a district or is an at large position. Yakima, a first class city, formerly used this system, but in 2014 a Federal District Court ruled that the system as applied in Yakima violated the Federal Voting Rights Act by effectively denying Latinos an equal opportunity to elect representatives of their choice to the city council. The court noted evidence of a decades-long pattern of polarized

voting in which Latino candidates were invariably defeated in general elections. To remedy the violation, in 2015 the court ordered the city to establish a different district-based voting system, described below.

District-Based System B: Voting Restricted in Both Primary and General Elections. This system is used by four home rule charter counties, King, Pierce, Snohomish, and Clallam; two first class cities, Aberdeen and Bremerton; and one non-charter optional municipal code city, Hoquiam. In these jurisdictions all legislative authority positions represent election districts. In both primary and general elections, a voter may vote only for candidates for positions representing the election district in which the voter resides.

District-Based System B: Modified. This system is used by one home rule charter county, Clark; three first class cities, Seattle, Spokane, and Tacoma; and six noncharter municipal code cities, Anacortes, Centralia, Chehalis, Pullman, Puyallup, and Sedro-Woolley. In these jurisdictions some legislative authority positions represent election districts and other positions are at large positions. In both primary and general elections, a voter may vote for candidates for positions representing the election district in which the voter resides and candidates for all at large positions. A non-charter optional municipal code city, a second class city, or a town may not use this system unless the city or town established the system prior to 1994.

Other Voting Systems. Most cities and towns do not use district-based voting systems. Instead, all legislative authority positions are at large, and primary and general election voters may vote for candidates for all positions. This entirely at large system is used by three first class cities, Everett, Richland, and Vancouver; 175 optional municipal code cities; eight second class cities; and 70 towns. At least five optional municipal code cities, Bonney Lake, Ellensburg, Kennewick, Prosser, and Snohomish, returned to this system after abandoning district-based systems.

One home rule charter county, San Juan, uses a unique system. Each county council member resides in a residency district within the county, but all council positions are at large positions, and primary and general election voters may vote for candidates for all positions.

Local Initiatives. Counties may not authorize county initiatives unless a home rule charter provides that authority. All seven county home rule charters do so. All ten first class cities and 50 optional municipal code cities currently authorize city initiatives, pursuant to city home rule charters or voter-approved ballot measures. Cities operating under the commission form of city government automatically have city initiative powers pursuant to enabling statutes; currently, only Shelton is within this class. The state's eight second class cities and 70 towns may not authorize local initiatives.

Summary of Bill: Counties. Counties that have not adopted home rule charters may establish a district-based system for electing commissioners, either by ordinance or county initiative, if initiatives are authorized.

Cities and Towns. Optional municipal code cities and second class cities may establish district-based or hybrid systems for electing city or town council members, either by ordinance or city or town initiative, if initiatives are authorized. Second class cities and

towns that expand the number of city or town council positions from five to seven may redistrict either by ordinance or city or town initiative, if initiatives are authorized.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: Testimony From 2015 Regular Session. PRO: This bill grants Pasco, a noncharter optional municipal code city, many other municipalities, and noncharter counties clear authority to establish district-based general election voting systems. Pasco is voluntarily attempting to establish such a system to avoid potential violation of the Federal Voting Rights Act. An attorney general opinion has been requested on the question of whether a noncharter optional municipal code city with a large minority population may adopt a district-based general election voting system to avoid potential violation of the Federal Rights Act, notwithstanding the limit in current state law. While this bill appropriately grants many municipalities an additional option, district-based voting systems may be inappropriate in small municipalities. Language should be clarified and made consistent.

OTHER: Cities should be allowed to move away from winner-take-all voting systems and instead use cumulative voting systems in which the top two finishers for at large positions may be elected in general elections, without primary elections. The Federal Voting Rights Act allows hybrid systems in which some positions are cumulative voting positions. The Federal District Court ruling requiring Yakima to change its voting system unjustly shortened the terms of city councilmembers. A proposed state voting rights act, HB 1745, is preferable to this bill. Unlike HB 1745, this bill does not require cities to consult with affected citizens to address the underlying issue, polarized voting. Cities using district-based voting systems could still dilute votes of minority voters if election districts are improperly drawn. Counties can already establish district-based general election voting systems in home rule charters. Provisions in this bill concerning noncharter counties may violate constitutional provisions requiring a uniform system of government in noncharter counties.

Testimony From 2016 Regular Session. PRO: This bill would eliminate an ambiguity in current state law and allow Pasco to change to district-based elections, avoiding a costly federal lawsuit. This bill is complimentary to other proposed legislation, the Washington Voting Rights Act, and doesn't solve all problems. The bill should be amended to allow the use of modified at-large voting as a local option. In cities where public service is voluntary, dividing into districts lowers the pool of volunteers to serve. Yakima sought to implement modified at-large voting as a remedy in a recent lawsuit, but was prevented from doing so because it is not allowed under state law. There is a public perception in winner-take-all at-large elections that votes don't count. How well will a commissioner represent their district's interests when they must secure the votes from two other districts to get elected? When elections get further away from the people, corporate interests play a larger role and the cost of elections increases.

CON: This bill may not have helped Yakima with their recent litigation. The bill leaves out school districts. What is needed is a stronger framework for cities to look at disenfranchised voting districts and blocs, like that provided under the proposed Washington Voting Rights Act.

OTHER: The bill does not put any requirements on how to district, so a jurisdiction might just move from one problematic system to another without achieving fairness. That would shield jurisdictions from litigation because information about how the new system operates would need to be collected. There are no tools that jurisdictions want for community collaboration, such as providing data, analysis, and a proposed remedy. The Washington Voting Rights Act puts the onus on the complainant to provide that analysis, putting the jurisdiction in a better place to create a fairer election system. The bill should be amended to establish deadlines for presenting districts to county auditors and making districts effective for subsequent elections.

Persons Testifying: Persons Testifying From 2015 Regular Session. PRO: Alex Soldano, City of Pasco; Victoria Lincoln, Association of Washington Cities.

OTHER: Krist Novoselic, Fair Vote; Micah Cawley, Mayor, City of Yakima; Shankar Narayan, American Civil Liberties Union; Teresa Mosqueda, Washington State Labor Council; Eric Gonzalez, OneAmerica; Brian Enslow, Washington State Association of Counties.

Persons Signed in to Testify But Not Testifying: No one.

Persons Testifying From 2016 Regular Session. PRO: Matt Watkins, Mayor, City of Pasco; Krist Novoselic, Fair Vote; Ken Morse, Informed Citizen Network.

CON: Neil Beaver, OneAmerica.

OTHER: Shankar Narayan, ACLU of Washington; Mary Hall, Thurston County Auditor.

Persons Signed In To Testify But Not Testifying: No one.