

SENATE BILL REPORT

SB 5068

As Passed Senate, March 2, 2017

Title: An act relating to establishing a voting rights act to promote equal voting opportunity in certain political subdivisions by authorizing district-based elections in cities, towns, code cities, and counties.

Brief Description: Establishing a voting rights act to promote equal voting opportunity in certain political subdivisions by authorizing district-based elections in cities, towns, code cities, and counties.

Sponsors: Senators Miloscia, Rivers, Schoesler, Honeyford and Padden.

Brief History:

Committee Activity: State Government: 1/18/17, 2/01/17 [DP, DNP].

Floor Activity:

Passed Senate: 3/02/17, 25-24.

Brief Summary of Bill

- Allows non-charter counties, code cities, second-class cities and towns to authorize district-based or hybrid systems for electing their legislative authorities by ordinance or, if authorized, by voter initiative.

SENATE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass.

Signed by Senators Miloscia, Chair; Zeiger, Vice Chair; Pearson.

Minority Report: Do not pass.

Signed by Senators Hunt, Ranking Minority Member; Kuderer.

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

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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.

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 non-charter 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.

1. *Voting restricted in primary elections only.* In this system, all legislative authority positions represent election districts. A primary election voter may vote only for candidates in the voter's election district, while a general election voter may vote for all legislative authority positions, regardless of the election district a position represents.
2. *Voting restricted in primary elections only—hybrid system.* In this system, some legislative authority positions represent election districts and other positions are at-large positions. A primary election voter may vote for candidates in the voter's election district 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 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-favored candidates were invariably defeated in general elections.

3. *Voting restricted in both primary and general elections.* In this system, 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.
4. *Voting restricted in both primary and general elections—hybrid system.* In this system, 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. At least five optional municipal code cities, Bonney Lake, Ellensburg, Kennewick, Prosser, and Snohomish, returned to this system after abandoning district-based systems.

For San Juan County Commission elections, 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 by ordinance.

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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: In our state, we have a tradition of bipartisan boundary drawing. We want the state to be a beacon of civil rights for the nation. It makes sense to allow cities flexibility in how their councilmembers are elected. We think there are cities that would chose to do so, if given the authority. The Voting Rights Act is instrumental in removing barriers to minority access. This will give cities and counties the opportunity to choose new, more inclusive systems, without costly federal intervention.

CON: This doesn't solve the problem being discussed. The problem isn't at-large voting; it's whether voters in protected classes have a fair opportunity to express their preferences. This bill would not have protected voters in Yakima or Pasco, where litigation has occurred. The bill provides no guidance on a fair way to draw the districts. This is merely a band-aid. Districts will ensure political stasis. Residents will only have one vote on the city council and exercise it every four years. Councilmembers will only be responsive to narrow neighborhood needs.

OTHER: Counties are concerned that if they were to take this approach, they could be sued for violating the state constitutional requirement that non-charter counties have a uniform system of government. That is an unsettled legal issue. This is still counties' preferred vehicle on this issue.

Persons Testifying: PRO: Senator Mark Miloscia, Prime Sponsor; David Elliott, Office of the Secretary of State; Victoria Lincoln, Association of WA Cities; Jason Peetz, citizen.

CON: Alex Hur, OneAmerica; Stuart Halsan, FairVote.

OTHER: Josh Weiss, Washington State Association of Counties.

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