

SENATE BILL REPORT

SB 5378

As Reported by Senate Committee On:
State Government & Elections, February 10, 2023

Title: An act relating to requiring voter education within jurisdictions engaged in changing the method of selecting candidates during a primary or removing a primary as the result of employing a single event election process in a general election including a new cause of action, and reversion of the candidate selection processes when necessary.

Brief Description: Concerning voter education.

Sponsors: Senators Kauffman, Wilson, J., Hunt, Hasegawa, Rivers, Keiser, Dozier, King, Van De Wege, Lovick, MacEwen, Conway, Lovelett, Nguyen, Saldaña, Wellman and Wilson, C.; by request of Secretary of State.

Brief History:

Committee Activity: State Government & Elections: 1/31/23, 2/10/23 [DPS].

Brief Summary of First Substitute Bill

- Requires that jurisdictions using alternative voting methods notify the public of changes and create public education campaigns to familiarize voters with elements of new processes.
- Requires that county elections offices and jurisdictions using alternative voting methods coordinate educational events for individuals with intellectual disabilities and create materials for dissemination in local high schools to inform about new processes.
- Causes jurisdictions which fail to comply with the educational and outreach requirements to revert to the use of previous non-alternative voting methods.
- Exempts jurisdictions which passed an ordinance or ballot measure adopting an alternative voting method before January 1, 2023 from the requirements of the act.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5378 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hunt, Chair; Valdez, Vice Chair; Wilson, J., Ranking Member; Dozier, Fortunato, Hasegawa and Kuderer.

Staff: Samuel Brown (786-7470)

Background: Candidate Selection in Washington. In primary elections, Washington uses a top-two system in which all candidates are listed on the same ballot and voters may choose any candidate. The two candidates receiving the most votes in the primary election advance to the general election. For offices in which there is more than one position with the same name, district number, or title, the positions are dealt with as separate offices to which candidates are elected in single-winner contests.

In current practice, the winners of single-member offices in all Washington jurisdictions are determined using the plurality system in which voters select one candidate and the candidate who receives the most votes is declared the winner. If there is a tie, the winner is chosen by lot.

Alternative Voting Methods. Several jurisdictions have adopted alternative methods of allocating votes to voters to determine which candidates advance out of a primary or win an election. These systems include:

- approval voting, where voters may show support for more than one candidate for a single position; and
- ranked choice voting (RCV), where a voter ranks candidates in order of preference, and votes are transferred to lower-ranked candidates who are not elected on first-place votes if a majority is not reached.

Fargo, North Dakota, and St. Louis, Missouri use approval voting to elect city councilmembers. Municipalities in several states, including California, Colorado, Delaware, Maine, Maryland, Massachusetts, Minnesota, New Mexico, and New York, have used RCV in municipal elections. Alaska and Maine use RCV in statewide and federal elections.

In 2022, Seattle voters defeated a referendum to use approval voting and passed a referendum to use RCV in municipal elections beginning in 2027. Pierce County used RCV for countywide offices in 2008 and 2009. Votes in Clark and San Juan counties rejected ballot measures to use RCV in 2022.

Summary of Bill (First Substitute): Public Outreach Campaign. Any jurisdiction using an alternative method of candidate selection must create a public outreach campaign to inform voters of changes. The campaign must include materials mailed to each voter's

address of record, an electronic information portal or website explaining the new process, and a toll-free hotline for voters to ask questions related to the new method of candidate selection.

Materials and the information portal or website must be translated into languages required by federal law and spoken within the jurisdiction. Materials must be understandable by voters with limited English proficiency, limited literacy, and intellectual disabilities. The information portal or website and toll-free hotline must be publicly available for at least 12 months before the beginning of the new method of candidate selection.

Advertising Campaign. The jurisdiction must also undertake an advertising campaign during the 12 months before use of the alternative method of candidate selection. This campaign must include:

- a social media campaign targeting potential voters;
- a radio and television campaign targeting potential voters, which clearly identifies the jurisdiction so as to reduce confusion; and
- a newspaper campaign with weekly ads on the day of highest expected circulation in all newspapers serving the jurisdiction.

Public Education Campaign. The county election office must:

- provide instructional materials and instructors upon request to high schools serving students within a jurisdiction adopting an alternative method of candidate selection; and
- in conjunction with the jurisdiction adopting an alternative method of candidate selection, must also coordinate a series of events with local organizations serving persons with intellectual disabilities.

Instructional materials and events must provide an overview of the new method, contrast with the prior method, and explain that ballots may have multiple methods of selecting candidates for different jurisdictions. Events with local organizations serving persons with intellectual disabilities must occur on at least a monthly basis at locations well-served by public transit in the 12 months before use of the alternative method of voting selection.

Costs of the public education campaign, including materials, advertising, distribution, and translation costs, are solely the responsibility of the jurisdiction using the alternative method of candidate selection. The county election office must be reimbursed by the jurisdiction for costs it incurs.

Enforcement. Any eligible voter in a jurisdiction using an alternative method of candidate selection may bring action if the jurisdiction fails to comply with the public education and outreach requirements of the bill. If the court finds that the jurisdiction failed to comply with the public education and outreach requirements, it must order the jurisdiction to revert to its previous method of candidate election and may award financial damages as appropriate.

Other Provisions. The requirements of the bill do not apply to jurisdictions adopting an alternative method of candidate selection through an ordinance or ballot measure passed by January 1, 2023.

EFFECT OF CHANGES MADE BY STATE GOVERNMENT & ELECTIONS COMMITTEE (First Substitute):

Other Provisions. The requirements of the bill do not apply to jurisdictions adopting an alternative method of candidate selection through an ordinance or ballot measure passed by January 1, 2023.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on January 1, 2024.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: When any new voting system is introduced, completely different from what we've been doing for decades, there's nothing requiring any voter education. Washington cannot leave voters behind. Washington elections must be transparent and not implicitly suppress voters by using systems they don't understand. Citizens who are not fluent in English or who are intellectually disabled will struggle to vote in a new way. Some requirements in the bill are too proscriptive - counties know what work for them, and they should not all be required to use TV as an outreach medium if they know it will be ineffective. A 12-month period may be too long, as voters may use the new method for voting on existing systems and not have their votes counted properly.

OTHER: Voter education is needed in jurisdictions going through fast changes to their systems. We are concerned about the message this sends to community members who have worked hard to change their voting systems to be more representative and have tried to educate their communities about what ranked choice voting really is. It's hard that all this work could be tossed away because of what the local jurisdiction does or fails to do with their outreach.

Persons Testifying: PRO: Senator Claudia Kauffman, Prime Sponsor; Steve Hobbs, Office of Secretary of State; Mary Hall, Thurston County Auditor.

OTHER: Eric pratt, I, America; Jude Ahmed, Urban League of Metropolitan Seattle and Tacoma Urban League.

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