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## State Government Committee

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### HB 3177

**Brief Description:** Enacting the Qualifying Primary Act.

**Sponsors:** Representatives Hatfield, Armstrong, Hankins, Campbell, Kessler, Grant and Kirby;  
by request of Secretary of State.

Brief Summary of Bill
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| <ul style="list-style-type: none"><li>• Creates a qualifying primary, in which the top two vote-getters, regardless of party affiliation, advance to the general election.</li></ul> |
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**Hearing Date:** 2/20/04

**Staff:** Katie Blinn (786-7114).

**Background:**

Blanket Primary:

In 1935, the Legislature approved an initiative to the Legislature establishing Washington's blanket primary for partisan elections. All eligible registered voters may participate because there is no process to register by party. Candidates for partisan office, however, may self-designate an affiliation with a political party when they file a declaration of candidacy in July. For each office that appears on the ballot, voters may vote for any of the candidates running, regardless of the candidate's party affiliation. In order to advance to the general election, a candidate must receive the highest number of votes cast for candidates of that party, as well as at least 1 percent of all the votes cast for that office. Consequently, the blanket primary operates as a nominating process, in that only one candidate from each political party proceeds to the general election. The partisan offices include: U.S. Senate, U.S. House of Representatives, Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Auditor, Attorney General, Commissioner of Public Lands, Insurance Commissioner, state Senate, state House of Representatives, and county offices.

Nonpartisan Primary:

Candidates for nonpartisan office advance to the general election if they receive the highest or second highest number of votes cast for the office. They also must have received at least 1 percent of the votes cast for the office. Nonpartisan offices include the Superintendent of Public Instruction, all judicial offices, cities, towns, and special purpose districts. Candidates skip the primary and only appear in the general election if only one or two candidates are running for a city, town, special purpose district, or district court judicial position.

Filling Vacancies:

If there are no candidates for a partisan office from one of the major parties because no one from that party filed during the regular filing period, the party may appoint a candidate to fill the vacancy on the major party ticket. If a partisan office that was not scheduled to be on the ballot becomes vacant any time between the regular filing period and six weeks before the primary, a special filing period is opened and the position appears in the primary.

If there are no candidates for nonpartisan office because no one filed during the regular filing period, or if a nonpartisan office that was not scheduled to be on the ballot becomes vacant any time between the regular filing period and six weeks before the primary, a special filing period is opened and the position appears in the primary. If the nonpartisan void in candidacy or vacancy in office occurs within six weeks of the primary, a special filing period is opened and the position appears in the general election. If the nonpartisan void in candidacy or vacancy in office occurs within six weeks of the general election, the election lapses and the office is stricken from the ballot.

#### Minor Parties and Independent Candidates:

Minor party and independent candidates go through a separate process to appear on the general election ballot. Minor parties and independent candidates hold a nominating convention at the end of June to nominate a candidate for partisan office. Nomination requires both a nominating certificate and a nominating petition. The certificate must specify the name of the minor party, the name of the candidate, and the office. The nominating petition must include the signatures of at least 200 registered voters for candidates for President, U.S. Senate, or a statewide office, and at least 25 signatures for any other partisan office. The independent or minor party candidate must still pay the filing fee and file a declaration of candidacy, and receive at least 1 percent of all votes cast for that office in order to advance to the general election.

#### Litigation:

In 1996, voters in California approved an initiative that established a blanket primary modeled after Washington's blanket primary. However, one aspect of California's previous closed primary system, party registration, was retained. Four political parties in California sued the California Secretary of State, arguing that the blanket primary system is unconstitutional because it allows voters who are not affiliated with a political party to select that party's nominees, thereby violating the political parties' right to freely associate. The system was upheld in U.S. District Court and the Ninth Circuit Court of Appeals, but struck down in June 2000 by the U.S. Supreme Court in *California Democratic Party, et al. v. Jones*, 350 U.S. 567 (2000).

The Supreme Court noted that, with the right to associate is the right *not* to associate, and that the right of association would prove meaningless if associations could not limit control over their decisions to those who share their same interests. The Supreme Court affirmed that special protection is given to the process by which political parties selects their nominees since a nominee acts as a standard bearer and spokesperson for the party, communicating the party's ideology and preferences to the general public. The Supreme Court concluded that California's blanket primary violates the political parties' right of free association because it allows voters who are not affiliated with a party to participate in that party's nominating process.

In July 2000, the three major political parties in Washington, the Democratic Party, the Republican Party, and the Libertarian Party, sued the Washington Secretary of State. The political parties sought a permanent injunction prohibiting the Secretary of State from conducting

any future partisan primaries under the blanket system. Finding that Washington election law and the Washington State Constitution were sufficiently different from California to distinguish the Washington lawsuit from the *California Democratic Party, et al. v. Jones* opinion, the U.S. District Court upheld the Washington blanket primary. However, in September 2003, the Ninth Circuit Court of Appeals reversed the District Court decision and, based on the U.S. Supreme Court opinion, found the Washington blanket primary unconstitutional. *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (9th Cir. 2003). The Ninth Circuit remanded the case back to the District Court for entry of summary judgment, declaratory judgment, and an injunction in favor of the political parties.

In November 2003, the Attorney General's Office, on behalf of the Secretary of State, filed a petition for writ of certiorari seeking review of the Ninth Circuit opinion by the U.S. Supreme Court. This is a strictly discretionary appeal. If the Supreme Court accepts the petition, it will hear the case sometime during its 2004-05 term. If the Court denies the petition, the ruling of the Ninth Circuit stands and the case will be remanded to the District Court. The Supreme Court is expected to issue its decision in late February 2004.

### **Summary of Bill:**

#### Qualifying Primary:

A new primary system is created, called a "qualifying primary". Each voter, regardless of party affiliation, may vote for any candidate listed on the ballot. The primary election is no longer a nominating process in that it is no longer an election to choose a political party's nominees. Instead, two candidates for each office *qualify* for the general election by becoming the two candidates who receive the most votes and receive at least 1 percent of the total votes cast for the office. Voters are not required to register by party or make a public declaration of party affiliation in order to participate. References to "nominating" procedures are changed to "qualifying" procedures. The statute authorizing the blanket primary is repealed.

#### Party Affiliation:

On the declaration of candidacy, the candidate may identify a major or minor political party that best approximates his or her political philosophy. Party affiliation information is simply to provide voters a brief description of each candidate's political philosophy, and cannot be construed as an endorsement or nomination by that political party.

If a court declares that a political party has the right to control the use of its name, thereby preventing candidates from self-designating party affiliation in a declaration of candidacy, candidates may instead submit a three-word description best approximating his or her political philosophy. Party affiliation or political preference information is listed on the primary and general election ballots, but may not impact how the primary is conducted, the canvassing of ballots, the certification of results, or the number of candidates for whom a voter may cast a vote.

#### Filling Vacancies:

The process for filling vacancies on a major party ticket, or for filling vacancies caused by the death or disqualification of a minor or major party candidate are both repealed. Between the regular filing period and six weeks before the primary, if there is a void in candidacy for a partisan or nonpartisan office because no one filed during the regular filing period, a special three-day filing period is reopened. If a partisan or nonpartisan office that was not previously scheduled to be on the ballot suddenly becomes vacant sometime between the regular filing period and six

weeks before the primary, a special three-day filing period is reopened and the position appears on the primary ballot. If a void in candidacy for a partisan occurs within six weeks of the primary, the election lapses and the office is stricken from the ballot.

Minor Parties and Independent Candidates:

Minor and independent candidates for all offices except President and Vice President are treated the same as major party candidates. President and Vice President nominations must still use the nominating convention process.

**Appropriation:** None.

**Fiscal Note:** Requested on February 16, 2004.

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