

# SENATE BILL REPORT

## SB 5745

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As Reported By Senate Committee On:  
Government Operations & Elections, February 17, 2005

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

**Brief Description:** Modifying primary election law.

**Sponsors:** Senators Roach, Hargrove, Berkey, Fairley, Finkbeiner, Haugen, Benson, Sheldon, Schmidt, Mulliken and Rockefeller; by request of Secretary of State.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/14/05, 2/17/05 [DPS].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 5745 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Roach, Ranking Minority Member; Fairley, Kline, McCaslin, Mulliken and Pridemore.

**Staff:** Mac Nicholson (786-7445)

**Background:** Last year, a new primary system was enacted into law and used in the 2004 primary election. The primary, commonly referred to as the "Montana" primary, requires the voter to select one major party ballot, or mark which party they wish to vote for on a consolidated ballot, and vote for only that party's candidates. Votes for candidates of a major political party other than the one selected by the voter would not be counted. The candidate with the most votes would proceed to the general election as the nominee of that party. The voter could also vote in nonpartisan offices. Minor party and independent candidates were nominated at conventions and appeared only on the general election ballot.

Initiative 872 was passed by the voters at the 2004 general election. I-872 implements a new system of conducting primary elections throughout the state, commonly referred to as a "top two" primary. Rather than a nominating process, the primary is used to winnow candidates for office to a final list of two for each office. Voters are free to cast votes for any candidate in the primary election without any limitation based on party preference or affiliation of either the voter or the candidate. The candidates' self-declared party affiliation, if any, will appear on the primary and general election ballots. The names of the two candidates who receive the greatest number of votes in the primary election will appear on the general election ballot. The specific mechanics of administering such a top two primary election were not included in the language of I-872, nor did the initiative strike provisions relating to the "Montana" primary. Additionally, I-872 amended and revived statutes that were repealed in the 2004 primary bill, which has resulted in a number of duplicate statutes in title 29A that, in some cases, are at odds with each other.

Amending the terms of an initiative within two years of its passage requires an affirmative vote of two-thirds of the members of the legislature.

**Summary of Substitute Bill:** The bill harmonizes existing election laws with the provisions and intent of I-872. The bill removes the "Montana" primary from election statutes. The separate ballot requirement for each major political party is eliminated, as is the option to use a consolidated ballot. The term "primary" is redefined as a procedure for winnowing candidates for public office to a final list of two as part of a special or general election. References throughout election laws to the primary as a nominating process are changed and refer to the primary as a qualifying process.

A primary must be conducted prior to any general election where candidates for partisan office are to be elected. If a candidate indicates a party preference on his or her declaration of candidacy, that party preference will be listed on the ballot. If no party preference is expressed, the candidate will be listed as an independent ballot. The bill states that party preference is listed for informational purposes only, and may not limit the options available to voters when voting.

The term "major political party" is redefined to mean a party identified on declaration of candidacy of at least one candidate for statewide office who received at least 5 percent of the total votes cast for that office at the last primary or general election in a year in which the office of Governor appeared on the ballot. Once qualified, major political party retains status as a major party until the next gubernatorial election.

Precinct committee officers are elected at the general election, rather than at the primary election. Statutes throughout title 29A are amended to implement this change.

All candidates for office appear on the primary ballot. Minor party candidates no longer proceed straight to the general election. Minor party nominating conventions are eliminated except for nominations for President and Vice President. Minor party nominations for those offices must be made at one or more conventions held no earlier than the first Sunday in July and no later than 70 days prior to the general election. Nominating petitions for minor party presidential and vice presidential candidates must have the signatures of 250 registered voters.

The bill provides that voids in candidacy are treated the same for all offices, whereas existing law treats voids differently depending on whether the office is a nonpartisan or partisan office.

The bill addresses situations where a candidate dies or is disqualified and a special filing period is not opened. If the candidate dies or becomes disqualified after filing but before the last day of the filing period, then the declaration is void and his or her name will not appear on the ballot. If the candidate dies or becomes disqualified after the close of filing but before the day of the primary, then the name stays on the ballot and votes for that candidate will be counted, but the name will not appear on the general ballot and no name will be substituted if that dead or disqualified person was one of the two to advance. If the candidate dies or becomes disqualified after the primary but before the general, then the name appears on the general election ballot and if the dead or disqualified person wins, the office will be regarded as vacant.

For public disclosure and campaign contribution purposes, a caucus political committee is redefined to be a political committee organized and maintained by the members of the majority caucus in the Senate or House of Representatives, or by members of the minority caucus in the Senate or House of Representatives.

The bill also makes technical changes, including reenacting statutes that were amended by I-872 but were repealed prior to passage of the initiative by last session's primary bill; repealing existing statutes that duplicated sections amended in I-872; and correcting internal statutory references.

**Substitute Bill Compared to Original Bill:** The substitute eliminates the provision that would allow a candidate to submit a three word description in the event a court holds that a political party has the right to control use of the name. The substitute allows minor party nominations for president and vice president to be made at multiple conventions, lowers the signature requirement for such nominations from 1000 to 250, and re-instates notice provisions for such conventions that were taken out of the original bill.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

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

**Testimony For:** This is a "clean-up" bill that implements I-872, but it will require a two-thirds vote of the legislature, as it does amend the initiative. The initiative made a broad change to the top two primary, but the details of conducting the primary are not set out in the initiative. Further, there are some conflicts between I-872 and existing statutory law that are cured in the bill. Also, the initiative didn't repeal the Montana primary, so the bill strikes that from the books. The bill mirrors the top two portion of the primary bill that was passed last year and vetoed. While the initiative destroys minor parties, the legislature should clean it up to benefit all citizens.

**Testimony Against:** The primary can be implemented without amending or changing the initiative. The legislature should allow multiple conventions for minor party presidential and vice presidential nominations.

**Who Testified:** PRO: Sam Reed, Shane Hamlin, Katie Blinn, Office of Secretary of State.

CON: Don Whiting, WA State Grange; Chris Stegman, Green Party; Lonnie Johns-Brown, League of Women Voters; Ruth Bennett, Libertarian Party; David Anderson, Your Vote Counts.