

FINAL BILL REPORT

ESB 6453

PARTIAL VETO

C 271 L 04

Synopsis as Enacted

Brief Description: Enacting a qualifying primary.

Sponsors: Senators Roach, Hargrove, Hale, T. Sheldon, Schmidt, Winsley, McCaslin, Carlson, Fairley and Rasmussen; by request of Secretary of State.

Senate Committee on Government Operations & Elections

Senate Committee on Ways & Means

Background: The method used in Washington to nominate candidates for the general election ballot is called the "blanket primary." This primary allows the votes of voters who are not members of a major political party to be counted in determining what candidate will run in the general election as the major political party's candidate or standard bearer. This feature of the Washington blanket primary was held unconstitutional by the federal Court of Appeals because, in the court's opinion, the major political parties' First Amendment right of free association was violated.

Summary: A "top-two" primary is enacted. Nominees of a political party are not selected at the primary election. Rather, the purpose of the primary is to certify two candidates for any partisan office as qualified to appear on the general election ballot. All candidates appear on the primary ballot, and are qualified to proceed to the general election ballot when they receive either the most or second most votes cast for each office appearing on the primary ballot. All voters are permitted to vote for the candidate they prefer for each office.

If a court rules that a candidate cannot state a political party that best approximates his or her political philosophy on the declaration of candidacy, the Secretary of State must issue a notice to the Governor, leaders of the Legislature, Code Reviser, and all county auditors that the state can no longer hold a qualifying primary. Instead, the state will use a nominating primary commonly referred to as an open, private choice primary, or the "straight Montana" primary. The notice must be issued by June 1 in order to switch primaries for that year.

The open, private choice primary is used to nominate major party candidates for office. Voters must affiliate with one political party for the day, and may only vote for candidates of that party. Voters cannot cross over and vote for candidates of another party as they move down the ballot. All eligible registered voters may participate in the primary, and there is no party registration. The political party a voter selects is not public information. Neither government nor political organizations may maintain any records that identify a voter with information marked on a ballot, including party affiliation.

Minor party and independent candidates in the open, private choice primary go directly to the general election ballot once they have satisfied the nominating convention requirements. The number of signatures required for nomination is increased from 200 to 1,000 for President, U.

S. Senate, U.S. House of Representatives, or statewide office; and from 25 to 100 for a legislative or local office. Major parties that did not receive more than 10 percent of the votes cast for any office can opt out of major party status and nominate candidates via nominating conventions.

County auditors have the option of using two types of ballots for the primary: a consolidated ballot that lists all major party candidates and includes a party affiliation check-off box; or physically separate ballots for each major party. The order that names appear on the ballot remains at random, but county auditors no longer have to rotate the names.

Existing election statutes are amended to implement the open, private choice primary.

Votes on Final Passage:

Senate	28	20	
House	51	46	(House amended)
Senate	36	12	(Senate concurred)

Effective: April 1, 2004

June 1 following Secretary of State issuing a notification that no qualifying primary may be held in this state (Sections 102-193)

Partial Veto Summary: The "top two" primary is vetoed.