
State Government & Tribal Relations Committee

HB 1156

Brief Description: Increasing representation and voter participation in local elections.

Sponsors: Representatives Harris-Talley, Gregerson, Shewmake, Ormsby, Chopp, Lekanoff, Davis, Frame, Macri, Duerr, Pollet, Goodman, Berg, Taylor, Walsh, Rule, Ortiz-Self, Berry, Peterson, Thai, Wicks, Bateman, Johnson, J., Simmons, Fitzgibbon, Ramel and Dolan.

Brief Summary of Bill

- Permits the use of ranked choice voting (RCV) in elections for offices in counties, cities, towns, school districts, fire districts, and port districts, and establishes certain requirements for RCV ballot design and vote tabulation.
- Permits cities, towns, and many special districts to choose whether to hold their elections in even- or odd-numbered years.
- Adds a cost-recovery provision to the Washington Voting Rights Act (Act) to allow a person who files a notice alleging a violation of the Act to recoup research costs, up to \$30,000, if the political subdivision adopts a remedy in response to the notice.
- Permits the Secretary of State to provide grants to local governments to implement RCV, switch to even-year elections, or make changes to their electoral system in response to a notice filed under the Act, subject to appropriation.

Hearing Date: 2/8/21

Staff: Jason Zolle (786-7124).

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.

Background:

Determining Election Winners.

Current Practice in Washington.

Each county in Washington has a canvassing board comprised of the chair of the county legislative body, the county auditor, and the county prosecuting attorney. For each election, the canvassing board is responsible for examining ballots, tabulating votes, and certifying election results. In elections for statewide office, United States Congress, and offices in legislative and judicial districts that include parts of more than one county, the Secretary of State (Secretary) then canvasses and certifies the returns.

With one exception, state law does not require any particular method for canvassing boards or the Secretary to determine which candidate should be certified as the winner after a general election. 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. In the 2008 and 2009 elections, Pierce County instead used a method called ranked choice voting (RCV) to determine the winner of its county-level offices.

Ranked Choice Voting.

Ranked choice voting is a method of voting in which voters may rank multiple candidates in order of preference. For single-winner elections, votes are tabulated using instant runoff voting. In this method, after voters' first-choice votes are tabulated, the candidate with the lowest number of votes is eliminated, and votes for that candidate are transferred to the next-ranked candidate on those ballots. Votes are retallied, and this process continues until one candidate reaches the threshold necessary to be declared the winner. In elections for multiple-member offices, votes are tabulated using the single transferable vote method. In this method, the winning threshold is calculated based on the number of seats to be filled and the number of votes cast. Ballots are counted in rounds, and votes are transferred to next-ranked candidates from candidates with the fewest votes, who are eliminated, as well as candidates who have already surpassed the threshold to win.

Municipalities in several states, including California, Colorado, Maine, Maryland, Massachusetts, Minnesota, New Mexico, and New York, have used RCV in municipal elections. One state, Maine, has used RCV in statewide and federal elections. Alaska voters approved a ballot measure in 2020 that will require use of RCV in future state and federal elections.

Primary Elections.

For primary elections, Washington uses a top-two primary system in which all candidates are listed on the same primary ballot and voters may choose any candidate. The name of the candidate who receives the greatest number of votes in the primary appears first on the general election ballot, and the name of the candidate who receives the next greatest number of votes appears second. 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.

Local Election Dates.

Every November, the state holds a statewide general election. In years that end in an even number, the election includes general elections for federal, state, and county officers, as well as state or local ballot measures such as initiatives, referenda, and constitutional amendments. In years that end in an odd number, general elections are held for city, town, and special district officers in special districts that hold elections under Title 29A, which includes school districts, park districts, port districts, and others. In addition, odd-year elections may include elections for:

- federal, state, and county officers, state legislators, supreme court justices, and superior court judges to fill the remainder of unexpired terms;
- county officers in a county governed by a charter that provides for odd-year elections; and
- state ballot measures.

The Washington Voting Rights Act.

A political subdivision violates the Washington Voting Rights Act (Act) when its elections exhibit polarized voting and there is a significant risk that members of a protected class do not have an equal opportunity to elect candidates of choice as a result of dilution or abridgement of their rights. A protected class includes voters who are members of a race, color, or language minority group. The Act applies to elections held within counties, cities, towns, school districts, fire protection districts, port districts, and public utility districts (political subdivisions).

Any voter who resides in a political subdivision may notify the political subdivision of the voter's intent to challenge the election system for violating the Act. The notice must describe the alleged violation and a possible remedy. The person bringing the notice and the political subdivision must work in good faith to implement a remedy that provides members of the protected class or classes equal opportunity to elect candidates of their choice.

A political subdivision may take corrective action to change its election system to remedy a potential violation of the Act. The political subdivision must obtain a court order certifying that the remedy complies with the Act and was prompted by a plausible violation of the Act. Courts must apply a rebuttable presumption against adopting a political subdivision's proposed remedy, and all facts and reasonable inferences must be viewed in favor of those opposing the proposed remedy.

If the political subdivision does not take corrective action within 90 days of receiving a notice, any person may file an action in court. If a violation is found, the court may order appropriate remedies, including requiring the political subdivision to redistrict or create a district-based election system. The court may award attorneys' fees and costs to a prevailing plaintiff. Prevailing defendants may be awarded certain costs, but not attorney's fees.

Summary of Bill:

Ranked Choice Voting.

Counties, cities, towns, school districts, fire districts, and port districts (eligible jurisdictions) that have voters in only one county may choose to use RCV for their elections. An eligible jurisdiction that has voters in more than one county may choose to use RCV if another eligible jurisdiction that lies entirely within at least two counties of the original district uses RCV, or if RCV is ordered to remedy a violation of the Act. An eligible jurisdiction that chooses to adopt RCV need not use it for every office in an election. Ranked choice voting must be implemented within two years following its adoption, although no earlier than 2024.

Certain requirements for RCV ballot design and vote tabulation are established.

Eligible jurisdictions that adopt RCV must either hold a primary using RCV to winnow the list to five candidates or eliminate the primary altogether. No primary may be held if fewer than five candidates have filed for office.

For offices in which there is more than one position with the same name, district number, or title, an eligible jurisdiction using RCV can choose whether the positions will be dealt with as separate offices. If dealt with as separate offices, RCV is conducted using instant runoff voting. If dealt with as a multi-member office, RCV is conducted using the single transferable vote method.

An RCV work group is established, consisting of a member from the Office of the Secretary of State, a member from the Washington State Association of County Auditors, and a member from an organization with expertise in RCV. The Secretary is required to consult with the work group when adopting rules to help administer and tabulate votes in RCV elections.

Even-Year Elections.

City, town, and special districts that hold elections under Title 29A may choose to hold their elections in even-numbered years, rather than odd-numbered years. The choice must be made by ordinance or similar legislative act.

Whenever a city, town, or special district chooses to switch its general elections between odd and even-numbered years and, as a result, the term of office of an elected official is scheduled to expire but a general election for that office has not yet been held, the elected official shall continue to serve until a successor is elected and qualified. For example, a city council member elected in 2019 whose term is scheduled to expire at the end of 2023 shall continue to serve that term until she is reelected or replaced in the 2024 election.

Language specifying the lengths of terms of offices for initial officers in newly formed special districts is modified. Such terms are determined based on whether the district is formed in an on-cycle or off-cycle year, rather than an even or odd year.

Washington Voting Rights Act Notice Cost Recovery.

A cost-recovery provision is added to the Act. When: (1) a person or persons files a notice to a political subdivision alleging a violation of the Act; (2) the subdivision adopts a remedy that

takes the notice into account; and (3) a court issues an order certifying that the remedy complies with the Act and was prompted by a plausible violation, then the person or persons who submitted the notice may make a demand to the political subdivision for reimbursement of the costs incurred in conducting the research necessary to send the notice. The demand must be received within 30 days of the adoption of the new electoral system, and it must include financial documentation. The demand must be paid within 60 days, up to \$30,000.

Grants of Funds to Implement the Bill.

Subject to appropriation, the Secretary may provide grants to local governments to implement RCV, switch to even-year elections, or make changes to their electoral system in response to a notice filed under the Act.

Appropriation: None.

Fiscal Note: Requested on February 1, 2021.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.