

HOUSE BILL REPORT

HB 1156

As Reported by House Committee On:
State Government & Tribal Relations
Appropriations

Title: An act relating to increasing representation and voter participation in local elections.

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 History:

Committee Activity:

State Government & Tribal Relations: 2/8/21, 2/11/21 [DPS];
Appropriations: 2/17/21, 2/18/21 [DPS(SGOV)].

Brief Summary of Substitute 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.
- 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 or make changes to their electoral system in response to a notice filed under the Act, subject to appropriation.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Walsh, Assistant Ranking Minority Member; Dolan and Gregerson.

Minority Report: Without recommendation. Signed by 2 members: Representatives Volz, Ranking Minority Member; Graham.

Staff: Jason Zolle (786-7124).

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.

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 Substitute 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 ranked choice voting (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 (Secretary), 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.

Washington Voting Rights Act Notice Cost Recovery.

A cost-recovery provision is added to the Washington Voting Rights Act (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 or make changes to their electoral system in response to a notice filed

under the Act.

Substitute Bill Compared to Original Bill:

The substitute bill removes provisions that permit jurisdictions to switch to even-year elections, and all related provisions.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) Ranked choice voting (RCV) is a more equitable way to elect representatives. It gives communities of color more opportunity and representation, which better fosters an inclusive and multiracial democracy. Younger candidates in particular have a better chance of being elected under RCV. The either-or system of voting dilutes votes, especially in a hyper-partisan environment, and it allows racist and extremist candidates to win with a minority of votes. Local elections should be conducted in the manner that works best for each locality. The City of Spokane is using RCV to vote on redoing its city flag. Ranked choice voting has been used in Utah and Maine and other places and it can be run alongside traditional elections. Creating, verifying, and tabulating ballots is no more difficult than in a traditional election. Ranked choice voting allows the elimination of the primary election and it is easier for voters to understand. Elections are more civil and more transparent when conducted under RCV. This bill merely gives localities the option of using RCV, and democracy is about giving people options on how they want to vote. More financial support for implementation of the Washington Voting Rights Act (Act) will help the Act be more utilized to bring equity to more voting systems. Without being able to recover their costs, people have to find someone to do research for them pro bono or they have to raise money to cover research costs. This bill gives communities of color what they need to enforce their voting rights.

(Opposed) Ranked choice voting is complex and litigious. The bill is vaguely drafted and untested. It requires the state to create, secure, and teach something new to a polarized and skeptical electorate. Voter confidence is essential. Ranked choice voting produced more polarized results when it was used in British Columbia in the 1950s.

Persons Testifying: (In support) Representative Harris-Talley, prime sponsor; Tara Ryan, Tara Zolfaghari, Yasmin Aref, and Alejandro Peralta, FairVote Washington; Melissa Rubio, OneAmerica; Lisa Parshley, Olympia City Council; Alice Woldt, Faith Action Network;

Awale Farah; Chetan Soni and Andrew Hong, Kirsten Harris-Talley Youth Team; Aseem Mulji, Campaign Legal Center; Kamau Chege, Washington Community Alliance; Amelia Powers Gardner, Utah County; Jay Andreottola, Asian and Pacific Islander Americans for Civic Empowerment; Kate Burke, City of Spokane; Ty Stober, City of Vancouver; and Dulce Gutierrez.

(Opposed) Jay Jennings, Office of the Secretary of State; and Ciaran Dougherty.

Persons Signed In To Testify But Not Testifying: Zoltan Hajnal, University of California, San Diego; Kristin Eberhard, Sightline Institute; Aryn Eldridge; Harry Maher, Transit Riders Union; Cindy Madigan, League of Women Voters of Washington; Shannon Grimes, FairVote Washington; Colin Cole, More Equitable Democracy Action; Eli Schwanitz; Katie Lauer, City of Minneapolis; and Sharon Hanek.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on State Government & Tribal Relations be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; Boehnke, Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 10 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chandler, Dye, Harris, Hoff, Jacobsen, Schmick and Steele.

Minority Report: Without recommendation. Signed by 1 member: Representative Caldier.

Staff: Linda Merelle (786-7092).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government & Tribal Relations:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 16, 2021.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the

session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Ranked-choice voting would allow voters to express their preferences and to vote in a manner that represents their values. The present voting system does not allow for second choices. Ranked-choice voting will allow more options for voters, and this bill represents pro democracy reform. Rather than being forced to choose the lesser of two evils, voters can give voice to their priorities. This is critical to a restoration of trust in the election system. If democracy is not strengthened, it will be lost.

(Opposed) It is not clear how expensive it would be to implement this bill, but the real cost is diminished voter confidence. Ranked-choice voting would require new voting and tabulation methods that would be different among jurisdictions. Each jurisdiction could choose a new and slightly different method of voting and tabulation. The cost burden on the counties would be extremely expensive and would include a significant increase in staffing, mailing costs, and the need for new voting machines.

Persons Testifying: (In support) Linda Brewster, Fix Democracy First; Timothy Kitchen; Kelsey Breseman; and Andre Stackhouse.

(Opposed) Jay Jennings, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: Sharon Hanek.