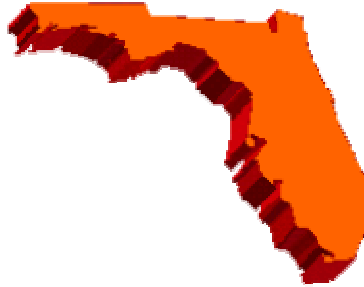


Fair Elections and the Law for the State of Florida



A Project of FairVote

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I. Introduction

This document is intended to educate reformers and elected officials as to the changes necessary for implementing voting reform in their state and community. The reforms advocated are to use IRV (instant runoff voting) for executive offices and full representation (a.k.a. proportional representation) for legislatures, councils, and committees. The reader should be familiar with common voting systems: plurality voting and bloc voting. The reader should also be familiar with fair elections systems: IRV, choice voting (a.k.a. single transferable vote or preference voting), cumulative voting, one-vote (a.k.a. single non-transferable vote or limited voting), and list voting.

While this document is intended to give a legal overview to voting reform, the reader should be cautioned that state statutes and constitutions can be confusing, complex, ambiguous, and subject to more than one interpretation. Further, although the author of this document has attempted a thorough analysis, he may have missed important statutes that would change the analysis herein.

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II. Summary of Findings

- Almost all elections are either by plurality in single-member districts or by bloc voting. There is a provision for runoff elections in primaries, but this has been suspended by the state legislature until 2006.
- A constitutional amendment may be required to implement IRV for general elections of any executive office. State law provides for runoff elections in primaries and only state law would need to be changed to implement IRV for primaries. Cities can override state law and implement IRV for primaries.
- A constitutional amendment is required to implement any method of full representation for the state legislature because the constitution specifies single-member districts.
- To implement full representation for the county board of commissioners or for the school board, state law needs to be changed to allow for multi-member districts. Cumulative voting and one-vote could then be implemented, but a constitutional amendment may be needed to implement choice voting.
- Cities can implement cumulative voting or one-vote to elect their legislatures. A constitutional amendment may be required to implement choice voting.

III. Reformers

The following are known voting reform groups.

- IRV Email List (<http://groups.yahoo.com/group/InstantRunoffFL/>)

IV. General Provisions

A. Plurality Requirement

- "General elections shall be determined by a plurality of votes cast." Fla. Const. Art. VI § 1 (2002). See also Fla. Stat. § 100.181 (2002).
- If no candidate receives a majority of the votes cast in the primary, then there is a second primary in which the names of the top two candidates will be placed on the ballot. Fla. Stat. § 100.061 (2002). Fla. Stat. § 100.091 (2002).

The legality of fair election systems will depend on the interpretation of the constitutional requirement of a plurality vote for general elections. Cumulative voting and one-vote are probably constitutional since the winners are those receiving the largest number of votes. One could argue that plurality inherently applies to electing the one candidate receiving the largest number of votes and require single-member districts, however we will assume below that cumulative voting and one-vote are compatible with the constitution.

Whether IRV and choice voting are compatible with the plurality requirement is a more difficult question. One can argue that the winners of IRV and choice voting elections have received a plurality of the vote and thus are elected in accordance with the constitution. However, a court could interpret the plurality provision as requiring traditional plurality elections.

The language used to describe the process of counting IRV ballots could affect whether IRV is constitutional. If the process for counting the votes is described as requiring a majority of the vote, then this could be perceived as conflicting with the plurality requirement of the constitution. However, the process could instead be described in terms of rounds of counting and stopping the count when only two candidates remain. The winner would then be the person having the highest number of votes in the final round. An approach that may pass muster is to have the IRV tally proceed automatically, rather than conditioned on the lack of a majority, reducing to two finalists, with the candidate then having a plurality being elected.

For primary elections, state law requires a runoff election if the winner doesn't receive a majority of the vote. However, the legislature has suspended this requirement until 2006. This provision is written for single-member districts and probably precludes multi-member districts for primary elections.

B. Ballots

- Voters "place an 'X' mark after the name of the candidate of his or her choice for each office to be filled." Fla. Stat. § 101.011 (2002).

This statute governs how a voter must mark a ballot and may be incompatible with ranked ballots. One could argue that a person's vote consists of ranking candidates and the ranking is achieved through the use of several marks on a ballot. One could also argue that a vote is to be made with a single mark on a ballot and this would be

incompatible with ranked ballots. This is unlikely to be a barrier to voting reform, but it may be desirable to explicitly allow for ranked ballots.

C. Voting Machines

- The Department of State must approve voting equipment. Fla. Stat. § 101.015 (2002). See also Fla. Stat. § 101.294 (2002).
- "The board of county commissioners of any county ... may ... purchase ... any electronic or electromechanical voting system approved by the Department of State." Fla. Stat. § 101.5604 (2002).

If a county needs to purchase voting equipment to implement a desired voting system, they may do so subject to the approval of the state.

V. State Government

A. Executive Offices

There are seven executive offices elected every four years: Governor, Lieutenant Governor, Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Agriculture, and Commissioner of Education.

As described above, a constitutional amendment may be needed to implement IRV for general elections state executive offices. IRV can be implemented for primaries by modifying state law.

B. Legislature

The Senate consists of 40 Senators elected from single-member districts. Half the senate is elected every two years to four-year terms by plurality vote. The House of Representatives consists of 120 Representatives elected from single-member districts every two years by plurality vote.

- "The legislative power of the state shall be vested in a legislature of the State of Florida, consisting of a senate composed of one senator elected from each senatorial district and a house of representatives composed of one member elected from each representative district." Fla. Const. Art. III § 1 (2002). See also Fla. Stat. § 10.00002 (2002).

To implement any system of full representation, the constitution needs to be changed to create multi-member districts. The plurality requirement of the constitution should also be changed to specifically allow for cumulative voting, one-vote, or choice voting.

The implementation of any method of full representation requires a constitutional amendment. Thus, the strategy in proposing a method of full representation to be implemented should be based on the merits of the system and the likelihood of success rather than on statutory considerations.

VI. Local Government

A. County Government

- "There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified." Fla. Const. Art. VIII § 1(d) (2002).
- "Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years." Fla. Const. Art. VIII § 1(e) (2002).
- There shall be one county commissioner for each of the five county commissioners' districts, who shall be elected by the qualified electors of the county. Fla. Stat. § 124.01 (2002).
- Alternatively, the voters can elect five commissioners from single-member districts and elect two commissioners at-large. Fla. Stat. § 124.011 (2002).
- The constitution treats the counties of Duval (Jacksonville), Monroe (Key West), Dade, and Hillsborough specially. Fla. Const. Art. VIII § 6 (2002).
- County Commissioners are elected to staggered terms of four years every two years. Fla. Stat. § 100.041(2) (2002).

As described above, a constitutional amendment may be needed to implement IRV for county executive offices and state law would need to be changed to implement IRV for primaries.

Although the state constitution gives counties some freedom to determine the structure of the board of county commissioners, this freedom has been constrained by state law. State law requires counties to have five commissioners elected from single-member districts and gives counties the option of having two more commissioners elected at-large. Ostensibly, a county could use full representation for the two at-large commissioners, but the requirement of staggered terms probably prevents even this. To allow full representation for the county board of commissioners, state law would have to be changed to allow multi-member districts for the county board. The plurality requirement of the constitution may need to be changed before choice voting could be implemented.

B. Municipal Government

- "Each municipal legislative body shall be elective." Fla. Const. Art. VIII § 2(b) (2002). See also Fla. Stat. § 165.061 (2002).
- "The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities." Fla. Stat. § 100.3605 (2002).

As described above, a constitutional amendment may be needed to implement IRV for municipal executive offices. However, since the state law regarding primaries does not apply expressly to municipalities, cities can pass an ordinance to change the manner in which primaries are conducted. Thus, a city could use IRV for a primary election.

A city can implement cumulative voting and one-vote to elect their legislative body as these are compatible with the plurality requirement of the constitution.

C. School Board

- School board members are elected to staggered terms of four years every two years. Fla. Stat. § 100.041(3) (2002).
- School boards can be structured in the same way as the board of county commissioners. Fla. Stat. § 1001.36 (2002). Fla. Stat. § 1001.362 (2002).

For the same reasons as listed above for the board of county commissioners, no method of full representation can be used for school boards. To allow full representation for a school board, state law would have to be changed to allow multi-member districts for the school board. The plurality requirement of the constitution may need to be changed before choice voting could be implemented.

This document was created by Jeff O'Neill. Jeff is student of the Class of 2005 at Cornell Law School and was a legal intern with the Center for Voting and Democracy in the summer of 2003. You can reach Jeff by email at jco8@cornell.edu.