

Fair Elections and the Law for the State of Maryland



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

- A constitutional amendment may be needed to implement IRV for state executive offices.
- A constitutional amendment is needed to implement full representation for the Senate, but only state law needs to be changed to implement full representation for the house.
- State law must be changed for counties to implement IRV or any form of full representation.
- Cities can implement IRV and full representation for city government. Towns can implement cumulative voting and one-vote for their legislatures. State law may need to be changed before a town could implement IRV or choice voting.
- State law specifies that county school boards are to be elected with bloc voting, thus state law would need to be changed before any form of full representation could be implemented.

III. Reformers

The following are known voting reform groups.

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

IV. Court Holdings

- Cane v. Worcester County, 59 F.3d 165 (4th Cir., 1995) – In a VRA suit the district court imposed cumulative voting as a remedy. The remedy was vacated on appeal as being contrary to the county's preferred choice of voting system.

V. General Provisions

A. Plurality Requirement

- “[T]he persons having the highest number of votes for [Governor and Lieutenant Governor], and being Constitutionally eligible, shall be the Governor and Lieutenant Governor.” Md. Const. Art. II § 3 (2003).
- The election for Judges, herein before provided, and all elections for Clerks, Registers of Wills, and other officers, provided in this Constitution, except State's Attorneys, shall be certified [by the court clerks]; and in all such elections for offices other than judges of an appellate court, the person having the greatest number of votes, shall be declared to be elected.” Md. Const. Art. IV § 11 (2003).
- In statewide primary and general elections, the candidate receiving the greatest number of votes is elected or nominated. Md. Elec. Law § 11-501(a)(3) (2003). Md. Elec. Law § 11-503(a)(2) (2003).

The state constitution specifies that for all offices provided in the constitution, the person having the greatest number of votes shall be elected. The offices of Governor, Lt. Governor, Attorney General, Comptroller, and the General Assembly are provided in the constitution. The constitution also contains provisions regarding county and municipal offices and it is not clear whether these offices are meant to be determined by the greatest number of votes. Local offices will be discussed in more detail below.

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. 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 precluding rank-order 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. 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.

B. Voting Machines and Ballots

- "The State Board, in consultation with the local boards, shall select and certify a voting system for voting in polling places and a voting system for absentee voting."
"The voting system selected and certified for voting in polling places and the voting system selected and certified for absentee voting shall be used in all counties." Md. Elec. Law § 9-101 (2003).

Counties must use the voting equipment selected by the State Board of Elections. Thus, counties cannot purchase their own voting equipment. Cities and towns probably cannot purchase their own voting equipment either.

VI. State Government

A. Executive Offices

There are four executive offices elected every four years: Governor, Lieutenant Governor, Attorney General, and Comptroller.

If the plurality requirement of the constitution is found to conflict with IRV, then a constitutional amendment is needed to implement IRV for state executive offices. Otherwise IRV can be implemented through appropriate legislation.

B. Legislature

The Senate consists of 47 Senators elected from single-member districts to four-year terms by plurality vote. The House of Delegates consists of 141 Delegates elected every four years by bloc vote. Delegate districts have from one to three members.

- "The State shall be divided by law into legislative districts for the election of members of the Senate and the House of Delegates. Each legislative district shall contain one (1) Senator and three (3) Delegates. Nothing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates into three (3) single-member delegate districts or one (1) single-member delegate district and one (1) multi-member delegate district." Md. Const. Art. III § 3 (2003).
- Specification of legislative districts. Md. State Gov. Code § 2-202 (2003).

The state constitution specifies single-member districts for the Senate, thus a constitutional amendment is needed to implement any method of full representation for the Senate. The constitution allows three-member districts for the House. Thus, any method of full representation that does not conflict with the plurality requirement of the constitution could be implemented for the House. Cumulative voting and one-vote are probably compatible with the plurality requirement of the constitution. One could argue that choice voting is also compatible with the plurality requirement.

VII. Local Government

A. County Government

- County Commissioners may be elected from districts, at large, or a combination thereof. Md. Const. Art. VII, § 1 (2003) (code counties). Md. Const. Art. XI-A, § 3A (2003) (chartered counties). See also Md. Code 25A § 2 (2003).
- Counties do not have the express power to determine the method of election of county officers. Md. Code 25A § 5 (2003) (chartered counties). Md. Code 25B § 13 (2003) (code counties).
- Chartered counties can determine the number of the county commissioners. Md. Const. Art. XI-A, § 6 (2003).

There are three types of county government: Commissioner, Code Home Rule, and Charter. County Commissioner counties do not have home rule powers. Code Home Rule and Charter counties have enumerated home rule powers. However, choosing the method of election of the county council or executive is not among the enumerated home rule powers. Although state law does not explicitly specify how county offices are to be elected, counties probably do not have the power to implement a voting system that is different from the current system. For example, a county probably cannot implement runoff elections, so they probably cannot implement IRV or full representation systems either. Thus, state law regarding home rule powers will need to be changed before any county could implement IRV or any method of full representation.

B. City and Town Governments

- Any such municipal corporation ... shall have the power and authority ... to amend or repeal an existing charter or local laws relating to the incorporation, organization, government, or affairs of said municipal corporation heretofore enacted by the General Assembly of Maryland." Md. Const. Art. XI-E § 3 (2003). See also Md. Code 23A § 2 (2003).
- The state election code does not apply to municipal elections. Md. Elec. Law § 1-101(v)(3) (2003).
- The term "municipal corporation" includes cities, towns and villages. Md. Code 23A § 9 (2003).
- Under home rule provisions, elections for town officers shall be conducted by plurality. Md. Ann. Code art. 23A, § 30(c) (2001).

City and town governments have greater home rule powers than do counties. State law treats the terms city, town, and village mostly as synonyms. One exception is a state law requiring that town election be determined by a plurality. It is strange to specify this requirement for towns but not for cities and villages. Cities and towns have the power to

pass laws relating to the organization and government of the city and this probably includes the power to implement IRV and full representation.

There is no plurality requirement for cities. The plurality requirement of the constitution does not apply since city offices are not provided in the constitution. The plurality requirement of the election code does not apply since the election code does not apply to city and town elections. Cities can probably implement IRV and full representation methods for city offices since this appears to be within the home rule powers and does not conflict with state law or the constitution.

Towns do have a plurality requirement. So towns can implement IRV and full representation methods only if they do not conflict with the plurality requirement. As discussed above, cumulative voting and one-vote are probably compatible with the plurality requirement and IRV and choice voting may also be compatible.

C. School Boards

- Some county school boards are elected and some are appointed. Md. Educ. Code § 3-114 (2003).
- "The candidates, equal in number to twice the number of offices to be filled, who receive the largest number of votes in the primary election shall be the nominated candidates." Md. Elec. Law § 8-804(c)(1) (2003).
- "In a general election for board of education members, a voter may vote for a number of nominees equal to the number of members to be elected." Md. Elec. Law § 8-806(a) (2003).
- "The nominees, equal in number to the number of offices to be filled, who receive the largest number of votes in a general election shall be declared elected." Md. Elec. Law § 8-806(b)(1) (2003).

State law specifies that county school boards are to be elected with bloc voting, thus state law would need to be changed to implement any form of full representation.

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.