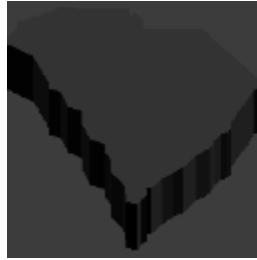


# Fair Elections and the Law for the State of South Carolina



## 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 Governor and Lt. Governor. IRV can be implemented for the other seven state executive offices by modifying state law and without modifying the constitution.
- A constitutional amendment is necessary to implement any method of full representation for the state legislature.
- State law must be changed before counties can implement IRV for executive offices or any method of full representation for the county council.
- State law must be changed before cities can implement IRV for executive offices or any method of full representation for the city council.

## **III. Reformers**

The following are known voting reform groups.

- No known voting reform groups in South Carolina.

## **IV. General Provisions**

### **A. Plurality Requirement**

- "In the general election for Governor, the person having the highest number of votes shall be Governor." S. Car. Const. Art. IV § 5 (2002).
- "A Lieutenant Governor shall be chosen at the same time, in the same manner ... as the Governor." S. Car. Const. Art. IV § 8 (2002).

- "No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast." S. Car. Code § 7-17-600 (2002). See also S. Car. Code § 7-13-50 (2002); S. Car. Code § 7-17-610 (2002).

The constitution specifies that the person having the highest number of votes will be elected for Governor and Lt. Governor. Whether this requirement is compatible with IRV is not clear. One could argue that the winner of an IRV election has received the highest number of votes after all rounds of counting have been completed. However, a court could interpret this provision as requiring traditional plurality elections. State law specifies that a majority is required for all primaries and is silent on elections for other state executive offices and the state legislature.

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. Multi-Member Districts**

- "Each multiple office in this State shall constitute a separate and distinct office to which a separate number shall be assigned within each election district for such an office. ... The election ballots for multiple offices shall reflect the number assigned to each office and the names of the candidates." S. Car. Code § 7-1-60 (2002).
- "If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of positions to be filled, and by dividing the result by two." S. Car. Code § 7-17-610 (2002).

State law appears to require numbered posts for all multi-member district elections. However, this directly contradicts the definition of a majority vote for multi-member districts. Also, local governments use at large elections without numbered posts. It appears that the statute requiring numbered posts only applied to elections for the state legislature when it used multi-member districts.

## **C. Voting Machines and Ballots**

- "Before any kind of vote recorder system, including an optical scan voting system, is used at any election, it shall be approved by the State Election Commission." S. Car. Code § 7-13-1330 (2002).

- "Before any kind of voting machine, including an electronic voting machine, is used at any election, it must be approved by the State Election Commission." S. Car. Code § 7-13-1620 (2002).
- "[M]ake a cross (X) in the voting square [] opposite the name of each candidate on the ballot for whom you wish to vote." S. Car Code § 7-13-330 (2002).

If a local government needs to purchase voting equipment to implement their desired voting system, they can do so with the approval of the Secretary of State. The provision requiring the voter to mark a cross should be changed to explicitly allow ranked ballots.

## **V. State Government**

### **A. Executive Offices**

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

If the plurality requirement of the constitution for Governor and Lt. Governor is found to conflict with IRV, then a constitutional amendment is needed to implement IRV. IRV can be implemented for the other seven state executive offices by modifying state law and without modifying the constitution.

### **B. Legislature**

The Senate consists of 46 Senators elected from single-member districts every four years by plurality vote. Although the Constitution specifies that each county shall be a Senate district, this is not the case in practice. The House of Representatives consists of 124 Representatives elected from single-member districts every two years by plurality vote. Although the Constitution specifies that each county shall constitute one representative district, this is not the case in practice. The differences between the state constitution and current practice are due to the one-person one-vote requirement of the U.S. Constitution.

- "The Senate shall be composed of one member from each County, to be elected for the term of four years." S. Car. Const. Art. III § 6 (2002).
- "The election for the office of State Senator in all senatorial districts shall be district-wide." S. Car. Code § 7-21-20 (2002). See also S. Car. Code § 2-1-65 (2002).
- "The House of Representatives shall consist of one hundred and twenty-four members, to be apportioned among the several Counties according to the number of inhabitants contained in each. Each County shall constitute one election district." S. Car. Const. Art. III § 3 (2002).
- Members of the House of Representatives are elected from single-member districts. S. Car. Code § 2-1-25 (2002).

The state constitution specifies single-member districts for the Senate and multi-member districts for the House (although the House is actually elected from single-member districts). A constitutional amendment is needed to implement any method of full representation for the Senate. A constitutional amendment is probably not strictly necessary to implement full representation for the House since the state doesn't follow the constitution. However, in reality a constitutional amendment would probably be required for such a significant change. 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**

- "The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties ... Alternate forms of government, not to exceed five, shall be established. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government." S. Car. Const. Art. VIII § 7 (2002).
- Counties may choose between five forms of county government: Council, Council-Supervisor, Council-Administrator, Council-Manager, and Board of Commissioners. S. Car. Code § 4-90-20 (2002).
- Counties can choose to elect their councils at large or from districts. The legislature sets the number of seats on the council. S. Car. Code § 4-9-10 (2002). See also § 4-9-90.
- The county treasurer and the county auditor are elected under certain forms of government. Car. Code § 4-9-60 (2002).
- County council elections are determined by the highest number of votes when changing from two-year terms to staggered, four-year terms. S. Car. Code § 4-9-90 (2002).

County council elections are determined by the highest number of votes when an election is held after changing from two-year terms to staggered, four-year terms. State law does explicitly define a plurality requirement for elections for county executive offices and ordinary county council elections. Although, South Carolina law does not specify precisely how votes are to be counted for county executive offices and county councils, counties have minimal home rule powers. Thus, a county probably cannot implement IRV or any method of full representation unless state law is changed to provide counties with greater home rule powers.

## **B. City Government**

- "The structure and organization, powers, duties, functions, and responsibilities of the municipalities shall be established by general law; provided, that not more than five alternative forms of government shall be authorized." S. Car. Const. Art. VTTT § 9 (2002).
- "No laws for a specific municipality shall be enacted, and no municipality shall be exempted from the laws applicable to municipalities or applicable to a particular form of government selected by any municipality as authorized by Section 9 of this article." S. Car. Const. Art. VTTT § 10 (2002).
- Cities may choose between three forms of municipal government: Mayor-Council, Council, and Council-Manager. S. Car. Code § 5-5-10 (2002).
- Cities can choose to elect their councils at large, from districts, by districts, or a combination thereof. S. Car. Code § 5-15-20 (2002).
- For nonpartisan municipal elections, the phrase "highest number of votes" is used in the definition of plurality election, election and runoff, and primary and general election. S. Car. Code § 5-15-61 (2002). S. Car. Code § 5-15-62 (2002). S. Car. Code § 5-15-63 (2002).
- "In partisan elections the person securing the highest number of votes for mayor shall be declared elected." Elections for councilmen are determined by the persons receiving the highest number of votes whether the elections are at large, by districts, or from districts. S. Car. Code § 5-15-120 (2002).

Nonpartisan city elections may be determined by plurality vote, by an election and a runoff, or by a primary and a general election. In partisan elections, the candidate receiving the highest number of votes is elected. Although, South Carolina law does not specify precisely how votes are to be counted in city elections, cities have minimal home rule powers. Thus, a city probably cannot implement IRV or any method of full representation unless state law is changed to provide cities with greater home rule powers.

## **C. School Boards**

- County boards of education and school trustees are appointed. S. Car. Code § 59-15-10 (2002). S. Car. Code § 59-19-30 (2002).

County school boards are appointed and not elected.

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](mailto:jco8@cornell.edu).