

Fair Elections and the Law for the State of Georgia



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

- IRV can be implemented for the eight executive offices by modifying state law and without modifying the constitution.
- Full representation systems can be implemented for the Georgia House of Representatives by modifying state law and without modifying the constitution. The constitution must be amended before any full representation system can be implemented for the senate.
- A city or county can implement IRV for its executive offices or a full representation system for its legislature after the state legislature has approved the appropriate enabling legislation.
- A county can implement a full representation system for the county school board after the state legislature has approved the appropriate enabling legislation.

III. Reformers

The following are known voting reform groups.

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

IV. General Provisions

A. Plurality Requirement

- "'Plurality" means the receiving by one candidate alone of the highest number of votes cast for eligible candidates in an election among the candidates for the same office, provided that such number of votes exceeds 45 percent of the total number of votes cast in such election for such office.' Ga. Code § 21-2-2(22) (2002).

- A plurality of the vote is required to be elected in a non-partisan election. Ga. Code § 21-2-284.1(a) (2002). See also § 21-2-285.1(a).
- "Except as otherwise provided in this Code section, no candidate shall be nominated for public office in any primary or elected to public office in any special election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office." Ga. Code § 21-2-501(a) (2002).
- "Except for presidential electors, to be elected to public office in a general election, a candidate must receive a plurality of the votes cast in an election to fill such public office." Ga. Code § 21-2-501(f) (2002).
- "To be elected to the office of presidential electors ... that slate of candidates shall be elected to such office which receives the highest number of votes cast." Ga. Code § 21-2-501(f) (2002).

In Georgia law, the term "plurality" has a non-standard definition. In Georgia, a candidate receives a "plurality" of the vote if she receives the largest number of votes, there is no tie, and she receives more than 45 percent of the vote. However, this definition of plurality does not apply to municipal elections, which will be discussed in the section below on local government. Some elections require the winner to receive a majority of the vote, some require the winner to receive a plurality of the vote (under Georgia's definition), and some require the winner to receive the largest number of votes (the usual definition of plurality). Elections that require the winner to receive a majority of the vote include primaries and special elections. Elections that require the winner to receive a plurality include non-partisan elections and general elections. Presidential electors are required to receive the largest number of votes. If there is a tie or if the candidate receiving the largest number of votes does not reach the required plurality or majority, then there will be a runoff election between the top two candidates.

Whether the plurality requirement in state law is compatible with IRV is not clear. One could argue that the winner of an IRV election has received a plurality after all rounds of counting have been completed. However, a court could interpret this provision as requiring traditional plurality elections.

The language used to describe the process of counting IRV ballots could affect whether IRV is legal. 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

- "[T]he equipment used for casting and counting votes in county, state, and federal elections shall, by the July, 2004, primary election and afterwards, be the same in each county in this state and shall be provided to each county by the state, as determined by the Secretary of State." Ga. Code § 21-2-300 (2002).
- Voting machines must be approved by the Secretary of State before they can be used in a primary or election. Ga. Code § 21-2-324 (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. However, if a local election coincides with a state or county election, then the local government must use the same voting machines as used in the rest of the state.

V. State Government

A. Executive Offices

There are eight executive offices elected every four years: Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, and Commissioner of Labor.

IRV can be implemented for the eight executive offices by modifying state law and without modifying the constitution. Legislation defining the implementation of IRV would have to be enacted and the plurality/majority requirements of state law may also need to be changed.

B. Legislature

The Senate consists of 56 Senators elected from single-member districts every two years by plurality vote. The House of Representatives consists of 180 Representatives elected every two years by plurality vote. As of 2003, there are 23 multi-member districts, each containing from two to four numbered posts, and 147 single-member districts.

- "The Senate shall consist of not more than 56 Senators, each of whom shall be elected from single-member districts." Ga. Const. Art. III § 2-1(a) (2002).
- "The House of Representatives shall consist of not fewer than 180 Representatives apportioned among representative districts of the state." Ga. Const. Art. III § 2-1(b) (2002).

To implement any system of full representation for the Senate, the constitution needs to be changed to allow for multi-member districts. 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.

There is no constitutional barrier to implementing full representation for the House. Since most districts are single-member districts, the apportionment would need to be changed to create more multi-member districts. Legislation defining the implementation of the full representation system would have to be enacted and the plurality/majority requirements of state law may also need to be changed.

VI. Local Government

A. County Government

- Counties shall not take any "[a]ction affecting the composition, form, procedure for election or appointment, compensation, and expenses and allowances in the nature of compensation of the county governing authority." Ga. Const. Art. IX § 2-1(c) (2002).

The constitution prohibits counties from making any changes to the structure of their county government without the approval of the state legislature. However, the structure of county government varies greatly: the number of county commissioners ranges from one to eleven; the terms can be concurrent or staggered and range from four to six years; elections can be from districts, at large, or a combination thereof; and the chair can be elected by the electorate or by the board. To request such a change, the county submits enabling legislation to the state legislature. It appears that at least for the variations mentioned above, the legislature generally approves such enabling legislation.

A county can implement IRV for its executive offices or a full representation system for its legislature after the state legislature has approved the appropriate enabling legislation. Since no county currently uses IRV or a full representation system, it is not clear whether the legislature will do so. Legislative approval may also depend on whether the legislature finds that IRV and full representation systems are compatible with the state majority and plurality requirements.

B. City Government

- 'Wherever the words "city," "town," "municipality," or "village" appear in the statutory laws of this state, such words shall be construed as synonymous.' Ga. Code § 36-30-1 (2002).
- 'For the purposes of this subsection and notwithstanding the provisions of paragraph (22) of Code Section 21-2-2, the word "plurality" shall mean the receiving by one candidate alone of the highest number of votes cast.' A majority vote is required to be elected in a municipal election unless the municipal charter or ordinances provide for a plurality. Ga. Code § 21-2-501(b) (2002).
- "In all cities having a population in excess of 100,000 according to the ... census ..., in order for a municipal candidate to be nominated for public office in any primary or elected to public office in any municipal election, he

or she must receive a majority of the votes cast." Ga. Code § 21-2-501(e) (2002).

- Municipal corporations shall not take any "[a]ction affecting the composition and form of the municipal governing authority, the procedure for election or appointment of the members thereof, and the continuance in office and limitation thereon for such members." Ga. Code § 36-35-6(a)(1) (2002).

Cities have the same limitations as do counties. One difference is that the prohibition is in state law rather than in the constitution. The legislature could thus give cities more home rule powers by modifying state law and without modifying the constitution.

A city can implement IRV for its executive offices or a full representation system for its legislature after the state legislature has approved the appropriate enabling legislation. Since no city currently uses IRV or a full representation system, it is not clear whether the legislature will do so. Legislative approval may also depend on whether the legislature finds that IRV and full representation systems are compatible with the state majority and plurality requirements.

C. School Boards

- "Each county of this state ... shall compose one school district and shall be confined to the control and management of a county board of education." Ga. Code § 20-2-52 (2002).

School boards are part of county government, so the procedure for implementing a full representation system for a county school board is the same as for the county legislature.

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.