

Fair Elections and the Law for the State of North 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

- One-Vote is currently used in nine North Carolina localities, including Beaufort, Bladen, Martin, and Sampson counties, to elect city councils, county commissioners, and school boards.
- IRV can be implemented for state executive offices through legislation and without amending the state constitution.
- Any method of full representation can be implemented for the state legislature through legislation and without amending the state constitution.
- Counties can use one-vote or cumulative voting to elect the county board of commissioners and also the county school board.
- Cities cannot use IRV to elect executive offices. Cities can use one-vote or cumulative voting to elect their legislatures.

III. Activists

The following are known voting reform groups.

- No known voting reform groups in North Carolina.

IV. Court Holdings

- Cleveland County Ass'n for Gov't by the People v. Cleveland County, 330 U.S. App. D.C. 20 (1998) – As part of a settlement in a previous suit, the county agreed to implement limited voting for the county board. In this suit, the court found that state law does not allow the board to implement limited voting.

- Limited voting was adopted as part of a settlement in two VRA cases: Hall v. Kennedy, (E.D.N.C. 1989); U.S. v. Sampson County, (E.D.N.C. 1989);

V. General Provisions

The North Carolina Constitution is remarkably flexible and provides no significant constraints on voting reform.

A. Plurality Requirement

- "Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:"
 - "If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%)."
 - "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 substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%)." N. Car. Gen. Stat. § 163-111(a) (2002).
- If an insufficient number of aspirants receive a substantial plurality of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held. N. Car. Gen. Stat. § 163-111(b) (2002).

Runoff elections can be requested for any partisan primary where the winner or winners have less than 40% of the vote. Partisan primaries are used for elections from Governor down to county commissioners. Cities also have the option of using partisan primaries.

This provision appears to have been carefully constructed to be compatible with bloc voting, one-vote, and cumulative voting. The precise language of this provision is possibly compatible with IRV and choice voting, since the language makes no mention as to how the votes are to be counted and the purpose of the statute appears to be to prevent candidates from winning with significantly less than a majority of the vote. With IRV or choice voting a second primary would rarely be necessary since the winners of the first primary would often receive a substantial plurality of the vote. A second primary could be necessary if there were a substantial number of "exhausted" ballots.

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 in state law. 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

- The board of county commissioners may lease or purchase voting equipment that has been approved by the state board of elections and the county board of elections. N. Car. Gen. Stat. § 163-165.8 (2002).
- "The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use." N. Car. Gen. Stat. § 163-165.7 (2002).

Note that by "voting system" we refer to the method for counting votes, such as IRV or cumulative voting. North Carolina uses the term "voting system" to refer to voting equipment that voters use to cast their votes.

As will be discussed below, counties and cities have some flexibility in implementing their choice of voting systems. If necessary, counties may purchase their own voting equipment, upon approval, to implement their desired voting system.

VI. State Government

A. Executive Offices

There are ten executive offices elected every four years: Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and a Commissioner of Insurance.

- The Governor and Lt. Governor are elected to four year terms. N. Car. Const. Art. III § 2 (2002).
- The other executive offices are elected to four year terms. N. Car. Const. Art. III § 7 (2002).

In order to implement IRV for the state executive offices, legislation defining the implementation of IRV would have to be enacted. There are no constitutional limitations.

B. Legislature

The Senate consists of 50 Senators elected from single-member districts every two years by plurality vote. The House of Representatives consists of 120 Representatives elected from single-member districts every two years by plurality vote.

- There are 50 Senators and 120 Representatives. N. Car. Const. Art. II § 2 (2002). N. Car. Const. Art. II § 4 (2002).
- Senators and Representatives are elected from single member districts. N. Car. Gen. Stat. § 120-1 (2002). N. Car. Gen. Stat. § 120-2 (2002).

In order to implement any method of full representation, state law would have to be changed to create multi-member districts. Any method of full representation could then be implemented with appropriate legislation. There are no constitutional limitations.

VII. Local Government

A. County Government

- "[A] power, right, duty, function, privilege, or immunity that is conferred or imposed by law [to a county] without direction or restriction as to how it is to be exercised or performed shall be carried into execution as provided by ordinance or resolution of the board of commissioners." N. Car. Gen. Stat. § 153A-12 (2002).
- The board of county commissioners must consist of at least three members. Counties can choose between two and four year terms, whether terms should overlap, and whether to have at-large elections or by district. N. Car. Gen. Stat. § 153A-58 (2002).

Counties do not seem to have any elected executive offices.

Counties have the option of electing their commissioners at-large. State law doesn't seem to specify how at-large elections are to be done. Since state law does not explicitly specify what voting system is to be used for county elections, counties can probably implement any voting system that doesn't conflict with state law. The only state law on point is § 163-111 which describes the partisan primary and second primary. Some counties already use one-vote and counties can probably also implement cumulative voting. A county may possibly be able to implement choice voting, but as discussed above this might conflict with the state law regarding primaries.

B. School Board

- "The county board of education in each county shall consist of five members elected by the voters of the county at large for terms of four years." N. Car. Gen. Stat. § 115C-35 (2002).
- School board elections are non-partisan. N. Car. Gen. Stat. § 115C-37 (2002).
- "The terms of office of the members shall be staggered so as nearly equal to one half as possible shall expire every two years." N. Car. Gen. Stat. § 115C-37 (2002).

- "The board of education for any city administrative unit shall be appointed or elected as now provided by law." N. Car. Gen. Stat. § 115C-37 (2002).

The county board of education is part of the county government. Some counties use one-vote to elect their school boards and counties could also use cumulative voting. Since the state law regarding partisan primary elections does not apply, it may even be possible to use choice voting as there would be no conflict with state law.

C. City Government

- "[T]he provisions ... of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State." N. Car. Gen. Stat. § 160A-4 (2002).
- Cities have four choices for their election method.
 - Partisan primary, possible second primary, and general election. N. Car. Gen. Stat. § 163-291 (2002).
 - Plurality. N. Car. Gen. Stat. § 163-292 (2002).
 - Election and a runoff if the winner doesn't have a majority. N. Car. Gen. Stat. § 163-293 (2002).
 - Nonpartisan primary and general election. N. Car. Gen. Stat. § 163-294 (2002).
- "Unless otherwise provided by its charter, each city shall be governed by a mayor and a council of three members, who shall be elected from the city at large for terms of two years." N. Car. Gen. Stat. § 160A-66 (2002).
- City councils will have from three to twelve members. Cities can choose between two and four year terms, whether terms should overlap, and whether to have at-large elections or by district. N. Car. Gen. Stat. § 160A-101 (2002).
- The mayor may be elected by the voters or by and from the city council. N. Car. Gen. Stat. § 160A-101 (2002).

The terms "city," "town," and "village" are interchangeable. State law specifies four alternatives that cities can use regarding primaries, runoff elections, and requiring majority support. Cities probably can not use IRV to elect executive offices as this would likely conflict with these state laws. However, some cities already use one-vote to elect their legislatures and cities could also choose to use cumulative voting since there is no conflict with state law. State law would have to be changed before cities could use choice voting.

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