

Fair Elections and the Law for the State of New York



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

- The constitution may need to be changed before IRV can be implemented for Governor and Lt. Governor. IRV can be implemented for all other state executive offices by modifying state law.
- A constitutional amendment is required to implement any method of full representation for the state legislature because the constitution specifies single-member districts.
- If IRV does not conflict with the plurality requirement in state law, then a local government can implement IRV to elect their executive offices. If IRV conflicts with the plurality requirement then state law will need to be changed before IRV can be implemented.
- If choice voting does not conflict with the plurality requirement of state law, then local governments can implement choice voting to elect their legislatures and school boards. If choice voting does conflict with state law, then local governments can instead use cumulative voting or one-vote to elect their legislatures and school boards.

III. Reformers

The following are known voting reform groups.

- Citizens for IRV in New York State (<http://www.nysirv.org/>)
- Email List (<http://groups.yahoo.com/group/InstantRunoffNYS/>)

In 2003, Assemblyman Fred Thiele submitted a bill to implement IRV for all primaries (A04481) and another for local elections (A04482). Please see <http://www.nysirv.org/> for more information.

IV. Court Holdings

- Blaikie v. Power, 13 N.Y.2d 134 (1963) – The court held that the New York City charter provision using one-vote to elect at-large city council members was constitutional.
- Johnson v. New York, 274 N.Y. 411 (1937) – The court held that the New York City charter provision using choice voting to elect at-large city council members was constitutional. While choice voting is still constitutional for local legislatures, it may conflict with current state law.

V. General Provisions

A. Plurality Requirement

- “The respective persons having the highest number of votes cast jointly for them for governor and lieutenant-governor respectively shall be elected.” N.Y. Const. Art. IV § 1 (2002).
- “The candidate receiving the highest number of votes for nomination for a public office ... shall be the nominee of his party for such office.” N.Y. Elect. § 9-200 (2002). See also N.Y. Elect. § 9-202 (2002); N.Y. Elect. § 6-160 (2002).
- “The [county] canvassing board shall determine each person elected by the greatest number of votes to each county office, and each person elected by the greatest number of votes to each city, town or village office of a city, town or village of which it is the board of canvassers.” N.Y. Elect. § 9-212 (2002).
- At any [village] primary, caucus, or general election the person receiving the highest number of votes for an office shall be nominated or elected. N.Y. Elect. § 6-202 (2002). See also N.Y. Elect. § 15-108 (2002); N.Y. Elect. § 15-126 (2002).

New York has an odd assortment of statutes specifying that the person receiving the highest number of votes shall be elected. These statutes cover almost all primary and general elections in the state. Interestingly, there does not seem to be such a provision for general elections for President, U.S. Senators, U.S. House, statewide executive offices other than Governor and Lt. Governor, N.Y. Senate, and N.Y. House.

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.

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 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. Runoff Elections

- “[A] city may not institute a runoff election for city office when no candidate in the general election receives a majority of the vote.” N.Y. A.G. Informal Op. 88-57.
- In New York City, if the winner of the primary for mayor, public advocate or comptroller receives less than 40% of the vote, then there will be a runoff election. N.Y. Elect. § 6-162 (2002).
- A village may provide for a runoff election to resolve a tie. N.Y. Elect. § 15-104 (2002). N.Y. Elect. § 15-126 (2002).
- If there is a tie in a school board election, then there must be a runoff. N.Y. Educ. § 2034(10) (2003). N.Y. Educ. § 2610(6) (2003).

In an informal opinion, the Attorney General determined that a city may not implement a runoff election in the event that the plurality winner receives less than a majority of the vote. The Attorney General found that a runoff election would contradict the statutory requirement of electing the person receiving the largest number of votes. As will be discussed below, local election laws must be consistent with state law. However, strangely enough, runoff elections are allowed to break ties for village and school board elections and possibly for other elections also.

C. Voting Machines

- Full Face Ballot Law - Voting machines must present all candidates for all offices at the same time. N.Y. Elect. § 7-202 (2002). See also N.Y. Elect. § 1-104 (2002).
- Voting machines must be approved by the state board of elections and by the county board of elections. N.Y. Elect. § 6-162 (2002).

Although the full face ballot law severely restricts which voting machines can be used in elections and hinders ranked ballot elections, this law will almost certainly be repealed soon. The state is buying new voting equipment as part of the Help America Vote Act and the legislature will probably repeal this law to allow more flexibility in choosing voting machines.

If a local government needs to purchase voting equipment to implement their desired voting system, they can do so with the approval of the county and the state.

VI. State Government

A. Executive Offices

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

The plurality requirement of the constitution may need to be changed before IRV can be implemented for Governor and Lt. Governor. IRV can be implemented for Comptroller and Attorney General by modifying state law.

B. Legislature

The Senate consists of at least 50 Senators elected from single-member districts every two years by plurality vote. The Assembly consists of 120 Assemblypersons elected from single-member districts every two years by plurality vote.

- “[T]he senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.” N.Y. Const. Art. III § 4 (2002).
- “[D]istricts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants.” N.Y. Const. Art. III § 4 (2002).
- There are 150 members of the assembly elected from single-member districts to two year terms. N.Y. Const. Art. III § 5 (2002).

The constitution specifies single-member districts explicitly for the Assembly and implicitly for the Senate. Senate districts do not cross county lines and the lesser populated counties consist of only one senate district. Since senate districts must “contain as nearly as may be an equal number of inhabitants” and some districts must be single-member districts, they must all be single-member districts. In order to implement any method of full representation, the constitution would have to be changed to create 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.

VII. Local Government

A. General Provisions

- “Every local government ... shall have a legislative body elective by the people thereof.” N.Y. Const. Art. IX § 1(a) (2002).

- "[E]very local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects ... (1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees ... (2) In the case of a city, town or village, the membership and composition of its legislative body." N.Y. Const. Art. IX § 2(c) (2002). See also N.Y. Mun. H. R. § 10(1) (2003).
- "The elective or appointive chief executive officer ... with the concurrence of the legislative body of such local government, or the legislative body by a vote of two-thirds of its total voting power without the approval of such officer, may request the legislature to pass a specific bill relating to the property, affairs or government of such local government which does not in terms and in effect apply alike to all counties, ..., all cities, all towns or all villages, as the case may be." N.Y. Mun. H. R. § 40 (2003).
- Local laws that change the method of nominating, electing, or removing an elective officer are subject to a mandatory referendum. N.Y. Mun. H. R. § 23 (2003).
- "No provision for the election of any elective officers by any system of proportional representation shall become effective ... unless a definite question with respect to the adoption of such system for the election of such officers shall have been submitted as a separate question and separately approved at the same election by the affirmative vote of a majority of the qualified electors voting thereon." N.Y. Mun. H. R. § 36(5)(c) (2003).

Local governments include county, city, town, and village governments. Local governments can pass local laws relating to the structure of their legislature and the voting system to be used to elect their offices, but these local laws can not conflict with the state constitution or state law. However, the local government can request the legislature to pass a special law, applying only to the local government, to allow the local government to implement a governmental structure not otherwise allowed by state law.

While local governments can pass local laws relating to the structure of their legislature and the voting system to be used to elect their offices as long they do not conflict with state law, such local laws must also be approved by referendum. The referendum process for implementing a system of full representation is stricter in that it must be a separate question that is separately approved.

B. County Government

- "Counties ... shall be empowered by general law, or by special law enacted upon county request pursuant to section two of this article, to adopt, amend or repeal alternative

forms of county government provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own." N.Y. Const. Art. IX § 1(h)(1) (2002).

- Counties can choose an elected or appointed county executive. N.Y. Alt. Co. Gov. § 50-53 (2002).
- "The supervisors of the several cities and towns in each county, when lawfully convened, shall constitute the board of supervisors of the county." N.Y. County § 150 (2002).
- A county may have an elected legislature instead of a board of supervisors. N.Y. County § 150-a (2002).

If IRV does not conflict with the plurality requirement in state law, then a county can implement IRV to elect county executive offices. If IRV conflicts with the plurality requirement then state law will need to be changed before IRV can be implemented.

Counties can have either a board of supervisors or a county legislature. A board of supervisors consists of one supervisor from each city and town in the county. The city or town supervisor is the chief executive of the city or town. Since there are no separate elections for the supervisors, no voting reform is possible.

A county legislature consists of representatives elected by the people of the county. For example, the Tompkins County legislature has 15 members elected from single-member districts every four years. State law does not seem to impose any constraints as to the size of the legislature, the terms of office, or to the number of officers per district. Thus, counties have flexibility in deciding how to elect their officers. Counties can use multi-member districts since there are no state laws to the contrary. If choice voting does not conflict with the plurality requirement of state law, then a county could implement choice voting to elect their legislature. If choice voting does conflict with state law, then a county could use cumulative voting or one-vote to elect their legislature.

C. City, Town, and Village Governments

If IRV does not conflict with the plurality requirement in state law, then a city, town, or village can implement IRV to elect their executive offices. If IRV conflicts with the plurality requirement then state law will need to be changed before IRV can be implemented.

State law does not seem to impose any constraints on cities, towns, and villages as to the size of the legislature, the terms of office, or to the number of officers per district. Thus, these local governments have flexibility in deciding how to elect their officers. They can use multi-member districts since there are no state laws to the contrary. If choice voting does not conflict with the plurality requirement of state law, then they could implement choice voting to elect their legislature. If choice voting does conflict with state law, then they could use cumulative voting or one-vote to elect their legislature.

D. School Boards

- School boards shall consist of five, seven, or nine members and be elected at large to staggered terms or three or five years. Elections are to be held every each year and the

candidate receiving the largest number of votes shall be elected. N.Y. Educ. § 2502 (2002). N.Y. Educ. § 2553 (2002).

Since state law does not require single-member districts, local governments can implement multi-member districts in electing their school board. However, the requirement of staggered terms limits the proportionality of a full representation system. For example, Ithaca's school board has nine members of which three are elected each year. If choice voting does not conflict with the plurality requirement of state law, then a local government could implement choice voting to elect their school board. If choice voting does conflict with state law, then a local government could use cumulative voting or one-vote to elect their school board.

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