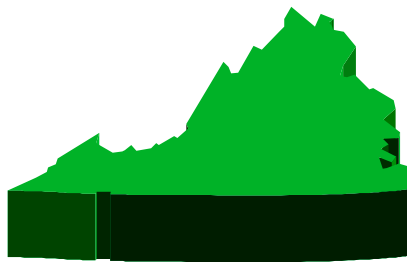


Fair Elections and the Law for the Commonwealth of Virginia



A Project of
FairVote

For more information contact:

FairVote
6930 Carroll Ave. Suite 610
Takoma Park, MD 20912

Phone: (301) 270-4616
Fax: (301) 270-4133
<http://www.fairvote.org>

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.

Please send feedback to info@fairvote.org.

II. Summary of Findings

- The constitution may need to be amended to implement IRV for statewide executive offices.
- Full representation can be implemented for the state House and Senate through appropriate legislation and without modifying the constitution.
- State law may need to be changed before a local government can implement IRV for executive offices. Local governments can implement full representation voting systems for their local legislatures.
- Local governments can use full representation methods to elect school board members.

III. Activists

The following are known voting reform groups.

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

In 2003, Delegate William Barlow introduced HB (2739), to allow IRV for statewide and federal elections. The bill failed in committee. For more information, see the following article: http://www.fairvote.org/op_edsv/runoff.htm

IV. General Provisions

A. Plurality Requirement

- For Governor, Lieutenant Governor, and Attorney General, the person having the highest number of votes shall be declared elected. Va. Const. Art. V §§ 2, 13, 15 (2002).

- For statewide executive offices "[t]he person having the highest number of votes for each office shall be declared elected." Va. Code § 24.2-210 (2002).
- "In all elections for the choice of any officer, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected to such office." Va. Code § 24.2-673 (2002).
- "As soon as the electoral board determines the persons who have received the highest number of votes for any office, the secretary shall make out an abstract of the votes for each of the following: Governor; Lieutenant Governor; Attorney General; members of the Senate of Virginia; members of the House of Delegates; ...each county office; each city office; each district office; each town office; and such others as may be required for statewide referenda." Va. Code § 24.2-675 (2002).

There are both constitutional and statutory plurality requirements for Governor, Lieutenant Governor and Attorney General. There is a statutory plurality requirement for the General Assembly and for county, city, and town offices.

The legality of fair election systems will depend on the interpretation of the 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 plurality requirement. 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 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. Voting Machines

- "With the approval of the State Board, the governing body of any county, city, or town may provide for the experimental use at an election in one or more election districts or precincts of a voting or counting system which it might legally adopt without a formal adoption thereof,

and its use at such election shall be valid for all purposes." Va. Code § 24.2-630 (2002).

- "Each county and city governing body shall purchase, lease, lease purchase, or otherwise acquire such systems and may provide for the payment therefore in the manner it deems proper. Systems of different kinds may be adopted for use and be used in different precincts of the same county or city, or within a precinct or precincts in a county or city, subject to the approval of the State Board." Va. Code § 24.2-626 (2002).
- "Any person, firm, or corporation manufacturing, owning, or offering for sale any mechanical voting device may apply to the State Board, in the manner prescribed by the Board, to examine and approve such device." Va. Code § 24.2-628 (2002).

The State Board must first approve any voting or counting system before it is used. Assuming legislation is passed to authorize IRV or full representation voting methods, these systems will likely be authorized by the State Board. Local governments can purchase and use such systems, provided they are cleared by the State Board.

V. State Government

A. Executive Offices

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

- The Governor, the Lieutenant Governor, and the Attorney General are elected to four year terms. Va. Const. Art. V §§ 1, 13, and 15 (2002).

Assuming IRV is found to be compatible with the plurality requirement for executive offices in the constitution, legislation defining the implementation of IRV would have to be enacted. This legislation could be similar to Delegate Barlow's bill, HB (2739), mentioned above.

B. Legislature

The Virginia General Assembly consists of the House of Delegates and the Senate. There are 100 members of the House of Delegates and 40 members of the Senate, each of whom are elected from single-member districts.

- "There shall be 100 members of the House of Delegates elected from 100 House of Delegates districts and each district is entitled to representation by one delegate." Va. Code § 24.2-304.01 (2002).
- "There shall be forty members of the Senate of Virginia elected from forty senatorial districts and each district is entitled to representation by one senator." Va. Code § 24.2-303.1 (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, assuming it is found to comply with the plurality requirement. There are no constitutional limitations.

VI. Local Government

A. County, City, or Town Government

- "There shall be elected by the qualified voters of each county and city a treasurer, a sheriff, an attorney for the Commonwealth, a clerk, who shall be clerk of the court in the office of which deeds are recorded, and a commissioner of revenue." Va. Const. Art. VII § 4 (2002).
- "The General Assembly may provide for county or city officers or methods of their selection." Va. Const. Art. VII § 4 (2002).
- "A municipal corporation shall have and may exercise all powers...under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government." Va. Code § 15.2-1102.
- "The governing body of each county, city, or town may provide by ordinance for the election of its members on any of the following bases: (i) at large from the county, city, or town; (ii) from single-member or multi-member districts or wards, or any combination thereof; or (iii) from any combination of at-large, single-member, and multi-member districts or wards." Va. Code § 24.2-304.1 (2002).

There is a home rule provision for municipalities in the Virginia Code. The Code does not require single-member districts, but does have a plurality requirement for local government. IRV would have to be found compatible with the plurality requirement to be used for any of the above local offices. Counties, cities, and towns should be able to implement full representation for their legislative bodies, if the method is found to comply with the plurality requirement, once appropriate legislation is passed.

B. School Board

- "Each school board member shall be appointed by the school board selection commission." Va. Code § 22.1-36 (2002).
- "If a majority of the qualified voters voting in such referendum vote in favor of changing the method of selecting school board members to direct election by the voters, then the members of the school board shall be elected by popular vote." Va. Code § 22.1-57.3 (2002).

- The initial elected school board shall consist of the same number of members as the appointed school board it replaces, and the members shall be elected in the same manner until it is expressly changed. Va. Code § 22.1-57.3 (2002).

Elections for school board should be compatible with full representation. As long as a locality approves a referendum to elect school board members, and establishes multi-member districts or at large elections for school board, there are no further restrictions.

This document was created by Elizabeth Reed. Liz is student of the Class of 2006 at Duke Law School and was an intern with the Center for Voting and Democracy in the summer of 2003. You can reach Liz by email at e.reed@duke.edu.