

## Notes on Draft RCV for President Bill

Presidential elections are different from any other kind of election in the United States, so any legislation bring ranked choice voting (“RCV”) to presidential elections will have to address issues not typically seen in other RCV laws. I’ll note at the outset that this draft delegates a lot of decision making authority to the State Board of Elections (“SBE”). Many of these decisions could (and in some cases probably should) be made by the legislature instead, so I expected a lot of the details left to SBE in this draft to be made during the legislative process and ultimately included in the bill.

First, since this is a statewide election, all presidential ballots--or something containing the records of votes cast on ballots (called a “cast vote record” or “CVR”)--will either need to be centralized in a single location for tabulation or there will need to be coordination between multiple counting centers throughout the tabulation process. This is because the statewide totals must be used when determining which candidates to eliminate. The current practice of counties conducting their own counts and reporting the results won’t work, since the candidate with the fewest first-round votes in a particular county may not be the candidate with fewest votes across the entire state. Maine dealt with this by centralizing all CVR data in a single place for tabulation. Ireland, which tabulates by hand, has multiple counting centers across the country. Each counting center conducts a round of tabulation and then calls its total into the country’s Election Commission. The Election Commission adds up the totals, determines which candidates should be eliminated, and then tells the counting centers, which then conduct the next round of tabulation and the process repeats until there’s a winner. The language in this bill leaves the SBE room to do either but a lot of the current statutory language about the timing and reporting of results needs to be repealed or amended.

Second, Illinois is a member of the National Popular Vote Interstate Compact. That’s great (we love NPV at FairVote), but Illinois won’t be able to use RCV in the general election if the Compact ever goes into effect. I’ve included a provision that switches voting back to the current first-past-the-post voting method in the event that happens. Primary elections would continue to be conducted by RCV, however.

Third, speaking of primaries, parties don’t necessarily award delegates on a winner-take-all basis, meaning we can’t simply declare a winner by running the count down until one candidate has a majority. For example, the Democratic Party uses a proportional system where all candidates earning more than 15% of the vote receive delegates. This bill would run the count down to two candidates to see who wins a majority of votes, but would also report the individual round-by-round results to each party, allowing them to award delegates however they want. (The Democrats, for example, would be able to use the results from the round when all candidates under 15% had been eliminated).

Fourth, because of the Electoral College, voters are really voting for presidential electors, not the individual candidates. This is a distinction that Illinois law makes very clear. I have tried to keep that distinction in this bill with one notable exception. In the part that sets the tabulation procedure (Section 5 in the bill, creating what will be Article 21A in the state code), I define

“candidate” to include “elector.” I did this to keep the language as simple as possible since the tabulation process is the same either way, but it’s possible that could cause more complications so that may need to change.

Fifth, the question of effective date is going to be a tricky one. Illinois currently uses a patchwork of voting systems, not all of which can run an RCV election. It’s possible to hand count ballots (many places do), but that will take a lot more time and work than most election administrators are willing to take on. Some possibilities include making every county upgrade to voting systems that can tabulate RCV (which will require a big appropriation) or buying voting systems for central counting facilities and shipping paper ballots there to be uploaded and tabulated.

If you have any questions, you can reach me at [dobrien@fairvote.org](mailto:dobrien@fairvote.org).

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AN ACT concerning elections.

**Be it enacted by the People of the State of Illinois, represented in the General Assembly:**

Section 5. The Election Code is amended by adding a new Article 21A as follows:

ARTICLE 21A. RANKED CHOICE VOTING

Sec. 21A-1. All primary elections for the nomination of the offices of President and Vice-President of the United States and general elections for electors of President and Vice-President of the United States shall be conducted by ranked choice voting when three or more candidates are involved.

Sec. 21A-2. Definitions. As used in this Article, unless the context otherwise requires:

“Active candidate” means any candidate that has not been defeated.

“Batch elimination” means the simultaneous defeat of two or more active candidates because it is mathematically impossible for those candidates to receive enough votes to become designated as elected before being designated as defeated.

“Candidate” means any person running in a primary election for the nomination of the offices of President and Vice-President of the United States or in a general election for elector of President and Vice-President of the United States.

“Cast vote record” means an archival record of all votes produced by a single voter. Cast vote records may be in electronic, paper, or other form.

“Elimination batch” means a group of two or more candidates who can be simultaneously defeated through batch elimination because it is mathematically impossible for those candidates to be elected.

“Highest-ranked active candidate” means the active candidate assigned to the highest ranking order on a ballot.

“Inactive ballot” means a ballot that does not contain any active candidates or has reached an overvote, making the ballot unable to be transferred to another active candidate.

“Overvote” means an instance in which a voter has ranked more than one candidate at the same ranking.

“Ranking” means the number assigned to a candidate that establishes the order in which a ballot is transferred to that candidate.

“Ranking order” means the number available to be assigned by a voter to a candidate to express the voter’s choice for that candidate. The number “1” is the highest ranking order, followed by “2” and then “3” and so on.

“Round” means an instance of the sequence of voting tabulation beginning with subsection (a) of Section 21A-3 of this Article.

“Skipped ranking” means a voter has left a ranking order unassigned but ranks a candidate at a subsequent ranking order.

Sec. 21A-3. Tabulation. In any election conducted by ranked choice voting, tabulation proceeds in rounds. Each round proceeds sequentially as follows:

(a) Each ballot shall count as one vote for the highest-ranked active candidate on that ballot. If two or fewer active candidates remain, the candidate with the fewest votes is defeated, the candidate with the greatest number of votes is declared the winner and tabulation is complete.

(b) If more than two active candidates remain, the active candidate with the fewest votes is defeated, and a new round begins with subsection (a).

Sec. 21A-4. Providing parties with primary results for the selection of delegates. In a primary election for the nomination of the offices of President and Vice-President of the United States, the State Board of Elections shall provide each political party conducting such a primary with the final results of that election, including the vote totals after each round showing how many votes each candidate had, so that each political party may select delegates as provided by party rule.

Sec. 21A-5. Form of ballot. Notwithstanding any other law to the contrary:

(a) In any contest conducted by ranked choice voting with three or more candidates, including qualified write-ins, the ballot shall allow voters to rank candidates in order of choice.

(b) If feasible, the ballot shall allow voters to rank as many choices as there are qualified candidates. In the event that the voting equipment cannot feasibly accommodate a number of rankings on the ballot equal to the number of qualified candidates, the ballot may limit the number of choices a voter may rank to the maximum number allowed by the equipment.

(c) The ballot shall not interfere with a voter’s ability to rank a write-in candidate as permitted by law.

(d) The ballot shall contain clear instructions informing voters how to rank candidates.

Sec. 21A-6. (a) A ballot that does not contain any active candidates shall not be transferred to or count for any candidate, but rather shall count as an inactive ballot.

(b) If a ballot contains a skipped ranking, the ballot shall be transferred to the highest-ranked active candidate.

(c) A ballot containing an overvote shall count as an inactive ballot once the overvote is reached.

Sec. 21A-7. Batch elimination. (a) The State Board of Elections may modify the tabulation to include batch elimination. If the tabulation does include batch elimination, then any

time the active candidate with the fewest votes would be defeated, each active candidate in the elimination batch shall be simultaneously defeated instead. An active candidate is in the elimination batch if the number of elected and active candidates with more votes than that candidate is greater than the number of offices to be elected, and it is mathematically impossible for that candidate to be elected for any of the following reasons:

(1) The candidate's current vote total plus the sum of current votes for active candidates with fewer votes would not be enough to equal or surpass the active candidate with the next highest current vote total.

(2) The candidate has a lower current vote total than an active candidate described in paragraph (1).

(b) If a candidate is defeated through batch elimination, votes for that candidate shall be transferred to each ballot's highest-ranked active candidate.

Sec. 21A-8. Ties. (a) If two or more active candidates are tied with the fewest number of votes and cannot be defeated through batch elimination, the candidate to be defeated shall be determined by lot.

(b) If all remaining active candidates are tied, the State Board of Elections shall publish or cause to be published a notice naming some day and place, not less than 5 days from the time of such publication of such notice, upon which the State Board of Elections will resolve the tie by lot to declare a winner.

Sec. 21A-9. Rulemaking authority. The State Board of Elections shall have rulemaking authority to implement this Article.

Sec. 21A-10. Effect of the Agreement Among the States to Elect the President by National Popular Vote.

(a) In the event that the Agreement Among the States to Elect the President by National Popular Vote is in effect and Illinois is a member state to such agreement, general elections for electors of President and Vice-President of the United States shall not be conducted by ranked choice voting but shall revert to plurality voting, in which voters select a single candidate or elector. In such event, the State Board of Elections shall promulgate whatever rules are necessary to conduct general elections for electors of President and Vice-President of the United States in accordance with the Agreement Among the States to Elect the President by National Popular Vote Act. Primary elections for the nomination of the offices of President and Vice-President of the United States shall continue to be conducted by ranked choice voting.

(b) If the Agreement Among the States to Elect the President by National Popular Vote is in effect and Illinois is a member state to such agreement, and such agreement subsequently

ceases to have effect or Illinois withdraws from such agreement then general elections for electors of President and Vice-President of the United States shall once again be conducted by ranked choice voting in accordance with this Act.

Section 10. The Election Code is amended by changing Sections 21-2 and 21-2.

Sec. 21-1. Choosing and election of electors of President and Vice-President of the United States shall be in the following manner:

(a) In each year in which a President and Vice-President of the United States are chosen, each political party or group in this State shall choose by its State Convention or State central committee electors of President and Vice-President of the United States and such State Convention or State central committee of such party or group shall also choose electors at large, if any are to be appointed for this State and such State Convention or State central committee of such party or group shall by its chair and secretary certify the total list of such electors together with electors at large so chosen to the State Board of Elections.

The filing of such certificate with the Board, of such choosing of electors shall be deemed and taken to be the choosing and selection of the electors of this State, if such party or group is successful at the polls as herein provided in choosing their candidates for President and Vice-President of the United States.

~~(b) The names of the candidates of the several political parties or groups for electors of President and Vice-President shall not be printed on the official ballot to be voted in the election to be held on the day in this Act above named. In lieu of the names of the candidates for such electors of President and Vice-President, immediately under the appellation of party name of a party or group in the column of its candidates on the official ballot, to be voted at said election first above named in subsection (1) of Section 2A-1.2 and Section 2A-2, there shall be printed within a bracket the name of the candidate for President and the name of the candidate for Vice-President of such party or group with a square to the left of such bracket. Each voter in this State from the several lists or sets of electors so chosen and selected by the said respective political parties or groups, may choose and elect one of such lists or sets of electors by placing a cross in the square to the left of the bracket aforesaid of one of such parties or groups. Placing a cross within the square before the bracket enclosing the names of President and Vice-President shall not be deemed and taken as a direct vote for such candidates for President and Vice-President, or either of them, but shall only be deemed and taken to be a vote for the entire list or set of electors chosen by that political party or group so certified to the State Board of Elections as herein provided. Voting by means of placing a cross in the appropriate place preceding the appellation or title of the particular political party or group, shall not be deemed or~~

~~taken as a direct vote for the candidates for President and Vice-President, or either of them, but instead to the Presidential vote, as a vote for the entire list or set of electors chosen by that political party or group so certified to the State Board of Elections as herein provided.~~

The official ballot for the election of electors of President and Vice-President of the United States at the election named in subsection (a)(1) of Section 2A-1.2 and Section 2A-2 shall be consistent with the requirements of Article 21A and any rules promulgated by the State Board of Elections thereunder.

(c) Such certification by the respective political parties or groups in this State of electors of President and Vice-President shall be made to the State Board of Elections within 2 days after such State convention or meeting of the State central committee in which the electors were chosen.

(d) Should more than one certificate of choice and selection of electors of the same political party or group be filed by contesting conventions or contesting groups, it shall be the duty of the State Board of Elections within 10 days after the adjournment of the last of such conventions to meet and determine which set of nominees for electors of such party or group was chosen and selected by the authorized convention of such party or group. The Board, after notice to the chair and secretaries or managers of the conventions or groups and after a hearing shall determine which set of electors was so chosen by the authorized convention and shall so announce and publish the fact, and such decision shall be final and the set of electors so determined upon by the electoral board to be so chosen shall be the list or set of electors to be deemed elected if that party shall be successful at the polls, as herein provided.

(e) Should a vacancy occur in the choice of an elector in a congressional district, such vacancy may be filled by the executive committee of the party or group for such congressional district, to be certified by such committee to the State Board of Elections. Should a vacancy occur in the office of elector at large, such vacancy shall be filled by the State committee of such political party or group, and certified by it to the State Board of Elections.

(Source: P.A. 99-522, eff. 6-30-16; 100-1027, eff. 1-1-19.)

~~Sec. 21-2. The county clerks of the several counties shall, within 21 days next after holding the election named in subsection (1) of Section 2A-1.2 and Section 2A-2, make 2 copies of the abstract of the votes cast for electors by each political party or group, as indicated by the voter, as aforesaid, by a cross in the square to the left of the bracket aforesaid, or as indicated by a cross in the appropriate place preceding the appellation or title of the particular political party or group, and transmit by mail one of the copies to the office of the State Board of Elections and retain the other in his office, to be sent for by the electoral board in case the other~~

~~should be mislaid. Within 31 days after the holding of such election, and sooner if all the returns are received by the State Board of Elections, the State Board of Elections shall proceed to open and canvass said election returns and to declare which set of candidates for President and Vice-President received, as aforesaid, the highest number of votes cast at such election as aforesaid; and the electors of that party whose candidates for President and Vice-President received the highest number of votes so cast shall be taken and deemed to be elected as electors of President and Vice-President, but should 2 or more sets of candidates for President and Vice-President be returned with an equal and the highest vote, the State Board of Elections shall cause a notice of the same to be published, which notice shall name some day and place, not less than 5 days from the time of such publication of such notice, upon which the State Board of Elections will decide by lot which of the sets of candidates for President and Vice-President so equal and highest shall be declared to be highest. And upon the day and at the place so appointed in the notice, the board shall so decide by lot and declare which is deemed highest of the sets of candidates for President and Vice-President so equal and highest, thereby determining only that the electors chosen as aforesaid by such candidates' party or group are thereby elected by general ticket to be such electors.~~

~~(Source: P.A. 100-863, eff. 8-14-18.)~~

(a) The State Board of Elections shall promulgate rules for the secure and timely transmission of ballots or cast vote records to a central facility or facilities for tabulation. Such rules shall protect ballot anonymity.

(b) The State Board of Elections shall promulgate rules for publicly reporting results. Such rules shall provide for preliminary reporting, reporting the final result, and reporting the vote totals in each round of tabulation.

Section 15. The Election Code is amended by adding a new Section 24-1.3 as follows:

Section 24-1.3.

(a) The State Board of Elections shall promulgate rules establishing requirements for voting machines and electronic voting systems to ensure they can conduct elections using ranked choice voting as specified in Article 21A.

(b) All voting machines and electronic voting systems adopted or purchased for use in elections to nominate President and Vice-President and to elect presidential electors must comply with the rules promulgated under Subsection (a).

(c) The State Board of Elections shall inform the General Assembly and the Governor when all jurisdictions possess voting machines or electronic voting systems that comply with the rules promulgated under Subsection (a).

Section 99. Effective date. This Act takes effect when the State Board of Elections provides notice required under 10 ILCS 5/24-1.3 (c) that every jurisdiction in the State has voting machines or electronic voting systems capable of conducting a ranked-choice voting election.