

# **Instant Runoff Voting: Goals, Standards and Criteria for Implementation and Evaluation**

*Approved by the North Carolina State Board of Elections on January 15, 2009*

The North Carolina General Assembly, in SL 2008-150, authorized the State Board of Elections (SBE) to conduct a pilot program in the use of instant runoff voting (IRV) among a limited number of local jurisdictions in 2009, 2010, and 2011. It directed the SBE, by January 1, 2009, in consultation with the School of Government of the University of North Carolina at Chapel Hill, to develop for the pilot program:

- goals
- standards consistent with general election law, and
- criteria for implementation and evaluation.

## **Statutory Requirements**

SL 2008-150, Sec. 3 (the “2008 Act”), authorizes IRV in up to 10 local jurisdictions in 2009, 2010, and 2011. That statute requires that the administration of IRV is follow the provision of SL 2006-192, Sec. 1(a) (the “2006 Act”), with the additional requirement that each local governing board involved must approve the use of IRV in its elections.

The 2006 Act authorized IRV elections in a number of jurisdiction is 2007 and 2008. (In fact, IRV was implemented in Hendersonville and Cary in 2007; no jurisdictions used it in 2008.) The 2006 Act set out details for administration of IRV. The 2006 Act specified that “other details” were to be as set out in H 1024 (1st edition) from the 2005 session of the General Assembly (the “2005 Bill”).

In addition, the 2006 Act specified that the State Board could make modifications as it deems necessary to the requirements of the 2005 Bill.

Reading the three provisions together—the 2005 Bill, the 2006 Act, and the 2008 Act, yields the following statutory requirements (“SR”s):

### **SR 1**

IRV may be used in up to 10 local jurisdictions, including school board elections, in each of 2009, 2010, and 2011. The SBE is to seek diversity of population size, regional location, and demographic composition.

**SR 2**

Each local governing board must approve participation in the pilot.

**SR 3**

Each local governing board must agree to cooperate with local board of elections in a voter education program.

**SR 4**

The local board of elections must agree.

**SR 5**

If a jurisdiction is in more than one county, all county boards of elections must agree.

**SR 6**

IRV may be used in a

- partisan primary
- nonpartisan election and runoff
- nonpartisan primary and election
- nonpartisan plurality

**SR 7**

If IRV is used in an election with nonpartisan election and runoff method, the resulting one election may be held in November.

**SR 8**

For single seat races, IRV is to work according to the following rules:

1. Voters may rank-order up to three candidates.
2. If one candidate receives sufficient first-choice votes to achieve the threshold of victory, the counting stops and that candidate wins.
3. If no candidate's votes achieve the threshold of victory, there is a second round of counting.
4. Only the two candidates receiving the most and second-most first-choice votes advance to the second round of counting. If two or more candidates are tied for second place, the IRV method is used to determine which of these candidates advances to the second round. If there is an insufficient number of candidates to use IRV, or if two candidates remain tied after the use of IRV, then the tie is broken pursuant to G.S. 163-182.8.
5. In the second round of counting, each ballot is counted as a vote for whichever of the two remaining candidates is ranked higher on the ballot. If neither remaining candidate is ranked on the ballot, the ballot is exhausted and not counted in the second round.

**SR 9**

The threshold of victory is to be:

1. For a partisan primary, multiply the total votes by 40%. Any excess of the sum so ascertained shall be a substantial plurality.
2. For a nonpartisan election and runoff, a majority of the vote
3. For nonpartisan primary and election, a majority of the vote
4. For nonpartisan plurality, as determined by the State Board with concurrence of county board of elections and local governing board

**SR 10**

For multiseat races SBE is to modify the method used in single seat races to apply its essential principles suitably.

**SR 11**

The entire electorate for the office must use the same method.

**SR 12**

The 2006 Act specifies that the SBE may make modifications as it deems necessary from the provisions borrowed from the 2005 Bill.

**Anticipated Revisions in Light of 2009 Experience**

The goals, standards, and criteria for implementation and evaluation set out here are to be applied to any elections that may be conducted using IRV in 2009. The SBE anticipates that modifications to the goals, standards, and criteria may be necessary or useful for elections in 2010 and 2011.

**Considerations Regarding the 2009 Pilot**

IRV represents a way of conducting elections and determining winners that is a substantial change from the methods currently in use. The General Assembly characterized the use of IRV in 2009, 2010, and 2011 as a “pilot.” Pilot programs, according to a publication of the Fiscal Research Division of the General Assembly, are “new initiatives implemented on a limited basis as a test or trial.” Significant considerations affect the use of IRV as a pilot. These considerations (“C”s) include:

**C 1**

All North Carolina boards of elections use state-certified voting equipment, either direct-record electronic (“DRE”) machines or optical scan (“OS”) machines. At the present time, only one manufacturer—ES&S—has voting equipment certified for use in North Carolina.

For jurisdictions located in counties using OS machines, the first round of counting in an IRV election—the round in which it is determined whether a candidate has exceeded the threshold of victory making further rounds of counting unnecessary—can be conducted using the automated counting function of the OS tabulator. Subsequent rounds of counting where

necessary may be conducted through (1) an electronic sort and electronic count, (2) a hand sort and electronic count, or (3) hand sort and hand count of the ballots.

For jurisdictions located in counties using DRE machines, the first round of counting similarly can be conducted using the DRE's regular automated counting but as a practical matter subsequent rounds, if necessary, cannot be counted directly by the DREs themselves or by the central tabulation software. For that reason the staff of the SBE have developed methods by which the vote information from the DRE is transferred to an Excel or other approved spreadsheet, validated for transfer accuracy, and then sorted and counted, either through the regular Excel functions or by hand-to-eye from the Excel spreadsheet. Any interested person may obtain a copy of the algorithm and spreadsheet.

Hand-to-eye counting is, by statute (G.S. 163-165.7), a certified voting system where the hand-to-eye count is from paper ballots marked by the voter, or marked by machine and verified by the voter prior to the ballots being cast. For that reason, the second round of voting where OS machines are used clearly involves a certified voting system. The second round of counting where DRE machines are used, however, involves a hand-to-eye count from an Excel spreadsheet or an automated count through regular Excel functions. In either case, the Excel software only serves the purpose of an electronic adding machine to total the votes.

## **C 2**

In North Carolina elections, votes cast by voters on election day at the precinct are tabulated at the precinct. That tabulation involves simply the reporting of vote totals from the DRE machine or OS tabulator. Mail, One-Stop and curbside absentee ballots are tabulated at a central location designated by the county board of elections, not at the precincts.

In an IRV election, the first round of tabulation will be done at the polls, as in a traditional election. But the second round of counting, whether hand-to-eye or electronic, will be done by the county board of elections, staff, election officials, or ballot counters.

As a result, the criteria for implementation set out below are explicit in their instructions on how the county-level counting is to be conducted, including the rights of those of who wish to observe.

## **C 3**

In partisan primaries, IRV works as a direct replacement for the second primary. If a candidate achieves the threshold of victory in the traditional primary, there is no second primary. Similarly, if a candidate in an IRV race achieves the threshold of victory on the first round of counting, there is no second round of counting. But if in a traditional primary no candidate achieves the threshold of victory, there is a second primary. Similarly, with IRV, if no candidate achieves the threshold of victory, there is a second round of counting.

The case is similar with the nonpartisan election and runoff system. IRV works as a direct replacement of the runoff. In a traditional nonpartisan election and runoff, a candidate who achieves the threshold of victory is elected and no runoff is needed, but if no candidate

exceeds the threshold, the two candidates receiving the most votes face one another in a runoff. The second round of counting in IRV directly replaces the runoff.

But in elections that traditionally employ the nonpartisan plurality method or the nonpartisan primary and election, IRV works a fundamental change. In a plurality election, the candidate with the most votes wins, irrespective of the percentage of vote received. If IRV is used in such a race, it will be the same as the method of the nonpartisan election and runoff system.

Similarly, IRV works a fundamental change if used in races with the nonpartisan primary and election method. By that method, the two top candidates in the primary face one another in the election, irrespective of the percentages that either receives. If IRV is used in such a race, however, a threshold of victory must be assigned and a candidate who exceeds that threshold on the first round is elected, without a second round of counting. The second-round election, in effect, simply does not happen in such a circumstance.

#### **C 4**

G.S. 163-182.1 directs that voters be given an opportunity to correct overvotes before their ballots are tabulated by the DRE or OS machine. In an IRV election, a traditional type of overvote will be easily caught by the voting machine and the voter will be given an opportunity to correct, as in traditional voting—that is, if the voter ranks two different candidates as his first choice in a vote-for-one field.

But there is a kind of marking of the ballot that is unique to IRV and that might be considered an overvote. That unique problem occurs when a voter on an IRV ballot ranks a single candidate at two or more different rankings. A voter might mark Candidate Jones as his first choice, his second choice, and his third choice. The machines will not be able to give the voter a second chance in that kind of marking. Voter education will be required at all IRV polling locations to insure that voters are adequately instructed on the IRV method of voting. The SBE does not consider this marking problem to be an “overvote” within the meaning of G.S. 163-182.1 because the voter has the option of voting their choices and alternates and therefore it is not an overvote in their first choice.

#### **C 5**

“Instant runoff voting” is one term used to describe the methods being employed in this pilot. It is “instant” in one sense: the voter goes to the polls only once and need not return for a second primary or runoff. But it is not “instant” in the sense that, just as with plurality elections, results may be known on election night due to the requirement to process the provisional ballots. By the very nature of the necessary procedures, the second round of IRV counting will often not, as a practical matter, happen on election night. For this—and perhaps other reasons—some of the limited number of jurisdictions using IRV refer to it as “ranked choice voting.” Whether that terminology would be desirable in North Carolina can be debated. The 2008 statute calls the system “instant runoff voting,” and that is the terminology the SBE will employ.

**C 6**

IRV is an election method rarely used in this country. A handful of jurisdictions have employed it in recent elections, but it is sufficiently rare that North Carolina's experience with its use in Hendersonville and Cary in 2007 is regularly cited by proponents and opponents. The SBE acquired a great deal of experience from the 2007 IRV program but did not have the opportunity to deal with a large volume of votes or offices on the ballot

**C 7**

The General Assembly has not appropriated funds to offset costs that local jurisdictions will incur through participation in the IRV pilot. All costs should be minimal except for the costs involved in voter/candidate/election official education and in evaluation. Those costs must be borne by the local jurisdiction.

**Goals**

The SBE is implementing the IRV pilot at the direction of the General Assembly with the following goals:

**G 1**

IRV pilot elections will be conducted with the same commitment to free, fair, and open elections that is applied to traditional elections.

**G 2**

Voters, elections officials, and candidates participating in an IRV pilot election will receive complete education on both the mechanics of voting in an IRV election and on the processes used in counting the votes and determining the winners.

**G 3**

Some participating jurisdictions which traditionally use the partisan primary or the nonpartisan election and runoff method will save money by avoiding an otherwise necessary second primary or runoff. Similarly, jurisdictions which traditionally use the nonpartisan primary and election method may save money by avoiding an otherwise necessary primary. They will also save their voters any costs associated with going to the polls at two different times.

**G 4**

Evaluative data will be available sufficient to inform a decision on whether to continue to experiment with IRV or to stop.

## **Standards Consistent with General Law**

To reach the goals established, and in light of the limitations identified, the SBE directs that the following standards will be applied to IRV pilot elections in 2009:

### **S 1**

Before the governing board of a jurisdiction approves participation in an IRV pilot election, it must be informed in writing by the SBE of the following:

1. if the county uses DRE voting machines, the second round of counting, if necessary, will be accomplished by a method that utilizes a hand sort or electronic sort as defined in the tabulation procedures.
2. if the jurisdiction uses the nonpartisan plurality election method or the nonpartisan primary and election method, IRV will change the criteria by which winners are determined
3. expenses related to education and evaluation will be borne by the jurisdiction

### **S 2**

Jurisdictions participating in the IRV pilot must apply the criteria for implementation and evaluation below. No variation from the criteria will be permitted except by direct authorization from the SBE, the Executive Director of the SBE or his designee.

### **S 3**

Only where the criteria for implementation and evaluation specifically authorize a process or action that is inconsistent with general election law may a participating jurisdiction vary from general election law. The SBE, the Executive Director of the SBE or his designee may authorize a variance in extraordinary circumstances.

### **S 4**

The criteria for implementation must assure that no voter may lessen the chance of victory of his first-choice candidate by marking other candidates as second- or third-choice.

### **S 5**

Optical scan ballots may not exceed one front-and-back sheet. An election that would require more than one front-and-back sheet may not be conducted through IRV unless the jurisdiction petitions the SBE for approval and approval is granted.

### **S 6**

The SBE may reject a request by a jurisdiction to participate.

## **Criteria for Implementation**

All jurisdictions conducting IRV elections will comply with the following criteria for implementation (“CI”s):

### **CI 1**

The governing board of a jurisdiction choosing to participate in the IRV pilot must make that decision no later than two months before the beginning of the filing period for offices in that election.

### **CI 2**

Boards of elections in counties with OS voting equipment conducting IRV elections for participating jurisdictions must follow the OS procedures adopted by the SBE. Full step-by-step directives for all sorting and counting options will have undergone full logic and accuracy testing by March 1, 2009.

### **CI 3**

Boards of elections in counties with DRE voting equipment conducting IRV elections for participating jurisdictions must follow the DRE procedures adopted by the SBE. Full step-by-step directives for all sorting and counting options will have undergone full logic and accuracy testing by March 1, 2009.

### **CI 4**

Participating jurisdictions and their county boards of elections will implement a plan for education of voters and candidates developed with the approval of the SBE. The educational plan will focus on the proper methods for marking IRV ballots, an overview of the vote-tallying method for determining winners, and access to additional information.

### **CI 5**

For any particular participating jurisdiction, IRV will apply to all offices on the ballot in the election unless a waiver is granted by the SBE.

### **CI 6**

The sample hand-to-eye count procedures of G.S. 163-182.1(b)(1) shall apply to IRV elections. The recount procedures—including hand-to-eye recount procedures—of G.S. 163-182.7 and G.S. 163-182.7A apply.

### **CI 7**

Each county board of elections conducting an IRV election shall train at least three pollworkers per precinct in the proper manner of instructing voters at the polls about marking an IRV ballot and shall have at least one pollworker at each polling place with the primary duty of providing that instruction at all times that the polls are open.

**CI 8**

The SBE will assign an SBE employee to each county board of elections conducting an IRV election to be present at the county on election day and on any days that ballot sorting or second-round counting are being conducted.

**Criteria for Evaluation**

All jurisdictions conducting IRV elections will comply with the following criteria for evaluation (“CE”s):

**CE 1**

Each jurisdiction will conduct, at its expense, exit polling of voters, using a polling instrument and pollsters approved by the SBE, to measure voter satisfaction with the experience and voter understanding of the IRV process.

**CE 2**

The SBE will devise and provide to each participating jurisdiction and to each county board of elections a form for tracking expenses incurred as a result of participating in an IRV election that would not otherwise have been incurred. The jurisdictions and the boards of elections will keep careful track of those expenses and report them to the SBE on a schedule to be set by the SBE. The jurisdiction will also report to the SBE its estimate of expenses avoided as a result of its participation in the IRV election.

**CE 3**

The SBE will conduct a survey of elections officials in counties conducting an IRV election, candidates in an IRV election, and other governing board members of participating jurisdictions, to measure their satisfaction with the experience and their understanding of the IRV process.

**CE 4**

The SBE will study evaluation results from other jurisdictions that have conducted IRV elections.