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H.396

Introduced by Representatives Fisher of Lincoln, Ancel of Calais, Aswad of Burlington, Burke of Brattleboro, Cheney of Norwich, Davis of Washington, Deen of Westminster, Donahue of Northfield, Edwards of Brattleboro, French of Randolph, Grad of Moretown, Haas of Rochester, Hooper of Montpelier, Howard of Rutland City, Johnson of South Hero, Kitzmiller of Montpelier, Larson of Burlington, Lippert of Hinesburg, Lorber of Burlington, Macaig of Williston, Maier of Middlebury, Marek of Newfane, Masland of Thetford, McCullough of Williston, Milkey of Brattleboro, Minter of Waterbury, Moran of Wardsboro, Mrowicki of Putney, Nuovo of Middlebury, Partridge of Windham, Ram of Burlington, Shand of Weathersfield, Sharpe of Bristol, Spengler of Colchester, Stevens of Waterbury, Weston of Burlington, Wizowaty of Burlington and Zuckerman of Burlington

Referred to Committee on

Date:

Subject: Elections; governor; instant runoff voting

1 Statement of purpose: This bill proposes to establish an instant runoff method
2 of casting, sorting, and counting votes to promote the election of the office of
3 governor by a majority of votes.

4 An act relating to the election of governor by the instant runoff voting
5 method

6 It is hereby enacted by the General Assembly of the State of Vermont:

7 Sec. 1. FINDINGS

8 (a) The legislature finds that:

9 (1) The principle of majority rule is fundamental to the concept of
10 democracy. When possible, election laws should be structured to uphold and
11 facilitate this basic principle.

12 (2) In a multicandidate race, in which no candidate receives a majority,
13 the candidate with the most votes (the plurality) may actually be the candidate
14 most opposed by the majority of voters.

15 (3) On 22 occasions in Vermont history, the governor was elected by the
16 general assembly rather than by the voters.

17 (4) In 35 percent of all election years in Vermont, one or more federal or
18 statewide races had a result with no majority.

1 (5) In one election with no majority winner in the governor’s race, the
2 general assembly deadlocked and elected no governor, forcing the lieutenant
3 governor to serve as acting governor.

4 (6) In another election, with no majority in the treasurer’s race, the
5 general assembly elected the candidate who came in third with just three
6 percent of the popular vote and who subsequently refused to serve, leaving the
7 state with no treasurer.

8 (b) The general assembly further finds that:

9 (1) The delay from November to the convening of the legislature in
10 January, in determining who will be governor, may be problematic in terms of
11 preparing a proposed budget and finding qualified citizens able to leave their
12 private sector employment for an administration that may never come into
13 being.

14 (2) It would be desirable, and there is a popular preference, to have a
15 direct popular election of the offices of governor while preserving the majority
16 requirement.

17 (c) The legislature further finds that:

18 (1) A voting system known as “preferential voting” in Robert’s Rules of
19 Order Newly Revised, and popularly known as “instant runoff voting,” which
20 has been used for governmental elections for over 80 years in Australia, as
21 well as in the Republic of Ireland and in England, and since 2006 in the city of

1 Burlington, Vermont, can fulfill these goals of majority rule, with direct
2 popular election.

3 (2) The instant runoff voting system, as set forth in this act, will promote
4 the popular election of the office of governor.

5 Sec. 2. 17 V.S.A. § 2103(43) is added to read:

6 (43) “Instant runoff method” means a method of casting, sorting, and
7 counting votes as set forth in sections 2473a and 2593 of this title that
8 accomplishes the same effect as if all voters were participating in a runoff
9 election, whereby only the two candidates with the greatest number of first
10 choices advance to a runoff count in which each ballot counts as a vote for
11 whichever of the final candidates is ranked higher on that ballot.

12 Sec. 3. 17 V.S.A. § 2473a is added to read:

13 § 2473a. INSTANT RUNOFF METHOD; APPLICATION; BALLOTS;

14 RULES

15 (a) Notwithstanding the provisions of section 2472 of this title to the
16 contrary, the instant runoff method shall be used in all general election contests
17 for the office of governor.

18 (b) For purposes of subsection (a) of this section, the secretary of state
19 may, by rule:

20 (1) provide for the use of mechanical, electronic, or other devices for
21 marking, sorting, and counting the ballots and tabulating the results;

1 (2) modify the form of the ballots and the directions to voters; and
2 (3) prescribe the details with respect to the method of marking, sorting,
3 counting, invalidating, and the tabulating of votes, provided that no change
4 shall be made which will alter the intent or principles embodied in this chapter.

5 (c) Ballots approved under this section shall be simple and easy to
6 understand, and shall allow a voter to rank candidates for an office in order of
7 choice. If practical, ballots shall be designed such that voters may mark their
8 first choices in the same manner as for offices not elected by the instant runoff
9 method. If the secretary determines that the number of candidates for a
10 particular office exceeds the practical space requirements for ranking all
11 candidates on the ballot, the secretary may limit the number of rankings the
12 voter may make. However, if there are three or more candidates for an office,
13 the secretary shall provide for ranking at least three choices.

14 (d) Instructions on the ballot shall include the following statement: “In
15 addition to your first-choice candidate, you may rank alternate choice
16 candidates if you wish. Marking a second or other choice cannot help defeat
17 your first choice.” Sample ballots to illustrate voting procedures, using
18 fictitious names, shall be posted in or near the voting booth and included in the
19 instruction materials for absentee ballots. Prior to each general election, the
20 secretary of state shall conduct a voter education campaign to educate voters
21 on the use and purpose of the instant runoff voting method. The secretary shall

1 use public service announcements, as well as seek other media cooperation to
2 the maximum extent practicable.

3 (e) Each ballot bears no more than a single vote for the office, which
4 counts as a vote for the candidate for whom the ballot is credited at the end of
5 an instant runoff tabulation.

6 Sec. 4. 17 V.S.A. § 2493(c) is added to read:

7 (c) In the case of elections conducted by the instant runoff method, the
8 secretary of state shall adopt rules to ensure that the arrangement of names,
9 offices, and choice on each type of machine conforms as nearly as practical to
10 the ballot design adopted by the secretary under section 2473a of this title.

11 Sec. 5. 17 V.S.A. § 2587(b) is amended to read:

12 (b) If the voter marks more names than there are persons to be elected to an
13 office, except as provided in section 2473a of this title, or marks contradictory
14 sides on any public question, his or her ballot shall not be counted for that
15 office or public question.

16 Sec. 6. 17 V.S.A. § 2592 is amended to read:

17 § 2592. CANVASSING COMMITTEES; CANVASS OF VOTES IN

18 GENERAL OR SPECIAL ELECTIONS

19 * * *

20 (h)(1) ~~The~~ In the case of candidates other than candidates for the offices of
21 governor, lieutenant governor, and treasurer, the canvassing committee shall

1 declare the person receiving the largest number of votes for each office to be
2 elected, and it shall issue a certificate of election, signed by a majority of the
3 canvassing committee, in substantially the following form:

4 State of Vermont)
5) s.s.
6 County)

7 At, on the day of 20, a
8 canvassing committee appointed by law completed a canvass of the returns
9 cast at a general election held on the day of, 20
10 for the office of The committee hereby certifies that
11 of was duly elected to the office by the voters present and
12 voting.

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14

15 (2) The committee shall send or deliver the certificate to the candidate
16 elected. In the case of representatives to the general assembly, the committee
17 shall also send or deliver a copy of each certificate to the secretary of state.

18 * * *

19 (k)(1) In the case of the offices of ~~governor~~, lieutenant governor, treasurer,
20 secretary of state, attorney general, and auditor of accounts, the canvassing
21 committee shall prepare a certificate of election but shall not sign it. The

1 prepared certificate shall be presented to the official canvassing committee
2 appointed by the general assembly, pursuant to Chapter II, ~~section~~ § 47 of the
3 ~~Vermont~~ Constitution of the State of Vermont, for ~~their~~ its use if they desire.

4 (2) In the case of the office of governor, the canvassing committee shall
5 prepare a certificate of election only if one candidate has received a majority,
6 but shall not sign it. The prepared certificate shall be presented to the official
7 canvassing committee appointed by the general assembly, pursuant to
8 Chapter II, § 47 of the Constitution of the State of Vermont, for its use.

9 Sec. 7. 17 V.S.A. § 2594 is added to read:

10 § 2594. INSTANT RUNOFF METHOD; INSTRUCTIONS FOR

11 TABULATING VOTES

12 (a) The provisions of section 2587 of this title shall apply to elections
13 conducted by the instant runoff method unless inconsistent with the provisions
14 of this section.

15 (b) The following procedures shall be used to determine the winners in
16 elections conducted by the instant runoff method:

17 (1) Ballots shall be counted initially by the election officials according
18 to the first choice marked on each ballot. If one candidate receives a majority
19 of the votes cast, the canvassing committee shall issue a certificate of election
20 in the manner provided in section 2592 of this title.

1 (2) If, at the end of the initial count, an examination of first choices does
2 not reveal which candidate has received the major part of the votes, the
3 canvassing committee established in section 2592 of this title shall forthwith
4 petition the Washington County superior court to determine the candidate who
5 received the major part of the votes by conducting instant runoff recounts in
6 the manner provided in this section. The petition shall be supported by a
7 statement that no candidate is the first choice of a majority of voters. Upon
8 receipt of the petition, the court shall appoint an instant runoff count committee
9 in the manner provided for appointment of a recount committee under
10 subsection 2602(a) of this title, and follow substantially the same procedures
11 provided for recounts under subchapter 9 of chapter 51 of this title.

12 (3) The instant runoff count committee shall sort and count votes for
13 candidates. If, in the first round, no candidate received a majority of first
14 choices, all candidates shall be eliminated except the two candidates with the
15 greatest number of first choices. Ballots which rank eliminated candidates and
16 which indicate one of the final candidates as an alternate choice shall be
17 counted as votes for whichever of the final candidates is ranked higher for that
18 office on each ballot. In each round, each ballot is counted as one vote for the
19 highest ranked advancing candidate on that ballot.

20 (4) In the case of the office of governor, the court shall prepare a
21 certificate of election but shall not sign it and forward it to the secretary of

1 state and the official canvassing committee appointed by the general assembly,
2 pursuant to Chapter II, § 47 of the Vermont constitution, for its use in
3 declaring the candidate who received the major part of the votes elected.

4 (5) If, at the conclusion of the instant runoff tabulation, neither of the
5 last two remaining candidates for the office of governor receives a majority of
6 the votes cast, excluding blank and spoiled votes, the court shall prepare a
7 report of no election. The report and the tabulations performed by the
8 committee shall be forwarded to the official canvassing committee appointed
9 by the general assembly, pursuant to Chapter II, § 47 of the Vermont
10 constitution, and to the full general assembly for its use in the election of the
11 governor. The general assembly shall proceed to elect one of the three
12 candidates for whom the greatest number of votes has been returned.

13 (c) The following general provisions shall apply whenever the instant
14 runoff method is used:

15 (1) If after the first choice candidate is eliminated, a ballot does not
16 indicate one of the advancing candidates as an alternate choice, the ballot is
17 exhausted.

18 (2) The fact that a voter gives more than one ranking to the same
19 candidate shall not invalidate the vote. The highest ranking given a particular
20 candidate shall count as long as the candidate is not eliminated.

1 (3) If there is a tie between candidates so that two or more candidates
2 have an equal number of first choices and more than two candidates would
3 advance to the final round, the instant runoff method shall be used by
4 eliminating all candidates receiving fewer first choices than the tied candidates,
5 to determine which two candidates shall advance as the two candidates in the
6 final round of counting.

7 Sec. 8. 17 V.S.A. § 2595 is added to read:

8 § 2595. SORTING AND COUNTING OF VOTES BY THE CANVASSING

9 COMMITTEE OF THE GENERAL ASSEMBLY

10 The canvassing committee of the general assembly appointed in accordance
11 with Chapter II, § 47 of the Constitution of the State of Vermont shall retain
12 the right to directly sort and count the votes for candidates for the office of
13 governor using the instant runoff method set forth in section 2593 of this title.
14 The municipal clerks, county clerks, secretary of state, and state police shall
15 cooperate as may be required if the canvassing committee of the general
16 assembly decides to conduct a direct sorting and counting of the votes as
17 provided in Chapter II, § 47 of the Vermont constitution.

18 Sec. 9. INTENT; SEVERABILITY

19 (a) The general assembly finds that the system of instant runoff voting
20 contained in this act complies with the provisions of Chapter II, § 47 of the
21 Constitution of the State of Vermont.

1 (b) In the event that a court of competent jurisdiction should find that the
2 instant runoff method of tabulating votes does not comply with the
3 requirements of determining if a candidate has received the major part of the
4 votes as set forth in Chapter II, § 47 of the Vermont constitution, in an election
5 for the office of governor the general assembly intends that the instant runoff
6 voting method, as described in this act, be employed, but that the instant runoff
7 tabulation results, indicating which candidate is preferred by a majority of
8 voters in a runoff election between the top two candidates, shall be available to
9 the general assembly for its use in carrying out its task of electing a governor
10 from among the three candidates receiving the greatest number of votes.

11 Sec. 10. EFFECTIVE DATE

12 This act shall take effect on July 1, 2009 and shall apply to the 2010 general
13 election and subsequent general elections.