

LD 859 An Act To Allow Municipalities To Use Ranked-choice Voting in Municipal Elections

To: Members, Joint Standing Committee on State and Local Government

From: Lynne Caswell, Esq., Legislative Analyst

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electronic
file<https://legislature.maine.gov/slg-meeting-materials-130th-legislature>**SUMMARY**

The sponsor's amendment to this concept draft bill (see Attachment A):

1. Amends the bill title - "An Act to Give Municipalities More Options in Municipal Elections";
2. Permits municipalities to adopt a "different method" than the plurality standard to determine the winner of an election; and
3. Permits municipalities to adopt a "different method" to resolve tie votes.

TESTIMONY¹**Sponsor** – Rep Berry

- municipalities w/o a charter are not able to choose rank choice or other method
- permits, does not require municipalities to adopt alternative

Cosponsor: Rep Kyle Bailey

- referendum revealed state wide approval of rank choice

Proponents: SOS Bellows; Maine of Women Voters' of Maine

- Rank choice state level since 2018;
- There are technical issues for local units;
- SOS needs statutory authority to implement rules for local elections;
- LWVM survey 10 years ago;
- Municipalities with a charter may adopt an alternative method (e.g. Portland in 2010)

Opponents: none**NFNA:** MMA

- Municipalities need specific statutory permission to choose rank choice or alternate method

Written only: Peter Anzuini; Wendy Lee MacDowell; Craig Caffrey; Mark Chase; Danny Emerson; Shallic Hurd; Holly Littlefield; David Manter; Roberta Manter; Joseph Massimino; Steven McCoy; Michael Parker; Michelle Peacock; Rhonda Reed; Glee Ross; Richard Smith; Francis Walker Jr.; Cherie Wilder; Patricia Frechette; Deborah Milite; Janet Preston

INFORMATION

- In 2017, the Maine Supreme Judicial Court advised that the Maine's constitution² requires a plurality vote in the general election of US Congressional representatives, the Governor and State legislative representatives. Because ranked-choice voting requires a majority, it is not permitted for general elections.³

¹ The section is not intended to reflect all comments and may include unintentionally errors.

² Constitution of Maine, Art. IV, Part First, Section 5 and Part Second, Sections 4 and 5 and Art. V, Part First, Section 3

³ Opinion of the Justices, 162 A. 3d 188 (2017)

- Maine's constitution does not address voting in primaries or municipal elections.

MATTERS FOR CONSIDERATION

1. What does "different method" mean (See Attachment B)

Ranked-choice Voting - voters rank all candidates; if no majority, last place candidate eliminated; 2nd round of vote tallying

Approval Voting - allow voters to cast votes for as many candidates as they like in a given rate. All votes are tallied and person with most votes wins

Proportional Representation – elected in multi-member districts rather than single-member districts; number of seats won by liked-minded group of voters (e.g. political party) is proportional to the overall % of total votes cast.

2. Three sections in Title 30-A require plurality vote (see Attachment C)

- §2555 requires a plurality vote in city elections;
- §2526 requires a plurality vote election of town officials in towns with a population > 4000; and
- §2528, sub-§10 requires a plurality vote in secret ballot for the election of town officials or municipal referenda elections

FISCAL IMPACT - Preliminary (OFPR)

None provided as of this date.

Sponsor's Amendment to LD 859, An Act to Allow Municipalities to use Rank-choice Voting in Municipal Elections

Amend the bill by striking the title and inserting the following:

An Act to Give Municipalities More Options in Municipal Elections

Amend the bill by striking everything after the enacting clause and inserting the following. The differences from the original bill are highlighted in yellow

Sec. 1. 30-A MRSA §2528, sub-§10 is amended to read:

10. Election by plurality vote; tie vote. Election must be by plurality vote unless the town adopts a different method at a meeting held at least 180 days in advance of the annual meeting. In the case of a tie vote, the meeting must be adjourned to a day certain, when ballots are again cast for the candidates tied for the office in question, unless all but one tied candidate withdraw from a subsequent election by delivering written notice of withdrawal signed by the candidate and notarized to the municipal offices within the 7-day period following the election. After the 7-day period has expired, the municipal officers shall call a run-off election between the remaining candidates by posting a warrant in the manner required for calling a town meeting. If only one candidate remains, that candidate is declared the winner and sworn into office.

If the meeting is adjourned sine die before a tie vote is resolved or the tie vote is discovered after the meeting adjourns sine die and more than one candidate remains, a new meeting must be called to conduct a run-off election by the method described in this subsection.

A town may adopt a different method of resolving tie votes at a meeting held at least 180 days in advance of the annual meeting.

Alternative Voting Systems¹

6/25/2020

Nearly every state uses a similar system for casting and counting votes—voters select one candidate per race on a ballot and the candidate that receives the most votes wins. This is known as plurality voting or winner-take-all.

Plurality voting isn't the only option, though. Ranked choice voting, approval voting and proportional representation are described below.

As legislators consider these options, these questions may be useful:

- Can the current voting equipment accommodate such a system? If not, could an RFP for the next generation of voting equipment include readiness for these options?
- What's the best way to educate voters on the new system?
- Are there any other statutory changes needed to implement an alternative voting system?

For more information, contact NCSL's [Elections Team](#).

Ranked-Choice Voting

In a [ranked-choice voting system](#), voters rank all the candidates for a given office by their preference—first choice, second choice, etc. The votes are first tallied based on the first choice on every ballot. When ranked-choice is used to elect one candidate (instead of multiple candidates in a multi-member district) the result is similar to traditional [runoff elections](#), but with just one trip to the polls. If no single candidate wins a first-round majority of the votes, then the candidate with the lowest number of votes is eliminated and another round of vote tallying commences. If a voter's first choice is eliminated, then the vote goes to the second choice and so on. Eventually one candidate receives a majority (over 50 percent) and wins the election. This is also known as “instant-runoff voting.”

For more information on ranked-choice voting, please visit NCSL's full page on [ranked-choice voting](#).

Approval Voting

Approval voting is a system which allows voters to cast votes for as many candidates as they like in a given race rather than just one single candidate. This allows voters to answer the question, “Do you approve of this person for the job?” The votes are then tallied normally and the candidate that receives the most votes wins the election, similar to plurality voting.

Approval voting will result in vote percentages that add up to more than 100 percent. Supporters [argue](#) that the system better represents the degree of support for third parties, makes the system more resistant to tactical voting or having third parties take away votes from major party candidates, and may lead to the election of more moderate candidates. Opponents, however, [contend](#) that approval voting may be vulnerable to strategic voting, is hardly used in competitive elections for this reason and could result in candidates that receive the first choice support of more than 50 percent of

¹ National Conference of State Legislators @ <https://www.ncsl.org/research/elections-and-campaigns/alternative-voting-systems.aspx>

voters losing to a candidate without a single first choice supporter. The Center for Election Science has [published a rebuttal](#) to common criticisms of approval voting.

Currently, approval voting is not widely used, but is [used by](#) the United Nations in a multi-round election to select the secretary-general, and by some political parties and other private associations. In 2018, voters in Fargo, N.D. approved a ballot initiative implementing approval voting for their municipal elections; the city held the nation's first-ever approval voting election on June 9, 2020.

Proportional Representation

Proportional representation describes systems in which legislators are elected in multi-member districts rather than single-member districts, and the number of seats won by like-minded group of voters (such as political parties in a partisan election system) is proportional to the overall percentage of votes that those voters cast in the election. For example, if there are 10 seats in a district and one party receives 50 percent of the vote then that party receives five seats, another party receives 40 percent of the vote then that party receives four seats and a third party receives 10 percent of the vote then that party receives one seat. To make proportional representation possible, legislatures and other governing bodies would need to be restructured so that there would be few or no single-member districts, as is most common currently.

The most common form of proportional representation used is party list voting, often associated with parliamentary systems, but used in some presidential systems as well. Under the simplest form of party list voting, each party nominates the number of candidates equal to the number of seats in that multi-member district. Voters then indicate their preference for a party—not individual candidates—on the ballot. Parties then receive a certain number of seats based on the vote and select candidates by their order on the ballot.

There are many variations of party list voting, including "mixed member" systems in Germany, where many legislators are elected in single-member districts, and "open list" systems, as in Finland, where voters may vote for individual candidates as well as for parties.

Party list forms of proportional representation is not used currently in the U.S. but is used by many countries throughout Africa, Asia, Australia, South America and Europe.

The United States uses candidate-based forms of proportional representation in more than 100 localities, all for candidates in multi-member districts. One such system is ranked choice voting (see above); cumulative voting (where voters have the same number of votes as seats to be filled and can distribute them all to one candidate or spread them amongst candidates) and limited voting (where voters have fewer votes to cast than seats to be filled).

30-A MRSA §2526. Choice and qualifications of town officials

Unless otherwise provided by charter, the following provisions apply to the choice and qualifications of town officials.

1. Manner of election. In a town with a population greater than 4,000, according to the last Federal Decennial Census, election shall be by plurality. Except as provided in section 2528, subsection 10, in a town with a population of 4,000 or under, election shall be by majority.

30- A MRSA §2555. Election by plurality

In a city election, unless otherwise provided by municipal charter, the person who receives a plurality of the votes cast for election to any office is elected to that office.

30-A MRSA §2528. Secret ballot

The following provisions govern a town's use of a secret ballot for the election of town officials or for municipal referenda elections. A vote by secret ballot takes precedence over a vote by any other means at the same meeting.

...

10. Election by plurality vote; tie vote. Election must be by plurality vote. In the case of a tie vote, the meeting must be adjourned to a day certain, when ballots are again cast for the candidates tied for the office in question, unless all but one tied candidate withdraw from a subsequent election by delivering written notice of withdrawal signed by the candidate and notarized to the municipal offices within the 7-day period following the election. After the 7-day period has expired, the municipal officers shall call a run-off election between the remaining candidates by posting a warrant in the manner required for calling a town meeting. If only one candidate remains, that candidate is declared the winner and sworn into office.

If the meeting is adjourned sine die before a tie vote is resolved or the tie vote is discovered after the meeting adjourns sine die and more than one candidate remains, a new meeting must be called to conduct a run-off election by the method described in this subsection.