House Bill 2761

Sponsored by Representative BUCKLEY; Representative DINGFELDER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Allows county or city to adopt instant runoff voting system for nomination or election of candidates to county or city office.

1   **A BILL FOR AN ACT**

2   Relating to elections; creating new provisions; and amending ORS 246.560, 249.088, 254.005, 254.065,

3   254.145, 254.575, 258.250 and 258.280.

4   **Be It Enacted by the People of the State of Oregon:**

5   <u>SECTION 1.</u> ORS 254.005 is amended to read:

6   254.005. As used in this chapter:

7   (1) "Ballot" means any material on which votes may be cast for candidates or measures. In the

8   case of a recall election, "ballot" includes material posted in a voting compartment or delivered to

9   an elector by mail.

10   (2) "Ballot label" means the material containing the names of candidates or the measures to be

11   voted on.

12   (3) "Chief elections officer" means the:

13   (a) Secretary of State, regarding a candidate for a state office or an office to be voted on in the

14   state at large or in a congressional district, or a measure to be voted on in the state at large.

15   (b) County clerk, regarding a candidate for a county office, or a measure to be voted on in a

16   county only.

17   (c) City clerk, auditor or recorder, regarding a candidate for a city office, or a measure to be

18   voted on in a city only.

19   (4) "County clerk" means the county clerk or the county official in charge of elections.

20   (5) "Elector" means an individual qualified to vote under section 2, Article II, Oregon Consti-

21   tution.

22   **(6) "Instant runoff voting system" means a system of voting for candidates for nomi-**

23   **nation or election to county or city office, authorized by section 16, Article II of the Oregon**

24   **Constitution, under which an elector may express the elector's first, second or additional**

25   **choices among the candidates for nomination or election to county or city office under**

26   **sections 3 and 4 of this 2007 Act.**

27   [*(6)*] **(7)** "Major political party" means a political party that has qualified as a major political

28   party under ORS 248.006.

29   [*(7)*] **(8)** "Measure" includes any of the following submitted to the people for their approval or

30   rejection at an election:

31   (a) A proposed law.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1   (b) An Act or part of an Act of the Legislative Assembly.

2   (c) A revision of or amendment to the Oregon Constitution.

3   (d) Local, special or municipal legislation.

4   (e) A proposition or question.

5   [*(8)*] **(9)** "Minor political party" means a political party that has qualified as a minor political

6 party under ORS 248.008.

7   [*(9)*] **(10)** "Nonpartisan office" means the office of judge of the Supreme Court, Court of Appeals,

8 circuit court or the Oregon Tax Court, Superintendent of Public Instruction, Commissioner of the

9 Bureau of Labor and Industries, any elected office of a metropolitan service district under ORS

10 chapter 268, justice of the peace, county clerk, county assessor, county surveyor, county treasurer,

11 county judge who exercises judicial functions, sheriff, district attorney or any office designated

12 nonpartisan by a home rule charter.

13   [*(10)*] **(11)** "Prospective petition" means the information, except signatures and other identifica-

14 tion of petition signers, required to be contained in a completed petition.

15   [*(11)*] **(12)** "Regular district election" means the election held each year for the purpose of

16 electing members of a district board as defined in ORS 255.005 (2).

17   [*(12)*] **(13)** "Vote tally system" means one or more pieces of equipment necessary to examine and

18 tally automatically the marked ballots.

19   [*(13)*] **(14)** "Voting machine" means any device that will record every vote cast on candidates

20 and measures and that will either internally or externally total all votes cast on that device.

21   **SECTION 2. Sections 3 and 4 of this 2007 Act are added to and made a part of ORS**

22 **chapter 254.**

23   **SECTION 3. (1) Notwithstanding any provision of ORS chapters 203, 221 and 246 to 260,**

24 **a county or city charter or ordinance may authorize the use of an instant runoff voting**

25 **system for the nomination and election of candidates to county or city office.**

26   **(2) The Secretary of State shall adopt rules governing the conduct of county or city**

27 **elections using an instant runoff voting system.**

28   **(3) Notwithstanding ORS 254.046, if a county or city conducts an election on any date**

29 **using an instant runoff voting system, the county or city shall bear the cost of the election.**

30   **SECTION 4. (1) Elections for the nomination or election of candidates to county or city**

31 **office that use an instant runoff voting system authorized under section 3 of this 2007 Act**

32 **shall be conducted as provided in this section.**

33   **(2) The ballot shall be designed to allow an elector to vote for the elector's first, second**

34 **and third choices from among the candidates, including candidates listed on the ballot or one**

35 **write-in candidate.**

36   **(3) Ballots shall be counted as follows:**

37   **(a) The elector's vote shall be assigned to the candidate marked as the elector's first**

38 **choice. If one candidate receives a majority of the first-choice votes, that candidate shall be**

39 **declared nominated or elected.**

40   **(b) If no candidate receives a majority of the first-choice votes, the candidate receiving**

41 **the fewest first-choice votes is eliminated. Each vote cast for the eliminated candidate shall**

42 **be transferred to the candidate who was the elector's next choice on the ballot.**

43   **(c) Candidates with the fewest votes shall continue to be eliminated, with the votes for**

44 **those candidates transferred to the candidate who was the elector's next choice on the ballot**

45 **until a candidate receives a majority of the votes cast. When a candidate receives a majority**

1 **of votes, that candidate is nominated or elected.**

2 **(d) Notwithstanding any provision of this subsection, a candidate is eliminated after the**
3 **first tally of ballots if the candidate receives fewer than 500 votes, or less than 10 percent**
4 **of the total votes cast for the nomination or office, whichever is less.**

5 **(4) An elector may vote for the elector's choices as follows:**

6 **(a) For each nomination or office for which there are three or more candidates listed on**
7 **the ballot, an elector may indicate three choices.**

8 **(b) For each nomination or office for which there are two candidates listed on the ballot,**
9 **an elector may indicate two choices.**

10 **(c) For each nomination or office for which there is one or no candidate listed on the**
11 **ballot, an elector may indicate one choice.**

12 **(5) If all candidates for whom an elector voted on a ballot are eliminated, the ballot is**
13 **considered exhausted and may not be considered in any continuing determination of whether**
14 **a candidate for the nomination or election received a majority of the votes cast. If the ballot**
15 **of an elector does not list the elector's choices in numerical order, the elector's next clearly**
16 **indicated choice in order shall be counted. If an elector's ballot assigns the same numeric**
17 **choice to more than one candidate, those assignments are invalid and the elector's vote is**
18 **transferred to the next numeric choice, if any.**

19 **(6) If two or more candidates for the same nomination or election, after a recount of the**
20 **votes cast, have an equal and the highest number of votes at any stage of the counting of**
21 **the votes, and one of the candidates is to be eliminated, the tie shall be resolved as provided**
22 **in ORS 254.575.**

23 SECTION 5. ORS 254.065 is amended to read:

24 254.065. (1) **Subject to subsection (2) of this section,** when one person is to be nominated for
25 or elected to an office, the person receiving the highest number of votes [*shall be*] **is** nominated or
26 elected. When more than one person is to be nominated for or elected to a single office, the persons
27 receiving the higher number of votes [*shall be*] **is** nominated or elected. This subsection does not
28 apply to a candidate for election to an office at a general election if the election for the office must
29 be held at a special election as described in ORS 254.650.

30 **(2) When one person is to be nominated for or elected to a county or city office using**
31 **an instant runoff voting system, the person receiving the highest number of votes as pro-**
32 **vided in section 4 of this 2007 Act is nominated or elected. When more than one person is**
33 **to be nominated for or elected to a single office, the persons receiving the higher number**
34 **of votes as provided in section 4 of this 2007 Act are nominated or elected.**

35 [*(2)*] **(3)** [*No measure shall be*] **A measure is not** adopted unless it receives an affirmative ma-
36 jority of the total votes cast on the measure. If two or more conflicting laws, or amendments to the
37 Constitution or charter, are approved at the same election, the law, or amendment, receiving the
38 greatest number of affirmative votes shall be paramount regarding each conflict, even though the
39 law, or amendment, may not have received the greatest majority of affirmative votes.

40 SECTION 6. ORS 254.145 is amended to read:

41 254.145. (1) The names of candidates for nomination for or election to each office shall be ar-
42 ranged on the ballot or ballot label in the order determined under ORS 254.155. The names of can-
43 didates for the offices of President and Vice President of the United States, however, shall be
44 arranged in groups. Except as provided in ORS 254.125, 254.135 and this section, no information
45 about the candidate, including any title or designation, other than the candidate's name, shall ap-

1   pear on the ballot. In a precinct in which voting machines are used, spaces shall be provided, either

2   on the ballot or on separate material delivered to the elector with the ballot, in which the elector

3   may write the names of persons for any offices appearing on the ballot label. In other precincts, at

4   the end of the list of candidates for each office shall be a blank space in which the elector may write

5   the name of any person not printed on the ballot. On the left margin of the ballot or ballot label the

6   name of each group or candidate may be numbered. The blank spaces shall not be numbered. A

7   particular number shall not be used to designate more than one candidate at any election.

8   (2) The names of all candidates for the same office shall be listed in the same column on the

9   ballot or ballot label. If more than one column is needed to list names of all candidates for that of-

10   fice, the names may be arranged in one or more columns in block form. The block shall be set apart

11   by rulings under the title of the office. If a blank space follows the list of candidates, the space shall

12   be in the same column as the names of candidates for that office. If blocks of columns are used,

13   blank spaces shall be included within the ruled block.

14   (3) In precincts using voting machines, the ballot label shall be clearly marked to indicate when

15   names of candidates for the office are continued on the following page.

16   (4) When a measure is submitted to the people, the number, ballot title and financial estimates

17   under ORS 250.125 of each measure shall be printed after the list of candidates. A measure referred

18   by the Legislative Assembly shall be designated "Referred to the People by the Legislative Assem-

19   bly." A state measure referred by petition shall be designated "Referendum Order by Petition of the

20   People." A state measure proposed by initiative petition shall be designated "Proposed by Initiative

21   Petition."

22   (5) For an election conducted at polling places under this chapter, each official ballot shall have

23   a removable stub. The stub on the ballots for a precinct shall be numbered consecutively.

24   (6) The ballot shall be printed to give the elector a clear opportunity to designate the elector's

25   choice for candidates and approval or rejection of measures submitted. In precincts not using voting

26   machines the elector shall indicate a preference by making a cross or check mark inside a voting

27   square corresponding to the candidate or answer for which the elector wishes to vote. A voting

28   square may be printed on the blank, write-in vote spaces. However, the elector is not required to

29   place a mark in the voting square corresponding to a name written in a blank space. On the ballot

30   or ballot label shall be printed words to aid the elector, such as "Vote for one," "Vote for three,"

31   and regarding measures, "Yes" and "No."

32   **(7) Notwithstanding subsection (6) of this section, the Secretary of State by rule shall**

33   **design ballots to accommodate an instant runoff voting system. If a county or city has au-**

34   **thorized an instant runoff voting system under section 3 of this 2007 Act, the county clerk**

35   **shall use ballots designed by the secretary in any county or city election in which the instant**

36   **runoff voting system is used.**

37   **SECTION 7.** ORS 254.575 is amended to read:

38   254.575. **(1) Except as provided in subsection (2) of this section,** when two or more candi-

39   dates for the same office, after a full recount of votes, have an equal and the highest number of

40   votes:

41   [*(1)*] **(a)** For election to state Senator or Representative, a party office, or a public office for

42   which the elections officer is other than the Secretary of State, the elections officer shall have the

43   candidates meet publicly to decide by lot who is elected.

44   [*(2)*] **(b)** For election to a public office other than Governor or those referred to in [*subsection*

45   *(1) of this section*] **paragraph (a) of this subsection**, the Secretary of State by proclamation shall

1 order a new election to fill the office.

2 [*(3)*] **(c)** For election to Governor, the Legislative Assembly at the beginning of the next regular

3 session shall meet jointly and elect one of the candidates.

4 [*(4)*] **(d)** For nomination by one major political party to an office, the elections officer who re-

5 ceives filings for nomination to the office shall have the candidates meet publicly to decide by lot

6 who is nominated.

7 **(2) In a county or city that has authorized an instant runoff voting system under section**

8 **3 of this 2007 Act, when two or more candidates for the same county or city office, after a**

9 **recount of votes, have an equal and the highest number of votes at any stage of the counting**

10 **of votes under section 4 of this 2007 Act and one of the candidates is to be eliminated, the**

11 **elections officer shall have the candidates meet publicly to decide by lot who is eliminated.**

12 <u>SECTION 8.</u> ORS 258.250 is amended to read:

13 258.250. (1) [*If the abstract of votes resulting from a full recount shows that the outcome of the*

14 *election on the measure was changed or that a candidate for whose benefit the recount was demanded*

15 *received a plurality of the votes,*] The deposit required by ORS 258.161 shall be refunded by the Sec-

16 retary of State to the person who filed the demand **for a recount if the abstract of votes re-**

17 **sulting from a full recount shows that:**

18 **(a) The outcome of the election on a measure was changed;**

19 **(b) The candidate for whose benefit the recount was demanded received a plurality of the**

20 **votes; or**

21 **(c) In a county or city that has authorized an instant runoff voting system under section**

22 **3 of this 2007 Act, the candidate for whose benefit the recount was demanded received the**

23 **highest number of votes**.

24 (2) The Secretary of State shall transfer the deposit required by ORS 258.161 and any additional

25 amount paid pursuant to subsection (5) of this section to a special account in the General Fund if:

26 (a) A full recount was not conducted; or

27 (b) The abstract of votes resulting from a full recount shows that:

28 (A) The outcome of the election on [*the*] **a** measure was not changed; [*or*]

29 (B) [*A*] **The** candidate for whose benefit the recount was demanded did not receive a plurality

30 of the votes[.]**; or**

31 **(C) In a county or city that has authorized an instant runoff voting system under section**

32 **3 of this 2007 Act, the candidate for whose benefit the recount was demanded did not receive**

33 **the highest number of votes.**

34 (3) Moneys deposited in the special account under subsection (2) of this section are continuously

35 appropriated for the purpose of reimbursing the county, city or other political subdivision or public

36 corporation for the cost of the recount and paying any refunds required by subsection (4) of this

37 section.

38 (4) Upon receipt from the official directed to conduct the recount of a signed certificate itemiz-

39 ing the cost of the recount, the Secretary of State shall request the Oregon Department of Admin-

40 istrative Services to issue warrants for the amount so certified. Any portion of the deposit required

41 by ORS 258.161 remaining after the cost of the recount has been paid shall be refunded to the person

42 who filed the demand upon receipt of a warrant from the Oregon Department of Administrative

43 Services showing the amount of the refund to which the person is entitled.

44 (5) If the cost of the recount exceeds the amount of the deposit required by ORS 258.161, and

45 if the person who filed the demand does not qualify for a refund under subsection (1) of this section,

1 the person shall pay to the Secretary of State the amount of the excess cost.

2 **SECTION 9.** ORS 258.280 is amended to read:

3 258.280. (1) The Secretary of State shall order a full recount of the votes cast for nomination

4 or election to a public office for which the Secretary of State is the filing officer, and the county

5 clerk who conducted the election shall order a full recount of the votes cast for nomination or

6 election to any other public office if the canvass of votes of the election reveals that:

7 (a) Two or more candidates for that nomination or office have an equal and the highest number

8 of votes; [*or*]

9 **(b) In a county or city that has authorized an instant runoff voting system under section**

10 **3 of this 2007 Act, two or more candidates for the same county or city office have an equal**

11 **and the highest number of votes at any stage of the counting of votes under section 4 of this**

12 **2007 Act and one of the candidates is to be eliminated; or**

13 [*(b)*] **(c)** The difference in the number of votes cast for a candidate apparently nominated or

14 elected to the office and the votes cast for the closest apparently defeated opponent is not more than

15 one-fifth of one percent of the total votes for both candidates.

16 (2) The cost of a full recount conducted under this section shall be paid by the county for a

17 county office, by the city for a city office, by the special district for a special district office or by

18 the state for any other office.

19 **SECTION 10.** ORS 246.560 is amended to read:

20 246.560. (1) A voting machine may not be approved by the Secretary of State unless the voting

21 machine is constructed so that it:

22 (a) Secures to the elector secrecy of voting.

23 (b) Provides facilities for voting for the candidates of as many political parties or organizations

24 as may make nominations and for or against as many measures as may be submitted.

25 (c) Permits the elector to vote for any person and as many persons for an office and upon any

26 measure for which the elector has the right to vote.

27 (d) Permits the elector, except at a primary election, to vote for all the candidates of one party

28 or in part for the candidates of one party and in part for the candidates of one or more other par-

29 ties.

30 (e) Correctly records on a separate ballot the votes cast by each elector for any person and for

31 or against any measure.

32 (f) Provides that a vote for more than one candidate cannot be cast by one single operation of

33 the voting machine or vote tally system except for President and Vice President and electors for

34 those offices.

35 (g) Provides that straight party pointers shall be disconnected from all candidate pointers.

36 (h) Contains a device that will duplicate the votes cast by each elector onto a paper record

37 copy.

38 (i) Contains a device that will allow each elector to view the elector's paper record copy while

39 preventing the elector from directly handling the paper record copy.

40 (2) A vote tally system shall be:

41 (a) Capable of correctly counting votes on ballots on which the proper number of votes have

42 been marked for any office or measure that has been voted.

43 (b) Capable of ignoring the votes marked for any office or measure if more than the allowable

44 number of votes have been marked, but shall correctly count the properly voted portions of the

45 ballot.

1   (c) Capable of accumulating a count of the specific number of ballots tallied for a precinct, ac-

2 cumulating total votes by candidate for each office, and accumulating total votes for and against

3 each measure of the ballots tallied for a precinct.

4   (d) Capable of tallying votes from ballots of different political parties, from the same precinct,

5 in a primary election.

6   (e) Capable of accommodating the procedure established under ORS 254.155.

7   (f) Capable of automatically producing precinct totals in either printed, marked, or punched

8 form, or combinations thereof.

9   **(g) Capable of accommodating the instant runoff voting system as defined in ORS 254.005.**

10   **SECTION 11.** ORS 249.088 is amended to read:

11   249.088. (1) [*Unless otherwise provided by*] **Subject to subsection (2) of this section and the**

12 **provisions of** a home rule charter[*,*]**:**

13   **(a) Except as provided in paragraphs (b) and (c) of this subsection,** at the nominating

14 election held on the date of the primary election, **the** two candidates **receiving the highest num-**

15 **ber of votes** shall be nominated for the nonpartisan office.

16   **(b)** [*However,*] **Except as provided in paragraph (c) of this subsection,** when a candidate[*,*

17 *other than a candidate for the office of sheriff, a candidate for the office of county clerk, a candidate*

18 *for the office of county treasurer or a candidate to fill a vacancy,*] **for nonpartisan office** receives a

19 majority of the votes cast for the office at the nominating election, that candidate is elected.

20   [*(2)*] **(c)** When a candidate for the office of sheriff, [*the office of*] county clerk[*, the office of*] **or**

21 county treasurer or a candidate to fill a vacancy receives a majority of votes cast for the office at

22 the nominating election, that candidate alone is nominated.

23   **(2) In a county or city that has authorized an instant runoff voting system under section**

24 **3 of this 2007 Act:**

25   **(a) Except as provided in paragraphs (b) and (c) of this subsection, at the nominating**

26 **election held on the date of the primary election, the procedure described in section 4 of this**

27 **2007 Act shall continue until two candidates remain and those two candidates shall be nom-**

28 **inated for the nonpartisan office;**

29   **(b) Except as provided in paragraph (c) of this subsection, when a candidate for nonpar-**

30 **tisan office receives a majority of the first-choice votes cast under section 4 of this 2007 Act,**

31 **that candidate is elected; and**

32   **(c) When a candidate for the office of sheriff, county clerk or county treasurer or a**

33 **candidate to fill a vacancy receives a majority of the first-choice votes cast under section 4**

34 **of this 2007 Act, that candidate alone is nominated.**

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