

PROPOSED LEGISLATION

State of Florida

Preference Voting for Veterans & Overseas Voters Act

Florida Statutes:

§101.0191 (new)

§101.019 (substantially revised)

Bill Analysis and Fiscal Impact Statement

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A Bill to be Entitled:

Preference Voting for Veterans & Overseas Voters in Primary, Presidential Preference, and General Elections.

Section s.101.0191 F.S. is created:

(1) All overseas and absent uniformed services voters in this state as defined in §101.6952, the Federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), and the Military and Overseas Voter Act of 2009 (MOVA), who file and are accepted by the Federal Post Card Application process (FPCA) shall be entitled to receive, on a timely basis, absentee and write-in ballots that allow for them to vote in Florida Primary, Presidential Preference, and General Elections, pursuant to the ranked preference voting method set forth in §101.019.

(2) The Florida Department of State – Division of Elections is directed to fulfill the intent, to the fullest extent possible, of the UOCAVA, MOVA, §101.019 and other relevant provisions of law to ensure that Military and Overseas Voters are able to avail themselves of the instant run-off voting method as described in §101.019(1)(f) and that such voters have the opportunity to express their preferences and exercise their franchise in every election as intended by Congress. The Federal Write-In Absentee Ballot (FWAB) will be accepted with ranked preferences.

(3) The Florida Department of State and Division of Elections shall create rules to ensure that each county has the proper software update enabled on their current voting equipment to facilitate a proper and protected instant run off primary for each partisan and non-partisan race.

(4) To be enacted upon becoming law.

101.019 - AS REVISED

101.019 Ranked preference voting ; methodology.—

(1) Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings:

(a) "Batch elimination" means the simultaneous defeat of multiple candidates for whom it is mathematically impossible to be elected.

(b) "Continuing ballot" means a ballot that is not an exhausted ballot.

(c) "Continuing candidate" means a candidate who has not been defeated.

(d) "Exhausted ballot" means a ballot that does not rank any continuing candidate, contains an overvote at the highest continuing ranking or contains 2 or more sequential skipped rankings before its highest continuing ranking.

(e) "Highest continuing ranking" means the highest ranking on a voter's ballot for a continuing candidate.

(f) "Instant Runoff" means the sequential elimination procedure as described in this section until one candidate has a majority of post-redistribution ballots in preference primaries or other single-winner elections governed by this section.

(g) "Last-place candidate" means the candidate with the fewest votes in a round of voting tabulation in an election governed by this section..

(h) "Mathematically impossible to be elected," with respect to a candidate, means either:

1. The candidate cannot be elected because the candidate's vote total in a round of voting tabulation in an election governed by this section, plus all votes that could possibly be transferred to the candidate in future rounds from candidates with fewer votes or an equal number of votes would not be enough to surpass the candidate with the next-higher vote total in the round; or

2. The candidate has a lower vote total than a candidate described in the preceding subparagraph (1).

(i) "Multi-Winner Election" means a circumstance in which there is more than one seat for which candidates are seeking to be elected.

(j) "Overvote" means a circumstance in which a voter has ranked more than one candidate at the same ranking.

(k) "Ranked preference voting" means the ranking system of voting as described in this section.

(l) "Ranking" means the number assigned on a ballot by a voter to a candidate to express the voter's preference for that candidate. Ranking number one is the

101.019 - AS REVISED

highest ranking, ranking number 2 is the next-highest ranking and so on through all candidates on the ballot the voter chooses to rank.

(m) "Round" means an instance of the sequence of voting tabulation in an election governed by this section.

(n) "Skipped ranking" means a circumstance in which a voter has left a ranking blank and ranks a candidate at a subsequent ranking.

(2) The following procedures are used to determine the winner(s) of an election determined by ranked preference voting.

(a) Rounds. Voting tabulation must proceed in rounds. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. The round then ends with one of the following 2 potential outcomes:

1. If there are 2 or fewer continuing candidates, the candidate with the most votes is declared the winner of the election.
2. If there are more than 2 continuing candidates, the last-place candidate is defeated and a new round begins.

(b) Ties. A tie between last-place candidates in any round must be decided by lot, and the candidate chosen by lot is defeated. The result of the tie resolution must be recorded and reused in the event of a recount. A tie between candidates for the most votes in the final round is decided by the same method used to determine the winner for general elections.

(c) Overvote. A ballot containing an overvote shall be considered an exhausted ballot once the overvote is encountered at the highest ranking for a continuing candidate;

(d) Skipped Ranking. If a ballot skips a ranking, then the it shall count as to the next ranking. If the next ranking is another skipped ranking, the ballot shall be considered an exhausted ballot once the second skipped ranking is encountered

(e) Modifications. Modification to the voting tabulation procedures as set forth in this section is permitted in accordance with the following:

101.019 - AS REVISED

1. The number of allowable rankings may be limited to no fewer than 5.
2. Two or more candidates may be defeated simultaneously by batch elimination in any round of counting.

(f) Rules. The Secretary of State shall adopt rules for the proper and efficient administration of elections determined by ranked-choice voting. At a minimum, rules required under this subsection must include procedures, as determined appropriate by the Division of Elections, for requesting and conducting recounts of the results as determined in the rounds of counting described in this section.

(3) In a multi-winner election candidates are not ranked by voters. Candidates receiving the most votes are declared the winners of the election. A tie between candidates for the last remaining seat is decided by the same method used to determine the winner for general elections.

(4) Any county, municipality, district or other local governmental entity choosing to use ranked preference voting for its elections shall abide by this section.

101.019 - MARK-UP

101.019 ~~Ranked-choice preference voting prohibited; methodology.~~ —

- (1) Definitions¹. As used in this section, unless the context otherwise indicates, the following terms have the following meanings:
- (a) "Batch elimination" means the simultaneous defeat of multiple candidates for whom it is mathematically impossible to be elected.
 - (b) "Continuing ballot" means a ballot that is not an exhausted ballot.
 - (c) "Continuing candidate" means a candidate who has not been defeated.
 - (d) "Exhausted ballot" means a ballot that does not rank any continuing candidate, contains an overvote at the highest continuing ranking or contains 2 or more sequential skipped rankings before its highest continuing ranking.
 - (e) "Highest continuing ranking" means the highest ranking on a voter's ballot for a continuing candidate.
 - (f) "Instant Runoff" means the sequential elimination procedure as described in this section until one candidate has a majority of post-redistribution ballots in preference primaries or other single-winner elections governed by this section.
 - (g) "Last-place candidate" means the candidate with the fewest votes in a round of voting tabulation in an election governed by this section.
 - (h) "Mathematically impossible to be elected," with respect to a candidate, means either:
 - 1. The candidate cannot be elected because the candidate's vote total in a round of voting tabulation in an election governed by this section, plus all votes that could possibly be transferred to the candidate in future rounds from candidates with fewer votes or an equal number of votes would not be enough to surpass the candidate with the next-higher vote total in the round; or
 - 2. The candidate has a lower vote total than a candidate described in the preceding subparagraph (1).
 - (i) "Multi-Winner Election" means a circumstance in which there is more than one seat for which candidates are seeking to be elected.
 - (j) "Overvote" means a circumstance in which a voter has ranked more than one candidate at the same ranking.
 - (k) "Ranked preference voting" means the ranking system of voting as described in this section.
 - (l) "Ranking" means the number assigned on a ballot by a voter to a candidate to express the voter's preference for that candidate. Ranking number one is the highest ranking, ranking number 2 is the next-highest ranking and so on through all candidates on the ballot the voter chooses to rank.
 - (m) "Round" means an instance of the sequence of voting tabulation in an election governed by this section.
 - (n) "Skipped ranking" means a circumstance in which a voter has left a ranking blank and ranks a candidate at a subsequent ranking.

~~A ranked-choice voting method that allows voters to rank candidates for an office in order of preference and has ballots cast to be tabulated in multiple rounds following the elimination of a~~

1 From Maine §723-A (2015-2019) & Alaska § 15.15.350 (2022)

101.019 - MARK-UP

~~candidate until a single candidate attains a majority may not be used in determining the election or nomination of any candidate to any local, state, or federal elective office in this state.~~

(2) The following procedures are used to determine the winner(s) of an election determined by ranked preference voting.

(a) Rounds. Voting tabulation must proceed in rounds. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. The round then ends with one of the following 2 potential outcomes:

1. If there are 2 or fewer continuing candidates, the candidate with the most votes is declared the winner of the election.

2. If there are more than 2 continuing candidates, the last-place candidate is defeated and a new round begins.

(b) Ties. A tie between last-place candidates in any round must be decided by lot, and the candidate chosen by lot is defeated. The result of the tie resolution must be recorded and reused in the event of a recount. A tie between candidates for the most votes in the final round is decided by the same method used to determine the winner for general elections.

(c) Overvote. A ballot containing an overvote shall be considered an exhausted ballot once the overvote is encountered at the highest ranking for a continuing candidate;

(d) Skipped Ranking. If a ballot skips a ranking, then it shall count as to the next ranking. If the next ranking is another skipped ranking, the ballot shall be considered an exhausted ballot once the second skipped ranking is encountered

(e) Modifications. Modification to the voting tabulation procedures as set forth in this section is permitted in accordance with the following:

1. The number of allowable rankings may be limited to no fewer than 5.

2. Two or more candidates may be defeated simultaneously by batch elimination in any round of counting.

(f) Rules. The Secretary of State shall adopt rules for the proper and efficient administration of elections determined by ranked-choice voting. At a minimum, rules required under this subsection must include procedures, as determined appropriate by the Division of Elections, for requesting and conducting recounts of the results as determined in the rounds of counting described in this section.

(3)² In a multi-winner election candidates are not ranked by voters. Candidates receiving the most votes are declared the winners of the election. A tie between candidates for the last remaining seat is decided by the same method used to determine the winner for general elections.

(4) Any county, municipality, district or other local governmental entity choosing to use ranked preference voting for its elections shall abide by this section.

~~(2) Any existing or future ordinance enacted or adopted by a county, a municipality, or any other local governmental entity which is in conflict with this section is void.~~

² This is in lieu of the more complex ranked preference with proportional voting method used in some jurisdictions (e.g. Cambridge, Massachusetts and Minneapolis, Minnesota.)

Preference Voting for Veterans & Overseas Voters Act
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

I. Summary:

Article IV, Section 4 of the United States Constitution guarantees the right to “a Republican Form of Government” to the citizens of Florida (and all other states), defined to emphasize “popular sovereignty and majoritarian control” such that the government “derives all its powers directly or indirectly from the great body of the people.” James Madison, *Federalist No. 39*.

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

Laws that impinge upon the right to vote of one class of voters (service men and women stationed abroad and civilians living overseas) but not others would likely violate the Equal Protection Clause as there is no rational basis to discriminate against voters simply because they live abroad, especially those serving their country to defend the very fundamental right at issue in this instance. *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

Two federal laws are designed to secure the right to vote of this class of voters: The Federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Act of 2009 (MOVA), which mandate that states enfranchise these voters by sending timely absentee ballots to UOCAVA voters. By implementing a system of ranked preference instant run-off voting, Florida will re-enfranchise military personnel stationed abroad and overseas voters by providing them greater access to the electoral process and the ability to demonstrate all of their preferences, as intended by Congress.

This bill and this bill analysis (together with the companion bill to establish procedures for ranked preference voting) are provided as the next step in establishing a framework for local government to use their existing software and machines for ranked preference voting for Military and Overseas Voters in accordance with the Florida Department of State – Division of Elections.

These bills rely on Primary Elections and Presidential Preference capabilities that already exist to allow Military and Overseas Voters a meaningful opportunity to

exercise their constitutional right to allow their voices to be heard in the selection of candidates to represent them.

These bills provide for the Department of State to direct its Division of Elections to inform and give formal approval to all 67 Counties to use existing ranked preference voting software on overseas military and off-duty voters paper ballots, which implements Instant-Runoff Voting (IRV) in County Primary Elections, to achieve a majority candidate in each election result. The companion bill also establishes procedures for governmental units in Florida that choose to use ranked preference voting as a means to save on costs and to better achieve the promise of a republican form of government.

Those requesting these bills agree on the following primary goals and necessary considerations:

- Most importantly Military, Retired Veterans, contractors and civilians living abroad and working for the defense of our nation have the right for their voices to be registered in primary, run-off elections, and presidential preference primary vote count.
- When candidates drop out of the race before the Florida Presidential Preference Primary the second, third or more choices sent by mail shall be counted in every county that receives them.
- These paper ballots must be run through, or hand entered into existing voting equipment and software to ensure there is an electronic tally as well as the original ballot as backup to ensure voting accuracy and accountability.
- Run-off elections are currently used in local primary elections. Existing voting equipment and software shall be used for Instant Run-Off elections (IRV) by having overseas voters rank their first, second or more choices, in one election ballot.
- The Florida Division of Elections will ensure that County Supervisors of Elections Offices understand that existing machines and software are already ready to do this and are approved.
- Each political party puts forth their most accepted candidate for the General Election in November with the choices of Military and Overseas Americans counted in the result.
- Florida should no longer be the lone holdout among Southern States as the only state that does not provide Military and Overseas Voters an instant-run-off election ballot.

- The companion bill that amends Florida statute section 101.019 is needed to allow for Florida to establish a ranked preference voting system for primary contests, and for other elections where government units in Florida wish to utilize this more cost-effective method of tabulating votes.

II. Present Situation:

Party primary elections in the State of Florida put forth candidates that have not received ranked Military and Overseas Voters run-off election votes.

The time-frame to produce, distribute and receive a mailed run-off election ballot is not consistent with the need to hold run-offs as soon as possible after a first round. Current voting machines and software prevent online interference with an accurate tabulation, since voting machines transfer totals by land line phone systems to prevent hacking, making these systems robust, accurate and free of foul play. States must adhere to federal law mandating that ballots be sent 45 days ahead of time to overseas voters, a hard deadline to meet for a primary runoff.

Five states—Arkansas, Alabama, Louisiana, Mississippi, and South Carolina—use a ranked-choice system for military and overseas voters. Currently, unlike these and other states, Florida’s Military and Overseas voter’s presidential preference ballots are outdated by the time they are received, and there is no opportunity to correct this in a run-off election. Their voices are accordingly silenced in presidential preference and run-off voting. Servicemen and women from Florida who are stationed overseas are treated to starkly different treatment than their colleagues serving alongside them from neighboring states.

Why are voters from other states given preferential treatment in this regard?

Because primaries for the U.S. House and Florida House and Senate produce a candidate to represent a voting district that leans heavily towards one party or another, in almost every case the General Election will confirm the choice made during the primary election in that district.

These bills help to ensure that candidates selected via instant run-off primaries are more reflective of the will of the voters in that district, and thus better securing the right of the people to a republican form of government.

Currently, primary elections do not allow voters to make a first choice of the party candidate that they prefer, and a second strategic choice for a candidate they find acceptable. This takes away their constitutional right to demonstrate their preferences for a majority result that produces a candidate with broad and deep support to represent them in the general election.

As noted above, the constitutional guarantee to a republican form of government requires “popular sovereignty and majoritarian control.” The framers of the U.S. Constitution also made it clear that “The House of Representatives shall be composed of Members chosen every second Year by the People of the several States,” with their intention that those members receive broad and deep support by an informed public. Article I, Section. 2, Constitution of the United States.

The method for ranked preference voting set forth in the companion bill (that amends §101.091) allows for the winning candidate to receive a majority (50% plus one) of votes cast as well as a plurality (most votes cast) because majority voting and plurality voting are not mutually exclusive to one another (preference voting that would result in a candidate receiving the most votes and also a majority is sometimes referred to as “plurality with elimination”, “instant run-off” or “ranked choice voting”).

III. Effect of Proposed Changes:

This bill requires the Florida Department of State to direct the Division of Elections to provide for Military and Overseas Voters to use ranked preference voting (instant run-off) paper ballots in all 67 Florida Counties.

The bill directs the Division of Elections to continue to use existing voting equipment already approved with the existing software that already has this method as a voting option. This software option is standard in both voting machines approved and in current use in the state of Florida.

The Division of Elections must reassure the County Supervisors of Elections that they can in fact use ranked-preference instant-run-off-voting to produce a majority (as well as a plurality) result.

Florida will join the other six southern states by giving veterans voting rights in presidential preference and primary elections. Government entities that choose to use ranked preference voting in their elections will be permitted to do so so long as they follow the procedures in the companion bill.

Allowing local government units to utilize instant run-off voting procedures produces cost savings. Prohibiting them from doing so as a cost-saving procedure in effect constitutes an unfunded mandate.

IV. Constitutional Issues:

A. Municipality/County Unfunded Mandates:

ARTICLE VII, Section 18(a) “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds . . .”

B. Public Records/Open Meeting Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article IV, Section 4 of the United States Constitution

“The United States shall guarantee to every State in this Union a Republican Form of Government”

Article I, Section 2 of the United States Constitution

“The House of Representatives shall be composed of Members chosen every second Year by the People of the several States”

Article I, Section 1&2 of the Florida Constitution

“Political power.—All political power is inherent in the people.”

“Basic rights.—All natural persons, female and male alike, are equal before the law”

V. Fiscal Impact Statement:

A. Tax/Fee Issues:
None.

B. Private Sector Impact:
None.

C. Government Sector Impact:

Runoff elections are held for many local elected offices when no candidate wins more than 50% of the vote on Election Day. This bill helps counties and local government use an instant run-off ballot to ensure that Military and Overseas Voters electoral preferences are counted in primary or presidential preference elections. This is a significant cost savings to county and local government.

VI. Technical Deficiencies:
None.

VII. Related Issues:

Redistricting plans have [run into difficulties](#) in Florida. A [proposal to combine ranked preference voting and multi-member districts](#) currently pending in Congress could provide a solution to this problem.

VIII. Statutes Affected:

This bill substantially amends Section 101.019

Section 100.025 Citizens residing overseas; notice of elections.

Section 101.65 Instructions to absent electors.

Section 101.6952 Vote-by-mail ballots for absent uniformed services and overseas voters.

IX. Additional Information:

From the National Conference of State Legislators:

“Ranked-choice voting may also bolster access for military and overseas voters when a primary race necessitates a runoff. States must adhere to federal law mandating that ballots be sent 45 days ahead of time to overseas voters, a hard deadline to meet for a primary runoff.

Five states—Arkansas, Alabama, Louisiana, Mississippi, and South Carolina—use a ranked-choice system for military and overseas voters. This ensures those voters still have a vote in the runoff—their first choice if that candidate is still in the race, or their second choice if the first choice has been eliminated.”

[Plurality With Elimination](#) (a/k/a “instant run-off) Voting.

[Ranked-Choice Voting \(ncsl.org\)](#)

<https://www.ncsl.org/research/elections-and-campaigns/ranked-choice-voting.aspx>

<https://www.ncsl.org/research/elections-and-campaigns/ranked-choice-voting636934215.aspx>

[Ranked-Choice-Ballots-for-Military-and-Overseas-Voters-Policy-Brief.pdf | Powered by Box](#)

Georgia’s Overseas Military Voting Rights Bill: [C:\pdf\195649.wpd \(ga.gov\)](#)
and [Military and Overseas Voting | Georgia Secretary of State \(ga.gov\)](#)

[GA HB59 - Elections; instant runoff voting by overseas citizens and military personnel; authorize, Norton Safe Search \(ask.com\)](#)

[Ranked Choice Ballots for Military and Overseas Voters - Fairvote](#)

[2021 State Legislation Advancing Ranked Choice Voting - FairVote](#)