OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 137 135th General Assembly	**Bill Analysis**

Version: As Introduced

Primary Sponsors: Sens. Gavarone and DeMora

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SUMMARY

- Prohibits any election from being conducted in Ohio using ranked choice voting, also known as instant runoff voting.

- Allows a county or municipal corporation to use its home rule powers under the Ohio Constitution to adopt a ranked choice voting system, but financially penalizes a local government that does so.

- Makes a county or municipal corporation that approves the use of ranked choice voting via a resolution or ordinance ineligible to receive distributions from the Local Government Fund until it rescinds the resolution or ordinance.

- Provides procedures for the Secretary of State, the Tax Commissioner, and county treasurers to follow in enforcing the penalty.

DETAILED ANALYSIS

Prohibition against ranked choice voting

The bill prohibits any election from being conducted in Ohio using ranked choice voting, also known as instant runoff voting. The bill uses both terms, but defines them in the same way. Under the bill, "ranked choice voting" and "instant runoff voting" mean a method of nominating or electing one or more candidates to an office as follows:[1]

- Voters rank candidates on the ballot in order of preference.

- Tabulation (vote counting) proceeds in rounds such that in each round, one or more candidates are nominated or elected or a last-place candidate is defeated.

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[1] R.C. 3501.01(EE), 3505.011(A), and 3513.141(A).

- Votes are transferred from nominated, elected, or defeated candidates to the voter's next-ranked candidate or candidates in order of preference.

- Tabulation ends when a candidate receives the majority of the votes cast or when the number of candidates nominated or elected equals the number of offices to be filled, as applicable.

See "**About ranked choice voting**," below for more information about this system. This analysis uses the term ranked choice voting to include instant runoff voting.

Existing state law does not contemplate the use of ranked choice voting for any election. The required ballot format and counting method under the Revised Code would not accommodate ranked choice voting.[2] However, the Ohio Supreme Court has ruled that a municipal corporation or chartered county can use its home rule powers under the Ohio Constitution to conduct municipal or county elections using ranked choice voting.[3] It appears that currently, no local government in Ohio uses ranked choice voting. But, five Ohio cities have used ranked choice voting – then called proportional representation – for city council elections during some period in the past: Ashtabula (1915-1929), Cleveland (1923-1931), Cincinnati (1925-1957), Hamilton (1926-1960), and Toledo (1935-1949).[4]

The bill specifies that it does not prohibit ranked choice voting in those local home rule situations, but that if a municipal corporation or chartered county does use ranked choice voting, it is subject to a state funding penalty.

Penalty for local governments

Under the bill, a county or municipal corporation that approves the use of ranked choice voting via a resolution or ordinance becomes ineligible to receive distributions from the Local Government Fund (LGF) beginning in the month following the adoption of the resolution or ordinance. If it rescinds the resolution or ordinance, the county or municipal corporation regains its eligibility for LGF payments beginning with the month following the last day the resolution or ordinance is in effect. After regaining eligibility, the county or municipal corporation can receive future payments, but it cannot receive back payments for the period of ineligibility. The withheld LGF funding is deposited in the General Revenue Fund (GRF).

The bill requires the Secretary of State to determine whether a county or municipal corporation has approved the use of ranked choice voting. When the Secretary determines that a county or municipal corporation is ineligible for LGF payments, the Secretary promptly must notify the Tax Commissioner of that fact. And, if the offending resolution or ordinance is rescinded, the Secretary promptly must notify the Tax Commissioner of the rescission.

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[2] R.C. 3505.03, 3505.04, 3505.10, 3505.27, 3505.33, 3513.12, 3513.14, and 3513.21, not in the bill.

[3] *State ex rel. Sherrill v. Brown,* 155 Ohio St. 607 (1951).

[4] Kathleen L. Barber, *Proportional Representation and Election Reform in Ohio* (Ohio State University Press 1995).

When a county or municipal corporation is ineligible for LGF money under the bill, the Tax Commissioner must reduce the state's payments to the applicable county's undivided local government fund by the amount the ineligible entity would have received and notify the county auditor and treasurer of the reduction. The county treasurer must not make any LGF payments to the ineligible entity during the period of ineligibility. Further, if the ineligible entity is a municipal corporation with a population of 1,000 or more, the Tax Commissioner must cease the state's direct LGF payments to the entity. (Only municipalities of that type receive direct LGF payments from the state.) The Tax Commissioner must make monthly transfers from the LGF to the GRF in the amount of any money withheld from counties or municipal corporations under the bill.[5]

About ranked choice voting

Overview

Ranked choice voting is a method of holding an election that allows a voter to rank three or more candidates on the ballot from favorite to least favorite. If the voter's favorite candidate cannot win, the vote is then transferred to the voter's next favored candidate. In a crowded field of candidates, the total vote might be split several ways, with no candidate receiving a majority vote. Ranked choice voting allows a single candidate to achieve a majority vote after multiple rounds of counting by systematically eliminating the least popular candidates and reassigning their votes to the remaining candidates based on the voters' indicated preferences.

In a race in which multiple seats are to be filled, such as an at-large city council race, the voter currently is instructed to select as many candidates as there are seats. Under a ranked choice voting system, the voter instead would rank all of the candidates, and votes would be transferred from the least popular candidates until the most popular candidates are identified as winning the available seats.

Ranked choice voting can be conducted by a variety of counting methods, such as alternative vote, single transferrable vote, and multiple transferrable vote, but the same basic voting procedure applies to all of these methods. For more information about the counting methods that are included under the umbrella of ranked choice voting, along with examples of jurisdictions that use those methods, see the Council of State Governments article, *Ranked Choice Voting: What, Where, Why & Why Not*.[6]

Example

In this example, a mayoral election is conducted using ranked choice voting – specifically, the alternative vote method – to determine the winner. Four candidates for mayor

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[5] R.C. 3505.011(B) and (C), 3513.141(B) and (C), 5747.502, 5747.504, and 5747.505.

[6] Council of State Governments, *Ranked Choice Voting: What, Where, Why & Why Not* (March 21, 2023), available via a google.com keyword search for "CSG ranked choice voting." See also Ballotpedia, *Ranked-choice voting (RCV)*, available at ballotpedia.org via a keyword search for "ranked choice voting."

appear on the ballot at the general election (candidates A, B, C, and D), and a candidate needs a majority vote (50% + 1 vote) to win.

Imagine that a voter's first choice is Candidate D, but the voter also knows that Candidate D is not very popular and is unlikely to win. If Candidate D cannot win, the voter would prefer Candidate B over candidates A and C. Under Ohio's current voting system, the voter would have to choose between supporting Candidate D or Candidate B on the ballot. Under ranked choice voting, the voter instead could fill out the ballot as follows:

Ballot for Mayor of City	
Candidate	Voter's ranking from 1-4, with 1 being the favorite
A	4
B	2
C	3
D	1

A total of 1,000 ballots are cast in the election. In the first round of vote counting, for each candidate, the election officials count the number of ballots that list that candidate as the first choice. The results are:

First round results		
Candidate	First choice	Percentage
A	400	40%
B	250	25%
C	200	20%
D	150	15%
Total votes	**1,000**	**100%**

Under Ohio's existing system, counting would end at this stage, and Candidate A would win by virtue of receiving the most votes at 40%, although no candidate received a majority vote. But, under ranked choice voting, counting continues using voter rankings until a candidate achieves a majority. Before the second round of counting, Candidate D, the candidate with the least votes, is eliminated. The 150 voters who listed Candidate D as first choice have their votes transferred to their second choice candidates. Ten voters listed Candidate A as second choice,

110 voters listed Candidate B as second choice, and 30 voters listed Candidate C as second choice.

Second round results				
Candidate	First choice	Second choice transfers from Candidate D	Total	Percentage
A	400	+ 10	410	41%
B	250	+ 110	360	36%
C	200	+ 30	230	23%
D	Eliminated, 150 votes transferred to other candidates			
Total votes	1,000			100%

After the second round, Candidate C is eliminated as the remaining candidate with the least votes. For the third round, the 230 votes for Candidate C are transferred to each voter's next preferred candidate (the voter's second or third choice) – 60 votes to Candidate A and 170 to Candidate B.

Third round results					
Candidate	First choice	Second choice transfers from Candidate D	Second or third choice transfers from Candidate C	Total	Percentage
A	400	+ 10	+ 60	470	47%
B	250	+ 110	+ 170	530	53%
C	Eliminated, 230 votes transferred to other candidates				
D	Eliminated, 150 votes transferred to other candidates				
Total votes	1,000				100%

After the third round of counting, Candidate B wins the election by achieving a majority of the votes cast in the race. Candidate B was not most voters' first choice, but based on the rankings, Candidate B was more popular than Candidate A. As noted above, if ranked choice voting were not used, Candidate A would have been the winner.

HISTORY

Action	Date
Introduced	07-20-23