

AMENDED IN ASSEMBLY APRIL 13, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2732

**Introduced by Assembly Member Eng
(Coauthor: Assembly Member Lieu)**

February 19, 2010

An act to amend Section 10700 of, and to add Sections 10708, 10709, 10710, 10711, and 10712 to, the Elections Code, and to amend Section 1773 of the Government Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 2732, as amended, Eng. Special legislative or congressional election: instant runoff voting.

Existing law requires the Governor to call a special election to fill a vacancy in a congressional or legislative office within 14 calendar days of the occurrence of the vacancy and provides that all candidates be listed on the ballot and, if any candidate receives a majority of all votes cast, he or she shall be declared elected. If a candidate does not receive a majority of all votes cast, the names of the candidates receiving the most votes representing a qualified political party are placed on the special general election ballot as that party's candidate. Under existing law, the special primary and the special general elections are required to be conducted within specified time periods.

This bill would instead authorize the board of supervisors of a county affected by the special election to make a determination within 30 days of a vacancy on whether to fill a vacancy in the office of United States Representative in Congress, State Senator, or Member of the Assembly by using a prescribed instant runoff voting method, except that if 2 or more counties are affected, all affected counties would have to agree

to use the instant runoff voting method. The bill also would require the Governor to call the special election within 5 calendar days after the determination of the affected county or counties on whether it will use the instant runoff procedures or within 35 days of the vacancy if no determination is made.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10700 of the Elections Code is amended
2 to read:

3 10700. (a) The Governor shall call all statewide special
4 elections by issuing a proclamation pursuant to Section 12000.

5 (b) Within 30 calendar days of the occurrence of a vacancy in
6 the office of United States Representative in Congress, State
7 Senator, or Member of the Assembly, the board of supervisors of
8 each affected county may determine during a public hearing
9 whether to fill the vacancy pursuant to either of the following
10 methods:

11 (1) Pursuant to Sections 10701, 10702, 10703, 10704, 10705,
12 10706, and 10707.

13 (2) Pursuant to Sections 10701 and 10702, subdivision (b) of
14 Section 10703, and Sections 10707, 10708, 10709, 10710, 10711,
15 and 10712.

16 (c) If neither option in subdivision (b) is approved by a majority
17 of an affected county's board of supervisors within 30 calendar
18 days of the occurrence of the vacancy, a quorum being present,
19 then the vacancy shall be filled pursuant to paragraph (1) of
20 subdivision (b). If two or more counties are affected by the
21 vacancy, the vacancy shall be filled pursuant to paragraph (1) of
22 subdivision (b), unless all affected counties determine through
23 their respective boards of supervisors, in accordance with the
24 procedure set forth above, to fill the vacancy pursuant to paragraph
25 (2) of subdivision (b).

26 (d) Except as provided by Chapter 3 (commencing with Section
27 10730), in the case of a vacancy in a congressional or legislative
28 office the Governor shall issue a proclamation, within five calendar
29 days of the determination made pursuant to subdivision (b), or
30 within 35 calendar days after the occurrence of the vacancy if no

1 such determination has been made, calling a special election in
2 accordance with that subdivision. A copy of the proclamation shall
3 be sent to the board of supervisors of each affected county.

4 SEC. 2. Section 10708 is added to the Elections Code, to read:

5 10708. (a) If authorized pursuant to paragraph (2) of
6 subdivision (b) of Section 10700, special elections to fill a vacancy
7 in the offices of United States Representative in Congress, State
8 Senator, and Member of the Assembly shall be conducted using
9 “instant runoff voting,” also known as “ranked choice voting.”

10 (b) As used in this chapter, the following definitions apply:

11 (1) “Instant runoff voting” means an election method in which
12 voters rank the candidates for office in order of preference, and
13 the ballots are counted in rounds that, in the case of a single-winner
14 election, simulate a series of runoffs until one candidate receives
15 a majority of votes.

16 (2) In each round of counting the following definitions apply:

17 (A) “Continuing ballot” means a ballot that counts toward some
18 candidate.

19 (B) “Continuing candidate” means a candidate that has not been
20 eliminated.

21 (C) “Majority of votes” means more than 50 percent of the votes
22 coming from continuing ballots.

23 (c) Instant runoff voting for special elections to fill a vacancy
24 in the offices of United States Representative in Congress, State
25 Senator, and Member of the Assembly shall be conducted
26 according to the procedures set forth in this section. Every affected
27 county shall conduct a voter education *and outreach* campaign to
28 familiarize voters with instant runoff voting *in every language a*
29 *ballot is made available to voters in the county. These efforts shall*
30 *include public service announcements in radio, television, or print*
31 *media that are disseminated in a manner consistent with the*
32 *language assistance requirements of the federal Voting Rights Act*
33 *of 1965 (42 U.S.C. Sec. 1973aa-1).*

34 (d) The instant runoff voting ballot shall allow voters to rank
35 as many choices as there are candidates. The ballot shall not
36 interfere with a voter’s ability to rank a write-in candidate. For the
37 purposes of this section, a mark for an unqualified write-in
38 candidate shall not be considered a mark for a candidate.

39 (e) The method of voting and counting ballots shall be conducted
40 by using rounds in the following manner:

1 (1) In the first round, every ballot shall count as a vote toward
2 the first-choice candidate on that ballot.

3 (2) After every round, if any candidate receives a majority of
4 votes from the continuing ballots, that candidate shall be declared
5 the winner.

6 (3) If no candidate receives a majority, the candidate receiving
7 the smallest number of votes shall be eliminated, and every ballot
8 counting toward that candidate shall be advanced to the next-ranked
9 continuing candidate on the ballot. If there is a tie between two or
10 more candidates for the smallest number of votes, the tie shall be
11 resolved by lot. All the ballots shall be counted again in a new
12 round.

13 (f) During the elimination stage of any round, in the event that
14 any candidate has more votes than the combined vote total of all
15 candidates with fewer votes, all the candidates with fewer votes
16 shall be eliminated simultaneously, and those ballots advanced to
17 the next-ranked continuing candidate.

18 (g) Skipped rankings. In the first or any round, in the event that
19 any ballot reaches a ranking with no candidate indicated, that ballot
20 shall immediately be advanced to the next ranking.

21 (h) After each round, any ballot that is not continuing is either
22 an undervote, overvote, or exhausted ballot, as follows:

23 (1) Any ballot that has no candidates indicated at any ranking
24 shall be declared an “undervote.”

25 (2) In the event that any ballot reaches a ranking with more than
26 one candidate indicated, that ballot shall immediately be declared
27 an “overvote.”

28 (3) In the event that any ballot cannot be advanced because no
29 further candidates are ranked on that ballot, that ballot shall
30 immediately be declared “exhausted.”

31 (4) Any ballot that has been declared an undervote, overvote,
32 or exhausted shall remain so and shall not count toward any
33 candidate in that round or in subsequent rounds.

34 (i) Summary, ballot image, and comprehensive reports shall be
35 made available after each instant runoff voting election, as follows:

36 (1) The “summary report” for an election means a report that
37 lists the candidate vote totals in each round, along with the
38 cumulative numbers of undervotes, overvotes, and exhausted
39 ballots in each round.

1 (2) The “ballot image report” for an election means a report that
2 lists, for each ballot, the candidate or candidates indicated at each
3 ranking, the precinct of the ballot, and whether the ballot was cast
4 absentee. In the report, the ballots shall be listed in an order that
5 does not permit the order in which they were cast in each precinct
6 to be reconstructed.

7 (3) The “comprehensive report” for an election means a report
8 that breaks the numbers in the summary report down by precinct.
9 The report shall list, for each round, the number of ballots cast in
10 each precinct as follows:

11 (A) Ballots that count as votes for each candidate in that round.

12 (B) Ballots that have been declared undervotes.

13 (C) Ballots that have been declared overvotes up to that point.

14 (D) Ballots that have been declared exhausted up to that point.

15 (4) Preliminary versions of the summary report and ballot image
16 report shall be made available as soon as possible after the ballots
17 have begun to be processed and counted. The summary report,
18 ballot image report, comprehensive report, and preliminary versions
19 of the summary report and ballot image report shall be made
20 available to the public during the canvass via the Internet and by
21 other means. The ballot image report and preliminary versions of
22 the ballot image report shall be made available in a plain text
23 electronic format.

24 (j) Prior to the selection of precincts for the public postelection
25 manual tally, as provided by state law, a report shall be made
26 available to the public that lists, for the ballots subject to the
27 manual tally, the number of those ballots in each precinct that
28 counted in each round as undervotes, overvotes, exhausted ballots,
29 and as votes for each candidate. The public manual tally shall
30 check those vote totals in each of the randomly selected precincts.

31 (k) (1) For the purposes of this subdivision, “voting equipment”
32 means all ballots or voting devices, vote tabulating systems, or
33 similar or related systems to be used in the conduct of the instant
34 runoff voting election, including, but not limited to, paper ballot
35 systems, optical scan systems, and touch-screen systems.

36 (2) In the event that the voting equipment cannot feasibly
37 accommodate a number of rankings on the ballot equal to the
38 number of candidates, the Secretary of State may limit the number
39 of choices a voter may rank to the maximum number allowed by
40 the equipment. This limit shall never be less than three.

(3) If the voting equipment cannot feasibly accommodate all of the procedures in subdivisions (e) to (i), inclusive, the Secretary of State may make changes to those procedures provided that instant runoff voting shall still be used and the fewest feasible number of changes made until such time as the voting equipment can accommodate those procedures in their entirety.

(4) If the state adopts guidelines for the conduct of instant runoff voting elections and the voting equipment used to conduct the instant runoff voting election can accommodate the state's guidelines, the Secretary of State shall have the option of adopting those guidelines, in whole or in part, in lieu of the instant runoff voting procedures in this section.

(5) In the event that the voting equipment cannot store ballot rankings, the Secretary of State may authorize the following change: Before counting the ballots in rounds, the first ranking on every ballot shall be tallied. The subdivision on skipped rankings shall not be construed to apply to this initial tally. If some candidate receives a majority of first rankings from all ballots cast, including ballots with no candidate marked at the first ranking and excluding ballots with more than one candidate marked at the first ranking, that candidate shall be declared the winner; and the ballots shall not be counted in rounds. Otherwise, the ballots shall be counted in rounds in accordance with this section.

(6) The Secretary of State shall have the further authority to make any necessary changes to the procedures set forth in this subdivision, including modifying the reporting requirements, to preserve the secrecy of the ballot and ensure the integrity and smooth functioning of the election, provided that instant runoff voting shall still be used and the fewest number of changes made to achieve such purposes. If a majority of all affected counties decide to adopt any such changes, then those changes shall apply uniformly to all affected counties for that instant runoff voting election.

SEC. 3. Section 10709 is added to the Elections Code, to read:

10709. An instant runoff voting special election shall be held on a Tuesday at least 72 days, but not more than 86 days, following the issuance of an election proclamation by the Governor pursuant to Section 10700, except that any special election may be conducted within 120 days following the proclamation in order that the election or the primary election may be consolidated with

1 the next regularly scheduled statewide election or local election
2 occurring wholly or partially within the same territory in which
3 the vacancy exists, provided that the voters eligible to vote in the
4 local election comprise at least 50 percent of all the voters eligible
5 to vote on the vacancy.

6 SEC. 4. Section 10710 is added to the Elections Code, to read:

7 10710. Candidates at the instant runoff voting special election
8 shall be nominated in the manner set forth in Chapter 1
9 (commencing with Section 8000) of Part 1 of Division 8, except
10 that nomination papers shall not be circulated more than 63 days
11 before the instant runoff voting special election, shall be left with
12 the county elections official for examination not less than 43 days
13 before the instant runoff voting special election, and shall be filed
14 with the Secretary of State not less than 39 days before the instant
15 runoff voting special election.

16 SEC. 5. Section 10711 is added to the Elections Code, to read:

17 10711. Notwithstanding Section 3001, applications for vote
18 by mail ballots may be submitted not more than 25 days before
19 the instant runoff voting special election, except that Section 3001
20 shall apply if the instant runoff voting special election is
21 consolidated with a statewide election. Applications received by
22 the elections official prior to the 25th day shall not be returned to
23 the sender, but shall be held by the elections official and processed
24 by him or her following the 25th day prior to the election in the
25 same manner as if received at that time.

26 SEC. 6. Section 10712 is added to the Elections Code, to read:

27 10712. (a) All candidates shall be listed on one ballot.

28 (b) If only one candidate qualifies to have his or her name
29 printed on the instant runoff voting ballot, that candidate shall be
30 declared elected, and no instant runoff voting election shall be
31 held.

32 SEC. 7. Section 1773 of the Government Code is amended to
33 read:

34 1773. When a vacancy occurs in the office of Representative
35 to Congress, or in either house of the Legislature, the Governor
36 shall within five calendar days of the determination made pursuant
37 to subdivision (b) of Section 10700 of the Elections Code, or within
38 35 calendar days after the occurrence of the vacancy if no such
39 determination has been made, issue a writ of election to fill the
40 vacancy; provided, that when such vacancy occurs in a

1 congressional office after the close of the nomination period in the
2 final year of the term of office, a special election may be held, at
3 the Governor's discretion; and provided, further, that when a
4 vacancy occurs in a legislative office after the close of the
5 nomination period in the final year of the term of office, no special
6 election shall be held.

7 The Governor shall issue the election proclamation under his
8 hand and the Great Seal of the state, and transmit copies to the
9 board of supervisors of the counties in which the election is to be
10 held.