

AMENDED IN SENATE APRIL 28, 2010

SENATE BILL

No. 1346

Introduced by Senator Hancock

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

SB 1346, as amended, Hancock. 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 ~~or counties 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, if certified by the Secretary of State, to make a determination to fill the vacancy using an optional,~~ 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 10708 is added to the Elections~~
2 ~~Code is amended, to read:~~
3 ~~10700.~~
4 ~~10708. (a) The Governor shall call all statewide special~~
5 ~~elections by issuing a proclamation pursuant to Section 12000.~~
6 ~~(b) Within 30 calendar days of the occurrence of a vacancy in~~
7 ~~the office of United States Representative in Congress, State~~
8 ~~Senator, or Member of the Assembly, the board of supervisors of~~
9 ~~each board of supervisors of an affected county may determine~~
10 ~~during a public hearing whether to fill the vacancy a vacancy in~~
11 ~~the office of United States Representative in Congress, State Senate,~~
12 ~~or Member of the Assembly pursuant to either of the following~~
13 ~~methods:~~
14 ~~(1) Pursuant to Sections 10701, 10702, 10703, 10704, 10705,~~
15 ~~10706, and 10707.~~
16 ~~(2) Pursuant to Sections 10701 and, 10702, subdivision (b) of~~
17 ~~Section 10703, and Sections 10707, 10708, 10709, 10710, 10711,~~
18 ~~and 10712, if the county has received certification from the~~
19 ~~Secretary of State in accordance with subdivision (c).~~
20 ~~(c)~~
21 ~~(b) If neither option in subdivision (b) (a) is approved by a~~
22 ~~majority of an affected county's board of supervisors within 30~~
23 ~~calendar days of the occurrence of the vacancy, a quorum being~~
24 ~~present, then the vacancy shall be filled pursuant to paragraph (1)~~
25 ~~of subdivision (b) (a). If two or more counties are affected by the~~
26 ~~vacancy, the vacancy shall be filled pursuant to paragraph (1) of~~
27 ~~subdivision (b), unless all affected counties determine through~~
28 ~~their respective boards of supervisors, in accordance with the~~
29 ~~procedure set forth above, to fill the vacancy pursuant to paragraph~~
30 ~~(2) of subdivision (b) (a).~~

~~(d) Except as provided by Chapter 3 (commencing with Section 10730), in the case of a vacancy in a congressional or legislative office the Governor shall issue a proclamation, within five calendar days of the determination made pursuant to subdivision (b), or within 35 calendar days after the occurrence of the vacancy if no such determination has been made, calling a special election in accordance with that subdivision. A copy of the proclamation shall be sent to the board of supervisors of each affected county.~~

(c) In order for a county or counties to participate in the special election option set forth in paragraph (2) of subdivision (a), the county or counties affected by the vacancy shall first have been certified by the Secretary of State as having satisfactory plans and equipment in place, including an agreement between multicounty districts, to conduct an election under those provisions.

SEC. 2. ~~Section 10708~~ 10709 is added to the Elections Code, to read:

~~10708.~~

10709. (a) If authorized pursuant to paragraph (2) of subdivision (b) of Section 10700, special elections to fill a vacancy in the offices of United States Representative in Congress, State Senator, and Member of the Assembly shall be conducted using “instant runoff voting,” also known as “ranked choice voting.”

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

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

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

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

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

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

(c) Instant runoff voting for special elections to fill a vacancy in the offices of United States Representative in Congress, State Senator, and Member of the Assembly shall be conducted according to the procedures set forth in this section. Every affected county shall conduct a voter education *and outreach* campaign to

1 familiarize voters with instant runoff voting *in every language in*
2 *which a ballot is made available to voters in the county. These*
3 *efforts shall include public service announcements in radio,*
4 *television, direct mail, telephone, or print media that are*
5 *disseminated in a manner consistent with the language assistance*
6 *requirements of the federal Voting Rights Act of 1965 (42 U.S.C.*
7 *Sec. 1973aa-1).*

8 (d) The instant runoff voting ballot shall allow voters to rank
9 as many choices as there are candidates. The ballot shall not
10 interfere with a voter's ability to rank a write-in candidate. For the
11 purposes of this section, a mark for an unqualified write-in
12 candidate shall not be considered a mark for a candidate.

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

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

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

20 (3) If no candidate receives a majority, the candidate receiving
21 the smallest number of votes shall be eliminated, and every ballot
22 counting toward that candidate shall be advanced to the next-ranked
23 continuing candidate on the ballot. If there is a tie between two or
24 more candidates for the smallest number of votes, the tie shall be
25 resolved by lot. All the ballots shall be counted again in a new
26 round.

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

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

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

37 (1) Any ballot that has no candidates indicated at any ranking
38 shall be declared an "undervote."

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

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

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

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

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

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

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

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

27 (B) Ballots that have been declared undervotes.

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

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

30 (4) Preliminary versions of the summary report and ballot image
31 report shall be made available as soon as possible after the ballots
32 have begun to be processed and counted. The summary report,
33 ballot image report, comprehensive report, and preliminary versions
34 of the summary report and ballot image report shall be made
35 available to the public during the canvass via the Internet and by
36 other means. The ballot image report and preliminary versions of
37 the ballot image report shall be made available in a plain text
38 electronic format.

39 (j) Prior to the selection of precincts for the public postelection
40 manual tally, as provided by state law, a report shall be made

1 available to the public that lists, for the ballots subject to the
2 manual tally, the number of those ballots in each precinct that
3 counted in each round as undervotes, overvotes, exhausted ballots,
4 and as votes for each candidate. The public manual tally shall
5 check those vote totals in each of the randomly selected precincts.

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

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

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

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

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

39 ~~(6) The Secretary of State shall have the further authority to~~
40 ~~make any necessary changes to the procedures set forth in this~~

1 subdivision, including modifying the reporting requirements, to
2 preserve the secrecy of the ballot and ensure the integrity and
3 smooth functioning of the election, provided that instant runoff
4 voting shall still be used and the fewest number of changes made
5 to achieve such purposes. If a majority of all affected counties
6 decide to adopt any such changes, then those changes shall apply
7 uniformly to all affected counties for that instant runoff voting
8 election.

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

10 10709. An instant runoff voting special election shall be held
11 on a Tuesday at least 72 days, but not more than 86 days, following
12 the issuance of an election proclamation by the Governor pursuant
13 to Section 10700, except that any special election may be
14 conducted within 120 days following the proclamation in order
15 that the election or the primary election may be consolidated with
16 the next regularly scheduled statewide election or local election
17 occurring wholly or partially within the same territory in which
18 the vacancy exists, provided that the voters eligible to vote in the
19 local election comprise at least 50 percent of all the voters eligible
20 to vote on the vacancy.

21 SEC. 4.

22 SEC. 3. Section 10710 is added to the Elections Code, to read:

23 10710. Candidates at the instant runoff voting special election
24 shall be nominated in the manner set forth in Chapter 1
25 (commencing with Section 8000) of Part 1 of Division 8, except
26 that nomination papers shall not be circulated more than 63 days
27 before the instant runoff voting special election, shall be left with
28 the county elections official for examination not less than 43 days
29 before the instant runoff voting special election, and shall be filed
30 with the Secretary of State not less than 39 days before the instant
31 runoff voting special election.

32 SEC. 5.

33 SEC. 4. Section 10711 is added to the Elections Code, to read:

34 10711. Notwithstanding Section 3001, applications for vote
35 by mail ballots may be submitted not more than 25 days before
36 the instant runoff voting special election, except that Section 3001
37 shall apply if the instant runoff voting special election is
38 consolidated with a statewide election. Applications received by
39 the elections official prior to the 25th day shall not be returned to
40 the sender, but shall be held by the elections official and processed

1 by him or her following the 25th day prior to the election in the
2 same manner as if received at that time.

3 ~~SEC. 6.~~

4 *SEC. 5.* Section 10712 is added to the Elections Code, to read:

5 10712. (a) All candidates shall be listed on one ballot.

6 (b) ~~If only one candidate qualifies to have his or her name~~
7 ~~printed on the instant runoff voting ballot, that candidate shall be~~
8 ~~declared elected, and no instant runoff voting election shall be~~
9 ~~held.~~

10 ~~SEC. 7.~~ Section 1773 of the Government Code is amended to
11 read:

12 ~~1773. When a vacancy occurs in the office of Representative~~
13 ~~to Congress, or in either house of the Legislature, the Governor~~
14 ~~shall within five calendar days of the determination made pursuant~~
15 ~~to subdivision (b) of Section 10700 of the Elections Code, or within~~
16 ~~35 calendar days after the occurrence of the vacancy if no such~~
17 ~~determination has been made, issue a writ of election to fill the~~
18 ~~vacancy; provided, that when such vacancy occurs in a~~
19 ~~congressional office after the close of the nomination period in the~~
20 ~~final year of the term of office, a special election may be held, at~~
21 ~~the Governor's discretion; and provided, further, that when a~~
22 ~~vacancy occurs in a legislative office after the close of the~~
23 ~~nomination period in the final year of the term of office, no special~~
24 ~~election shall be held.~~

25 The Governor shall issue the election proclamation under his
26 hand and the Great Seal of the state, and transmit copies to the
27 board of supervisors of the counties in which the election is to be
28 held.