

**A-Engrossed**  
**House Bill 2761**

Ordered by the House April 3  
Including House Amendments dated April 3

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.

Allows [*county or city*] **county, city or metropolitan service district** to adopt instant runoff voting system for nomination or election of candidates to [*county or city*] **county, city or metropolitan service district** office.

**A BILL FOR AN ACT**

1  
2 Relating to elections; creating new provisions; and amending ORS 249.088, 254.005, 254.065, 254.575,  
3 258.250 and 258.280.

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

5 **SECTION 1.** 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, or to an office of a metropolitan service district  
24 organized under ORS chapter 268, authorized by section 16, Article II of the Oregon Consti-  
25 tution, under which an elector may express the elector's first, second or additional choices  
26 among the candidates for nomination or election to county, city or metropolitan service  
27 district office under sections 3 and 4 of this 2007 Act.

28 [(6)] (7) "Major political party" means a political party that has qualified as a major political

**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 party under ORS 248.006.

2 [(7)] (8) "Measure" includes any of the following submitted to the people for their approval or  
3 rejection at an election:

4 (a) A proposed law.

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

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

7 (d) Local, special or municipal legislation.

8 (e) A proposition or question.

9 [(8)] (9) "Minor political party" means a political party that has qualified as a minor political  
10 party under ORS 248.008.

11 [(9)] (10) "Nonpartisan office" means the office of judge of the Supreme Court, Court of Appeals,  
12 circuit court or the Oregon Tax Court, Superintendent of Public Instruction, Commissioner of the  
13 Bureau of Labor and Industries, any elected office of a metropolitan service district under ORS  
14 chapter 268, justice of the peace, county clerk, county assessor, county surveyor, county treasurer,  
15 county judge who exercises judicial functions, sheriff, district attorney or any office designated  
16 nonpartisan by a home rule charter.

17 [(10)] (11) "Prospective petition" means the information, except signatures and other identifica-  
18 tion of petition signers, required to be contained in a completed petition.

19 [(11)] (12) "Regular district election" means the election held each year for the purpose of  
20 electing members of a district board as defined in ORS 255.005 (2).

21 [(12)] (13) "Vote tally system" means one or more pieces of equipment necessary to examine and  
22 tally automatically the marked ballots.

23 [(13)] (14) "Voting machine" means any device that will record every vote cast on candidates  
24 and measures and that will either internally or externally total all votes cast on that device.

25 **SECTION 2. Sections 3 and 4 of this 2007 Act are added to and made a part of ORS**  
26 **chapter 254.**

27 **SECTION 3. (1) Notwithstanding any provision of ORS chapters 203, 221 and 246 to 260,**  
28 **a charter or ordinance of a county, city or metropolitan service district organized under ORS**  
29 **chapter 268 may authorize the use of an instant runoff voting system for the nomination and**  
30 **election of candidates to county, city or metropolitan service district office.**

31 **(2) The Secretary of State shall adopt rules governing the conduct of county, city or**  
32 **metropolitan service district elections using an instant runoff voting system.**

33 **(3) Notwithstanding ORS 254.046, if a county, city or metropolitan service district con-**  
34 **ducts an election on any date using an instant runoff voting system, the county, city or**  
35 **metropolitan service district shall bear the cost of the election.**

36 **SECTION 4. (1) Elections for the nomination or election of candidates to county or city**  
37 **office, or to an office of a metropolitan service district organized under ORS chapter 268,**  
38 **that use an instant runoff voting system authorized under section 3 of this 2007 Act shall**  
39 **be conducted as provided in this section.**

40 **(2) The ballot shall be designed to allow an elector to vote for the elector's first, second**  
41 **and third choices from among the candidates, including candidates listed on the ballot or one**  
42 **write-in candidate.**

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

44 **(a) The elector's vote shall be assigned to the candidate marked as the elector's first**  
45 **choice. If one candidate receives a majority of the first-choice votes, that candidate shall be**

1 **declared nominated or elected.**

2 **(b) If no candidate receives a majority of the first-choice votes, the candidate receiving**  
3 **the fewest first-choice votes is eliminated. Each vote cast for any eliminated candidate shall**  
4 **be transferred to the candidate who was the elector's next choice on the ballot.**

5 **(c) Candidates with the fewest votes shall continue to be eliminated, with the votes for**  
6 **those candidates transferred to the candidate who was the elector's next choice on the ballot**  
7 **until a candidate receives a majority of the votes cast. When a candidate receives a majority**  
8 **of votes, that candidate is nominated or elected.**

9 **(d) Notwithstanding any provision of this subsection, a candidate is eliminated after the**  
10 **first tally of ballots if the candidate receives fewer than 500 votes, or less than 10 percent**  
11 **of the total votes cast for the nomination or office, whichever is less. Each vote cast for any**  
12 **eliminated candidate shall be transferred to the candidate who was the elector's next choice**  
13 **on the ballot.**

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

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

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

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

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

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

32 **SECTION 5.** ORS 254.065 is amended to read:

33 254.065. (1) **Subject to subsection (2) of this section,** when one person is to be nominated for  
34 or elected to an office, the person receiving the highest number of votes [*shall be*] **is** nominated or  
35 elected. When more than one person is to be nominated for or elected to a single office, the persons  
36 receiving the higher number of votes [*shall be*] **is** nominated or elected. This subsection does not  
37 apply to a candidate for election to an office at a general election if the election for the office must  
38 be held at a special election as described in ORS 254.650.

39 **(2) When one person is to be nominated for or elected to a county or city office, or to**  
40 **an office of a metropolitan service district organized under ORS chapter 268, using an instant**  
41 **runoff voting system, the person receiving the highest number of votes as provided in section**  
42 **4 of this 2007 Act is nominated or elected. When more than one person is to be nominated**  
43 **for or elected to a single office, the persons receiving the higher number of votes as provided**  
44 **in section 4 of this 2007 Act are nominated or elected.**

45 [(2)] (3) [*No measure shall be*] **A measure is not** adopted unless it receives an affirmative ma-

1 jority of the total votes cast on the measure. If two or more conflicting laws, or amendments to the  
 2 Constitution or charter, are approved at the same election, the law, or amendment, receiving the  
 3 greatest number of affirmative votes shall be paramount regarding each conflict, even though the  
 4 law, or amendment, may not have received the greatest majority of affirmative votes.

5 **SECTION 6.** ORS 254.575 is amended to read:

6 254.575. (1) **Except as provided in subsection (2) of this section**, when two or more candi-  
 7 dates for the same office, after a full recount of votes, have an equal and the highest number of  
 8 votes:

9 [(1)] (a) For election to state Senator or Representative, a party office, or a public office for  
 10 which the elections officer is other than the Secretary of State, the elections officer shall have the  
 11 candidates meet publicly to decide by lot who is elected.

12 [(2)] (b) For election to a public office other than Governor or those referred to in [*subsection*  
 13 *(1) of this section*] **paragraph (a) of this subsection**, the Secretary of State by proclamation shall  
 14 order a new election to fill the office.

15 [(3)] (c) For election to Governor, the Legislative Assembly at the beginning of the next regular  
 16 session shall meet jointly and elect one of the candidates.

17 [(4)] (d) For nomination by one major political party to an office, the elections officer who re-  
 18 ceives filings for nomination to the office shall have the candidates meet publicly to decide by lot  
 19 who is nominated.

20 **(2) In a county, city or metropolitan service district organized under ORS chapter 268**  
 21 **that has authorized an instant runoff voting system under section 3 of this 2007 Act, when**  
 22 **two or more candidates for the same county, city or metropolitan service district office, af-**  
 23 **ter a recount of votes, have an equal and the highest number of votes at any stage of the**  
 24 **counting of votes under section 4 of this 2007 Act and one of the candidates is to be elimi-**  
 25 **nated, the elections officer shall have the candidates meet publicly to decide by lot who is**  
 26 **eliminated.**

27 **SECTION 7.** ORS 258.250 is amended to read:

28 258.250. (1) [*If the abstract of votes resulting from a full recount shows that the outcome of the*  
 29 *election on the measure was changed or that a candidate for whose benefit the recount was demanded*  
 30 *received a plurality of the votes,*] The deposit required by ORS 258.161 shall be refunded by the Sec-  
 31 retary of State to the person who filed the demand **for a recount if the abstract of votes re-**  
 32 **sulting from a full recount shows that:**

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

34 **(b) The candidate for whose benefit the recount was demanded received a plurality of the**  
 35 **votes; or**

36 **(c) In a county, city or metropolitan service district organized under ORS chapter 268**  
 37 **that has authorized an instant runoff voting system under section 3 of this 2007 Act, the**  
 38 **candidate for whose benefit the recount was demanded received the highest number of**  
 39 **votes.**

40 (2) The Secretary of State shall transfer the deposit required by ORS 258.161 and any additional  
 41 amount paid pursuant to subsection (5) of this section to a special account in the General Fund if:

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

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

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

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

1 of the votes[.]; or

2 **(C) In a county, city or metropolitan service district that has authorized an instant**  
3 **runoff voting system under section 3 of this 2007 Act, the candidate for whose benefit the**  
4 **recount was demanded did not receive the highest number of votes.**

5 (3) Moneys deposited in the special account under subsection (2) of this section are continuously  
6 appropriated for the purpose of reimbursing the county, city or other political subdivision or public  
7 corporation for the cost of the recount and paying any refunds required by subsection (4) of this  
8 section.

9 (4) Upon receipt from the official directed to conduct the recount of a signed certificate itemiz-  
10 ing the cost of the recount, the Secretary of State shall request the Oregon Department of Admin-  
11 istrative Services to issue warrants for the amount so certified. Any portion of the deposit required  
12 by ORS 258.161 remaining after the cost of the recount has been paid shall be refunded to the person  
13 who filed the demand upon receipt of a warrant from the Oregon Department of Administrative  
14 Services showing the amount of the refund to which the person is entitled.

15 (5) If the cost of the recount exceeds the amount of the deposit required by ORS 258.161, and  
16 if the person who filed the demand does not qualify for a refund under subsection (1) of this section,  
17 the person shall pay to the Secretary of State the amount of the excess cost.

18 **SECTION 8.** ORS 258.280 is amended to read:

19 258.280. (1) The Secretary of State shall order a full recount of the votes cast for nomination  
20 or election to a public office for which the Secretary of State is the filing officer, and the county  
21 clerk who conducted the election shall order a full recount of the votes cast for nomination or  
22 election to any other public office if the canvass of votes of the election reveals that:

23 (a) Two or more candidates for that nomination or office have an equal and the highest number  
24 of votes; [or]

25 **(b) In a county, city or metropolitan service district organized under ORS chapter 268**  
26 **that has authorized an instant runoff voting system under section 3 of this 2007 Act, two or**  
27 **more candidates for the same county, city or metropolitan service district office have an**  
28 **equal and the highest number of votes at any stage of the counting of votes under section**  
29 **4 of this 2007 Act and one of the candidates is to be eliminated; or**

30 [(b)] (c) The difference in the number of votes cast for a candidate apparently nominated or  
31 elected to the office and the votes cast for the closest apparently defeated opponent is not more than  
32 one-fifth of one percent of the total votes for both candidates.

33 (2) The cost of a full recount conducted under this section shall be paid by the county for a  
34 county office, by the city for a city office, by the special district for a special district office or by  
35 the state for any other office.

36 **SECTION 9.** ORS 249.088 is amended to read:

37 249.088. (1) [Unless otherwise provided by] **Subject to subsection (2) of this section and the**  
38 **provisions of a home rule charter[.]:**

39 **(a) Except as provided in paragraphs (b) and (c) of this subsection,** at the nominating  
40 election held on the date of the primary election, **the two candidates receiving the highest num-**  
41 **ber of votes** shall be nominated for the nonpartisan office.

42 **(b) [However,] Except as provided in paragraph (c) of this subsection,** when a candidate[,  
43 other than a candidate for the office of sheriff, a candidate for the office of county clerk, a candidate  
44 for the office of county treasurer or a candidate to fill a vacancy,] **for nonpartisan office** receives a  
45 majority of the votes cast for the office at the nominating election, that candidate is elected.

1        [(2)] (c) When a candidate for the office of sheriff, [*the office of*] county clerk[, *the office of*] or  
2 county treasurer or a candidate to fill a vacancy receives a majority of votes cast for the office at  
3 the nominating election, that candidate alone is nominated.

4        **(2) In a county, city or metropolitan service district organized under ORS chapter 268**  
5 **that has authorized an instant runoff voting system under section 3 of this 2007 Act:**

6        (a) Except as provided in paragraphs (b) and (c) of this subsection, at the nominating  
7 election held on the date of the primary election, the procedure described in section 4 of this  
8 2007 Act shall continue until two candidates remain and those two candidates shall be nom-  
9 inated for the nonpartisan office;

10        (b) Except as provided in paragraph (c) of this subsection, when a candidate for nonpar-  
11 tisan office receives a majority of the first-choice votes cast under section 4 of this 2007 Act,  
12 that candidate is elected; and

13        (c) When a candidate for the office of sheriff, county clerk or county treasurer or a  
14 candidate to fill a vacancy receives a majority of the first-choice votes cast under section 4  
15 of this 2007 Act, that candidate alone is nominated.

16