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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **3365**

02/17/2020 Authored by Elkins, Dehn, Morrison, Bahner, Christensen and others
The bill was read for the first time and referred to the Committee on Government Operations

1.1 A bill for an act

1.2 relating to elections; authorizing jurisdictions to adopt ranked-choice voting;

1.3 establishing procedures for adoption, implementation, and use of ranked-choice

1.4 voting; allowing municipalities to use electronic voting systems with a reallocation

1.5 feature; authorizing rulemaking; amending Minnesota Statutes 2018, sections

1.6 205.13, subdivision 2; 206.58, subdivision 1; 206.83; 206.89, subdivisions 2, 3;

1.7 proposing coding for new law in Minnesota Statutes, chapter 206; proposing coding

1.8 for new law as Minnesota Statutes, chapter 204E.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. **[204E.01] APPLICABILITY.**

1.11 This chapter applies to all elections expressly authorized by law to use ranked-choice

1.12 voting. All other provisions of the Minnesota Election Law also apply, to the extent they

1.13 are not inconsistent with this chapter.

1.14 Sec. 2. **[204E.02] DEFINITIONS.**

1.15 Subdivision 1. **Scope.** The definitions in this section apply to this chapter.

1.16 Subd. 2. **Batch elimination.** "Batch elimination" means a simultaneous defeat of multiple

1.17 continuing candidates that have no mathematical chance of being elected.

1.18 Subd. 3. **Cast vote record.** "Cast vote record" means the tabulatable record of all votes

1.19 produced by a single voter in one voting session.

1.20 Subd. 4. **Duplicate ranking.** "Duplicate ranking" means a voter has ranked the same

1.21 candidate at multiple rankings for the office being counted.

1.22 Subd. 5. **Exhausted ballot.** "Exhausted ballot" means a ballot that can no longer be

1.23 advanced under the procedures in section 204E.06.

2.1 Subd. 6. **Highest continuing ranking.** "Highest continuing ranking" means the ranking
2.2 on a voter's ballot with the lowest numerical value for a continuing candidate.

2.3 Subd. 7. **Local election official.** "Local election official" means the principal officer in
2.4 the jurisdiction charged with duties relating to elections.

2.5 Subd. 8. **Mathematically impossible to be elected.** "Mathematically impossible to be
2.6 elected" means either:

2.7 (1) the candidate cannot be elected because the candidate's current vote total plus all
2.8 votes that could possibly be transferred to the candidate in future rounds from candidates
2.9 with fewer votes or an equal number of votes and surplus votes would not be enough to
2.10 surpass the candidate with the next higher current vote total; or

2.11 (2) the candidate has a lower current vote total than a candidate who is described by
2.12 clause (1).

2.13 Subd. 9. **Overvote.** "Overvote" means a voter has ranked more than one candidate at
2.14 the same ranking.

2.15 Subd. 10. **Partially defective ballot.** "Partially defective ballot" means a ballot that is
2.16 defective to the extent that the election judges are unable to determine the voter's intent with
2.17 respect to the office being counted.

2.18 Subd. 11. **Ranked-choice voting.** "Ranked-choice voting" means an election method
2.19 in which voters rank candidates for an office in order of their preference, with each vote
2.20 counting for the highest-ranked continuing candidate on each ballot until that candidate has
2.21 been elected or defeated by the method established in this chapter.

2.22 Subd. 12. **Ranked-choice voting tabulation center.** "Ranked-choice voting tabulation
2.23 center" means the place selected for the automatic or manual processing and tabulation of
2.24 ballots.

2.25 Subd. 13. **Ranking.** "Ranking" means the number assigned by a voter to a candidate to
2.26 express the voter's preference for that candidate. Ranking number one is the highest ranking.
2.27 A ranking of lower numerical value indicates a greater preference for a candidate than a
2.28 ranking of higher numerical value.

2.29 Subd. 14. **Round.** "Round" means an instance of the sequence of voting tabulation steps
2.30 established in section 204E.06.

2.31 Subd. 15. **Skipped ranking.** "Skipped ranking" means a voter has left a ranking blank
2.32 and ranks a candidate at a subsequent ranking.

3.1 Subd. 16. **Surplus.** "Surplus" means the total number of votes cast for an elected
3.2 candidate in excess of the threshold.

3.3 Subd. 17. **Surplus fraction of a vote.** "Surplus fraction of a vote" means the proportion
3.4 of each vote to be transferred when a surplus is transferred. The surplus fraction is calculated
3.5 by dividing the surplus by the total votes cast for the elected candidate, calculated to four
3.6 decimal places, ignoring any remainder.

3.7 Subd. 18. **Threshold.** "Threshold" means the number of votes sufficient for a candidate
3.8 to be elected. In any given election, the threshold equals the total votes counted in the first
3.9 round after removing defective ballots, divided by the sum of one plus the number of offices
3.10 to be filled and adding one to the quotient, disregarding any fractions.

3.11 Subd. 19. **Transfer value.** "Transfer value" means the fraction of a vote that a transferred
3.12 ballot will contribute to the next ranked continuing candidate on that ballot. The transfer
3.13 value of a vote cast for an elected candidate is calculated by multiplying the surplus fraction
3.14 of each vote by its current value, calculated to four decimal places, ignoring any remainder.
3.15 The transfer value of a vote cast for a defeated candidate is the same as its current value.

3.16 Subd. 20. **Transferable vote.** "Transferable vote" means a vote or a fraction of a vote
3.17 for a candidate who has been either elected or defeated.

3.18 Subd. 21. **Totally defective ballot.** "Totally defective ballot" means a ballot that is
3.19 defective to the extent that election judges are unable to determine the voter's intent for any
3.20 office on the ballot.

3.21 Subd. 22. **Undervote.** "Undervote" means a voter did not rank any candidates for an
3.22 office.

3.23 Sec. 3. **[204E.03] AUTHORIZATION TO ADOPT RANKED-CHOICE VOTING;**
3.24 **IMPLEMENTATION.**

3.25 (a) The following political subdivisions may adopt, in the manner provided in this section,
3.26 ranked-choice voting as a method of voting for local offices within the political subdivision:

3.27 (1) home rule charter or statutory cities;

3.28 (2) counties;

3.29 (3) townships; and

3.30 (4) school districts.

4.1 (b) A jurisdiction that adopts ranked-choice voting may do so by adopting an ordinance
4.2 or resolution or by a ballot question presented to the voters. The ranked-choice voting
4.3 method may be repealed by one of the same methods provided for adoption.

4.4 (c) A home rule charter jurisdiction that adopts a ranked-choice voting system in its
4.5 charter may adopt this chapter by reference in an ordinance, but is not required to do so.
4.6 Nothing in this chapter prevents a home rule charter jurisdiction from adopting another
4.7 voting method in its charter.

4.8 (d) Ranked-choice voting must only be used to elect local offices at a general or special
4.9 election, or at a primary election which serves as a party-nominating election for a partisan
4.10 office. A primary election must not be held for any nonpartisan offices that are elected using
4.11 ranked-choice voting.

4.12 (e) A jurisdiction that adopts the use of ranked-choice voting in local elections must do
4.13 so no later than 30 days before the first day for filing affidavits of candidacy for the office
4.14 for which ranked-choice voting is to be used as the method of election.

4.15 (f) Repeal of ranked-choice voting must be no later than 30 days before the first day for
4.16 filing affidavits of candidacy for offices for which ranked-choice voting is used as the
4.17 method of election.

4.18 (g) The local election official must notify the secretary of state and, if applicable, the
4.19 county auditor within 30 days following adoption or repeal of ranked-choice voting.

4.20 Sec. 4. **[204E.04] BALLOTS.**

4.21 Subdivision 1. **Ballot format.** (a) If there are three or more qualified candidates, a ballot
4.22 must allow a voter to rank at least three candidates for each office in order of preference
4.23 and must also allow the voter to add write-in candidates.

4.24 (b) A ballot must:

4.25 (1) include instructions to voters that clearly indicate how to mark the ballot;

4.26 (2) include instructions to voters that clearly indicate how to rank candidates in order
4.27 of the voter's preference; and

4.28 (3) indicate the number of seats to be elected for each office.

4.29 (c) A jurisdiction may use ballots compatible with alphanumeric character recognition
4.30 voting equipment.

5.1 Subd. 2. **Mixed-election method ballots.** If elections are held in which ranked-choice
5.2 voting is used in addition to other methods of voting, the ranked-choice voting and
5.3 non-ranked-choice voting elections must be on the same ballot card if possible, with
5.4 ranked-choice voting and non-ranked-choice voting portions clearly separated on the ballot
5.5 card. A separate ballot card may be used if necessary. A jurisdiction may deviate from the
5.6 standard ballot order of offices to allow separation of ranked-choice voting and
5.7 non-ranked-choice voting elections.

5.8 Subd. 3. **Ballot format rules.** The local election official must establish administrative
5.9 rules for ballot format after a voting mechanism has been selected, consistent with this
5.10 section.

5.11 Sec. 5. **[204E.05] RANKED-CHOICE VOTING TABULATION CENTER.**

5.12 Subdivision 1. **Tabulation of votes; generally.** The local election official must designate
5.13 one location to serve as the ranked-choice voting tabulation center. If the tabulation includes
5.14 a manual count of physical ballots, the center must be accessible to the public for the purpose
5.15 of observing the vote tabulation. Tabulation of votes must be conducted as described in
5.16 section 204E.06.

5.17 Subd. 2. **Precinct tabulation.** When the hours for voting have ended and all voting has
5.18 concluded, the election judges in each precinct must record and publicly declare the number
5.19 of first choices cast for each candidate in that precinct. The election judges must then securely
5.20 transfer all electronic voting data and ballots from the precinct to the ranked-choice voting
5.21 tabulation center designated under this section. Upon receipt at the ranked-choice voting
5.22 tabulation center, all electronic voting data and ballots must be secured.

5.23 Subd. 3. **Notice of recess in count.** In the event the tabulation of the ballots is conducted
5.24 manually, at any time following receipt of materials under subdivision 1, the local election
5.25 official may declare a recess. Notice of the recess must include the date, time, and location
5.26 at which the process of recording and tabulating votes will resume and the reason for the
5.27 recess. Notice must be posted on the city's official bulletin board and on the door of the
5.28 ranked-choice voting tabulation center.

5.29 Subd. 4. **Recording write-in votes.** At a time set by the local election official, the
5.30 election judges shall convene at the ranked-choice voting tabulation center to examine
5.31 ballots on which voters have indicated a write-in choice, and record the names and number
5.32 of votes received by each write-in candidate. In the event that votes cast for the write-in
5.33 category are not eliminated as provided in section 204E.06, the results must be entered into
5.34 the ranked-choice voting tabulation software.

6.1 Subd. 5. **Ranked-choice vote tabulation.** After all votes have been recorded, and at a
6.2 time set by the local election official, the process of tabulating votes cast for offices to be
6.3 elected using the ranked-choice method must begin. The counting must continue until
6.4 preliminary results for all races are determined, subject to subdivision 3.

6.5 Sec. 6. **[204E.06] TABULATION OF VOTES.**

6.6 (a) Tabulation of votes must proceed in rounds for each office to be counted. The
6.7 threshold must be calculated and publicly declared. Each round must proceed sequentially
6.8 as follows:

6.9 (1) the number of votes cast for each candidate for the current round must be counted.
6.10 If the number of candidates whose vote totals equal or exceed the threshold are equal to the
6.11 number of seats to be filled, those candidates who are continuing candidates are elected and
6.12 the tabulation is complete. If the number of candidates whose vote totals are equal to or
6.13 greater than the threshold is not equal to the number of seats to be filled, a new round begins
6.14 and the tabulation must continue as provided in the remainder of this paragraph;

6.15 (2) surplus votes for any candidates whose vote totals are equal to or greater than the
6.16 threshold must be calculated;

6.17 (3) after any surplus votes are calculated but not yet transferred, all candidates for whom
6.18 it is mathematically impossible to be elected must be defeated by batch elimination. Votes
6.19 for the defeated candidates must be transferred to each ballot's next-ranked continuing
6.20 candidate, and the tabulation process reiterates beginning with clause (2). If no candidate
6.21 can be defeated mathematically, the tabulation must continue as described in clause (4);

6.22 (4) the transfer value of each vote cast for an elected candidate must be transferred to
6.23 the next continuing candidate on that ballot. Of the candidates whose vote totals reach or
6.24 exceed the threshold, the candidate with the largest surplus is declared elected and that
6.25 candidate's surplus is transferred. A tie between two or more candidates must immediately
6.26 and publicly be resolved by lot by the local election official at the tabulation center. The
6.27 surplus of the candidate chosen by lot must be transferred before other transfers are made.
6.28 The result of the tie resolution must be recorded and reused in the event of a recount. If no
6.29 candidate has a surplus, the tabulation must continue as described in clause (5); otherwise,
6.30 the tabulation process must reiterate beginning with clause (2);

6.31 (5) if there are no transferable surplus votes, the candidate with the fewest votes is
6.32 defeated. Votes for the defeated candidate must be transferred to each ballot's next-ranked
6.33 continuing candidate. Ties between candidates with the fewest votes must be decided by

lot, and the candidate chosen by lot must be defeated. The result of the tie resolution must be recorded and reused in the event of a recount. The tabulation process must reiterate beginning with clause (2); and

(6) the procedures in clauses (2) to (5) must be repeated until the number of candidates whose vote totals are equal to or exceed the threshold is equal to the number of seats to be filled, or until the number of continuing candidates is equal to the number of offices yet to be elected. If the number of continuing candidates is equal to the number of offices yet to be elected, the remaining continuing candidates must be declared elected. In the case of a tie between two continuing candidates, the tie must be decided by lot as provided in section 204C.34, and the candidate chosen by lot must be defeated. The result of the tie resolution must be recorded and reused in the event of a recount.

(b) When a single skipped ranking is encountered on a ballot, that ballot must count toward the next nonskipped ranking. If any ballot cannot be advanced because no further candidates are ranked on that ballot, because a voter has skipped more than one ranking, or because an undervote, overvote, or duplicate ranking is encountered, the ballot must not count toward any candidate in that round or in subsequent rounds for the office being counted.

Sec. 7. **[204E.07] REPORTING RESULTS.**

(a) Each precinct must print a precinct summary statement, which must include the number of first choices cast for each candidate in that precinct.

(b) The local election official must provide a summary statement with the following information: total votes cast; number of undervotes; number of totally defective and spoiled ballots; threshold calculation; total first choice rankings for all candidates; round-by-round tabulation results, including simultaneous batch eliminations, surplus transfers if applicable, and defeated candidate transfers; and exhausted ballots at each round.

(c) In jurisdictions where ballots are scanned and recorded electronically, the local election official must provide an electronically available spreadsheet of the cast vote record.

(d) The election abstract must include the information required in the ranked-choice voting tabulation center summary statement, with the addition of the number of registered voters by precinct, the number of same-day voter registrations, and the number of absentee voters.

8.1 Sec. 8. [204E.08] RECOUNTS.

8.2 (a) A candidate defeated in the final round of tabulation may request a recount as provided
8.3 in section 204C.36.

8.4 (b) A candidate defeated in the final round of tabulation when the vote difference is
8.5 greater than that provided in section 204C.36 may request a recount at the candidate's own
8.6 expense. A candidate defeated in an earlier round of tabulation may request a recount at the
8.7 candidate's own expense. The candidate is responsible for all expenses associated with the
8.8 recount, regardless of the vote difference between the candidates in the round in which the
8.9 requesting candidate was defeated. The requesting candidate shall file with the filing officer
8.10 a bond, cash, or surety in an amount set by the filing officer for the payment of the recount
8.11 expenses. Expenses must be determined as provided in section 204C.36, subdivision 4.

8.12 (c) Rules adopted by the secretary of state under section 204C.36 for recounts apply to
8.13 recounts conducted under this section.

8.14 Sec. 9. [204E.09] RULES.

8.15 The secretary of state may adopt rules necessary to implement the requirements and
8.16 procedures established by this chapter.

8.17 Sec. 10. Minnesota Statutes 2018, section 205.13, subdivision 2, is amended to read:

8.18 Subd. 2. **Notice of filing dates.** At least two weeks before the first day to file affidavits
8.19 of candidacy, the municipal clerk shall publish a notice stating the first and last dates on
8.20 which affidavits of candidacy may be filed in the clerk's office and the closing time for
8.21 filing on the last day for filing. The clerk shall post a similar notice at least ten days before
8.22 the first day to file affidavits of candidacy. The notice must indicate the method of election
8.23 to be used for the offices on the ballot. The notice must separately list any office for which
8.24 affidavits of candidacy may be filed to fill the unexpired portion of a term when a special
8.25 election is being held to fill a vacancy as provided in section 412.02, subdivision 2a.

8.26 Sec. 11. Minnesota Statutes 2018, section 206.58, subdivision 1, is amended to read:

8.27 Subdivision 1. **Municipalities.** (a) The governing body of a municipality, at a regular
8.28 meeting or at a special meeting called for the purpose, may provide for the use of an
8.29 electronic voting system in one or more precincts and at all elections in the precincts, subject
8.30 to approval by the county auditor. The governing body shall disseminate information to the
8.31 public about the use of a new voting system at least 60 days prior to the election and shall
8.32 provide for instruction of voters with a demonstration voting system in a public place for

9.1 the six weeks immediately prior to the first election at which the new voting system will be
9.2 used.

9.3 (b) No system may be adopted or used unless it has been approved by the secretary of
9.4 state pursuant to section 206.57.

9.5 (c) The governing body of a municipality may provide for the use of an electronic voting
9.6 system that has been approved by the secretary of state under section 206.57 but includes
9.7 an automatic tabulating equipment reallocation feature that has not been approved by the
9.8 secretary of state if the municipal clerk certifies to the secretary of state, within 30 days
9.9 from the date of adoption under paragraph (a), that the reallocation feature:

9.10 (1) has been certified as required under section 206.57, subdivision 6; and

9.11 (2) meets the municipality's ordinance requirements for electronic voting systems.

9.12 **Sec. 12. [206.802] ELECTRONIC VOTING SYSTEMS; PURCHASING.**

9.13 Any new voting system purchased for use in Minnesota for the purpose of replacing a
9.14 voting system must have the ability to:

9.15 (1) capture, store, and publicly report ballot data;

9.16 (2) to the extent practicable, produce a single human-readable file for each contest on
9.17 the ballot containing all cast vote records captured for that contest;

9.18 (3) keep data anonymous;

9.19 (4) accept ranked or cumulative voting data under a variety of tabulation rules;

9.20 (5) be programmable to follow all other specifications of the ranked-choice voting system
9.21 as provided in chapter 204E;

9.22 (6) provide a minimum of three rankings for ranked-choice voting elections;

9.23 (7) to the extent practicable, notify voters of the following errors: overvotes, skipped
9.24 rankings, and duplicate rankings in a ranked-choice voting election; and

9.25 (8) be programmable to print a zero tape indicating all rankings for all candidates in a
9.26 ranked-choice voting election.

9.27 **EFFECTIVE DATE.** This section is effective upon certification by the secretary of
9.28 state that equipment meeting the standards required by this section is available for purchase
9.29 and implementation.

Sec. 13. Minnesota Statutes 2018, section 206.83, is amended to read:

206.83 TESTING OF VOTING SYSTEMS.

(a) Within 14 days before election day, the official in charge of elections shall have the voting system tested to ascertain that the system will correctly mark ballots using all methods supported by the system, including ranked-choice voting if applicable, and through assistive technology, and count the votes cast for all candidates and on all questions. Public notice of the time and place of the test must be given at least two days in advance by publication once in official newspapers. The test must be observed by at least two election judges, who are not of the same major political party, and must be open to representatives of the political parties, candidates, the press, and the public. The test must be conducted by (1) processing a preaudited group of ballots punched or marked to record a predetermined number of valid votes for each candidate and on each question, and must include for each office one or more ballot cards which have votes in excess of the number allowed by law in order to test the ability of the voting system tabulator and electronic ballot marker to reject those votes; and (2) processing an additional test deck of ballots marked using the electronic ballot marker for the precinct, including ballots marked using the electronic ballot display, audio ballot reader, and any assistive voting technology used with the electronic ballot marker. If an election is to be conducted using ranked-choice voting, the equipment must also be tested to ensure that each ranking for each candidate is recorded properly.

(b) If any error is detected, the cause must be ascertained and corrected and an errorless count must be made before the voting system may be used in the election.

(c) After the completion of the test, the programs used and ballot cards must be sealed, retained, and disposed of as provided for paper ballots.

Sec. 14. Minnesota Statutes 2018, section 206.89, subdivision 2, is amended to read:

Subd. 2. **Selection for review; notice.** At the canvass of the state primary, the county canvassing board in each county must set the date, time, and place for the postelection review of the state general election to be held under this section. In jurisdictions where ranked-choice voting is used, the date, time, and place for postelection review must be set by the local election official at least 30 days before the election. The postelection review must not begin before the 11th day after the state general election and must be complete no later than the 18th day after the state general election.

At the canvass of the state general election, the county canvassing boards must select the precincts to be reviewed by lot. The ballots to be reviewed for a precinct include both

the ballots counted at the polling place for that precinct and the absentee ballots counted centrally by a ballot board for that precinct. The county canvassing board of a county with fewer than 50,000 registered voters must conduct a postelection review of a total of at least two precincts. The county canvassing board of a county with between 50,000 and 100,000 registered voters must conduct a review of a total of at least three precincts. The county canvassing board of a county with over 100,000 registered voters must conduct a review of a total of at least four precincts, or three percent of the total number of precincts in the county, whichever is greater. At least one precinct selected in each county must have had more than 150 votes cast at the general election.

The county auditor must notify the secretary of state of the precincts that have been chosen for review and the time and place the postelection review for that county will be conducted, as soon as the decisions are made. If the selection of precincts has not resulted in the selection of at least four precincts in each congressional district, the secretary of state may require counties to select by lot additional precincts to meet the congressional district requirement. The secretary of state must post this information on the office website.

Sec. 15. Minnesota Statutes 2018, section 206.89, subdivision 3, is amended to read:

Subd. 3. **Scope and conduct of review.** The county canvassing board shall appoint the postelection review official as defined in subdivision 1. The postelection review must be conducted of the votes cast for president or governor; United States senator; and United States representative. In jurisdictions where ranked-choice voting is used, the review must also include at least one single-seat ranked-choice voting election and at least one multiple-seat ranked-choice voting election, if such an election occurred. A postelection review of a ranked-choice voting election must be conducted for elections decided most closely in the final round, by percentage. The same requirement applies in jurisdictions where ranked-choice voting is used in odd-year elections. The postelection review official may conduct postelection review of the votes cast for additional offices.

The postelection review must be conducted in public at the location where the voted ballots have been securely stored after the state general election or at another location chosen by the county canvassing board. The postelection review official for each precinct selected must conduct the postelection review and may be assisted by election judges designated by the postelection review official for this purpose. The party balance requirement of section 204B.19 applies to election judges designated for the review. The postelection review must consist of a manual count of the ballots used in the precincts selected and must be performed in the manner provided by section 204C.21. The postelection review must be conducted in

- 12.1 the manner provided for recounts under section 204C.361 to the extent practicable, and
- 12.2 where ranked-choice voting is used, must include testing of the accumulation software using
- 12.3 stored electronic data for those precincts that are not reviewed by manual count. The review
- 12.4 must be completed no later than two days before the meeting of the state canvassing board
- 12.5 to certify the results of the state general election.