

HJR

9

CONGRESSIONAL QUARTERLY'S

GUIDE

TO

U.S.

ELECTIONS

terms for an interim of at least one term. Two exceptions to that general rule—Delaware and Missouri—impose an absolute two term limit. That is, a governor may serve only two terms, however spaced, in his lifetime. The remaining 21 states impose no limits on the number of consecutive terms a governor may serve (box this page).

Majority Vote Requirement

A peculiarity of gubernatorial voting which has almost disappeared from the American political scene is the requirement that the winning gubernatorial candidate receive a majority of the popular vote. Otherwise, the choice devolves upon the state legislature or, in one case, necessitates a runoff between the two highest candidates. Centered in New England, this practice was used mainly in the 19th century. All six New England states, plus Georgia, had such a provision in their state constitutions at one time. New Hampshire, Vermont, Massachusetts, and Connecticut already had the provision when they entered the Union from 1789 to 1791.

Rhode Island required a majority election, but did not adopt a provision for legislative election until 1842. (See p. 364) Maine adopted the provision when it split off from Massachusetts to form a separate state in 1820; Georgia put the provision in its constitution when it switched from legislative to popular election of governors in 1825.

The purpose of the majority provision appears to have been to safeguard against a candidate in a multiple field winning with a small fraction of the popular vote. In most of New England, the provision was part of the early state constitutions, formed largely in the 1780s, before the development of the two party system.

The prospect of multiple-candidate fields diminished with the coming of the two party system. Nevertheless, each of these states had occasion to use the provision at least once. Sometimes, in an extremely close election, minor party candidates received enough of a vote to keep the winner from getting a majority of the total vote. And at other times, strong third party movements or disintegration of the old party structure resulted in the election being thrown into the state legislatures.

Vermont still maintains the majority vote provision, although the legislature has not elected a governor since 1912. Georgia maintains the requirement for a majority vote for governor, but instead of legislative election, provides for a runoff between the top two contenders three weeks after the general election.¹

Following are the states which had the majority vote provision for governor, the years in which the choice devolved on the legislature because of it, and the year in which the requirement was repealed or changed:

Connecticut

No gubernatorial candidate received a majority of the popular vote, thus throwing the election into the legislature in the following years subsequent to 1824: 1833, 1834, 1842, 1844, 1846, 1849, 1850, 1851, 1854, 1855, 1856, 1878, 1884, 1886, 1888, and 1890. Following the election of 1890, the legislature was unable to choose a new governor, so the outgoing governor, Morgan G. Bulkeley (R) continued to serve through the entire new term (1891-93). The provision was repealed in 1901. The years prior to 1824 in which the provision was used, if any, were unavailable from the Connecticut secretary of state's office.

¹ Mississippi has a majority vote provision under the 1890 state constitution, but the provision has not been used because the Democratic Party nominee has always received a majority.

Limitations on Governor Terms

(As of 1975)

State	Maximum number of consecutive terms
Alabama	2
Alaska	2
Arizona	No limit
Arkansas	No limit
California	No limit
Colorado	No limit
Connecticut	No limit
Delaware	2*
Florida	2
Georgia	None
Hawaii	No limit
Idaho	No limit
Illinois	No limit
Indiana	2
Iowa	No limit
Kansas	2
Kentucky	None
Louisiana	2
Maine	2
Maryland	2
Massachusetts	No limit
Michigan	No limit
Minnesota	No limit
Mississippi	None
Missouri	2*
Montana	No limit
Nebraska	2
Nevada	2
New Hampshire	No limit
New Jersey	2
New Mexico	None
New York	No limit
North Carolina	None
North Dakota	No limit
Ohio	2
Oklahoma	2
Oregon	2
Pennsylvania	2
Rhode Island	No limit
South Carolina	None
South Dakota	2
Tennessee	None
Texas	No limit
Utah	No limit
Vermont	No limit
Virginia	None
Washington	No limit
West Virginia	2
Wisconsin	No limit
Wyoming	No limit

* Indicates an absolute two term limit. That is, no person may serve more than two gubernatorial terms in his lifetime. In other states with limitations, a governor may serve as many terms as he may be elected to, provided he retires after one, or two, terms, depending on the constitutional provisions of his state, and stays out of office at least one term before running again.

None indicates the governor must retire at the end of his first term. After a one term interim, he may serve again.

2 indicates the governor must retire after two consecutive terms. After a one term interim, he may serve again.

SOURCE: *The Book of the States, 1974-75*, Vol. XX, The Council of State Governments, Lexington, Ky., 1974.

Georgia

Although the majority vote requirement was contained in the constitution as early as 1825, it was not used until the 20th century. In 1966, with an emerging Republican Party, a controversial Democratic nominee, and an independent Democrat all in the gubernatorial race, no candidate received a majority. The legislature chose Democrat Lester Maddox. It was the controversy surrounding this experience which led to the change from legislative choice to a runoff among the top two contenders. Earlier, in 1946, the Georgia legislature also attempted to choose the governor, under unusual circumstances not covered by the majority vote requirement. The governor-elect, Eugene Talmadge (D) died before taking office. The legislature, when it met, chose Talmadge's son, Herman E. Talmadge, as the new governor. Talmadge was eligible for consideration on the basis that he received enough write-in votes in the general election to make him the second-place candidate. But the state supreme court voided the legislature's choice and declared that the lieutenant governor-elect, Melvin E. Thompson (D) should be governor.

Maine

Maine entered statehood in 1820 with a majority vote provision for governor and kept it until repeal in 1880. During this 60 year span, the legislature was called on to choose the governor nine times, as follows: 1840, 1846, 1848, 1852, 1853, 1854, 1855, 1878 and 1879.

Massachusetts

Like the other New England states, Massachusetts originally had a requirement for majority voting in gubernatorial elections. However, after six straight elections from 1848 to 1853 when the legislature was forced to choose the governor, Massachusetts repealed the provision in 1855. The years in which it was used were as follows: 1785, 1833, 1842, 1843, 1845, 1848, 1849, 1850, 1851, 1852, 1853.

New Hampshire

New Hampshire's mandated majority vote for governor was in force from 1784 through 1912, when it was repealed. The outcome of the following gubernatorial elections was determined by the legislature: 1785, 1787, 1789, 1790, 1812, 1824, 1846, 1851, 1856, 1863, 1871, 1874, 1875, 1886, 1888, 1890, 1906, and 1912.

Rhode Island

Under the constitution of 1842, Rhode Island required a majority to win the gubernatorial election. Under this mandate, the legislature chose the governor in the years 1846, 1875, 1876, 1880, 1883, 1890, and 1891. Owing to a disagreement between the two houses of the state legislature, the ballots for governor were not counted in 1893, and Gov. D. Russell Brown (R) continued in office for another term of one year. The provision for majority voting was then repealed.

Before 1842, there was also a requirement for a popular majority, but the legislature was not allowed to choose a new governor if no candidate achieved a majority. Three times—in 1806, 1832 and 1839—there was a lack of a majority in a gubernatorial election, with a different outcome each time. In 1806, the lieutenant governor-elect served as acting governor for the term. In 1832, the legislature mandated a new election, but still no majority choice was reached; three more elections were held, all without a majority being achieved, so the same state officers were con-

tinued until the next regular election. And in 1839, when neither the gubernatorial nor lieutenant governor's race yielded a winner by majority, the senior state senator acted as governor for the term.

Vermont

Vermont's provision for majority gubernatorial election resulted in the legislature picking the governor 19 times: 1789, 1797, 1813, 1814, 1830, 1831, 1832, 1834, 1841, 1843, 1845, 1846, 1847, 1848, 1849, 1852, 1853, 1902, and 1912. On a twentieth occasion, 1835, the legislature failed to choose a new governor because of a deadlock and the lieutenant governor-elect served as governor for the term. The Vermont provision remains in force.

—By Warden Moxley

Bibliography**Books**

- Abernathy, Bryon R., *Some Persisting Questions Concerning the Constitutional State Executive*, Lawrence, Kansas, University of Kansas Press, 1960.
- Alderfer, Harold F., *Gubernatorial Elections in Pennsylvania, 1822-1942*, State College, Pennsylvania, Municipal Publication Service, 1946.
- Anderson, William, *Government in the Fifty States, "The Development of the Governorship,"* pp. 257-70, New York, Holt, Rinehart & Winston, 1950.
- The Book of the States, "State Administration Officials: Methods of Selection,"* p. 155, Lexington, Kentucky, The Council of State Governments, 1974.
- Ford, Marian A., *Candidates for Governors: Alabama-Wyoming, 1890-1970*, Studio City, California, 1971.
- The Governor: The Office and Its Power*, Lexington, Kentucky, The Council of State Governments, 1972.
- Governor's Yearbook*, Minneapolis, Minnesota, R. Burns, 1964.
- Graves, W. Brooke, *American State Government*, Boston, Massachusetts, D. C. Heath, 1953.
- Hunt, William W., *The Book of Governors, 1509-1935*, Los Angeles, California, Washington Typographers, 1935.
- Jacob, Herbert, *Politics in the American States*, Boston, Massachusetts, Little, Brown, 1965.
- Kallenbach, Joseph E., *The American Chief Executive: The Presidency and the Governorship*, New York, Harper, 1966.
- Key, V. O., *American State Politics*, New York, Knopf, 1956.
- Lipson, Leslie, *The American Governor from Figurehead to Leader*, Chicago, Illinois, University of Illinois Press, 1939.
- Lockard, Duane, *New Jersey Governor: A Study in Political Power*, New Brunswick, New Jersey, Rutgers University Press, 1964.
- Morey, Roy D., *Politics and Legislation: The Office of Governor in Arizona*, Tucson, Arizona, University of Arizona Press, 1965.
- Nevins, Allan, *The American States During and After the Revolution, 1775-1789*, New York, Macmillan, 1924.
- Peterson, Clarence S., *First Governors of the Forty-Eight States*, New York, Hobson Book Press, 1947.
- Plumb, Ralph G., *Our American Governors*, Wisconsin, 1956.
- Pomper, Gerald M., "Governors, Money and Votes," *Elections in America*, pp. 126-148, New York, Dodd, Mead, 1968.

- Ransone, Coleman B., *The Office of Governor in the South*, University, Alabama, University of Alabama Press, 1951.
- Ransone, Coleman B., *The Office of Governor in the United States*, University, Alabama, University of Alabama Press, 1956.
- Rich, Bennett M., *State Constitutions: The Governors*, New York, National Municipal League, 1960.
- Rohr, C. J., *The Governor of Maryland: A Constitutional Study*, Baltimore, Maryland, Johns Hopkins Press, 1932.
- Ruskowi, C. W., *The Constitutional Governor*, Boston, Massachusetts, B. Humphries, 1943.
- Schlesinger, Joseph A., *How They Became Governor: A Study of Comparative State Politics 1870-1950*, East Lansing, Michigan, Michigan State University, 1957.
- Solomon, Samuel R., *The Governors of the United States, 1900-1974*, Lexington, Kentucky, University of State Governments, 1974.
- Spence, James R., *The Making of the Moore-Preyer-Lake Primaries, 1964*, Salem, North Carolina, Blair, 1968.
- Sturm, Albert L., *Thirty Years of State Constitution Making: 1938-1968*, New York, National Municipal League, 1970.
- Wilson, Woodrow, "The State Executives," *The State and Federal Governments of the United States*, pp. 65-75, Boston, Massachusetts, D. C., Heath, 1889.

Articles

- Bryan, Richard J., "Legislative Election of a Governor," *North Carolina Law Review*, December, 1967, pp. 128-42.
- Ewing, Cortez A. M., "Southern Governors," *Journal of Politics*, Volume 10, 1948, pp. 385-409.
- Fairlie, John A., "The State Governor," *Michigan Law Review*, March/April, 1912, Numbers 5 & 6.
- Kallenbach, Joseph E., "Constitutional Limitations on Re-eligibility of National and State Chief Executives," *American Political Science Review*, June, 1952, pp. 438-54.
- Lauchheimer, M. H., "Governor Under the Constitution," *American Law Review*, September/October, 1916, pp. 707-29.
- MacDonald, A. F., "American Governors, 1900-1910," *National Municipal Review*, November, 1927, pp. 715-19.
- Mathews, J. M., "The Role of the Governor," *American Political Science Review*, May, 1912, pp. 216-28.
- Perkins, John A., "American Governors 1930-1940," *National Municipal Review*, March, 1940, pp. 178-84.
- Solomon, Samuel R., "American Governors Since 1915," March, 1931, pp. 152-58.
- Solomon, Samuel R., "United States Governors, 1940-1950," *National Municipal Review*, April, 1952, pp. 190-97.

Term of office

Time in excess of four-year term which Governor may be required to serve "until his successor shall be chosen and qualified" is part of his constitutional term; provision rendering Governor ineligible to succeed himself has no bearing whatever upon duration of his term. 201/867, 828 (41 S. E. 2d 383).

2-2702 (Art. V, Sec. I) Paragraph II. Election for Governor

The first election for Governor, under this Constitution, shall be held on Tuesday after the first Monday in November of 1978, and the Governor-Elect shall be installed in office at the next session of the General Assembly. An election shall take place quadrennially thereafter, on said date, until another date be fixed by the General Assembly. Said election shall be held at the places of holding general elections in the several counties of this State, in the manner prescribed for the election of members of the General Assembly, and the electors shall be the same.

Editorial Note

This section was Const. 1945, § 2-3002. The first election for Governor under the 1976 Constitution was changed to 1978 as the proper date.

Library References

See 5 E. G. L. Constitutional Law, § 84. Op. Att'y Gen. 1960-61 pp. 204, 213; 1962, p. 227.

ANNOTATIONS

Stated. 223/7, 11 (152 S. E. 2d 847).

2-2703 (Art. V, Sec. I) Paragraph III. Transmission, canvassing and publishing election returns

The returns of each election district in a gubernatorial election shall be sealed up by the superintendent thereof separately from other returns and shall be transmitted to the Secretary of State. On the Tuesday next following the general election, unless the date therefor shall be changed by law, the Secretary of State shall transmit said returns to a Constitutional Officers Election Board which shall be composed of the Speaker and Clerk of the House of Representatives, the President Pro Tempore and the Secretary of the Senate, and the chairman of each standing committee of the General Assembly. Such Board shall open and publish the returns, and the person having the majority of the whole number of votes shall be declared duly elected Governor of this State. Each candidate for Governor shall be entitled to designate one person to be present at the opening of the returns.

Editorial Note

This section was Const. 1945 § 2-3003. In the 1976 Constitution language was changed for proper agreement between noun and pronoun.

Library References

See 5 E. G. L. Constitutional Law, § 84. Op. Att'y. Gen. 1948-49, pp. 155, 162.

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Notes of Decisions Under the Constitution of 1945 (prior to 1968 Amendment)

Stated. 223/7, 11 (152 S. E. 2d 847).

2-2704 (Art. V, Sec. I) Paragraph IV. Run-off election

In the event no gubernatorial candidate receives a majority of the whole number of votes cast in the general election, the Constitutional Officers Election Board shall continue the gubernatorial election by immediately calling a run-off election and designate as candidates therein the two persons who received the highest number of votes, who continue in life and have not declined to continue as a gubernatorial candidate. This run-off election shall be held on the third Tuesday immediately following the general election unless the date thereof shall be changed by the General Assembly. The run-off election shall be a continuation of the general election and only the electors who were entitled to vote in the general election shall be entitled to vote therein; and only those votes cast for the two persons designated shall be counted in the tabulation and canvass of the votes cast. The provisions relating to the transmission of the returns in the general election, the opening of the returns, their tabulation, canvassing and publication shall apply to the run-off election. On the Tuesday next following the run-off election, the Constitutional Officers Election Board shall convene, open, canvass, tabulate and publish the returns of the run-off election. The person having the highest number of votes entitled to be counted in the run-off election shall be declared the duly elected Governor of this State.

Editorial Note

This section was Const. 1945, § 2-3004.

Library References

See 5 E. G. L. Constitutional Law, § 84. Op. Att'y Gen. 1948-49, p. 155; 1954-56, p. 375.

Notes of Decisions Under the Constitution of 1945 (prior to 1968 Amendment)

Canvass of returns

General Assembly, as canvassers of election returns, have no discretionary power except to determine if returns are in proper form and executed by proper officials and to pronounce mathematical result; they can neither receive nor consider any extraneous information or evidence, but must look only to contents of election returns. 201/867, 877 (41 S. E. 2d 883).

Condition precedent

Condition precedent to election of Governor by General Assembly is a failure of the people to cast a majority of their votes for any person, in which event the General Assembly is given power to elect one of the two persons having the highest number of votes who are in life and willing to accept election at the time appointed for the General Assembly to elect. 201/867 (2) (41 S. E. 2d 883).

Constitutionality

Georgia Assembly is not disqualified to elect Governor as required by Article V of State Constitution of 1945. Neither is it disqualified by fact that its Democratic members had obligated themselves to support Democratic nominee in general election on November 8, 1966. That election is over, and with it, terminated any promises by Democratic legislators to support Democratic nominee. 385 U. S. 231 (87 Sup. Ct. Rep. 719, 17 L. Ed. 2d 330).

Article V of Georgia Constitution of 1945 provides method for selecting Governor which is as old as Nation itself. Georgia does not violate equal protection clause of Federal Constitution by following this Article as it was written. Id.

Construction

The word "person," as used in the second and third clauses of this section, refers to a living person as of the time of the election by the people, and his subsequent death is immaterial, so far as any power of election by the General Assembly is concerned. 201/867, 881 (41 S. E. 2d 883).

The clause "the person having majority of the whole number of votes, shall be declared duly elected Governor," means that the General Assembly shall declare such persons to have been duly elected Governor; it means this under any and all circumstances, for it refers always to a past fact. Id. 884.

In construing this section, Supreme Court is authorized, if indeed not required, to give consideration to the history of elections for Governor over a period of approximately half a century before the drafting and submission of the present Constitution and its ratification by the voters in 1945. Id. 884.

Acts 1871, p. 27, providing that if at special election for Governor no person be found to have received a majority of the whole number of votes cast, then from the two persons having the highest number of votes, who shall be in life, the legislature shall elect a Governor, and Acts 1878-79, p. 173 (now § 40-102 of Code), providing for election to fill vacancy in office, are legislative interpretation of language of this section prior to its incorporation in Constitution of 1877, and when lifted from that Constitution and inserted in the Constitution of 1945, presumably was intended to have the same meaning. Id. 886.

See also General Note at end of Title 2.

Death

Death of person receiving majority of votes cast for Governor after election by the people and before publication of returns by the General Assembly did not change duty of that body to declare his election nor authorize the General Assembly to declare by resolution that because of his death no person had a majority of the votes and to elect a Governor; such an election was a void act, which did not confer any right or title to the office of Governor. 201/867, 868 (2-a) (41 S. E. 2d 883).

Duty of General Assembly

In publishing returns and declaring results the members of the General Assembly perform a strict and precise duty identical in character with that which rests upon any and all persons who are merely authorized to canvass; they are not, while performing that duty, exercising or authorized to exercise any discretion, but simply perform the ministerial act of disclosing to the public the official election returns that have been prepared by the election managers. 201/867, 876 (41 S. E. 2d 883).

The canvassing of returns and declaration of the result are constitutional directives to the General Assembly, and its failure to observe them ought not to defeat the right of the person elected or the franchise of the voters who elected him. Id. 877.

Georgia Election

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STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Joint Resolution No. 9 Date on Bill: 1/18/83
 Title: "Proposing an amendment to the Constitution of the State of Alaska relating
 Sponsor: to elections...Governor and Lieutenant Governor" Bussell, Fischer, Hayes
 Requestor: House Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-			

b. Revenues:

Revenue								
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2. Source of funds to offset fiscal impact of bill:

Sponsor was unable to provide funding information.

3. Assumptions:

1. HJR has no fiscal impact as the Division of Elections plans for the inclusion of constitutional amendments on the general election ballot.
2. If passed and approved by the electorate, the division would not be impacted until FY 87 - the next gubernatorial election year.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Dana Coffman, Deputy Director Phone: 586-6181
 Division: Division of Elections Date: 2-14-83

Approved by Commissioner: _____ Date: _____
 Department: _____

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to -Requestor Copy to Mike Nizich

2/18/83

HJR 9

SUMMARY OF VOTER TOTALS, PERCENTAGES OF GOV. ELECTIONS, GENERAL
1962-1982

<u>YEAR</u>	<u>TOTAL VOTES</u>	<u>CANDIDATE #1 / %</u>	<u>CAN.#2 / %</u>	<u>CAN.#3 / %</u>
1962	60,084 (56,681)*	29,627 49.3% (52.2%)	27,054 45% (47.7%)	
1966	67,361 (66,294)	33,145 49.2% (49.9%)	32,065 47.6% (48.3%)	1084 1.6% (1.6%)
1970	82,405 (80,779)	42,309 51.3% (52.3%)	37,264 45.2% (46.1%)	1206 1.4% (1.4%)
1974	98,557 (96,163)	45,840 46.5% (47.6%)	45,553 46.2% (47.3%)	4770 4.8% (4.9%)
1978	129,705 (126,910)	49,580 38.2% (39.%)	33,555 25.8% (26.4%)	25,656 19.8% (20.2%)
			<u>CAN #4 / %</u>	<u>CAN.#5 / %</u>
			15,656 12.% (13.%)	2,463 1.9% (1.94%)
1982	199,358 (194,511)	89,918 45.1% (46.2%)	72,291 36.2% (37.1%)	29,067 14.5% (14.9%)
			<u>CAN. #4 / %</u>	
			3235 1.6% (1.66%)	

* NOTE: These numbers and percentages in ()s are totals excluding votes not cast for one of the candidates listed above; all small write-in votes.