

Massachusetts General Laws, Chapter 54A
ELECTION OF CERTAIN CITY AND TOWN OFFICERS BY PROPORTIONAL
REPRESENTATION OR PREFERENTIAL VOTING

Sec.

1. Definitions; applicability of chapter.
2. Petitions; filing; certification of signatures; referendum; adoption.
3. Nomination of candidates.
4. Ballots; form; contents.
3. Printing of ballots; arrangement of names; number of ballots.
6. Central counting place of ballots; director.
7. Challengers; witnesses; watchers; other representatives.
8. Use of ballot boxes; procedure.
9. Rules for counting ballots and determining results.
10. Ballots; preservation; examination.
11. Publication of statements regarding ballots cost
12. Recount of ballots.
13. Vacancies in bodies elected by proportional representation; filling.
14. Ballots; rules for counting where election by preferential voting.
15. Vacancies in single elective offices; filling.
16. Mechanical or other voting devices; methods of counting first choices.
17. Applicability of general laws relating to elections and corrupt practices.

[Original chapter 54A §§ 1-16, added by St.1937, c. 345, which related to the same subject matter as the present chapter, under a slightly different heading, was stricken out by St.1938, C. 341, § 1, which inserted the present chapter 54A §§ 1-17 in place thereof.]

Cross References

Arrest for violating provisions of this chapter, warrant not needed, see c. 56 § 57.
Cities or towns, laws relating particularly to shall prevail if a conflict, see c. 50, § 6.
Counting ballots before voting ceased, see c. 54, § 105.
Definitions of terms used in this chapter, see c. 50, § 51.
Jurisdiction of courts enforcement of provisions of this chapter, see c. 56, § 59.
Jurisdiction of supreme judicial and superior courts in enforcing chapters 50-56 inclusive, see c. 50, § 59.
Laws relating particularly to any city or town, see c. 50. § 16.
Prosecutions for violating provisions of this chapter not placed on file, see c. 56, § 58.
Removal of ballots from ballot box, exception thereto, see c. 54 § 105.
Section providing for determination of results of election not to derogate from this chapter. see c. 50, § 2.
Speedy trial of actions involving election laws, see c. 211, § 59A.
Temporary city clerk, appointment of, see c. 41, 1§ 14
Town boards, filling of vacancies in, exceptions thereto, see c. 41, § 11.
Town officers, election of, see c. 41, § 6.

§ 1. Definitions; applicability of chapter. The following words, as used in this chapter, shall, unless the context otherwise requires, have the following meanings:

"Elected at large" shall mean elected by and from all the voters of a city or town.

"Elective body" or "body" shall mean any body, board or commission of any city or town,

whether or not any or all of its members are elected at large, including the school committee, the selectmen of a town and the legislative body of a city, or either branch thereof, but shall not include the town meeting members of any town.

"Elective office" or "office" shall mean any office in any city or town, other than that of a member of a body as herein defined, the incumbent of which is elected at large.

"Elective officer" or "officer" shall mean any officer of any city or town, not a member of a body as herein defined, who is elected at large.

"Proportional representation", shall mean any proportional representation method of election authorized by this chapter.

"Preferential voting" shall mean the preferential voting method of election provided for in this chapter.

This chapter shall not apply to any town wherein official ballots are not used at town elections. [Added St.1938, c. 341, § 1, as amended St.1941, c. 345.]

Cross References

Applicability to district elections, see c. 41, § 114.

Applicability to town elections, see c. 41, § 6.

Applicability to town elections and primaries upon establishment of voting precincts, see c. 43A, § 3.

§ 2. Petitions; filing; certification of signatures; referendum; adoption. A petition in a form prescribed as hereinafter provided, signed in person by registered voters of any city or any town as to which this chapter applies, equal in number to at least ten per cent of the registered voters thereof, petitioning that all the members of any particular elective body as to which this chapter applies, specified in the petition, to be composed of any odd number of members not more than fifteen in a city, or any number then permitted by law in a town, which is specified therein, be elected at large by proportional representation, or that any particular elective officer, specified therein, be elected by preferential voting, and that the question of adopting the proposed change be submitted to the voters of such city or town at a regular municipal election, as specified therein, may be filed with the city or town clerk not later than sixty days prior to such a municipal election; provided, that this section shall not authorize the filing of a petition for the submission of such a question relative to a body or officer except at the regular municipal election next preceding a regular municipal election at which successors to one or more members of such a body are to be elected or a successor to such officer is to be elected, as the case may be; and provided, further, that this section shall not authorize the submission of such a question relative to any body the members of which are already authorized to be elected by proportional representation.

The city or town clerk shall prescribe the form of the aforesaid petitions which shall conform to the provisions of section thirty-eight of chapter forty-three relative to initiative petitions in cities governed by said chapter.

Within twenty days after the filing of any such petition, the city or town clerk shall transmit the same to the registrars of voters who shall certify upon such petition the number of signatures which are names of registered voters in such city or town; provided, that the registrars need not certify a greater number of names than is equal in number to twelve per cent of the registered voters therein.

If such a petition, signed by the requisite number of voters of a city or town and otherwise conforming to the provisions of this section, is filed with the city or town clerk and the signatures thereon certified as hereinbefore required, there shall be printed on the official ballot to be used in such city or town at the election specified in such petition, the question of the adoption of the change petitioned for, in the form set forth in the first of the following questions, in case the change will affect an elective body or in the form set forth in the second, in case it will affect an elective officer, the blanks in either such question to be properly filled in:

(1) Referendum on the election at large by proportional representation of the members of (insert name of the elective body specified in the petition) of the (city or town) of _____.

Shall the (insert name of the elective body specified in the petition) of this (city or town) be elected by proportional representation as authorized in chapter fifty-four A of the General Laws, said body to consist of (insert number) members, all to be elected at large? YES NO

(2) Referendum on the election by preferential voting of (insert title of the elective officer specified in the petition) of the (city or town) of _____.

Shall the (insert title of the elective officer specified in the petition) of this (city or town) be elected by preferential voting as authorized in chapter fifty-four A of the General Laws? YES NO

If, pending the determination of the question of electing by proportional representation the members of any elective body proposed by a petition already filed under this section, a petition presenting the question of so electing the members of such body but specifying a different number of members shall be presented for filing with a city or town clerk, no action shall be taken upon the later petition except to file it, until after the submission to a vote of the question proposed by the earlier petition. Should the result of such vote be adverse thereto, proceedings shall then be had upon the later petition as though it had been filed upon the day when such vote on the earlier petition was cast.

If a majority of the votes cast upon any such question relative to a body or officer of a city or town is in the affirmative the following provisions of this chapter, so far as apt, shall apply with respect to such body or officer and shall become operative with respect to the regular municipal election of such city or town next succeeding the vote on such question; provided, that if the terms of all members of such a body in office immediately preceding such election will not so expire that successors to all the members will be required by law to be elected at such election, the operation of such provisions shall be suspended and, as the terms of the members so in office, other than those having the longest unexpired terms, expire, their successors shall be elected, by the voting system then in effect, to serve only for terms of such length that the terms of all members so in office will expire at the same time.

At the regular municipal election immediately preceding the termination of the terms of all members of such a body, the full number of its members as specified in the question shall be elected at large, to serve for terms of the same length as the longest term then established for any of its members, by proportional representation and in accordance with the provisions of law governing elections to such body which are not inconsistent with this chapter, and thereafter as

the terms of the members so elected expire their successors shall be elected in the same manner and, except as otherwise provided by chapter forty-one in the case of a town, for the same terms.

At the regular municipal election immediately preceding the termination of the term of such an elective officer, his successor shall be elected, for the same term of office as then provided by law, by preferential voting and in accordance with the provisions of law governing elections to such office which are not inconsistent with this chapter.

If, pending the determination of the question of the adoption of one of the plans provided for by chapter forty-three, which has already been filed, a petition under this chapter shall be presented for filing with the city clerk, no action shall be taken upon the petition under this chapter, except to file it, until after the submission to a vote of the question proposed by the earlier petition. Should the result of such vote be adverse thereto, proceedings shall then be had upon the petition under this chapter as though it had been filed on the day when such vote on the earlier petition was cast. [Added St.1938, c. 341, § 1, as amended St.1938, c. 378, § 17; St.1941, c. 640, § 6.]

Cross References

Initiative and referendum petitions, generally, see Const. Amend, art. 48.

Method of electing town officers, see c. 41, § 1.

Provisions of section not applicable, see c. 41, § 1.

Notes of Decisions

Library references

Statutes [key]344

C.J.S. Statutes § 122

1. In general

A difference among the several cities of the commonwealth resulting from adoption by one of them of a form of government providing for proportional representation involving limited and preferential voting, is not constitutionally objectionable on ground of inequality in the right of duly qualified voters to elect officers among the several cities of the commonwealth. Moore v. Election Commissioners of Cambridge (1941) 35 N.E.2d 222, 309 Mass. 303.

§ 3. Nomination of candidates. Notwithstanding any provision of general or special law, nominations of candidates to be elected to such a body or office shall be made only by nomination papers; and, except as hereinafter provided, the provisions of special law, if any, relative to the nomination of candidates by nomination papers for election to such body or office shall apply with respect to such nominations or, if there is no such special law, the provisions of general law relative to such nominations shall so apply.

The number of signatures of voters of a city or town required for nomination of a candidate for election as a member of any such elective body shall be not less than one nor more than two for every two hundred votes cast for governor at the preceding biennial state election in such city or town, and for nomination of a candidate for election to any such elective office not less than one nor more than two for every one hundred votes so cast; and any nomination papers for election to any such body or office bearing more than the maximum number of signatures permitted by this section shall be invalid. Nomination papers shall be issued by the city or town clerk to any such candidate, upon request, to such number as will provide spaces for signatures equal to three times the number of signatures required for the nomination of such a candidate, but no more. A voter may not sign the nomination papers of more than one candidate for election as a member of any such body; and if a voter signs nomination papers of more than one such candidate his

signature shall be invalid on all such papers except the first one acted upon by the registrars of voters. [Added St.1938, c. 341, § 1.]

Library references: Elections [key]126(1), 141; C.J.S. Elections §§ 106, 111.

Cross references

Nomination papers, number of voters can sign, exception thereto, see c. 53, § 7.

Signing nomination papers generally, see c. 53 § 7.

§ 4. Ballots; form; contents. At any election at which members of such a board are to be elected by proportional representation or such an officer is to be elected by preferential voting, official ballots for such purpose shall be prepared and furnished by the city or town clerk. There shall be a separate form of ballot for each such body and for each such officer, and each such separate form of ballot shall be of a different and clearly distinguishable color from that of any other form of ballot prepared and furnished at the public expense for use at the same election.

On such ballots for use in elections by proportional representation or preferential voting, there shall be printed the following directions to voters, the first sentence under the heading to be printed in prominent bold-faced type.

DIRECTIONS TO VOTERS

DO NOT use X marks.

Mark your choices with NUMBERS only.

Put the figure 1 opposite your first choice, the figure 2 opposite your second choice, the figure 3 opposite your third choice, and so on. You may mark as many choices as you please.

Do not put the same figure opposite more than one name.

If you spoil this ballot, return it for cancellation to the election officer in charge of the ballots and get another from him. [Added St.1938, c. 341, § 1.]

Library references: Elections [key]166, 170; C.J.S. Elections § 156.

§ 5. Printing of ballots; arrangement of names; number of ballots. Ballots used in elections to such a body or office by proportional representation or preferential voting shall be printed in as many lots as there are candidates for election thereto. In the first lot the names of the candidates shall appear in the alphabetical order of their surnames. In the second lot the names shall appear in the same order except that the first name in the first lot shall be placed last. In each succeeding lot the order shall be the same as that of the lot preceding, except that the first name in that preceding lot shall be placed last. Sets of ballots to be used at the several polling places shall be made up by combining ballots from the different lots in regular rotation, so that no two successive voters shall receive ballots from the same lot, and so that each candidate's name shall appear first and in each other position substantially the same number of times on the ballots used. The number of ballots provided for each polling place shall exceed by twenty per cent the number of voters entitled to vote thereat. [Added St.1938, c. 341, § 1.]

Cross References

Applicability to municipal elections in cities under governmental Plan E, see c. 43, § 113.

Municipal elections in city adopting charter plan, this section applicable, see c. 43, § 113.

§ 6. Central counting place of ballots; director. Immediately preceding an election by the method of proportional representation or preferential voting, the city or town clerk shall designate a central counting place where ballots used under such method shall be brought together and counted publicly, appoint a competent person to act as director of the count, employ a sufficient staff of assistants and make suitable arrangements for the counting of such ballots.

The city or town clerk shall furnish the director of the count with a seal or suitable device with a designation thereon of such central counting place, and such seal shall be used in sealing all envelopes required by law to be sealed at said central counting place. The director of the count shall retain custody of the seal and shall after the election is at an end deliver it to the city or town clerk. Before entering upon the performance of his official duties, the director of the count and each of his assistants shall be sworn before the city or town clerk or any officer qualified to administer oaths, or, in the case of any such assistant, before the director; and a record thereof shall be made. The director of the count and his assistants shall receive such compensation for each day's actual service as the city council or selectmen may determine. During the absence or disability of the director of the count, such one of his assistants as may be designated by the city or town clerk shall perform the duties of such director. [Added St.1938, c. 341, § 1.]

Library references: Elections [key]242; C.J.S. Elections § 225.

Cross References

Applicability to municipal elections in cities under governmental Plan B, see c. 43, § 113.

Director of count, penalty for interfering with, see c. 56, § 48.

Failure to perform general duties, penalty for, see c. 56, § 22.

General penalty provisions, See c. 56, § 22.

Improper disposition of ballots and lists. see c. 56, § 16.

Municipal elections in city adopting charter plan, this section applicable, see c. 43, § 113.

Officers qualified to administer oaths, see c. 222, § 1.

Penalty for interfering with election officials appointed under this section, see c. 56, § 48.

Supervision of counting of ballots, see section 9 of this chapter.

Violation of provisions relating to disposition of ballots, penalty for, see c. 56, § 16.

§ 7. Challengers; witnesses; watchers; other representatives. At each election by the method of proportional representation or preferential voting any candidate for election by such method shall be entitled, upon written application to the city or town clerk at least ten days before said election, to exercise all rights granted by the election laws to a political party in regard to the appointment of challengers at the polling places. Such challengers shall be permitted to remain at the polling places until the ballots have been transmitted to the central counting place, and to accompany the ballot receptacles to the central counting place.

Each such candidate shall be entitled to appoint two witnesses and two alternate witnesses of the count of the ballots cast for election to the body or office to which he seeks to be elected, and any such appointments shall become effective upon the issue to such appointees of credentials as hereinafter provided. Such credentials shall be issued by the city or town clerk, provided that written notice of the names and addresses of the appointees signed by such candidate is filed with the city or town clerk at least ten days before the election at which they are intended to be used. Credentials issued to any such witness shall entitle the holder to free access to any part of the central counting place wherein the ballots cast at such election for election to the body or office to which the candidate seeks to be elected are being counted, to witness the counting of

such ballots and to inspect all activities in connection with the counting thereof; and credentials issued to any such alternate witness shall entitle the holder to exercise like rights in the absence of the principal witness for whom he has been appointed to act as alternate.

Each such candidate shall also be entitled to appoint two representatives to watch the ballots at the central counting place during recesses when the counting of ballots is not in progress. Application for the appointment of such representatives shall be made and credentials issued as provided in this section for witnesses to the central count and their alternates. During any time when the counting of ballots is not in progress, from the time the ballots first begin to arrive at the central counting place until the ballots have been sent from the central counting place to the city or town clerk as provided in section nine (s), such representatives shall have the right to be present, with facilities for keeping in full view all the ballots cast in electing persons to fill the office sought by their candidate, or the containers in which such ballots have been placed, except during such time as the ballots or containers of ballots may be kept in a locked safe or a vault. No such witness, alternate witness or representative shall be allowed to handle any of such ballots.

Challengers, witnesses, alternate witnesses and representatives provided for in this section shall serve without compensation. [Added St.1938, c. 341, § 1.]

Cross References

Applicability to municipal elections in cities under governmental Plan E, see c. 43, § 113.

Candidates may appoint member to board of review, see section 9(r) of this chapter.

Municipal elections in city adopting charter plan, this section applicable, see c. 43, § 113.

Political party committee empowered to appoint challengers, see c. 54, § 85A.

§ 8. Use of ballot boxes; procedure. At each polling place in any city or town where an election by proportional representation or preferential voting is to be held as a part of an election by any other method or at which any question is to be submitted on the ballot, an additional state ballot box shall be used for the ballots cast under proportional representation or under preferential voting, or under both, as the case may be. In such case, the clerk of the city or town shall, at the expense of the city or town, provide the additional state ballot box for each polling place in the city or town and shall deliver the same to the election officers thereat seasonably before the election at which it is to be used.

In such case, as soon as the polls have closed and the ballot box used for ballots other than those cast under proportional representation or preferential voting, has been opened in accordance with section one hundred and five of chapter fifty-four and while such ballots are being audibly counted as provided therein, the election officers shall sort out any ballots cast under proportional representation or preferential voting which have been deposited in such ballot box and immediately deposit such ballots in the additional ballot box provided therefor. Such additional ballot box shall then be opened by the presiding officer and the ballots taken therefrom and audibly counted one by one and the whole number of ballots cast under proportional representation and preferential voting shall be publicly announced by him and a record made thereof in words at length and of the ballot box register. Any ballots other than those cast under proportional representation or preferential voting found in such additional ballot

box shall immediately be deposited in the ballot box provided therefor for cancellation and shall then be taken out and included for counting with the other like ballots already audibly counted.

The presiding officer shall thereupon cause all ballots cast under proportional representation and preferential voting to be publicly enclosed in an envelope or envelopes and sealed up with the seal provided for the polling place and also with the private seal of any election officer who may desire to affix the same thereto. A majority of the election officers at the polling place shall endorse upon such envelope or envelopes the polling place, the election and date and also a certificate that all the ballots cast under proportional representation and preferential voting by the voters at such polling place and none others are enclosed therein.

The presiding officer shall cause a copy of the record of the total number of names checked on the voting lists, a copy of the record of the whole number of ballots cast under proportional representation and preferential voting, a copy of the record of the register of the ballot box used for such ballots and a record of the number of such ballots given out to voters and of the number of such ballots spoiled and returned by the voters for cancellation, to be enclosed in an envelope and sealed up as aforesaid and shall certify on the envelope the contents thereof. He shall also enclose in an envelope or envelopes in like manner those of such ballots which were spoiled and returned and those which were not given out.

He shall then personally deliver the said envelopes to the central counting place or transmit them thereto by a police officer.

In the event that an election by proportional representation or preferential voting shall be conducted but not as a part of an election by any other method or at which any question is to be submitted on the ballot, the presiding officer shall, as soon as the polls are closed, seal the ballot box and deliver it in person to the central counting place or transmit it thereto by the police officer in attendance at the polling place, together with the voting lists, a record of the ballot box register and of the number of ballots given out, and the ballots spoiled and returned and the ballots not given out, all of which shall be enclosed in an envelope or envelopes sealed and identified as aforesaid.

Proper receipts shall be required in connection with the transmission of ballot boxes, ballots, records and copies of records.

The ballot receptacles shall be assembled by polling places for counting at the central counting place in an order of polling places determined by the city or town clerk by lot. For such purpose lots shall be drawn not later than the closing of the polls in the presence of such candidates or their agents as wish to attend after due notification at least five days in advance.

The ballot receptacles shall be opened and the number of ballots found therein recorded and the number thereof shall be compared with the records sent from the corresponding polling places. The records thus compared shall be made available to the public with notations explaining any necessary corrections therein and if any discrepancy appears in such records which cannot be reconciled it shall be noted on the records. [Added St.1938, C. 341, § 1.]

Cross References

Applicability of this section to municipal elections in Plan E cities, see c. 43, § 113.

Applicability to municipal elections in cities under governmental Plan E, see c. 43, § 113.

State ballot boxes, additional ones, see c. 54, § 67A.

§ 9. Rules for counting ballots, and determining results. Ballots cast under proportional representation shall be counted and the results determined under the supervision of the director of the count appointed pursuant to section six, according to the following rules:

- (a) The ballots in each ballot receptacle shall be examined for validity and those which are found to be blank or otherwise invalid shall be separated from the valid ballots. The number of valid ballots from each precinct and the total number of valid ballots shall be recorded. If a ballot does not clearly show which candidate the voter prefers to all others, or if it contains any word, mark or other sign apparently intended to identify the voter, it shall be set aside as invalid. Every ballot not thus invalid shall be counted according to the intent of the voter, so far as that can be clearly ascertained, whether marked according to the directions printed on it or not. No ballot shall be held invalid because the names of candidates thereon for whom the voter did not mark a choice have been stricken out, unless such striking out constitutes an identifying mark. A single cross on a ballot on which no figure 1 appears shall be considered equivalent to the figure 1. If a ballot contains both figures and crosses, the order of the choice shown by the figures shall be taken as the voter's intention in so far as the order is clearly indicated. If the consecutive numerical order of the figures on a ballot is broken by the omission of one or more figures, the smallest number marked shall be taken to indicate the voter's first choice, the next smallest his second, and so on, without regard to the figure or figures omitted.
- (b) Each candidate shall be credited with one vote for every valid ballot that is sorted to him as first choice, or otherwise credited to him as hereinafter provided, and no ballot shall ever be credited to more than one candidate at the same time.
- (c) A "quota" is the smallest number of votes which any candidate must receive in order to be assured of election without more candidates being elected than there are offices to be filled. It shall be determined by dividing the total number of valid ballots by one more than the total number of candidates to be elected and adding one to the result, disregarding fractions. Whenever at any stage of the counting the number of ballots credited to a candidate becomes equal to the quota, he shall be declared elected, and no ballots in excess of the quota shall be credited to him except as provided in rule (f) or (1) of this section.
- (d) The ballots shall be sorted according to the first choices marked on them, the ballots from each polling place being handled together, and those from different polling places being handled in the order of polling places determined under the provisions of section eight.
- (e) If a candidate is elected while the ballots are being sorted according to first choices, any subsequent ballots which show him as first choice shall each be credited to the second choice marked on it, or, if the second choice also has been elected, to the next choice marked on it for a candidate not yet elected.
- (f) If during the first sorting of ballots, ballots are found which are marked for a candidate already elected as first choice, but show no clear choice for any unelected candidate, such ballots shall at the end of the sorting be given to the candidate of their first choice, and in their place an equal number, as nearly as possible, of the last ballots sorted to that candidate

which show a clear choice for unelected candidates, all as determined by the director of the count, shall be taken and re-sorted to unelected candidates as if they were then being sorted for the first time.

- (g) When all the ballots have been thus sorted and credited to the first available choices marked on them, every candidate who is credited with fewer ballots than the number of signatures required for his nomination shall be declared defeated.
- (h) All the ballots of the candidates thus defeated shall be transferred, each to the candidate indicated on it as next choice among the continuing candidates. A "continuing candidate" is a candidate not as yet either elected or defeated. Any ballot taken for transfer which does not clearly indicate any candidate as next choice among the continuing candidates shall be set aside as "exhausted".
- (i) When all the ballots of the candidates thus defeated have been transferred, the one candidate who is then lowest on the poll shall be declared defeated and all his ballots transferred in the same way.
- (j) Thereupon the candidate who is then lowest shall be declared defeated and all his ballots similarly transferred; and in like manner candidates shall be declared defeated one at a time and all their ballots transferred.
- (k) If, when a candidate is to be declared defeated, two or more candidates are tied at the bottom of the poll, that one of the tied candidates shall be declared defeated who was credited with fewest ballots immediately prior to the last transfer of ballots. If two or more of the tied candidates were tied at that stage of the count, also, the second tie shall be decided by referring similarly to the standing of candidates immediately prior to the last transfer of ballots before that. This principle shall be applied successively as many times as may be necessary, a tie shown at any stage of the count being decided by referring to the standing of the tied candidates immediately prior to the last preceding transfer of ballots. Any tie not otherwise provided for shall be decided by lot.

In interpreting this and other rules contained in this section the transfer of all ballots from candidates defeated together under rule (g) of this section, and the transfer of all ballots from each candidate defeated thereafter shall each constitute a single separate transfer.

- (l) Whenever candidates to the number to be elected have received the quota, any transfer of ballots in progress when the last quota was reached shall be completed, but immediately thereafter all continuing candidates shall be declared defeated and the election shall be at an end. Whenever all ballots of all defeated candidates have been transferred, and it is impossible to defeat another candidate without reducing the continuing candidates below the number still to be elected, all the continuing candidates shall be declared elected and the election shall be at an end.
- (m) A record of the count shall be kept in such form as to show, after each sorting or transfer of ballots, the number thereby credited to each candidate, the number thereby set aside as exhausted, the total for each candidate, the total set aside as exhausted, and the total number of valid ballots found by adding the totals of all candidates and the total set aside as exhausted.
- (n) Every ballot that is transferred from one candidate to another shall be stamped or marked so that its entire course from candidate to candidate can be conveniently traced.

- (o) If at any time after the first sorting of the ballots a ballot is found to have been credited to the wrong candidate, it may be transferred, as part of the transfer that is in progress, to the continuing candidate, if any, to whom it should have been credited at the time the error was made, or, if it should previously have become exhausted, may be set aside as exhausted as part of the transfer that is in progress; provided, that if the number of misplaced ballots found is sufficient to make it possible that any candidate has been wrongly defeated, so much of the sorting and transferring as may be required to correct the error shall be done over again before the count proceeds.

If in correcting an error any ballots are re-sorted or re-transferred, every ballot shall be made to take the same course that it took in the original count unless the correction of an error requires its taking a different course. The principles of the rules of this section shall apply also to any recount which may be made after the original count has been completed.

- (p) The director of the count and his assistants shall proceed with reasonable expedition in the counting of the ballots, but may take recesses at the discretion of the director. The city or town clerk shall make proper provision for the safekeeping of the ballots while the counting is not in progress.
- (q) The candidates, their witnesses, alternate witnesses and representatives accredited under section seven, representatives of the press, and, as far as may be consistent with good order and with convenience in the counting and transferring of the ballots, the public shall be afforded every facility for being present and witnessing the counting and transferring of the ballots.
- (r) Each of the candidates entitled to appoint witnesses of the central count as provided in section seven shall be entitled to appoint a member of a board of review of the central count. Such appointment shall be made within the time and in the manner prescribed for the appointment of such witnesses of the central count. In the central counting place a board of review so constituted shall be given facilities for examining all the ballots in the quota of each elected candidate in order to make sure that all the ballots of such quota are rightfully credited to the candidate toward whose election they have been counted, that the number of ballots therein is actually equal to the quota prescribed in this section, and that "exhausted" ballots have been properly so designated. Any errors discovered by such a board of review shall be reported to the director of the count.
- (s) When the election with respect to any particular body or office is at an end the director of the count shall publicly announce the result of the vote for such body or office. The provisions of section one hundred and seven of chapter fifty-four relative to presiding officers and other election officers at polling places shall, so far as apt, apply to the director of the count and his assistants with respect to all ballots, records, copies of records, envelopes and ballot boxes, transmitted to the central counting place under section eight and to all other papers, records and apparatus used in counting the votes at the central counting place, except that ballots cast for a particular body or office, as well as those spoiled and returned and those not given out, shall be enclosed, and the envelopes sealed and delivered or transmitted to the city or town clerk as soon as may be after the public announcement of the result of the vote for such body or office.
- (t) No canvass or count of the vote shall be made on the Lord's day. [Added St. 1938, c. 341, § 1, as amended St. 1950, c. 28.]

Historical Note

The 1950 amendment added paragraph (t), prohibiting canvass or count of the vote on the Lord's day.

Cross References

Application of proportional representation provisions of this section to Plan E city elections, see c. 43, § 115. (Repealed 1972, 596, Sec. 1)

Applicability to municipal elections, see c. 43, § 115. (Repealed 1972, 596, Sec.1)

Determination of election results generally, see c. 50, § 2.

Municipal elections in city adopting charter plan, this section and the following sections applicable, see c. 43, § 115. (Repealed 1972, 596, Sec. 1)

Preferential voting elections, counting ballots, see section 14 of this chapter.

Representatives of candidates to watch ballots, see section 7 of this chapter.

Notes of Decisions

In general 1

Determination of voter's intent 2

Library references: Elections [key]235. C.J.S. Elections § 223

1. In general

The lower Court and the Supreme Judicial Court may correct any error of law, appearing on face of ballot, which error has been made by returning board in counting ballot as vote for a particular candidate. *Contakos v. Election Commission of Lowell* (1954) 118 N.E.2d 736, 331 Mass. 254.

2. Determination of voter's intent

The will of a voter, if it can be determined with reasonable certainty, must be given effect.

Contakos v. Election Commission of Lowell (1954) 118 N.E.2d 736, 331 Mass. 254.

Where ballot, considered in light of character and location of mark and conditions attendant upon election, fairly indicate voter's intent, vote should be counted in accordance with that intent, provided voter has substantially complied with election law, but where ballot is marked so as to leave voter's intent a matter of conjecture, the vote should not be counted.

Ballots, on which voters had at first marked a cross in box opposite certain candidate's name and had them marked over the cross with what appeared to be the figure "1," would be credited to such candidate.

§ 10. Ballots; preservation; examination. The ballots cast at each election by proportional representation or preferential voting shall be preserved by the city or town clerk until the term of office of the members of the body or of the officer elected thereby has expired, and shall be available for examination continuously throughout the business day, under supervision of the city or town clerk, on written application signed by not less than one hundred voters of the city or town and the payment of a fee of twenty-five dollars for each day on which such inspection is held. Such application shall name not more than three representatives of the applicants to make such examination. [Added St.1938, c. 341, § 1.]

Cross References

Application of proportional representation provisions of this section to Plan E city elections, see c. 43, § 115. (Repealed 1972, 596, Sec. 1)

§ 11. Publication of statements regarding ballots cast. Within thirty days after an election to elect members of a body by proportional representation or an officer by preferential voting, the city or

town clerk shall cause the ballots cast for such body or office to be examined and shall publish a statement showing-

- (a) The number of first-choice ballots cast for each candidate at each polling place.
- (b) The number of ballots from each polling place finally counted for each of the elected candidates.
- (c) The number of the exhausted ballots from each polling place which showed one or more choices for elected candidates and the number which did not show any such choice.
- (d) The number of blank ballots cast for each body or office at each polling place.
- (e) The number of ballots otherwise invalid cast for each body or office at each polling place.
- (f) The number of first choices, second choices, third choices, and so on, used in the election of each of the elected candidates.
- (g) Such other information in regard to the ballots as the city or town clerk may deem of interest.

A copy of such statement shall be kept on file in the office of the city or town clerk open to public inspection. [Added St.1938, c. 341, § 1.]

Cross References

Application of proportional representation provisions of this section to Plan E city elections, see c. 43, § 115. (Repealed 1972, 596, Sec. 1)

§ 12. Recount of ballots. Partial or complete recounts of the ballots cast for any body or office in an election by proportional representation or by preferential voting shall take place in the manner provided in sections one hundred and thirty-four to one hundred and thirty-seven, inclusive, of said chapter fifty-four, except that any petition shall be submitted on or before five o'clock in the afternoon of the third day following the public announcement by the director of the count of the result of the vote for such body or office and shall be on a form approved and furnished by the city or town clerk and be signed in a town by ten or more voters of such town, in a city, except Boston, by fifty or more voters of such city and in Boston by two hundred and fifty or more voters of said Boston and except that any such recount in any city or in any town divided into precincts shall be conducted for the entire city or town instead of for specified precincts. If a partial or complete recount of the ballots cast in such an election shall in fact take place, it shall be conducted according to the rules prescribed for the original count as nearly as is practicable. [Added St.1938, c. 341, § 1.]

Library references: Elections [key]245. C.J.S. Elections § 228

Cross References

Application of proportional representation provisions of this section to Plan E city elections, see c. 43, § 115. (Repealed 1972, 596, Sec. 1)

§ 13. Vacancies in bodies elected by proportional representation; filling. When a vacancy occurs in an elective body whose members were elected by proportional representation, such vacancy shall be filled for the remainder of the unexpired term by a public recount of the ballots credited

at the end of the original count to the candidate elected thereby whose place has become vacant. Except for the following special rules, the provisions governing the original count shall be in effect:

- (a) All choices marked for candidates theretofore elected or who have become ineligible or have withdrawn shall be disregarded:
- (b) The ballots shall be sorted each to the earliest choice marked on it for any of the eligible candidates.
- (c) If any candidate has to his credit more than half of the ballots which show any preference among the eligible candidates he shall be declared elected to the vacant place.
- (d) If no candidate receives more than half of such ballots, the candidates lowest on the poll shall be declared defeated one after another and after each candidate is defeated his ballots shall be transferred among the continuing candidates.
- (e) The process hereinbefore provided shall be continued until one candidate is credited with more ballots than all the other undefeated candidates together, when he shall be declared elected to the vacant place.

If a vacancy in an elective body occurs for which no regularly nominated candidate remains it shall be filled for the unexpired term by a majority vote of the remaining members; and if but a single member remains or if a majority vote of the remaining members is not obtained within thirty days after the vacancy occurs, it shall be filled by a special election, in the case of a single vacancy, by preferential voting or, in case two or more vacancies exist at the same time, by proportional representation. [Added St.1938, c. 341, § 1.]

Cross References

Application of proportional representation provisions of this section to Plan E city elections, see c. 43, § 115.

(Repealed 1972, 596, Sec. 1)

City charter plan, vacancies filled in elective bodies, see c.43, § 102.

§ 14. Ballots; rules for counting where election by preferential voting. Ballots cast under preferential voting shall be counted in the central counting place under the supervision of the director of the count, in accordance with the following rules:

- (a) The ballots shall first be sorted according to the first choices marked on them, and the total number of valid ballots thus sorted to each candidate shall be ascertained. The validity of ballots shall be determined according to the principles laid down for the count of ballots in an election by proportional representation in rule (a) of section nine.
- (b) If any candidate is found to have been marked as first choice on more than half of the valid ballots he shall be declared elected.
- (c) If no candidate is so elected after the count of first choices, every candidate who is credited with fewer ballots than the number of signatures required for his nomination shall be declared defeated.
- (d) All the ballots of the candidates so defeated shall be transferred, each to the candidate indicated on it as next choice among the undefeated candidates. Any ballot taken for

transfer which does not clearly indicate any candidate as next choice among the undefeated candidates shall be set aside as "exhausted".

- (e) If, after this or any subsequent transfer of ballots, one candidate is credited with more than half of the valid ballots which have not become exhausted, he shall be declared elected.
- (f) If no candidate is so elected after the transfer of the ballots of candidates defeated under rule (c), the one candidate who is then lowest on the poll shall be declared defeated and all his ballots transferred in the same way.
- (g) Thereupon, if no candidate is yet elected, the candidate who is then lowest shall be declared defeated and all his ballots similarly transferred. Thus candidates shall be deemed defeated one at a time, and all their ballots transferred until some candidate has received the necessary majority of the ballots which have not become exhausted and is accordingly declared elected.
- (h) Ties shall be decided, a record of the count kept, errors corrected, recesses taken, and candidates and others permitted to be present according to the principles prescribed for elections by proportional representation in rules (k), (m), (o), (p) and (q) of section nine. [Added St.1938, c. 341, §1.]

Cross References

Application of proportional representation provisions of this section to Plan E city elections, see c. 43, § 115. (Repealed 1972, 596, Sec.1)

Notes of Decisions

In general 1

Reasonableness of procedure 2

1. In General

The essential feature of "preferential voting" is that a voter, though permitted to cast only one effective vote for an officer, is permitted to express not only a first choice for one candidate, but also one or more other choices, in the order of his preference, for other candidates for the same office. Moore v. Election Commissioners of Cambridge (1941) 35 N.E.2d 222, 309 Mass. 303.

2. Reasonableness of procedure

The method of counting employed in preferential system of voting embodied in Plan E form of city government is not unreasonable or productive of inequality because excess of votes representing first choices for a candidate are counted for candidates who represent second or successive choices of the voters, in accordance with a uniform principle. Moore v. Election Commissioners of Cambridge (1941) 35 N.E.2d 222, 309 Mass. 303.

The provision for preferential voting embodied in Plan E form of city government, as applied to the election of members of the municipal council in the city of Cambridge, is not unreasonable, nor does it impair equal rights of all duly qualified voters of the city to elect members of the council, though in application to particular situations exact mathematical equality may not result, since theoretical perfection is not essential to constitutional validity. *Id.*

The element of chance in determination of candidates that from time to time are to be eliminated under preferential system of voting embodied in Plan E form of city government is not so great as necessarily to vitiate the method of counting embodied therein. *Id.*

§ 15. Vacancies in single elective offices; filling. All provisions of law from time to time applicable in the case of a vacancy in an elective office shall continue to apply after the filling of

such office by preferential voting, except that any election to fill such vacancy shall also be by preferential voting. [Added St.1938, c. 341, § 1.]

Cross References

Application of proportional representation provisions of this section to Plan E city elections, see c. 43, § 115. (Repealed 1972, 596, Sec.1)

§ 16. Mechanical or other voting devices; methods of counting first choices.

(a) In conducting any election by proportional representation or preferential voting, mechanical or other devices may be used, subject, however, to the provisions of sections thirty-two to thirty-nine, inclusive, of chapter fifty-four, if the city council or the town passes a vote providing expressly that such devices shall be used in such election; and said sections, so far as apt, shall be applicable in all respects in case of such devices so used. In case such devices are to be used in any city or town, the city or town clerk may modify the form of ballot, the rotation of names thereon, the directions to voters and other details in respect to the election process; provided, that no change shall be made which will alter or impair the principles of voting or counting the ballots governing elections by proportional representation or preferential voting, as the case may be, but the voter may be limited to not less than fifteen choices for any particular body or office.

(b) In any city or town where elections by proportional representation are to be held, any method of counting the voters' first choices and treating any such choices in excess of the quota, provided for under any system of proportional representation which on January first, nineteen hundred and thirty-eight was in effect for the purpose of municipal elections in any city of the United States, may be substituted for the method of counting such choices set forth in this chapter, if the registrars of voters determine that such substitution is advisable; provided, that they issue regulations embodying the method so substituted and provided, further, that such regulations shall not be effective with respect to any election unless at least thirty days prior thereto copies of such regulations are available for delivery to such of the voters as may request them. Added St.1938, c. 341, § 1.

Library references: Elections [key]222. C.J.S. Elections § 203

Cross References

Application of proportional representation provisions of this section to Plan E city elections, see c. 43, § 115. (Repealed 1972, 596, Sec. 1)

§ 17. Applicability of general laws relating to elections and corrupt practices. All elections by proportional representation or preferential voting held in any city or town under this chapter shall be subject to all general laws relating to elections and corrupt practices, so far as applicable and not inconsistent with this chapter. [Added St.1938, c. 341, § 1.]

Cross References

Corrupt practices, generally, see c. 55, § 1 et seq.
Determination of election results generally, see c. 50, § 2.