

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

950 CMR 56.00: ADMINISTRATIVE PROCEEDINGS CONCERNING PRACTICES OF LOCAL ELECTION OFFICIALS

Section

56.01: General Provisions

56.02: Complaint

56.03: Investigation; Consultation; Report

56.04: Decision

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56.01: General Provisions

(1) Purpose. 950 CMR 56.00 provides procedures for the Secretary to decide whether a pattern of conduct or a standard, practice or procedure of a local official is contrary to the election laws, under M.G.L. c. 56, § 60 and further provides an administrative complaint procedure in accordance with the requirements of Section 402 the Help America Vote Act of 2002. These provisions shall be construed to promote the fundamental right to vote and the uniform application of the election laws throughout the Commonwealth.

(2) Definitions. As used in 950 CMR 56.00:

Election Laws (as used in 950 CMR 56.00) and General or Special Law concerning administration of elections" (as used in M.G.L. c. 56, § 60) include any provision of M.G.L. chs. 50 through 54, or of any other general or special law, including the provisions of the Help America Vote Act of 2002, 42 USC 15301, constitutional provision, or home rule charter concerning administration of elections, or of any regulation adopted under authority of any of the preceding provisions, or of any judicial or administrative decision interpreting any of the preceding provisions.

HAVA means the relevant provisions of the Help America Vote Act of 2002, 42 USC 15301, *et seq.*

Local Official includes one or more of a city or town clerk, election commission, board of registrars of voters, or any other municipal or district officer upon whom a duty is imposed by the election laws.

Secretary means the state secretary, or the state secretary's chief legal counsel or another attorney designated to act on the state secretary's behalf.

Urgent Circumstances shall be determined by the Secretary and include, but are not limited to, the time period on or near the day of a primary, caucus, or election, or of a deadline for voter registration or for filing or submitting any relevant document under the election laws.

(3) Amendment. 950 CMR 56.00 may be amended at any time in the manner provided by law. Any interested person may petition the Secretary requesting the adoption, amendment, or repeal of any regulation, under M.G.L. c. 30A, § 4. This petition shall be considered by the Secretary within 30 days after filing.

56.02: Complaint

Any person may complain to the Secretary that a pattern of conduct, or a standard, practice or procedure, of a local election official is contrary to the election laws. Additionally, a person may complain to the Secretary, in accordance with the provisions of Section 402 of HAVA, that Title III has been violated, is being violated or is about to be violated.

(1) Complaints need not use the language or refer to the relevant provision of the election laws, nor M.G.L. c. 56, § 60, nor 950 CMR 56.00. The complaint shall be in writing, except in urgent circumstances. The Secretary's office may initiate a complaint.

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- (2) Complaints filed in accordance with Section 402 of HAVA, must be in writing and notarized.
- (3) Any complaints must be made to:
Elections Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, MA 02108

56.03: Investigation; Consultation; Report

- (1) The Secretary shall assign any complaint to an investigator, who shall be an employee of the Secretary's Elections Division.
- (2) The investigator shall investigate the complaint's allegations under the supervision of the Secretary or his designee and with the assistance of other employees of the Secretary's Elections Division.
- (3) The investigator shall consult with the local election official complained of, by informing the local election official of the substance of the complaint and requesting a response.
- (4) The investigator, after review by the Secretary or his designee, may decide that the complaint is without basis, is outside the Secretary's jurisdiction, or fails to state a claim upon which relief can be granted, and shall so inform the local election official and the complainant in writing.
- (5) The investigator shall then prepare a report, including the results of this consultation, and shall present this report to the Secretary.
- (6) The report may recommend an informal resolution or the text of an order. Except in urgent circumstances, the report shall be in writing and shall be sent to the local official and to the complainant, who may file their written comments on it with the Secretary within ten days after the report was sent.

56.04: Decision

- (1) After reviewing the report and any written comments, the Secretary may render a decision which may incorporate the report in whole or in part. The Secretary may hold an informal conference before rendering a decision.
- (2) Before a decision is rendered, hearings may be held. The parties shall include the local official, the Secretary's investigator, and any complainant who wishes to participate.
 - (a) After reviewing the report and any written comments, and before rendering a decision, the Secretary may initiate an adjudicatory proceeding by issuing an order to show cause to the local election official under 801 CMR 1.01(6)(d).
 1. The decision whether or not to hold an adjudicatory hearing shall be in the Secretary's unreviewable discretion.
 2. An adjudicatory hearing shall be before the Secretary and shall be governed by 801 CMR 1.01, except as the Secretary may modify these rules because of time restraints.
 - (b) For complaints filed in accordance with Section 402 of HAVA, the complainant may request a hearing on the record.
 1. Decisions on complaints filed in accordance with Section 402 of HAVA shall be made within 90 days from the date the complaint is filed, unless the complainant consents to a longer period for making such decision.
 2. If a decision is not made within 90 days as set forth above, the matter shall be referred to the Massachusetts Office on Dispute Resolution for further proceedings.
 - (c) After any hearing, the Secretary shall render a decision.

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(3) The Secretary's decision shall be in writing, shall state the reasons for the decision, and may include an order to the local official to comply with the relevant provisions of the election laws. It shall be mailed to the local official and to the complainant. In urgent circumstances, it shall also be delivered by hand to the local official or communicated by telephone to the local official.

(4) Before issuing any order to comply with law, the Secretary shall notify the Attorney General or an assistant attorney general designated by the Attorney General for this purpose.

(5) The Secretary's order may require that the local official sign an affidavit giving assurances that the local official will obey the order.

56.05: Enforcement

The Secretary may notify the Attorney General of any local official's failure to obey an order. The Attorney General may enforce the order by civil action.

REGULATORY AUTHORITY

950 CMR 56.00: M.G.L. c. 56, § 60.

NON-TEXT PAGE