

SENATE No. 2078

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

COMMUNICATION
FROM THE
PUBLIC EMPLOYEE RETIREMENT
ADMINISTRATION COMMISSION (PERAC)
RELATIVE TO AMENDMENTS TO THE
RULES AND REGULATIONS GOVERNING
RETIREMENT BOARD ELECTIONS
IN MASSACHUSETTS
(840 CMR 7.00)

(pursuant to Section 50 of Chapter 7 of the General Laws)

December 15, 2015

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William F. Welch, Senate Clerk
Office of the Clerk of the Senate
State House, Room 335
Boston, MA 02133

Dear Mr. Welch:

In accordance with the provisions of Chapter 7, Section 50 of the General Laws, I am pleased on behalf of the Public Employee Retirement Administration Commission (PERAC), to file amendments to the rules and regulations governing retirement board elections in Massachusetts (840 CMR 7.00).

These regulatory amendments are necessary to regulate the retirement board elections procedures at the local retirement systems.

Pursuant to the provisions of G.L. c. 7, § 50, the clerks shall refer this matter to the appropriate standing committee of the General Court. If the General Court takes no final action relative to the regulations within forty-five days of the date said regulations are referred to the appropriate committee, the General Court not having prorogued within said forty-five days, the regulations shall be deemed to be approved. Within fifteen days of receipt of any recommendations, the committee shall transmit in writing to PERAC its suggestions, if any, for modifications in recommended regulations. Within fifteen days of receipt of the committee's suggestions, PERAC shall resubmit the regulations to the committee, together with any modifications made to them.

If you have questions or need additional information, please feel free to contact me.

Sincerely,

Joseph E. Connarton
Executive Director

Enclosure

JEC/dmd
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Election Regulations

840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION 840 CMR 7.00:

STANDARD RULES FOR ELECTIONS Section

- 7.01: General Provisions
- 7.02: Election Officer; Appeals to Board
- 7.03: Notice of Elections
- 7.04: Nominations
- 7.05: Election by Declaration
- 7.06: Official Election Ballots
- 7.07: Elections Conducted by Mail or at Polling Place
- 7.08: Absentee Ballots
- 7.09: Tabulation of Ballots
- 7.10: Election Results
- 7.11: Preservation of Ballots
- 7.12: Simultaneous Elections
- 7.13: Terms

7.01: General Provisions

(1) 840 CMR 7.00 is the standard rule for elections promulgated by the Public Employee Retirement Administration Commission (“PERAC”) pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, § 21. Except for elections in the State Employees’ Retirement System, which shall be governed by the provisions of M.G.L. c. 32, § 20(1), the Teachers’ Retirement System, which shall be governed by the provisions of M.G.L. c. 32 § 20(2), county retirement systems, which shall be governed by the provisions of M.G.L. c. 32, §§ 20(3)(b) and 20(3)(h), and in regional retirement systems which shall be governed by the provisions of M.G.L. c. 34B, §§ 19 and 19A, and as otherwise provided by PERAC, and by supplementary rules of a particular retirement board approved by PERAC pursuant to 840 CMR 14.02, or by statute, 840 CMR 7.00 shall govern all elections of elected board members held under the supervision of a retirement board.

(2) Unless a different meaning is plainly required by the context, the term "member", as used in 840 CMR 7.00, means member in service where the elected member is elected from members in service and means member in or retired from service where the elected member is elected from members in or retired from service. For the purposes of this regulation, the following terms shall have the following meaning:

(a) “Member in service” shall mean any member who is regularly employed in the performance of his or her duties;

(b) “Member inactive” shall mean any member whose employment has been terminated and who may be entitled to any present or potential retirement allowance or to a return of his or her accumulated total deductions;

(c) "Retiree" shall mean any member in service who has been retired and who is receiving a retirement allowance.

(3) The elected retirement board member shall be elected by the members of the retirement system from among their number. Members inactive have the right to vote in board elections, but do not have the right to serve as a board member.

(4) If otherwise eligible and allowed by law, board staff may be elected to a board other than the board for which he or she is employed.

7.02: Election Officer; Appeals to Board

The board shall designate an Election Officer, who may be a member of the board, who shall assist the board in supervising the election and shall determine all matters relating to the election. Any person aggrieved by a determination of an Election Officer may appeal to the board. The board may promulgate supplementary rules governing the election which shall take effect as approved by the Commission pursuant to 840 CMR 14.02.

7.03: Notice of Elections

The retirement board shall provide reasonable notice of the election not less than 90 days prior to the date of the election. Notice shall state the time, place and manner of the election and shall describe nomination and election procedures including, if the election is conducted at a polling place, procedures for voting by absentee ballot. If the retirement board does not provide notice of the election within 90 days prior to the date of election, that retirement board must send a written request for an exception to PERAC with a compelling reason for such exception.

(1) Notice shall be mailed to each active, inactive and retired member of the appropriate system, or

(2) Notice shall be mailed to each retired member and the last known address of each inactive member of the appropriate system and, for all members, shall be posted in at least three appropriate public locations:

(a) within the jurisdiction of the system, or

(b) where a system includes more than one governmental unit, within the jurisdiction of each governmental unit.

(3) If the retirement board wishes to utilize electronic means of notification, the retirement board must submit a supplemental regulation to PERAC describing the electronic notification process, and obtain PERAC's approval thereof not less than 120 days prior to the date of the election.

(4) A copy of the Notice of Election must be sent to PERAC at the same time it is sent to and/or posted for all members.

7.04: Nominations

Any active or retired member of the appropriate system may qualify as a candidate by filing with the board a nomination paper or papers, containing the signatures and addresses of at least five active or retired members of the system. Nomination papers, in blank, shall be made available to candidates at least 90 days prior to the date of the election. The nomination paper or papers, containing the necessary number of qualified signatures and addresses shall be filed no later than 45 days prior to the date of the election. If the board determines that a candidate has filed nomination papers containing less than the required number of qualified signatures, the board shall declare the nomination papers invalid and shall notify the candidate of its determination.

7.05: Election by Declaration

If the board determines that only one candidate has been nominated, the board shall declare said candidate to be the elected member of the board, no election shall be held, and said candidate shall take office and serve in all respects as though he or she had been elected by election.

7.06: Official Election Ballot

If the board determines that more than one candidate has been nominated, the board shall immediately prepare an official election ballot. Qualified candidates shall be listed on the official ballot in an order determined by a random drawing of the names of the candidates. If the incumbent elected member is nominated, he or she has the right to be identified as such on the official ballot. The official ballot shall state the length of the term for which the candidates are running.

7.07: Elections Conducted by Mail or at a Polling Place

Elections shall be conducted either entirely by mail or at a polling place open for not less than ten hours, the time and place to be determined by the board. In elections conducted at a polling place, members shall cast their votes on the official ballot in person at the polling place except as provided in 840 CMR 7.08.

If the retirement board wishes to conduct its election via electronic means, the retirement board must submit a supplemental regulation to PERAC describing the electronic election process, and obtain PERAC's approval thereof not less than 120 days prior to the date of election.

7.08: Absentee Ballots

In elections conducted at a polling place members retired from service may vote by absentee ballot and an absentee ballot shall be mailed to each such member with notice of the election pursuant to 840 CMR 7.03. A member in service and a member inactive may, upon timely request, vote by absentee ballot only if he or she:

- (a) will be absent from the city or town where the polling place is located during the hours that it will be open;
- (b) will be unable to cast his or her vote in person on the day of the election for reasons of religious belief; or
- (c) will be unable to cast his or her vote in person at the polling place by reason of medical condition.

Requests for absentee ballots shall be in writing and shall be filed no later than seven business days before the election. Absentee ballots shall be counted only if received by the board no later than the time fixed for the closing of the polls on the day of the election.

7.09: Tabulation of Ballots

Ballots shall be tabulated only by persons designated by the board under the direction of the Election Officer. The board shall notify each candidate of the time and location of the tabulation of the ballots and shall permit all candidates, or their representatives, to be present at the tabulation. At least two individuals shall be responsible for counting the ballots.

7.10: Election Results

The board shall notify each candidate, in writing, and shall give public notice of the results of the election within seven days after the election.

7.11: Preservation of Ballots

All ballots received by the board, including those determined to be invalid, shall be preserved by the board for 60 days after finalization of ballot count by the Election Officer or Election Board.

7.12: Simultaneous Elections

Boards may hold a simultaneous election for the two elected members if the term of each elected member has expired or if both elected positions are vacant and if the two terms are equal. The board shall provide two separate ballots unless PERAC has approved a written request allowing for the use of one ballot.

7.13: Terms

The terms of the elected members of the board shall be for not more than three years. An elected board member serves until the qualification of his or her successor, even if that requires that he or she serve for longer than three years. In the event of a vacancy, the board must hold an election within 120 days from the date of vacancy. In such a situation, the board must determine before the election whether the newly elected member will serve for a three-year term or for the remainder of the vacant term.