



CITY OF CAMBRIDGE

BOARD OF ELECTION COMMISSIONERS

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To: Richard C. Rossi, City Manager
From: Board of Election Commissioners
Date: April 30, 2014

Re: Response to Awaiting Report #14-07 re: What steps would be necessary to change the method by which surplus votes are transferred in municipal elections and whether the Fractional Transfer Method could replace the Cincinnati Method and whether this requires a Charter Change

In response to the above-referenced Council Order, the Board (in consultation with the Law Department) reports the following:

If the City Council votes to move forward with exploring the idea of replacing the Cincinnati Method of surplus ballot transfer with the Fractional Transfer Method, we strongly recommend that the City as a first order of business hire a consultant who specializes in proportional representation and municipal elections who could provide detailed insight and develop a comprehensive plan regarding the possible effects, costs, implementation, laws/regulations, proposed schedules and completion dates, pros/cons, skills and knowledge required, etc., with regard to such replacement before any proposal to move toward replacing the Cincinnati Method of surplus ballot transfer with the Fractional Transfer Method proceeds.

Legal Framework--

In 1940 the voters of the City of Cambridge elected by referendum to adopt the Plan E Charter (MGL Chapter 43, Sections 93-116.) As part of the charter the voters accepted a provision requiring that the City use the method of counting ballots found in Chapter 54A of the Massachusetts General Laws or "...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..."(MGL Chapter 54A, Section 16b; MGL Chapter 43, Section 115) In 1973 the Board of Election Commissioners adopted the rules for transfer of surplus votes

from a section of the Code of Cincinnati, Ohio which had been in use in Cincinnati on January 1, 1938 (the “Cincinnati Method.”)

In determining whether the Cincinnati Method may legally be replaced by the Fractional Transfer Method there are many factors to be considered. First, was the Fractional Transfer Method of proportional representation in effect for the purpose of municipal elections in any city of the United States on January 1, 1938? If the Fractional Transfer Method was in effect at that time, it would be the responsibility of the Board of Elections Commissioners to determine whether the change would be “advisable” and, if so, to adopt the rules for transfer of surplus under the Fractional Transfer Method replacing the Cincinnati Method.

If the Fractional Transfer Method sought to be substituted was not in effect on January 1, 1938 in any U.S. city, then the Election Commissioners do not have the authority to adopt it because MGL Chapter 54A, Section 16(b) and MGL Chapter 43, Section 115 (cited above) do not allow it.

In order to supersede the limitations established in G.L.c.43, s.115 and G.L.c.54A, s.16(b), both of those laws would have to be changed. Special legislation passed by the state legislature would be required to change the language of G.L.c.54A, s.16(b). The necessary change to G.L.c.43, s.115 would be a “charter change,” in that it would be altering a section of the Plan E charter (G.L.c.43, s.115) that applies to Cambridge. There are a number of different methods for making a charter change.

The following is a brief summary of procedures for making charter changes. This summary should not be considered a detailed systematic account of the subject.

A city can adopt or change a charter with or without action by the state Legislature. Any change must be consistent with state law.

1. Adoption or revision – may be used to adopt a new charter or to change an existing charter or special act unless specifically provided otherwise.¹

Adoption or revision procedures require election of a local charter commission (Please note steps are subject to time restrictions).

¹ There is a separate “amendment” procedure which may also be used to change a current charter involving approval by the Attorney General, action by the local legislative body, and approval by local voters. This amendment procedure cannot be used to change things such as the composition, mode of election, terms of office of the local legislative body, the mayor or the city manager. Due to its limitations, this would not be a viable approach to changing the method by which surplus votes are transferred because such a change would affect the “mode of election” of the local legislative body.

- It can take two years to implement. Steps are as follows:
- Petitioning the local registered voters – file signed charter petition with the election commission for certification. Once certified the city council must order the question be submitted to the voters at the next regular municipal election. If the council fails to act the question will automatically appear on the ballot.
- Election of a charter commission to propose a charter or revision – Nomination papers should also be filed for candidates for the position of member of the Charter Commission. The voters must elect nine candidates who will prepare the charter or revision if voted to do so. Both the charter question and commission candidates are included on the next regularly scheduled Municipal Election Ballot. Commissioners serve without pay.
- If the question passes, the State Department of Community Affairs must be notified. The Charter Commission must then hold several public hearings and prepare reports within a specified time to be submitted to the state Department of Community Affairs and the Attorney General. The Attorney General will submit a written opinion to the Charter Commission outlining any conflicts between the charter/revision and constitutional and statutory law. If the Charter Commission’s final report recommends a new charter or revision it must be submitted to the voters at the next regularly scheduled municipal election.
- Approval of the proposal by the voters – the charter would take effect on the day specified in the charter.

2. Special Act—no charter commission required

- Local legislative body votes to request the state Legislature to pass a special act.
- State legislative action taken
- Typically, although not clearly required unless so stipulated in the special act, acceptance of the charter change passed by the Legislature is subject to a vote of approval by City voters.

Practical Considerations--

Prior to determining if the Fractional Transfer Method of transferring surplus votes in municipal elections could replace the Cincinnati Method, it would be useful to investigate what overall effect such a replacement would have on the current or future voting system (voting machines, software, costs, consultants, procedures etc.). The Secretary of the Commonwealth “promulgates regulations governing the approval of the type of voting equipment... to achieve and maintain the maximum degree of accuracy, impartiality and efficiency on the procedures of voting and counting, tabulating and recording votes”(MGL Chapter 54 Section 37). Currently, two pieces of new voting equipment are undergoing the State certification process. If approved by the State, the machines will undergo field testing. If a change were to occur in the method of counting ballots, it may necessitate new software, possibly new voting machines, and a new State certification process, all of which would result in additional costs yet to be determined. In addition, as part of the consideration of the desirability of the Fractional Transfer Method, the impacts that such a method would have on manual recount procedures must be taken into account. It

is anticipated that it would be extremely difficult to do a manual recount based on the Fractional Transfer Method. If the City Council votes to pursue this, the City would need to hire a qualified expert consultant from the outset.

Recommendation--

In conclusion, it would be beneficial to hire a consultant who specializes in proportional representation and municipal elections who could provide detailed insight and develop a comprehensive plan regarding the possible effects, costs, implementation, laws/regulations, proposed schedules and completion dates, pros/cons, skills and knowledge required, etc., related to such replacement before any proposal to move toward replacing the Cincinnati Method of surplus ballot transfer with the Fractional Transfer Method proceeds.