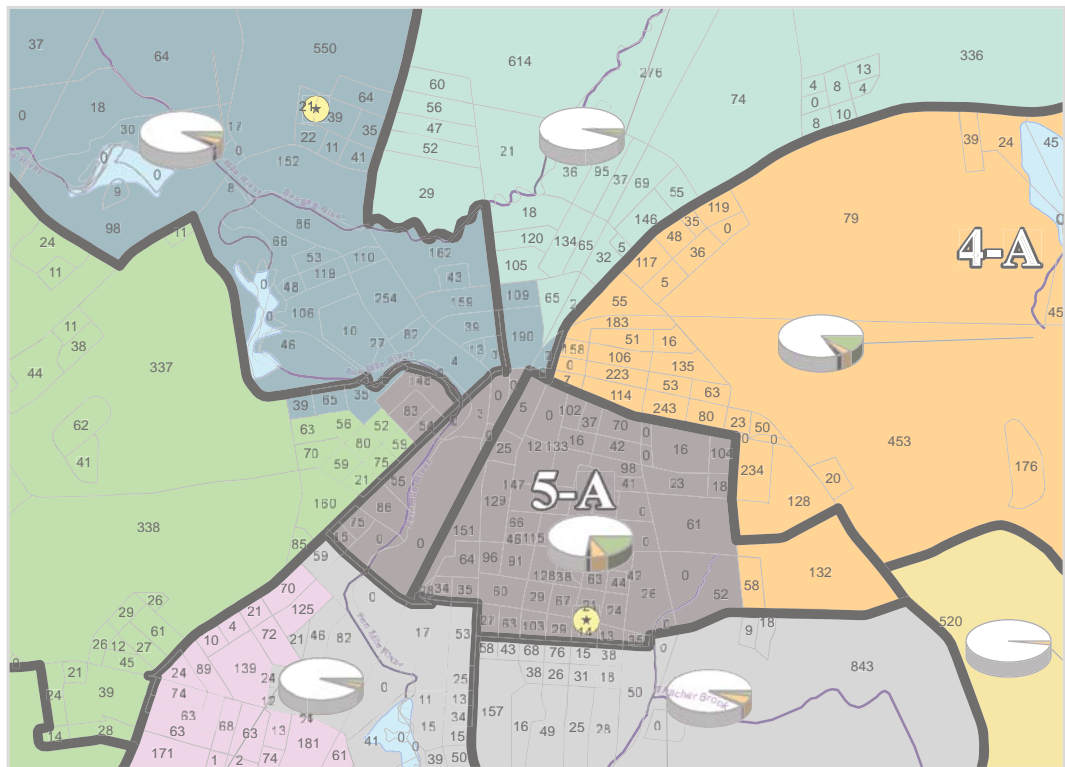




Re-Precincting in Massachusetts



William Francis Galvin
Secretary of the Commonwealth
Elections Division

Contents

An Introduction to Re-precincting and Redistricting in Massachusetts	1
Part One – Local Re-Precincting	3
Establishment of Wards and Precincts.....	3
Statutory Time Line.....	4
Standards	4
Minority Vote Dilution.....	5
Procedure and Calendar of Events	7
Submission of Approved Districts.....	10
The Local Election District Review Commission	10
Correcting Deficiencies	11
Sub-precincts in Representative Town Meeting Towns	12
Notice to the Public and Local Officials	12
Effective Date	12
Part Two – Legislative Redistricting	13
Congressional Districts.....	13
State Legislative Districts	13

An Introduction to Re-precincting and Redistricting in Massachusetts

“The great principle established by [Mass. Const. Amend. Art. XXI] is equality of representation among all the voters of the Commonwealth. That is a fundamental principle of representative government... There can be no equality among citizens if the vote of one counts for considerably more than that of another in electing public officers.” Attorney General v. Suffolk County Apportionment Comm’rs, 224 Mass. 598, 604 (1916) (Rugg, C.J.). All people should have free, open and fair access to the electoral process, and every person’s vote should carry the same weight. The law requires that legislative districts be redrawn on a periodic basis so that shifts in population will neither unfairly increase nor diminish a particular voter’s voice in government. Every ten years, the legislature and local governments must re-draw boundaries that take into consideration population, communities of interest, and state and federal constitutional requirements, amongst others. The government may not unfairly dilute minority voting strength, nor may it make race the predominant factor in redistricting absent a compelling state interest.

In any examination of redistricting, it is important to identify the basic elements that comprise a redistricting plan. This booklet briefly explains the process for redrawing the boundaries of the electoral districts in Massachusetts. In addition, it will describe the major state and federal constitutional considerations in the redistricting process.

By precedent, wards and precincts in the cities and towns within which they are comprised, form the building blocks for the larger legislative districts. The smallest electoral district is the precinct; its residents all vote at the same polling place on election day.

Districts must be drawn so as to contain roughly equal numbers of residents. This is different from the number of registered voters. Population is determined by the most recent federal census. All local re-precincting and state redistricting relies on the federal census taken in 2010 and at subsequent ten year intervals.

Part One outlines how local districts (precincts and wards) are drawn by local officials subject to approval by a state commission called the Local Election Districts Review Commission.

Part Two describes how legislative districts for electing members of Congress, state senators, state representatives and governor’s councillors are drawn by the state legislature.

Part One – Local Re-Precincting

The basis for any redistricting plan is population. The Massachusetts Constitution requires that districts be formed with “as nearly as may be” an equal number of “inhabitants” as determined by the federal census. Municipalities themselves have the initial responsibility of establishing ward and precinct boundaries, which become the building blocks in determining legislative and local government districts.

A precinct is the smallest geographically bounded unit used for state election purposes. A precinct is where one polling place in a municipality is located.¹ A ward is a geographically bounded unit for election purposes, which consists of one or more precincts.

Towns with representative town meetings elect their members by precinct and cities choose political party committees and sometimes city council members or other officials by ward. In some municipalities, the council members are elected by districts, which are created using precincts.

After obtaining the necessary local approval, each city and town must submit their plans, including maps, population information and a legal description of the boundaries of each ward and precinct, to the Secretary of the Commonwealth who thereafter makes this information and material available to an independent commission known as the Local Election District Review Commission (LEDRC).

Legal Citations:

- Massachusetts General Laws chapter 54, sections 2 and 6

Establishment of Wards and Precincts

Each city (except Boston) and town (except Nantucket and Rockport) is required to establish ward and precinct lines every ten years, following the federal census if:

- the wards of a city do not contain approximately equal numbers of residents so that each ward’s population is within 5 percent of the average;
- a ward not divided into precincts contains more than 4,000 residents;
- a town contains more than 6,200 residents; or
- a precinct contains more than 4000 residents.

Even if a city or town does not need to re-draw their precinct lines because their existing plan remains in conformity with the law, they must still file all the

¹ In some municipalities, sub-precincts may be established which provide an additional polling place for some of the voters in the precinct.

necessary information based on the latest federal census figures and have the plan reapproved by the LEDRC.

Legal Citations:

- Massachusetts General Laws chapter 54, section 1 (city wards), section 2 (city precincts), section 6 (towns)
- 1982 Mass. Acts ch. 605, section 3 (Boston)
- 1995 Mass. Acts ch. 312 (Rockport)
- 2001 Mass. Acts ch. 49 (Nantucket)

Statutory Time Line

Presently, under state law, cities and towns must establish new wards and precincts by June, 2011, and the state legislature is required to complete its redistricting in time for the 2012 elections.

A constitutional amendment was approved by the legislature and adopted by the voters of the Commonwealth which amended Amend. Art. CI to require the entire redistricting process to be completed in time for the legislative elections immediately following release of the decennial census data. Recently, the state laws were amended to accelerate the deadlines by which municipalities must complete redrawing of their ward and precinct lines and thereafter file such plans with the LEDRC.

Legal Citations:

- Massachusetts General Laws chapter 54, sections 1, 2, and 6
- 2010 Mass. Acts ch. 321

Standards

The law requires that voting precincts established by a city or town must meet the following requirements:

- Each new precinct must be “composed of compact and contiguous territory” without protruding fingers or long tails.
- Precincts must be bounded by the center-line of streets or other well defined boundaries such as streams or other bodies of water, railroad tracks, power lines or other clearly visible geographic figures. These features must be recognized as block boundaries by the United States Bureau of the Census and appear on their official block boundary maps. Rear lot lines or other imaginary lines are not acceptable. The use of census boundaries provides redistricting authorities with not only a definitive number of inhabitants in

a fixed area, but with demographic information obtained from the federal census, which is essential to any redistricting plan.

- No precinct may contain more than 4,000 residents.
- Every precinct's population must be within five percent (5%) of the average precinct population for that ward or town. Ward populations must be within five percent (5%) of the average ward population for the city.

For state election purposes, precincts established during the re-precincting process may not be changed in a ward or town which is in more than one senatorial, representative or governor's council district. They may be changed for local elections only and in this case two sets of precinct lines must be maintained.

For the purposes of dividing a city or town into precincts and of apportioning representation in any elected municipal body, the figures reported by the federal census are the only numbers used.

Legal Citations:

- Generally: Massachusetts General Laws chapter 54 section 2 (cities), section 6 (towns)
- Population Deviations: LEDRC Memorandum, January 20, 1989; Black Political Task Force v Connolly, 679 F. Supp. 109, 114, 123-31 (D. Mass. 1988) (three judge court); Brown v. Thomson, 462 U. S. 835 (1983); Brookline v. Secretary of the Commonwealth, 417 Mass 406 (1994).
- Same Congressional District: Massachusetts General Laws chapter 54 section 4
- Boundary Lines: Town of Danvers Board of Selectmen v. LEDRC, No. 85-2518 (Mass. Super., Essex January 6, 1986); City of Everett (LEDRC, March 19, 1986); Town of Freetown (LEDRC, February 25, 1986); City of Worcester (LEDRC, December 20, 1985); Town of Randolph (LEDRC, July 23, 2001).

Minority Vote Dilution

Redrawn precinct and ward boundaries must not result in the dilution of minority group members' votes. This is a local consideration when municipal representative districts, which are made up of wards and precincts, are used to elect officials—such as ward aldermen or councillors in a city or representative town meeting members by precinct in a town.

Section 2 of the federal Voting Rights Act of 1965, as amended by Congress in 1982, prohibits any voting practice which “results in a denial or abridgement of the right... to vote on account of race or color” or membership in a language

minority group. The Act defines “language minority” as persons “who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.” It is a violation of this statute if the political process is not equally open to members of such a racial or language minority group, in that they have less opportunity than others to participate in the political process and elect representatives of their choice. The federal courts have often held that this statute applies to the drawing of district boundaries for electing officials. The “equal rights” provision of article one of the state constitution’s Declaration of Rights contains similar requirements.

It is important to note that district (ward or precinct) boundaries that result in diluting minority group members’ votes may violate these provisions even if the officials who drew those boundaries did not intend that result. In other words, without taking careful precautions officials may inadvertently violate these provisions (thus causing district boundaries to be invalid) or at least provoke unnecessary litigation.

Two examples of possible violations are known as “packing” and “fragmentation.”

- “Packing” means concentrating a high proportion of minority group members in one or a few districts so that their votes cannot elect as many minority group representatives as another plan may potentially allow.
- “Fragmentation” refers to spreading minority group members among many districts or submerging them in a district dominated by another group also resulting in the election of a smaller number of minority group representatives.

Under different circumstances either of these practices may violate the previously mentioned provisions.

In order to avoid even the unintentional violations, officials should obtain precise information about how many minority group members reside in which areas of their city or town. The best source is the “Census of Population and Housing” provided by the United States Census Bureau. The data series “Block Statistics” contains basic race and ethnic information allowing aggregation of minority data from the block level up to the ward and precinct areas being redistricted for the community. This and other statistical data will be posted on the U.S. Census Bureau’s website (www.census.gov) no later than April 1, 2011.

Legal Citations:

- Race and Language Minorities: 42 U.S.C. § 1973; Thornburg v. Gingles, 478 U. S. 30 (1986); Latino Political Action Committee v. City of Boston, 609 F. Supp. 739 (D. Mass. 1985); Black Political Task Force v. Galvin, 300 F. Supp. 291 (D. Mass 2004); Meza v. Galvin, 322 F. Supp. 2d 52 (D. Mass. 2004)

- Political Minorities: Voinovich v. Quilter; Davis v. Bandemer, 478 U. S. 109 (1986); Black Political Task Force v. Connolly, F. Supp. Civ., Nos. 91-12750-H, 91-12751-H (D. Mass. 1992); Debarrio Uno v. City of Holyoke, Civ No 92-30052-MAP (D. Mass. 1995).

Procedure and Calendar of Events

Local re-precincting plans are adopted by a vote of the city council or board of aldermen in a city and by a vote of the board of selectmen in a town. When re-precincting is optional in towns, the town meeting may vote to require the board of selectmen to re-precinct.

As noted earlier, for towns with less than 6,200 inhabitants and choosing not to divide their town into precincts, they must still make a formal submission to the LEDRC.

Cities and towns must adopt a re-precincting plan after being notified of the official data obtained from the decennial federal census. Under the General Laws, the timeline is on the next page:

TOWN actions required:	Deadline Date (no later than)
<p>The Board of Selectmen in Towns with under 6,200 residents may on its own initiative, or if so directed by town meeting, shall divide the town into precincts;</p> <p>AND</p> <p>Every town with more than 6,200 residents shall divide the town into precincts.</p>	June 15, 2011*
<p>The town clerk must give written notice of the division, submit maps, etc to the SOC, and the SOC must thereafter forward to the LEDRC.</p>	June 22, 2011
<p>The LEDRC will review the submission and vote to accept or reject the submission. If the plan is accepted, the town will be so notified. If the LEDRC determines there are problems with the submitted plan, the LEDRC must give specific written notice to the Board of Selectmen of any problems.</p>	July 27, 2011
<p>The Board of Selectmen must make the changes recommended by the LEDRC.</p>	August 10, 2011
<p>For a town comprised of one precinct with more than 6,200 inhabitants not divided by August 10, 2011, LEDRC shall divide the town or appoint a master to make the division (division to be made within 15 days and subject to LEDRC approval).</p>	August 25, 2011
<p>FINAL POSSIBLE DATE</p>	September 9, 2011
OR	
<p>For a town comprised of more than one precinct that fails to act August 10, 2011, the LEDRC shall divide the town or appoint a master to make the division (division to be made within 15 days and subject to LEDRC approval).</p>	August 10, 2011
<p>FINAL POSSIBLE DATE</p>	August 25, 2011

CITY actions required:	Deadline Date (no later than)
City council must vote on a new division of precincts.	June 15, 2011*
City must give written notice of the division, and submit maps, etc., to the SOC and the SOC must thereafter forward to the LEDRC.	June 22, 2011
The LEDRC will review the submission and vote to accept or reject the submission. If the plan is accepted, the city will be so notified. If the LEDRC determines there are problems with the submitted plan, the LEDRC must give specific written notice to the mayor or city manager of any problems.	July 27, 2011
Within 7 days after receipt of notice from the LEDRC, the mayor or city manager must present his recommendations to the city council.	Date will vary depending on date of receipt of notice.
The city council should make the changes presented by the mayor, or if the city council does not, the mayor may give an executive order making the changes.	August 10, 2011
If the city council fails to act by the 49th day following the final day to give notice to the SOC, the LEDRC shall make the division or appoint a master to make the division (division to be made within 15 days and subject to LEDRC approval).	August 10, 2011
FINAL POSSIBLE DATE	August 25, 2011

* If the state secretary determines that census figures are available at such time as to allow this process to begin earlier, the state secretary will designate the date on which such process shall begin. All other dates would therefore change accordingly.

Submission of Approved Districts

The city or town clerk must send notice to the Office of the Secretary of the Commonwealth forthwith after the city council or the board of selectmen vote to accept a plan. Six (6) items must be submitted:

1. Number and designation (numbers or letters) of wards and precincts and their population; and
2. Official census map showing new wards and precincts designated by number and letter; and
3. A physical boundary description of the new wards and precincts which includes the number of residents in each new ward and precinct; and
4. A list of the census tract and block numbers and each block's population for each precinct; and
5. A map with the precincts drawn on it; and
6. Vote of adoption.

All of the above submissions must be certified.

When submitted, these materials should be accompanied by a letter from the city or town clerk or election commission that the materials have been certified by a vote of the board of selectmen or board of aldermen or the city council.

The Office of Secretary of the Commonwealth transmits these materials to the Local Election District Review Commission (LEDRC).

The Local Election District Review Commission

The Local Election District Review Commission (LEDRC) is an independent commission charged with the responsibilities of overseeing, supervising and approving the divisions of cities and towns into precincts. While LEDRC is within the department of the Secretary of the Commonwealth, it is not within his supervision or control.

The LEDRC consists of three members: the attorney general and the state secretary, or their designees, and a third member appointed by the governor. Each member serves at the pleasure of his or her respective designating officer.

Each city and town must file its re-precincting submission with the LEDRC through the Secretary of the Commonwealth. The LEDRC reviews each plan

under the requirements of chapter 54 of the Massachusetts General Laws and other relevant constitutional requirements. The LEDRC has the authority to reject submitted plans and to require local authorities to reconfigure their wards and precincts. If the plan is disapproved, the LEDRC must clearly spell out the deficiencies in the plan in writing and promptly notify the local officials.

If a locality fails to submit a ward and precinct plan or fails to comply with a directive of the LEDRC following its review, then the LEDRC (or a master appointed by the LEDRC) is mandated to make local ward and precinct divisions itself. The cost of any such undertaking by the LEDRC is borne by the offending locality.

Correcting Deficiencies

In cities, the mayor or city manager receives the notice of deficiencies from the LEDRC. The mayor or the city manager must present his recommendations to the city council to revise the plan to bring it into compliance in a timely fashion after receiving notice from the LEDRC. After receiving the notice of defects from the LEDRC and thereafter the recommendations from the mayor, the city council must adopt a revised plan. If the city council fails to timely adopt a plan, the mayor or city manager may give an executive order making the changes.

If the city council fails to act and the mayor or city manager fails to issue an executive order, the LEDRC can either make the division itself or appoint a master to make the division.

In towns, the board of selectmen receives the notice of deficiencies from the LEDRC. The board of selectmen must make the changes recommended by the LEDRC. If the board of selectmen does not make the changes in a timely manner, the LEDRC can either make the division itself or appoint a master to make the division.

If the LEDRC is required to appoint a master, all costs associated with the appointment will be the obligation of the municipality.

Legal Citations:

- LEDRC: Massachusetts General Laws chapter 9, section 9A
- Massachusetts General Laws chapter 54, sections 1, 2 and 6

Sub-precincts in Representative Town Meeting Towns

In a town with a representative town meeting, the board of selectmen may further divide these precincts for the sole purpose of facilitating voting. Each sub-precinct must be designated by a letter added to a number or a number added to a letter. All town meeting members who represented the precinct which was divided must continue to represent the entire territory of the precinct. Notice of the sub-precinct must be sent to the Office of the Secretary of the Commonwealth, but it need not be approved by the Local Election District Review Commission. Within twenty (20) days after the division the board of selectmen must notify each registered voter in a newly divided precinct, in writing, of the location of the polling place to be used by that of the voter.

Legal Citations:

- Massachusetts General Laws chapter 54, section 7A
- Massachusetts General Laws chapter 54, section 24
- Town of Framingham, (LEDRC, June 8, 1978)

Notice to the Public and Local Officials

Once a re-division has been approved by the LEDRC, the city council in a city or the board of selectmen in a town must publish a map or description of the new precincts. The map must clearly define the boundaries of the precincts. Copies of the map or description of the precincts are sent to the registrars of voters, the board of assessors and to the election officers in each precinct. Copies are also posted in public places in every precinct as determined by the city council or the board of selectmen. Every registered voter whose polling place is changed by the re-precincting must be notified by mail of the new polling place.

Legal Citations:

- Massachusetts General Laws chapter 54, sections 5, 8 and 24

Effective Date

Changes in wards and precincts are effective on December 31 of the year of their adoption. All regular municipal preliminaries, primaries and elections held in any community after it has been redivided shall be held in such community as redivided.

Legal Citations:

- Massachusetts General Laws chapter 54, section 1 (cities), section 6 (towns)

Part Two – Legislative Redistricting

The Massachusetts Legislature is charged with the task of re-drawing congressional districts and state senatorial, representative and councilor districts.

Congressional Districts

Congress apportions the 435 House seats among the States on its receipt of federal census data every 10 years. At present and based on the 2000 federal census, Massachusetts has ten members in the United States House of Representatives. Each Representative is chosen from a district which is formed on the basis of the number of legal residents in the district. The number of legal residents is derived from the federal census which is taken at the beginning of each decade. However, based on the total population of the United States as determined by the 2010 federal census, Massachusetts will lose a Representative and instead have only nine Representatives.

The Bureau of the Census, a federal agency, is responsible for counting the number of persons in the United States. The federal census is conducted every ten years. The President then transmits to the Congress the number of United States Representatives to which each state is entitled. Within fifteen days after receiving the President's statement the Clerk of the House transmits a certificate to the Governor of each state stating the number of United States Representatives to which that state is entitled. It is then the duty of the state to redraw congressional districts. Unlike state legislative districts, courts have required congressional districts to contain as nearly as practicable, an equal number of residents, corresponding to the number of United States Representatives certified to the state by Congress. In Massachusetts, this task is carried out by the state legislature. The new districts take effect for the next congressional election after the federal census (e.g. 2012).

Legal Citations:

- U.S. Const., Art. I, § 2; and Amend. XIV, § 2
- White v. Weiser, 412 U. S. 783 (1973)
- Reynolds v. Sims, 377 U. S. 533 (1964)
- Massachusetts General Laws chapter 57, section 1

State Legislative Districts

The Massachusetts Legislature is responsible for redrawing state representative, state senatorial and governor's councillor districts. In addition to various other important state and federal constitutional and statutory requirements, redistricting

is based on the number of legal residents in each district as determined by the federal census taken in 1990 and every tenth year after.

Each district for a particular office must contain an equal number of residents, as nearly as possible. Unlike congressional districts, state legislative districts need only be substantially equal. For example, based upon the 1990 federal census, each state representative district had to contain approximately 37,500 residents. This figure is obtained by dividing the total number of Massachusetts residents by the number of state representative seats (160). Based upon the 2000 federal census, the state's population was 6,349,119. Therefore each of the 160 representative districts had to contain approximately 39,682 residents while each of the 40 senatorial districts had to contain approximately 158,728 residents. Further, a district's population must be within 5% of that average number unless justified by important state policies. For example, in a state representative district drawn after the 1990 federal census, the number of residents could have been 1875 less or 1875 more than 37,500 and for the districts drawn after the 2000 federal census, the number of residents could have been 1984 less or 1984 more than 39,682.

This same procedure is used to calculate the number of residents in the 40 senatorial districts. Councillor districts are composed of five contiguous state senatorial districts; there are eight councillor districts in all.

The new districts take effect for the state primary and election two years after the federal census on which they are based. The new districts resulting from the 2010 federal census will take effect for the 2012 presidential primaries, state primaries and state election.

Legal Citations:

- Massachusetts Constitution amend. article 101
- Massachusetts General Laws chapter 57 sections 2, 3 and 4
- 1987 House Document No. 5875, at 20-30
- Brown v. Thomson, 462 U. S. 835 (1983)
- Black Political Task Force v. Connolly, 679 F. Supp. 109, 114, 123-31 (D. Mass. 1988) (three judge court)
- Merriam v. Secretary of the Commonwealth, 375 Mass. 246, 376 N. E. 2d 838 (1978)
- Black Political Task Force v. Connolly, F. Supp. Civ., Nos. 91-12750-H, 91-12751-H (D. Mass. 1992)
- Lamson v. Secretary of the Commonwealth, 341 Mass. 264, 168 N. E. 2d 480 (1960)
- Brookline v. Secretary of the Commonwealth, 417 Mass. 406 (1994)

