

Laying out,  
etc., ways  
other than state  
highways.

The department may lay out or alter ways other than state highways in any city or town provided that federal aid may be secured toward the damages sustained, and provided that the mayor of the city or the board of selectmen of the town consents thereto. Land or rights in land may be acquired for this purpose by eminent domain under chapter seventy-nine by the department in behalf of the city or town in which the land lies. Any person whose property has been taken or injured by any action of said department under authority of this section may recover from the commonwealth under chapter seventy-nine such damages therefor as he may be entitled to. For this purpose the department may use any funds which may be available for the purpose of securing federal aid in the construction of highways, and may also use any money appropriated for a county, or by a city or town, toward the damages sustained, provided that the county commissioners, selectmen or mayor have agreed in writing to pay the money thus appropriated upon the order of the department.

*Approved June 3, 1943.*

**Chap. 417** AN ACT RELATIVE TO RECOUNTS AT PRIMARIES AND ELECTIONS.

*Be it enacted, etc., as follows:*

G. L. (Ter.  
Ed.), 54, § 135,  
etc., amended.

Local or  
state-wide  
recount, how  
and by whom  
conducted,  
notice of result,  
amendment  
of record, etc.

Chapter fifty-four of the General Laws is hereby amended by striking out section one hundred and thirty-five, as most recently amended by chapter three hundred and fifty of the acts of nineteen hundred and forty-one, and inserting in place thereof the following section:— *Section 135.* If, on or before five o'clock in the afternoon on the third day following an election in a ward of a city or in a town, ten or more voters of such ward or town, except a town having more than twenty-five hundred voters and voting by precincts and except Boston, and in such a town voting by precincts ten or more voters of each precinct in which a recount is petitioned for and in Boston fifty or more voters of a ward, shall sign in person, adding thereto their respective residences on the preceding January first, and cause to be filed with the city or town clerk a statement, sworn to by one of the subscribers, that they have reason to believe and do believe that the records, or copies of records, made by the election officers of certain precincts in such ward or town, or, in case of a town not voting by precincts, by the election officers of such town, are erroneous, specifying wherein they deem such records or copies thereof to be in error, or that challenged votes were cast by persons not entitled to vote therein, and that they believe a recount of the ballots cast in such precincts or town will affect the election of one or more candidates voted for at such election, specifying the candidate or candidates, or will affect the decision of a question voted upon at such election, specifying the question, the city or town clerk shall forthwith transmit such statement and the envelopes or containers con-

taining the ballots, sealed, to the registrars of voters, who shall first examine the statement and attach thereto a certificate of the number of names of subscribers which are names of registered voters in such ward or town and shall then, without unnecessary delay, but not before the last hour for filing requests for recounts as aforesaid, open the envelopes or containers, recount the ballots and determine the questions raised, and shall examine all ballots cast by or for challenged voters and reject any such ballot cast by or for a person found not to have been entitled to vote. They shall endorse on the back of every ballot so rejected the reason for such rejection and said statement shall be signed by a majority of said registrars. A member of the board of registrars shall endorse over his signature on the back of each protested ballot the block number of which it is a part and the office for which the vote is protested, together with the name of the candidate for whom the vote is counted. Upon a recount of votes for town officers in a town where the selectmen are members of the board of registrars of voters, the recount shall be made by the moderator, who shall have all the powers and perform all the duties conferred or imposed by this section upon registrars of voters.

In cases of recounts at elections where voting machines have been used the city or town clerk shall transmit to the registrars the records of the election officers, the envelopes or containers containing the total sheets showing the votes recorded by the voting machines, cast by challenged voters and cast by absent voting ballots, respectively, and containing the ballots cast by challenged voters and the absent voting ballots cast.

Recounts where voting machines have been used.

State-wide recounts in cases of offices to be filled or questions to be voted upon at the state election by all the voters of the commonwealth may be requested as provided in the foregoing provisions of this section so far as applicable, except that any petition therefor shall be on a form approved and furnished by the state secretary, shall be signed in the aggregate by at least one thousand voters, not less than two hundred and fifty to be from each of four different counties, and shall be submitted on or before five o'clock in the afternoon of the tenth day following such election to the registrars of voters of the city or town in which the signers appear to be voters, who shall forthwith certify thereon the number of signatures which are names of registered voters in said city or town, and except that such petitions for recount shall be filed with the state secretary on or before five o'clock in the afternoon of the fifteenth day following such election. He shall hold such petitions for recount until after the official tabulation of votes by the governor and council and if it then appears that the difference in the number of votes cast for the two leading candidates for the office, or in the number of affirmative and negative votes on a question, for which the recount is desired, is more than one per cent of the total number of votes cast for such office or on such

State-wide recounts, petition for, etc.

question, the petitions for recount shall be void. If such difference in the votes so cast appears to be one per cent or less of the total votes cast for such office or on such question, he shall forthwith order the clerk of each city and town of the commonwealth to transmit forthwith, and said clerk shall so transmit, the envelopes or containers containing the ballots, sealed except in the case of those containing ballots which have already been recounted in respect to said office or question under authority of this section, to the registrars of the city or town who shall, without unnecessary delay, open the envelopes or containers, recount the ballots cast for said office or on said question and determine the questions raised. If a state-wide recount is petitioned for, all ballots cast at a state election shall be held, except as otherwise provided herein, by the city and town clerks until the expiration of sixty days after said election.

Candidates and persons representing petitioners, to be notified, etc.

The registrars shall, before proceeding to recount the ballots, give not less than three days' written notice to each candidate who appears to have been elected to the office in question and to each candidate for such office specified in any statement filed under authority of this section, or to such person as shall be designated by the petitioners for a recount of ballots cast upon questions submitted to the voters, of the time and place of making the recount, and each such candidate or person representing petitioners as aforesaid shall be allowed to be present and to witness such recount at each table where a recount of the ballots affecting such candidate is being held, accompanied by counsel, if he so desires. Each such candidate or person may also be represented by agents, appointed by him or his counsel in writing, sufficient in number to provide one such agent for each officer counting or checking such ballots; provided, that no such candidate or person may have more than one such agent, other than his counsel, witnessing the work of any one officer at any one time. Each such candidate, person, counsel and agent shall have the right to watch and inspect the ballots, tally sheets and all other papers used in the recount, and to watch every individual act performed in connection therewith. In the case of a recount of ballots cast for offices which are filled by all the voters of the commonwealth, such notice may be given to the duly organized state political committees. In the case of a recount of the ballots cast upon a question submitted to all the voters as aforesaid, one representative from any committee organized to favor or to oppose the question so submitted shall be permitted to be present and witness the recount.

Recounts to be upon questions designated in statements, etc.

All recounts shall be upon the questions designated in the statements or petitions filed, and no other count shall be made, or allowed to be made, or other information taken, or allowed to be taken, from the ballots on such recount, except that in the case of a recount of the ballots cast for

an office, the votes cast for all of the candidates for such office, including blanks cast, shall be recounted.

If, after a petition for a recount of the votes for an office in any ward, town or precinct of a town has been filed, all the candidates for such office shall file a written request with the city or town clerk that the recount petitioned for be discontinued the city or town clerk shall immediately order such recount discontinued whereupon such proceedings shall terminate.

Discontinu-  
ance of recount  
in city or town,  
how effected.

If, after a petition for state-wide recount for an office has been filed, the leading candidate, together with every other candidate whose votes therefor are not exceeded in number by the votes of the leading candidate by more than one per cent of the total number of votes cast for such office, shall file a written request with the state secretary that the recount petitioned for be discontinued, the state secretary shall immediately order such recount discontinued whereupon such proceedings shall terminate.

Discontinu-  
ance of state-  
wide recount,  
how effected.

The registrars shall, when the recount is complete, enclose all the ballots in their proper envelopes or containers, seal each envelope or container with a seal provided therefor, and certify upon each envelope or container that it has been opened and again sealed in conformity to law; and shall likewise make and sign a statement of their determination of the questions raised. They shall also enclose all protested ballots in a separate envelope, seal the envelope with a seal provided therefor and certify upon the envelope that it contains all ballots that have been protested. When ballots are summoned to court, only such ballots as have been duly recorded as protested at a recount shall be required to be produced except by express order of the court. The envelopes or containers, with such statement, shall be returned to the city or town clerk, who shall alter and amend, in accordance with such determination, such records as have been found to be erroneous; and the records so amended shall stand as the true records of the election. Copies of such amended records of votes cast at a state election shall be made and transmitted as required by law in the case of copies of original records; provided, that such copies of amended records shall in case of a state-wide recount be transmitted by the city or town clerk to the state secretary within four days of the completion of such recount. If, in case of a recount of votes for town officers, it shall appear that a person was elected other than the person declared to have been elected, the registrars of voters shall forthwith make and sign a certificate of such fact, stating therein the number of votes cast, as determined by the recount, for each candidate for the office the election to which is disputed, and shall file the same with the town clerk. The town clerk shall record the certificate and shall, within twenty-four hours after such filing, cause a copy of such certificate, attested by him, to be delivered to or left at the residence of

Record and  
notice of  
result.

the person so declared to have been elected, and to the person who by such certificate appears to be elected.

Clerical  
assistance.

Registrars of voters may employ such clerical assistance as they deem necessary to enable them to carry out this section and in the investigation of challenged votes may summon witnesses and administer oaths.

*Approved June 3, 1943.*

*Chap. 418* AN ACT AUTHORIZING THE SALE OF CERTAIN LAND HELD BY THE CITY OF CHICOPEE FOR PARK AND PLAYGROUND PURPOSES.

*Be it enacted, etc., as follows:*

The city of Chicopee, upon vote of the city council and with the approval of the mayor, may sell, by public or private sale, real estate located in said city and taken and acquired by it by eminent domain for park and playground purposes, which taking is recorded in Hampden county registry of deeds, March third, nineteen hundred and thirty-eight, Book 1634, page 371. Said property is more fully described as follows: — Tract on northerly side of Harrison avenue, as shown on plan of lots recorded in said registry of deeds in Book S, page 38. Beginning at a point in said northerly line of Harrison avenue, one hundred feet west of the westerly line of Wheatland avenue; thence west along the northerly line of Harrison avenue, three hundred and sixty-five feet more or less to the easterly line of property of Mary C. Swan; thence by said Swan property in a northerly direction to a point on the rear boundary line of present lots facing on Front street and now or formerly of one Harrison; thence along the southerly boundary of aforesaid lots three hundred and ten feet more or less to a point one hundred feet westerly from the westerly line of Wheatland avenue; thence southerly by an angle of ninety degrees one hundred and twenty-five feet to point of beginning; also certain other lots as shown on certain plans recorded in said registry of deeds as follows: — Lots number 161, 162, 163, 228 to 233, inclusive, 236, all as shown on plan recorded in Hampden county registry of deeds in book of plans A, page 42; Lots 350 to 356, inclusive, 362 to 365, inclusive, 335 to 342, inclusive, 394, 395, 400 to 404, inclusive, 413, 440 to 443, inclusive, 456, all as shown on plan of lots recorded in said registry of deeds in book of plans A, page 46; and Lots 527 to 535, inclusive, 540 to 544, inclusive, 549 to 561, inclusive, 571 to 580, inclusive, 605, 606, 607, 608, 616, 625 to 630, inclusive, all as shown on a plan recorded in said registry of deeds in book of plans S, page 38; subject to the rights of the owners of parcels shown on plan of lots recorded in said registry of deeds in book of plans A, page 42; book of plans A, page 46; book of plans 4, page 83; and book of plans S, page 38; to use certain streets and avenues as granted them by Edward