

Sec. 23. **Repealer.** *Laws 1959, Chapter 675, Article III, Section 11, Subdivision 3, Section 12, Subdivision 2, and Article VII, Section 23, are hereby repealed.*

Approved April 20, 1961.

CHAPTER 607—H. F. No. 996

[Coded]

An act relating to elections; amending laws 1959, Chapter 675, Article X, Sections 2, 3, 7, 9, and 10; repealing laws 1959, Chapter 675, Article X, Sections 4, 5, 6, and 8, and Article XI, Section 35.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Laws 1959, Chapter 675, Article X, Section 2, is amended to read:

Sec. 2. [209.02] **Election contests.** ~~Any 25 voters of the state, or of any political subdivision thereof, may contest the right of any person to nomination, position, or office for which these voters had the right to vote, on the ground of deliberate, serious, and material violation of the provisions of the Minnesota Election law or of any other provisions of law relating to nominations and elections. Any defeated candidate for a nomination, position, or office may make the contest. The proceeding shall be commenced by petition filed in the district court of the county in which the candidate whose election is contested resides, and the contest shall be carried on according to law.~~

~~In case of contests over nomination, the court shall pronounce whether the incumbent or contestant was duly nominated, and the person so declared nominated shall have his name printed on the official ballots.~~

Subdivision 1. Contest, who may institute, grounds. Any voter, including a candidate, may contest the nomination or election of any person for whom he had the right to vote, who is declared nominated or elected to a state, county, legislative, or municipal, or district court office, or the declared result of a constitutional amendment or other question voted upon at an election by proceeding as provided in this article. The contest may be brought over an irregularity in the conduct of an election or canvass of votes or on the

Changes or additions indicated by italics, deletions by ~~strikeout~~.

grounds of deliberate, serious, and material violations of the provisions of the Minnesota Election Law.

Subd. 2. Contest, notice filed, where brought. *The contestant shall file a written notice of contest specifying the points upon which the contest will be made with the clerk of the district court of the county in which the candidate whose election is contested resides; or in the case of a state office, in any district court of the state, and in that case the place of trial may be changed as in civil actions. If the contest relates to a constitutional amendment or other question to be voted for statewide or to a question to be voted for in more than one county, then the notice of contest shall be filed in the district court of Ramsey County, and the place of trial may be changed as in civil actions.*

Subd. 3. Notice of contest, filing, service. *The notice of contest shall be filed within ten days after the canvass is completed, except that if the contest relates to a primary election, the time for filing the notice of contest shall be limited to five days. Within the same period copies thereof shall be served upon the candidate whose election is contested and upon the official authorized to issue the certificate of election. When the contest relates to a constitutional amendment or other question to be voted for statewide or to a question to be voted for in more than one county, the secretary of state shall be designated the contestee, and a copy of the notice of contest shall be served upon him within ten days, or five days in the case of a primary, after the canvass is completed. When the contest relates to a question that affects a single county or a single municipality, the county auditor or the clerk of the municipality, as the case may be, shall be designated the contestee, and a copy of the notice of contest shall be served upon him within ten days, or five days in the case of a primary, after the canvass is completed. In all cases where the contest relates to an irregularity in the conduct of the election or canvass of votes a copy of the notice of contest shall also be served within ten days, or five days in the case of a primary, after the canvass is completed upon the clerk of the municipality in which the irregularity is said to have existed.*

Subd. 4. Notice of contest, how served. *Service of the notice of contest shall be made in the same manner as provided for the service of summons in civil actions. In all cases two copies of the notice shall be furnished the official authorized to issue the certificate of election at the*

Changes or additions indicated by italics, deletions by ~~strikeout~~.

time of service upon him, and the official shall send one copy thereof by registered mail to the contestee at his last known address. If the sheriff is unable to make personal or substituted service upon the contestee, then the affidavit of the sheriff to that effect and the affidavit of the official authorized to issue the certificate of election that he sent a copy to the contestee by registered mail to his last known address shall be sufficient to confer jurisdiction upon the proper court to hear and determine the contest.

Subd. 5. Violation of law as grounds for contest, how commenced. *If the contest is brought on the grounds of deliberate, serious, and material violation of the provisions of the Minnesota Election Law, the contest shall be commenced in the manner provided in this section; except that if the ground of action is discovered from statement of receipts and disbursements required to be filed by candidates and committees, the action may be commenced and the notice filed and served within ten days after the filing of such statements, except in the case of primaries, the time shall be limited to five days.*

Subd. 6. Contest of nomination. *If a nomination is contested, the court shall decide which candidate was nominated, and that candidate shall be entitled to have his name printed on the official ballots.*

Sec. 2. *Laws 1959, Chapter 675, Article X, is amended by adding a section to read:*

[209.03] Contestee, answer. *When the contestee desires to offer testimony on points not specified in contestant's notice, he shall file and serve on the contestant notice thereof specifying such additional points. All notices subsequent to the original notice of contest shall be served in such manner and within such times as the court may by order direct.*

Sec. 3. *Laws 1959, Chapter 675, Article X, is amended by adding a section to read:*

[209.04] Pleadings, trial procedure. *The notices shall be treated as the pleadings in the case, and may be amended in the discretion of the court. The contest proceedings shall be brought on for trial by either the contestant or contestee as soon as practicable within 20 days after the filing of the notice of contest at a general or special term of the court, or if there is none, the judge shall set a special term to be held within that time. The matter shall be tried by the*

Changes or additions indicated by italics, deletions by ~~strikeout~~.

court in the manner provided for the trial of civil actions so far as practicable.

Sec. 4. Laws 1959, Chapter 675, Article X, Section 3, is amended to read:

Sec. 3. [209.05] **Contest, guard of ballots.** In counties having a population of 200,000 or more, and in all cities of the first class any candidate for office at any election, upon demand made upon the custodian of the ballots, shall be entitled, either by himself, or his duly authorized agent, or agents, not exceeding two at any one time, to maintain continuous, visual watch over these boxes at all hours of the day and night until the expiration of the time for instituting contests, and, in case of the instituting of contest or contests, either party to such contest, upon demand upon the custodian of the ballots and upon notice to the opposing party to such contest, shall be entitled by himself, or his duly authorized agent or agents, not exceeding two at any one time, to maintain an actual, visual watch over such ballot boxes at all hours of the day and night. In event of such demand, either by candidate or party to a contest, the custodian of such ballots shall be authorized to appoint some suitable person as watchman over such ballot boxes during such hours as he shall deem necessary, in order to prevent leaving the same in the sole custody of such candidate or contestant, or his agent or agents.

In any election, upon demand made of the custodian of the ballots and upon notice to the opposing party, a continuous visual guard over the ballots at all hours of the day and night may be kept by a candidate until the expiration of the time for instituting contests, and in case of a contest it may be kept by any party thereto. The guard may be maintained either by the candidate or other party himself or by each of their duly authorized agents not exceeding two for each party at any one time. In event of such demand, the custodian of the ballots shall appoint some suitable person as guard over the ballots during such hours as he shall deem necessary in order to prevent leaving the same in the sole custody of the candidate or other party or the agents of one of them.

Sec. 5. Laws 1959, Chapter 675, Article X, Section 9, is amended to read:

Sec. 9. [209.06] **Contest, recount of ballots.** ~~After a contest has been instituted, either party may have the~~

Changes or additions indicated by *italics*, deletions by ~~strikeout~~.

ballots inspected before preparing for trial. The party applying for such inspection shall file with the clerk a verified petition, stating that he cannot properly prepare his case for trial without an inspection of such ballots, and thereupon the judge of the court shall appoint three persons, for a county or municipal office, or other question submitted to popular vote in any county or municipality, one selected by each of the parties and a third by those two by whom such inspection shall be made. If the contest relates to a state office, or to the declared result upon a constitutional amendment or other question submitted to popular vote throughout the state a judge of the court shall issue an order directing that all ballots pertaining to such contest be forthwith transmitted to the secretary of state by the several county auditors of the state. Such ballots, together with the sealed envelopes in which they were returned by the judges, shall be properly boxed and sealed before shipment. They shall be shipped by express and it shall be the duty of the transportation company having in charge the transportation of such ballots to properly safeguard the same from the time they are received until they are delivered to the secretary of state. The order may be served upon the several county auditors by registered mail. Such order may be modified as to the most populous counties and provisions made for inspecting the ballots of such counties at the county seats thereof. Before such order is issued the applicant therefor shall deposit with the secretary of state a sum of money sufficient to pay all expenses connected with the transportation of such ballots. No compensation shall be allowed the county auditor for his services in preparing such ballots for shipment. In state contests the judge of the court shall appoint as many sets of three persons as may be necessary to expeditiously count and inspect the ballots in the office of the secretary of state, or elsewhere. Such inspectors shall be selected in the same manner as for county or municipal contests. Contests for district judge, or other offices not specifically provided for herein, shall be conducted under this section; the procedure therefor to be fixed by the court. Inspection of ballots shall be conducted in the presence of the legal custodian of the ballots and the party applying therefor shall file with the clerk a bond in the sum of \$250, if the contest be within a single county; otherwise such bonds shall be in a sum to be fixed by the court in its discretion, with two sureties, and conditioned that he will pay the costs and expenses of such in case he fails to maintain his contest. If the contestant prevails in his contest the cost shall be taxed against the

Changes or additions indicated by *italics*, deletions by ~~strikeout~~.

contestee. In case either party neglects or refuses to name an inspector, he shall be named by the judge. The compensation of inspectors shall be the same as for referees, unless otherwise stipulated. Any court of proper jurisdiction may order the return of any ballots to the county from which they were sent, after inspection, if necessary to be used in any other contest proceeding. The secretary of state shall preserve any ballots in his possession until the next general election, unless otherwise directed by order of court.

Subdivision 1. Recount, appointment of inspectors.

After a contest has been instituted, either party may have the ballots inspected before preparing for trial. The party applying for such inspection shall file with the clerk of district court in which the contest is brought a verified petition, stating that he cannot properly prepare his case for trial without an inspection of such ballots and designating the precincts in which he desires to have ballots inspected, and thereupon a judge of the court wherein the trial of such case is pending shall appoint three persons for a legislative, county, municipal, district court or other office not specifically provided for herein, or for any question voted upon at a county or municipal election, one selected by each of the parties and a third by those two by whom such inspection shall be made. In case either party neglects or refuses to name an inspector, he shall be named by such judge. The compensation of inspectors shall be the same as for referees, unless otherwise stipulated.

Subd. 2. Recount, bond, taxing of costs. *The party applying for the inspection shall file with the clerk of district court a bond in the sum of \$250 if the contest be within a single county; otherwise the bond shall be in a sum to be fixed by the court in its discretion, with such sureties as shall be approved by the court, and conditioned that he will pay the costs and expenses of such in case he fails to maintain his contest. If the contestee succeeds, costs of the contest shall be taxed against the contestant. If the contestant succeeds, costs of the contest shall be taxed against the contestee, except that if the contestee loses because of an error in the counting of ballots or canvass of the returns or by reason of any other irregularity in the election procedure, costs shall be taxed, in the discretion of the judge, upon those municipalities responsible for errors which resulted in the reversal of the prior results of the election.*

Subd. 3. Recount of ballots, statewide election. *If*

Changes or additions indicated by italics, deletions by ~~strikeout~~.

the contest relates to a state office or to the declared result of a constitutional amendment or other question voted upon at a statewide election, the party applying for the inspection shall designate the precincts in the counties in which he desires the inspection to be made; and the court shall order the appointment of as many sets of three inspectors as may be necessary to expeditiously count and inspect the ballots, and the ballots shall be inspected in the office of the county auditor who is the legal custodian of the ballots in question. The inspectors in a state contest shall be selected in the manner provided in subdivision 1 of this section.

Subd. 4. Recount of ballots, report of inspectors. *The inspection shall be made in the presence of the legal custodian of the ballots, and the inspectors shall recanvass the votes cast for the parties to the contest or the question in issue in accordance with the rules for counting ballots provided in the Minnesota Election Law. They shall make a written report of such recanvass and report the number of votes cast for each of the parties to the contest for each precinct that is recounted and report any disputed ballots upon which the inspectors cannot agree.*

Sec. 6. Laws 1959, Chapter 675, Article X, is amended by adding a section to read:

[209.07] Contest, determination. *Upon a determination of the contest by the court, after the time for appeal has expired or in case of an appeal, after the final judicial determination of the contest, the official authorized to issue the certificate of election shall issue the certificate to the person entitled thereto; except that if a contestant succeeds in a contest where there is no question as to which of the candidates received the highest number of votes cast at the election, the contestant shall not, by reason of the disqualification of the contestee, be entitled to the certificate of election.*

Sec. 7. Laws 1959, Chapter 675, Article X, Section 10, is amended to read:

Sec. 10. [209.09] Appeal to Supreme court. *When an appeal is taken to the supreme court from the determination of the district court in any contest instituted under ~~section 8 of~~ this article, the party appealing shall file in the district court a bond in such sum, not less than \$500, and with such sureties, as shall be approved by the judge, conditioned for the payment of all costs incurred by the re-*

Changes or additions indicated by *italics*, deletions by ~~strikeout~~.

spondent in case appellant fails on his appeal. *The notice of appeal shall be served and filed no later than ten days in case of a general election and no later than 5 days in case of a primary election after the entry of the determination of the district court in the contest.* The return of such appeal shall be made, certified, and filed in the supreme court as soon as practicable and in any event within 15 days after service of notice of appeal. The appeal may be brought on for hearing in the court at any time when it is in session, upon ~~ten days'~~ such notice from either party, as the court may determine which notice may be served during term time or in vacation; and it may be heard and determined summarily by the court.

Sec. 8. Laws 1959, Chapter 675, Article X, Section 7, is amended to read:

Sec. 7. [209.10] **Contest of legislative office.** *Subdivision 1. Legislative contest, duties of court, transmittal to proper house. When the contest relates to the office of state senator or representative, the only question to be tried by the court, notwithstanding any other provision of law, shall be the question as to which of the parties to the contest received the highest number of votes legally cast at the election, and as to who is entitled to receive the certificate of election. The judge trying the proceedings shall make findings of fact and conclusions of law upon the question so tried. Further evidence upon the points specified in the notices, including but not limited to the question as to the right of any person to nomination or office on the ground of deliberate, serious, and material violation of the provisions of the Minnesota Election Law, shall be taken and preserved by the judge trying the contest, or under his direction by some person appointed by him for that purpose, but the judge shall make no finding or conclusion thereon. After the time for appeal has expired, or in case of an appeal, after the final judicial determination of the contest, upon application of either of the parties to the contest, the clerk of the district court shall transmit all the files and records of the proceedings with all the evidence taken to the presiding officer of the house by which the contest is to be tried.*

Subd. 2. Legislative contest, hearing, procedure. In hearing the contest, the house or senate shall proceed as follows:

~~(1)~~ (a) At the time appointed, the parties shall be

Changes or additions indicated by italics, deletions by ~~strikeout~~.

called, and, if they appear, their appearance shall be recorded;

~~(2)~~ (b) If the presiding officer be a party, a speaker pro tem shall be elected to preside;

~~(3)~~ (c) The contestant's evidence shall be submitted first, followed by that of the ~~contestant~~ *contestee*, and the ~~contestee~~ *contestant* shall open the argument, and close the same after the contestee has been heard;

~~(4)~~ (d) The vote upon the contest shall *be viva voce*, any member may offer reasons for the vote he intends to give, and a majority of the votes given shall decide; but no party to the contest shall vote upon any question relative thereto; and

~~(5)~~ (e) The clerk or secretary shall enter the proceedings in the journal.

Sec. 9. *Laws 1959, Chapter 675, Article X, Section 4, Section 5, Section 6, and Section 8, and Article XII, Section 35, are hereby repealed.*

Approved April 20, 1961.

CHAPTER 608—H. F. No. 1000

[Coded in Part]

An act relating to home rule charter of cities and villages; amending Minnesota Statutes 1957, Sections 410.05, 410.06, 410.07 as amended, 410.10, 410.12, subdivisions 1 and 4 as amended, 410.16, and 410.24; repealing Minnesota Statutes 1957, Section 410.26.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1957, Section 410.05 is amended to read:

410.05 **Charter commission.** When the judges of the judicial district in which such city or village is situated, shall deem it for the best interest of the municipality so to do, they may appoint a ~~board of freeholders~~ *charter commission* to frame such charter, composed of 15 members, each of whom shall ~~have been~~ *be a freeholder and* qualified voter of such city or village ~~for five years last past~~; and, upon pre-

Changes or additions indicated by italics, deletions by strikeout.