

HOUSE No. 4120

The committee on Ways and Means to whom was referred the Bill reforming election laws (House, No. 4022), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4120). May 24, 2012. Brian S. Dempsey, for the committee.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act reforming election laws.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to improve the administration of elections in the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 51 of the General Laws is hereby amended by inserting after section 17 the
2 following section:-

3 Section 17A. Every member of the board of registrars and election commission and any other
4 person responsible for the administration of the election laws in a city or town shall attend annual
5 training conducted by the office of the state secretary on the applicable state and federal election
6 laws and regulations.

7 SECTION 2. Chapter 51 of the General Laws is hereby amended by inserting after section 36
8 the following section:-

9 Section 36A. The state secretary shall publish on the internet, in a manner accessible to the
10 public, an affidavit of voter registration in a printable electronic document format. This
11 document shall be a valid affidavit of voter registration under this chapter. The state secretary
12 shall post the electronic document in every language provided for in section 36.

13 The electronic affidavit of voter registration shall give registrants the option to enter data directly
14 into the form prior to printing out the affidavit or to print a blank form and manually enter
15 information. The registrant shall personally sign and mail, transmit or otherwise deliver the
16 completed affidavit of voter registration form to the appropriate city elections department or
17 town clerk's office; provided, however, that the registrant may mail, transmit or otherwise
18 deliver the form to the state secretary who shall cause it to be delivered to the appropriate city
19 elections department or town clerk's office.

20 SECTION 3. Section 42 of said chapter 51 of the General Laws, as appearing in the 2010
21 Official Edition, is hereby amended by inserting after the word "chapter", in line 2, the following
22 words:- by any person at least 16 years of age or older.

23 SECTION 4. Section 47A of said chapter 51, as so appearing, is hereby amended by adding the
24 following sentence:- If such person is at least 16 years of age and has not attained the
25 qualification of age, the affidavit of registration shall be re-examined by the registrar until such
26 person will, on or before the day of the next preliminary, primary, special or general election or
27 town meeting, attain full age, at which time the registrar shall enter such person's name in the
28 current annual register of voters.

29 SECTION 5. Chapter 54 of the General Laws is hereby amended by inserting after section 109
30 the following section:-

31 Section 109A. (a) For the purposes of this section, “audited precinct,” shall mean any precinct
32 selected in accordance with subsection (c) for the purpose of conducting audits as provided in
33 this section.

34 (b) An audit shall be conducted pursuant to this section following any biennial state election,
35 state primary preceding a biennial state election, presidential primary, or special general election
36 for senator in congress or representative in congress.

37 (1) Following a biennial state election in which the office of governor is contested, or a state
38 primary preceding such biennial state election, each precinct selected pursuant to subsection (c)
39 shall conduct a hand-counted audit of votes cast on the day of election of: (i) races for the
40 following offices in which more than one candidate’s name appears on the ballot: governor,
41 representative in congress, senator in congress, if such office appears on the ballot, and two of
42 the following offices chosen by random drawing: representative in the general court, senator in
43 the general court, state secretary, attorney general, auditor, treasurer, and lieutenant governor, if
44 such office appears on the ballot; and (ii) one statewide ballot question, if any appear on the
45 ballot, chosen by random drawing.

46 (2) Following a biennial state election in which the candidates of each party for president and
47 vice president appear on the ballot, or a state primary preceding such biennial state election, each
48 precinct selected pursuant to subsection (c) shall conduct a hand-counted audit of votes cast on
49 the day of election of: (i) races for the following offices in which more than one candidate’s
50 name appears on the ballot: president and vice president, representative in congress, senator in
51 congress, if such office appears on the ballot, representative in the general court, and senator in

52 the general court; and (ii) one statewide ballot question, if any appear on the ballot, chosen by
53 random drawing.

54 (3) Following a presidential primary or special general election for representative in congress
55 or senator in congress, each precinct selected pursuant to subsection (c) shall conduct a hand-
56 counted audit of each race in which more than one candidate's name appears on the ballot in that
57 precinct.

58 (4) If a valid petition for a recount is made pursuant to section 135 for a race subject to audit
59 by this section, then the votes for that race shall not be audited in any precinct named in the
60 petition; provided, however, that if an audit is has commenced in a precinct when the valid
61 petition for a recount is made, the audit in said precinct shall be suspended. The audit of the race
62 in question shall proceed in any precinct selected pursuant to subsection (c) not included in the
63 petition for a recount.

64 (5) Any random drawing required by this subsection shall be conducted by the state
65 secretary. Such drawing will occur at the same time and place as the drawing required by
66 subsection (c).

67 (c) The precincts to be audited shall be chosen in a random, publicly verifiable, non-
68 computerized drawing supervised by the state secretary within 48 hours after polls are closed.
69 The drawing shall be fully observable to the public and representatives of each political party
70 and shall use a procedure that can be easily understood to be random by members of the public.
71 Notice of the time and place of the drawing shall be given at least 10 days in advance of the
72 election on the electronic website of the state secretary. The number of precincts selected to be
73 audited in this drawing shall be equal to 3 per cent of all precincts in the commonwealth,

74 rounded up to the next highest whole number; provided, however, that if the audit is prompted by
75 a special general election for representative in congress, the number of precincts selected to be
76 audited in this drawing shall be equal to 3 per cent of all precincts subject to that special election,
77 rounded up to the next highest whole number.

78 (d) (1) The board of registrars or election commission in each municipality where 1 or more
79 precincts selected to be audited are located shall conduct the audit. The board of registrars or
80 election commission may employ tally clerks for the purpose of counting the ballots. Audits shall
81 commence not later than 2 business days following the random drawing of precincts supervised
82 by the state secretary and shall continue on each successive business day or other day at the
83 discretion of the board or commission in each municipality. The time and place of the audits in
84 each municipality where one or more precincts selected to be audited are located shall be
85 publicly announced in advance. The audits shall be performed in full public view and conducted
86 pursuant to the procedures for hand counts of ballots in sections 135 and 135A.

87 (2) The state secretary shall issue uniform written training materials for audit personnel to each
88 municipality in the commonwealth at least 10 days prior to any election that will be audited
89 pursuant to this section.

90 (3) Notwithstanding any general or special law or rule or regulation to the contrary, for the
91 purpose of conducting the audit the board or commission shall unseal the envelopes or containers
92 containing the ballots. The board or commission shall, when the audit is complete, enclose all the
93 ballots in their proper envelopes or containers, seal each envelope or container with a seal
94 provided therefor, and certify upon each envelope or container that it has been opened and again
95 sealed in conformity to law.

96 (4) Voter intent shall be the standard for counting votes. Individuals charged with tabulating
97 votes during the audit shall disregard the omission or inaccuracy of initials, the omission,
98 inaccuracy or misspelling of given names, and the misspelling of surnames, if the intent of the
99 voter to express a preference for any particular individual can be ascertained. Such statements of
100 voters shall be counted, tabulated and entered, together with any other votes cast, on official
101 audit report forms provided by the state secretary.

102 (e) Upon completion of the audit in each municipality the board of registrars or election
103 commission shall record each race audited in each precinct on a separate audit report form
104 provided by the state secretary. The registrars shall submit the completed audit report forms to
105 the state secretary no later than the fourteenth day following the election. An audit report form
106 shall provide for the entry of:

107 (1) the number of votes for each candidate, or each yes and no vote and the blank votes and over
108 votes as recorded in the audit hand count;

109 (2) the election night tallies reported for each candidate or each yes and no vote and the blank
110 votes and over-votes for the same ballots that were counted in the audit;

111 (3) the differences between the audit hand count results and the election night tallies for each
112 candidate, yes and no question and blank votes;

113 (4) The number of votes for each contest for which voter intent is discernible but that are not
114 marked by the voter according to the instructions provided to the voters under section 48 and any
115 explanatory notes related thereto; and

116 (5) Any additional notes on perceived causes of discrepancies.

117 (f) Upon receipt of the results of the audit, the state secretary shall calculate the total number of
118 votes for each candidate and ballot question as recorded in the audit hand count and shall
119 compare this total to the sum of the originally reported votes for each candidate and ballot
120 question in the audited precincts. When such comparison reveals a discrepancy between the
121 hand-counted audit and the originally reported tally of the audited precincts the discrepancy shall
122 be analyzed to ascertain its cause. The state secretary shall oversee the analysis and shall publish
123 the findings and make the findings available online, along with the factual information on which
124 such findings were based, within 180 days.

125 (g) If there is a discrepancy between the results reached pursuant to an audit and originally
126 reported tallies, the hand count of the official paper ballots conducted pursuant to the audit shall
127 be the official vote of record and the board of registrars or election commission shall amend each
128 precinct tally sheet, official return book and check list delivered to the office of the registrars.

129 (h) If there is a discrepancy between the results reached in a precinct pursuant to an audit and the
130 originally reported tallies in that precinct in any audited race or any audited ballot question that
131 reasonably leads to doubt about the accuracy of election results, the state secretary may order
132 audits of such additional precincts, offices, or ballot questions as shall be necessary to ensure that
133 the election results are accurate.

134 (i) (1) Upon receipt of the results of the audit, the state secretary shall make information in the
135 audit reports publicly available on a precinct-by-precinct basis as soon as practicable, but no later
136 than 10 days after receipt of the audit report form, in both human and machine readable formats,
137 such as a spreadsheet or comma-separated-value file. This information shall also be posted on
138 the electronic website of the state secretary.

139 (2) The state secretary shall publish the results of the audit in the report required by section 133
140 or in some other document in which the results of the audit can easily be compared with the
141 number of votes received by each candidate for nomination and for election for a state and
142 federal office.

143 (3) The audit and publication of the results thereof shall be completed prior to the time the
144 commonwealth shall make a final determination concerning the appointment of its presidential
145 electors.

146 (j) The state secretary shall promulgate rules and regulations to implement the requirements of
147 this section.

148 SECTION 6. Costs incurred under Section 5 of this act shall be paid by the state using funds
149 available to the commonwealth pursuant to sections 101 to 106 and 251 to 258 of the federal
150 Help America Vote Act of 2002, 42 U.S.C. sections 15301 to 15306, inclusive, as it may be
151 amended, and 42 U.S.C. sections 15401 to 15408, inclusive, as it may be amended. The state
152 secretary shall amend the state plan required under section 253(b) of the Help America Vote Act
153 of 2002, 42 U.S.C. section 15403(b) to include post election audits.

154 SECTION 7. Notwithstanding any general or special law to the contrary, the state secretary shall
155 promulgate rules and regulations under section 109A of chapter 54 of the General Laws on or
156 before July 1, 2013.

157 SECTION 8. Sections 1, 3, and 4 of this act shall take effect on April 1, 2013.

158 SECTION 9. Section 2 of this act shall take effect 60 days after the effective date of this act.

159 SECTION 10. Section 5 of this act shall take effect on January 1, 2014.