

# HOUSE . . . . . No. 652

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act to provide for audits of election results ..

*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 54 of the Massachusetts General Laws are hereby amended by  
2     inserting after section 109 the following new section:--

3           Section 109A. Audits of election results.

4           Following each primary, general or special election, a random hand-counted audit shall  
5     be conducted as provided in this section of the votes in each race for president, U.S. senator, U.S.  
6     representative, governor, attorney general, state secretary; for one race chosen at random from  
7     the office of lieutenant governor, treasurer, and auditor; and also for each statewide initiative and  
8     referendum question. Races in which only one candidate's name appears on the ballot shall not  
9     be audited.

10          The state secretary shall establish an audit protocol such that:

11          for elections which appeared on the ballot state-wide, the audit shall be designed and  
12     implemented to provide at least a 99% probability of leading to a hand recount of 100% of the  
13     ballots whenever such a recount would change the electoral outcome of such contest, and

14 for each election held for United States Representative, the audit shall be designed and  
15 implemented to provide at least a 90% probability of leading to a hand recount of 100% of the  
16 ballots whenever such a recount would change the electoral outcome of such contest, and

17 a minimum of five precincts per Congressional district are selected for audits of elections  
18 for U.S. representative, and a minimum of ten precincts from all the precincts in the  
19 Commonwealth are selected for audit of races that appeared on the ballots state-wide.

20 The precincts to be audited shall be chosen in a random, publicly verifiable, non-  
21 computerized drawing supervised by the state secretary following the reporting of unofficial  
22 election results from each precinct, which shall be made publicly available by municipal clerks  
23 and by the state secretary. The time and place of the drawing shall be announced at least 48  
24 hours in advance and be open to representatives of each political party and to the public. Except  
25 as provided in b (iii) of this section, precincts that are selected in the random drawing may be  
26 used to audit any races subject to audit under this section.

27 The board of registrars in each municipality where precincts have been selected shall  
28 conduct the audit of the precincts in such municipality. The board of registrars may employ tally  
29 clerks for the purpose of counting the ballots. Audits shall commence not later than 24 hours  
30 following the random drawing of precincts supervised by the state secretary and shall continue  
31 on each successive business day or other day at the discretion of the board of registrars in each  
32 municipality. The time and place of the audits in each municipality where precincts have been  
33 selected shall be publicly announced in advance and the audits shall be performed in full public  
34 view and conducted pursuant to the procedures for hand-counts of ballots in Section 105 of  
35 Chapter 54.

36           Upon receipt of the results of the manual audit count from the audited precincts, the state  
37   secretary shall calculate the total number of votes for each candidate and ballot question as  
38   recorded in the manual audit count and shall compare this total to the sum of the originally  
39   reported votes for each candidate and ballot question in the audited precincts. The state secretary  
40   shall order audits of such additional precincts as shall be necessary to carry out the requirements  
41   of this section.

42           Whenever the difference between the hand-counted audit and the originally reported tally  
43   is more than one percent for any particular machine model, the discrepancy between the hand-  
44   counted audit and the original vote tally shall be analyzed to ascertain the cause of the  
45   discrepancy. The state secretary shall oversee the analysis and shall publish and make available  
46   online the findings, along with the factual information on which they were based, within 180  
47   days.

48           If there is a discrepancy between a manual count and originally reported tallies, where the  
49   original results were obtained using electronic equipment, the manual count of the official paper  
50   ballots shall be the official vote of record.

51           The results of audits and hand-counts, as well as the corresponding data for the originally  
52   reported tallies, shall be made publicly available on a precinct-by-precinct basis both in hardcopy  
53   and in electronic file format.

54           The audit and publication of the results thereof shall be completed prior to the time the  
55   State shall make a final determination concerning the appointment of its electors for President  
56   and Vice President of the United States as established in federal law.

57           The state secretary shall adopt regulations to implement the requirements of this section  
58   and shall hold public hearings both before and after issuing draft regulations. The state secretary  
59   shall consult one or more persons with expertise in statistics and election auditing to develop the  
60   procedures that will be used to select the precincts for audit, and to determine when, in light of  
61   any errors the audit uncovers, a sufficient number of precincts have been counted manually to  
62   fulfill the requirements of paragraphs a (i) and a(ii ) of this section. Final regulations concerning  
63   such procedures shall be published at least 60 days before the date of the election.

64           SECTION 2. Section 135 of chapter 54 of the General Laws is hereby amended by  
65   inserting in paragraph 9 after the first sentence the following new sentence:--

66           Ballots that have already been counted in a manual audit of the election in question  
67   provided under section 109A of the general laws do not have to be counted under this section.