

HOUSE No. 613

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to provide for audits of election results.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|------------------------------|------------------------|------------------|
| <i>Aaron Michlewitz</i> | <i>3rd Suffolk</i> | <i>1/15/2013</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | |
| <i>Kevin G. Honan</i> | <i>17th Suffolk</i> | |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | |
| <i>Diana DiZoglio</i> | <i>14th Essex</i> | <i>2/1/2013</i> |
| <i>Ann-Margaret Ferrante</i> | <i>5th Essex</i> | |
| <i>Paul J. Donato</i> | <i>35th Middlesex</i> | <i>1/16/2013</i> |
| <i>Peter V. Kocot</i> | <i>1st Hampshire</i> | |
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> | |
| <i>Martha M. Walz</i> | <i>8th Suffolk</i> | |
| <i>James J. Dwyer</i> | <i>30th Middlesex</i> | |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> | |
| <i>Kay Khan</i> | <i>11th Middlesex</i> | |
| <i>Cory Atkins</i> | <i>14th Middlesex</i> | |
| <i>Jonathan Hecht</i> | <i>29th Middlesex</i> | |
| <i>Denise Andrews</i> | <i>2nd Franklin</i> | |
| <i>Tom Sannicandro</i> | <i>7th Middlesex</i> | |
| <i>Kevin J. Murphy</i> | <i>18th Middlesex</i> | |

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| <i>Bruce E. Tarr</i> | <i>First Essex and Middlesex</i> | |
| <i>Carlos Henriquez</i> | <i>5th Suffolk</i> | |
| <i>Edward F. Coppinger</i> | <i>10th Suffolk</i> | |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> | |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | |
| <i>Thomas P. Conroy</i> | <i>13th Middlesex</i> | |

HOUSE No. 613

By Mr. Michlewitz of Boston, a petition (accompanied by bill, House, No. 613) of Aaron Michlewitz and others for legislation to authorize local boards of registrars to perform random audits of election results in precincts. Election Laws.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1980 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 Chapter 54 of the General Laws is hereby amended by inserting after section 109 the
2 following section:--

3 Section 109A. Audits of election results.

4 (a) For the purposes of this section the term “audited precinct” means any precinct
5 selected in accordance with subsection (c) of this section for the purpose of conducting audits as
6 provided in this section.

7 (b) Races subject to audit.

8 (1) A hand-counted audit shall be conducted in each audited precinct following:

9 (i) any state primary preceding a biennial state election;

10 (ii) any presidential primary;

11 (iii) any biennial state election;

12 (iv) any special general election for senator in congress or representative in congress.

13 (2) In each audited precinct, the following races shall be subject to the hand-counted
14 audit:

15 (i) each race appearing on the ballot in that audited precinct; and

16 (ii) any statewide ballot question appearing on the ballot in that audited precinct.

17 Provided, however, that races in which only one candidate's name appears on the ballot
18 shall not be audited. If a valid petition for a recount is made pursuant to section 135 of chapter
19 54 of the General Laws for a race subject to audit by this section, then the votes for that race
20 shall not be audited in any audited precinct named in the petition. The audit of the race in
21 question shall proceed in any audited precinct not included in the petition for a recount.

22 (c) Selection of precincts. The audited precincts shall be chosen in a random, publicly
23 verifiable, non-computerized drawing supervised by the state secretary following publication of
24 unofficial election results from each precinct where any race subject to audit appeared on the
25 ballot. The number of audited precincts selected in this drawing shall be equal to one per cent of
26 all precincts in the Commonwealth, unless the audit is prompted by a special general election for
27 representative in congress in which case the number of audited precincts selected in this drawing
28 shall be equal to one per cent of all precincts subject to that special election.

29 The time and place of the drawing shall be announced at least 48 hours in advance and be
30 open to representatives of each political party and to the public. The audited precincts selected in
31 this manner shall be used to audit any races subject to audit by this section.

32 (d) Procedure for conducting audits. The board of registrars in each municipality where
33 one or more audited precincts are located shall conduct the audit. The board of registrars may
34 employ tally clerks for the purpose of counting the ballots. Audits shall commence not later than
35 24 hours following the random drawing of precincts supervised by the state secretary and shall
36 continue on each successive business day or other day at the discretion of the board of registrars
37 in each municipality. The time and place of the audits in each municipality where one or more
38 audited precincts are located shall be publicly announced in advance. The audits shall be
39 performed in full public view and conducted pursuant to the procedures for hand counts of
40 ballots in Section 105 of Chapter 54.

41 If there is a discrepancy between the results reached pursuant to an audit and originally
42 reported tallies, the hand count of the official paper ballots conducted pursuant to the audit shall
43 be the official vote of record.

44 (e) Analysis of audit results. Upon receipt of the results of the audit, the state secretary
45 shall calculate the total number of votes for each candidate and ballot question as recorded in the
46 hand count and shall compare this total to the sum of the originally reported votes for each
47 candidate and ballot question in the audited precincts. When such comparison reveals a

48 discrepancy between the hand-counted audit and the originally reported tally of the audited
49 precincts the discrepancy shall be analyzed to ascertain its cause. The state secretary shall
50 oversee the analysis and shall publish the findings and make the findings available online, along
51 with the factual information on which such findings were based, within 180 days.

52 (f) If discrepancies between the hand-counted audits and the originally reported tallies of
53 the audited precincts cause concern about the accuracy of the election results, the state secretary
54 shall order audits of such additional precincts, offices, initiatives, or questions as shall be
55 necessary to resolve such concern.

56 (g) Public availability of audit results. The results of audits, as well as the corresponding
57 data for the originally reported tallies, shall be made publicly available on a precinct-by-precinct
58 basis both in paper and electronic file format.

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

62 (h) Funding. Costs incurred under this section shall be paid by the state using funds
63 available to Massachusetts pursuant to sections 251-258 of the Help America Vote Act of 2002.

64 (i) Implementation of regulations. The state secretary shall adopt regulations to
65 implement the requirements of this section, and shall hold public hearings both before and after
66 issuing draft regulations. The state secretary shall consult one or more persons with expertise in
67 statistics and election auditing prior to issuing draft regulations implementing subsections (c) and
68 (f) of this section. Final regulations implementing the requirements of this section shall be
69 published at least 60 days before the date of the election.