

SENATE No. 327

The Commonwealth of Massachusetts

PRESENTED BY:

Barry R. Finegold

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 reforming election laws.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|--------------------------------|-------------------------------------|
| <i>Barry R. Finegold</i> | <i>Second Essex and Middlesex</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> |
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> |
| <i>Christopher G. Fallon</i> | <i>33rd Middlesex</i> |
| <i>Carl M. Sciortino, Jr.</i> | <i>34th Middlesex</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> |
| <i>Peter V. Kocot</i> | <i>1st Hampshire</i> |
| <i>Jay R. Kaufman</i> | <i>15th Middlesex</i> |
| <i>Jonathan Hecht</i> | <i>29th Middlesex</i> |
| <i>William N. Brownsberger</i> | <i>Second Suffolk and Middlesex</i> |
| <i>Tom Sannicandro</i> | <i>7th Middlesex</i> |
| <i>Thomas P. Conroy</i> | <i>13th Middlesex</i> |
| <i>Kenneth J. Donnelly</i> | <i>Fourth Middlesex</i> |
| <i>Thomas M. Stanley</i> | <i>9th Middlesex</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> |
| <i>Timothy J. Toomey, Jr.</i> | <i>26th Middlesex</i> |
| <i>Katherine M. Clark</i> | <i>Fifth Middlesex</i> |

| | |
|-------------------------------|------------------------------------|
| <i>Anthony W. Petruccelli</i> | <i>First Suffolk and Middlesex</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> |
| <i>Anne M. Gobi</i> | <i>5th Worcester</i> |
| <i>Kevin J. Murphy</i> | <i>18th Middlesex</i> |
| <i>Ellen Story</i> | <i>3rd Hampshire</i> |
| <i>Aaron Vega</i> | <i>5th Hampden</i> |
| <i>Sonia Chang-Diaz</i> | <i>Second Suffolk</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Diana DiZoglio</i> | <i>14th Essex</i> |
| <i>Carlos Henriquez</i> | <i>5th Suffolk</i> |
| <i>Marcos A. Devers</i> | <i>16th Essex</i> |
| <i>James J. O'Day</i> | <i>14th Worcester</i> |
| <i>James Arciero</i> | <i>2nd Middlesex</i> |
| <i>Kenneth I. Gordon</i> | <i>21st Middlesex</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>Jennifer E. Benson</i> | <i>37th Middlesex</i> |

SENATE No. 327

By Mr. Finegold, a petition (accompanied by bill, Senate, No. 327) of Barry R. Finegold, Sal N. DiDomenico, Frank I. Smizik, Jason M. Lewis and other members of the General Court for legislation to reform election laws. Election Laws.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act reforming election laws.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to improve forthwith 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.

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. Subsection (c) of section 4 of chapter 51 of the General Laws, as appearing
2 in the 2010 Official Edition, is hereby amended by inserting after the word “mailing”, in line 35,
3 the following words:- for two consecutive years.

4 SECTION 2. Said chapter 51 is hereby further amended by inserting after section 17 the
5 following section:-

6 Section 17A. In each municipality, the city or town clerk and the election director shall
7 attend annual training conducted by the office of the state secretary on the applicable state and
8 federal election laws and regulations. Upon completion of the training, they shall inform the
9 board of registrars and election commissioners.

10 SECTION 3. Said chapter 51, as so appearing, is hereby further amended by inserting
11 after section 33 the following section:-

12 Section 33A. The state secretary will create and maintain an online portal allowing
13 citizens to complete an affidavit of registration online. Such registration will be transmitted by
14 the secretary to the appropriate local registrar. The online affidavit will use the registrants’
15 signature from the Registry of Motor Vehicles records; the Registrar of Motor Vehicles shall

16 make appropriate provisions to facilitate the electronic transfer of the image of the signature to
17 the central voter registry. If such signature cannot be found using the online affidavit of
18 registration form the applicant will be so informed and given the option to print the affidavit of
19 registration, append their signature, and mail it directly to the appropriate registrar of voters.
20 Nothing in this section shall be construed to change any registration deadline or qualification of
21 voting.

22 SECTION 4. Section 37A of said chapter 51, as so appearing, is hereby amended by
23 inserting after the word “thirty-seven”, in line 2, the following:- “for two consecutive years, and
24 who during that time fails to vote in any election,”.

25 SECTION 5. Section 42 of said chapter 51, as so appearing, is hereby amended by
26 inserting after the word “chapter”, in line 2, the following words:- by any person at least 16 years
27 of age or older.

28 SECTION 6. Section 42H of said chapter 51, as so appearing, is hereby amended by
29 inserting after the word “delivery”, in line 4, the following words:- and through the online portal

30 SECTION 7. Section 47A of said chapter 51, as so appearing, is hereby amended by
31 adding the following sentence:- If such person is at least 16 years of age and has not attained the
32 qualification of age, the affidavit of registration shall be re-examined by the registrar until such
33 person will, on or before the day of the next preliminary, primary, special or general election or
34 town meeting, attain full age, at which time the registrar shall enter such person’s name in the
35 current annual register of voters.

36 SECTION 8. Said chapter 51 is hereby further amended by inserting after section 63 the
37 following section:-

38 Section 64. The state secretary shall create and maintain an online portal through which
39 any member of the public may check to determine whether or not they are registered to vote.
40 Such a portal shall allow a member of the public to enter their name, date of birth and residential
41 zip code and will subsequently display whether a voter with said name and date of birth and
42 residential zip code is registered to vote, whether the registration of the voter is active or inactive
43 pursuant to section 37A of chapter 51, the polling location for said voter and state and federal
44 elected officials who represent said voter. The portal shall not display any other biographical
45 information about the voter except the information provided by the user of the site. If there is no
46 voter in the central registry of voters matching the information submitted to the portal, the
47 website shall inform the user how they may obtain a voter registration form.

48 SECTION 9. Section 11 of chapter 54 of the General Laws, as so appearing, is hereby
49 amended by striking out, in lines 5 and 6, the words "one warden, one deputy warden, one clerk,
50 one deputy clerk, four inspectors and four deputy inspectors" and inserting in place thereof the

51 following words:- a minimum of one warden, one clerk, two inspectors and a ballot box
52 inspector.

53 SECTION 10. Section 12 of said chapter 54, as so appearing, is hereby amended by
54 striking out, in lines 4 and 5, the words "one warden, one deputy warden, one clerk, one deputy
55 clerk, two inspectors and two deputy inspectors" and inserting in place thereof the following
56 words:- a minimum of one warden, one clerk, two inspectors and a ballot box inspector.

57 SECTION 11. Said chapter 54 is hereby further amended by inserting after section 25A
58 the following section:-

59 Section 25B. (a) Pursuant to a request, in person, by a qualified voter, as defined in
60 section 1 of chapter 51, the local election officers and registrars of every city or town shall allow
61 any qualified voter to cast a ballot for any biennial state election, special state election, primary,
62 special primary or any other election during the early voting period as set forth in this section,
63 including but not limited to any city or town election held at the same time. Cities and towns
64 may also provide for early voting in elections not held in conjunction with state elections.

65 (b) Early voting shall begin in the seventh day preceding an election. The early voting
66 period shall end at the close of polls on the day preceding the day before the election.

67 (c) For the purposes of early voting, a polling place shall include a city hall election
68 office and a town hall clerk's office and the registrars of each city or town shall identify and
69 provide for additional centrally-located, suitable and convenient early voting polling places
70 within each city or town for use during the early voting period. Towns with populations under
71 22,000 are not required to, but may, designate polling places other than city or town hall. Cities
72 with population of over 125,000 shall designate at least one polling place for every two wards.
73 The designation of an early voting polling place shall be made 30 days in advance of the
74 election. Each early voting polling location must be open for 8 hours on each weekday during the
75 early voting period. The polling location must be open for an aggregate of eight hours each
76 weekend during the early voting period. Each polling location shall be accessible to persons with
77 disabilities.

78 (d) The registrars for each city or town shall publish the location of the early voting
79 polling place as well as the applicable dates and hours. Said publication shall occur during the
80 week prior to the commencement of the early voting period and at least once during the period.
81 Notice of the location, dates and hours of early voting shall be sent to every newspaper listed in
82 the in the Directory of New England Newspapers and Periodicals, located in such town or city.
83 Notice of the locations, dates and hours of early voting shall also be conspicuously posted in the
84 office of the city clerk or in the principal official bulletin board of each city or town, on any other
85 public building deemed necessary, and on the city or town's website, if any.

86 (e) The state secretary shall provide a sufficient number of early voting ballots to the
87 registrars of each city or town for use during the early voting period. The ballots shall be
88 delivered to the registrars of each city or town 14 days in advance of the early voting.

89 (f) Early voting ballots shall be provided to each qualified voter who participates in early
90 voting.

91 (g) Prior to the commencement of early voting, the registrars for each city or town shall
92 prepare a list for the early voting polling place, containing the names and residences of all
93 persons qualified to vote therein, as the same appear upon the annual register, and shall
94 reasonably transmit the same to the election officers at every polling place designated by the
95 registrars.

96 (h) The presiding election officer at the early voting polling location shall cause to be
97 placed on the voting lists opposite the name of any qualified voter who participates in early
98 voting the letters "EV" designating an early voter.

99 (i) At the end of each day during the early voting period, the presiding election officer
100 shall separate, compile, and record early ballots cast at each polling location into the appropriate
101 ward and precinct.

102 (j) Sections 24, 25, 25A, 65, 66, 73, and 75 shall apply to polling places during early
103 voting.

104 (k) The ballot boxes for early voting shall be sealed and locked and maintained securely
105 by the election officers.

106 (l) The registrars for each city or town shall designate a location for the counting of early
107 ballots. All totals shall be added to the totals at the relevant wards and precincts.

108 (m) The state secretary shall promulgate rules and regulations to implement the
109 requirements of this section.

110 SECTION 12. Section 66 of said chapter 54, as so appearing, is hereby amended by
111 striking out, in line 9, the following words:- "police officer or constable at the polling place" and
112 inserting in place thereof the following word:- "warden"; and by striking out, in lines 18
113 and 19, the following:- " , either personally or by a police officer or constable in attendance at the
114 polling place,".

115 SECTION 13. Said chapter 54 is hereby further amended by striking out section 67, as so
116 appearing, and inserting in place thereof the following section:-

117 Section 67. The voting list shall be delivered to the warden at the entrance to the precinct
118 in the polling place. When a ballot is delivered to a voter, the voter's name shall be checked on
119 the voting list at the entrance of the precinct. At least 1 inspector in charge of the voting list and

120 the inspector in charge of the ballot box shall be of different political parties. No person shall
121 vote if the person's name is not on the voting list, nor until the inspector shall check the person's
122 name thereon, unless the person presents a certificate from the registrars of the voters as
123 provided by section 51 or section 59 of chapter 51, or unless the person is voting by provisional
124 ballot under section 76C.

125 SECTION 14. Section 72 of said chapter 54 is hereby repealed.

126 SECTION 15. Section 75 of said chapter 54, as so appearing, is hereby amended by
127 striking out, in lines 3 and 4, the following words:- "the police officer or constable in attendance
128 at the polling place" and inserting in place thereof the following words:- a police officer or
129 constable.

130 SECTION 16. Section 83 of said chapter 54, as so appearing, is hereby amended by
131 striking, in lines 2 through 6, the words:- "give his name and, if requested, his residence, to one
132 of the officers in charge of the ballot box who shall distinctly announce the same. If the name is
133 found on the voting list by the election officer, he shall distinctly repeat the name and check it on
134 the voting list; and the voter may then".

135 SECTION 17. Section 107 of said chapter 54, as so appearing, is hereby amended by
136 striking out, in lines 20 and 21, the following words:- "or transmit to him, by the police officer or
137 constable in attendance at the election,".

138 SECTION 18. Said chapter 54 is hereby further amended by inserting after section 109
139 the following section:-

140 Section 109A. (a) For the purposes of this section, "audited precinct" shall mean any
141 precinct selected in accordance with subsection (c) for the purpose of conducting audits as
142 provided in this section.

143 (b) An audit shall be conducted pursuant to this section following any biennial state
144 election, presidential primary, or special general election for senator in Congress or
145 representative in Congress.

146 (1) Following a biennial state election in which the office of governor is contested, each
147 precinct selected pursuant to subsection (c) shall conduct a hand-counted audit of votes cast on
148 the day of election of: (i) races for the following offices in which more than 1 candidate's name
149 appears on the ballot: governor, representative in Congress, senator in Congress, if such office
150 appears on the ballot, and 2 of the following offices chosen by random drawing: representative in
151 the general court, senator in the general court, state secretary, attorney general, auditor, treasurer,
152 and lieutenant governor, if such office appears on the ballot; and (ii) one statewide ballot
153 question, if any appear on the ballot, chosen by random drawing.

154 (2) Following a biennial state election in which the candidates of each party for president
155 and vice president appear on the ballot, each precinct selected pursuant to subsection (c) shall
156 conduct a hand-counted audit of votes cast on the day of election of: (i) races for the following
157 offices in which more than 1 candidate's name appears on the ballot: president and vice
158 president, representative in Congress, senator in Congress, if such office appears on the ballot,
159 representative in the general court, and senator in the general court; and (ii) 1 statewide ballot
160 question, if any appear on the ballot, chosen by random drawing.

161 (3) Following a presidential primary or special general election for representative in
162 Congress or senator in Congress, each precinct selected pursuant to subsection (c) shall conduct
163 a hand-counted audit of each race in which more than 1 candidate's name appears on the ballot
164 in that precinct.

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

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

174 (c) The precincts to be audited shall be chosen in a random, publicly verifiable, non-
175 computerized drawing supervised by the state secretary within 48 hours after polls are closed.
176 The drawing shall be fully observable to the public and representatives of each political party
177 and shall use a procedure that can be easily understood to be random by members of the public.
178 Notice of the time and place of the drawing shall be given at least 10 days in advance of the 69
179 election on the electronic website of the state secretary. The number of precincts selected to be
180 audited in this drawing shall be equal to 3 per cent of all precincts in the commonwealth,
181 rounded up to the next highest whole number; provided, however, that if the audit is prompted by
182 a special general election for representative in congress, the number of precincts selected to be
183 audited in this drawing shall be equal to 3 per cent of all precincts subject to that special election,
184 rounded up to the next highest whole number.

185 (d) (1) The board of registrars or election commission in each municipality where 1 or
186 more precincts selected to be audited are located shall conduct the audit. The board of registrars
187 or election commission may employ tally clerks for the purpose of counting the ballots. Audits
188 shall commence not later than 2 business days following the random drawing of precincts
189 supervised by the state secretary and shall continue on each successive business day or other day
190 at the discretion of the board or commission in each municipality. The time and place of the

191 audits in each municipality where 1 or more precincts selected to be audited are located shall be
192 publicly announced in advance. The audits shall be performed in full public view and conducted
193 pursuant to the procedures for hand counts of ballots in sections 135 and 135A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

256 SECTION 19. Chapter 56 of the General Laws is hereby amended by inserting after
257 section 41A the following section:-

258 Section 41B. No candidate for nomination or election to public office or any other person
259 shall write, print, post or distribute, or cause to be written, printed, posted or distributed, a
260 circular or poster designed to aid or defeat any candidate for nomination or election to any public
261 office unless there appears upon such circular or poster a statement disclosing the identity of the
262 individual, corporation, group or association paying for the circular or poster. Such statement
263 shall appear under the heading “paid for by,” and shall include either the name of the political or
264 other organization paying for the circular or poster, or of some person eighteen years of age or
265 older who is responsible therefore; with the organization or person’s name and residence, and the
266 street and number thereof, if any. The statement shall be printed in a conspicuous place and shall
267 appear in a clearly readable manner with a reasonable degree of color contrast between the
268 background and the printed statement. This section shall apply only to circulars or posters
269 costing more than \$250 to print or mail.

270 Any violation of this section shall be punished by imprisonment for not more than six
271 months or by a fine of not more than \$1,000.

272 SECTION 20. Costs incurred under section 18 shall be paid by the state using funds
273 available to the commonwealth pursuant to sections 101 to 106, inclusive, and in sections 251 to
274 258, inclusive, of the federal Help America Vote Act of 2002, 42 U.S.C. sections 15301 to
275 15306, inclusive, as it may be amended, and 42 U.S.C. sections 15401 to 15408, inclusive, as it
276 may be amended. The state secretary shall amend the state plan required under section 253(b) of
277 the Help America Vote Act of 2002, 42 U.S.C. section 15403(b) to include post election audits.

278 SECTION 21. Notwithstanding any general or special law to the contrary, the state
279 secretary shall promulgate rules and regulations under section 109A of chapter 54 of the General
280 Laws on or before September 1, 2013.

281 SECTION 22. Notwithstanding any general or special law to the contrary, there shall be
282 established an elections task force. Said task force shall undertake a study of the implementation
283 of ss. 5, 7, 11, 18 and 20 of this act. Said study shall include an analysis of: (1) the state and local
284 costs of implementing said proposals, the costs of increasing access to the Central Registry of
285 Voters, and the availability of federal funding through the Help America Vote Act; (2) the
286 administrative requirements for adopting such a system, including their impact upon poll
287 operations and upon the operation of municipal clerks offices on election day; (3) the possibility
288 of fraud; and (4) the effects upon finalizing a vote and possible recounts.

289 The task force shall consist of the house and senate chairs of the joint committee on
290 election laws; the speaker of the house of representatives or his designee; the president of the
291 senate or her designee; the house minority leader or his designee; the senate minority leader or
292 his designee; the state secretary or his designee; the registrar of motor vehicles or her designee; 3
293 representatives of the Massachusetts Town Clerks Association, one of whom is the President of
294 the Massachusetts Town Clerk Association (who shall serve as the task force chair), one of

295 whom shall be from a town of between 2,001 and 12,000 inhabitants, and one of whom shall be
296 from a town of 2,000 or fewer inhabitants, 3 representatives of the Massachusetts Municipal
297 Association, one of whom shall be the chief election officer of a city under 100,000 inhabitants,
298 one of who shall be the chief election officer of a city over 100,001 inhabitants; and 1
299 representative of each of the following groups: the League of Women Voters of Massachusetts,
300 the Massachusetts Chapter of the NAACP, Common Cause, and MassVOTE, and OISTE.

301 The task force shall complete its study and submit its final report in writing to the joint
302 committee on election laws and the state secretary no later than April 1, 2013.