

HOUSE No. 652

The Commonwealth of Massachusetts

PRESENTED BY:

Jay R. Kaufman

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 passage of the accompanying bill:

An Act to provide for audits of election results .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jay R. Kaufman	15th Middlesex
Carl M. Sciortino, Jr.	34th Middlesex
Steven J. D'Amico	4th Bristol
Frank I. Smizik	15th Norfolk
Thomas M. Stanley	9th Middlesex
Martha M. Walz	8th Suffolk
Kay Khan	11th Middlesex
Denise Provost	27th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 671 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 inserting after section 109 the
2 following new section:--
- 3 Section 109A. Audits of election results.
- 4 a) Following each primary, general or special election, a random hand-counted audit shall be conducted as
5 provided in this section of the votes in each race for president, U.S. senator, U.S. representative, governor,
6 attorney general, state secretary; for one race chosen at random from the office of lieutenant governor,
7 treasurer, and auditor; and also for each statewide initiative and referendum question. Races in which only
8 one candidate's name appears on the ballot shall not be audited.
- 9 b) The state secretary shall establish an audit protocol such that:
- 10 i. for elections which appeared on the ballot state-wide, the audit shall be designed and implemented
11 to provide at least a 99% probability of leading to a hand recount of 100% of the ballots whenever
12 such a recount would change the electoral outcome of such contest, and
- 13 ii. for each election held for United States Representative, the audit shall be designed and
14 implemented to provide at least a 90% probability of leading to a hand recount of 100% of the
15 ballots whenever such a recount would change the electoral outcome of such contest, and
- 16 iii. a minimum of five precincts per Congressional district are selected for audits of elections for U.S.
17 representative, and a minimum of ten precincts from all the precincts in the Commonwealth are
18 selected for audit of races that appeared on the ballots state-wide.
- 19 c) The precincts to be audited shall be chosen in a random, publicly verifiable, non-computerized drawing
20 supervised by the state secretary following the reporting of unofficial election results from each precinct,
21 which shall be made publicly available by municipal clerks and by the state secretary. The time and place
22 of the drawing shall be announced at least 48 hours in advance and be open to representatives of each
23 political party and to the public. Except as provided in b (iii) of this section, precincts that are selected in
24 the random drawing may be used to audit any races subject to audit under this section.
- 25 d) The board of registrars in each municipality where precincts have been selected shall conduct the audit of
26 the precincts in such municipality. The board of registrars may employ tally clerks for the purpose of
27 counting the ballots. Audits shall commence not later than 24 hours following the random drawing of

28 precincts supervised by the state secretary and shall continue on each successive business day or other day
29 at the discretion of the board of registrars in each municipality. The time and place of the audits in each
30 municipality where precincts have been selected shall be publicly announced in advance and the audits
31 shall be performed in full public view and conducted pursuant to the procedures for hand-counts of ballots
32 in Section 105 of Chapter 54.

- 33 e) Upon receipt of the results of the manual audit count from the audited precincts, the state secretary shall
34 calculate the total number of votes for each candidate and ballot question as recorded in the manual audit
35 count and shall compare this total to the sum of the originally reported votes for each candidate and ballot
36 question in the audited precincts. The state secretary shall order audits of such additional precincts as shall
37 be necessary to carry out the requirements of this section.
- 38 f) Whenever the difference between the hand-counted audit and the originally reported tally is more than one
39 percent for any particular machine model, the discrepancy between the hand-counted audit and the original
40 vote tally shall be analyzed to ascertain the cause of the discrepancy. The state secretary shall oversee the
41 analysis and shall publish and make available online the findings, along with the factual information on
42 which they were based, within 180 days.
- 43 g) If there is a discrepancy between a manual count and originally reported tallies, where the original results
44 were obtained using electronic equipment, the manual count of the official paper ballots shall be the official
45 vote of record.
- 46 h) The results of audits and hand-counts, as well as the corresponding data for the originally reported tallies,
47 shall be made publicly available on a precinct-by-precinct basis both in hardcopy and in electronic file
48 format.
- 49 i) The audit and publication of the results thereof shall be completed prior to the time the State shall make a
50 final determination concerning the appointment of its electors for President and Vice President of the
51 United States as established in federal law.
- 52 j) The state secretary shall adopt regulations to implement the requirements of this section and shall hold
53 public hearings both before and after issuing draft regulations. The state secretary shall consult one or more
54 persons with expertise in statistics and election auditing to develop the procedures that will be used to
55 select the precincts for audit, and to determine when, in light of any errors the audit uncovers, a sufficient
56 number of precincts have been counted manually to fulfill the requirements of paragraphs a (i) and a(ii) of
57 this section. Final regulations concerning such procedures shall be published at least 60 days before the date
58 of the election.

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

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