HOUSE . . . . . No. 4022

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.

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

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

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

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

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

The electronic affidavit of voter registration shall give registrants the option to enter data directly into the form prior to printing out the affidavit or to print a blank form and manually enter information. The registrant shall personally sign and mail, transmit or otherwise deliver the completed affidavit of voter registration form to the appropriate city elections department or 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
21 2010 Official Edition, is hereby amended by inserting after the word "chapter", in line 2, the
22 following 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
24 adding the 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
30 section 109 the following section:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

148 SECTION 6. Costs incurred under Section 5 of this act shall be paid by the state using
149 funds available to the commonwealth pursuant to sections 101 to 106 and 251 to 258 of the
150 federal Help America Vote Act of 2002, 42 U.S.C. sections 15301 to 15306, inclusive, as it may
151 be 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
155 secretary shall promulgate rules and regulations under section 109A of chapter 54 of the General
156 Laws on or before July 6, 2012.

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
159 act.