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SECTION 109A

Section 109A: Audit of votes following presidential general election

Section 109A. (a) For the purposes of this section, "audited precinct" shall mean any precinct selected under subsection (c) to conduct audits as provided in this section.

(b) An audit shall be conducted pursuant to this section following any presidential general election.

(1) Each precinct selected pursuant to subsection (c) shall conduct a hand-counted audit of votes cast on the day of election of: (i) races in which more than 1 candidate's name appears on the ballot for president and vice president, representative in congress, senator in congress, representative in the general court and senator in the general court; and (ii) 1 statewide ballot question, if any appear on the ballot, chosen by random drawing.

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

(3) Any random drawing required by this subsection shall be conducted by the state secretary. The drawing shall occur at the same time and place as the drawing required by subsection (c).

(c) The precincts to be audited shall be chosen in a random, publicly verifiable, non-computerized drawing supervised by the state secretary within 48 hours after polls are closed. The drawing shall be fully observable to the public and representatives of each political party and shall use a procedure that can be easily understood to be random by members of the public. Notice of the time and place of the drawing shall be given at least 10 days before the election on the electronic website of the state secretary. The number of precincts selected to be audited in this drawing shall be equal to 3 per cent of all precincts in the commonwealth, rounded up to the next highest whole number.

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

(2) The state secretary shall issue uniform written training materials for audit personnel to each municipality at least 10 days prior to any election to be audited pursuant to this section.

(3) Notwithstanding any general or special law to the contrary, to conduct the audit the board or commission shall unseal the envelopes or containers containing the ballots. The board or commission shall, when the audit is complete, enclose all the ballots in their proper envelopes or containers, seal each envelope or container with a seal provided and certify upon each envelope or container that it has been opened and again sealed in conformity to law.

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

(e) Upon completion of the audit in each municipality, the board of registrars or election commission shall record each race audited in each precinct on a separate audit report form provided by the state secretary. The registrars shall submit the completed audit report forms to the state secretary not later than 14 days following the election. An audit report form shall provide for the entry of:

(i) the number of votes for each candidate or each yes and no vote and the blank votes and over-votes as recorded in the audit hand count;

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

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

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

(v) any additional notes on perceived causes of discrepancies.

(f) Upon receipt of the results of the audit, the state secretary shall calculate the total number of votes for each candidate and ballot question as recorded in the audit hand count and shall compare this total to the sum of the originally reported votes for each candidate and ballot

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

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

(h) If there is a discrepancy between the results reached in a precinct pursuant to an audit and the originally reported tallies in that precinct in any audited race or any audited ballot question that reasonably leads to doubt about the outcome of the election or systemic failure to accurately count ballots, the state secretary may order audits of additional precincts, offices or ballot questions as shall be necessary to ensure that the outcome of the election is accurate and that the cause of the systemic failure is identified.

(i)(1) Upon receipt of the results of the audit, the state secretary shall make information in the audit reports publicly available on a precinct-by-precinct basis as soon as practicable, but not later than 10 days after receipt of the audit report form, in both human and machine readable formats, such as a spreadsheet or comma-separated-value file. This information shall also be posted on the electronic website of the state secretary.

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

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

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

