

# SENATE . . . . No. 492

---

[Senate, No. 492 — Substituted by amendment (Whittier) for House Bill No. 1542.]

---

## The Commonwealth of Massachusetts

---

In the Year One Thousand Nine Hundred and Forty-Three.

---

### AN ACT RELATIVE TO RECOUNTS AT PRIMARIES AND ELECTIONS.

*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 one hundred and thirty-five of chapter  
2 fifty-four, as most recently amended by chapter  
3 three hundred and fifty of the acts of nineteen hun-  
4 dred and forty-one, is hereby further amended by  
5 striking out said section and inserting in place  
6 thereof the following section: —

7 *Section 135.* If, on or before five o'clock in the  
8 afternoon on the third day following an election in a  
9 ward of a city or in a town, ten or more voters of  
10 such ward or town, except a town having more than  
11 twenty-five hundred voters and voting by precincts  
12 and except Boston, and in such a town voting by  
13 precincts ten or more voters of each precinct and in  
14 Boston fifty or more voters of a ward, shall sign in  
15 person, adding thereto their respective residences on

16 the preceding January first, and cause to be filed  
17 with the city or town clerk a statement, sworn to  
18 by one of the subscribers, that they have reason to  
19 believe and do believe that the records, or copies  
20 of records, made by the election officers of certain  
21 precincts in such ward or town, or, in case of a town  
22 not voting by precincts, by the election officers of  
23 such town, are erroneous, specifying wherein they  
24 deem such records or copies thereof to be in error,  
25 or that challenged votes were cast by persons not  
26 entitled to vote therein, and that they believe a  
27 recount of the ballots cast in such precincts or town  
28 will affect the election of one or more candidates  
29 voted for at such election, specifying the candidate  
30 or candidates, or will affect the decision of a question  
31 voted upon at such election, specifying the question,  
32 the city or town clerk shall forthwith transmit such  
33 statement and the envelopes or containers containing  
34 the ballots, sealed, to the registrars of voters, who  
35 shall first examine the statement and attach thereto  
36 a certificate of the number of names of subscribers  
37 which are names of registered voters in such ward or  
38 town and shall then, without unnecessary delay,  
39 but not before the last hour for filing requests for  
40 recounts as aforesaid, open the envelopes or con-  
41 tainers, recount the ballots and determine the  
42 questions raised, and shall examine all ballots cast  
43 by or for challenged voters and reject any such ballot  
44 cast by or for a person found not to have been en-  
45 titled to vote. They shall endorse on the back of  
46 every ballot so rejected the reason for such rejec-  
47 tion and said statement shall be signed by a majority  
48 of said registrars. A member of the board of regis-  
49 trars shall endorse over his signature on the back

50 of each protested ballot the block number of which  
51 it is a part and the office for which the vote is pro-  
52 tested, together with the name of the candidate for  
53 whom the vote is counted. Upon a recount of votes  
54 for town officers in a town where the selectmen are  
55 members of the board of registrars of voters, the  
56 recount shall be made by the moderator, who shall  
57 have all the powers and perform all the duties con-  
58 ferred or imposed by this section upon registrars of  
59 voters.

60 In cases of recounts at elections where voting ma-  
61 chines have been used the city or town clerk shall  
62 transmit to the registrars the records of the election  
63 officers, the envelopes or containers containing the  
64 total sheets showing the votes recorded by the  
65 voting machines, cast by challenged voters and  
66 cast by absent voting ballots, respectively, and  
67 containing the ballots cast by challenged voters and  
68 the absent voting ballots cast.

69 State-wide recounts in cases of offices to be filled  
70 or questions to be voted upon at the state election  
71 by all the voters of the commonwealth may be  
72 requested as provided in the foregoing provisions of  
73 this section so far as applicable, except that any  
74 petition therefor shall be on a form approved and  
75 furnished by the state secretary, shall be signed in  
76 the aggregate by at least one thousand voters, not  
77 less than two hundred and fifty to be from each of  
78 four different counties, and shall be submitted on or  
79 before five o'clock in the afternoon of the tenth  
80 day following such election to the registrars of voters  
81 of the city or town in which the signers appear to  
82 be voters, who shall forthwith certify thereon the  
83 number of signatures which are names of registered

84 voters in said city or town, and except that such  
85 petitions for recount shall be filed with the state  
86 secretary on or before five o'clock in the afternoon  
87 of the fifteenth day following such election. He  
88 shall hold such petitions for recount until after the  
89 official tabulation of votes by the governor and  
90 council and if it then appears that the difference in  
91 the number of votes cast for the two leading candi-  
92 dates for the office, or in the number of affirmative  
93 and negative votes on a question, for which the  
94 recount is desired, is more than one per cent of the  
95 total number of votes cast for such office or on such  
96 question, the petitions for recount shall be void.  
97 If such difference in the votes so cast appears to be  
98 one per cent or less of the total votes cast for such  
99 office or on such question, he shall forthwith order  
100 the clerk of each city and town of the common-  
101 wealth to transmit forthwith, and said clerk shall  
102 so transmit, the envelopes or containers containing  
103 the ballots, sealed except in the case of those con-  
104 taining ballots which have already been recounted  
105 in respect to said office or question under authority  
106 of the preceding paragraph, to the registrars of the  
107 city or town who shall, without unnecessary delay,  
108 open the envelopes or containers, recount the ballots  
109 cast for said office or on said question and determine  
110 the questions raised. If a state-wide recount is  
111 petitioned for, all ballots cast at a state election  
112 shall be held, except as otherwise provided herein,  
113 by the city and town clerks until the expiration of  
114 sixty days after said election.

115 The registrars shall, before proceeding to recount  
116 the ballots, give not less than three days' written  
117 notice to each candidate who appears to have been

118 elected to the office in question and to each candi-  
119 date for such office specified in any statement  
120 filed under authority of this section, or to such  
121 person as shall be designated by the petitioners for a  
122 recount of ballots cast upon questions submitted  
123 to the voters, of the time and place of making the  
124 recount, and each such candidate or person repre-  
125 senting petitioners as aforesaid shall be allowed to  
126 be present and to witness such recount at each table  
127 where a recount of the ballots affecting such candidate  
128 is being held, accompanied by counsel, if he so  
129 desires. Each such candidate or person may also  
130 be represented by agents, appointed by him or his  
131 counsel in writing, sufficient in number to provide  
132 one such agent for each officer counting or checking  
133 such ballots; provided, that no such candidate or  
134 person may have more than one such agent, other  
135 than his counsel, witnessing the work of any one  
136 officer at any one time. Each such candidate, person,  
137 counsel and agent shall have the right to watch and  
138 inspect the ballots, tally sheets and all other papers  
139 used in the recount, and to watch every individual  
140 act performed in connection therewith. In the  
141 case of a recount of ballots cast for offices which  
142 are filled by all the voters of the commonwealth,  
143 such notice may be given to the duly organized state  
144 political committees. In the case of a recount of  
145 the ballots cast upon a question submitted to all  
146 the voters as aforesaid, one representative from any  
147 committee organized to favor or to oppose the  
148 question so submitted shall be permitted to be  
149 present and witness the recount.

150 All recounts shall be upon the questions designated  
151 in the statements or petitions filed, and no other

152 count shall be made, or allowed to be made, or other  
153 information taken, or allowed to be taken, from the  
154 ballots on such recount, except that in the case of a  
155 recount of the ballots cast for an office, the votes  
156 cast for all of the candidates for such office, including  
157 blanks cast, shall be recounted.

158 If, during a recount, all of the candidates for an  
159 office being recounted in a city or town election or,  
160 during a state-wide recount the leading candidates  
161 and other candidates the difference in the vote for  
162 whom is such one per cent or less, request in writing,  
163 filed with the city or town clerk in the case of a city  
164 or town election or the state secretary in the case  
165 of a state election, that the recount be discontinued,  
166 the city or town clerk or the state secretary shall  
167 immediately order the recount discontinued where-  
168 upon proceedings thereunder shall terminate.

169 The registrars shall, when the recount is complete,  
170 enclose all the ballots in their proper envelopes or  
171 containers, seal each envelope or container with a  
172 seal provided therefor, and certify upon each en-  
173 velope or container that it has been opened and again  
174 sealed in conformity to law; and shall likewise  
175 make and sign a statement of their determination  
176 of the questions raised. They shall also enclose all  
177 protested ballots in a separate envelope, seal the  
178 envelope with a seal provided therefor and certify  
179 upon the envelope that it contains all ballots that  
180 have been protested. When ballots are summoned  
181 to court, only such ballots as have been duly re-  
182 corded as protested at a recount shall be required to  
183 be produced except by express order of the court.  
184 The envelopes or containers, with such statement,  
185 shall be returned to the city or town clerk, who shall

186 alter and amend, in accordance with such deter-  
187 mination, such records as have been found to be  
188 erroneous; and the records so amended shall stand  
189 as the true records of the election. Copies of such  
190 amended records of votes cast at a state election  
191 shall be made and transmitted as required by law  
192 in the case of copies of original records; provided,  
193 that such copies of amended records shall in case  
194 of a state-wide recount be transmitted by the city  
195 or town clerk to the state secretary within four  
196 days of the completion of such recount. If, in case  
197 of a recount of votes for town officers, it shall appear  
198 that a person was elected other than the person  
199 declared to have been elected, the registrars of  
200 voters shall forthwith make and sign a certificate  
201 of such fact, stating therein the number of votes  
202 cast, as determined by the recount, for each candi-  
203 date for the office the election to which is disputed,  
204 and shall file the same with the town clerk. The  
205 town clerk shall record the certificate and shall,  
206 within twenty-four hours after such filing, cause a  
207 copy of such certificate, attested by him, to be  
208 delivered to or left at the residence of the person so  
209 declared to have been elected, and to the person  
210 who by such certificate appears to be elected.

211 Registrars of voters may employ such clerical  
212 assistance as they deem necessary to enable them  
213 to carry out this section and in the investigation of  
214 challenged votes may summon witnesses and ad-  
215 minister oaths.

