

HOUSE BILL 1172

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By: **Delegate Kaiser**

Introduced and read first time: February 7, 2020

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Election Law – Postelection Tabulation Audits – Risk-Limiting Audits**

3 FOR the purpose of requiring that the State Board of Elections conduct a certain automated
4 software audit in collaboration with the local boards of elections; requiring the State
5 Board, in collaboration with the local boards, to conduct a certain risk-limiting audit
6 after each statewide election; repealing a requirement that the State Board conduct
7 a certain manual audit after each statewide general election; repealing the authority
8 of the State Board to conduct a certain manual audit after each statewide primary
9 election; repealing certain provisions of law governing the conduct of a certain
10 manual audit; requiring the State Board, in collaboration with the local boards, to
11 conduct a risk-limiting audit of at least one statewide contest and any other contests
12 selected for audit by the State Board after each statewide election; requiring that a
13 risk-limiting audit manually examine certain paper records or batches of certain
14 paper records in a certain manner, be completed before certification of the election
15 results, and be observable by the public to a certain extent; requiring the official
16 result of an election to be altered to match the result found by a risk-limiting audit
17 if the risk-limiting audit finds that the electronic count is incorrect; requiring the
18 State Board to post a certain report on its website concerning a risk-limiting audit
19 within a certain period of time; requiring that certain regulations adopted by the
20 State Board be comprehensive; requiring that certain regulations include certain
21 criteria, the risk limit, and the audit method; requiring the State Administrator of
22 Elections to convene a Risk-Limiting Audits Workgroup on or before a certain date;
23 requiring the Workgroup to consist of certain persons selected by the State
24 Administrator; requiring the State Administrator, or the State Administrator's
25 designee, to serve as chair of the Workgroup; requiring the Workgroup to provide
26 certain advice and assistance in conducting certain pilot risk-limiting audits and
27 draft proposed text of certain risk-limiting audit regulations; requiring the State
28 Board, in collaboration with the appropriate local boards, to conduct pilot
29 risk-limiting audits in a certain number of counties following a certain statewide
30 general election; requiring the State Board to select the contests to be audited and
31 determine how the pilot risk-limiting audits are to be conducted; providing that a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



pilot risk-limiting audit may be conducted after the election results are certified and may not have any effect on the certified election results; requiring the State Board to adopt certain regulations on or before a certain date; defining certain terms; altering a certain definition; repealing a certain definition; making conforming changes; providing for a delayed effective date for certain provisions of this Act; and generally relating to postelection tabulation audits.

BY repealing and reenacting, with amendments,
Article – Election Law
Section 11–309
Annotated Code of Maryland
(2017 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Election Law

11–309.

(a) (1) In this section the following words have the meanings indicated.

**(2) “ELECTRONIC COUNT” MEANS THE VOTE TOTALS PRODUCED BY
THE VOTING SYSTEM.**

[(2)] (3) “Manual [audit] COUNT” means inspection of voter-verifiable paper records by hand and eye to obtain vote totals in a contest [that are compared to the vote totals produced for that contest by the electronic voting system].

[(3) “Previous comparable general election” means:

(i) in a presidential election year, the presidential election held 4 years earlier; and

(ii) in a gubernatorial election year, the gubernatorial election held 4 years earlier.]

(4) “RISK-LIMITING AUDIT” MEANS A POSTELECTION AUDIT PROCEDURE THAT EMPLOYS STATISTICAL METHODS TO ENSURE A LARGE, PREDETERMINED MINIMUM CHANCE OF REQUIRING A FULL MANUAL COUNT OF VOTER-VERIFIABLE PAPER RECORDS IN AN AUDITED CONTEST IF A FULL MANUAL COUNT OF THE VOTER-VERIFIABLE PAPER RECORDS WOULD FIND A DIFFERENT OUTCOME THAN THE OUTCOME DETERMINED BY THE ELECTRONIC COUNT.

[(4)] (5) “Voter-verifiable paper record” has the meaning stated in § 9–102 of this article.

(b) Following each statewide ~~[general]~~ election, the State Board, **IN COLLABORATION WITH THE LOCAL BOARDS**, shall conduct an audit of the accuracy of the voting system's tabulation of votes by completing:

(1) an automated software audit of the electronic images of all ballots cast in the election; and

(2) a ~~[manual audit of voter-verifiable paper records]~~ **RISK-LIMITING AUDIT** in accordance with subsection ~~[(d)] (C)~~ of this section.

[(c)] Following each statewide primary election, the State Board:

(1) shall complete an automated software audit of the electronic images of all ballots cast in the election; and

(2) may complete a manual audit of voter-verifiable paper records in a manner prescribed by the State Board.

(d) (1) Following each statewide general election, the State Board shall complete a manual audit of:

(i) at least 2% of precincts statewide, including:

1. at least one randomly chosen precinct in each county; and
2. additional precincts selected by the State Board; and

(ii) a number of votes equal to at least 1% of the statewide total in the previous comparable general election of each of the following, including at least a minimum number of each of the following in each county, as prescribed by the State Board:

1. early votes;
2. absentee votes; and
3. provisional votes.

(2) The manual audit shall be completed within 120 days after the general election.

(3) If the manual audit shows a discrepancy, the State Board may:

- (i) expand the manual audit; and
- (ii) take any other actions it considers necessary to resolve the discrepancy.

(4) Within 14 days after the conclusion of the audit, the State Board shall post on its website a report that describes:

(i) the precincts and number of votes selected for the manual audit in each county and the manner in which the precincts and votes were selected;

(ii) the results of the manual audit; and

(iii) any discrepancy shown by the manual audit and how the discrepancy was resolved.

(5) The State Board shall allow for public observation of each part of the manual audit process to the extent practicable.

(e) An audit under this section:

(1) may not have any effect on the certified election results; and

(2) shall be used to improve the voting system and voting process for future elections.]

(C) (1) FOLLOWING EACH STATEWIDE ELECTION, THE STATE BOARD, IN COLLABORATION WITH THE LOCAL BOARDS, SHALL CONDUCT A RISK-LIMITING AUDIT OF:

(I) AT LEAST ONE STATEWIDE CONTEST; AND

(II) ANY OTHER CONTESTS SELECTED FOR AUDIT BY THE STATE BOARD.

(2) A RISK-LIMITING AUDIT SHALL:

(I) MANUALLY EXAMINE RANDOMLY CHOSEN INDIVIDUAL VOTER-VERIFIABLE PAPER RECORDS OR BATCHES OF VOTER-VERIFIABLE PAPER RECORDS UNTIL THERE IS SUFFICIENTLY STRONG STATISTICAL EVIDENCE THAT A FULL MANUAL COUNT OF THE AUDITED CONTEST WOULD CONFIRM THE ELECTRONIC COUNT, OR UNTIL THERE HAS BEEN A FULL MANUAL COUNT;

(II) BE COMPLETED BEFORE CERTIFICATION OF THE ELECTION RESULTS; AND

(III) BE OBSERVABLE BY THE PUBLIC TO THE MAXIMUM EXTENT PRACTICABLE.

(3) IF A RISK-LIMITING AUDIT FINDS THAT THE ELECTRONIC COUNT IS INCORRECT, THE OFFICIAL RESULT OF THE ELECTION SHALL BE ALTERED TO MATCH THE RESULT FOUND BY THE RISK-LIMITING AUDIT.

(4) WITHIN 10 DAYS AFTER THE CONCLUSION OF THE RISK-LIMITING AUDIT, THE STATE BOARD SHALL POST ON THE STATE BOARD'S WEBSITE A REPORT THAT DESCRIBES THE AUDIT PROCESS AND THE RESULTS OF THE AUDIT.

~~[(f)] (D)~~ (1) The State Board shall adopt COMPREHENSIVE regulations to carry out this section.

(2) THE REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO CARRY OUT RISK-LIMITING AUDITS IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION SHALL INCLUDE:

(I) CRITERIA FOR DETERMINING THE CONTESTS TO BE AUDITED;

(II) THE RISK LIMIT; AND

(III) THE AUDIT METHOD.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) In this section the following words have the meanings indicated.

(2) "Electronic count" has the meaning stated in § 11-309 of the Election Law Article, as enacted by Section 1 of this Act.

(3) "Local board" means a local board of elections.

(4) "Risk limit" means the maximum chance that, if the electronic count of a contest is incorrect, the risk-limiting audit will not correct it.

(5) "Risk-limiting audit" has the meaning stated in § 11-309 of the Election Law Article, as enacted by Section 1 of this Act.

(6) "State Administrator" means the State Administrator of Elections.

(7) "State Board" means the State Board of Elections.

(b) (1) On or before September 1, 2020, the State Administrator shall convene a Risk-Limiting Audits Workgroup.

(2) The Workgroup shall consist of the following persons selected by the

State Administrator:

(i) experts in the theory and practice of risk-limiting audits;

(ii) at least one representative of the voting system vendor; and

(iii) local election officials.

(3) The State Administrator, or the State Administrator's designee, shall serve as chair of the Workgroup.

(4) The Workgroup shall:

(i) provide advice and assistance to the State Board and the local boards in conducting the pilot risk-limiting audits required under subsection (c) of this section; and

(ii) draft proposed text of the comprehensive risk-limiting audit regulations required under subsection (d) of this section for consideration by the State Board.

(c) (1) Following the statewide general election in November 2020, the State Board, in collaboration with the appropriate local boards, shall conduct pilot risk-limiting audits in at least two counties.

(2) The State Board shall:

(i) select the contests to be audited; and

(ii) determine how the pilot risk-limiting audits are to be conducted.

(3) A pilot risk-limiting audit:

(i) may be conducted after the election results are certified; and

(ii) may not have any effect on the certified election results.

(d) The State Board shall adopt the comprehensive regulations required under § 11-309(d) of the Election Law Article, as enacted by Section 1 of this Act, on or before January 1, 2022.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect January 1, 2021.

SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect June 1, 2020.