

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 State
18 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.



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

7 BY repealing and reenacting, with amendments,

8 Article – Election Law

9 Section 11–309

10 Annotated Code of Maryland

11 (2017 Replacement Volume and 2019 Supplement)

12 **SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,**

13 That the Laws of Maryland read as follows:

14 **Article – Election Law**

15 11–309.

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

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

19 **[(2)] (3) “Manual [audit] COUNT” means inspection of voter-verifiable**
20 **paper records by hand and eye to obtain vote totals in a contest [that are compared to the**
21 **vote totals produced for that contest by the electronic voting system].**

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

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

25 **(ii) in a gubernatorial election year, the gubernatorial election held**
26 **4 years earlier.]**

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

33 **[(4)] (5) “Voter-verifiable paper record” has the meaning stated in §**
34 **9–102 of this article.**

4 (1) an automated software audit of the electronic images of all ballots cast
5 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.

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

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

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

16 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:

21 1. early votes;

22 2. absentee votes; and

23 3. provisional votes.

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

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

27 (i) expand the manual audit; and

(ii) take any other actions it considers necessary to resolve the discrepancy.

5 (ii) the results of the manual audit; and

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

10 (e) An audit under this section:

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

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

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

17 (I) AT LEAST ONE STATEWIDE CONTEST; AND

20 (2) A RISK–LIMITING AUDIT SHALL:

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

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

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

12 (I) CRITERIA FOR DETERMINING THE CONTESTS TO BE
13 AUDITED:

14 (II) THE RISK LIMIT: AND

15 (III) THE AUDIT METHOD.

16 SECTION 2. AND BE IT FURTHER ENACTED, That:

17 (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.

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

21 (4) "Risk limit" means the maximum chance that, if the electronic count of
22 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.

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

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

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

1 State Administrator:

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

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

4 (iii) local election officials.

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

7 (4) The Workgroup shall:

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

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

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

17 (2) The State Board shall:

18 (i) select the contests to be audited; and

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

20 (3) A pilot risk-limiting audit:

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

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

23 (d) The State Board shall adopt the comprehensive regulations required under §
24 11-309(d) of the Election Law Article, as enacted by Section 1 of this Act, on or before
25 January 1, 2022.

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

28 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section
29 3 of this Act, this Act shall take effect June 1, 2020.