

HOUSE BILL 1064

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5lr1824

By: **Delegates Hixson, Gutierrez, C. Howard, A. Miller, Pena–Melnik, Rosenberg, and Turner**

Introduced and read first time: February 13, 2015

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Election Law – Audits of Election Results**

3 FOR the purpose of requiring a local board of canvassers to complete certain ballot
4 accounting, reconciliation, and tabulation audit procedures in a certain manner
5 before certifying the results of an election; requiring the State Board of Elections to
6 adopt certain regulations relating to ballot accounting and reconciliation procedures;
7 requiring that a tabulation audit be conducted of at least certain contests in certain
8 elections; requiring that a tabulation audit be completed before the results of an
9 election may be certified; requiring that a tabulation audit consist of a comparison
10 of a manual count with the machine count of the same ballots; requiring that the
11 manual count be considered the official and accurate record of the votes cast if there
12 is a discrepancy between the machine count and a manual count; requiring the State
13 Board to adopt certain regulations governing tabulation audits; requiring that a
14 recount consist of a manual count of the votes subject to the recount; requiring that
15 the manual count be considered the official and accurate record of the votes cast in
16 a recount; establishing the Election Audit Workgroup; providing for the composition,
17 chair, and staffing of the Workgroup; prohibiting a member of the Workgroup from
18 receiving certain compensation, but authorizing the reimbursement of certain
19 expenses; requiring the Workgroup to recommend certain regulations for adoption
20 by the State Board on or before a certain date; requiring the Workgroup to direct and
21 oversee a certain pilot tabulation audit; requiring the Workgroup to submit a report
22 on certain matters to the State Board and certain committees of the General
23 Assembly on or before a certain date; defining certain terms; providing for the
24 termination of certain provisions of this Act; and generally relating to audits of
25 election results.

26 BY repealing and reenacting, with amendments,
27 Article – Election Law
28 Section 11–308 and 12–106
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2010 Replacement Volume and 2014 Supplement)

BY adding to

Article – Election Law

Section 11–309

Annotated Code of Maryland

(2010 Replacement Volume and 2014 Supplement)

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

Article – Election Law

11–308.

(a) Within 10 days after any election, and before certifying the results of the election, each board of canvassers shall:

(1) COMPLETE BALLOT ACCOUNTING AND RECONCILIATION IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION;

(2) VERIFY THE VOTE COUNT IN A CONTEST SUBJECT TO A TABULATION AUDIT IN ACCORDANCE WITH § 11–309 OF THIS SUBTITLE; AND

(3) verify the vote count in ALL CONTESTS IN accordance with the regulations prescribed by the State Board for the voting system used in that election.

(B) THE STATE BOARD SHALL ADOPT REGULATIONS REQUIRING:

(1) ACCOUNTING FOR ALL BALLOTS USED IN AN ELECTION, INCLUDING THOSE BALLOTS USED IN EARLY VOTING CENTERS AND POLLING PLACES AND THOSE TRANSMITTED TO ABSENTEE VOTERS BY MAIL AND ELECTRONICALLY; AND

(2) PUBLIC REPORTING ON THE STATE BOARD’S WEB SITE OF:

(I) THE NUMBER OF ABSENTEE BALLOTS SENT, RETURNED, AND COUNTED; AND

(II) A RECONCILIATION OF:

1. THE NUMBER OF VOTERS WHO CHECKED IN TO VOTE AT EACH EARLY VOTING CENTER OR POLLING PLACE AND THE NUMBER OF VOTES CAST; AND

1 **2. THE VOTE TOTALS ON THE:**

2 **A. VOTING MACHINE MEMORY CARDS;**

3 **B. PAPER REPORTS PRODUCED BY EACH VOTING**
4 **MACHINE; AND**

5 **C. ELECTION MANAGEMENT SYSTEM.**

6 **[(b)] (C)** Upon completion of the verification process, **INCLUDING BALLOT**
7 **ACCOUNTING AND RECONCILIATION UNDER SUBSECTION (B) OF THIS SECTION AND**
8 **A TABULATION AUDIT REQUIRED UNDER § 11-309 OF THIS SUBTITLE,** the members of
9 the board of canvassers shall:

10 (1) certify in writing that the election results are accurate and that the vote
11 has been verified; and

12 (2) provide copies of the election results to the persons specified under §
13 11-401 of this title.

14 **[(c)] (D)** (1) If a member of a board of canvassers dissents from a
15 determination of an election result or reasonably believes that the conduct of a local board
16 member or local board proceeding was not in compliance with applicable law or regulation
17 or was otherwise illegal or irregular, the member shall prepare and file with the local board
18 a distinct written statement of the reasons for the dissent or concern.

19 (2) The State Board shall maintain a file of the written statements
20 submitted under this subsection by members of the local boards.

21 **11-309.**

22 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
23 **INDICATED.**

24 **(2) “AUDIT UNIT” MEANS A GROUP OF BALLOTS SELECTED AT**
25 **RANDOM FOR AUDITING.**

26 **(3) “MACHINE COUNT” MEANS THE PROCESS OF VOTE TALLYING AND**
27 **VOTE TABULATION BY THE STATE’S CERTIFIED ELECTRONIC VOTING SYSTEM.**

28 **(4) “MANUAL COUNT” MEANS A PROCESS OF VOTE TALLYING AND**
29 **VOTE TABULATION IN WHICH VOTER-VERIFIED PAPER BALLOTS ARE INSPECTED BY**
30 **HAND AND EYE TO DETERMINE THE INTENT OF THE VOTER.**

1 **(5) “MARGIN OF DIFFERENCE” MEANS THE DIFFERENCE BETWEEN**
2 **THE NUMBER OF VOTES RECEIVED BY THE APPARENT WINNING CANDIDATE AND THE**
3 **NUMBER OF VOTES RECEIVED BY THE APPARENT LOSING CANDIDATE WITH THE**
4 **HIGHEST NUMBER OF VOTES, EXPRESSED AS A PERCENTAGE OF THE TOTAL NUMBER**
5 **OF VOTES CAST IN A CONTEST.**

6 **(6) “STATEWIDE CONTEST” MEANS A CONTEST FOR THE OFFICES OF**
7 **PRESIDENT OF THE UNITED STATES, UNITED STATES SENATOR, GOVERNOR AND**
8 **LIEUTENANT GOVERNOR, ATTORNEY GENERAL, AND COMPTROLLER.**

9 **(7) “TABULATION AUDIT” MEANS VERIFICATION OR CORRECTION OF**
10 **THE MACHINE COUNT OF VOTES CAST IN A CONTEST THROUGH A MANUAL COUNT OF**
11 **SOME OR ALL VOTES CAST IN THE CONTEST.**

12 **(8) “VOTER-VERIFIED PAPER BALLOT” MEANS A VOTER-VERIFIABLE**
13 **PAPER RECORD AS DEFINED IN § 9-102 OF THIS ARTICLE.**

14 **(B) (1) A TABULATION AUDIT OF THE VOTE COUNT SHALL BE CONDUCTED**
15 **OF AT LEAST ALL STATEWIDE CONTESTS IN THE PRIMARY ELECTION AND THE**
16 **GENERAL ELECTION IN 2018 AND IN EACH SUBSEQUENT REGULARLY SCHEDULED**
17 **PRIMARY ELECTION AND GENERAL ELECTION.**

18 **(2) A TABULATION AUDIT UNDER THIS SECTION SHALL BE**
19 **COMPLETED BEFORE THE RESULTS OF AN ELECTION MAY BE CERTIFIED IN**
20 **ACCORDANCE WITH § 11-308 OF THIS SUBTITLE.**

21 **(C) (1) A TABULATION AUDIT UNDER THIS SECTION SHALL CONSIST OF A**
22 **COMPARISON OF A MANUAL COUNT WITH THE MACHINE COUNT OF THE SAME**
23 **BALLOTS.**

24 **(2) IF THERE IS A DISCREPANCY BETWEEN THE MACHINE COUNT AND**
25 **A MANUAL COUNT, THE MANUAL COUNT SHALL BE CONSIDERED THE OFFICIAL AND**
26 **ACCURATE RECORD OF THE VOTES CAST.**

27 **(D) THE STATE BOARD SHALL ADOPT REGULATIONS GOVERNING**
28 **TABULATION AUDITS THAT PROVIDE FOR:**

29 **(1) PUBLIC OBSERVATION AND COMMENT ON THE AUDIT PROCESS IN**
30 **A MANNER THAT DOES NOT INTERFERE WITH THE ACCURACY OR INTEGRITY OF THE**
31 **AUDIT PROCESS;**

32 **(2) SELECTION OF CONTESTS TO BE AUDITED IN ADDITION TO THOSE**
33 **CONTESTS REQUIRED TO BE AUDITED UNDER SUBSECTION (B)(1) OF THIS SECTION;**

1 **(3) RANDOM SELECTION OF APPROPRIATE AUDIT UNITS FROM**
2 **AMONG ALL BALLOTS CAST IN A CONTEST, INCLUDING EARLY, POLLING PLACE,**
3 **ABSENTEE, AND PROVISIONAL BALLOTS;**

4 **(4) PUBLIC REPORTING ON THE STATE BOARD'S WEB SITE OF THE**
5 **PRELIMINARY RESULTS FOR ALL SELECTED AUDIT UNITS;**

6 **(5) AUDITING ONLY THE NUMBER OF AUDIT UNITS NECESSARY,**
7 **BASED ON THE MARGIN OF DIFFERENCE IN AN AUDITED CONTEST, TO ATTAIN AN**
8 **APPROPRIATELY HIGH LEVEL OF CONFIDENCE THAT THE CORRECT OUTCOME HAS**
9 **BEEN DETERMINED;**

10 **(6) IF AN AUDIT REVEALS DISCREPANCIES BETWEEN THE MACHINE**
11 **COUNT AND THE MANUAL COUNT, PROCEDURES FOR:**

12 **(I) INVESTIGATING AND DETERMINING THE CAUSE OF THE**
13 **DISCREPANCIES; AND**

14 **(II) EXPANDING THE MANUAL COUNT TO ADDITIONAL AUDIT**
15 **UNITS AS APPROPRIATE TO DETERMINE THE CORRECT OUTCOME OF A CONTEST;**

16 **(7) THE SELECTION OF ADDITIONAL SPECIFIC AUDIT UNITS FOR**
17 **INCLUSION IN AN AUDIT AT THE REQUEST OF A CANDIDATE, A BALLOT ISSUE**
18 **COMMITTEE, A POLITICAL PARTY, THE STATE BOARD, A LOCAL BOARD, OR ANY**
19 **OTHER INTERESTED PERSON AS APPROPRIATE;**

20 **(8) PAYMENT OF THE COST OF ANY ADDITIONAL AUDITING UNDER**
21 **ITEM (7) OF THIS SUBSECTION BY:**

22 **(I) THE PERSON REQUESTING THE ADDITIONAL AUDITING; OR**

23 **(II) IF THE ADDITIONAL AUDITING REVEALS SIGNIFICANT**
24 **DISCREPANCIES, THE APPROPRIATE LOCAL BOARD;**

25 **(9) PUBLIC REPORTING ON THE STATE BOARD'S WEB SITE OF THE**
26 **RESULTS OF AN AUDIT, INCLUDING:**

27 **(I) ANY DISCREPANCIES BETWEEN THE MACHINE COUNT AND**
28 **THE MANUAL COUNT REVEALED BY THE AUDIT;**

29 **(II) HOW ANY DISCREPANCIES BETWEEN THE MACHINE COUNT**
30 **AND THE MANUAL COUNT WERE RESOLVED; AND**

1 (III) ANY ACTIONS TO BE TAKEN TO IMPROVE ELECTION
2 PROCEDURES IN RESPONSE TO THE AUDIT; AND

3 (10) ANY OTHER PROVISION NECESSARY TO CARRY OUT THE
4 REQUIREMENTS OF THIS SECTION.

5 12-106.

6 (a) In accordance with regulations adopted by the State Board, the local board
7 shall:

8 (1) conduct the recount and certify the official result of the election or
9 question which is the subject of the recount; and

10 (2) ensure the public's ability to be present while the recount is conducted.

11 (B) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
12 MEANINGS INDICATED.

13 (II) "MACHINE COUNT" HAS THE MEANING STATED IN §
14 11-309(A)(3) OF THIS ARTICLE.

15 (III) "MANUAL COUNT" HAS THE MEANING STATED IN §
16 11-309(A)(4) OF THIS ARTICLE.

17 (2) A RECOUNT UNDER THIS SUBTITLE SHALL CONSIST OF A MANUAL
18 COUNT OF THE VOTES SUBJECT TO THE RECOUNT.

19 (3) IF THERE IS A DISCREPANCY BETWEEN THE MACHINE COUNT AND
20 THE MANUAL COUNT IN A RECOUNT UNDER THIS SUBTITLE, THE MANUAL COUNT
21 SHALL BE CONSIDERED THE OFFICIAL AND ACCURATE RECORD OF THE VOTES CAST.

22 [(b)] (C) The State Board shall monitor and support the work of any local board
23 conducting a recount to ensure compliance with this subtitle.

24 [(c)] (D) The State Board shall establish a procedure that will allow petitioners
25 and counterpetitioners to request that a recount be terminated prior to its completion.

26 [(d)] (E) When a recount is completed, the local board, and when appropriate the
27 State Board, shall correct the primary, general, or special election returns and certificates
28 that were made by a canvassing board.

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

1 (a) There is an Election Audit Workgroup.

2 (b) The Workgroup consists of the following members:

3 (1) the State Administrator of Elections, or the State Administrator's
4 designee; and

5 (2) the following members appointed by the Governor:

6 (i) a representative of a local board of elections;

7 (ii) a representative of the State's voting system vendor;

8 (iii) an auditor employed by the Office of Legislative Audits in the
9 Department of Legislative Services;

10 (iv) an academic statistician with expertise in the auditing of election
11 results;

12 (v) an attorney with expertise in election law;

13 (vi) a representative of an election reform advocacy group with an
14 interest in election auditing; and

15 (vii) an individual with a demonstrated record of expertise and
16 engagement in election auditing.

17 (c) The State Administrator or the State Administrator's designee shall serve as
18 chair of the Workgroup.

19 (d) The State Board of Elections and the Department of Legislative Services shall
20 provide staff for the Workgroup.

21 (e) A member of the Workgroup:

22 (1) may not receive compensation as a member of the Workgroup; but

23 (2) is entitled to reimbursement for expenses under the Standard State
24 Travel Regulations, as provided in the State budget.

25 (f) The Workgroup shall:

26 (1) solicit public comments throughout its deliberations;

27 (2) make information concerning its deliberations and activities publicly
28 available in a timely manner;

1 (3) on or before July 1, 2016, recommend for adoption by the State Board
2 of Elections the regulations required under § 11–309(d) of the Election Law Article as
3 enacted by this Act;

4 (4) direct and oversee a pilot project that:

5 (i) consists of a tabulation audit of the contest for President of the
6 United States in the 2016 general election; and

7 (ii) shall be conducted in accordance with the requirements and
8 regulations under § 11–309 of the Election Law Article as enacted by this Act to the extent
9 practicable, except that the audit:

10 1. shall be conducted after the results of the election are
11 certified; and

12 2. may not alter the certified results of the election; and

13 (5) on or before June 30, 2017, submit to the State Board of Elections and,
14 in accordance with § 2–1246 of the State Government Article, the Senate Education,
15 Health, and Environmental Affairs Committee and the House Committee on Ways and
16 Means a report that includes:

17 (i) a thorough analysis of the pilot tabulation audit of the contest for
18 President of the United States in the 2016 general election; and

19 (ii) recommendations regarding:

20 1. auditing of other aspects of election administration,
21 including the voter registration process; and

22 2. the potential use of signature verification to validate that
23 absentee ballots were properly cast.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
25 1, 2015. Section 2 of this Act shall remain effective for a period of 3 years and, at the end of
26 June 30, 2018, with no further action required by the General Assembly, Section 2 of this
27 Act shall be abrogated and of no further force and effect.