

HOUSE BILL 759

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By: **Delegate Kaiser**

Introduced and read first time: January 29, 2021

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; altering the scope
5 of the automated software audit to be of the electronic images of not more than a
6 certain percentage of ballots cast in an election, rather than of all ballots cast;
7 requiring the State Board, in collaboration with the local boards, to conduct a certain
8 risk-limiting audit after each statewide election; repealing a requirement that the
9 State Board conduct a certain manual audit after each statewide general election;
10 repealing the authority of the State Board to conduct a certain manual audit after
11 each statewide primary election; repealing certain provisions of law governing the
12 conduct of a certain manual audit; requiring the State Board, in collaboration with
13 the local boards, to conduct a risk-limiting audit of at least one statewide contest, at
14 least one countywide or other local contest in each county, and any other contests
15 selected for audit by the State Board after each statewide election; requiring that a
16 risk-limiting audit manually examine certain paper records or batches of certain
17 paper records in a certain manner, be completed before certification of the election
18 results, and be observable by the public to a certain extent; requiring the official
19 result of an election to be altered to match the result found by a risk-limiting audit
20 if the risk-limiting audit finds that the electronic count is incorrect; requiring the
21 State Board to post a certain report on its website concerning a risk-limiting audit
22 within a certain period of time; requiring that certain regulations adopted by the
23 State Board be comprehensive; requiring that certain regulations include certain
24 criteria, the risk limit, and the audit method; requiring the State Administrator of
25 Elections to convene a Risk-Limiting Audits Workgroup; requiring the Workgroup
26 to consist of certain persons selected by the State Administrator; requiring the State
27 Administrator, or the State Administrator's designee, to serve as chair of the
28 Workgroup; requiring that the first meeting of the Workgroup be held on or before a
29 certain date; requiring the Workgroup to draft proposed text of certain risk-limiting
30 audit regulations; requiring the State Board to adopt certain regulations on or before
31 a certain date; defining certain terms; altering a certain definition; repealing a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain definition; making conforming changes; and generally relating to postelection
2 tabulation audits.

3 BY repealing and reenacting, with amendments,
4 Article – Election Law
5 Section 11–309
6 Annotated Code of Maryland
7 (2017 Replacement Volume and 2020 Supplement)

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

10 **Article – Election Law**

11 11–309.

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

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

15 **[(2)] (3) “Manual [audit] COUNT”** means inspection of voter–verifiable
16 paper records by hand and eye to obtain vote totals in a contest [that are compared to the
17 vote totals produced for that contest by the electronic voting system].

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

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

21 (ii) in a gubernatorial election year, the gubernatorial election held
22 4 years earlier.]

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

29 **[(4)] (5) “Voter–verifiable paper record”** has the meaning stated in §
30 9–102 of this article.

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

1 (1) an automated software audit of the electronic images of [all] **NOT**
2 **MORE THAN 25% OF THE** ballots cast in the election; and

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

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

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

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

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

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

13 1. at least one randomly chosen precinct in each county; and

14 2. additional precincts selected by the State Board; and

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

18 1. early votes;

19 2. absentee votes; and

20 3. provisional votes.

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

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

24 (i) expand the manual audit; and

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

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

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

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

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

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

8 (e) An audit under this section:

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

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

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

15 (I) **AT LEAST ONE STATEWIDE CONTEST;**

16 (II) **AT LEAST ONE COUNTYWIDE OR OTHER LOCAL CONTEST IN**
17 **EACH COUNTY; AND**

18 (III) **ANY OTHER CONTESTS SELECTED FOR AUDIT BY THE STATE**
19 **BOARD.**

20 (2) **A RISK-LIMITING AUDIT SHALL:**

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

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.**

30 (3) **IF A RISK-LIMITING AUDIT FINDS THAT THE ELECTRONIC COUNT**

1 IS INCORRECT, THE OFFICIAL RESULT OF THE ELECTION SHALL BE ALTERED TO
2 MATCH THE RESULT FOUND BY THE RISK-LIMITING AUDIT.

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

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

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

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

13 (II) THE RISK LIMIT; AND

14 (III) THE AUDIT METHOD.

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

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

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

19 (3) "State Administrator" means the State Administrator of Elections.

20 (4) "State Board" means the State Board of Elections.

21 (b) (1) The State Administrator shall convene a Risk-Limiting Audits
22 Workgroup.

23 (2) The Workgroup shall consist of the following persons selected by the
24 State Administrator:

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

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

27 (iii) local election officials.

28 (3) The State Administrator, or the State Administrator's designee, shall

1 serve as chair of the Workgroup.

2 (4) The first meeting of the Workgroup shall be held on or before June 10,
3 2021.

4 (5) The Workgroup shall:

5 (i) draft proposed text of the comprehensive risk-limiting audit
6 regulations required under subsection (c) of this section for consideration by the State
7 Board; and

8 (ii) meet periodically thereafter to make recommendations to the
9 State Board to revise and improve the risk-limiting audit process as appropriate.

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

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June
14 1, 2021.