

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 759
Ways and Means

(Delegate Kaiser)

Education, Health, and Environmental Affairs

Election Law - Risk-Limiting Audits Workgroup

This bill requires the State Administrator of Elections to convene a Risk-Limiting Audits Workgroup to draft, by December 17, 2021, (1) a specified plan to conduct a risk-limiting audit after each statewide election and (2) proposed legislation that would enact the plan. **The bill takes effect June 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures may increase, in FY 2022, by approximately \$12,500 per expert participating in the workgroup, to the extent compensation of those experts is necessary.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The State Administrator of Elections must convene a Risk-Limiting Audits Workgroup consisting of (1) experts in the theory and practice of risk-limiting audits; (2) at least one representative of the voting system vendor; and (3) local election officials. The State Administrator, or the State Administrator's designee, must serve as the chair of the workgroup. The workgroup's first meeting must be held by June 10, 2021.

“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. “Risk limit” means the small, predetermined maximum chance that a risk-limiting audit will not require 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.

The workgroup must (1) draft a plan to conduct a risk-limiting audit of at least one statewide contest and at least one countywide or other local contest in each county after each statewide election; (2) draft proposed legislation for consideration by the General Assembly during the 2022 regular session that would enact the plan for conducting risk-limiting audits after each statewide election; and (3) meet periodically thereafter to make recommendations to the State Board of Elections (SBE) to revise and improve the risk-limiting audit process as appropriate.

The bill establishes specified requirements for the plan, including that it require a risk-limiting audit to be completed before certification of the election results. The plan must include (1) criteria for determining the contests to be audited; (2) the risk limit; and (3) the audit method.

The workgroup must submit its plan and proposed legislation to the Senate Education, Health, and Environmental Affairs Committee and the House Committee on Ways and Means by December 17, 2021.

Current Law:

Post-election Audit Requirements

Pursuant to Chapter 523 of 2018, SBE is required to conduct an audit of the accuracy of the voting system’s tabulation of votes, following each statewide general election, by completing (1) an automated software audit of the electronic images of all ballots cast in the election and (2) a specified manual audit of voter-verifiable paper records. Following each statewide primary election, SBE (1) must 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 SBE.

Manual Audit (Post-general Election) and Reporting

The manual audit of voter-verifiable paper records required to be conducted following each statewide general election must be of (1) at least 2% of precincts statewide, including

at least one randomly chosen precinct in each county and additional precincts selected by SBE and (2) a number of votes equal to at least 1% of the statewide total in the previous comparable general election of early votes, of absentee votes, and of provisional votes, including at least a minimum number of early votes, absentee votes, and provisional votes in each county, as prescribed by SBE. “Previous comparable general election” is defined as (1) in a presidential election year, the presidential election held four years earlier and (2) in a gubernatorial election year, the gubernatorial election held four years earlier.

The manual audit must be completed within 120 days after the general election. If the manual audit shows a discrepancy, SBE is authorized to expand the manual audit and take any other actions it considers necessary to resolve the discrepancy.

Within 14 days after the conclusion of the audit, SBE must post a report on its website that describes (1) 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; (2) the results of the manual audit; and (3) any discrepancy shown by the manual audit and how the discrepancy was resolved. SBE must allow for public observation of each part of the manual audit process to the extent practicable.

SBE Regulations and the Effect of the Audits

An audit pursuant to the provisions established under Chapter 523 may not have any effect on the certified election results and must be used to improve the voting system and voting process for future elections.

SBE is required to adopt regulations to implement the provisions established under Chapter 523.

State Fiscal Effect: General fund expenditures may increase, in fiscal 2022, by approximately \$12,500 for each expert in the theory and practice of risk-limiting audits that SBE may need to compensate for their participation in the workgroup. This estimate is based on a past SBE cost for an expert, in the development of an audit process.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): State Board of Elections; Department of Legislative Services

Fiscal Note History:
rh/hlb

First Reader - February 14, 2021

Third Reader - March 23, 2021

Revised - Amendment(s) - March 23, 2021

Revised - Updated Information - March 23, 2021

Analysis by: Scott D. Kennedy

Direct Inquiries to:

(410) 946-5510

(301) 970-5510