

HOUSE BILL 40

G1
HB 572/23 – W&M

(PRE-FILED)

4lr0962

By: **Delegate Kaiser**

Requested: October 13, 2023

Introduced and read first time: January 10, 2024

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 the State Board of Elections, in collaboration with the local
4 boards of elections, to conduct a risk-limiting audit after each statewide election;
5 authorizing the State Board, in collaboration with the local boards, to conduct a
6 risk-limiting audit after a special general election; authorizing, rather than
7 requiring, the State Board, in collaboration with the local boards, to conduct an
8 automated software audit after a statewide election; repealing a requirement to
9 conduct a manual audit after each statewide general election; requiring the State
10 Board, in collaboration with certain local boards, to conduct pilot risk-limiting
11 audits; and generally relating to postelection tabulation audits.

12 BY repealing and reenacting, with amendments,
13 Article – Election Law
14 Section 11-309
15 Annotated Code of Maryland
16 (2022 Replacement Volume and 2023 Supplement)

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

19 **Article – Election Law**

20 11-309.

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

22 **(2) “AUTOMATED SOFTWARE AUDIT” MEANS AN AUDIT OF**
23 **ELECTRONIC IMAGES OF BALLOTS CAST IN AN ELECTION USING SOFTWARE THAT IS**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 INDEPENDENT OF THE VOTING SYSTEM.

2 (3) "ELECTRONIC COUNT" MEANS THE VOTE TOTALS PRODUCED BY
3 THE VOTING SYSTEM.

4 (4) "LOCAL CONTEST" MEANS A CONTEST THAT:

5 (I) IS NOT A STATEWIDE CONTEST; AND

6 (II) APPEARS ON THE BALLOT IN ALL OR PART OF A COUNTY,
7 INCLUDING A CONTEST TO REPRESENT A DISTRICT THAT INCLUDES MORE THAN ONE
8 COUNTY.

9 [(2)] (5) "Manual [audit] COUNT" means inspection of voter-verifiable
10 paper records by hand and eye to obtain vote totals in a contest [that are compared to the
11 vote totals produced for that contest by the electronic voting system].

12 [(3) "Previous comparable general election" means:

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

15 (ii) in a gubernatorial election year, the gubernatorial election held
16 4 years earlier.]

17 (6) "RISK LIMIT" MEANS THE SMALL, PREDETERMINED MAXIMUM
18 CHANCE THAT A RISK-LIMITING AUDIT WILL NOT REQUIRE A FULL MANUAL COUNT
19 OF VOTER-VERIFIABLE PAPER RECORDS IN AN AUDITED CONTEST IF A FULL
20 MANUAL COUNT OF THE VOTER-VERIFIABLE PAPER RECORDS WOULD FIND A
21 DIFFERENT OUTCOME THAN THE OUTCOME DETERMINED BY THE ELECTRONIC
22 COUNT.

23 (7) "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)] (8) "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 shall conduct an
32 audit of the accuracy of the voting system's tabulation of votes by completing:

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

3 (2) a manual audit of voter-verifiable paper records in accordance with
4 subsection (d) 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 **(B) (1) FOLLOWING EACH STATEWIDE ELECTION, THE STATE BOARD, IN**
13 **COLLABORATION WITH THE LOCAL BOARDS, SHALL AUDIT THE ACCURACY OF THE**
14 **VOTING SYSTEM'S TABULATION OF VOTES BY CONDUCTING A RISK-LIMITING AUDIT**
15 **OF:**

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

17 **(II) AT LEAST ONE LOCAL CONTEST IN EACH COUNTY; AND**

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

20 **(2) FOLLOWING A SPECIAL GENERAL ELECTION, THE STATE BOARD,**
21 **IN COLLABORATION WITH THE LOCAL BOARDS, MAY CONDUCT A RISK-LIMITING**
22 **AUDIT.**

23 **(3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**
24 **STATE BOARD SHALL SELECT THE SPECIFIC CONTESTS TO BE AUDITED UNDER**
25 **PARAGRAPH (1) OF THIS SUBSECTION.**

26 **(II) A CONTEST FOR AN OFFICE FOR WHICH THE TERM BEGINS**
27 **IN THE MONTH OF DECEMBER MAY NOT BE SELECTED FOR AUDIT UNLESS THE**
28 **ELECTION DIRECTOR FOR THE COUNTY AGREES TO AUDIT THE CONTEST.**

29 **(4) A RISK-LIMITING AUDIT SHALL:**

30 **(I) MANUALLY EXAMINE RANDOMLY CHOSEN INDIVIDUAL**

1 VOTER-VERIFIABLE PAPER RECORDS OR BATCHES OF VOTER-VERIFIABLE PAPER
2 RECORDS UNTIL THE RISK LIMIT IS MET;

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

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

7 (5) IF A RISK-LIMITING AUDIT FINDS THAT THE ELECTION OUTCOME
8 DETERMINED BY THE ELECTRONIC COUNT IS INCORRECT, THE OFFICIAL RESULT OF
9 THE ELECTION SHALL BE ALTERED TO MATCH THE OUTCOME DETERMINED BY THE
10 RISK-LIMITING AUDIT.

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

14 (C) IN ADDITION TO THE RISK-LIMITING AUDIT REQUIRED UNDER
15 SUBSECTION (B) OF THIS SECTION, THE STATE BOARD, IN COLLABORATION WITH
16 THE LOCAL BOARDS, MAY CONDUCT AN AUTOMATED SOFTWARE AUDIT AFTER A
17 STATEWIDE ELECTION.

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

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

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

24 (II) THE RISK LIMIT; AND

25 (III) THE AUDIT METHOD.

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

27 (a) The State Board of Elections, in collaboration with the appropriate local
28 boards of elections, shall conduct pilot risk-limiting audits in at least three counties of at
29 least three contests on the November 2024 general election ballot.

30 (b) The State Board shall:

31 (1) select the contests to be audited; and

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

2 (c) A pilot risk-limiting audit may not have any effect on the certified election
3 results.

4 (d) On or before January 15, 2025, the State Board, after consultation with the
5 local boards, shall submit a report to the Senate Education, Energy, and the Environment
6 Committee and the House Ways and Means Committee, in accordance with § 2-1257 of the
7 State Government Article, that includes:

8 (1) an analysis of the pilot risk-limiting audits conducted under subsection
9 (a) of this section; and

10 (2) any recommended changes to the Election Law Article that the State
11 Board, after consultation with the local boards, considers necessary to implement
12 risk-limiting audits and other postelection tasks in a timely manner, including any
13 recommended changes to postelection deadlines.

14 (e) It is the intent of the General Assembly that the State Board, after
15 consultation with the local boards, shall adopt any amendments to regulations that the
16 State Board considers necessary to implement risk-limiting audits and other postelection
17 tasks in a timely manner, including changes to postelection deadlines.

18 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take
19 effect January 1, 2025.

20 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section
21 3 of this Act, this Act shall take effect June 1, 2024.