

HOUSE BILL 759

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11r1912

By: **Delegate Kaiser**

Introduced and read first time: January 29, 2021

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 4, 2021

CHAPTER _____

1 AN ACT concerning

2 **Election Law – ~~Postelection Tabulation Audits – Risk Limiting Audits~~**
3 **Risk-Limiting Audits Workgroup**

4 FOR the purpose of ~~requiring that the State Board of Elections conduct a certain automated~~
5 ~~software audit in collaboration with the local boards of elections; altering the scope~~
6 ~~of the automated software audit to be of the electronic images of not more than a~~
7 ~~certain percentage of ballots cast in an election, rather than of all ballots cast;~~
8 ~~requiring the State Board, in collaboration with the local boards, to conduct a certain~~
9 ~~risk limiting audit after each statewide election; repealing a requirement that the~~
10 ~~State Board conduct a certain manual audit after each statewide general election;~~
11 ~~repealing the authority of the State Board to conduct a certain manual audit after~~
12 ~~each statewide primary election; repealing certain provisions of law governing the~~
13 ~~conduct of a certain manual audit; requiring the State Board, in collaboration with~~
14 ~~the local boards, to conduct a risk limiting audit of at least one statewide contest, at~~
15 ~~least one countywide or other local contest in each county, and any other contests~~
16 ~~selected for audit by the State Board after each statewide election; requiring that a~~
17 ~~risk limiting audit manually examine certain paper records or batches of certain~~
18 ~~paper records in a certain manner, be completed before certification of the election~~
19 ~~results, and be observable by the public to a certain extent; requiring the official~~
20 ~~result of an election to be altered to match the result found by a risk limiting audit~~
21 ~~if the risk limiting audit finds that the electronic count is incorrect; requiring the~~
22 ~~State Board to post a certain report on its website concerning a risk limiting audit~~
23 ~~within a certain period of time; requiring that certain regulations adopted by the~~
24 ~~State Board be comprehensive; requiring that certain regulations include certain~~
25 ~~criteria, the risk limit, and the audit method; requiring the State Administrator of~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Elections to convene a Risk-Limiting Audits Workgroup; requiring the Workgroup
 2 to consist of certain persons selected by the State Administrator; requiring the State
 3 Administrator, or the State Administrator's designee, to serve as chair of the
 4 Workgroup; requiring that the first meeting of the Workgroup be held on or before a
 5 certain date; requiring the Workgroup to draft ~~proposed text of certain risk-limiting~~
 6 ~~audit regulations; requiring the State Board to adopt certain regulations on or before~~
 7 ~~a certain date; defining certain terms; altering a certain definition; repealing a~~
 8 ~~certain definition; making conforming changes; and generally relating to postelection~~
 9 ~~tabulation audits~~ a plan to conduct a risk-limiting audit of certain contests after
 10 each statewide election and proposed legislation for consideration by the General
 11 Assembly that would enact the plan; requiring the plan for conducting risk-limiting
 12 audits drafted by the Workgroup to include certain requirements and certain
 13 elements; requiring the Workgroup to submit its plan for conducting risk-limiting
 14 audits and its proposed legislation that would enact the plan to certain committees
 15 of the General Assembly on or before a certain date; defining certain terms; and
 16 generally relating to a Risk-Limiting Audits Workgroup.

17 ~~BY repealing and reenacting, with amendments,~~
 18 ~~Article — Election Law~~
 19 ~~Section 11-309~~
 20 ~~Annotated Code of Maryland~~
 21 ~~(2017 Replacement Volume and 2020 Supplement)~~

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

24 ~~Article — Election Law~~

25 ~~11-309.~~

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

27 ~~(2) "ELECTRONIC COUNT" MEANS THE VOTE TOTALS PRODUCED BY~~
 28 ~~THE VOTING SYSTEM.~~

29 ~~[(2)] (3) "Manual [audit] COUNT" means inspection of voter-verifiable~~
 30 ~~paper records by hand and eye to obtain vote totals in a contest [that are compared to the~~
 31 ~~vote totals produced for that contest by the electronic voting system].~~

32 ~~(3) "Previous comparable general election" means:~~

33 ~~(i) in a presidential election year, the presidential election held 4~~
 34 ~~years earlier; and~~

35 ~~(ii) in a gubernatorial election year, the gubernatorial election held~~
 36 ~~4 years earlier.]~~

~~(4) "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.~~

~~[(4)] (5) "Voter-verifiable paper record" has the meaning stated in § 9-102 of this article.~~

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

~~(1) an automated software audit of the electronic images of [all] NOT MORE THAN 25% OF THE ballots cast 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.~~

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

~~(1) shall 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 the State Board.~~

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

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

~~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:~~

~~1. early votes;~~

~~2. absentee votes; and~~

~~3. provisional votes.~~

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

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

~~(i) expand the manual audit; and~~

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

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

~~(i) 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;~~

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

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

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

~~(e) An audit under this section:~~

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

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

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

~~(I) AT LEAST ONE STATEWIDE CONTEST;~~

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

~~(III) ANY OTHER CONTESTS SELECTED FOR AUDIT BY THE STATE BOARD.~~

~~(2) A RISK-LIMITING AUDIT SHALL:~~

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

~~(H) BE COMPLETED BEFORE CERTIFICATION OF THE ELECTION RESULTS; AND~~

~~(HH) BE OBSERVABLE BY THE PUBLIC TO THE MAXIMUM EXTENT PRACTICABLE.~~

~~(3) IF A RISK LIMITING AUDIT FINDS THAT THE ELECTRONIC COUNT IS INCORRECT, THE OFFICIAL RESULT OF THE ELECTION SHALL BE ALTERED TO MATCH THE RESULT FOUND BY THE RISK LIMITING AUDIT.~~

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

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

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

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

~~(H) THE RISK LIMIT; AND~~

~~(HH) THE AUDIT METHOD.~~

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

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

(2) "Electronic count" means the vote totals produced by the voting system.

(3) "Manual count" means inspection of voter-verifiable paper records by hand and eye to obtain vote totals in a contest.

(4) “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.

~~(2) (5) “Risk-limiting audit” has the meaning stated in § 11-309 of the Election Law Article, as enacted by Section 1 of this Act~~ 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.

~~(3) (6) “State Administrator” means the State Administrator of Elections.~~

~~(4) (7) “State Board” means the State Board of Elections.~~

(8) “Voter-verifiable paper record” has the meaning stated in § 9-102 of the Election Law Article.

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

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

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

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

(iii) local election officials.

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

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

(5) The Workgroup shall:

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

(ii) 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;

1 (ii) draft proposed legislation for consideration by the General
2 Assembly during the 2022 regular session that would enact the plan for conducting
3 risk-limiting audits after each statewide election; and

4 (iii) meet periodically thereafter to make recommendations to the
5 State Board to revise and improve the risk-limiting audit process as appropriate.

6 (c) ~~The State Board shall adopt the comprehensive regulations required under §~~
7 ~~11-309(d) of the Election Law Article, as enacted by Section 1 of this Act, on or before~~
8 ~~January 1, 2022~~ The plan for conducting risk-limiting audits drafted by the Workgroup
9 shall:

10 (1) require manual examination of randomly chosen individual
11 voter-verifiable paper records or batches of voter-verifiable paper records until the
12 maximum chance of a full manual count finding a different outcome than the outcome
13 determined by the electronic count is no larger than the risk limit, or until there has been
14 a full manual count;

15 (2) require a risk-limiting audit to:

16 (i) be completed before certification of the election results; and

17 (ii) be observable by the public to the maximum extent practicable;

18 (3) require that, if a risk-limiting audit finds that the election outcome
19 determined by the electronic count is incorrect, the official result of the election be altered
20 to match the outcome determined by the risk-limiting audit;

21 (4) require that a public report concerning the risk-limiting audit process
22 and the results of the risk-limiting audit be released after each statewide election; and

23 (5) include:

24 (i) criteria for determining the contests to be audited;

25 (ii) the risk limit; and

26 (iii) the audit method.

27 (d) On or before December 17, 2021, the Risk-Limiting Audits Workgroup shall
28 submit its plan for conducting risk-limiting audits and its proposed legislation that would
29 enact the plan to the Senate Education, Health, and Environmental Affairs Committee and
30 the Committee on Ways and Means in accordance with § 2-1257 of the State Government
31 Article.

32 SECTION ~~2~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 June 1, 2021.