

HOUSE BILL 745

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HB 759/21 – W&M

2lr1357
CF 2lr1370

By: **Delegates Kaiser and Wilkins**

Introduced and read first time: February 3, 2022

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

11 BY repealing and reenacting, with amendments,
12 Article – Election Law
13 Section 11–309
14 Annotated Code of Maryland
15 (2017 Replacement Volume and 2021 Supplement)

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

18 **Article – Election Law**

19 11–309.

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

21 **(2) “AUTOMATED SOFTWARE AUDIT” MEANS AN AUDIT OF**
22 **ELECTRONIC IMAGES OF BALLOTS CAST IN AN ELECTION USING SOFTWARE THAT IS**
23 **INDEPENDENT OF THE VOTING SYSTEM.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **[(2)] (4) “Manual [audit] COUNT”** means inspection of voter-verifiable
4 paper records by hand and eye to obtain vote totals in a contest [that are compared to the
5 vote totals produced for that contest by the electronic voting system].

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

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

9 (ii) in a gubernatorial election year, the gubernatorial election held
10 4 years earlier.]

11 **(5) “RISK LIMIT” MEANS THE SMALL, PREDETERMINED MAXIMUM**
12 **CHANCE THAT A RISK-LIMITING AUDIT WILL NOT REQUIRE A FULL MANUAL COUNT**
13 **OF VOTER-VERIFIABLE PAPER RECORDS IN AN AUDITED CONTEST IF A FULL**
14 **MANUAL COUNT OF THE VOTER-VERIFIABLE PAPER RECORDS WOULD FIND A**
15 **DIFFERENT OUTCOME THAN THE OUTCOME DETERMINED BY THE ELECTRONIC**
16 **COUNT.**

17 **(6) “RISK-LIMITING AUDIT” MEANS A POSTELECTION AUDIT**
18 **PROCEDURE THAT EMPLOYS STATISTICAL METHODS TO ENSURE A LARGE,**
19 **PREDETERMINED MINIMUM CHANCE OF REQUIRING A FULL MANUAL COUNT OF**
20 **VOTER-VERIFIABLE PAPER RECORDS IN AN AUDITED CONTEST IF A FULL MANUAL**
21 **COUNT OF THE VOTER-VERIFIABLE PAPER RECORDS WOULD FIND A DIFFERENT**
22 **OUTCOME THAN THE OUTCOME DETERMINED BY THE ELECTRONIC COUNT.**

23 **[(4)] (7) “Voter-verifiable paper record”** has the meaning stated in §
24 9–102 of this article.

25 **[(b) Following each statewide general election, the State Board shall conduct an**
26 **audit of the accuracy of the voting system’s tabulation of votes by completing:**

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

29 (2) a manual audit of voter-verifiable paper records in accordance with
30 subsection (d) of this section.

31 **(c) Following each statewide primary election, the State Board:**

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

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

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

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

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

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

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

11 1. early votes;

12 2. absentee votes; and

13 3. provisional votes.

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

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

17 (i) expand the manual audit; and

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

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

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

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

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

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

1 (e) An audit under this section:

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

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

5 **(B) (1) FOLLOWING EACH STATEWIDE ELECTION, THE STATE BOARD, IN**
6 **COLLABORATION WITH THE LOCAL BOARDS, SHALL AUDIT THE ACCURACY OF THE**
7 **VOTING SYSTEM'S TABULATION OF VOTES BY COMPLETING A RISK-LIMITING AUDIT**
8 **OF:**

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

10 **(II) AT LEAST ONE LOCAL CONTEST IN EACH COUNTY, WHICH**
11 **MAY BE A COUNTYWIDE CONTEST OR A LOCAL CONTEST ON THE BALLOT IN PART OF**
12 **A COUNTY; AND**

13 **(III) ANY OTHER CONTESTS SELECTED FOR AUDIT BY THE STATE**
14 **BOARD.**

15 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**
16 **STATE BOARD SHALL SELECT THE SPECIFIC CONTESTS TO BE AUDITED UNDER**
17 **PARAGRAPH (1) OF THIS SUBSECTION.**

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

21 **(3) A RISK-LIMITING AUDIT SHALL:**

22 **(I) MANUALLY EXAMINE RANDOMLY CHOSEN INDIVIDUAL**
23 **VOTER-VERIFIABLE PAPER RECORDS OR BATCHES OF VOTER-VERIFIABLE PAPER**
24 **RECORDS UNTIL THE MAXIMUM CHANCE OF A FULL MANUAL COUNT FINDING A**
25 **DIFFERENT OUTCOME THAN THE OUTCOME DETERMINED BY THE ELECTRONIC**
26 **COUNT IS NO LARGER THAN THE RISK LIMIT, OR UNTIL THERE HAS BEEN A FULL**
27 **MANUAL COUNT;**

28 **(II) BE COMPLETED BEFORE CERTIFICATION OF THE ELECTION**
29 **RESULTS; AND**

30 **(III) BE OBSERVABLE BY THE PUBLIC TO THE MAXIMUM EXTENT**
31 **PRACTICABLE.**

1 **(4) IF A RISK-LIMITING AUDIT FINDS THAT THE ELECTION OUTCOME**
2 **DETERMINED BY THE ELECTRONIC COUNT IS INCORRECT, THE OFFICIAL RESULT OF**
3 **THE ELECTION SHALL BE ALTERED TO MATCH THE OUTCOME DETERMINED BY THE**
4 **RISK-LIMITING AUDIT.**

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

8 **(C) IN ADDITION TO THE RISK-LIMITING AUDIT REQUIRED UNDER**
9 **SUBSECTION (B) OF THIS SECTION, THE STATE BOARD, IN COLLABORATION WITH**
10 **THE LOCAL BOARDS, MAY CONDUCT AN AUTOMATED SOFTWARE AUDIT AFTER A**
11 **STATEWIDE ELECTION THAT INCLUDES NOT MORE THAN 25% OF THE BALLOT**
12 **STYLES USED IN THAT ELECTION.**

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

14 **(2) THE REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS**
15 **SUBSECTION TO CARRY OUT RISK-LIMITING AUDITS IN ACCORDANCE WITH**
16 **SUBSECTION (B) OF THIS SECTION SHALL INCLUDE:**

17 **(I) CRITERIA FOR DETERMINING THE CONTESTS TO BE**
18 **AUDITED;**

19 **(II) THE RISK LIMIT; AND**

20 **(III) THE AUDIT METHOD.**

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

22 **(a) Following the statewide general election in November 2022, the State Board**
23 **of Elections, in collaboration with the appropriate local boards of elections, shall conduct**
24 **pilot risk-limiting audits in at least two counties of at least two contests on the November**
25 **2022 general election ballot.**

26 **(b) The State Board shall:**

27 **(1) select the contests to be audited; and**

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

29 **(c) A pilot risk-limiting audit:**

30 **(1) may be conducted in whole or in part after the election results are**
31 **certified; and**

1 (2) may not have any effect on the certified election results.

2 (d) On or before December 1, 2023, the State Board shall submit a report on the
3 pilot risk-limiting audits to the Senate Education, Health, and Environmental Affairs
4 Committee and the House Ways and Means Committee, in accordance with § 2-1257 of the
5 State Government Article.

6 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take
7 effect January 1, 2023.

8 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section
9 3 of this Act, this Act shall take effect July 1, 2022.