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ASSEMBLY, No. 5037

STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED NOVEMBER 14, 2024

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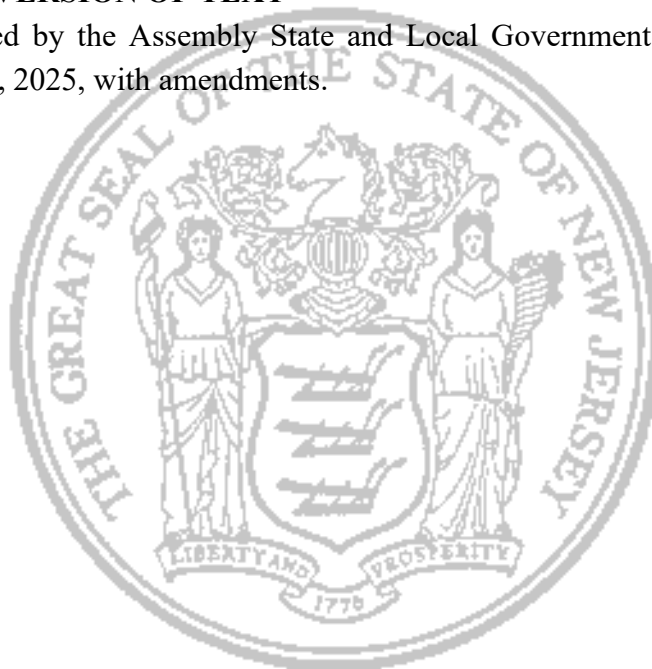
Assemblymen Schnall, Miller, Assemblywomen Haider and McCoy

SYNOPSIS

Revises procedures governing audits of election results.

CURRENT VERSION OF TEXT

As reported by the Assembly State and Local Government Committee on December 15, 2025, with amendments.



(Sponsorship Updated As Of: 12/22/2025)

1 AN ACT concerning post-election audits and amending section 1 of
2 P.L.2007, c.349.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 1 of P.L.2007, c.349 (C.19:61-9) is amended to read
8 as follows:

9 1. a. Notwithstanding any law, rule or regulation to the
10 contrary, the Secretary of State shall appoint each year an
11 independent, professional audit team. It shall oversee, in each
12 county, **[random hand-to-eye counts]** post-election audits of the
13 voter-verifiable paper records that are to be conducted by
14 appropriate county election officials. Post-election audits may be
15 conducted by a hand-to-eye count, or via independent third-party
16 electronic machines that are not in any way associated with the
17 official ballot tabulation system for the election. Audits shall be
18 conducted for each election held for federal or State office,
19 including the offices of Governor, Lieutenant Governor and
20 member of the Legislature, and for county and municipal offices
21 selected by the Secretary of State. In each county, the audit shall be
22 conducted in at least two percent of the election districts in which
23 each audited election appears on the ballot. County and municipal
24 elections held in fewer than 100 election districts are exempt from
25 this requirement. Election districts that are randomly selected for
26 auditing for either the Congressional or State legislative elections in
27 alternating years may be used to audit any other election that
28 appears on the ballot in such districts. Ballot batches, as provided
29 for in subsection c. of this section, shall also be audited subject to
30 the provisions of this section. In the case of a general election,
31 audits shall begin 13 days after the election and shall be completed
32 prior to the certification of the results of that election. Extensions
33 may be provided by the Secretary of State if necessary.

34 b. The membership and composition of the audit team shall be
35 at the discretion of the Secretary of State but shall be not less than
36 four, and at least one member shall have verifiable expertise in the
37 field of statistics and another member shall have verifiable expertise
38 in the field of auditing. No member of the audit team shall include
39 any person who:

40 (1) is serving in any position on any political campaign
41 committee of any candidate for political office in the elections that
42 are subject to the manual audit;

43 (2) is an employee of, or reports to, the Secretary of State; or

44 (3) is serving as an officer or an employee of any entity that
45 designs, manufactures, or services a voting system used in the State.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ASL committee amendments adopted December 15, 2025.

- 1 c. ¹~~【The】~~ For hand-to-eye counts, the¹ independent audit team
2 shall oversee, supervise, and require county election officials to
3 conduct an audit of the results of an election in accordance with the
4 following procedures:
- 5 (1) ~~【Any procedure designed, adopted, and implemented by the~~
6 ~~audit team shall be implemented to ensure with at least 99%~~
7 ~~statistical power that for each federal, gubernatorial or other~~
8 ~~Statewide election held in the State, a 100% manual recount of the~~
9 ~~voter-verifiable paper records would not alter the electoral outcome~~
10 ~~reported by the audit. For each election held for State office, other~~
11 ~~than Governor and Lieutenant Governor, and for county and~~
12 ~~municipal elections held in 100 or more election districts, any~~
13 ~~procedure designed, adopted, and implemented by the audit team~~
14 ~~shall be implemented to ensure with at least 90% statistical power~~
15 ~~that a 100% manual recount of the voter-verifiable paper records~~
16 ~~would not alter the electoral outcome reported by the audit. Such~~
17 ~~procedures designed, adopted, and implemented by the audit team~~
18 ~~to achieve statistical power shall be based upon scientifically~~
19 ~~reasonable assumptions, with respect to each audited election,~~
20 ~~including but not limited to: the possibility that within any election~~
21 ~~district up to 20% of the total votes cast may have been counted for~~
22 ~~a candidate or ballot position other than the one intended by the~~
23 ~~voters; and that the number of votes cast per election district will~~
24 ~~vary. Such】~~ ¹~~【Post-election audit】~~ Any procedure designed,
25 adopted, and implemented by the audit team for a hand-to-eye count
26 shall be implemented to ensure with at least 99 percent statistical
27 power that for each federal, gubernatorial, or other Statewide
28 election held in the State, a 100 percent manual recount of the
29 voter-verifiable paper records would not alter the electoral outcome
30 reported by the audit. For each election held for State office, other
31 than Governor and Lieutenant Governor, and for county and
32 municipal elections held in 100 or more election districts, any
33 procedure designed, adopted, and implemented by the audit team
34 shall be implemented to ensure with at least 90 percent statistical
35 power that a 100 percent manual recount of the voter-verifiable
36 paper records would not alter the electoral outcome reported by the
37 audit. Such procedures designed, adopted, and implemented by the
38 audit team to achieve statistical power shall be based upon
39 scientifically reasonable assumptions, with respect to each audited
40 election, including but not limited to: the possibility that within any
41 election district up to 20 percent of the total votes cast may have
42 been counted for a candidate or ballot position other than the one
43 intended by the voters; and that the number of votes cast per
44 election district will vary. Such¹ procedures and assumptions shall
45 be published prior to any given election, and the public shall have
46 the opportunity to comment thereon.
- 47 (2) Any procedure designed, adopted, and implemented by the
48 audit team for each county and municipal election held in fewer

1 than 100 election districts, but more than a single election district,
2 shall be conducted in at least two election districts.

3 (3) Within a reasonable period of time after the final vote count
4 after an election, the ¹【Secretary of State, with the audit team,】
5 county boards of elections¹ shall determine and then announce
6 publicly the election districts in the State in which audits shall be
7 conducted, and within 24 hours of that announcement, the audit
8 shall be commenced.

9 (4) With respect to votes cast at the election district on the date
10 of an election other than by emergency or provisional ballot, the
11 independent audit team shall oversee and supervise a 【hand-to-eye
12 count】 ¹【post-election audit】 hand-to-eye count¹ of the voter-
13 verifiable paper records and compare those records with the count
14 of such votes announced by the county boards of elections.

15 (5) With respect to the votes cast other than at the election
16 district on the date of the election, or any other votes counted
17 electronically by the county board of elections on or after the date
18 of the election, including votes cast by military service voters and
19 overseas federal election voters, the independent audit team shall
20 oversee and supervise a 【count by hand】 ¹【post-election audit】
21 count by hand¹ of the voter-verifiable paper records as follows. To
22 maintain voter privacy, prior to each election, the audit team shall
23 direct the appropriate county election official to divide the ballots
24 into batches, hereinafter referred to as audit units. Each audit unit
25 shall contain approximately the average number of ballots cast in
26 the election districts within the county, or fewer, but shall not be
27 associated with any particular election district. As the ballots
28 comprising each audit unit are counted electronically, each audit
29 unit shall be assigned a unique identification number. Immediately
30 after counting the ballots comprising each audit unit, a cumulative
31 summary vote tally report bearing the audit unit's unique
32 identification number and containing the sum of the vote totals of
33 the audit unit and all previously counted audit units in the election
34 shall be printed and affixed to the audit unit. The reports shall be
35 subject to the same secure chain of custody as the ballots
36 comprising the audit units and shall be used by the audit team to
37 determine the electronic vote tally for each audit unit. The audit
38 team shall first compare the vote tallies in the final cumulative
39 report to the official results announced by the county and resolve
40 any discrepancies, and then include all the audit units from each
41 county in the random selection process and if selected, cause them
42 to be audited in the same manner provided herein for election
43 districts 【, except that the hand-to-eye count shall be compared to
44 the electronic vote tally derived from the cumulative reports】 ¹,
45 except that the hand-to-eye count shall be compared to the
46 electronic vote tally derived from the cumulative reports¹.

47 (6) The selection of the election districts, audit units, and county
48 and municipal elections to be audited shall be made by the

1 ¹**【Secretary of State】** county boards of elections¹ on a random basis
2 by lot, at a public meeting, using a uniform distribution in which all
3 election districts in which an election is held, and county and
4 municipal elections have an equal chance of being selected, in
5 accordance with such procedures as the Secretary of State, upon the
6 recommendation of a majority of the audit team, deems appropriate.
7 Selection of election districts or audit units for county and
8 municipal elections held in less than 100 election districts may be
9 made randomly using a non-uniform distribution to be determined
10 by the Secretary of State, upon the recommendation of a majority of
11 the audit team. Such procedures shall be published prior to use in
12 any given election, and the public shall have the opportunity to
13 comment thereon. Notwithstanding the requirements set forth in
14 this paragraph, the audit team shall have the authority to cause
15 audits to be conducted of any election district or audit unit which
16 has not been randomly selected for auditing in which a majority of
17 the audit team determines from the un-audited election results, past
18 election results, or other data that the votes are likely to have been
19 miscounted. The Secretary of State shall allow members of the
20 public, including but not limited to those permitted to observe
21 recounts, to observe the audits.

22 (7) As soon as practicable after the completion of an audit
23 conducted pursuant to this section, the Secretary of State shall
24 announce publicly and publish the results of the audit and shall
25 include in the announcement a comparison of the results of the
26 election in the districts, as determined by the independent audit
27 team performing the audit, and the final vote count in the districts
28 as announced by the county boards of elections, including a list, by
29 election district and audit unit, of any discrepancies between the
30 initial vote count and **【any subsequent manual】** ¹**【the post-election**
31 **audit】** any subsequent manual¹ counts of the voter-verifiable paper
32 record; explanations for such discrepancies, if any; and tallies of all
33 overvotes, undervotes or their equivalents, blank ballots, spoiled
34 ballots, and cancellations recorded on the voter-verifiable paper
35 record. If the audit under this section results in a change in the
36 number of votes counted for any candidate, the revised vote totals
37 shall be incorporated in the official result from the relevant election
38 districts or audit units.

39 (8) No county shall certify the results of any election that is
40 subject to an audit performed pursuant to this section prior to the
41 completion of the audit and the announcement and publication of
42 the results thereof as required by paragraph (7) of this subsection.
43 The audit and publication of the results thereof shall be completed
44 prior to the time the State shall make a final determination with
45 respect to any controversy or contest concerning the appointment of
46 its electors for President or Vice President of the United States prior
47 to the deadline established in section 6 of Pub.L.80-644 (3
48 U.S.C.s.6).

1 (9) If the Secretary of State, based on a recommendation of a
2 majority of the professional audit team, determines that any of the
3 **【hand-to-eye】** ¹**【post-election audit】** hand-to-eye¹ counts
4 conducted under this section show cause for concern about the
5 accuracy of the results of any election in the State, or in a county or
6 a municipality, or with respect to a particular election, the
7 independent audit team shall oversee, supervise, and cause to be
8 conducted **【hand-to-eye counts】** ¹**【post-election audits】** hand-to-
9 eye counts¹ under this section in such additional election districts or
10 audit units as the Secretary of State considers appropriate to resolve
11 any such concerns. The Secretary of State shall issue previous to
12 any election the criteria to be employed to determine whether the
13 **【hand-to-eye counts】** ¹**【post-election audits】** hand-to-eye
14 counts¹ show concern about the accuracy of the election results in
15 order to trigger further **【hand-to-eye counts】** ¹**【action】** hand-to-eye
16 counts¹. Such criteria shall be published prior to use in any given
17 election, and the public shall have the opportunity to comment
18 thereon. Notwithstanding the requirements previously set forth in
19 this paragraph, additional **【hand-to-eye】** ¹**【post-election audit】**
20 hand-to-eye¹ counts shall be conducted if in the initial audit
21 conducted pursuant to the procedures set forth in this subsection,
22 any discrepancy or discrepancies attributable to the electronic
23 counting system would alter the vote share of any candidate or
24 ballot position by one tenth of one percent or more of the **【hand**
25 **counted】** ¹hand counted¹ votes in the sample. Under such
26 circumstances, the audit of the election shall be expanded using the
27 same number of election districts and when possible, audit units, as
28 the initial audit and shall be conducted under the same procedures
29 used to conduct the initial audit, provided, however, that if the
30 initial audit comprises more than one half the total number of
31 election districts and audit units in the election, the expanded audit
32 shall be a full hand-to-eye count of the remaining un-audited
33 election districts and audit units. Further hand-to-eye counts shall
34 be conducted if any discrepancy or discrepancies attributable to the
35 electronic counting system detected by the initial or subsequent
36 expanded audit indicates a substantial possibility that a complete
37 hand-to-eye recount would alter the outcome of the audited
38 election.

39 (10) If the voter-verifiable paper records in any machine are
40 found to be unusable for an audit for any reason whatsoever,
41 another machine used in the same election shall be selected at
42 random by the audit team to replace the original machine in the
43 audit sample. All such selections shall be made randomly in the
44 presence of those observing the audit using a method approved by
45 the Secretary of State. An investigation to determine the reason the
46 voter-verifiable paper records were compromised and unusable
47 shall begin immediately, and the results of the investigation shall be
48 made public upon completion.

1 d. Nothing in this section shall be construed to prevent a
2 candidate or other applicant from requesting a recount pursuant to
3 R.S.19:28-1 et seq. or any other law. In the event that such a
4 recount is held in any election district that has been audited
5 pursuant to this section, the official result from such election
6 district shall be applied to the recount in lieu of conducting a
7 subsequent hand count of the audited election district unless a court,
8 at the request of a candidate or other applicant who requested the
9 recount, so orders.

10 ¹e. A post-election audit may be conducted via an independent
11 third-party electronic machine, only if such machine has been tested
12 and certified by a National Institute of Standards and Technology
13 certified laboratory or a U.S. Election Assistance Commission
14 accredited voting system test laboratory. The machine shall be
15 tested using the same test decks previously used for pre-election
16 testing of early voting and election day tabulators or scanners. The
17 entity that provides the machine shall be responsible for any fees
18 associated with the testing or certification process. Testing shall
19 occur at least 24 hours prior to the selection of audit units.

20 f. For a post-election audit conducted via an independent
21 electronic third-party machine, the independent audit team shall
22 oversee, supervise, and require county election officials to conduct
23 an audit of the results of an election in accordance with the
24 following procedures:

25 (1) Within a reasonable period of time after the final vote count
26 after an election, the county board of elections shall randomly select
27 at least two percent of the audit units in the county and then
28 announce the audit units publicly. Within 24 hours of that
29 announcement, the audit shall be commenced.

30 (2) Prior to commencing an audit pursuant to this subsection, the
31 county board of elections shall test both the independent electronic
32 third-party machine and the audit software to ascertain that the
33 system will accurately count the votes cast for all offices and on all
34 measures. Public notice of the time and place of the test shall be
35 given at least 48 hours prior thereto by publication once in three or
36 more daily or weekly newspapers published in the county or
37 jurisdiction where such equipment is used, if a newspaper is
38 published therein, otherwise in a newspaper of general circulation
39 therein; said newspapers shall be selected to give the widest
40 possible notice to the voters of said county and one of said
41 newspapers shall be the newspaper or one of the newspapers in
42 which legal notices of the county are required to be published.

43 (3) The independent electronic third-party machine shall produce
44 and print the tally of ballots cast by ballot type, including early
45 voting ballots, vote-by-mail ballots, provisional ballots, and ballots
46 cast on election day, for each election in the audited jurisdiction,
47 and shall be capable of disaggregating ballots on which the voter
48 over-voted, under-voted, or recorded a mark that the machine does
49 not recognize.

1 (4) With respect to votes cast at the election district on the date
2 of an election other than by emergency or provisional ballot, the
3 independent audit team shall oversee and supervise a machine audit
4 of the voter-verifiable paper records and compare those records
5 with the count of such votes announced by the county boards of
6 elections.

7 (5) With respect to the votes cast other than at the election
8 district on the date of the election, or any other votes counted
9 electronically by the county board of elections on or after the date
10 of the election, including votes cast by military service voters and
11 overseas federal election voters, the independent audit team shall
12 oversee and supervise a machine audit of the voter-verifiable paper
13 records as follows. To maintain voter privacy, prior to each
14 election, the audit team shall direct the appropriate county election
15 official to divide the ballots into batches, hereinafter referred to as
16 audit units. Each audit unit shall contain approximately the average
17 number of ballots cast in the election districts within the county, or
18 fewer, but shall not be associated with any particular election
19 district. As the ballots comprising each audit unit are counted
20 electronically, each audit unit shall be assigned a unique
21 identification number. Immediately after counting the ballots
22 comprising each audit unit, a cumulative summary vote tally report
23 bearing the audit unit's unique identification number and containing
24 the sum of the vote totals of the audit unit and all previously
25 counted audit units in the election shall be printed and affixed to the
26 audit unit. The reports shall be subject to the same secure chain of
27 custody as the ballots comprising the audit units and shall be used
28 by the audit team to determine the electronic vote tally for each
29 audit unit. The audit team shall first compare the vote tallies in the
30 final cumulative report to the official results announced by the
31 county and resolve any discrepancies, and then include all the audit
32 units from each county in the random selection process and, if
33 selected, cause them to be audited in the same manner provided
34 herein for election districts, except that the machine audit shall be
35 compared to the electronic vote tally derived from the cumulative
36 reports.

37 (6) The selection of the election districts, audit units, and county
38 and municipal elections to be audited shall be made by the county
39 boards of elections on a random basis by lot, at a public meeting,
40 using a uniform distribution in which all election districts in which
41 an election is held, and county and municipal elections have an
42 equal chance of being selected, in accordance with such procedures
43 as the Secretary of State, upon the recommendation of a majority of
44 the audit team, deems appropriate. Selection of election districts or
45 audit units for county and municipal elections held in less than 100
46 election districts may be made randomly using a non-uniform
47 distribution to be determined by the Secretary of State, upon the
48 recommendation of a majority of the audit team. Such procedures
49 shall be published prior to use in any given election, and the public

1 shall have the opportunity to comment thereon. Notwithstanding
2 the requirements set forth in this paragraph, the audit team shall
3 have the authority to cause audits to be conducted of any election
4 district or audit unit which has not been randomly selected for
5 auditing in which a majority of the audit team determines from the
6 un-audited election results, past election results, or other data that
7 the votes are likely to have been miscounted. The Secretary of
8 State shall allow members of the public, including but not limited to
9 those permitted to observe recounts, to observe the audits.

10 (7) As soon as practicable after the completion of an audit
11 conducted pursuant to this section, the Secretary of State shall
12 announce publicly and publish the results of the audit and shall
13 include in the announcement a comparison of the results of the
14 election in the districts, as determined by the independent audit
15 team performing the audit, and the final vote count in the districts
16 as announced by the county boards of elections, including a list, by
17 election district and audit unit, of any discrepancies between the
18 initial vote count and any subsequent counts of the voter-verifiable
19 paper record; explanations for such discrepancies, if any; and tallies
20 of all overvotes, undervotes or their equivalents, blank ballots,
21 spoiled ballots, and cancellations recorded on the voter-verifiable
22 paper record. If the audit under this section results in a change in
23 the number of votes counted for any candidate, the revised vote
24 totals shall be incorporated in the official result from the relevant
25 election districts or audit units.

26 (8) No county shall certify the results of any election that is
27 subject to an audit performed pursuant to this section prior to the
28 completion of the audit and the announcement and publication of
29 the results thereof as required by paragraph (7) of this subsection.
30 The audit and publication of the results thereof shall be completed
31 prior to the time the State shall make a final determination with
32 respect to any controversy or contest concerning the appointment of
33 its electors for President or Vice President of the United States prior
34 to the deadline established in section 6 of Pub.L.80-644 (3
35 U.S.C.s.6).

36 (9) If the Secretary of State, based on a recommendation of a
37 majority of the professional audit team, determines that any of the
38 counts conducted under this subsection show cause for concern
39 about the accuracy of the results of any election in the State, or in a
40 county or a municipality, or with respect to a particular election, the
41 independent audit team shall oversee, supervise, and cause to be
42 conducted machine counts under this subsection in such additional
43 election districts or audit units as the Secretary of State considers
44 appropriate to resolve any such concerns. The Secretary of State
45 shall issue previous to any election the criteria to be employed to
46 determine whether the machine counts show concern about the
47 accuracy of the election results in order to trigger further machine
48 counts. Such criteria shall be published prior to use in any given
49 election, and the public shall have the opportunity to comment

1 thereon. Notwithstanding the requirements previously set forth in
2 this paragraph, additional machine counts shall be conducted if in
3 the initial audit conducted pursuant to the procedures set forth in
4 this subsection, any discrepancy or discrepancies attributable to the
5 electronic counting system would alter the vote share of any
6 candidate or ballot position by one tenth of one percent or more of
7 the counted votes in the sample. Under such circumstances, the
8 audit of the election shall be expanded using the same number of
9 election districts and when possible, audit units, as the initial audit
10 and shall be conducted under the same procedures used to conduct
11 the initial audit, provided, however, that if the initial audit
12 comprises more than one half the total number of election districts
13 and audit units in the election, the expanded audit shall be a full
14 machine count of the remaining un-audited election districts and
15 audit units. Further machine counts shall be conducted if any
16 discrepancy or discrepancies attributable to the electronic counting
17 system detected by the initial or subsequent expanded audit
18 indicates a substantial possibility that a complete machine recount
19 would alter the outcome of the audited election.

20 (10) If the voter-verifiable paper records in any machine are
21 found to be unusable for an audit for any reason whatsoever,
22 another machine used in the same election shall be selected at
23 random by the audit team to replace the original machine in the
24 audit sample. All such selections shall be made randomly in the
25 presence of those observing the audit using a method approved by
26 the Secretary of State. An investigation to determine the reason the
27 voter-verifiable paper records were compromised and unusable
28 shall begin immediately, and the results of the investigation shall be
29 made public upon completion.¹

30 (cf: P.L.2023, c.124, s.15)

31

32 2. This act shall take effect immediately.