

ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5037

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2025

The Assembly State and Local Government Committee reports favorably and with committee amendments Assembly Bill No. 5037.

As amended by the committee, this bill revises procedures governing the audits of election results and permits such audits to be conducted by an independent third-party electronic machine that is not in any way associated with the official ballot tabulation system for the election.

Under the bill, as amended, a post-election audit may be conducted via an independent third-party electronic machine only if such machine has been tested and certified by a National Institute of Standards and Technology certified laboratory or a U.S. Election Assistance Commission accredited voting system test laboratory. The machine must be tested using the same test decks previously used for pre-election testing of early voting and election day tabulators or scanners. The bill establishes that the entity that provides the machine will be responsible for any fees associated with the testing or certification process and requires testing to occur at least 24 hours prior to the selection of audit units.

The bill, as amended, requires that, for a post-election audit conducted via an independent electronic third-party machine, an independent audit team must oversee, supervise, and require county election officials to conduct an audit of the results of an election in accordance with the following procedures:

(1) Within a reasonable period of time after the final vote count after an election, the county board of elections must randomly select at least 2 percent of the audit units in the county and then announce the audit units publicly. Within 24 hours of that announcement, the audit must be commenced.

(2) Prior to commencing an audit pursuant to this subsection, the county board of elections must test both the independent electronic third-party machine and the audit software to ascertain that the system will accurately count the votes cast for all offices and on all measures. Public notice of the time and place of the test must be given at least 48 hours prior thereto by publication once in three or more daily or

weekly newspapers published in the county or jurisdiction where such equipment is used, if a newspaper is published therein, otherwise in a newspaper of general circulation therein; said newspapers must be selected as to give the widest possible notice to the voters of said county and one of said newspapers must be the newspaper or one of the newspapers in which legal notices of the county are required to be published.

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

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

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

(6) The selection of the election districts, audit units, and county and municipal elections to be audited must be made by the county boards of elections on a random basis by lot, at a public meeting, using a uniform distribution in which all election districts in which an election is held, and county and municipal elections have an equal chance of being selected, in accordance with such procedures as the Secretary of State, upon the recommendation of a majority of the audit team, deems appropriate. Selection of election districts or audit units for county and municipal elections held in less than 100 election districts may be made randomly using a non-uniform distribution to be determined by the Secretary of State, upon the recommendation of a majority of the audit team. Such procedures must be published prior to use in any given election, and the public must have the opportunity to comment. Notwithstanding the requirements set forth in this paragraph, the audit team will have the authority to cause audits to be conducted of any election district or audit unit which has not been randomly selected for auditing in which a majority of the audit team determines from the un-audited election results, past election results, or other data that the votes are likely to have been miscounted. The Secretary of State must allow members of the public, including but not limited to those permitted to observe recounts, to observe the audits.

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

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

(9) If the Secretary of State, based on a recommendation of a majority of the professional audit team, determines that any of the

counts conducted under this subsection show cause for concern about the accuracy of the results of any election in the State, or in a county or a municipality, or with respect to a particular election, the independent audit team must oversee, supervise, and cause to be conducted machine counts under this subsection in such additional election districts or audit units as the Secretary of State considers appropriate to resolve any such concerns. The Secretary of State must issue, prior to any election, the criteria to be employed to determine whether the machine counts show concern about the accuracy of the election results in order to trigger further machine counts. Such criteria must be published prior to use in any given election, and the public must have the opportunity to comment. Additional machine counts must be conducted if in the initial audit conducted pursuant to the procedures set forth in this subsection, any discrepancy or discrepancies attributable to the electronic counting system would alter the vote share of any candidate or ballot position by one tenth of one percent or more of the counted votes in the sample. Under such circumstances, the audit of the election must be expanded using the same number of election districts and when possible, audit units, as the initial audit and must be conducted under the same procedures used to conduct the initial audit, provided, however, that if the initial audit comprises more than one half the total number of election districts and audit units in the election, the expanded audit must be a full machine count of the remaining un-audited election districts and audit units. Further machine counts must be conducted if any discrepancy or discrepancies attributable to the electronic counting system detected by the initial or subsequent expanded audit indicates a substantial possibility that a complete machine recount would alter the outcome of the audited election.

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

COMMITTEE AMENDMENTS:

The committee amendments provide for separate procedures to be followed in the case of post-election audits which are conducted by a hand-to-eye count, or which are conducted via independent third-party electronic machines. The amendments establish that existing processes will be followed for hand-to-eye counts and establish a process to be followed when independent third-party electronic machines are utilized for post-election audits.

The amendments also make county boards of elections responsible for the selection of the election districts, audit units, and county and municipal elections to be audited, rather than the Secretary of State.