

**SENATE, No. 3853**

**STATE OF NEW JERSEY**

**221st LEGISLATURE**

INTRODUCED NOVEMBER 18, 2024

**Sponsored by:**

**Senator ANDREW ZWICKER**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**SYNOPSIS**

Revises procedures governing audits of election results.

**CURRENT VERSION OF TEXT**

As introduced.



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

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

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

1 c. The independent audit team shall oversee, supervise, and  
2 require county election officials to conduct an audit of the results of  
3 an election in accordance with the following procedures:

4 (1) **Any** procedure designed, adopted, and implemented by the  
5 audit team shall be implemented to ensure with at least 99%  
6 statistical power that for each federal, gubernatorial or other  
7 Statewide election held in the State, a 100% manual recount of the  
8 voter-verifiable paper records would not alter the electoral outcome  
9 reported by the audit. For each election held for State office, other  
10 than Governor and Lieutenant Governor, and for county and  
11 municipal elections held in 100 or more election districts, any  
12 procedure designed, adopted, and implemented by the audit team  
13 shall be implemented to ensure with at least 90% statistical power  
14 that a 100% manual recount of the voter-verifiable paper records  
15 would not alter the electoral outcome reported by the audit. Such  
16 procedures designed, adopted, and implemented by the audit team  
17 to achieve statistical power shall be based upon scientifically  
18 reasonable assumptions, with respect to each audited election,  
19 including but not limited to: the possibility that within any election  
20 district up to 20% of the total votes cast may have been counted for  
21 a candidate or ballot position other than the one intended by the  
22 voters; and that the number of votes cast per election district will  
23 vary. **Such** Post-election audit procedures and assumptions shall  
24 be published prior to any given election, and the public shall have  
25 the opportunity to comment thereon.

26 (2) Any procedure designed, adopted, and implemented by the  
27 audit team for each county and municipal election held in fewer  
28 than 100 election districts, but more than a single election district,  
29 shall be conducted in at least two election districts.

30 (3) Within a reasonable period of time after the final vote count  
31 after an election, the Secretary of State, with the audit team, shall  
32 determine and then announce publicly the election districts in the  
33 State in which audits shall be conducted, and within 24 hours of  
34 that announcement, the audit shall be commenced.

35 (4) With respect to votes cast at the election district on the date  
36 of an election other than by emergency or provisional ballot, the  
37 independent audit team shall oversee and supervise a **hand-to-eye**  
38 **count** post-election audit of the voter-verifiable paper records and  
39 compare those records with the count of such votes announced by  
40 the county boards of elections.

41 (5) With respect to the votes cast other than at the election  
42 district on the date of the election, or any other votes counted  
43 electronically by the county board of elections on or after the date  
44 of the election, including votes cast by military service voters and  
45 overseas federal election voters, the independent audit team shall  
46 oversee and supervise a **count by hand** post-election audit of the  
47 voter-verifiable paper records as follows. To maintain voter  
48 privacy, prior to each election, the audit team shall direct the

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1 appropriate county election official to divide the ballots into  
2 batches, hereinafter referred to as audit units. Each audit unit shall  
3 contain approximately the average number of ballots cast in the  
4 election districts within the county, or fewer, but shall not be  
5 associated with any particular election district. As the ballots  
6 comprising each audit unit are counted electronically, each audit  
7 unit shall be assigned a unique identification number. Immediately  
8 after counting the ballots comprising each audit unit, a cumulative  
9 summary vote tally report bearing the audit unit's unique  
10 identification number and containing the sum of the vote totals of  
11 the audit unit and all previously counted audit units in the election  
12 shall be printed and affixed to the audit unit. The reports shall be  
13 subject to the same secure chain of custody as the ballots  
14 comprising the audit units and shall be used by the audit team to  
15 determine the electronic vote tally for each audit unit. The audit  
16 team shall first compare the vote tallies in the final cumulative  
17 report to the official results announced by the county and resolve  
18 any discrepancies, and then include all the audit units from each  
19 county in the random selection process and if selected, cause them  
20 to be audited in the same manner provided herein for election  
21 districts **】, except that the hand-to-eye count shall be compared to**  
22 **the electronic vote tally derived from the cumulative reports】.**

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

45 (7) As soon as practicable after the completion of an audit  
46 conducted pursuant to this section, the Secretary of State shall  
47 announce publicly and publish the results of the audit and shall  
48 include in the announcement a comparison of the results of the

1 election in the districts, as determined by the independent audit  
2 team performing the audit, and the final vote count in the districts  
3 as announced by the county boards of elections, including a list, by  
4 election district and audit unit, of any discrepancies between the  
5 initial vote count and **【any subsequent manual】** the post-election  
6 audit counts of the voter-verifiable paper record; explanations for  
7 such discrepancies, if any; and tallies of all overvotes, undervotes  
8 or their equivalents, blank ballots, spoiled ballots, and cancellations  
9 recorded on the voter-verifiable paper record. If the audit under  
10 this section results in a change in the number of votes counted for  
11 any candidate, the revised vote totals shall be incorporated in the  
12 official result from the relevant election districts or audit units.

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

23 (9) If the Secretary of State, based on a recommendation of a  
24 majority of the professional audit team, determines that any of the  
25 **【hand-to-eye】** post-election audit counts conducted under this  
26 section show cause for concern about the accuracy of the results of  
27 any election in the State, or in a county or a municipality, or with  
28 respect to a particular election, the independent audit team shall  
29 oversee, supervise, and cause to be conducted **【hand-to-eye counts】**  
30 post-election audits under this section in such additional election  
31 districts or audit units as the Secretary of State considers  
32 appropriate to resolve any such concerns. The Secretary of State  
33 shall issue previous to any election the criteria to be employed to  
34 determine whether the **【hand-to-eye counts】** post-election audits  
35 show concern about the accuracy of the election results in order to  
36 trigger further **【hand-to-eye counts】** action. Such criteria shall be  
37 published prior to use in any given election, and the public shall  
38 have the opportunity to comment thereon. Notwithstanding the  
39 requirements previously set forth in this paragraph, additional  
40 **【hand-to-eye】** post-election audit counts shall be conducted if in the  
41 initial audit conducted pursuant to the procedures set forth in this  
42 subsection, any discrepancy or discrepancies attributable to the  
43 electronic counting system would alter the vote share of any  
44 candidate or ballot position by one tenth of one percent or more of  
45 the **【hand counted】** votes in the sample. Under such circumstances,  
46 the audit of the election shall be expanded using the same number  
47 of election districts and when possible, audit units, as the initial

1 audit and shall be conducted under the same procedures used to  
2 conduct the initial audit, provided, however, that if the initial audit  
3 comprises more than one half the total number of election districts  
4 and audit units in the election, the expanded audit shall be a full  
5 hand-to-eye count of the remaining un-audited election districts and  
6 audit units. Further hand-to-eye counts shall be conducted if any  
7 discrepancy or discrepancies attributable to the electronic counting  
8 system detected by the initial or subsequent expanded audit  
9 indicates a substantial possibility that a complete hand-to-eye  
10 recount would alter the outcome of the audited election.

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

21 d. Nothing in this section shall be construed to prevent a  
22 candidate or other applicant from requesting a recount pursuant to  
23 R.S.19:28-1 et seq. or any other law. In the event that such a  
24 recount is held in any election district that has been audited  
25 pursuant to this section, the official result from such election  
26 district shall be applied to the recount in lieu of conducting a  
27 subsequent hand count of the audited election district unless a court,  
28 at the request of a candidate or other applicant who requested the  
29 recount, so orders.

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

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32 2. This act shall take effect immediately.

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STATEMENT

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37 This bill revises procedures governing the audits of election  
38 results. These changes include permitting post-election audits to be  
39 conducted by independent third-party electronic machines that are  
40 not in any way associated with the official ballot tabulation system  
41 for the election in addition to a hand-to-eye count.

42 This bill eliminates certain requirements that audit procedures  
43 designed, adopted, and implemented by the audit team be  
44 implemented to ensure certain percentages of statistical power that a  
45 100 percent manual recount of the voter-verifiable paper records  
46 would not alter the electoral outcome reported by the audit.  
47 Instead, post-election audit procedures will be published prior to  
48 elections and will be subject to public comment.