

[First Reprint]

**SENATE, No. 3853**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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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 reported by the Senate Budget and Appropriations Committee on December 15, 2025, with amendments.



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:**

**<sup>1</sup>Senate SBA committee amendments adopted December 15, 2025.**

1 c. <sup>1</sup>~~【The】~~ For hand-to-eye counts, the<sup>1</sup> 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】<sup>1</sup>~~【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. Such<sup>1</sup> 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 <sup>1</sup>【Secretary of State, with the audit team,】  
5 county boards of elections<sup>1</sup> 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】 <sup>1</sup>【post-election audit】 hand-to-eye count<sup>1</sup> 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】 <sup>1</sup>【post-election audit】  
21 count by hand<sup>1</sup> 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】 <sup>1</sup>,  
45 except that the hand-to-eye count shall be compared to the  
46 electronic vote tally derived from the cumulative reports<sup>1</sup>.

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

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

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

1 to the deadline established in section 6 of Pub.L.80-644 (3  
2 U.S.C.s.6).

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

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

1 voter-verifiable paper records were compromised and unusable  
2 shall begin immediately, and the results of the investigation shall be  
3 made public upon completion.

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

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

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

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

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

46 (3) The independent electronic third-party machine shall  
47 produce and print the tally of ballots cast by ballot type, including  
48 early voting ballots, vote-by-mail ballots, provisional ballots, and

1 ballots cast on election day, for each election in the audited  
2 jurisdiction, and shall be capable of disaggregating ballots on which  
3 the voter over-voted, under-voted, or recorded a mark that the  
4 machine does not recognize.

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

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

41 (6) The selection of the election districts, audit units, and county  
42 and municipal elections to be audited shall be made by the county  
43 boards of elections on a random basis by lot, at a public meeting,  
44 using a uniform distribution in which all election districts in which  
45 an election is held, and county and municipal elections have an  
46 equal chance of being selected, in accordance with such procedures  
47 as the Secretary of State, upon the recommendation of a majority of  
48 the audit team, deems appropriate. Selection of election districts or

1 audit units for county and municipal elections held in less than 100  
2 election districts may be made randomly using a non-uniform  
3 distribution to be determined by the Secretary of State, upon the  
4 recommendation of a majority of the audit team. Such procedures  
5 shall be published prior to use in any given election, and the public  
6 shall have the opportunity to comment thereon. Notwithstanding  
7 the requirements set forth in this paragraph, the audit team shall  
8 have the authority to cause audits to be conducted of any election  
9 district or audit unit which has not been randomly selected for  
10 auditing in which a majority of the audit team determines from the  
11 un-audited election results, past election results, or other data that  
12 the votes are likely to have been miscounted. The Secretary of  
13 State shall allow members of the public, including but not limited to  
14 those permitted to observe recounts, to observe the audits.

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

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

41 (9) If the Secretary of State, based on a recommendation of a  
42 majority of the professional audit team, determines that any of the  
43 counts conducted under this subsection show cause for concern  
44 about the accuracy of the results of any election in the State, or in a  
45 county or a municipality, or with respect to a particular election, the  
46 independent audit team shall oversee, supervise, and cause to be  
47 conducted machine counts under this subsection in such additional  
48 election districts or audit units as the Secretary of State considers

1 appropriate to resolve any such concerns. The Secretary of State  
2 shall issue previous to any election the criteria to be employed to  
3 determine whether the machine counts show concern about the  
4 accuracy of the election results in order to trigger further machine  
5 counts. Such criteria shall be published prior to use in any given  
6 election, and the public shall have the opportunity to comment  
7 thereon. Notwithstanding the requirements previously set forth in  
8 this paragraph, additional machine counts shall be conducted if in  
9 the initial audit conducted pursuant to the procedures set forth in  
10 this subsection, any discrepancy or discrepancies attributable to the  
11 electronic counting system would alter the vote share of any  
12 candidate or ballot position by one tenth of one percent or more of  
13 the counted votes in the sample. Under such circumstances, the  
14 audit of the election shall be expanded using the same number of  
15 election districts and when possible, audit units, as the initial audit  
16 and shall be conducted under the same procedures used to conduct  
17 the initial audit, provided, however, that if the initial audit  
18 comprises more than one half the total number of election districts  
19 and audit units in the election, the expanded audit shall be a full  
20 machine count of the remaining un-audited election districts and  
21 audit units. Further machine counts shall be conducted if any  
22 discrepancy or discrepancies attributable to the electronic counting  
23 system detected by the initial or subsequent expanded audit  
24 indicates a substantial possibility that a complete machine recount  
25 would alter the outcome of the audited election.

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

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

37

38 2. This act shall take effect immediately.