

Chapter 523

(House Bill 1278)

AN ACT concerning

Election Law – Postelection Tabulation Audit

FOR the purpose of requiring the State Board of Elections to conduct an audit of the accuracy of the voting system’s tabulation of votes by completing a certain audit of electronic ballot images and a certain manual audit after each statewide general election; requiring the State Board to complete a certain audit of electronic ballot images after each statewide primary election; authorizing the State Board to complete a certain manual audit after each statewide primary election; requiring the State Board to complete a manual audit of certain precincts and certain early, absentee, and provisional votes following each statewide general election; requiring a manual audit to be completed within a certain period of time; authorizing the State Board to take certain actions if a manual audit shows a discrepancy; requiring the State Board to post a certain report on its website within a certain period of time after the conclusion of a manual audit; requiring the State Board to allow for public observation of a manual audit to the extent practicable; prohibiting an audit under this Act from affecting the certified election results; requiring an audit under this Act to be used to improve the voting system and voting process for future elections; requiring the State Board to adopt certain regulations; requiring the State Board to submit a certain report to certain committees of the General Assembly on or before a certain date; defining certain terms; and generally relating to a postelection audit of the voting system’s tabulation of votes.

BY adding to

Article – Election Law

Section 11–309

Annotated Code of Maryland

(2017 Replacement Volume and 2017 Supplement)

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

Article – Election Law**11–309.**

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “MANUAL AUDIT” MEANS INSPECTION OF VOTER–VERIFIABLE PAPER RECORDS BY HAND AND EYE TO OBTAIN VOTE TOTALS IN A CONTEST THAT

ARE COMPARED TO THE VOTE TOTALS PRODUCED FOR THAT CONTEST BY THE ELECTRONIC VOTING SYSTEM.

(3) “PREVIOUS COMPARABLE GENERAL ELECTION” MEANS:

(I) IN A PRESIDENTIAL ELECTION YEAR, THE PRESIDENTIAL ELECTION HELD 4 YEARS EARLIER; AND

(II) IN A GUBERNATORIAL ELECTION YEAR, THE GUBERNATORIAL ELECTION HELD 4 YEARS EARLIER.

~~(3)~~ **(4) “VOTER-VERIFIABLE PAPER RECORD” HAS THE MEANING STATED IN § 9-102 OF THIS ARTICLE.**

(B) FOLLOWING EACH STATEWIDE GENERAL ELECTION, THE STATE BOARD SHALL CONDUCT AN AUDIT OF THE ACCURACY OF THE VOTING SYSTEM’S TABULATION OF VOTES BY COMPLETING:

(1) AN AUTOMATED SOFTWARE AUDIT OF THE ELECTRONIC IMAGES OF ALL BALLOTS CAST IN THE ELECTION; AND

(2) A MANUAL AUDIT OF VOTER-VERIFIABLE PAPER RECORDS IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION.

(C) FOLLOWING EACH STATEWIDE PRIMARY ELECTION, THE STATE BOARD:

(1) SHALL COMPLETE AN AUTOMATED SOFTWARE AUDIT OF THE ELECTRONIC IMAGES OF ALL BALLOTS CAST IN THE ELECTION; AND

(2) MAY COMPLETE A MANUAL AUDIT OF VOTER-VERIFIABLE PAPER RECORDS IN A MANNER PRESCRIBED BY THE STATE BOARD.

(D) (1) FOLLOWING EACH STATEWIDE GENERAL ELECTION, THE STATE BOARD SHALL COMPLETE A MANUAL AUDIT OF:

(I) AT LEAST 2% OF PRECINCTS STATEWIDE, INCLUDING:

1. AT LEAST ONE RANDOMLY CHOSEN PRECINCT IN EACH COUNTY; AND

2. ADDITIONAL PRECINCTS SELECTED BY THE STATE BOARD; ~~AND AND~~

~~(H) AT LEAST 1% OF THE STATEWIDE TOTAL OF EACH OF THE FOLLOWING, INCLUDING AT LEAST A MINIMUM NUMBER OF EACH OF THE FOLLOWING IN EACH COUNTY, AS PRESCRIBED BY THE STATE BOARD:~~

- ~~1. EARLY VOTES;~~
- ~~2. ABSENTEE VOTES; AND~~
- ~~3. PROVISIONAL VOTES.~~

~~(H) AT LEAST 1% OF THE STATEWIDE TOTAL OF EARLY VOTES, INCLUDING AT LEAST A MINIMUM NUMBER OF EARLY VOTES IN EACH COUNTY, AS PRESCRIBED BY THE STATE BOARD; AND~~

~~(H) (II) A NUMBER OF VOTES EQUAL TO AT LEAST 1% OF THE STATEWIDE TOTAL IN THE PREVIOUS COMPARABLE GENERAL ELECTION OF EACH OF THE FOLLOWING, INCLUDING AT LEAST A MINIMUM NUMBER OF EACH OF THE FOLLOWING IN EACH COUNTY, AS PRESCRIBED BY THE STATE BOARD:~~

- ~~1. EARLY VOTES;~~
- ~~2. ABSENTEE VOTES; AND~~
- ~~3. PROVISIONAL VOTES.~~

(2) THE MANUAL AUDIT SHALL BE COMPLETED WITHIN 120 DAYS AFTER THE GENERAL ELECTION.

(3) IF THE MANUAL AUDIT SHOWS A DISCREPANCY, THE STATE BOARD MAY:

- (I) EXPAND THE MANUAL AUDIT; AND
- (II) TAKE ANY OTHER ACTIONS IT CONSIDERS NECESSARY TO RESOLVE THE DISCREPANCY.

(4) WITHIN 14 DAYS AFTER THE CONCLUSION OF THE AUDIT, THE STATE BOARD SHALL POST ON ITS WEBSITE A REPORT THAT DESCRIBES:

(I) THE PRECINCTS AND NUMBER OF VOTES SELECTED FOR THE MANUAL AUDIT IN EACH COUNTY AND THE MANNER IN WHICH THE PRECINCTS AND VOTES WERE SELECTED;

(II) THE RESULTS OF THE MANUAL AUDIT; AND

(III) ANY DISCREPANCY SHOWN BY THE MANUAL AUDIT AND HOW THE DISCREPANCY WAS RESOLVED.

(5) THE STATE BOARD SHALL ALLOW FOR PUBLIC OBSERVATION OF EACH PART OF THE MANUAL AUDIT PROCESS TO THE EXTENT PRACTICABLE.

(E) AN AUDIT UNDER THIS SECTION:

(1) MAY NOT HAVE ANY EFFECT ON THE CERTIFIED ELECTION RESULTS; AND

(2) SHALL BE USED TO IMPROVE THE VOTING SYSTEM AND VOTING PROCESS FOR FUTURE ELECTIONS.

(F) THE STATE BOARD SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That on or before May 1, 2019, the State Board of Elections shall submit a report, in accordance with § 2-1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and the House Ways and Means Committee that describes the resources required to complete the audit required under this Act following the 2018 general election. The report shall include the amount of time needed to complete the audit, the number of personnel required to complete the audit, any other costs incurred by the State Board or the local boards of elections to complete the audit, and any other administrative obstacles to completing the audit.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2018.

Approved by the Governor, May 8, 2018.