

# HOUSE BILL 745

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HB 759/21 – W&M

2lr1357  
CF SB 742

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By: ~~Delegates Kaiser and Wilkins~~, **Wilkins, Carr, K. Young, Patterson, and P. Young**

Introduced and read first time: February 3, 2022  
Assigned to: Ways and Means

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 9, 2022

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Election Law – Postelection Tabulation Audits – Risk-Limiting Audits**

3 FOR the purpose of requiring the State Board of Elections, in collaboration with the local  
4 boards of elections, to conduct a risk-limiting audit after each statewide election;  
5 authorizing, rather than requiring, the State Board, in collaboration with the local  
6 boards, to conduct an automated software audit after a statewide election; repealing  
7 a requirement to conduct a manual audit after each statewide general election;  
8 requiring the State Board, in collaboration with certain local boards, to conduct pilot  
9 risk-limiting audits after a certain statewide general election; and generally relating  
10 to postelection tabulation audits.

11 BY repealing and reenacting, with amendments,  
12 Article – Election Law  
13 Section 11–309  
14 Annotated Code of Maryland  
15 (2017 Replacement Volume and 2021 Supplement)

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

18 **Article – Election Law**

19 11–309.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) (1) In this section the following words have the meanings indicated.

2 (2) “AUTOMATED SOFTWARE AUDIT” MEANS AN AUDIT OF  
3 ELECTRONIC IMAGES OF BALLOTS CAST IN AN ELECTION USING SOFTWARE THAT IS  
4 INDEPENDENT OF THE VOTING SYSTEM.

5 (3) “ELECTRONIC COUNT” MEANS THE VOTE TOTALS PRODUCED BY  
6 THE VOTING SYSTEM.

7 [(2)] (4) “Manual [audit] COUNT” means inspection of voter-verifiable  
8 paper records by hand and eye to obtain vote totals in a contest [that are compared to the  
9 vote totals produced for that contest by the electronic voting system].

10 [(3) “Previous comparable general election” means:

11 (i) in a presidential election year, the presidential election held 4  
12 years earlier; and

13 (ii) in a gubernatorial election year, the gubernatorial election held  
14 4 years earlier.]

15 (5) “RISK LIMIT” MEANS THE SMALL, PREDETERMINED MAXIMUM  
16 CHANCE THAT A RISK-LIMITING AUDIT WILL NOT REQUIRE A FULL MANUAL COUNT  
17 OF VOTER-VERIFIABLE PAPER RECORDS IN AN AUDITED CONTEST IF A FULL  
18 MANUAL COUNT OF THE VOTER-VERIFIABLE PAPER RECORDS WOULD FIND A  
19 DIFFERENT OUTCOME THAN THE OUTCOME DETERMINED BY THE ELECTRONIC  
20 COUNT.

21 (6) “RISK-LIMITING AUDIT” MEANS A POSTELECTION AUDIT  
22 PROCEDURE THAT EMPLOYS STATISTICAL METHODS TO ENSURE A LARGE,  
23 PREDETERMINED MINIMUM CHANCE OF REQUIRING A FULL MANUAL COUNT OF  
24 VOTER-VERIFIABLE PAPER RECORDS IN AN AUDITED CONTEST IF A FULL MANUAL  
25 COUNT OF THE VOTER-VERIFIABLE PAPER RECORDS WOULD FIND A DIFFERENT  
26 OUTCOME THAN THE OUTCOME DETERMINED BY THE ELECTRONIC COUNT.

27 [(4)] (7) “Voter-verifiable paper record” has the meaning stated in §  
28 9–102 of this article.

29 [(b) Following each statewide general election, the State Board shall conduct an  
30 audit of the accuracy of the voting system’s tabulation of votes by completing:

31 (1) an automated software audit of the electronic images of all ballots cast  
32 in the election; and

1           (2) a manual audit of voter-verifiable paper records in accordance with  
2 subsection (d) of this section.

3           (c) Following each statewide primary election, the State Board:

4           (1) shall complete an automated software audit of the electronic images of  
5 all ballots cast in the election; and

6           (2) may complete a manual audit of voter-verifiable paper records in a  
7 manner prescribed by the State Board.

8           (d) (1) Following each statewide general election, the State Board shall  
9 complete a manual audit of:

10                   (i) at least 2% of precincts statewide, including:

11                           1. at least one randomly chosen precinct in each county; and

12                           2. additional precincts selected by the State Board; and

13                   (ii) a number of votes equal to at least 1% of the statewide total in  
14 the previous comparable general election of each of the following, including at least a  
15 minimum number of each of the following in each county, as prescribed by the State Board:

16                           1. early votes;

17                           2. absentee votes; and

18                           3. provisional votes.

19           (2) The manual audit shall be completed within 120 days after the general  
20 election.

21           (3) If the manual audit shows a discrepancy, the State Board may:

22                   (i) expand the manual audit; and

23                   (ii) take any other actions it considers necessary to resolve the  
24 discrepancy.

25           (4) Within 14 days after the conclusion of the audit, the State Board shall  
26 post on its website a report that describes:

27                   (i) the precincts and number of votes selected for the manual audit  
28 in each county and the manner in which the precincts and votes were selected;

29                   (ii) the results of the manual audit; and

1 (iii) any discrepancy shown by the manual audit and how the  
2 discrepancy was resolved.

3 (5) The State Board shall allow for public observation of each part of the  
4 manual audit process to the extent practicable.

5 (e) An audit under this section:

6 (1) may not have any effect on the certified election results; and

7 (2) shall be used to improve the voting system and voting process for future  
8 elections.]

9 **(B) (1) FOLLOWING EACH STATEWIDE ELECTION, THE STATE BOARD, IN**  
10 **COLLABORATION WITH THE LOCAL BOARDS, SHALL AUDIT THE ACCURACY OF THE**  
11 **VOTING SYSTEM'S TABULATION OF VOTES BY COMPLETING A RISK-LIMITING AUDIT**  
12 **OF:**

13 **(I) AT LEAST ONE STATEWIDE CONTEST;**

14 **(II) AT LEAST ONE LOCAL CONTEST IN EACH COUNTY, WHICH**  
15 **MAY BE A COUNTYWIDE CONTEST OR A LOCAL CONTEST ON THE BALLOT IN PART OF**  
16 **A COUNTY; AND**

17 **(III) ANY OTHER CONTESTS SELECTED FOR AUDIT BY THE STATE**  
18 **BOARD.**

19 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**  
20 **STATE BOARD SHALL SELECT THE SPECIFIC CONTESTS TO BE AUDITED UNDER**  
21 **PARAGRAPH (1) OF THIS SUBSECTION.**

22 **(II) A CONTEST FOR AN OFFICE FOR WHICH THE TERM BEGINS**  
23 **IN THE MONTH OF DECEMBER MAY NOT BE SELECTED FOR AUDIT UNLESS THE**  
24 **ELECTION DIRECTOR FOR THE COUNTY AGREES TO AUDIT THE CONTEST.**

25 **(3) A RISK-LIMITING AUDIT SHALL:**

26 **(I) MANUALLY EXAMINE RANDOMLY CHOSEN INDIVIDUAL**  
27 **VOTER-VERIFIABLE PAPER RECORDS OR BATCHES OF VOTER-VERIFIABLE PAPER**  
28 **RECORDS UNTIL THE ~~MAXIMUM CHANCE OF A FULL MANUAL COUNT FINDING A~~**  
29 **~~DIFFERENT OUTCOME THAN THE OUTCOME DETERMINED BY THE ELECTRONIC~~**  
30 **~~COUNT IS NO LARGER THAN THE RISK LIMIT, OR UNTIL THERE HAS BEEN A FULL~~**  
31 **~~MANUAL COUNT~~ RISK LIMIT IS MET;**

1 (II) BE COMPLETED BEFORE CERTIFICATION OF THE ELECTION  
2 RESULTS; AND

3 (III) BE OBSERVABLE BY THE PUBLIC TO THE MAXIMUM EXTENT  
4 PRACTICABLE.

5 (4) IF A RISK-LIMITING AUDIT FINDS THAT THE ELECTION OUTCOME  
6 DETERMINED BY THE ELECTRONIC COUNT IS INCORRECT, THE OFFICIAL RESULT OF  
7 THE ELECTION SHALL BE ALTERED TO MATCH THE OUTCOME DETERMINED BY THE  
8 RISK-LIMITING AUDIT.

9 (5) WITHIN 10 DAYS AFTER THE CONCLUSION OF THE RISK-LIMITING  
10 AUDIT, THE STATE BOARD SHALL POST ON THE STATE BOARD'S WEBSITE A REPORT  
11 THAT DESCRIBES THE AUDIT PROCESS AND THE RESULTS OF THE AUDIT.

12 (C) IN ADDITION TO THE RISK-LIMITING AUDIT REQUIRED UNDER  
13 SUBSECTION (B) OF THIS SECTION, THE STATE BOARD, IN COLLABORATION WITH  
14 THE LOCAL BOARDS, MAY CONDUCT AN AUTOMATED SOFTWARE AUDIT AFTER A  
15 STATEWIDE ELECTION ~~THAT INCLUDES NOT MORE THAN 25% OF THE BALLOT~~  
16 ~~STYLES USED IN THAT ELECTION.~~

17 [(f)] (D) (1) The State Board shall adopt regulations to carry out this section.

18 (2) THE REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS  
19 SUBSECTION TO CARRY OUT RISK-LIMITING AUDITS IN ACCORDANCE WITH  
20 SUBSECTION (B) OF THIS SECTION SHALL INCLUDE:

21 (I) CRITERIA FOR DETERMINING THE CONTESTS TO BE  
22 AUDITED;

23 (II) THE RISK LIMIT; AND

24 (III) THE AUDIT METHOD.

25 SECTION 2. AND BE IT FURTHER ENACTED, That:

26 (a) Following the statewide general election in November 2022, the State Board  
27 of Elections, in collaboration with the appropriate local boards of elections, shall conduct  
28 pilot risk-limiting audits in at least two counties of at least two contests on the November  
29 2022 general election ballot.

30 (b) The State Board shall:

31 (1) select the contests to be audited; and

1 (2) determine how the pilot risk-limiting audits are to be conducted.

2 (c) A pilot risk-limiting audit:

3 (1) may be conducted in whole or in part after the election results are  
4 certified; and

5 (2) may not have any effect on the certified election results.

6 (d) On or before December 1, 2023, the State Board shall submit a report on the  
7 pilot risk-limiting audits to the Senate Education, Health, and Environmental Affairs  
8 Committee and the House Ways and Means Committee, in accordance with § 2-1257 of the  
9 State Government Article.

10 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take  
11 effect January 1, 2023.

12 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section  
13 3 of this Act, this Act shall take effect July 1, 2022.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.