

SENATE, No. 507
STATE OF NEW
JERSEY

212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

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SYNOPSIS

Requires mandatory audit of election results in randomly selected election districts.

CURRENT VERSION OF TEXT

As introduced.

AN ACT providing for audits of the results of elections and supplementing chapter 61 of Title 19 of the Revised Statutes.

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

1. a. Notwithstanding any law, rule or regulation to the contrary, the Attorney General shall appoint each year an independent, professional audit team. It shall oversee, in each county, random hand-to-eye counts of the voter-verifiable paper records that are to be conducted by appropriate county election officials. Audits shall be conducted for each election held for federal or State office, including the offices of Governor and member of the Legislature, and for county and municipal offices selected by the Attorney General. In each county, the audit shall be conducted in at least two percent of the election districts in which each audited election appears on the ballot. County and municipal elections held in fewer than 100 election districts are exempt from this requirement. Election districts that are randomly selected for auditing for either the Congressional or State Legislative elections in alternating years may be used to audit any other election that appears on the ballot in such districts. Ballot batches (pursuant to P.L. , c. (C.) (Section 1. c. (5) now pending before the Legislature as this bill) will also be audited, subject to the provisions of this act. b.

The number and composition of the audit team shall be at the discretion of the Attorney General but shall be no less than four, and at least one member shall have verifiable expertise in the field of statistics and another member shall have verifiable expertise in the field of auditing. No member of the audit team shall include any person who is:

(1) serving in any position on any political campaign committee of any candidate for political office in the elections that are subject to the manual audit;

(2) an employee of or reports to the Attorney General; or

(3) serving as an officer or an employee of any entity that designs, manufactures or services a voting system used in the State.

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

(1) Any procedure designed, adopted and implemented by the audit team shall be implemented to ensure with at least 99%

statistical power that for each federal or gubernatorial (or other statewide) election held in the State, a 100% manual recount of the voter-verifiable paper records would not alter the electoral outcome reported by the audit. For each election held for State office, other than Governor, and for county and municipal offices held in 100 or more election districts, any procedure designed, adopted and implemented by the audit team shall be implemented to ensure with at least 90% statistical power that a 100% manual recount of the voter-verifiable paper records would not alter the electoral outcome reported by the audit. Such procedures designed, adopted and implemented by the audit team to achieve statistical power shall be based upon scientifically reasonable assumptions, with respect to each audited election, including but not limited to: the possibility that within any election district up to twenty percent of the total votes cast may have been counted for a candidate or ballot position other than the one intended by the voters; and that the number of votes cast per election district will vary. Such procedures and assumptions shall be published prior to any given election, and the public shall have the opportunity to comment thereon.

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

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

(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 shall oversee and supervise a hand-to-eye count 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 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 shall oversee and supervise a count by hand of the voter-verifiable paper records as follows: To maintain voter privacy, prior to each election, the audit

team shall direct the appropriate county election official to divide the ballots into batches hereinafter referred to as audit units. Each audit unit shall contain approximately the average number of ballots cast in the election districts within the county, or fewer, but shall not be associated with any particular election district. As the ballots comprising each audit unit are counted electronically, each audit unit shall 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 shall be printed and affixed to the audit unit. The reports will be subject to the same secure chain of custody as the ballots comprising the audit units and shall be used by the audit team to determine the electronic vote tally for each audit unit. The audit team shall 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 hand-to-eye count shall 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 shall be made by the Attorney General 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 Attorney General, 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 Attorney General, upon the recommendation of a majority of the audit team. Such procedures shall be published prior to use in any given election, and the public shall have the opportunity to comment thereon. Notwithstanding the requirements set forth in this paragraph, the audit team shall 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 Attorney General shall 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 P.L. , c. (C.)(now pending before the Legislature as this bill), the Attorney General shall announce publicly and publish the results of the audit and shall 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 manual 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 shall certify the results of any election that is subject to an audit performed pursuant to P.L. , c. (C.) (now pending before the Legislature as this bill) prior to the completion of the audit and the announcement and publication of the results thereof as required by paragraph 5 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, Title 3 of the United States Code.

(9) If the Attorney General, based on a recommendation of a majority of the professional audit team, determines that any of the hand-to-eye counts conducted under P.L. , c. (C.)(now pending before the Legislature as this bill) 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 shall oversee, supervise and cause to be conducted hand-to-eye counts under this act in such additional election districts or audit units as the Attorney General considers appropriate to resolve any such concerns. The Attorney General

shall issue previous to any election the criteria to be employed to determine whether the hand-to-eye counts show concern about the accuracy of the election results in order to trigger further hand-to-eye counts. Such criteria shall be published prior to use in any given election, and the public shall have the opportunity to comment thereon. Notwithstanding the requirements previously set forth in this paragraph, additional hand-to-eye counts must be conducted if in the initial audit conducted pursuant to the procedures set forth in section (c) herein, 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 hand counted votes in the sample. Under such circumstances, the audit of the election shall be expanded using the same number of election districts and where possible, audit units, as the initial audit and shall 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 will be a full hand-to-eye count of the remaining un-audited election districts and audit units. Further hand-to-eye 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 hand-to-eye 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 shall be selected at random by the audit team to replace the original machine in the audit sample. All such selections shall be made randomly in the presence of those observing the audit using a method approved by the Attorney General. An investigation to determine the reason the voter-verifiable paper records were compromised and unusable shall begin immediately, and the results of the investigation shall be made public upon completion.

d. Nothing in this section shall be construed to prevent a candidate or other applicant from requesting a recount pursuant to P.L. 1953, c. 19 (C.19:28-1 et seq.) or any other law. In the event that such a recount is held in any election district that has been audited pursuant to P.L. , c. (C.)(now pending before the Legislature as this bill) the official result from such election district shall be

applied to the recount in lieu of conducting a subsequent hand count of the audited election district unless a court, at the request of a candidate or other applicant who requested the recount, so orders.

2. This act shall take effect on January 1, 2008.

STATEMENT

The purpose of this bill is to establish a procedure for the mandatory audit of election results each year in randomly selected voting districts in the State. The audit would be supervised by an audit team appointed by the Attorney General as the State's Chief Election Officer, who would also have discretion as to the number and composition of such a team, with a minimum of four, but it must include at least one member who has verifiable expertise in the field of statistics and another who has verifiable expertise in the field of auditing. Elections officials will, at the direction of the audit team, conduct random hand-to-eye counts of the voter-verifiable paper records in at least two percent of the election districts, in each county, where elections are held for federal or State offices, including the offices of Governor and member of the Legislature, and for county and municipal offices selected by the Attorney General. The audit team will develop and implement statistical random sampling techniques with enough power to confirm that miscounts with the potential to change the outcome of any audited election have not occurred, and will have authority to audit election districts in addition to those selected at random.

Under the bill, the Attorney General will determine and then announce publicly the election districts in the State in which audits will be conducted within a reasonable time after the final vote count for an election, and the audit will commence within 24 hours after that announcement. Votes cast on electronic voting machines, provisional ballots, absentee ballots and military and overseas federal election voters are to be included in the audit. To protect voter privacy, absentee ballots will be divided into audit units approximately equal in size to the average election district in each county in terms of the number of ballots cast, but will not be associated with any particular election district. If the Attorney General determines that any of the hand-to-eye counts show cause

for concern about the accuracy of the results of any election, the independent audit team may supervise and cause to be performed hand-to-eye counts in such additional election districts and audit units as the Attorney General considers appropriate to resolve any such concerns. At minimum, the Attorney General will conduct a second audit if errors detected by the first audit cause a miscount that changes a candidate's vote share by .1% or more, and further hand-to-eye counts if miscount rates detected by the initial audit or subsequent expanded audit would have the potential to alter the outcome of the audited election were they to persist throughout the entire vote count.

The bill takes effect on January 1, 2008, which is the date by which voter-verifiable paper records must be operational on electronic voting machines used in this State, pursuant to P.L. 2005, c.137.