

[First Reprint]

SENATE, No. 507

STATE OF NEW JERSEY
212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

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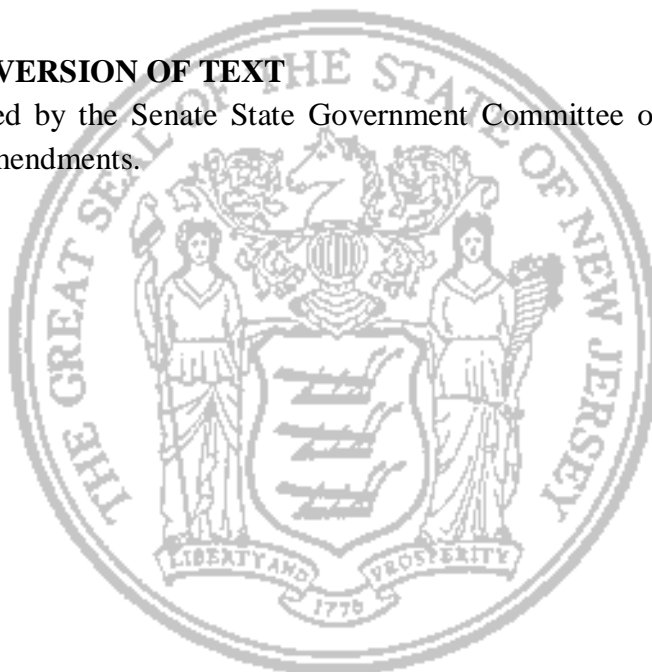
Senator Inverso and Assemblywoman Oliver

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate State Government Committee on December 3, 2007, with amendments.



(Sponsorship Updated As Of: 1/8/2008)

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

3

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

6

7 1. a. ¹**[**Notwithstanding any law, rule or regulation to the
8 contrary, the Attorney General shall appoint each year an
9 independent audit team. It shall conduct random hand counts of the
10 voter-verified paper records in at least two percent of the election
11 districts where elections are held for federal or State office,
12 including the offices of Governor and member of the Legislature,
13 and for county and municipal offices selected by the Attorney
14 General. Hand counts shall also be made of the results of at least
15 one voting machine in one election district in each county where
16 elections occur each year. The number and composition of the audit
17 team shall be at the discretion of the Attorney General, except that
18 at least one member shall have verifiable expertise in the field of
19 statistics.

20 b. The independent audit team shall conduct an audit of the
21 results of an election in accordance with the following procedures.

22 (1) No later than 24 hours after the final vote count after an
23 election, the Attorney General shall determine and then announce
24 publicly the districts in the State in which audits shall be conducted.

25 (2) With respect to votes cast at the election district on the date
26 of an election other than by provisional ballot, the independent
27 audit team shall count by hand the voter-verified paper records and
28 compare those records with the count of such votes announced by
29 the county boards of elections.

30 (3) With respect to votes cast other than at the election district on
31 the date of the election, or votes cast by provisional ballot on the
32 date of the election that are certified and counted by the county
33 board of elections on or after the election, including votes cast by
34 military service voters and overseas federal election voters, the
35 independent audit team shall count by hand the applicable voter-
36 verified paper records and compare those records with the count of
37 such votes announced by the county boards of elections.

38 (4) The selection of the election districts and county and
39 municipal elections to be audited shall be made by the Attorney
40 General on a random basis using a uniform distribution in which all
41 districts and county and municipal elections have an equal chance
42 of being selected, in accordance with such procedures as the
43 Attorney General deems appropriate, except that at least one voting

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:

¹Senate SSG committee amendments adopted December 3, 2007.

1 machine in one district shall be selected for an audit in each county
2 in the State.

3 (5) As soon as practicable after the completion of an audit
4 conducted pursuant to P.L. , c. (C.)(now pending before the
5 Legislature as this bill), the Attorney General shall announce
6 publicly and publish the results of the audit and shall include in the
7 announcement a comparison of the results of the election in the
8 districts, as determined by the independent audit team performing
9 the audit, and the final vote count in the districts as announced by
10 the county boards of elections.

11 (6) No county shall certify the results of any election that is
12 subject to an audit performed pursuant to P.L. , c. (C.)
13 (now pending before the Legislature as this bill) prior to the
14 competition of the audit and the announcement and publication of
15 the results thereof as required by paragraph 5 of this subsection,
16 except to the extent necessary to permit the State to make a final
17 determination with respect to any controversy or contest concerning
18 the appointment of its electors for President or Vice President of the
19 United States prior to the deadline established in section 6, Title 3
20 of the United States Code.

21 (7) If the Attorney General determines that any of the hand
22 counts conducted under P.L. , c. (C.)(now pending before
23 the Legislature as this bill) show cause for concern about the
24 accuracy of the results of any election in the State, or in a county or
25 a municipality, or with respect to a particular election, the
26 independent audit team may conduct hand counts under this act in
27 such additional election districts as the Attorney General considers
28 appropriate to resolve any such concerns.】

29 Notwithstanding any law, rule or regulation to the contrary, the
30 Attorney General shall appoint each year an independent,
31 professional audit team. It shall oversee, in each county, random
32 hand-to-eye counts of the voter-verifiable paper records that are to
33 be conducted by appropriate county election officials. Audits shall
34 be conducted for each election held for federal or State office,
35 including the offices of Governor, Lieutenant Governor and
36 member of the Legislature, and for county and municipal offices
37 selected by the Attorney General. In each county, the audit shall be
38 conducted in at least two percent of the election districts in which
39 each audited election appears on the ballot. County and municipal
40 elections held in fewer than 100 election districts are exempt from
41 this requirement. Election districts that are randomly selected for
42 auditing for either the Congressional or State legislative elections in
43 alternating years may be used to audit any other election that
44 appears on the ballot in such districts. Ballot batches, as provided
45 for in subsection c. of this section, shall also be audited subject to
46 the provisions of this section.

47 b. The membership and composition of the audit team shall be at
48 the discretion of the Attorney General but shall be not less than
49 four, and at least one member shall have verifiable expertise in the

1 field of statistics and another member shall have verifiable expertise
2 in the field of auditing. No member of the audit team shall include
3 any person who:

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

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

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

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

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

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

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

44 (4) With respect to votes cast at the election district on the date
45 of an election other than by emergency or provisional ballot, the
46 independent audit team shall oversee and supervise a hand-to-eye
47 count of the voter-verifiable paper records and compare those
48 records with the count of such votes announced by the county
49 boards of elections.

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

31 (6) The selection of the election districts, audit units, and county
32 and municipal elections to be audited shall be made by the Attorney
33 General on a random basis by lot, at a public meeting, using a
34 uniform distribution in which all election districts in which an
35 election is held, and county and municipal elections have an equal
36 chance of being selected, in accordance with such procedures as the
37 Attorney General, upon the recommendation of a majority of the
38 audit team, deems appropriate. Selection of election districts or
39 audit units for county and municipal elections held in less than 100
40 election districts may be made randomly using a non-uniform
41 distribution to be determined by the Attorney General, upon the
42 recommendation of a majority of the audit team. Such procedures
43 shall be published prior to use in any given election, and the public
44 shall have the opportunity to comment thereon. Notwithstanding
45 the requirements set forth in this paragraph, the audit team shall
46 have the authority to cause audits to be conducted of any election
47 district or audit unit which has not been randomly selected for
48 auditing in which a majority of the audit team determines from the
49 un-audited election results, past election results, or other data that

1 the votes are likely to have been miscounted. The Attorney General
2 shall allow members of the public, including but not limited to
3 those permitted to observe recounts, to observe the audits.

4 (7) As soon as practicable after the completion of an audit
5 conducted pursuant to this section, the Attorney General shall
6 announce publicly and publish the results of the audit and shall
7 include in the announcement a comparison of the results of the
8 election in the districts, as determined by the independent audit
9 team performing the audit, and the final vote count in the districts
10 as announced by the county boards of elections, including a list, by
11 election district and audit unit, of any discrepancies between the
12 initial vote count and any subsequent manual counts of the voter-
13 verifiable paper record; explanations for such discrepancies, if any;
14 and tallies of all overvotes, undervotes or their equivalents, blank
15 ballots, spoiled ballots, and cancellations recorded on the voter-
16 verifiable paper record. If the audit under this section results in a
17 change in the number of votes counted for any candidate, the
18 revised vote totals shall be incorporated in the official result from
19 the relevant election districts or audit units.

20 (8) No county shall certify the results of any election that is
21 subject to an audit performed pursuant to this section prior to the
22 completion of the audit and the announcement and publication of
23 the results thereof as required by paragraph 7 of this subsection.
24 The audit and publication of the results thereof shall be completed
25 prior to the time the State shall make a final determination with
26 respect to any controversy or contest concerning the appointment of
27 its electors for President or Vice President of the United States prior
28 to the deadline established in section 6 of Pub.L.80-644 (3 U.S.C.§
29 6).

30 (9) If the Attorney General, based on a recommendation of a
31 majority of the professional audit team, determines that any of the
32 hand-to-eye counts conducted under this section show cause for
33 concern about the accuracy of the results of any election in the
34 State, or in a county or a municipality, or with respect to a
35 particular election, the independent audit team shall oversee,
36 supervise, and cause to be conducted hand-to-eye counts under this
37 section in such additional election districts or audit units as the
38 Attorney General considers appropriate to resolve any such
39 concerns. The Attorney General shall issue previous to any election
40 the criteria to be employed to determine whether the hand-to-eye
41 counts show concern about the accuracy of the election results in
42 order to trigger further hand-to-eye counts. Such criteria shall be
43 published prior to use in any given election, and the public shall
44 have the opportunity to comment thereon. Notwithstanding the
45 requirements previously set forth in this paragraph, additional hand-
46 to-eye counts shall be conducted if in the initial audit conducted
47 pursuant to the procedures set forth in this subsection, any
48 discrepancy or discrepancies attributable to the electronic counting
49 system would alter the vote share of any candidate or ballot position

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

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

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

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