STATE OF NEW YORK

3738

2023-2024 Regular Sessions

IN ASSEMBLY

February 7, 2023

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to conducting risk-limiting audits

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 9-211 of the election law, as amended by chapter 763 of the laws of 2021, is amended to read as follows:

1. **(a)** Within fifteen days after each general or special election, within thirteen days after every primary election, and within seven days after every village election conducted by the board of elections, the board of elections or a bipartisan committee appointed by such board shall **conduct a risk-limiting** audit**, which will include a hand-to-eye review of at least three percent of** the voter verifiable [~~audit~~] **paper** records [~~from three percent of voting machines or systems within the jurisdiction of such board. Such audits may be performed manually or via the use of any automated tool authorized for such use by the state board of elections which is independent from the voting system it is being used to audit. Voting machines or systems shall be selected for audit through a random, manual process~~] **in accordance with the regulations promulgated pursuant to paragraph (b) of this subdivision. In addition to such audit and in accordance with the same procedures the board of elections shall audit the voter verifiable audit records from three percent of voting machines or systems within the jurisdiction of such board**. At least five days prior to the time fixed for such [~~selection~~] **risk-limiting audit** process, the board of elections shall send notice by first class mail to each candidate, political party and independent body entitled to have had watchers present at the polls in any election district in such board's jurisdiction. Such notice shall state the time and place fixed for such [~~random selection process~~] **risk-limiting audit**.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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The audit shall be conducted in the same manner, to the extent applicable, as a canvass of paper ballots. Each candidate, political party or independent body entitled to appoint watchers to attend at a polling place shall be entitled to appoint such number of watchers to observe the audit.

(b) The state board of elections shall promulgate regulations for the implementation of risk-limiting audits required by paragraph (a) of this subdivision. The number of voter verifiable audit records selected for such audits shall be determined pursuant to such regulations that make use of statistical methods and are designed to limit the risk of certifying an incorrect outcome, but shall be at least three percent of all ballots cast.

(c) As used in this section: (i) "Risk-limiting audit" means a post-election process such that, if the reported outcome of the contest is incorrect, there is at least a ninety percent chance that the audit will replace the incorrect outcome with the correct outcome as determined by a full, hand-to-eye tabulation of all votes validly cast in that election contest that ascertains voter intent manually and directly from voter-verifiable paper records.

(ii) "Reported outcome" means the outcome of an election contest which is determined according to the canvass and which will become the official, certified outcome unless it is revised by an audit, recount, or other legal process.

(iii) "Incorrect outcome" means an outcome that differs from the outcome that would be determined by a full tabulation of all votes validly cast in that election contest, determining voter intent manually, directly from voter-verifiable paper records.

(iv) "Outcome" means the winner or set of winners of an election contest, which might be candidates or positions.

§ 2. County boards of elections are authorized to conduct risk-limiting audit pilots. Any board conducting a pilot audit shall notify the New York state board of elections. The New York state board of elections must provide a report to the state legislature on June 30, 2025 with the findings from the risk-limiting audits conducted through March 31, 2025.

§ 3. This act shall take effect immediately; provided, however, that section one of this act shall take effect on January 1, 2026.