

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 256

Senator LaRose

A BILL

To amend section 3505.21 and to enact section 1
3505.331 of the Revised Code to require the 2
boards of elections to conduct risk-limiting 3
audits of election results. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3505.21 be amended and section 5
3505.331 of the Revised Code be enacted to read as follows: 6

Sec. 3505.21. (A) As used in this section: 7

(1) "during—During the casting of the ballots" includes 8
any time during which a board of elections permits an elector to 9
vote an absent voter's ballot in person at the office of the 10
board and any time ballots may be cast in a precinct polling 11
place on the day of an election. 12

(2) "During the counting of the ballots" includes any time 13
during which the election officials count and tally ballots, 14
make the official canvass of election returns, or conduct an 15
audit of the official results of an election. 16

(B) At any primary, special, or general election, any 17
political party supporting candidates to be voted upon at such 18

election and any group of five or more candidates may appoint to 19
the board of elections or to any of the precincts in the county 20
or city one person, a qualified elector, who shall serve as 21
observer for such party or such candidates during the casting of 22
the ballots and during the counting of the ballots; provided 23
that separate observers may be appointed to serve during the 24
casting and during the counting of the ballots. No candidate, no 25
uniformed peace officer as defined by section 2935.01 of the 26
Revised Code, no uniformed state highway patrol trooper, no 27
uniformed member of any fire department, no uniformed member of 28
the armed services, no uniformed member of the organized 29
militia, no person wearing any other uniform, and no person 30
carrying a firearm or other deadly weapon shall serve as an 31
observer, nor shall any candidate be represented by more than 32
one observer at any one precinct or at the board of elections 33
except that a candidate who is a member of a party controlling 34
committee, as defined in section 3517.03 of the Revised Code, 35
may serve as an observer. 36

(C) Any political party or group of candidates appointing 37
observers shall notify the board of elections of the names and 38
addresses of its appointees and the precincts at which they 39
shall serve or that they will serve at the board of elections. 40
Notification of observers appointed to serve on the day of an 41
election shall take place not less than eleven days before the 42
day of the election on forms prescribed by the secretary of 43
state and may be amended by filing an amendment with the board 44
of elections at any time until four p.m. of the day before the 45
election. Notification of observers appointed to serve at the 46
office of the board during the time absent voter's ballots may 47
be cast in person shall take place not less than eleven days 48
before absent voter's ballots are required to be ready for use 49

pursuant to section 3509.01 of the Revised Code on forms 50
prescribed by the secretary of state and may be amended by 51
filing an amendment with the board of elections at any time 52
until four p.m. of the day before the observer is appointed to 53
serve. The observer serving on behalf of a political party shall 54
be appointed in writing by the chairperson and secretary of the 55
respective controlling party committee. Observers serving for 56
any five or more candidates shall have their certificates signed 57
by those candidates. Observers appointed to a precinct may file 58
their certificates of appointment with the voting location 59
manager of the precinct at the meeting on the evening prior to 60
the election, or with the voting location manager of the 61
precinct on the day of the election. Observers appointed to the 62
office of the board to observe the casting of absent voter's 63
ballots in person prior to the day of the election may file 64
their certificates with the director of the board of elections 65
the day before or on the day that the observers are scheduled to 66
serve at the office of the board. 67

Upon the filing of a certificate, the person named as 68
observer in the certificate shall be permitted to be in and 69
about the applicable polling place during the casting of the 70
ballots and shall be permitted to watch every proceeding of the 71
precinct election officials from the time of the opening until 72
the closing of the polls. The observer also may inspect the 73
counting of all ballots in the polling place or board of 74
elections from the time of the closing of the polls until the 75
counting is completed and the final returns are certified and 76
signed. Observers appointed to serve at the board of elections 77
on the day of an election under this section may observe at the 78
board of elections and may observe at any precinct in the 79
county. The precinct election officials shall protect such 80

observers in all of the rights and privileges granted to them by 81
Title XXXV of the Revised Code. 82

(D) No persons other than the precinct election officials, 83
the observers, a police officer, other persons who are detailed 84
to any precinct on request of the board of elections, or the 85
secretary of state or the secretary of state's legal 86
representative shall be admitted to the polling place, or any 87
room in which a board of elections is counting ballots, after 88
the closing of the polls until the counting, certifying, and 89
signing of the final returns of each election have been 90
completed. 91

(E) Not later than four p.m. of the twentieth day prior to 92
an election at which questions are to be submitted to a vote of 93
the people, any committee that in good faith advocates or 94
opposes a measure may file a petition with the board of any 95
county asking that the petitioners be recognized as the 96
committee entitled to appoint observers to the count at the 97
election. If more than one committee alleging themselves to 98
advocate or oppose the same measure file such a petition, the 99
board shall decide and announce by registered mail to each 100
committee not less than twelve days immediately preceding the 101
election which committee is recognized as being entitled to 102
appoint observers. The decision shall not be final, but any 103
aggrieved party may institute mandamus proceedings in the court 104
of common pleas of the county in which the board has 105
jurisdiction to compel the precinct election officials to accept 106
the appointees of such aggrieved party. Any such recognized 107
committee may appoint an observer to the count in each precinct. 108
Committees appointing observers shall notify the board of 109
elections of the names and addresses of its appointees and the 110
precincts at which they shall serve. Notification shall take 111

place not less than eleven days before the election on forms 112
prescribed by the secretary of state and may be amended by 113
filing an amendment with the board of elections at any time 114
until four p.m. on the day before the election. A person so 115
appointed shall file the person's certificate of appointment 116
with the voting location manager in the precinct in which the 117
person has been appointed to serve. Observers shall file their 118
certificates before the polls are closed. In no case shall more 119
than six observers be appointed for any one election in any one 120
precinct. If more than three questions are to be voted on, the 121
committees which have appointed observers may agree upon not to 122
exceed six observers, and the precinct election officials shall 123
appoint such observers. If such committees fail to agree, the 124
precinct election officials shall appoint six observers from the 125
appointees so certified, in such manner that each side of the 126
several questions shall be represented. 127

(F) No person shall serve as an observer at any precinct 128
or at the board of elections unless the board of elections of 129
the county in which such observer is to serve has first been 130
notified of the name, address, and location at which such 131
observer is to serve. Notification to the board of elections 132
shall be given by the political party, group of candidates, or 133
committee appointing such observer as prescribed in this 134
section. No such observers shall receive any compensation from 135
the county, municipal corporation, or township, and they shall 136
take the following oath, to be administered by one of the 137
precinct election officials: 138

"You do solemnly swear that you will faithfully and 139
impartially discharge the duties as an official observer, 140
assigned by law; that you will not cause any delay to persons 141
offering to vote; and that you will not disclose or communicate 142

to any person how any elector has voted at such election." 143

Sec. 3505.331. (A) After declaring the official results of 144
the elections, as described in section 3505.33 of the Revised 145
Code, the board of elections shall conduct a risk-limiting audit 146
of those results in accordance with this section. Except as 147
otherwise provided in this division, the board shall begin the 148
audit not earlier than six business days after it declares the 149
official results and shall complete the audit not later than the 150
twenty-first day after it declares the official results. If the 151
board conducts a recount, the board shall begin the audit 152
immediately after the board certifies the results of the recount 153
and shall complete the audit not later than the fourteenth day 154
after it certifies the results of the recount. 155

(B) The board shall conduct the audit in accordance with 156
procedures prescribed by the secretary of state, which shall 157
require all of the following: 158

(1) The board shall audit not less than three contested 159
rates, questions, or issues, as directed by the secretary of 160
state. If fewer than three contested rates, questions, or issues 161
appear on the ballot at the election, then the board shall audit 162
every contested rate, question, and issue. In any election, 163
every contested rate, question, or issue shall be eligible to be 164
audited. 165

(2) Every ballot that was included in the canvass of the 166
election returns shall be eligible to be audited, including 167
regular ballots cast on the day of the election, absent voter's 168
ballots, and provisional ballots. 169

(3) The board shall conduct the audit using a risk- 170
limiting audit protocol that uses statistical methods to limit 171

to acceptable levels the risk of certifying an incorrect outcome 172
for a particular race, question, or issue. The protocol shall 173
require bipartisan teams of election officials to physically 174
examine and hand count randomly sampled ballots and to continue 175
the hand counting until the results of the hand count provide 176
sufficiently strong evidence that a hand count of all of the 177
ballots would confirm the election result declared under section 178
3505.33 of the Revised Code or until all of the ballots have 179
been hand counted, whichever occurs first. 180

(C) (1) The board shall give public notice of the times and 181
places for preparing for and conducting the audit in accordance 182
with section 121.22 of the Revised Code. Subject to division (C) 183
(2) of this section, at all times while the board prepares for 184
and conducts the audit, the board shall permit observers 185
appointed under section 3505.21 of the Revised Code, 186
representatives of the news media, and members of the general 187
public to observe the audit and to inspect public records that 188
are relevant to the audit. 189

(2) (a) No person other than a member of the board or a 190
designated employee of the board shall be permitted to handle a 191
ballot. 192

(b) If the board determines that it is necessary to limit 193
the number of persons who may observe the audit because of 194
physical space or other practical constraints, the board may 195
limit the number of members of the general public who may be 196
present, in accordance with procedures prescribed by the 197
secretary of state. The board shall not prevent any observer 198
appointed under section 3505.21 of the Revised Code or any 199
representative of the news media from observing the audit. 200

(D) Not later than five days after completing the audit, 201

the board shall certify the results of the audit to the 202
secretary of state in the form and by the method prescribed by 203
the secretary of state. The secretary of state shall make the 204
results of the audit available to the public on the secretary of 205
state's official web site. If the results of the completed audit 206
indicate that the canvass or the previously declared official 207
election results must be amended, the board promptly shall amend 208
the canvass or issue an amended declaration of the official 209
results, as applicable. 210

(E) As used in this section: 211

(1) "Ballot" means either a paper ballot or the relevant 212
entry on a voter verified paper audit trail. 213

(2) "Voter verified paper audit trail" has the same 214
meaning as in section 3506.01 of the Revised Code. 215

Section 2. That existing section 3505.21 of the Revised 216
Code is hereby repealed. 217

Section 3. (A) Section 3505.331 of the Revised Code as 218
enacted by this act first applies with respect to the official 219
results of the general election held on November 3, 2020. The 220
boards of elections shall conduct audits of the official results 221
of the general election held on November 6, 2018, and the 222
primary election held on March 10, 2020, in accordance with this 223
section. 224

(B) After declaring the official results of the election, 225
as described in section 3505.33 of the Revised Code, the board 226
of elections shall conduct an audit of those results in 227
accordance with this section. Except as otherwise provided in 228
this division, the board shall begin the audit not earlier than 229
six business days after it declares the official results and 230

shall complete the audit not later than the twenty-first day 231
after it declares the official results. If the board conducts a 232
recount, the board shall begin the audit immediately after the 233
board certifies the results of the recount and shall complete 234
the audit not later than the fourteenth day after it certifies 235
the results of the recount. 236

(C) The board shall conduct the audit in accordance with 237
procedures prescribed by the Secretary of State, which shall 238
require all of the following: 239

(1) The board shall audit not less than three contested 240
races, questions, or issues, as directed by the Secretary of 241
State. If fewer than three contested races, questions, or issues 242
appear on the ballot at the election, then the board shall audit 243
every contested race, question, and issue. In any election, 244
every contested race, question, or issue shall be eligible to be 245
audited. 246

(2) Every ballot that was included in the canvass of the 247
election returns shall be eligible to be audited, including 248
regular ballots cast on the day of the election, absent voter's 249
ballots, and provisional ballots. 250

(3) The board shall conduct the audit using either a risk- 251
limiting audit protocol in accordance with division (C)(3)(a) of 252
this section or a percentage-based audit protocol in accordance 253
with division (C)(3)(b) of this section. 254

(a) A risk-limiting audit protocol shall use statistical 255
methods to limit to acceptable levels the risk of certifying an 256
incorrect outcome for a particular race, question, or issue. The 257
protocol shall require bipartisan teams of election officials to 258
physically examine and hand count randomly sampled ballots and 259

to continue the hand counting until the results of the hand count provide sufficiently strong evidence that a hand count of all of the ballots would confirm the declared election result or until all of the ballots have been hand counted, whichever occurs first.

(b) (i) A percentage-based audit protocol shall require bipartisan teams of election officials to physically examine and hand count a number of randomly sampled ballots equal to a given percentage of the total number of ballots cast in the county at that election, as prescribed by the Secretary of State. After the election officials complete the initial audit, the board shall calculate the accuracy rate of each audited race, question, or issue by dividing the sum of any discrepancies for the race, question, or issue discovered during the audit by the total number of ballots audited for the race, question, or issue and subtracting the resulting number from one hundred.

(ii) If the accuracy rate for an audited race, question, or issue is less than the acceptable accuracy rate prescribed by the Secretary of State, the board shall escalate the audit of that race, question, or issue by requiring bipartisan teams of election officials to physically examine and hand count a second set of randomly sampled ballots equal to a given percentage of the total number of ballots cast in the county at that election, as prescribed by the Secretary of State. The second set of ballots shall not include any ballots that were included in the first set of audited ballots. After the election officials have counted the second set of ballots, the board shall calculate the combined accuracy rate for both audited sets of ballots for that race, question, or issue.

(D) (1) The board shall give public notice of the times and

places for preparing for and conducting the audit in accordance 290
with section 121.22 of the Revised Code. Subject to division (D) 291
(2) of this section, at all times while the board prepares for 292
and conducts the audit, the board shall permit observers 293
appointed under section 3505.21 of the Revised Code, 294
representatives of the news media, and members of the general 295
public to observe the audit and to inspect public records that 296
are relevant to the audit. 297

(2) (a) No person other than a member of the board or a 298
designated employee of the board shall be permitted to handle a 299
ballot. 300

(b) If the board determines that it is necessary to limit 301
the number of persons who may observe the audit because of 302
physical space or other practical constraints, the board may 303
limit the number of members of the general public who may be 304
present, in accordance with procedures prescribed by the 305
Secretary of State. The board shall not prevent any observer 306
appointed under section 3505.21 of the Revised Code or any 307
representative of the news media from observing the audit. 308

(E) (1) Not later than five days after completing the 309
audit, the board shall certify the results of the audit to the 310
Secretary of State in the form and by the method prescribed by 311
the Secretary of State. The Secretary of State shall make the 312
results of the audit available to the public on the Secretary of 313
State's official web site. 314

(2) If the board conducted a percentage-based audit and 315
was required to escalate the audit of a race, question, or issue 316
under division (C) (3) (b) (ii) of this section, and the combined 317
accuracy rate for that race, question, or issue is less than the 318
acceptable combined accuracy rate prescribed by the Secretary of 319

State, the Secretary of State may require the board to order 320
bipartisan teams of election officials to physically examine and 321
hand count all ballots cast for that race, question, or issue. 322
The requirements of division (D) of this section apply to any 323
full hand count conducted under this division. 324

(3) If the results of the completed audit or the results 325
of any full hand count ordered under division (E)(2) of this 326
section indicate that the canvass or the previously declared 327
official election results must be amended, the board promptly 328
shall amend the canvass or issue an amended declaration of the 329
official results, as applicable. 330

(F) As used in this section: 331

(1) "Ballot" means either a paper ballot or the relevant 332
entry on a voter verified paper audit trail. 333

(2) "Voter verified paper audit trail" has the same 334
meaning as in section 3506.01 of the Revised Code. 335