

**As Introduced**

**132nd General Assembly  
Regular Session  
2017-2018**

**S. B. No. 256**

**Senator LaRose**

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**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 260  
count provide sufficiently strong evidence that a hand count of 261  
all of the ballots would confirm the declared election result or 262  
until all of the ballots have been hand counted, whichever 263  
occurs first. 264

(b) (i) A percentage-based audit protocol shall require 265  
bipartisan teams of election officials to physically examine and 266  
hand count a number of randomly sampled ballots equal to a given 267  
percentage of the total number of ballots cast in the county at 268  
that election, as prescribed by the Secretary of State. After 269  
the election officials complete the initial audit, the board 270  
shall calculate the accuracy rate of each audited race, 271  
question, or issue by dividing the sum of any discrepancies for 272  
the race, question, or issue discovered during the audit by the 273  
total number of ballots audited for the race, question, or issue 274  
and subtracting the resulting number from one hundred. 275

(ii) If the accuracy rate for an audited race, question, 276  
or issue is less than the acceptable accuracy rate prescribed by 277  
the Secretary of State, the board shall escalate the audit of 278  
that race, question, or issue by requiring bipartisan teams of 279  
election officials to physically examine and hand count a second 280  
set of randomly sampled ballots equal to a given percentage of 281  
the total number of ballots cast in the county at that election, 282  
as prescribed by the Secretary of State. The second set of 283  
ballots shall not include any ballots that were included in the 284  
first set of audited ballots. After the election officials have 285  
counted the second set of ballots, the board shall calculate the 286  
combined accuracy rate for both audited sets of ballots for that 287  
race, question, or issue. 288

(D) (1) The board shall give public notice of the times and 289

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