
OLR Bill Analysis

sSB 472

AN ACT CONCERNING THE RECOMMENDATIONS OF THE RISK-LIMITING AUDITS WORKING GROUP.

SUMMARY

This bill implements risk-limiting audits (RLAs) for state elections but generally maintains the existing post-election audit process for federal and state primaries and municipal elections. RLAs are publicly verifiable auditing procedures that manually examine a statistical sample of paper ballots and guaranty a specified risk limit, which the bill caps at 5%.

To accomplish this, the bill establishes the general scope and procedures for RLAs, such as (1) outlining election officials' duties and the affected public offices, (2) creating ballot manifests, and (3) applying existing provisions for post-election audits to RLAs (e.g., provisions on using electronic equipment and voting tabulators and how to address election contests). The bill requires the secretary of the state (SOTS) to prescribe instructions and procedures for conducting the audits. It also allows her to adopt associated regulations.

The bill also establishes a pilot program to conduct RLAs at municipal elections in 2023. It requires SOTS to randomly select three municipalities for the program, with one municipality for each of the following population ranges (i.e., the estimated number from the most recent State Register and Manual): (1) less than 20,000; (2) 20,000-89,999; and (3) 90,000 or greater (§ 12).

Lastly, the bill makes minor, technical, and conforming changes.

EFFECTIVE DATE: January 1, 2024, except the provision establishing the pilot program for the 2023 municipal election is effective October 1, 2022.

RISK-LIMITING AUDIT SCOPE

Definitions

The bill requires registrars of voters to conduct RLAs for state elections, instead of the current post-election audit process. Federal and state primaries, as well as municipal elections, remain subject to existing auditing requirements (see BACKGROUND). Under the bill, an RLA is a publicly verifiable auditing procedure that (1) manually examines a statistical sample of paper ballots, which reflect the intents of the voters who cast the ballots; (2) produces an outcome of either “ACCEPTABLE” or “INCONCLUSIVE”; and (3) guaranties a specified risk limit.

The “risk limit” is the maximum probability that an audit would produce an outcome of “ACCEPTABLE” when there is a disagreement between the person declared elected and the person who received the most votes as determined by the paper ballots (i.e., the percentage chance an RLA will fail to catch that the reported results are incorrect). Under the bill, the risk limit for RLAs is capped at 5% (presumably, the secretary will set the specific limit in her prescribed procedures or in regulation, see below).

Covered Offices

Under the bill, an RLA must be conducted on the election outcomes for the following offices:

1. presidential elector;
2. all applicable state offices (i.e., those for which all electors of the state may vote, including Governor, Lieutenant Governor, Secretary, Treasurer, Comptroller, Attorney General, and senator in Congress);
3. at least one representative in Congress, selected by random draw;
4. at least 5% of the General Assembly, selected by random draw; and
5. any other office federal law requires to be audited.

If an office of a representative in Congress or state legislator is subject

to recanvass or an election contest, the secretary must ensure that office is selected for an RLA. The bill requires the random draws to be open to the public.

RISK-LIMITING AUDIT PROCEDURES

Pre-Audit Ballot Manifests

The bill requires election officials to create ballot manifests for subsequent use at RLAs following procedures established by SOTS and open to public observation. Although not defined by the bill, a “ballot manifest” is generally a detailed description of how the ballots are stored and organized, listing at minimum the physical location of every ballot cast in the election so that individual ballots or batches of ballot cards can be found, retrieved, and examined manually.

Under the bill, a ballot manifest must be created by manually verifying and recording the number of ballots cast that comprise the result publicly announced by the moderator. The manifests must be created by:

1. election officials in each polling place within 72 hours after the polls close,
2. absentee ballot counters in each central counting location within 72 hours after the polls close, and
3. recanvass officials within 24 hours after completing any recanvass in a voting district for a state election.

Under the bill, the moderator must submit a ballot manifest to the registrars of voters immediately after creating it. The registrars must then submit it to SOTS before the designated day to begin an RLA.

Designated Day

Similar to post-election audits, the bill requires the secretary to designate a day for an RLA to begin, which must be at least (1) 15 days after the state election but (2) two business days before the canvass of votes. Each audit must have advance notice and be open to the public.

Conducting an Audit

Under the bill, registrars of voters must conduct the RLAs and SOTS must prescribe instructions and procedures for conducting them, consistent for all offices. The bill also allows her to adopt necessary regulations for the audits and to establish guidelines for expanded audits when audit results cannot be reconciled with the outcome of the person declared elected by having the greatest number of votes, as determined by the paper ballots (i.e., the “reported results”).

If an RLA for a particular office is “INCONCLUSIVE,” the secretary must order a manual recount of all ballots cast for that office. She may also issue an order, as under current law, to correct any irregularity or impropriety from an RLA.

Reporting Results

As under current law, all audit results, including RLAs, must be filed with the secretary on a form she prescribes. The secretary must immediately forward the results to UConn, which must analyze the results and submit a written report describing any identified concerns to the secretary. Instead of the secretary forwarding the original report to the State Elections Enforcement Commission (SEEC), as currently required, the bill requires her to transmit to SEEC a copy of UConn’s written report, whether for RLAs or post-election audits.

Electronic Equipment and Voting Tabulators

The bill extends several of existing law’s provisions on using electronic equipment and voting tabulators in post-election audits to also cover RLAs (CGS §§ 9-320f & 9-320g). Principally, it:

1. allows the secretary, after consulting with UConn, to authorize the use of electronic equipment;
2. requires her to have access to the code in any voting machine if a problem is discovered due to an RLA;
3. directs her or her designee to examine and recertify a tabulator if UConn’s written report indicates that it failed to record votes accurately and in accordance with state law;

4. requires preserving and returning paper ballots used in an RLA to their designated receptacle (e.g., ballots must be returned to the ballot box, securely sealed, and locked);
5. requires the secretary, if audit officials cannot reconcile the audit results with the reported results, to investigate voting tabulators as needed to determine if they must be (a) decertified or (b) examined and recertified; and
6. authorizes the secretary or a court with competent jurisdiction to issue an order to (a) keep a voting tabulator locked for a longer period than prescribed by law and (b) have a tabulator audited by a person they designate.

By law, if the secretary produces a report on the investigation it must be filed with SEEC, which may investigate further to determine if there was an election law violation. SEEC may also issue orders (see 6, above) if they receive this report. If the machine in question is an optical scan voting system, an order to lock it must include the tabulator, memory card, and all other components and processes used in its programming.

ELECTION OFFICIALS

Compensation

Under the bill, municipalities must compensate election officials who participate in administering and conducting an RLA at the municipality's standard rate of pay for elections.

Regional Election Monitors

As with post-election audits, the bill requires regional election monitors to (1) represent, consult with, and act on the secretary's behalf for RLA preparation and operation and (2) communicate with and help registrars of voters to prepare and implement the audits.

ELECTION COMPLAINTS AND EVIDENCE

Like post-election audits, the bill requires RLA reported results to be open to public inspection and allows them to be used as prima facie evidence of an irregularity for a contested election or other cause of action from an election. It also specifies that an action or complaint may

be brought in response to any state election audit, not just manual tabulations of paper ballots.

The bill specifies that its RLA provisions do not preclude a candidate or elector from seeking other existing remedies for contested elections.

BACKGROUND

Post-Election Audit Procedure

Under current law, the secretary must audit at least 5% of the state's voting districts (i.e., polling locations), selected at random after a federal, state, or municipal regular election or primary. Audits must be noticed in advance and open for public observation. Registrars of voters must conduct the audits by hand unless the secretary, in consultation with UConn, authorizes them to be conducted electronically (CGS § 9-320f, as amended by PA 21-2, June Special Session).

During the post-election audit, registrars tally the paper ballots cast by voters and counted by each optical scan voting tabulator subject to the audit. Once complete, they compare their results with the reported results. Registrars must report the audit results on a secretary-prescribed form with the total number of ballots counted and the total votes for each audited candidate, broken down by whether the ballot was properly or improperly completed.

After a post-election audit, the secretary must order a recount (i.e., recanvass) for an office if there is a discrepancy that could affect its outcome. (If the secretary is a candidate on the ballot that is subject to an audit, SEEC orders the recount.) For this purpose, a "discrepancy" is a difference between the voting tabulator and audit vote counts that exceeds 0.5% of the lower total, where the difference cannot be resolved through an accounting of ballots that were improperly marked (CGS § 9-320f(f) & (o)).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/29/2022)