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## State and Local Government

### I-10 Post-election Audits

According to the National Conference of State Legislatures, 33 states and the District of Columbia currently have some form of a post-election audit in place.

#### What is a Post-election Audit?

A post-election audit (audit) verifies the equipment and procedures used to count votes during an election worked properly and the election yielded the correct outcome. Most audits look at a fixed percentage of voting districts or voting machines and compare the paper record to the results produced by the voting system.

In states that conduct post-election audits, most have included audit requirements and processes in statute.

#### Post-election Audit vs. Recount

Audits differ from recounts in that they are conducted regardless of the margins of victory, though audits can lead to a recount if errors are detected. A recount is a repeat tabulation of votes cast in an election that is used to determine the correctness of an initial count. Recounts will often take place in the event the initial vote tally during an election is extremely close.

#### What is Audited?

Paper records used in an audit may include voter-marked paper ballots, voter-verified paper audit trails produced by direct-recording electronic voting machines (DREs), or paper ballot records produced by ballot-marking devices.

#### Types of Post-election Audits

There are three main types of audits implemented by states: traditional audits, risk-limiting audits, and procedural audits. (See the chart at the end of this article for information on the type of audit each state has implemented.)

### **Traditional Post-election Audits**

Thirty states and the District of Columbia conduct traditional audits. This type of audit is usually conducted manually by hand counting a portion of the paper records and comparing them to the electronic results produced by electronic voting machines. Some states, however, have a process where all or part of the audit can be conducted electronically. Some states that implemented traditional audits use a tiered system, which means a different number of ballots are reviewed, depending on the margin of victory.

### **Risk-limiting Audits**

Three states require risk-limiting audits and two states provide counties with the option to utilize risk-limiting audits if they so chose. A risk-limiting audit makes use of statistical principles and methods and is designed to limit the risk of certifying an incorrect election outcome. If the margin is larger, fewer ballots need to be counted. If the race is tighter, more ballots are audited.

### **Procedural Audits**

A procedural audit is a process for ensuring the correct processes and procedures were followed during the course of the election and may be conducted instead of, or in addition to, a post-election audit. Procedural audits vary in their scope and comprehensiveness, but almost always include a ballot accounting and reconciliation process.

### **Post-election Audits under Certain Circumstances**

Some states do not require a post-election audit to be conducted after every election, but only require them in certain circumstances. For example:

- Idaho conducts a post-election audit only when a recount is required (IC §34-2313); and
- Indiana requires a procedural audit if the total number of votes cast and the

total number of voters in a precinct's poll book differ by five or more. A county chairman for a major political party may also request an audit for confirmation of votes cast (IC §3-11-13-37 *et seq.*, §3-12-3.5-8).

### **Post-election Audits in Kansas**

During the 2018 Legislative Session, the Legislature passed HB 2539, which requires county election officers to conduct a manual audit or tally of each vote cast in 1.0 percent of all precincts, with a minimum of one precinct located within the county. The audit requirements apply to all counties for elections occurring after January 1, 2019. The requirement for audit or tally applies regardless of the method of voting used. The bill specifies these contested races will be audited:

- In presidential election years: one federal race, one state legislative race, and one county race;
- In even-numbered, non-presidential election years: one federal race, one statewide race, one state legislative race, and one county race; and
- In odd-numbered election years: two local races, selected randomly after the election.

### **States with No Post-election Audits**

Ten states do not conduct any type of audit. These states are: Alabama, Arkansas, Delaware, Georgia, Louisiana, Maine, Mississippi, New Hampshire, Oklahoma, and South Dakota.

### Table of Post-election Audits by State

*Note:* Table only contains information on states that conduct post-election audits.

State	Audit Type	Statutes
Alaska	Traditional	AS § 15.15.420 - § 15.15.450
Arizona	Traditional	ARS § 16-602; State of Arizona Elections Procedures Manual
California	Traditional	CEC § 336.5; § 15360
Colorado	Risk-limiting	CRSA § 1-7-515; Colorado Secretary of State Election Rule 25
Connecticut	Traditional	CGSA § 9-320f
Florida	Traditional	FSA § 101.591
Hawaii	Traditional	HRS § 16-42, Hawaii Administrative Rules § 3-172-102
Idaho	Other	IC § 34-2313
Illinois	Traditional	10 ILCS § 5/24A-15; § 5/24C-15
Indiana	Other	IC § 3-12-3.5-8; § 3-11-13-37 <i>et seq.</i>
Iowa	Traditional	ICA § 50.51
Kansas <sup>a</sup>	Traditional	KSA § 25-3009
Kentucky	Traditional	KRS § 117.305; § 117.383
Maryland	Traditional	MD Code, Election Law § 11-3093; Code of Maryland Regulations § 33.08.05.00 <i>et seq.</i>
Massachusetts	Traditional	MGLA 54 § 109A
Michigan	Procedural	MCLA § 168.31a; Post-election Audit Manual
Minnesota	Traditional	MSA § 206.89
Missouri	Traditional	15 CSR § 30-10.090; § 30-10.110
Montana	Traditional	MCA § 13-17-501 - § 13-17-509
Nebraska <sup>b</sup>	Other	Nebraska Secretary of State's Office
Nevada	Traditional	NRS § 293.247; NAC 293.255
New Jersey <sup>c</sup>	Traditional	NJSA § 19:61-9
New Mexico	Traditional, with a tiered system based on the margin of victory	NMSA § 1-14-13.2 <i>et seq.</i> ; NMAC 1.10.23
New York	Traditional	NY Elect. § 9-211; 9 NYCRR 6210.18
North Carolina	Traditional	NCGSA § 163A-1166
North Dakota	Procedural	NDCC § 16.1-06-15
Ohio	Traditional, with risk-limiting audits recommended	OH ST § 3506.14; Secretary of State Directive 2017-14
Oregon	Traditional, with a tiered system based on the margin of victory	ORS § 254.529
Pennsylvania	Traditional	25 PS § 3031.17
Rhode Island	Risk-limiting	RI ST § 17-19-37.4
South Carolina	Procedural	South Carolina Election Commission – Description of Election Audits in South Carolina
Tennessee	Traditional	TCA § 2-20-103
Texas	Traditional	VTCA § 127.201; Election Advisory No. 2012-03(3d)
Utah	Traditional	Election Policy Directive from the Office of the Lieutenant Governor (Sect. 6)
Vermont	Traditional	17 VSA § 2493; § 2582 - § 2588
Virginia	Risk-limiting	VCA § 24.2-671.1
Washington	Traditional, with option of conducting a risk-limiting audit	RCW § 29A.60.170; § 29A.60.185; WAC 434-262-105
West Virginia	Traditional	WVC § 3-4A-28
Wisconsin	Traditional	WSA § 7.08(6); Wisconsin Elections Commission Voting Equipment Audits
Wyoming	Procedural	WS 22-11-104; Wyoming Administrative Rules Secretary of State Election Procedures, Chapter 25
District of Columbia	Traditional	DC ST § 1-1001.09a

<sup>a</sup> *Note:* These provisions apply to Kansas elections held after January 1, 2019.

<sup>b</sup> *Note:* Nebraska does not have a statutory requirement or rules and regulations for post-election audits, but they may be conducted by the Office of the Secretary of State.

<sup>c</sup> *Note:* New Jersey currently does not have machines that produce a paper record and therefore cannot yet conduct an audit.

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