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LAW/RWH 6/18/08

P.L. 2007, CHAPTER 349, *approved January 14, 2008*
Senate, No. 507 (*First Reprint*)

1 AN ACT providing for audits of the results of elections and
2 supplementing chapter 61 of Title 19 of the Revised Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. a. ¹[Notwithstanding any law, rule or regulation to the
8 contrary, the Attorney General shall appoint each year an
9 independent audit team. It shall conduct random hand counts of the
10 voter-verified paper records in at least two percent of the election
11 districts where elections are held for federal or State office,
12 including the offices of Governor and member of the Legislature,
13 and for county and municipal offices selected by the Attorney
14 General. Hand counts shall also be made of the results of at least
15 one voting machine in one election district in each county where
16 elections occur each year. The number and composition of the audit
17 team shall be at the discretion of the Attorney General, except that
18 at least one member shall have verifiable expertise in the field of
19 statistics.

20 b. The independent audit team shall conduct an audit of the
21 results of an election in accordance with the following procedures.

22 (1) No later than 24 hours after the final vote count after an
23 election, the Attorney General shall determine and then announce
24 publicly the districts in the State in which audits shall be conducted.

25 (2) With respect to votes cast at the election district on the date
26 of an election other than by provisional ballot, the independent
27 audit team shall count by hand the voter-verified paper records and
28 compare those records with the count of such votes announced by
29 the county boards of elections.

30 (3) With respect to votes cast other than at the election district on
31 the date of the election, or votes cast by provisional ballot on the
32 date of the election that are certified and counted by the county
33 board of elections on or after the election, including votes cast by
34 military service voters and overseas federal election voters, the
35 independent audit team shall count by hand the applicable voter-
36 verified paper records and compare those records with the count of
37 such votes announced by the county boards of elections.

38 (4) The selection of the election districts and county and
39 municipal elections to be audited shall be made by the Attorney
40 General on a random basis using a uniform distribution in which all
41 districts and county and municipal elections have an equal chance
42 of being selected, in accordance with such procedures as the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SSG committee amendments adopted December 3, 2007.

1 Attorney General deems appropriate, except that at least one voting
2 machine in one district shall be selected for an audit in each county
3 in the State.

4 (5) As soon as practicable after the completion of an audit
5 conducted pursuant to P.L. , c. (C.)(now pending before the
6 Legislature as this bill), the Attorney General shall announce
7 publicly and publish the results of the audit and shall include in the
8 announcement a comparison of the results of the election in the
9 districts, as determined by the independent audit team performing
10 the audit, and the final vote count in the districts as announced by
11 the county boards of elections.

12 (6) No county shall certify the results of any election that is
13 subject to an audit performed pursuant to P.L. , c. (C.)
14 (now pending before the Legislature as this bill) prior to the
15 competition of the audit and the announcement and publication of
16 the results thereof as required by paragraph 5 of this subsection,
17 except to the extent necessary to permit the State to make a final
18 determination with respect to any controversy or contest concerning
19 the appointment of its electors for President or Vice President of the
20 United States prior to the deadline established in section 6, Title 3
21 of the United States Code.

22 (7) If the Attorney General determines that any of the hand
23 counts conducted under P.L. , c. (C.)(now pending before
24 the Legislature as this bill) show cause for concern about the
25 accuracy of the results of any election in the State, or in a county or
26 a municipality, or with respect to a particular election, the
27 independent audit team may conduct hand counts under this act in
28 such additional election districts as the Attorney General considers
29 appropriate to resolve any such concerns.】

30 Notwithstanding any law, rule or regulation to the contrary, the
31 Attorney General shall appoint each year an independent,
32 professional audit team. It shall oversee, in each county, random
33 hand-to-eye counts of the voter-verifiable paper records that are to
34 be conducted by appropriate county election officials. Audits shall
35 be conducted for each election held for federal or State office,
36 including the offices of Governor, Lieutenant Governor and
37 member of the Legislature, and for county and municipal offices
38 selected by the Attorney General. In each county, the audit shall be
39 conducted in at least two percent of the election districts in which
40 each audited election appears on the ballot. County and municipal
41 elections held in fewer than 100 election districts are exempt from
42 this requirement. Election districts that are randomly selected for
43 auditing for either the Congressional or State legislative elections in
44 alternating years may be used to audit any other election that
45 appears on the ballot in such districts. Ballot batches, as provided
46 for in subsection c. of this section, shall also be audited subject to
47 the provisions of this section.

48 b. The membership and composition of the audit team shall be at
49 the discretion of the Attorney General but shall be not less than

1 four, and at least one member shall have verifiable expertise in the
2 field of statistics and another member shall have verifiable expertise
3 in the field of auditing. No member of the audit team shall include
4 any person who:

5 (1) is serving in any position on any political campaign
6 committee of any candidate for political office in the elections that
7 are subject to the manual audit;

8 (2) is an employee of, or reports to, the Attorney General; or

9 (3) is serving as an officer or an employee of any entity that
10 designs, manufactures, or services a voting system used in the State.

11 c. The independent audit team shall oversee, supervise, and
12 require county election officials to conduct an audit of the results of
13 an election in accordance with the following procedures.

14 (1) Any procedure designed, adopted, and implemented by the
15 audit team shall be implemented to ensure with at least 99%
16 statistical power that for each federal, gubernatorial or other
17 Statewide election held in the State, a 100% manual recount of the
18 voter-verifiable paper records would not alter the electoral outcome
19 reported by the audit. For each election held for State office, other
20 than Governor and Lieutenant Governor, and for county and
21 municipal elections held in 100 or more election districts, any
22 procedure designed, adopted, and implemented by the audit team
23 shall be implemented to ensure with at least 90% statistical power
24 that a 100% manual recount of the voter-verifiable paper records
25 would not alter the electoral outcome reported by the audit. Such
26 procedures designed, adopted, and implemented by the audit team
27 to achieve statistical power shall be based upon scientifically
28 reasonable assumptions, with respect to each audited election,
29 including but not limited to: the possibility that within any election
30 district up to 20% of the total votes cast may have been counted for
31 a candidate or ballot position other than the one intended by the
32 voters; and that the number of votes cast per election district will
33 vary. Such procedures and assumptions shall be published prior to
34 any given election, and the public shall have the opportunity to
35 comment thereon.

36 (2) Any procedure designed, adopted, and implemented by the
37 audit team for each county and municipal election held in fewer
38 than 100 election districts, but more than a single election district,
39 shall be conducted in at least two election districts.

40 (3) Within a reasonable period of time after the final vote count
41 after an election, the Attorney General, with the audit team, shall
42 determine and then announce publicly the election districts in the
43 State in which audits shall be conducted, and within 24 hours of
44 that announcement, the audit shall be commenced.

45 (4) With respect to votes cast at the election district on the date
46 of an election other than by emergency or provisional ballot, the
47 independent audit team shall oversee and supervise a hand-to-eye
48 count of the voter-verifiable paper records and compare those

1 records with the count of such votes announced by the county
2 boards of elections.

3 (5) With respect to the votes cast other than at the election
4 district on the date of the election, or any other votes counted
5 electronically by the county board of elections on or after the date
6 of the election, including votes cast by military service voters and
7 overseas federal election voters, the independent audit team shall
8 oversee and supervise a count by hand of the voter-verifiable paper
9 records as follows. To maintain voter privacy, prior to each
10 election, the audit team shall direct the appropriate county election
11 official to divide the ballots into batches, hereinafter referred to as
12 audit units. Each audit unit shall contain approximately the average
13 number of ballots cast in the election districts within the county, or
14 fewer, but shall not be associated with any particular election
15 district. As the ballots comprising each audit unit are counted
16 electronically, each audit unit shall be assigned a unique
17 identification number. Immediately after counting the ballots
18 comprising each audit unit, a cumulative summary vote tally report
19 bearing the audit unit's unique identification number and containing
20 the sum of the vote totals of the audit unit and all previously
21 counted audit units in the election shall be printed and affixed to the
22 audit unit. The reports shall be subject to the same secure chain of
23 custody as the ballots comprising the audit units and shall be used
24 by the audit team to determine the electronic vote tally for each
25 audit unit. The audit team shall first compare the vote tallies in the
26 final cumulative report to the official results announced by the
27 county and resolve any discrepancies, and then include all the audit
28 units from each county in the random selection process and if
29 selected, cause them to be audited in the same manner provided
30 herein for election districts, except that the hand-to-eye count shall
31 be compared to the electronic vote tally derived from the
32 cumulative reports.

33 (6) The selection of the election districts, audit units, and county
34 and municipal elections to be audited shall be made by the Attorney
35 General on a random basis by lot, at a public meeting, using a
36 uniform distribution in which all election districts in which an
37 election is held, and county and municipal elections have an equal
38 chance of being selected, in accordance with such procedures as the
39 Attorney General, upon the recommendation of a majority of the
40 audit team, deems appropriate. Selection of election districts or
41 audit units for county and municipal elections held in less than 100
42 election districts may be made randomly using a non-uniform
43 distribution to be determined by the Attorney General, upon the
44 recommendation of a majority of the audit team. Such procedures
45 shall be published prior to use in any given election, and the public
46 shall have the opportunity to comment thereon. Notwithstanding
47 the requirements set forth in this paragraph, the audit team shall
48 have the authority to cause audits to be conducted of any election
49 district or audit unit which has not been randomly selected for

1 auditing in which a majority of the audit team determines from the
2 un-audited election results, past election results, or other data that
3 the votes are likely to have been miscounted. The Attorney General
4 shall allow members of the public, including but not limited to
5 those permitted to observe recounts, to observe the audits.

6 (7) As soon as practicable after the completion of an audit
7 conducted pursuant to this section, the Attorney General shall
8 announce publicly and publish the results of the audit and shall
9 include in the announcement a comparison of the results of the
10 election in the districts, as determined by the independent audit
11 team performing the audit, and the final vote count in the districts
12 as announced by the county boards of elections, including a list, by
13 election district and audit unit, of any discrepancies between the
14 initial vote count and any subsequent manual counts of the voter-
15 verifiable paper record; explanations for such discrepancies, if any;
16 and tallies of all overvotes, undervotes or their equivalents, blank
17 ballots, spoiled ballots, and cancellations recorded on the voter-
18 verifiable paper record. If the audit under this section results in a
19 change in the number of votes counted for any candidate, the
20 revised vote totals shall be incorporated in the official result from
21 the relevant election districts or audit units.

22 (8) No county shall certify the results of any election that is
23 subject to an audit performed pursuant to this section prior to the
24 completion of the audit and the announcement and publication of
25 the results thereof as required by paragraph 7 of this subsection.
26 The audit and publication of the results thereof shall be completed
27 prior to the time the State shall make a final determination with
28 respect to any controversy or contest concerning the appointment of
29 its electors for President or Vice President of the United States prior
30 to the deadline established in section 6 of Pub.L.80-644 (3 U.S.C. §
31 6).

32 (9) If the Attorney General, based on a recommendation of a
33 majority of the professional audit team, determines that any of the
34 hand-to-eye counts conducted under this section show cause for
35 concern about the accuracy of the results of any election in the
36 State, or in a county or a municipality, or with respect to a
37 particular election, the independent audit team shall oversee,
38 supervise, and cause to be conducted hand-to-eye counts under this
39 section in such additional election districts or audit units as the
40 Attorney General considers appropriate to resolve any such
41 concerns. The Attorney General shall issue previous to any election
42 the criteria to be employed to determine whether the hand-to-eye
43 counts show concern about the accuracy of the election results in
44 order to trigger further hand-to-eye counts. Such criteria shall be
45 published prior to use in any given election, and the public shall
46 have the opportunity to comment thereon. Notwithstanding the
47 requirements previously set forth in this paragraph, additional hand-
48 to-eye counts shall be conducted if in the initial audit conducted
49 pursuant to the procedures set forth in this subsection, any

1 discrepancy or discrepancies attributable to the electronic counting
2 system would alter the vote share of any candidate or ballot position
3 by one tenth of one percent or more of the hand counted votes in the
4 sample. Under such circumstances, the audit of the election shall
5 be expanded using the same number of election districts and when
6 possible, audit units, as the initial audit and shall be conducted
7 under the same procedures used to conduct the initial audit,
8 provided, however, that if the initial audit comprises more than one
9 half the total number of election districts and audit units in the
10 election, the expanded audit shall be a full hand-to-eye count of the
11 remaining un-audited election districts and audit units. Further
12 hand-to-eye counts shall be conducted if any discrepancy or
13 discrepancies attributable to the electronic counting system detected
14 by the initial or subsequent expanded audit indicates a substantial
15 possibility that a complete hand-to-eye recount would alter the
16 outcome of the audited election.

17 (10) If the voter-verifiable paper records in any machine are
18 found to be unusable for an audit for any reason whatsoever,
19 another machine used in the same election shall be selected at
20 random by the audit team to replace the original machine in the
21 audit sample. All such selections shall be made randomly in the
22 presence of those observing the audit using a method approved by
23 the Attorney General. An investigation to determine the reason the
24 voter-verifiable paper records were compromised and unusable
25 shall begin immediately, and the results of the investigation shall be
26 made public upon completion.

27 d. Nothing in this section shall be construed to prevent a
28 candidate or other applicant from requesting a recount pursuant to
29 R.S.19:28-1 et seq. or any other law. In the event that such a
30 recount is held in any election district that has been audited
31 pursuant to this section, the official result from such election
32 district shall be applied to the recount in lieu of conducting a
33 subsequent hand count of the audited election district unless a court,
34 at the request of a candidate or other applicant who requested the
35 recount, so orders.¹

36
37 2. This act shall take effect on January 1, 2008.
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39

40 _____
41
42 Requires mandatory audit of election results in randomly
43 selected election districts.

SENATE, No. 507

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

Co-Sponsored by:

Senator Inverso

SYNOPSIS

Requires mandatory audit of election results in randomly selected election districts.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/31/2006)

1 AN ACT providing for audits of the results of elections and
2 supplementing chapter 61 of Title 19 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. Notwithstanding any law, rule or regulation to the contrary,
8 the Attorney General shall appoint each year an independent audit
9 team. It shall conduct random hand counts of the voter-verified
10 paper records in at least two percent of the election districts where
11 elections are held for federal or State office, including the offices of
12 Governor and member of the Legislature, and for county and
13 municipal offices selected by the Attorney General. Hand counts
14 shall also be made of the results of at least one voting machine in
15 one election district in each county where elections occur each year.
16 The number and composition of the audit team shall be at the
17 discretion of the Attorney General, except that at least one member
18 shall have verifiable expertise in the field of statistics.

19 b. The independent audit team shall conduct an audit of the
20 results of an election in accordance with the following procedures.

21 (1) No later than 24 hours after the final vote count after an
22 election, the Attorney General shall determine and then announce
23 publicly the districts in the State in which audits shall be conducted.

24 (2) With respect to votes cast at the election district on the date
25 of an election other than by provisional ballot, the independent
26 audit team shall count by hand the voter-verified paper records and
27 compare those records with the count of such votes announced by
28 the county boards of elections.

29 (3) With respect to votes cast other than at the election district on
30 the date of the election, or votes cast by provisional ballot on the
31 date of the election that are certified and counted by the county
32 board of elections on or after the election, including votes cast by
33 military service voters and overseas federal election voters, the
34 independent audit team shall count by hand the applicable voter-
35 verified paper records and compare those records with the count of
36 such votes announced by the county boards of elections.

37 (4) The selection of the election districts and county and
38 municipal elections to be audited shall be made by the Attorney
39 General on a random basis using a uniform distribution in which all
40 districts and county and municipal elections have an equal chance
41 of being selected, in accordance with such procedures as the
42 Attorney General deems appropriate, except that at least one voting
43 machine in one district shall be selected for an audit in each county
44 in the State.

45 (5) As soon as practicable after the completion of an audit
46 conducted pursuant to P.L. , c. (C.)(now pending before the
47 Legislature as this bill), the Attorney General shall announce

S507 GILL

1 publicly and publish the results of the audit and shall include in the
2 announcement a comparison of the results of the election in the
3 districts, as determined by the independent audit team performing
4 the audit, and the final vote count in the districts as announced by
5 the county boards of elections.

6 (6) No county shall certify the results of any election that is
7 subject to an audit performed pursuant to P.L. , c. (C.)
8 (now pending before the Legislature as this bill) prior to the
9 competition of the audit and the announcement and publication of
10 the results thereof as required by paragraph 5 of this subsection,
11 except to the extent necessary to permit the State to make a final
12 determination with respect to any controversy or contest concerning
13 the appointment of its electors for President or Vice President of the
14 United States prior to the deadline established in section 6, Title 3
15 of the United States Code.

16 (7) If the Attorney General determines that any of the hand
17 counts conducted under P.L. , c. (C.)(now pending before
18 the Legislature as this bill) show cause for concern about the
19 accuracy of the results of any election in the State, or in a county or
20 a municipality, or with respect to a particular election, the
21 independent audit team may conduct hand counts under this act in
22 such additional election districts as the Attorney General considers
23 appropriate to resolve any such concerns.

24

25 2. This act shall take effect on January 1, 2008.

26

27

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STATEMENT

29

30 The purpose of this bill is to establish a procedure for the
31 mandatory audit of election results each year in randomly selected
32 voting districts in the State. The audit would be conducted by an
33 audit team appointed by the Attorney General, who would also have
34 discretion as to the number and composition of such a team but it
35 must include at least one member who has verifiable expertise in
36 the field of statistics. It will conduct random hand counts of the
37 voter-verified paper records in at least two percent of the election
38 districts where elections are held for federal or State offices,
39 including the offices of Governor and member of the Legislature,
40 and for county and municipal offices selected by the Attorney
41 General. Hand counts will also be made of the results of at least
42 one voting machine in one election district in each county where
43 elections occur each year.

44 Under the bill, the Attorney General will determine and then
45 announce publicly the districts in the State in which audits will be
46 conducted within 24 hours after the final vote count for an election.
47 Votes cast by electronic voting machines, provisional ballots
48 absentee ballots and military and overseas federal election voters
49 are to be included in the audit. If the Attorney General determines

S507 GILL

4

1 that any of the hand counts show cause for concern about the
2 accuracy of the results of any election, the independent audit team
3 may conduct hand counts in such additional election districts as the
4 Attorney General considers appropriate to resolve any such
5 concerns.

6 The bill takes effect on January 1, 2008, which is the date by which
7 voter-verified paper records must be operational on electronic
8 voting machines used in this State, pursuant to P.L.2005, c.137.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 507

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 3, 2007

The Senate State Government Committee reports without recommendation and with committee amendments Senate, No. 507.

The purpose of this bill is to establish a procedure for the mandatory audit of election results each year in randomly selected voting districts in the State. The audit would be conducted by an audit team appointed annually by the Attorney General, who would also have discretion as to the number and composition of such a team. It must include at least four members, one member whom must have verifiable expertise in the field of statistics and another who has verifiable expertise in the field of auditing. The audit team will oversee, in each county, random hand-to-eye counts of voter verifiable paper records conducted by appropriate county officials. Audits will be conducted for each election held for federal or State office, including Governor, Lieutenant Governor and member of the Legislature and for county and municipal offices selected by the Attorney General. In each county the audit will be conducted in at least two percent of the election districts in which each audited election appears on the ballot, but county and municipal elections held in fewer than 100 election districts are exempt from this requirement.

Under the bill, the audit team will develop statistical procedures with at least 99 percent statistical power so that for every election for a federal or gubernatorial election subject to an audit, a 100 percent manual recount of the voter-verifiable records would not alter the electoral outcome reported by the audit, and statistical procedures with at least 90 percent statistical power so that for every election for a State office, other than governor, including for a county or municipal office, a 100 percent manual recount would not alter the electoral outcome reported by the audit. Any procedure designed by the audit team for a county and municipal election held in fewer than 100 election districts, but more than a single district, will be conducted in at least two election districts. The bill also establishes a detailed procedure for the hand-to-eye count of votes counted electronically that maintains the privacy of the vote. In addition, the bill provides that the selection of districts will be made on a random basis, by lot, but the audit team has the authority to cause audits to be conducted in

any election district or audit unit in addition to those selected at random when a majority of the audit team determines from the un-audited election results, past election results, or other data that the votes are likely to have been miscounted.

Under the bill, the Attorney General can authorize the audit team to conduct a second audit if errors detected by the first audit cause a miscount that changes a candidate's vote share by 0.1 percent or more, and additional counts if miscount rates detected by the initial audit or subsequent expanded audit would have the potential to alter the outcome of the audited election were they to persist throughout the entire vote count. If the voter-verifiable paper records in any machine are found to be unusable for an audit for any reason whatsoever, another machine used in the same election will be selected at random by the audit team to replace the original machine in the audit sample. Nothing in the bill can be construed to prevent a candidate or other applicant from requesting a recount pursuant to current law. If such a recount is held in any election district that has been audited pursuant to this bill, the official result from the election district would be applied to the recount in lieu of conducting a subsequent hand count of the audited election district unless a court, at the request of a candidate or other applicant who requested the recount, so orders.

The bill takes effect on January 1, 2008.

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee amended the bill to: a) require the audit team to have a minimum of four members, including one person who has a verifiable expertise in the field of auditing; b) provide that no audit team may include any person who is serving on any political committee of any candidate for public office in elections subject to the audit, who is an employee or reports to the Attorney General, or who is an employee of any entity that manufactures voting systems used in the State; c) require the audit team to develop statistical procedures with at least 99 percent statistical power so that for every election for a federal or gubernatorial election subject to an audit, a 100 percent manual recount of the voter-verifiable records would not alter the electoral outcome reported by the audit, and statistical procedures with at least 90 percent statistical power so that for every election for a State office, other than governor, including for a county or municipal office, a 100 percent manual recount would not alter the electoral outcome reported by the audit; d) provide that any procedure designed by the audit team for a county and municipal election held in fewer than 100 election districts, but more than a single district, will be conducted in at least two election districts; e) establish a detailed procedure for the hand count of votes counted electronically that

maintains the privacy of the vote; f) provide that the selection of districts will be made on a random basis, by lot, but the audit team has the authority to cause audits to be conducted in any election district or audit unit in addition to those selected at random when a majority of the audit team determines from the un-audited election results, past election results, or other data that the votes are likely to have been miscounted; g) provide that the Attorney General will authorize the audit team to conduct a second audit if errors detected by the first audit cause a miscount that changes a candidate's vote share by 0.1 percent or more, and additional counts if miscount rates detected by the initial audit or subsequent expanded audit would have the potential to alter the outcome of the audited election were they to persist throughout the entire vote count; h) provide that if the voter-verifiable paper records in any machine are found to be unusable for an audit for any reason whatsoever, another machine used in the same election will be selected at random by the audit team to replace the original machine in the audit sample; i) provide that nothing in the bill can be construed to prevent a candidate or other applicant from requesting a recount pursuant to current law; and j) if such a recount is held in any election district that has been audited pursuant to this bill, the official result from the election district would be applied to the recount in lieu of conducting a subsequent hand count of the audited election district unless a court, at the request of a candidate or other applicant who requested the recount, so orders.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 507

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2007

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 507 (1R).

The bill establishes a procedure for the mandatory audit of election results each year in randomly selected voting districts in the State. The audit would be conducted by an audit team appointed annually by the Attorney General, who would also have discretion as to the number and composition of such a team. It must include at least four members, one member whom must have verifiable expertise in the field of statistics and another who has verifiable expertise in the field of auditing. The audit team will oversee, in each county, random hand-to-eye counts of voter verifiable paper records conducted by appropriate county officials. Audits will be conducted for each election held for federal or State office, including Governor, Lieutenant Governor and member of the Legislature and for county and municipal offices selected by the Attorney General. In each county the audit will be conducted in at least two percent of the election districts in which each audited election appears on the ballot, but county and municipal elections held in fewer than 100 election districts are exempt from this requirement.

Under the bill, the audit team will develop statistical procedures with at least 99 percent statistical power so that for every election for a federal or gubernatorial election subject to an audit, a 100 percent manual recount of the voter-verifiable records would not alter the electoral outcome reported by the audit, and statistical procedures with at least 90 percent statistical power so that for every election for a State office, other than governor, including for a county or municipal office, a 100 percent manual recount would not alter the electoral outcome reported by the audit. Any procedure designed by the audit team for a county and municipal election held in fewer than 100 election districts, but more than a single district, will be conducted in at least two election districts. The bill also establishes a detailed procedure for the hand-to-eye count of votes counted electronically that maintains the privacy of the vote. In addition, the bill provides that the selection of districts will be made on a random basis, by lot, but the audit team has the authority to cause audits to be conducted in

any election district or audit unit in addition to those selected at random when a majority of the audit team determines from the un-audited election results, past election results, or other data that the votes are likely to have been miscounted.

Under the bill, the Attorney General can authorize the audit team to conduct a second audit if errors detected by the first audit cause a miscount that changes a candidate's vote share by 0.1 percent or more, and additional counts if miscount rates detected by the initial audit or subsequent expanded audit would have the potential to alter the outcome of the audited election were they to persist throughout the entire vote count. If the voter-verifiable paper records in any machine are found to be unusable for an audit for any reason whatsoever, another machine used in the same election will be selected at random by the audit team to replace the original machine in the audit sample. Nothing in the bill can be construed to prevent a candidate or other applicant from requesting a recount pursuant to current law. If such a recount is held in any election district that has been audited pursuant to this bill, the official result from the election district would be applied to the recount in lieu of conducting a subsequent hand count of the audited election district unless a court, at the request of a candidate or other applicant who requested the recount, so orders.

The bill takes effect on January 1, 2008.

FISCAL IMPACT:

According to preliminary information from the Attorney General's Office the cost of this bill will range from \$0.14 to \$3.00 per ballot audited, with an average cost of \$2.33, based on information received from county election officials. If 200,000 ballots are audited then the costs will be approximately \$466,000. The 200,000 ballot count is based on high turnout elections such as a federal election with 50 percent turnout or a State election with a 37 percent turnout.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 507

STATE OF NEW JERSEY 212th LEGISLATURE

DATED: DECEMBER 21, 2007

SUMMARY

- Synopsis:** Requires mandatory audits of election results in randomly selected election districts.
- Type of Impact:** Increase in State and County Government Expenditures.
- Agencies Affected:** Department of Law and Public Safety, Division of Elections; County Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Cost Increase - See comments below		
Local Cost	Indeterminate Cost Increase - See comments below		

- The increased costs to the State and county governments cannot be determined due to a lack of actual cost information relevant to this bill from all counties and the number of variables relevant to elections in this State and relevant to the procedures and conditions for the conduct of audits set forth in the bill. Mandatory audits will result in an expenditure increase for the State and for county governments. The Department of Law and Public Safety has estimated the cost of such audits at \$2.33 per ballot based on a survey of 16 county election officials.
- Requires hand-to-eye audits of voter-verifiable paper records of election results to be conducted by county election officials in election districts randomly selected by the Attorney General, with the audits supervised by an independent, professional audit team of at least four members appointed by the Attorney General. In each county, an audit will be conducted in at least two percent of the election districts.

BILL DESCRIPTION

Senate Bill No. 507 (1R) of 2007 requires the Attorney General to appoint each year an independent, professional audit team of no fewer than four members, to oversee, in each county, random hand-to-eye counts of the voter-verifiable paper records, to be conducted by appropriate

county election officials. Audits will be conducted for each election held for federal, State, county, and municipal offices. In each county, the audit will be conducted in at least two percent of the election districts.

The audit team will design, adopt, and implement procedures to ensure, with at least 99% statistical power, that for each federal and gubernatorial election, a 100% manual recount of the voter-verifiable paper records would not alter the electoral outcome reported by the audit; and for each State, county, and municipal election, to ensure, with at least 90% statistical power, that a 100% manual recount of the voter-verifiable paper records would not alter the electoral outcome reported by the audit. The audit for each county and municipal election held in fewer than 100 election districts will be conducted in at least two election districts.

The Attorney General will determine and then announce publicly, within a reasonable period of time after the final vote count after an election, the election districts in which audits will be conducted and the audits will start within 24 hours of that announcement. The selection of the election districts, audit units, and county and municipal elections to be audited will be made by the Attorney General on a random basis by lot, at a public meeting after public notice of the selection procedures. The audit team can audit an election district that has not been randomly selected if a majority of the audit team determines from the un-audited election results, past election results, or other data that the votes are likely to have been miscounted.

The bill also provides for the procedures for the audit of votes cast other than at the election district on election day, or of other votes counted electronically by the county board of elections after election day, including votes cast by military service voters and overseas federal election voters

The results of the audit will be announced publicly by the Attorney General, with certain details provided. No county can certify the results of an election that is subject to an audit prior to the completion of the audit and the announcement and publication of the results

If the Attorney General determines that any of the hand-to-eye counts conducted show cause for concern about the accuracy of the results of an election based on certain criteria, the audit team will oversee additional audits of election districts as the Attorney General considers appropriate to resolve concerns. Additional hand-to-eye counts will be conducted if in the initial audit a discrepancy attributable to the electronic counting system would alter the vote share of any candidate or ballot position by one tenth of one percent or more of the hand counted votes in the sample.

If the voter-verifiable paper records in any machine are found to be unusable for an audit for any reason whatsoever, another machine used in the same election will be selected at random by the audit team to replace the original machine in the audit sample, and an investigation conducted.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received; however, relevant information was informally supplied by the Office of the Attorney General.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concludes that mandatory audits will result in an expenditure increase for the State and each county. However, a precise estimate of the cost to the State and to county governments to implement the provisions of this bill cannot be

determined because actual cost information relevant to this bill for each county is unavailable and because of the variables relevant to elections in this State (for example, number and type of races and voter turnout per audited election) and relevant to the procedures and conditions for the conduct of audits as set forth in the bill (for example, a discrepancy between the audit and the vote count will require an enhanced audit). As discussed below, information presented by the Department of Law and Public Safety estimates the cost at an average of \$2.33 per ballot audited, given certain conditions. Therefore, an audit of 200,000 votes would cost \$466,000.

The OLS has obtained from the Department of Law and Public Safety an estimate of the per ballot cost of this bill based on a survey of 16 county election officials. The county officials were asked to calculate the per ballot cost of a manual count of an election with one federal race on the ballot and a 50 percent registered voter turnout, assuming all votes cast in the election were cast by paper ballot. The officials were asked to estimate: the number of workers required to manually count the ballots; the number of workers per counting team; how many of the workers would be existing employees and could be used for this task without overtime pay; the amount of time required to complete the task given the number of workers specified; the cost per worker per day; and how many more workers would be required to complete the task in the same amount of time if there were three races rather than one on the ballot. Using the county responses, the department calculated a cost of \$2.33 per ballot counted as the weighted average using percentage of registered workers, after discarding the two highest costs and the two lowest costs reported.

There has been other cost information presented on this bill, and OLS attempted to obtain information on the cost of audits conducted in comparable states with voter-verifiable paper records. According to a political scientist at Bard College in New York, the estimated cost of a federal election audit in New Jersey under this bill will total approximately \$20,000, at a rate of \$0.10 per ballot. The estimate is based on the estimates of the experience of election officials in other states that use optical scan ballots. However, OLS notes that this bill requires an audit using the hand-to-eye method, not optical scan technology. The founder and director of Citizens for Election Integrity Minnesota, a non-partisan organization that advocates for accurate and verifiable elections, reports that the 2006 post-election audit of Minnesota's voting systems cost approximately \$0.09 to \$0.10 per ballot. However, Minnesota's \$0.10 per ballot cost was driven by the use of volunteers conducting the audits. Written testimony submitted on this bill by this group states that, "[w]hile no hard data was gathered regarding costs involved, based on an informal survey of some election officials we estimate the total costs of staff time, including the election judges was \$24,500 to \$27,500. Given that 277,177 votes were audited in all of the races across the state, this would mean about nine or ten cents per hand-counted vote." It should be noted that this bill requires a professional audit team to be assembled and that Minnesota only audits the top three races in that state. The OLS located a report on a pilot project in Georgia created by a 2006 law to audit the 2006 November general election and any runoff election. Under this project, one county, where 976 votes were cast, was audited over a three day period by an audit team of 24 members, including three managers, at a total cost of \$2,937, or \$3.00 per ballot audited.

Section: State Government

Analyst: Kimberly Anne McCord
Associate Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

ASSEMBLY, No. 2730

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MARCH 2, 2006

Sponsored by:
Assemblyman REED GUSCIORA
District 15 (Mercer)

SYNOPSIS

Requires mandatory audit of election results in randomly selected election districts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing for audits of the results of elections and
2 supplementing chapter 61 of Title 19 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. Notwithstanding any law, rule or regulation to the
8 contrary, the Attorney General shall appoint each year an
9 independent audit team. It shall conduct random hand counts of the
10 voter-verified paper records in at least two percent of the election
11 districts where elections are held for federal or State office,
12 including the offices of Governor and member of the Legislature,
13 and for county and municipal offices selected by the Attorney
14 General. Hand counts shall also be made of the results of at least
15 one voting machine in one election district in each county where
16 elections occur each year. The number and composition of the audit
17 team shall be at the discretion of the Attorney General, except that
18 at least one member shall have verifiable expertise in the field of
19 statistics.

20 b. The independent audit team shall conduct an audit of the
21 results of an election in accordance with the following procedures.

22 (1) No later than 24 hours after the final vote count after an
23 election, the Attorney General shall determine and then announce
24 publicly the districts in the State in which audits shall be conducted.

25 (2) With respect to votes cast at the election district on the date
26 of an election other than by provisional ballot, the independent
27 audit team shall count by hand the voter-verified paper records and
28 compare those records with the count of such votes announced by
29 the county boards of elections.

30 (3) With respect to votes cast other than at the election district on
31 the date of the election, or votes cast by provisional ballot on the
32 date of the election that are certified and counted by the county
33 board of elections on or after the election, including votes cast by
34 military service voters and overseas federal election voters, the
35 independent audit team shall count by hand the applicable voter-
36 verified paper records and compare those records with the count of
37 such votes announced by the county boards of elections.

38 (4) The selection of the election districts and county and
39 municipal elections to be audited shall be made by the Attorney
40 General on a random basis using a uniform distribution in which all
41 districts and county and municipal elections have an equal chance
42 of being selected, in accordance with such procedures as the
43 Attorney General deems appropriate, except that at least one voting
44 machine in one district shall be selected for an audit in each county
45 in the State.

46 (5) As soon as practicable after the completion of an audit
47 conducted pursuant to P.L. , c. (C.)(now pending before the
48 Legislature as this bill), the Attorney General shall announce

1 publicly and publish the results of the audit and shall include in the
2 announcement a comparison of the results of the election in the
3 districts, as determined by the independent audit team performing
4 the audit, and the final vote count in the districts as announced by
5 the county boards of elections.

6 (6) No county shall certify the results of any election that is
7 subject to an audit performed pursuant to P.L. , c. (C.)
8 (now pending before the Legislature as this bill) prior to the
9 competition of the audit and the announcement and publication of
10 the results thereof as required by paragraph 5 of this subsection,
11 except to the extent necessary to permit the State to make a final
12 determination with respect to any controversy or contest concerning
13 the appointment of its electors for President or Vice President of the
14 United States prior to the deadline established in section 6, Title 3
15 of the United States Code.

16 (7) If the Attorney General determines that any of the hand
17 counts conducted under P.L. , c. (C.)(now pending before
18 the Legislature as this bill) show cause for concern about the
19 accuracy of the results of any election in the State, or in a county or
20 a municipality, or with respect to a particular election, the
21 independent audit team may conduct hand counts under this act in
22 such additional election districts as the Attorney General considers
23 appropriate to resolve any such concerns.

24

25 2. This act shall take effect on January 1, 2008.

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27

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STATEMENT

29

30 The purpose of this bill is to establish a procedure for the
31 mandatory audit of election results each year in randomly selected
32 voting districts in the State. The audit would be conducted by an
33 audit team appointed by the Attorney General, who would also have
34 discretion as to the number and composition of such a team but it
35 must include at least one member who has verifiable expertise in
36 the field of statistics. It will conduct random hand counts of the
37 voter-verified paper records in at least two percent of the election
38 districts where elections are held for federal or State offices,
39 including the offices of Governor and member of the Legislature,
40 and for county and municipal offices selected by the Attorney
41 General. Hand counts will also be made of the results of at least
42 one voting machine in one election district in each county where
43 elections occur each year.

44 Under the bill, the Attorney General will determine and then
45 announce publicly the districts in the State in which audits will be
46 conducted within 24 hours after the final vote count for an election.
47 Votes cast by electronic voting machines, provisional ballots
48 absentee ballots and military and overseas federal election voters

A2730 GUSCIORA

4

1 are to be included in the audit. If the Attorney General determines
2 that any of the hand counts show cause for concern about the
3 accuracy of the results of any election, the independent audit team
4 may conduct hand counts in such additional election districts as the
5 Attorney General considers appropriate to resolve any such
6 concerns.
7 The bill takes effect on January 1, 2008, which is the date by which
8 voter-verified paper records must be operational on electronic
9 voting machines used in this State, pursuant to P.L.2005, c.137.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2730

STATE OF NEW JERSEY

DATED: MAY 21, 2007

The Assembly State Government Committee reports favorably Assembly Bill No. 2730.

This bill establishes a procedure for the mandatory audit of election results each year in randomly selected voting districts in the State. The audit will be conducted by an audit team appointed by the Attorney General, who will also have discretion as to the number and composition of such a team but it must include at least one member who has verifiable expertise in the field of statistics. It will conduct random hand counts of the voter-verified paper records in at least two percent of the election districts where elections are held for federal or State offices, including the offices of Governor and member of the Legislature, and for county and municipal offices selected by the Attorney General. Hand counts will also be made of the results of at least one voting machine in one election district in each county where elections occur each year.

Under the bill, the Attorney General will determine and then announce publicly the districts in the State in which audits will be conducted within 24 hours after the final vote count for an election. Votes cast by electronic voting machines, provisional ballots, absentee ballots and military and overseas federal election voters are to be included in the audit. If the Attorney General determines that any of the hand counts show cause for concern about the accuracy of the results of any election, the independent audit team may conduct hand counts in such additional election districts as the Attorney General considers appropriate to resolve any such concerns.

The bill takes effect on January 1, 2008, which is the date by which voter-verified paper records must be operational on electronic voting machines used in this State, pursuant to P.L.2005, c.137.

Assembly Bill No. 2730 is identical to Senate Bill No. 507 of 2006.

STATEMENT TO
ASSEMBLY, No. 2730

with Assembly Floor Amendments
(Proposed By Assemblyman GUSCIORA)

ADOPTED: DECEMBER 13, 2007

This amendment changes the bill to: a) require the independent, professional audit team to have a minimum of four members, including one person who has verifiable expertise in the field of auditing; b) provide that no audit team may include any person who is serving on any political committee of any candidate for public office in elections subject to the audit, who is an employee or reports to the Attorney General, or who is an employee of any entity that manufactures voting systems used in the State; c) require the audit team to develop statistical procedures with at least 99 percent statistical power so that for every election for a federal or gubernatorial election subject to an audit, a 100 percent manual recount of the voter-verifiable records would not alter the electoral outcome reported by the audit, and statistical procedures with at least 90 percent statistical power so that for every election for a State office, other than governor, including for a county or municipal office, a 100 percent manual recount would not alter the electoral outcome reported by the audit; d) provide that any procedure designed by the audit team for a county and municipal election held in fewer than 100 election districts, but more than a single district, will be conducted in at least two election districts; e) establish a detailed procedure for the hand count of votes counted electronically that maintains the privacy of the vote; f) provide that the selection of districts to be audited will be made on a random basis, by lot, but the audit team has the authority to cause audits to be conducted in any election district or audit unit in addition to those selected at random when a majority of the audit team determines from the un-audited election results, past election results, or other data that the votes are likely to have been miscounted; g) provide that the Attorney General will authorize the audit team to conduct a second audit if errors detected by the first audit cause a miscount that changes a candidate's vote share by 0.1 percent or more, and additional counts if miscount rates detected by the initial audit or subsequent expanded audit would have the potential to alter the outcome of the audited election were they to persist throughout the entire vote count; h) provide that if the voter-verifiable paper records in any machine are found to be unusable for an audit for any reason whatsoever, another machine used in the same election will be selected at random by the audit team to replace the original machine in the audit sample; i) provide that nothing in the bill can be construed to prevent a candidate or other applicant from requesting a recount

pursuant to current law; and j) if such a recount is held in any election district that has been audited pursuant to this bill, the official result from the election district would be applied to the recount in lieu of conducting a subsequent hand count of the audited election district unless a court, at the request of a candidate or other applicant who requested the recount, so orders.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2730

STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JANUARY 2, 2008

SUMMARY

- Synopsis:** Requires mandatory audits of election results in randomly selected election districts.
- Type of Impact:** Increase in State and County Government Expenditures.
- Agencies Affected:** Department of Law and Public Safety, Division of Elections; County Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Cost Increase - See comments below		
Local Cost	Indeterminate Cost Increase - See comments below		

- The increased costs to the State and county governments cannot be determined due to a lack of actual cost information relevant to this bill from all counties and the number of variables relevant to elections in this State and relevant to the procedures and conditions for the conduct of audits set forth in the bill. Mandatory audits will result in an expenditure increase for the State and for county governments. The Department of Law and Public Safety has estimated the cost of such audits at \$2.33 per ballot based on a survey of 16 county election officials.
- Requires hand-to-eye audits of voter-verifiable paper records of election results to be conducted by county election officials in election districts randomly selected by the Attorney General, with the audits supervised by an independent, professional audit team of at least four members appointed by the Attorney General. In each county, an audit will be conducted in at least two percent of the election districts.

BILL DESCRIPTION

Assembly Bill No. 2730 (1R) of 2007 requires the Attorney General to appoint each year an independent, professional audit team of no fewer than four members, to oversee, in each county, random hand-to-eye counts of the voter-verifiable paper records, to be conducted by

appropriate county election officials. Audits will be conducted for each election held for federal, State, county, and municipal offices. In each county, the audit will be conducted in at least two percent of the election districts.

The audit team will design, adopt, and implement procedures to ensure, with at least 99% statistical power, that for each federal and gubernatorial election, a 100% manual recount of the voter-verifiable paper records would not alter the electoral outcome reported by the audit; and for each State, county, and municipal election, to ensure, with at least 90% statistical power, that a 100% manual recount of the voter-verifiable paper records would not alter the electoral outcome reported by the audit. The audit for each county and municipal election held in fewer than 100 election districts will be conducted in at least two election districts.

The Attorney General will determine and then announce publicly, within a reasonable period of time after the final vote count after an election, the election districts in which audits will be conducted and the audits will start within 24 hours of that announcement. The selection of the election districts, audit units, and county and municipal elections to be audited will be made by the Attorney General on a random basis by lot, at a public meeting after public notice of the selection procedures. The audit team can audit an election district that has not been randomly selected if a majority of the audit team determines from the un-audited election results, past election results, or other data that the votes are likely to have been miscounted.

The bill also provides for the procedures for the audit of votes cast other than at the election district on election day, or of other votes counted electronically by the county board of elections after election day, including votes cast by military service voters and overseas federal election voters

The results of the audit will be announced publicly by the Attorney General, with certain details provided. No county can certify the results of an election that is subject to an audit prior to the completion of the audit and the announcement and publication of the results

If the Attorney General determines that any of the hand-to-eye counts conducted show cause for concern about the accuracy of the results of an election based on certain criteria, the audit team will oversee additional audits of election districts as the Attorney General considers appropriate to resolve concerns. Additional hand-to-eye counts will be conducted if in the initial audit a discrepancy attributable to the electronic counting system would alter the vote share of any candidate or ballot position by one tenth of one percent or more of the hand counted votes in the sample.

If the voter-verifiable paper records in any machine are found to be unusable for an audit for any reason whatsoever, another machine used in the same election will be selected at random by the audit team to replace the original machine in the audit sample, and an investigation conducted.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received; however, relevant information was informally supplied by the Office of the Attorney General.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concludes that mandatory audits will result in an expenditure increase for the State and each county. However, a precise estimate of the cost to the State and to county governments to implement the provisions of this bill cannot be

determined because actual cost information relevant to this bill for each county is unavailable and because of the variables relevant to elections in this State (for example, number and type of races and voter turnout per audited election) and relevant to the procedures and conditions for the conduct of audits as set forth in the bill (for example, a discrepancy between the audit and the vote count will require an enhanced audit). As discussed below, information presented by the Department of Law and Public Safety estimates the cost at an average of \$2.33 per ballot audited, given certain conditions. Therefore, an audit of 200,000 votes would cost \$466,000.

The OLS has obtained from the Department of Law and Public Safety an estimate of the per ballot cost of this bill based on a survey of 16 county election officials. The county officials were asked to calculate the per ballot cost of a manual count of an election with one federal race on the ballot and a 50 percent registered voter turnout, assuming all votes cast in the election were cast by paper ballot. The officials were asked to estimate: the number of workers required to manually count the ballots; the number of workers per counting team; how many of the workers would be existing employees and could be used for this task without overtime pay; the amount of time required to complete the task given the number of workers specified; the cost per worker per day; and how many more workers would be required to complete the task in the same amount of time if there were three races rather than one on the ballot. Using the county responses, the department calculated a cost of \$2.33 per ballot counted as the weighted average using percentage of registered workers, after discarding the two highest costs and the two lowest costs reported.

There has been other cost information presented on this bill, and OLS attempted to obtain information on the cost of audits conducted in comparable states with voter-verifiable paper records. According to a political scientist at Bard College in New York, the estimated cost of a federal election audit in New Jersey under this bill will total approximately \$20,000, at a rate of \$0.10 per ballot. The estimate is based on the estimates of the experience of election officials in other states that use optical scan ballots. However, OLS notes that this bill requires an audit using the hand-to-eye method, not optical scan technology. The founder and director of Citizens for Election Integrity Minnesota, a non-partisan organization that advocates for accurate and verifiable elections, reports that the 2006 post-election audit of Minnesota's voting systems cost approximately \$0.09 to \$0.10 per ballot. However, Minnesota's \$0.10 per ballot cost was driven by the use of volunteers conducting the audits. Written testimony submitted on this bill by this group states that, "[w]hile no hard data was gathered regarding costs involved, based on an informal survey of some election officials we estimate the total costs of staff time, including the election judges was \$24,500 to \$27,500. Given that 277,177 votes were audited in all of the races across the state, this would mean about nine or ten cents per hand-counted vote." It should be noted that this bill requires a professional audit team to be assembled and that Minnesota only audits the top three races in that state. The OLS located a report on a pilot project in Georgia created by a 2006 law to audit the 2006 November general election and any runoff election. Under this project, one county, where 976 votes were cast, was audited over a three day period by an audit team of 24 members, including three managers, at a total cost of \$2,937, or \$3.00 per ballot audited.

Section: State Government

Analyst: Kimberly Anne McCord
Associate Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

Jan-15-08 Governor Corzine Takes Action on Legislation

NEWS RELEASE

Governor Jon S. Corzine
January 15, 2008

FOR MORE INFORMATION:

Press Office
609-777-2600

GOVERNOR CORZINE TAKES ACTION ON LEGISLATION

TRENTON- Governor Jon S. Corzine signed the following bills into law on Sunday, January 13, with related statements:

S-502/A-1011 w/Statement (Gill/Prieto, Stack, Cohen, Panter) - Requires health benefits coverage by health insurers and SHBP for orthotic and prosthetic appliances and provides reimbursement therefore.

"I commend the sponsors of Senate Bill No. 502 (First Reprint), which I signed today, for recognizing the importance of making sure that persons in need of orthotic or prosthetic appliances obtain them.

"While I have signed this measure in light of the critical nature of the issue for persons who need these appliances, I do have several concerns about elements of the bill which would have led me to conditionally veto the bill had it been presented to me in other circumstances. First, I have a general concern with bills that mandate specific insurance coverage. These bills deal piecemeal with issues of cost and coverage that might better be addressed more comprehensively. In that regard, I commend the work of the New Jersey Mandated Health Insurance Advisory Commission, and I will continue to read its reports with interest.

"In addition, I am concerned that the bill will be read as deviating from standard practice in the health care delivery system by precluding utilization review, which is designed to ensure the medical necessity for such appliances and thereby prevent unnecessary costs. Accordingly, I have asked the Departments of Health and Senior Services and Human Services to periodically review the utilization of orthotic or prosthetic appliances statewide to ensure that those who need such devices obtain them and that the public is bearing no unnecessary costs.

"Finally, I am concerned that the bill sets the reimbursement level for these services at that set by Medicare. While I appreciate the importance of assuring that these appliances are readily available for those who require them, I am

concerned that this aspect of the bill will limit insurers' ability to negotiate price reductions under circumstances that will not reduce access. Accordingly, I am requesting the Departments of Health and Senior Services and Human Services, consulting with the Department of Banking and Insurance, to monitor the effects of this aspect of the bill and report periodically to me."

S-3043/A-4666 w/Statement (Codey, Rice/Pou) - "Urban Transit Hub Tax Credit Act"; allows tax credits to certain businesses for certain capital investments in urban transit hubs.

"Senate Bill No. 3043 (First Reprint), which I approved today, establishes a new tax credit program to spur new capital investment and increased employment in targeted urban rail transit hubs and to catalyze economic development in those areas. The bill supports the revitalization of New Jersey's urban centers by leveraging valuable transit assets that provide a strong foundation for economic growth, while encouraging increased transit ridership.

"This bill provides one more tool to promote economic development in the State. I intend that the bill will serve as a model for our economic development efforts by focusing our resources on targeted, well-defined areas with express job-creation requirements. Because I believe this approach can work in other areas as well, I am asking the Office of Economic Growth to work with the Legislature and craft similar approaches for other appropriate areas in the State."

ACS for A-3572/SCS for SCS for SS for S-554 w/Statement (Gusciora, Barnes, McKeon, Chivukula, Gordon/B.Smith) - "Electronic Waste Recycling Act."

"Assembly Committee Substitute for Assembly Bill No. 3572, which I signed today, establishes a new program for the disposal of electronic devices, including televisions, computers, and related components and subcomponents in New Jersey.

"I commend the sponsors of this bill for putting forward legislation that is designed to address a significant and growing problem, both in New Jersey and nationally. The type of waste generated by televisions and computers, while relatively small in volume, accounts for a significant percentage of this nation's toxic waste. The electronic waste stream that will be required to be recycled

under this bill can contain significant and dangerous levels of a wide variety of materials, including lead, mercury, cadmium, and PCBs.

"In signing this bill, I am cognizant of its impact on a variety of manufacturers, both situated in New Jersey and located elsewhere. It is my understanding and expectation that technical concerns with this legislation, which I would have addressed through a conditional veto had that option been available, will be addressed in the coming session. Notwithstanding these concerns, I know the sponsors share with me a desire not only to move forward on this difficult issue but also to ensure fairness and equity in the application and administration of this important environmental initiative. In this connection, I have asked the Department of Environmental Protection to work with this bill's sponsors in order to further craft and refine this measure."

A-4314/S-2123 w/Statement (Wisniewski, Stack, Vas/Coniglio) - Establishes pilot program for traffic control signal monitoring system.

"Assembly Bill No. 4314 (Second Reprint), which I approved today, establishes a pilot program for traffic control signal monitoring systems. Supporters of this measure point to research showing that traffic control monitoring systems have been successfully employed in numerous other jurisdictions around the country. Many local officials in New Jersey, particularly mayors of our largest municipalities, believe these systems will help reduce traffic accidents at dangerous intersections.

"In light of this support, I believe that it is appropriate to initiate this pilot program to determine the extent to which these systems advance public safety. In doing so, however, I believe that it is important that this be done in a fashion that allows us to assess its value. In particular, I believe that the test should be whether these systems reduce traffic accidents rather than whether they generate local revenue from fines and penalties.

"To that end, I have asked the Commissioner of Transportation to implement the program in a careful and deliberate manner. It is appropriate that implementation be undertaken in a staged fashion so that the number of jurisdictions that utilize these systems may be limited at the outset until we have further information to assess their utility. In addition, I expect that that the

Commissioner of Transportation will evaluate the effectiveness of these systems on a periodic basis and include the status of such evaluations in the annual reports he will be submitting. Finally, I have asked the Commissioner to develop the program so that appropriate action can be taken in the event that operation of the system no longer serves to promote public safety."

Governor Corzine signed the following bills into law on Monday, January 14, with statements:

S-507/A-2730 w/Statement (Gill/Gusciora) - Requires mandatory audit of election results in randomly selected election districts.

"Today, I am signing into law this measure because it furthers the public confidence in the accuracy and conduct of our election process. There is no more important element in our democratic system than the integrity of our elections, and I wholeheartedly support the establishment of an audit team to review the accuracy and conduct of elections in the state. This law contains many critical elements, including (a) that the audit team include independent individuals and professionals capable of ensuring an appropriate statistical approach, (b) that the audits cover federal and statewide elections as well as a selected number of county and municipal elections, and (c) that the audits not prevent or compromise the ability of candidates or other applicant from requesting a recount.

"While I firmly believe that this measure is intended to and will further the integrity of our election system, I do have a number of concerns which I will work with the legislative leadership and sponsors to address, and which would have led me to conditionally veto the bill had it been presented to me in other circumstances. Most significantly, I believe it is important to review the most appropriate method of sampling and selection of election districts to best realize the purposes of election auditing. While cost is not a determinative factor here, it is important that we expend our resources in those races where there is the greatest need to review the integrity of the electoral process. To this end, it will be important to assess whether the approach undertaken by this measure requires sampling at a level that exceeds what is necessary to provide confidence in the electoral result. Finally, it appears that further refinement may

be appropriate to ensure that the audit process can be completed in a timely fashion and not cause problems related to the certification of election results.

"In raising these concerns, I note that no other state has provided an independent audit team with the level of responsibilities and expectations set forth in this legislation. Given that New Jersey will be the first to do so, it is particularly appropriate that we commit to reexamining the approach taken in this legislation, and I will work with the Legislature to do so after we have had an opportunity to learn from the experience of the audit team in at least one statewide primary and general election. In this regard, I also observe that in light of my recent signing of Senate Bill No. 2949 (First Reprint) the deadline for the State to provide voting machines that shall produce an individual permanent paper record for each vote cast has been extended until June 3, 2008, and thus the application of this measure is unlikely to be possible at least until that date.

"Again, I applaud the sponsors and the Legislature for their commitment to ensuring public confidence in the integrity of the electoral process and look forward to working with them to ensure that New Jersey is a leader in this area."

A-2135/S-2748 w/Statement (Cohen/Scutari, Gill) - Increases judicial salaries and prosecutors' salaries.

"Assembly Bill No. 2135 (First Reprint), which I signed today, represents the completion of a three-step increase in judicial salaries that first began with provisions of the FY 2008 Appropriations Act, which was approved last year. Under the legislation I signed today, judicial salaries would increase by five percent effective January 1, 2008, and five percent effective January 1, 2009.

"The bill also would have the effect of increasing the salaries of Administrative Law Judges, Workers' Compensation Judges, and County Sheriffs, Clerks, Surrogates, and Registers of Deeds and Mortgages because the salaries of these officials are statutorily set at a percentage of the salary of a Judge of the Superior Court. This bill also would increase the annual salaries of County Prosecutors. Those salaries would increase from \$141,000 to \$153,000 effective January 1, 2008, and to \$165,000 effective January 1, 2009.

"I support increasing judicial salaries and commend the Legislature for approving an increase in those salaries. As noted in the recent report of the Public Officers Salary Review Commission, which is the statutory body created to study these issues every four years and which recommended an increase in judicial salaries, this increase is vital to ensuring the continued exceptional quality of our Judiciary and the retention of our experienced judges.

"I also recognize that we need to attract and retain high quality professionals to serve as County Prosecutors. Though the additional cost of the salary increase for County Prosecutors is relatively modest, I am concerned that this salary increase will create greater unfairness in the overall compensation structure for State and local government. I note that County Prosecutors now will have salaries that exceed those of State government cabinet officers, including the Attorney General, who is charged under statute with oversight of County Prosecutor offices. This salary differential has the potential over time of making it more difficult to attract and retain high quality prosecutors to serve in the Division of Criminal Justice. I would have tried to address this problem through a conditional veto had circumstances permitted that approach.

"Along with the problem of salary differential among similarly situated officials is the problem created by the fact that salaries of cabinet-level and sub-cabinet officials have remained unchanged for five years. This issue is undermining the stability of leadership of the cabinet departments of State government. We should be addressing this problem, and we would be addressing it now were it not for the financial emergency now confronting State government.

"In the interim, with regard to the specific issues facing the Department of Law and Public Safety, I have asked the Attorney General to work with the Department of the Treasury to develop appropriate recommendations to address those issues."

Governor Corzine signed the following bill on Tuesday, January 15:

S-2040/A-3280 (Sarlo, Sweeney/Cryan, Gregg) - Provides for special licenses to serve alcoholic beverages to smart growth development projects; allows for sale of certain plenary retail consumption licenses for use in such projects.

In addition, Governor Corzine decided not to sign the following bills, which are therefore pocket vetoed, and issued related statements:

SCS for S-176/AS for A-1511 (Doria, Scutari/Oliver, Greenstein, Cruz-Perez, Bramnick) - **POCKET VETO** - Expands wrongful death act to allow recovery for mental anguish, emotional pain and suffering, loss of society and loss of companionship.

"I am filing Senate Committee Substitute for Senate Bill No. 176 in the Division of Archives and Records Management without my approval.

"Under the provisions of Article V, Section I, Paragraph 14 of the Constitution, this bill, which was passed within 10 days preceding the expiration of the second legislative year, does not become law because it was not signed prior to the seventh day following such expiration. In this circumstance, there is no provision for the return of a bill to the Legislature for reconsideration, but I deem it to be in the public interest to state my reasons for deciding not to sign this bill.

"Senate Committee Substitute for Senate Bill No. 176 would expand the types of damages allowed in wrongful death actions beyond "pecuniary" losses to include injuries resulting from 'mental anguish, emotional pain and suffering, loss of society and loss of companionship.'"

"I commend the sponsors for recognizing the need to ensure that the lives of minors, parents who do not work outside the home, and the elderly are not significantly undervalued by a system that limits an individual's worth to his or her financial contribution to the family. On the other hand, unlimited damages based on emotional anguish or pain and suffering could have a significant impact on state and local budgets, since government entities are not infrequently named as defendants in wrongful death suits, and there are similar concerns as the State undertakes efforts to attract and grow businesses here.

"Unfortunately, I do not believe that this bill in its current form strikes a fair balance that would avoid using a strict monetary valuation of a person's life while also addressing the adverse effect of allowing unlimited and unpredictable damages.

"I encourage the Legislature to promptly revisit this important issue. Further, I recommend that the Legislature consider alternative means of striking an appropriate balance, especially by granting more flexibility for courts to reduce excessive non-pecuniary damage awards and defining non-pecuniary damages less expansively.

"Accordingly, I must file Senate Committee Substitute for Senate Bill No. 176 without my approval."

A-3153/S-2209 (Schaer, Scalera/Sarlo) - **POCKET VETO** - Provides certain law enforcement officers cannot be suspended without pay for more than 120 calendar days.

"I am filing Assembly Bill No. 3153 (Third Reprint) in the Division of Archives and Records Management without my approval.

Under the provisions of Article V, Section I, Paragraph 14 of the Constitution, this bill, which was passed within 10 days preceding the expiration of the second legislative year, does not become law because it was not signed prior to the seventh day following such expiration. In this circumstance, there is no provision for the return of a bill to the Legislature for reconsideration, but I deem it to be in the public interest to state my reasons for deciding not to sign this bill.

"This bill would require State and local government agencies to pay salary to certain law enforcement officers and paid firefighters in their employ who have been suspended pending a determination of disciplinary charges against them after certain time periods have passed. Specifically, the bill would require such payment of salary to begin 181 days after the charge resulting in suspension. It further would require repayment from an employee against whom a charge was sustained. Moreover, the 180-day time period would be tolled during any period of postponement that occurs at the request of an employee covered by the bill.

"I certainly understand and agree with the intent of the sponsors of this bill, which is to ensure that law enforcement officers and paid firefighters do not suffer severe financial hardship or dire economic consequences due to the loss of their regular salary during the sometimes lengthy period of time required to determine disciplinary charges that ultimately were dismissed. I also agree that

the procedures currently in place for resolving these cases must be changed to reduce median processing times that in some cases now total nearly two years, and I am committed to working to bring about those changes.

"However, I also understand that cases in which a law enforcement officer or firefighter has been suspended without pay generally involve serious matters with serious implications for the employer and the career of the officer or firefighter. For these reasons, these cases legitimately require sufficient time in order for the appropriate outcome to be reached. I believe that imposition of the 180-day deadline called for in this bill would make it far more difficult to arrive at an appropriate resolution given the complexity of these matters and the stakes involved. I would support legislation that creates a more workable and realistic deadline, such as 365 days."

A-4393/S-2878 (Wisniewski, Cohen/Adler) - **POCKET VETO** - Requires certain public contract bid advertisements to contain certified cost estimates or estimate ranges of projected contract costs and specifies grounds for rejection of all bids.

"I am filing Assembly Bill No. 4393 (Second Reprint) in the Division of Archives and Records Management without my approval.

"Under the provisions of Article V, Section I, Paragraph 14 of the Constitution, this bill, which was passed within 10 days preceding the expiration of the second legislative year, does not become law because it was not signed prior to the seventh day following such expiration. In this circumstance, there is no provision for the return of a bill to the Legislature for reconsideration, but I deem it to be in the public interest to state my reasons for deciding not to sign this bill.

"Assembly Bill No. 4393 would make significant changes to the current statutes governing the contracting process for public construction projects. While the bill has many strong proponents, it has generated a significant volume of passionate opposition from a broad spectrum of State and local government officials, entities, and organizations. These include, but are by no means limited to, the State Comptroller, the Attorney General, the League of Municipalities, the Association of Counties, the Governmental Purchasing Association of New Jersey, and many dozens of counties, municipalities, colleges, universities, school

districts, and other entities that passed resolutions or contacted my office to express serious concerns about this bill.

"While I generally support the sponsors' goals of making our public contracting processes more efficient and transparent, I am advised that this bill, as currently drafted, includes apparent technical errors and other flaws that I have no opportunity to address by way of a conditional veto because the bill was not passed by either House of the 212th Legislature until the last voting session. It is my hope that the proponents of similar future legislation will be willing to work in coordination with the Office of State Comptroller and the Division of Local Government Services in the Department of Community Affairs, as well as with affected public entities and their representatives, to craft an appropriate bill that addresses the concerns that motivated this bill while avoiding the problems associated with this bill.

"Accordingly, I must file Assembly Bill No. 4393 (Second Reprint) without my approval."