

A-Engrossed
Senate Bill 944

Ordered by the Senate May 17
Including Senate Amendments dated May 17

Sponsored by Senators FREDERICK, KNOPP, Representative HERNANDEZ; Senators MANNING JR, ROBLAN, WAGNER, Representatives KENY-GUYER, NEARMAN, WILLIAMSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Permits county clerk to decide whether to conduct hand count of ballots or risk-limiting audit following each primary, general or special election. Establishes requirements for risk-limiting audit. Requires that records relating to risk-limiting audit or hand count of ballots be retained for two years.

Applies to primary, general and special elections held on or after September 1, 2020.

A BILL FOR AN ACT

1
2 Relating to election audits; creating new provisions; and amending ORS 254.529 and 254.535.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 254.**

5 **SECTION 2. (1) As used in this section:**

6 (a) **"Incorrect election outcome" means an election outcome that differs from the**
7 **election outcome that would result from an accurate hand count of all validly cast ballots.**

8 (b) **"Risk" means the probability that an audit procedure would fail to detect an incorrect**
9 **election outcome.**

10 (c) **"Risk limit" means the largest acceptable risk.**

11 (d) **"Risk-limiting audit" means a set of procedures to ensure that the risk does not ex-**
12 **ceed the risk limit.**

13 (2) **At each primary election, general election or special election, the county clerk for**
14 **each county shall make a determination on whether to conduct a hand count of ballots in**
15 **the manner described in ORS 254.529 or to conduct a risk-limiting audit in the manner de-**
16 **scribed in this section.**

17 (3) **If the county clerk makes a determination under subsection (2) of this section to**
18 **conduct a risk-limiting audit, the county clerk shall conduct a risk-limiting audit for one or**
19 **more single-county election contests. For an election contest involving more than one**
20 **county, the county clerk may request that the Secretary of State or the county clerks in the**
21 **other counties holding the election coordinate for the purpose of conducting a multicounty**
22 **risk-limiting audit.**

23 (4) **A risk-limiting audit conducted under this section must:**

24 (a) **Permit members of the public to observe the procedures and verify the results of the**
25 **audit;**

26 (b) **Ensure that the entity directly involved in tabulating or examining ballots during the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **audit does not have the sole authority to establish the policies and regulations for the audit**
2 **or to judge whether an audit has satisfied those policies and regulations;**

3 (c) **Ensure that all ballots tabulated or examined during an audit are protected from loss,**
4 **substitution, alteration or addition;**

5 (d) **Ensure that the audit takes into account all forms of validly cast ballots, including**
6 **accepted provisional ballots;**

7 (e) **Include mechanisms that permit the entity conducting the audit to respond to par-**
8 **ticular allegations regarding election irregularities;**

9 (f) **Be conducted in a timely manner that permits the initially reported outcome to be**
10 **corrected before an election contest is certified;**

11 (g) **Ensure that no change or error in technology used to assist with the audit could re-**
12 **sult in an undetected change in the results of the audit; and**

13 (h) **Be based on direct visual human examination of elector-marked ballots.**

14 (5) **A risk-limiting audit conducted under this section may not rely on a scanned image**
15 **of a ballot or a machine interpretation of marks on a ballot to determine elector intent.**

16 (6) **The Secretary of State, in consultation with county clerks and individuals or entities**
17 **with significant statistical expertise in conducting audits, shall establish rules for the im-**
18 **plementation of this section, including:**

19 (a) **Setting the risk limit; and**

20 (b) **Establishing the procedures to be used for conducting a risk-limiting audit.**

21 **SECTION 3.** ORS 254.529 is amended to read:

22 254.529. (1) At each **primary election, general election and special election,** the county clerk
23 shall **make a determination on whether to** conduct:

24 (a) A hand count of ballots as described in this section and compare the tally of votes for those
25 ballots produced by a vote tally system with the tally of votes for those ballots produced by the hand
26 count; **or**

27 (b) **A risk-limiting audit in the manner described in section 2 of this 2019 Act.**

28 (2)[(a)] **If the county clerk determines that a hand count will be conducted:**

29 (a) In the event that the unofficial tally of ballots produced by a vote tally system reveals that
30 the margin of victory between the two candidates receiving the largest number of votes in the
31 county is less than one percent of the total votes cast in that election in the county, the county
32 clerk shall conduct a hand count of ballots in at least 10 percent of all precincts or of ballots in
33 at least 10 percent of all batches of ballots collected by the county clerk.

34 (b) In the event that the unofficial tally of ballots reveals that the margin of victory between
35 the two candidates receiving the largest number of votes in the county is greater than or equal to
36 one percent but less than two percent of the total votes cast in the county, the county clerk shall
37 conduct a hand count of ballots in at least five percent of all precincts or of ballots in at least five
38 percent of all batches of ballots collected by the county clerk.

39 (c) In the event that the unofficial tally of ballots reveals that the margin of victory between
40 the two candidates receiving the largest number of votes in the county is greater than or equal to
41 two percent of the total votes cast in the county, the county clerk shall conduct a hand count of
42 ballots in at least three percent of all precincts or of ballots in at least three percent of all batches
43 of ballots collected by the county clerk.

44 (3) **If the county clerk determines that a hand count will be conducted,** the county clerk
45 shall conduct a hand count of ballots cast in the election contest between the two candidates re-

1 ceiving the largest number of votes in the county, an election contest for an office to be voted on
2 in the state at large and, if possible, an election contest for a state measure. The Secretary of State
3 shall select the precincts or batches at random. At the *[general]* election:

4 (a) If selecting precincts, no fewer than 150 ballots must have been cast in at least one of the
5 precincts selected.

6 (b) If selecting batches, the number of ballots contained in the batches selected must in the ag-
7 gregate be equal to or greater than:

8 (A) Ten percent of the total number of ballots cast in the election for a hand count required
9 under subsection (2)(a) of this section.

10 (B) Five percent of the total number of ballots cast in the election for a hand count required
11 under subsection (2)(b) of this section.

12 (C) Three percent of the total number of ballots cast in the election for a hand count required
13 under subsection (2)(c) of this section.

14 (4) Not later than 5 p.m. of the 15th business day after the date of the *[general]* election, the
15 Secretary of State shall **in writing** advise **the** county clerks **who made a determination that a**
16 **hand count will be conducted** *[in writing]* of:

17 (a) The election contests for which ballots are to be hand counted; and

18 (b) The precincts or batches in which ballots are to be hand counted.

19 (5) A county clerk shall begin the hand counts *[prescribed by]* **under** this section not later than
20 the 23rd day after the election and complete the hand counts not later than the 30th day after the
21 election. The results of the hand counts shall be provided to the Secretary of State, who shall make
22 the results publicly available on the Secretary of State's website.

23 (6) A comparison of the tally of votes produced by a vote tally system with the tally of votes
24 produced by the hand count *[required by]* **under** this section must show that the tally of votes
25 produced by the vote tally system differs by no more than one-half of one percent from the tally of
26 votes produced by the hand count.

27 (7)(a) If a hand count conducted under this section results in a tally of votes for a candidate or
28 measure that is different from the tally of votes produced by the vote tally system for that candidate
29 or measure, and the difference for each race is equal to or less than one-half of one percent, the
30 tally of votes produced by the vote tally system is the official tally of votes for that vote tally sys-
31 tem.

32 (b) If a hand count conducted under this section results in a tally of votes for a candidate or
33 measure that is different from the tally of votes produced by the vote tally system for that candidate
34 or measure, and the difference in any race is greater than one-half of one percent, the county clerk
35 shall conduct a second hand count of the same ballots.

36 (c) If the second hand count conducted under this subsection results in a tally of votes for a
37 candidate or measure that is different from the tally of votes produced by the vote tally system for
38 that candidate or measure, and the difference for each race is equal to or less than one-half of one
39 percent, the tally of votes produced by the vote tally system is the official tally of votes for that
40 vote tally system.

41 (d) If the second hand count conducted under this subsection results in a tally of votes for a
42 candidate or measure that is different from the tally of votes produced by the vote tally system for
43 that candidate or measure, and the difference in any race is greater than one-half of one percent,
44 the county clerk shall conduct a hand count of all ballots counted by that vote tally system. The
45 hand count is the official tally of votes for that vote tally system. If the hand count is the official

1 tally of votes, not later than the 30th day after the election, the county clerk shall certify amended
2 abstracts of votes to appropriate elections officials.

3 (8) For purposes of conducting the hand counts *[required]* under this section, the county clerk
4 shall:

5 (a) Retain custody of the ballots; and

6 (b) Provide for security for the ballots and the information required to be collected under this
7 subsection.

8 (9) This section does not apply:

9 (a) To precincts that are subject to a recount under ORS 258.161, 258.280 or 258.290.

10 (b) If federal law requires a post-election hand count of ballots at the **primary election**, general
11 **election or special** election to verify election results and the Secretary of State determines that the
12 requirements of federal law are at least as stringent as the requirements of subsections (1) to (8)
13 of this section.

14 **SECTION 4.** ORS 254.535 is amended to read:

15 254.535. (1) Except as provided in subsection (3) of this section, each tally sheet, return sheet,
16 **record relating to a risk-limiting audit conducted under section 2 of this 2019 Act, record**
17 **relating to a hand count of ballots conducted under ORS 254.529** and ballot return identification
18 envelope shall be preserved for two years after the election to which it relates.

19 (2) Except as provided in subsection (3) of this section, the county clerk shall destroy the ballots
20 and written challenge statements not sooner than the 90th day after the final day permitted for a
21 contest of the election, unless otherwise ordered by the court.

22 (3) In accordance with 42 U.S.C. 1974, any ballot, voter registration records and any other ma-
23 terials relating to any election at which a candidate is nominated or elected to federal office shall
24 be retained for not less than 22 months following the date of the election.

25 **SECTION 5. Section 2 of this 2019 Act and the amendments to ORS 254.529 and 254.535**
26 **by sections 3 and 4 of this 2019 Act apply to primary elections, general elections and special**
27 **elections held on or after September 1, 2020.**

28