

Post-Election Audits of Election Results

Introduction

No voting system is perfect. The optical scan vote counting systems in use now in Michigan have both known error rates and known security vulnerabilities that warrant a serious effort to check the accuracy of the vote count. It is particularly important to compare the reported, election night results with a manual, hand-to-eye count of paper ballots, because this is the only way to make the audit independent of the software the systems use. Post-election audits that conduct hand counts can detect errors that pre-election testing cannot.

The legislation proposed here would institute post-election audits that use hand counts both on election night and, more systematically, thereafter. On election night, a simple check of one contest can detect significant errors in the performance of the optical scanner used in the precinct. A systematic, statistically based audit (or risk limiting audit) that commences soon after election night can ensure with the least cost and a high probability that the outcome of an election contest will not be accepted if the outcome is incorrect. Together these audits can assure voters that contests are decided correctly, find counting errors and correct them, deter fraud, provide for continuous improvement in the conduct of elections, and generally promote public confidence in elections.

SYNOPSIS

The proposed bill requires audits that hand count voted paper ballots in order to identify and correct counting errors, identify appropriate steps to avoid future recurrence of those errors, and achieve specified levels of statistical confidence that the outcomes of election contests are accurate. For example, a statistical outcome of 99% probability means that 99 times out of 100 when a contest has an incorrect outcome the audit will detect the error.

Definitions:

An “**election contest**” shall mean any official vote of the electorate of the State of Michigan to determine who shall hold a public office, including both partisan and non-partisan or judicial offices, or whether a ballot issue, initiative or referendum, shall be passed into law.

The “**outcome**” of an election contest shall mean the winner of a contest for elected office or the passage into law or denial of passage into law of a ballot issue.

The “**correct outcome**” of an election contest is the outcome of a complete manual recount.

An “**audit unit**” shall mean a group of paper ballots. Audit units may correspond to ballots voted in a particular precinct, ballots tallied on a single machine, or batches of absentee ballots when not included in the precinct count.

The “**margin of victory**” is the difference in the number of votes between the top and second place position in an election contest divided by the total number of votes in that contest and expressed as a percentage.

A “**provisional envelope ballot**” is a paper ballot voted in accordance with provisions of the federal Help America Vote Act, including being sealed in an envelope and opened by the local Clerk only after a six day grace period has lapsed during which a voter has provided proof of qualification to vote. Such ballots, if qualified, are counted manually, and are thus not subject to machine count.

Audit Authority

Vote count audits conducted after election night, except as specified below, shall be designed, overseen, conducted, and reported under the authority of the office of State Treasurer (hereafter “the Treasurer”) as follows.

(1) Standards and Procedures

The Michigan Council on Governmental Auditing and Accountability (MCGAA), in accordance with requirements specified in this document, shall establish standards and procedures for the purposes of securing electronic vote counting from fraud or tampering and conducting post-election audits of election results. The MCGAA shall further review and revise the standards and procedures to reflect best practices, every two years after every general federal election.

The Treasurer shall appoint two or more independent, professional advisors to assist the MCGAA in establishing and reviewing the standards and procedures. At least one of the professional advisors must have professional qualifications in statistically based auditing of election vote counts, and at least one must have professional qualifications in computer security.

(2) State Vote Audit Board

The Treasurer shall appoint a State Vote Audit Board that shall have the authority and responsibility to

- a) Direct the Bureau of Elections and Clerks of local jurisdictions to implement all measures deemed necessary by the MCGAA to secure electronic vote counting.
- b) Monitor and report on compliance with security standards.
- c) Design, oversee, and report post-election audits of election results in accordance with the standards and procedures established by the MCGAA and the requirements specified in this document. The audits conducted by the State Vote Audit Board after election night shall implement statistical models and methods that have been accepted following peer review.
- d) At its discretion the State Vote Audit Board shall either conduct a county level audit itself or appoint, train, and swear in a County Vote Audit Team, for any or every county in the State of Michigan. The State Vote Audit Board shall conduct or oversee the conduct of county level audits in accordance with the standards and procedures established by the MCGAA and the requirements specified in this document.
- e) The State Vote Audit Board shall examine all discrepancies, irregularities, and anomalies reported by county level audit activity, including election night audits, challenger audits, petitioner audits, and any other credible source; decide whether to investigate further, or escalate existing audits, or initiate new audits in response; and report to the public all investigations, escalations, and additional audit results.

In constituting the State Vote Audit Board, the Treasurer shall include among those appointed two or more independent, professional advisors. At least one of the professional advisors must have professional qualifications in statistically based auditing of election vote counts, and at least one must have professional qualifications in computer security.

Challenger Election Audits

A civic group or political party shall be permitted to register to become “challenger election auditors,” using the same procedure as for the registration of challengers (as per MCL 168.730-31), for the purpose of conducting their own hand count audits. The appropriate county or state officials shall offer free training and, upon registrants’ successful completion, shall swear them in. These challenger election auditors may then conduct their own audits under the supervision of the appropriate officials, after election night and prior to official certification of the election results. If challenger election auditors find discrepancies or anomalies, such discrepancies will trigger escalation, investigation and full hand recounts or revotes in the same manner as those found by state officials.

Vote Count Audits on Election Night

(1) In each precinct immediately upon the end of voting at the polling place on election night, but before the paper ballots are sealed, the precinct chair or chair of a duly constituted counting board (MCL 168.679) shall oversee a hand-to-eye count of all voted paper ballots in the precinct for one contested election contest selected at random. The

hand count audit shall be conducted by two election inspectors, representing different political parties, who use a procedure prescribed by the MCGAA.

(2) The precinct chair or chair of a duly constituted counting board shall compare the vote totals from the hand-to-eye count to the vote totals recorded by the electronic counting system used in the precinct for that contest and report the result as part of the precinct report in the poll book, to the County Board of Canvassers for the precinct's jurisdiction.

Vote Count Audits after Election Night

Contests to Audit

Category A. Audits shall be conducted for each contested race held for the office of U.S. Senator, member of the U.S. House of Representatives, Governor, Attorney General, and Secretary of State, and for each ballot initiative that would amend the Michigan Constitution .

Category B. Among contested races for the Michigan Legislature, Michigan judicial offices or federal judicial offices residing in Michigan, statewide committees including university boards of trustees and the State Board of Education, statewide ballot proposals that do not amend the constitution, and any other non-federal contested election contests for which electors from more than one county are eligible to vote, the State Vote Audit Board shall determine before each general election the total number of such contests that shall be audited, and shall conduct a random selection of that number of contests, after the polls close on election night, and in accordance with procedures specified below in Random Selections.

Category C. Among contested local and county election contests, the State Vote Audit Board shall determine before each general election a positive number of such contests that shall be audited and shall conduct a random selection of that number of contests after the polls close on election night and in accordance with procedures specified below in Random Selections.

Audit Administration

Audits shall be conducted of the unofficial election results for each selected contest, including all ballots counted by electronic means and all ballots that for any reason may have been counted by hand. The audits shall be designed and managed by the State Vote Audit Board and, at their discretion, implementation in each county may be delegated to trained and sworn County Vote Audit Teams. The audits shall include all types of ballots, whether voted in a precinct, absentee, or valid provisional envelope ballots. Among the totality of ballots cast in a contest to be audited, a random selection of audit units shall be made in accordance with procedures described in Random Selections and those audit units shall be manually counted using hand-to-eye counts of all the votes in that contest marked on paper ballots. Audit units that are randomly selected to be part of an audit of a Congressional election contest in alternating years may be used, at the discretion of the State Vote Audit Board, to audit any other election contest that appears on the ballot in the same jurisdiction. Audit tallies shall include overvotes resulting in invalid votes, undervotes, and blank ballots. Audits shall also conduct a complete ballot accounting of each audit unit to reconcile total ballots of any sort, including surplus unvoted ballots, with subtotals for each category of ballot.

Membership and Composition of the State Vote Audit Board and County Vote Audit Teams

The membership and composition of the State Vote Audit Board and County Vote Audit Teams shall be established according to standards set by the MCGAA and the following provisions:

(1) The State Vote Audit Board shall have at least one member with verifiable expertise in the field of statistics and a second member shall have verifiable expertise in the field of auditing.

(2) No County Vote Audit Team shall have fewer than two members.

(3) No person shall be eligible to serve as a member of the State Vote Audit Board or a County Vote Audit Team if he or she is currently serving or during the immediately preceding 2 years has served:

(a) in any position on any political campaign or committee for any party, candidate for elected office, or issue that has appeared on any ballot in this state; or

(b) as an employee of, or reported to, a local, county, or state election administrator; or

(c) as an officer or an employee of, or provided any goods or services to, any entity that designs, manufactures, or services a voting system or parts thereof used in this State.

Chain of Custody of Election Materials

(1) The State Vote Audit Board through its delegates shall assume custody of ballots, poll books and all necessary records, after they are returned to the chief clerk of the jurisdiction on election night, for the purpose of conducting audits; and shall return custody to local and county clerks immediately upon completion of the audit.

(2) All electronic equipment used during an election shall be placed in the custody of the State Vote Audit Board or its delegates when it is removed from service intact and unaltered on election night. The equipment shall remain in the custody of the State Vote Audit Board or its delegates until the completion of all audits. During this time there shall be no access to the equipment unless it is authorized by the State Vote Audit Board. After audits are completed custody shall be turned over to local and county officials.

(3) Electronic equipment here includes all electronic vote counting machines and their components and accessories (such as removable memory cards and ballot bins), and all vote count aggregation equipment used at the county or state level.

(4) All electronic vote counting machines and any portable memory devices used to aggregate the vote count shall be marked with identification that specifies the precinct or other audit unit or units from which the votes were recorded thereby or therein. The identifying markers shall remain on or with the equipment, including when memory devices are used for vote aggregation, and be reaffixed, if necessary, after such use, so that there is a continuous accurate record of what ballots were processed by the equipment.

Reporting of Election Night Results to the State Vote Audit Board

The County Board of Canvassers of each county shall report the complete election night results for that county to the State Vote Audit Board within 24 hours of the closing of polls. The report shall include the totals for each contest in each individual audit unit and the totals for each election contest in the county, and any discrepancy in any precinct between the election night hand count of one contest and the electronic vote counting

machine's total for the same contest. The State Vote Audit Board shall make the complete results, including discrepancy reports from election night audits, available to the public within 48 hours of the closing of polls.

Audit Standards

All post-election audits of election results shall be conducted in accordance with the following standards:

(1) Statistical Standards

Category A: Any audit design adopted by the State Vote Audit Board shall be implemented to ensure for each election contest in Category A (federal, major statewide contests, and constitutional issues) that there is no more than a 1% probability that the audit will confirm the reported outcome from election night if the outcome is incorrect.

Category B: For each audited election contest in Category B (minor statewide contests, state legislature, multi-county) any audit design adopted by the State Vote Audit Board shall be implemented to ensure that there is no more than a 5% probability that the audit will confirm the reported outcome from election night if the outcome is incorrect.

Category C: The State Vote Audit Board shall develop statistical standards for audits of election contests in Category C (countywide and local) that set target levels of probability in the range from 5% to 40%, on a scale depending on the number of audit units in each audited contest. Any audit design for a Category C contest shall be implemented to ensure that there is no more than the target level of probability that the audit will confirm the reported outcome from election night if the outcome is incorrect.

Such procedures designed and adopted by the State Vote Audit Board to achieve these levels of probability shall be based upon scientifically reasonable assumptions with respect to each audited election contest and upon a statistical method that considers such factors as the number of ballots in each audit unit, the number of audit units from which the sample is to be taken, and the margin of victory in the contest audited.

(2) Audit Transparency

All standards, procedures, designs, models, and methods for the conduct of post-election audits of election results in Michigan shall be officially provided to the public prior to any given election, and the public shall have a minimum of 60 days to comment thereon. Within a reasonable period of time after the election, and prior to certification of the vote by County Boards of Canvassers, the Treasurer, with the State Vote Audit Board, shall determine by random selection which audit units will be manually recounted in accordance with Random Selections below and then announce the audit units publicly, and within 24 hours of that announcement, the audit shall commence.

Each public meeting and all ballot counting conducted in the performance of post-election audits of election results pursuant to this statute, including election night audits, challenger election audits, and petitioner election audits, shall be conducted in a manner allowing public observation of the entire process sufficient to observe, verify, and point out procedural mistakes without interfering with the proceedings. Any challenges to procedure, and their remedy, if any, shall be recorded in a log pertaining to the audit.

(3) “Blind” Standard for Persons Assigned to Manual Counting

For every audit unit that is included in the audit statistical sample, the manual, hand-to-eye recount shall be conducted independently and without consideration of unofficial

results of the election at the precinct or any other level. When and only when the hand-to-eye count is complete, shall the Vote Audit Team compare that count with the machine count of such votes accrued in the unofficial election results, recorded and signed by the election inspectors, and submitted with their sworn record of the election (poll book). Members of any statistically-based audit counting team should have no prior knowledge of precinct specific electronic results.

(4) Random Selections

The selection for audit of election contests not otherwise required to be audited (Categories B and C) shall be a simple random sample made by the Treasurer, with the State Vote Audit Board, at a public meeting, in which all election contests in the same category have an equal chance of being selected, in accordance with such procedures as the standards of the MCGAA establish.

The sample of audit units to be manually counted in an audited election contest shall be made by the Treasurer, with the State Vote Audit Board, at a public meeting, in accordance with such procedures as the standards of the MCGAA establish. The sample of audit units may be either a simple random sample in which all units have an equal chance of being selected or a stratified sample in which units are randomly selected within categories based on the size of an independent variable such as the unit population, with category sample sizes based on the proportion of the total vote produced by the units in the category.. Samples of audit units for election contests that were voted in fewer than ten election precincts may be made randomly using a non-uniform distribution to be determined by the standards of the MCGAA. Such procedures shall be

published prior to use in any given election, and the public shall have the opportunity to comment thereon.

Additional Targeted and Selective Auditing

(1) Selected by the State Vote Audit Board

Notwithstanding the requirements set forth in Random Selections, the State Vote Audit Board or its delegates shall have the authority to audit any election contest or to manually recount any audit unit, even though the contest or audit unit has not been randomly selected for auditing, in which a majority of the State Vote Audit Board determines from the un-audited election results, past election results, election night audits, or any other evidence available to the Board that an audit is warranted. This authority shall include auditing every contest in a given jurisdiction if the State Vote Audit Board or its delegates find cause for such action.

(2) Selected by Qualified Petitioners

A. Notwithstanding the requirements set forth in Random Selections, and whether or not a specific contest has been selected by the State Vote Audit Board for audit, any person qualified to file a request for a recount of that particular election contest, or any person representing a challenger audit group, shall be entitled to select for audit up to two percent of audit units included in the contest, rounded to the next whole number of audit units. This prerogative shall be exercised by filing a signed and notarized, written request with the State Vote Audit Board within 96 hours after the closing of polls in an election.

B. The petitioner may request that the selection of audit units be a random sample as outlined in the previous section and the State Vote Audit Board shall grant the request

and make the random selection. The petitioner may alternatively request, and the State Vote Audit Board shall grant, that some or all of the audit units be those which are specifically designated in writing by the petitioner.

C. In so far as possible, such targeted and selective audits shall be conducted in accordance with the standards and procedures established pursuant to this statute. All results of targeted and selective audits shall be reported immediately to the State Vote Audit Board, which shall incorporate those results into the audit of any contest in Category A, B or C that is mandated or selected for audit. If the results of any targeted and selective audit show discrepancies, the State Vote Audit Board shall make a determination whether to escalate the audit and follow up as necessary in accordance with its rules and guidelines (see Escalation, below).

Exercise of the prerogative to petition for targeted and selective audit shall in no way preempt or nullify petitioners' right of recount as otherwise established by law.

Use of Ballot Batches

Whenever feasible, batches of ballots counted outside the precinct during an election should be no larger than 2,000 ballots for each electronic counting machine used. If for any reason it is not feasible to keep batches of ballots counted outside the precinct to 2,000 or fewer ballots, then the County Vote Audit Team shall divide groups of ballots larger than 2000 according to procedures specified by the State Vote Audit Board and in accordance with the following standards:

(1) The batches shall be nearly equal in size and in no case larger than 2,000;

- (2) Qualified provisional envelope ballots should be treated as a batch for potential random selection, and divided if the number exceeds 2,000;
- (3) Batches selected for audit shall be selected at random;
- (4) In order to keep secret the identity of individual voters, to the extent feasible the distribution of ballots within and between batches shall not be in the original order;
- (5) Absentee ballot batches counted by absentee counting boards shall not be associated with any particular election precinct. On election day, each audit unit shall be assigned a unique identification number, as the ballots comprising each audit unit are scanned and counted electronically. Immediately after scanning and tabulating the ballots comprising each audit unit, a cumulative summary vote tally report bearing the audit unit's unique identification number and containing the sum of the vote totals displayed on the tabulator LCD after the scanning of ballots in the audit unit shall be completed, signed by at least two election inspectors of different political parties, and affixed to the audit unit. The reports and respective ballots shall be subject to the same secure chain of custody as the ballots comprising the jurisdictional audit units.

The Vote Audit Team shall include all the audit units from each county in the random selection process and for units so selected, cause them to be audited in the same manner provided herein for election precincts, except that the hand-to-eye count shall be compared to the electronic vote tally derived from the election inspectors' completed reports of tabulator LCD readings for audit units.
- (6) Discrepancies in the vote count that trigger escalation for batches counted outside the precinct shall be comparable to the triggers for ballots counted in the precinct.

Compromised Ballots

If the paper ballots in any audit unit are found to be unusable for an audit for any reason whatsoever, another audit unit for the same election contest shall be selected at random by the State Vote Audit Board or its delegates to replace the original audit unit in the audit sample. All such selections shall be made randomly at a public meeting pursuant to Random Selections. An investigation to determine the reason the paper ballots were compromised and unusable shall be conducted immediately, and the results of the investigation shall be made public immediately and if warranted reported immediately to appropriate law enforcement authorities.

Escalation

- (1) The State Vote Audit Board shall make a good faith effort to develop, and the Treasurer shall issue previous to each election,
 - A. Criteria to be employed to determine whether discrepancies revealed by hand-to-eye counts or any other anomalies or irregularities brought to the attention of an audit show cause for concern about the accuracy of the outcome of an election contest sufficient to trigger further hand-to-eye counts (escalation);
 - B. Criteria and procedures for conducting investigations of discrepancies, anomalies, and irregularities when further investigation is deemed necessary to resolve questions of escalation; and
 - C. Criteria that specify under what circumstances a full recount will be conducted.

- Such criteria shall be announced and reported publicly prior to use in any given election, and the public shall have opportunity to comment thereon in sufficient time to allow responsive changes to be made when warranted.
- (2) If the Treasurer, based on a recommendation of a majority of the State Vote Audit Board, determines that the results of any of the hand-to-eye counts conducted under this statute, including discrepancies, irregularities, or anomalies reported by election night audits, challenger audits, or audits requested by qualified petitioners, indicate cause for concern about the accuracy of the outcome of any election contest in the State, the respective County Audit Teams shall conduct additional hand-to-eye counts under this section of such additional audit units, up to and including a full recount, as the State Vote Audit Board considers appropriate to resolve those concerns and to attain the desired level of statistical probability (see Statistical Standards) for the audit's conclusions.
- (3) If additional audit units are manually counted, the escalated audit of the election contest shall be conducted under the same procedures used for vote count audits after election night.

Assignment of Audit Costs

The costs of the audits shall be allocated as follows:

- (1) The jurisdiction responsible for each precinct shall pay the costs incurred for the election night audit of a single race;
- (2) The State of Michigan shall pay the costs incurred to establish audit and security standards and procedures, to create and staff the State Vote Audit Board, and to

- perform all of its functions;
- (3) The State of Michigan shall pay the costs incurred for vote count audits after election night, except for targeted and selective audits or challenger audits, the costs of which shall be paid by the petitioner or challengers involved.
- (4) If the results of a targeted and selective audit or a challenger audit trigger or contribute to triggering escalation, and the ensuing audit, when completed, alters the outcome of the contest, then the petitioners or challenger groups shall be reimbursed by the State of Michigan as per order of the State Vote Audit Board for the costs the petitioners or challenger groups incurred in the initial audit.

Standard of Acceptable Performance by an Electronic Voting System

A comparison of the results compiled by any electronic voting system with the results of any hand count audit, including election night audits, audits by challenger audit groups, or audits requested by qualified petitioners, must show that the results of the voting system for each contest differed by no more than one-half of one percent from the manual audit count in any audit unit. (It is to be noted in conjunction with this standard that MCL 168.737 specifies that mismarked ballots be treated in such a way that they would not be counted in this standard.)

Penalties for Electronic Voting Systems Failure

Vendor Performance Bonds

- (1) Within 90 days of the effective date of this statute, vendors of electronic voting systems currently approved for use in Michigan will submit a vendor performance bond

or bank letter of credit guaranteeing the amount of \$1,000 per machine in active use in the state.

(2) Vendors of electronic voting systems not currently approved for use in Michigan shall certify to the Treasurer that they will not offer for sale a system which is not certified for use in Michigan elections. The vendor shall furnish to the Treasurer a vendor performance bond or bank letter of credit guaranteeing the amount of \$1000 per machine sold in Michigan, conditioned on certification of the voting system by the State Vote Audit Board and on offering the equipment for sale in accordance with Michigan election laws.

Vendor Penalties

If an electronic voting system is found to have failed to meet the standard of acceptable performance in ten or more audit units for any combination of audited contests in a single election, the voting system shall not be used in another election until it has been examined and recertified to security standards established by the MCGAA.

(1) If the voting system failure is attributable to either its design or to actions of the vendor, the vendor shall forfeit the vendor performance bond. If vendor design fails to mitigate against predictable “human error” in the use of the voting equipment then the vendor shall be considered liable as specified herein.

(2) The vendor of the electronic voting system must pay any costs incurred by the State Vote Audit Board to examine and recertify the voting system.

(3) The State Vote Audit Board must reimburse, from forfeited bonds of vendors, the local units of government, petitioners, or challengers for their costs of auditing any audit unit which used an electronic voting system that failed to meet the standard of acceptable

performance.

Reporting to the Public

As soon as feasible after the completion of an audit, the Treasurer, based on approval of a majority of the State Vote Audit Board, shall announce and report publicly the audit results for any unit audited by the Audit Board or its delegates, by an election night audit, by a challenger group audit, or by a petitioner audit, and shall include in the announcement a comparison of the manual vote count in each election contest for each audit unit with the unofficial vote count as announced by the county canvassing boards (on election night or near thereto), including:

- 1) The initial vote count and any subsequent manual counts of the paper ballots;
- 2) A list, by audit unit, of any discrepancies between the county's unofficial results and the audit results, and any other anomalies or irregularities encountered;
- 3) Tallies of all overvotes, undervotes, and blank ballots, as well as spoiled ballots and defective ballots recorded in the precinct poll book or equivalent record for other types of audit unit.
- 4) Accounts of investigations conducted pursuant to discrepancies, anomalies or irregularities; and
- 5) Explanations of discrepancies, anomalies or irregularities, if investigation determined why they occurred.

The Treasurer shall further assure that the complete results of each election, including all audits conducted, are made available indefinitely in a public archive. To ensure the availability and reliability of the archive for future audit sampling selection and scientific

study, the Treasurer shall secure the original audit results, including machine records and audit tallies, and, where an audit escalated to a recount or revote, images of the applications to vote, precinct lists, ballots, and poll book pages.

Incorporation of Audit Results into Certified Results

No County Board of Canvassers shall certify the results of any election contest that is subject to an audit prior to the completion of the audit and the public announcement and report of the results thereof as required by Reporting to the Public. If the audit produces a change in the number of votes counted for any candidate or ballot issue, the revised vote totals shall be incorporated into the official canvass of votes, which includes reports of provisional envelope ballots, for the certification of the respective audit units. If an audit of a specific contest has required a complete recount or sufficient escalation to establish with reasonable certainty that the contest audited has a different outcome than reported on election night, that alternate outcome must be made the official outcome when the contest result is certified.

No Abridgement of Right of Recount

Nothing in this section shall be construed to prevent a candidate or other applicant from requesting a recount pursuant to MCL 168.861-894, or any other law. In the event that such a recount is held for any audit unit that has been manually counted pursuant to this section, the official audit results shall be applied to the recount in lieu of conducting an additional hand count of the same audit unit, unless a court, at the request of a candidate or other applicant who requested the recount, orders otherwise.

Timing with respect to Appointment of Electors for President of the United States

The audit and report thereof shall be completed prior to the time the State shall make a final determination of any dispute concerning the appointment of its electors for President of the United States prior to the deadline established in section 6 of Pub.L.80-644 (3 U.S.C.§6).

Mandate for New Election

The Secretary of State shall order a new election and complete revote for any election contest where an audit or its consequent escalation and investigation, up to and including an attempt to fully recount the contest, uncover sufficient numbers of compromised ballots or discrepancies in the vote count, or sufficient amounts of irregularity or anomaly such that the State Vote Audit Board cannot determine an outcome of the contest with a reasonably high level of probability.