

# ASSEMBLY, No. 3648

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JANUARY 26, 2009

**Sponsored by:**

**Assemblywoman JOAN M. QUIGLEY**

**District 32 (Bergen and Hudson)**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen, Essex and Passaic)**

**Co-Sponsored by:**

**Senators Sweeney and O'Toole**

**SYNOPSIS**

Delays requirement that voting machines produce individual permanent paper record for each vote cast due to the State's critical economic situation and lack of appropriate technology.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/24/2009)**

1 AN ACT suspending the requirement that voting machines produce a  
2 voter-verified paper record for each vote cast, and amending  
3 R.S.19:48-1, P.L.1973, c.82 and P.L.2005, c.137.

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

7  
8 1. R.S.19:48-1 is amended to read as follows:

9 19:48-1. a. Any thoroughly tested and reliable voting machines  
10 may be adopted, rented, purchased or used, which shall be so  
11 constructed as to fulfill the following requirements:

12 (a) It shall secure to the voter secrecy in the act of voting;

13 (b) It shall provide facilities for such number of office columns,  
14 not less than 40 and not exceeding 60, as the purchasing authorities  
15 may specify and of as many political parties or organizations, not  
16 exceeding nine, as may make nominations, and for or against as  
17 many questions, not exceeding 30, as submitted;

18 (c) It shall, except at primary elections, permit the voter to vote  
19 for all the candidates of one party or in part for the candidates of  
20 one party or one or more parties;

21 (d) It shall permit the voter to vote for as many persons for an  
22 office as he is lawfully entitled to vote for, but no more;

23 (e) It shall prevent the voter from voting for the same person  
24 more than once for the same office;

25 (f) It shall permit the voter to vote for or against any question  
26 he may have the right to vote on, but no other;

27 (g) It shall for use in primary elections be so equipped that the  
28 election officials can stop a voter from voting for all candidates  
29 except those of the voter's party;

30 (h) It shall correctly register or record and accurately count all  
31 votes cast for any and all persons, and for or against any and all  
32 questions;

33 (i) It shall be provided with a "protective counter" or  
34 "protective device" whereby any operation of the machine before or  
35 after the election will be detected;

36 (j) It shall be so equipped with such protective devices as shall  
37 prevent the operation of the machine after the polls are closed;

38 (k) It shall be provided with a counter which shall show at all  
39 times during an election how many persons have voted;

40 (l) It shall be provided with a model, illustrating the manner of  
41 voting on the machine, suitable for the instruction of voters;

42 (m) It must permit a voter to vote for any person for any office,  
43 except delegates and alternates to national party conventions,  
44 whether or not nominated as a candidate by any party or

**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.

1 organization by providing an opportunity to indicate such names or  
2 name;

3 (n) It shall be equipped with a permanently affixed box or  
4 container of sufficient strength, size and security to hold all  
5 emergency ballots and pre-punched single-hole envelopes and with  
6 a clipboard and a table-top privacy screen;

7 (o) It shall not use mechanical lever machines or punch cards to  
8 record votes.

9 All voting machines used in any election shall be provided with a  
10 screen, hood or curtain, which shall be so made and adjusted as to  
11 conceal the voter and his action while voting.

12 It shall also be provided with one device for each party for  
13 voting for all the presidential electors of that party by one  
14 operation, and a ballot therefor containing only the words  
15 "presidential electors for," preceded by the name of that party and  
16 followed by the names of the candidates thereof for the offices of  
17 President and Vice-President and a registering device therefor  
18 which shall register the vote cast for such electors when thus voted  
19 collectively.

20 b. (1) By January 1, 2009, each voting machine shall produce an  
21 individual permanent paper record for each vote cast, which shall be  
22 made available for inspection and verification by the voter at the  
23 time the vote is cast, and preserved for later use in any manual  
24 audit. In the event of a recount of the results of an election, the  
25 voter-verified paper record shall be the official tally in that election.  
26 A waiver of the provisions of this paragraph shall be granted by the  
27 Secretary of State if the technology to produce a permanent voter-  
28 verified paper record for each vote cast is not commercially  
29 available.

30 (2) The provisions of paragraph (1) of this subsection shall be  
31 suspended until: (i) the Secretary of State and the State Treasurer  
32 certify in writing that sufficient funds have been provided by the  
33 federal government and received by the State to offset the entire  
34 cost of ensuring that each voting machine used in this State  
35 produces an individual permanent paper record for each vote cast;  
36 or (ii) the annual appropriation act contains an appropriation of  
37 sufficient funds to ensure that each voting machine used in this  
38 State produces an individual permanent paper record for each vote  
39 cast and such appropriated funds have not been reserved by the  
40 Governor under a spending reduction plan; or (iii) the Secretary of  
41 State and the State Treasurer certify in writing that sufficient funds  
42 have been provided by the federal government and received by the  
43 State, and the annual appropriation act contains an appropriation of  
44 sufficient unreserved funds, to ensure, when such funds are  
45 combined, that each voting machine used in this State produces an  
46 individual paper record for each vote cast.

47 (cf: P.L.2008, c.18, s.1)

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1       2. Section 3 of P.L.1973, c.82 (C.19:53A-3) is amended to read  
2 as follows:

3       3. Every electronic voting system, consisting of a voting device  
4 in combination with automatic tabulating equipment, acquired or  
5 used in accordance with this act, shall:

6       a. Provide for voting in secrecy, except in the case of voters  
7 who have received assistance as provided by law;

8       b. Permit each voter to vote at any election for all persons and  
9 offices for whom and for which he is lawfully entitled to vote; to  
10 vote for or against any question upon which he is entitled to vote;  
11 and the automatic tabulating equipment shall reject choices  
12 recorded on his ballot if the number of choices exceeds the number  
13 which he is entitled to vote for the office or on the measure;

14       c. Permit each voter, at presidential elections, by one mark to  
15 vote for the candidates of that party for president, vice president,  
16 and their presidential electors;

17       d. Permit each voter, at other than primary elections, to vote for  
18 the nominees of one or more parties and for independent candidates;  
19 and personal choice or write-in candidates;

20       e. Permit each voter in primary elections to vote for candidates  
21 in the party primary in which he is qualified to vote, and the  
22 automatic tabulating equipment shall reject any votes cast for  
23 candidates of another party;

24       f. Prevent the voter from voting for the same person more than  
25 once for the same office;

26       g. Be suitably designed for the purpose used, of durable  
27 construction, and may be used safely, efficiently, and accurately in  
28 the conduct of elections and counting ballots;

29       h. When properly operated, record correctly and count  
30 accurately every vote cast, including all overvotes or undervotes  
31 and all affirmative votes or negative votes on all public questions or  
32 referenda;

33       i. (1) By January 1, 2009, each voting machine shall produce  
34 an individual permanent paper record for each vote cast, which shall  
35 be made available for inspection and verification by the voter at the  
36 time the vote is cast, and preserved for later use in any manual  
37 audit. In the event of a recount of the results of an election, the  
38 voter-verified paper record shall be the official tally in that election.  
39 A waiver of the provisions of this subsection shall be granted by the  
40 Secretary of State if the technology to produce a permanent voter-  
41 verified paper record for each vote cast is not commercially  
42 available.

43       (2) The provisions of paragraph (1) of this subsection shall be  
44 suspended until: (i) the Secretary of State and the State Treasurer  
45 certify in writing that sufficient funds have been provided by the  
46 federal government and received by the State to offset the entire  
47 cost of ensuring that each voting machine used in this State  
48 produces an individual permanent paper record for each vote cast;

1 or (ii) the annual appropriation act contains an appropriation of  
2 sufficient funds to ensure that each voting machine used in this  
3 State produces an individual permanent paper record for each vote  
4 cast and such appropriated funds have not been reserved by the  
5 Governor under a spending reduction plan; or (iii) the Secretary of  
6 State and the State Treasurer certify in writing that sufficient funds  
7 have been provided by the federal government and received by the  
8 State, and the annual appropriation act contains an appropriation of  
9 sufficient unreserved funds, to ensure, when such funds are  
10 combined, that each voting machine used in this State produces an  
11 individual paper record for each vote cast.

12 (cf: P.L.2008, c.18, s.2)

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14 3. Section 3 of P.L.2005, c.137 (C.19:53A-3.1) is amended to  
15 read as follows:

16 3. Unless federal funding is made available to pay for the  
17 purchase or retrofit of a voting machine to produce a voter-verified  
18 paper record as required by P.L.2005, c.137 (C.19:53A-3.1 et al.), a  
19 county shall be reimbursed by the State for such costs upon  
20 application for reimbursement to the Attorney General and approval  
21 of the application by the Director of the Division of Budget and  
22 Accounting in the Department of the Treasury, in accordance with  
23 the provisions of Article VIII, Section II, paragraph 5 of the New  
24 Jersey Constitution.

25 This provision shall be suspended until the conditions set forth in  
26 paragraph (2), subsection b. of R.S.19:48-1 or paragraph (2) of  
27 subsection i. of section 3 of P.L.1973, c.82 (C.19:53A-3) have been  
28 met.

29 (cf: P.L.2005, c.137, s.3)

30

31 4. This act shall take effect immediately.

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#### STATEMENT

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36 The purpose of this bill is to suspend the requirement in current  
37 law that by January 1, 2009 the voting machines used in this State  
38 produce an individual permanent paper record for each vote cast.

39 Specifically, the bill provides that the January 1, 2009 deadline is  
40 suspended until: a) the Secretary of State and the State Treasurer  
41 certify in writing that sufficient funds have been provided by the  
42 federal government and received by the State to offset the entire  
43 cost of ensuring that each voting machine used in this State  
44 produces an individual permanent paper record for each vote cast;  
45 or b) the annual appropriation act contains an appropriation of  
46 sufficient funds to ensure that each voting machine used in this  
47 State produces an individual permanent paper record for each vote  
48 cast and such appropriated funds have not been reserved by the

1 Governor under a spending reduction plan; or c) the Secretary of  
2 State and the State Treasurer certify in writing that sufficient funds  
3 have been provided by the federal government and received by the  
4 State, and the annual appropriation act contains an appropriation of  
5 sufficient unreserved funds, to ensure, when such funds are  
6 combined, that each voting machine used in this State produces an  
7 individual paper record for each vote cast.

8 This suspension is necessary because of the dire economic  
9 situation in which the State finds itself currently. Recent estimates  
10 reveal that the State will need to close a \$2.1 billion budget gap in  
11 the 2009 fiscal year and a more severe gap in the 2010 fiscal year.  
12 Although \$19 million in State funds had been set aside to help pay  
13 the costs of retrofitting the direct recording electronic (DRE) voting  
14 machines used in 18 of the State's 21 counties, this money is no  
15 longer available for this purpose. The funds have been placed in  
16 reserve to help the State meet its most urgent fiscal obligations and  
17 balance its budgets, as required by the New Jersey Constitution.  
18 Without this \$19 million, there are insufficient funds available  
19 currently to pay for a retrofit of all the DRE voting machines or to  
20 change to any other alternative voting system that produces a paper  
21 trail of the votes cast by a voter in an election held in this State.