

CHAPTER 17

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

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

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

Voting machines, requirements.

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

- (a) It shall secure to the voter secrecy in the act of voting;
- (b) It shall provide facilities for such number of office columns, not less than 40 and not exceeding 60, as the purchasing authorities may specify and of as many political parties or organizations, not exceeding nine, as may make nominations, and for or against as many questions, not exceeding 30, as submitted;
- (c) It shall, except at primary elections, permit the voter to vote for all the candidates of one party or in part for the candidates of one party or one or more parties;
- (d) It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for, but no more;
- (e) It shall prevent the voter from voting for the same person more than once for the same office;
- (f) It shall permit the voter to vote for or against any question he may have the right to vote on, but no other;
- (g) It shall for use in primary elections be so equipped that the election officials can stop a voter from voting for all candidates except those of the voter's party;
- (h) It shall correctly register or record and accurately count all votes cast for any and all persons, and for or against any and all questions;
- (i) It shall be provided with a "protective counter" or "protective device" whereby any operation of the machine before or after the election will be detected;
- (j) It shall be so equipped with such protective devices as shall prevent the operation of the machine after the polls are closed;
- (k) It shall be provided with a counter which shall show at all times during an election how many persons have voted;
- (l) It shall be provided with a model, illustrating the manner of voting on the machine, suitable for the instruction of voters;
- (m) It must permit a voter to vote for any person for any office, except delegates and alternates to national party conventions, whether or not nominated as a candidate by any party or organization by providing an opportunity to indicate such names or name;
- (n) It shall be equipped with a permanently affixed box or container of sufficient strength, size and security to hold all emergency ballots and pre-punched single-hole envelopes and with a clipboard and a table-top privacy screen;
- (o) It shall not use mechanical lever machines or punch cards to record votes.

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

It shall also be provided with one device for each party for voting for all the presidential electors of that party by one operation, and a ballot therefor containing only the words "presidential electors for," preceded by the name of that party and followed by the names of

the candidates thereof for the offices of President and Vice-President and a registering device therefor which shall register the vote cast for such electors when thus voted collectively.

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

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

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

C.19:53A-3 Requirements of electronic voting systems.

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

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

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

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

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

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

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

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

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

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

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

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

C.19:53A-3.1 Reimbursement for purchase, retrofit of voting machine to produce paper record, provision suspended until certain conditions met.

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

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

4. This act shall take effect immediately.

Approved March 6, 2009.