ASSEMBLY, No. 3991

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED MAY 17, 2018

Sponsored by:
Assemblyman VINCENT MAZZEO
District 2 (Atlantic)
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District 37 (Bergen)
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District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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SYNOPSIS
Establishes “New Jersey Elections Security Act.”

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 8/28/2018)
AN ACT concerning secure voting and elections and supplementing
Title 19 of the Revised Statutes.

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

1. This act shall be known and may be cited as the “New Jersey
Elections Security Act.”

2. a. The Secretary of State shall establish a demonstration
program to replace electronic voting machines with a paper ballot
voting system using optical scanners. The program shall be
implemented beginning at the first general election in November
following the effective date of this act, P.L. , c. (C. ) (pending
before the Legislature as this bill), in three of the State’s 21
counties, one each in the Northern, Central, and Southern parts of
the State, which shall be selected by the Secretary of State. The
demonstration program in the initial three counties shall be
implemented for one year in every election in those counties, and
shall continue thereafter. Following the completion of the one-year
demonstration program, the Secretary of State shall expand the
program to include six additional counties per year over the next
three years, until all of the State’s 21 counties are implementing
the paper ballot voting system using optical scanners in the fourth year
of implementation.

b. The demonstration program established under subsection a.
of this section shall include, but may not be limited to, the
following requirements:

(1) a voter shall mark a paper ballot, which shall be tabulated
using an optical scanner;

(2) a voter shall insert the marked paper ballot into the optical
scanner, unless the voter is entitled to request and has requested
assistance to vote pursuant to guidelines under the “Americans with
Disabilities Act of 1990” (42 U.S.C. s.12101 et seq.), and in that
case the voter shall be assisted;

(3) the optical scanners purchased by the State for use in
elections under the demonstration program and thereafter shall
provide a “cast vote record” (CVR);

(4) all new optical scanners shall adhere to the federal Election
Assistance Commission’s Voluntary Voting System Guidelines
prior to purchase; and

(5) any other requirement the Secretary of State deems
appropriate for the implementation of the demonstration program.

3. a. The Secretary of State shall require the County Boards of
Elections or Superintendents of Elections, as the case may be, to
maintain all paper ballots cast in an election under this act,
P.L. , c. (C. ) (pending before the Legislature as this bill), for a
period of not less than two years following the date of an election. Thereafter, the ballots may be retained in accordance with procedures set forth by the Director of the Division of Elections in the Department of State.

b. Prior to verification of the official election results by the County Boards of Elections or Superintendents of Elections, as the case may be, the boards or superintendents shall:

(1) compare and reconcile the number of ballots with the number of voters who signed in at the polling place and who voted by mail-in, provisional, and military or overseas ballots;

(2) compare and reconcile precinct totals with countywide results to ensure that they add up to the correct sum; and

(3) review, and account for, all optical scanner memory cards or flash drives to ensure they are properly loaded into the tally server.

4. a. The Secretary of State shall also require each of the counties chosen for the demonstration program under section 1 of this act, P.L. , c. (C. ) (pending before the Legislature as this bill), to conduct a risk-limiting audit, as provided in this section. Thereafter, each county in this State shall conduct risk-limiting audits for each election as they begin to use the paper ballot voting system with optical scanners.

b. Each county shall make use of a risk-limiting audit in accordance with the requirements of this section. Races to be audited shall be selected in accordance with procedures established by the Secretary of State, and all contested races are eligible for such selection. Upon written application from a county, the Secretary of State may waive the requirements of this subsection upon a sufficient showing by the county that the technology in use by the county will not enable the county to satisfy such requirements in preparation for the first election in which a risk-limiting audit is used.

c. The Secretary of State shall promulgate the rules and regulations necessary to implement and administer the requirements of this section. In connection with the promulgation of the rules and regulations, the secretary shall consult recognized statistical experts, equipment vendors, and county clerks, and shall consider best practices for conducting risk-limiting audits.

d. As used in this section:

(1) “Incorrect outcome” means an outcome that is inconsistent with the election outcome that would be obtained by conducting a full recount.

(2) “Risk-limiting audit” means an audit protocol that makes use of statistical methods and is designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome.
5. There shall be appropriated the funds necessary to purchase new equipment, software, and hardware for the paper ballot voting system and to meet the costs of the program established by this act, P.L. , c. (C. ) (pending before the Legislature as this bill). The Department of State shall be permitted to sell decommissioned voting machines, equipment, and software to other states to recoup funds. The department shall also apply for grant funding from the United States Election Assistance Commission to help offset these costs.

6. a. There is established the New Jersey Election Security Commission, which shall be in but not of the Department of State. b. The commission shall be composed of nine members to be appointed as follows:

   (1) The Secretary of State, or the designee thereof;
   (2) The Attorney General, or the designee thereof;
   (3) The Director of the New Jersey Office of Homeland Security and Preparedness, or the designee thereof;
   (4) Two members of the Senate, appointed by the President thereof, who shall not be members of the same political party;
   (5) Two members of the General Assembly, appointed by the Speaker thereof, who shall not be members of the same political party; and
   (6) Two members of the New Jersey Association of Election Officials, appointed by the Governor, one of whom shall be a County Clerk and one of whom shall be a county Superintendent of Elections, who shall not be members of the same political party.

   Each member shall serve for a term of two years from the date of appointment and be eligible for re-appointment without limit. Any vacancy in the membership of the commission shall be filled in the same manner as the original appointment.

c. Members of the commission shall be appointed within 45 days of the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) and shall organize as soon as practicable after the appointment of the majority of its members. The Chair and Vice Chair of the commission shall be selected by the Governor from among the appointed members. The Chair may appoint a secretary, who need not be a member of the commission. The commission shall meet at the call of the Chair and hold hearings at the times and in the places it may deem appropriate and necessary to fulfill its purposes.

d. The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties, within the limits of funds appropriated or otherwise made available to the commission for its purposes.

e. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of the Department of
State, and to employ such stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limit of funds available to it for its purposes.

f. No later than four months following each general election following the enactment of this act, P.L. , c. (C. ) (pending before the Legislature as this bill), the commission shall draft and release a report on the security of elections occurring in this State during the previous year. The report shall include the results from the risk-limiting audit and the change to paper ballots with optical scans required by this act. The commission may make recommendations, if deemed necessary, for the improvement of election security in this State.

g. Copies of the report shall be transmitted to the Governor, the Lieutenant Governor, the President of the Senate, the Speaker of the General Assembly, the chairs of the Senate and Assembly Standing reference committees that consider election-related legislation, or their successor committees, and any other official required to receive reports pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1). Copies of the report shall also be made available to the general public.

7. This act shall take effect immediately, but the Department of State in conjunction with any other applicable departments and local government units may take anticipatory actions prior to the enactment of this bill.

STATEMENT

This bill, the “New Jersey Elections Security Act,” establishes a demonstration program to transition the State to a paper ballot voting system using optical scanners in each election. The bill directs the Secretary of State to establish a demonstration program to replace electronic voting machines with a paper ballot voting system using optical scanners. The program would begin implementation at the first general election in November following the bill’s effective date in three of the State’s 21 counties, one each in the Northern, Central, and Southern parts of the State. The counties would be selected by the Secretary of State. After one-year, the Secretary of State would expand the program to include six additional counties per year over the next three years, until all of the State’s 21 counties are implementing the paper ballot voting system using optical scanners in the fourth year of implementation.

Under the program, a voter at the polls would mark a paper ballot, which would be tabulated using an optical scanner. The voter would insert the marked paper ballot into the optical scanner, unless
the voter is entitled to request and has requested assistance to vote pursuant to guidelines under the Americans with Disabilities Act, and in that case the voter shall be assisted. The bill requires the optical scanners purchased by the State to provide a “cast vote record,” and to adhere to the federal Election Assistance Commission’s Voluntary Voting System Guidelines.

The bill provides that, prior to verification of the official election results by the County Boards of Elections or Superintendents of Elections, as the case may be, the boards or superintendents would be required to (1) compare and reconcile the number of ballots with the number of voters who signed in at the polling place and who voted by mail-in, provisional, and military or overseas ballots; (2) compare and reconcile precinct totals with countywide results to ensure that they add up to the correct amount; and (3) review, and account for, all optical scanner memory cards or flash drives to ensure they are properly loaded into the tally server. Counties would also be required to conduct a risk-limiting audit for each election, which means an audit protocol that makes use of statistical methods and is designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome. This provision in the bill is modeled after the risk-limiting audit statute in the State of Colorado.

Under the bill, the program would be funded through appropriation by the Legislature. The Department of State would be permitted to sell decommissioned voting machines, equipment, and software to other states to recoup funds, and would also apply for grant funding from the United States Election Assistance Commission to help offset these costs.

In addition, the bill creates a permanent nine-member New Jersey Election Security Commission, composed of cabinet officers from the Executive Branch, members of the Senate and General Assembly, and local officials from the New Jersey Association of Election Officials. No later than four months following each general election after the bill becomes law, the commission is to draft and release a report on the security of elections occurring in this State during the previous year. The report is to include the results from the risk-limiting audit and the change to paper ballots with optical scans required by the bill. The commission may make recommendations, if deemed necessary, for the improvement of election security in this State.

The bill would take effect immediately, but the Department of State in conjunction with any other applicable departments and local government units may take anticipatory actions prior to its enactment.

The State of New Jersey needs to immediately upgrade election security based on a consistent threat of cyber warfare from foreign governmental and non-governmental actors. In 2016, the United States Department of Homeland Security noted that certain
elections databases in several states were hacked. New Jersey is currently one of only a handful of states that use voting machines that do not provide a paper record, which opens up the possibility of not being able to detect if the voting machines were hacked by verifying the tally with the paper records. Moreover, the United States Department of State has not taken action to prevent foreign meddling in elections, and therefore states are obligated to take action.