

ASSEMBLY, No. 3991

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 17, 2018

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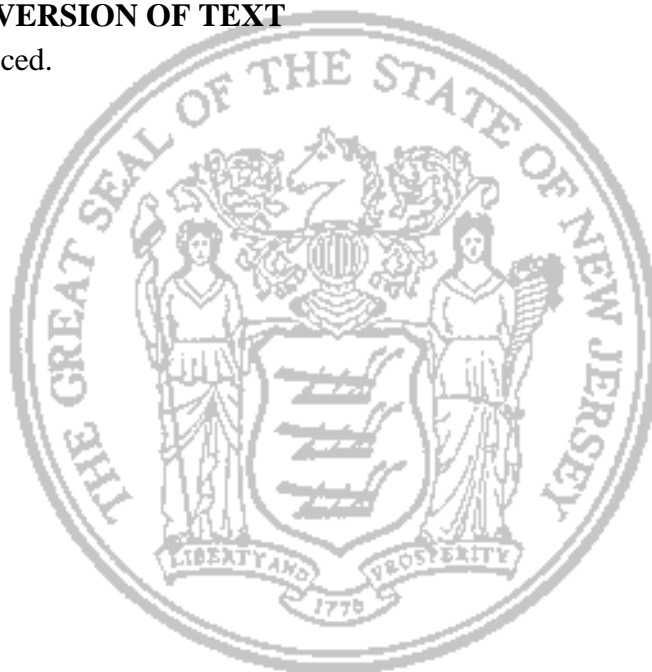
Assemblymen McKeon and Holley

SYNOPSIS

Establishes “New Jersey Elections Security Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/16/2018)

1 AN ACT concerning secure voting and elections and supplementing
2 Title 19 of the Revised Statutes.

3

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

6

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

9

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

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

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

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

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

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

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

44

45 3. a. The Secretary of State shall require the County Boards of
46 Elections or Superintendents of Elections, as the case may be, to
47 maintain all paper ballots cast in an election under this act,
48 P.L. , c. (C.) (pending before the Legislature as this bill), for a

1 period of not less than two years following the date of an election.
2 Thereafter, the ballots may be retained in accordance with
3 procedures set forth by the Director of the Division of Elections in
4 the Department of State.

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

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

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

13 (3) review, and account for, all optical scanner memory cards or
14 flash drives to ensure they are properly loaded into the tally server.
15

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

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

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

39 d. As used in this section:

40 (1) "Incorrect outcome" means an outcome that is inconsistent
41 with the election outcome that would be obtained by conducting a
42 full recount.

43 (2) "Risk-limiting audit" means an audit protocol that makes use
44 of statistical methods and is designed to limit to acceptable levels
45 the risk of certifying a preliminary election outcome that constitutes
46 an incorrect outcome.

1 5. There shall be appropriated the funds necessary to purchase
2 new equipment, software, and hardware for the paper ballot voting
3 system and to meet the costs of the program established by this act,
4 P.L. , c. (C.) (pending before the Legislature as this bill). The
5 Department of State shall be permitted to sell decommissioned
6 voting machines, equipment, and software to other states to recoup
7 funds. The department shall also apply for grant funding from the
8 United States Election Assistance Commission to help offset these
9 costs.

10

11 6. a. There is established the New Jersey Election Security
12 Commission, which shall be in but not of the Department of State.

13 b. The commission shall be composed of nine members to be
14 appointed as follows:

15 (1) The Secretary of State, or the designee thereof;

16 (2) The Attorney General, or the designee thereof;

17 (3) The Director of the New Jersey Office of Homeland Security
18 and Preparedness, or the designee thereof;

19 (4) Two members of the Senate, appointed by the President
20 thereof, who shall not be members of the same political party;

21 (5) Two members of the General Assembly, appointed by the
22 Speaker thereof, who shall not be members of the same political
23 party; and

24 (6) Two members of the New Jersey Association of Election
25 Officials, appointed by the Governor, one of whom shall be a
26 County Clerk and one of whom shall be a county Superintendent of
27 Elections, who shall not be members of the same political party.

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

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

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

47 e. The commission shall be entitled to call to its assistance and
48 avail itself of the services of the employees of the Department of

1 State, and to employ such stenographic and clerical assistance and
2 incur traveling and other miscellaneous expenses as may be
3 necessary in order to perform its duties, within the limit of funds
4 available to it for its purposes.

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

14 g. Copies of the report shall be transmitted to the Governor, the
15 Lieutenant Governor, the President of the Senate, the Speaker of the
16 General Assembly, the chairs of the Senate and Assembly Standing
17 reference committees that consider election-related legislation, or
18 their successor committees, and any other official required to
19 receive reports pursuant to section 2 of P.L.1991, c.164 (C.52:14-
20 19.1). Copies of the report shall also be made available to the
21 general public.

22

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

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STATEMENT

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31 This bill, the "New Jersey Elections Security Act," establishes a
32 demonstration program to transition the State to a paper ballot
33 voting system using optical scanners in each election.

34 The bill directs the Secretary of State to establish a
35 demonstration program to replace electronic voting machines with a
36 paper ballot voting system using optical scanners. The program
37 would begin implementation at the first general election in
38 November following the bill's effective date in three of the State's
39 21 counties, one each in the Northern, Central, and Southern parts
40 of the State. The counties would be selected by the Secretary of
41 State. After one-year, the Secretary of State would expand the
42 program to include six additional counties per year over the next
43 three years, until all of the State's 21 counties are implementing the
44 paper ballot voting system using optical scanners in the fourth year
45 of implementation.

46 Under the program, a voter at the polls would mark a paper
47 ballot, which would be tabulated using an optical scanner. The voter
48 would insert the marked paper ballot into the optical scanner, unless

1 the voter is entitled to request and has requested assistance to vote
2 pursuant to guidelines under the Americans with Disabilities Act,
3 and in that case the voter shall be assisted. The bill requires the
4 optical scanners purchased by the State to provide a “cast vote
5 record,” and to adhere to the federal Election Assistance
6 Commission’s Voluntary Voting System Guidelines.

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

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

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

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

45 The State of New Jersey needs to immediately upgrade election
46 security based on a consistent threat of cyber warfare from foreign
47 governmental and non-governmental actors. In 2016, the United
48 States Department of Homeland Security noted that certain

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1 elections databases in several states were hacked. New Jersey is
2 currently one of only a handful of states that use voting machines
3 that do not provide a paper record, which opens up the possibility of
4 not being able to detect if the voting machines were hacked by
5 verifying the tally with the paper records. Moreover, the United
6 States Department of State has not taken action to prevent foreign
7 meddling in elections, and therefore states are obligated to take
8 action.