

ASSEMBLY, No. 291

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Establishes “New Jersey Elections Security Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning secure voting and elections and supplementing
2 Title 19 of the Revised Statutes and repealing section 1 of
3 P.L.2007, c.349.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. This act shall be known and may be cited as the “New Jersey
9 Elections Security Act.”
10

11 2. a. Following the effective date of this act, P.L. , c. (C.)
12 (pending before the Legislature as this bill), whenever a county
13 replaces its electronic voting machines, it shall replace them with a
14 paper ballot voting system as specified under this section.

15 b. The paper ballot voting system shall include, but may not be
16 limited to, the following requirements:

17 (1) a voter shall mark a paper ballot at the polling place, either
18 by hand, using a ballot marking device certified by the State, or
19 both, as may be determined in each county, which ballot shall be
20 tabulated using voting equipment certified by the State;

21 (2) a voter shall vote independently using the voting equipment
22 certified by the State, unless the voter is entitled to request and has
23 requested assistance to vote pursuant to guidelines under the
24 “Americans with Disabilities Act of 1990” (42 U.S.C. s.12101 et
25 seq.), and in that case the voter shall be assisted;

26 (3) the voting equipment certified by the State for use in
27 elections first implementing the paper ballot voting system and
28 thereafter shall provide a “cast vote record” (CVR);

29 (4) all new voting equipment certified by the State shall adhere
30 to the federal Election Assistance Commission’s Voluntary Voting
31 System Guidelines prior to purchase; and

32 (5) any other requirement the Secretary of State deems
33 appropriate for the implementation of the paper ballot voting
34 system.
35

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

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

47 (1) compare and reconcile the cast vote record provided by the
48 voting equipment certified by the State with the number of voters

1 who signed in at the polling place and who voted by mail-in,
2 provisional, and military or overseas ballots;

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

5 (3) review, and account for, all voting equipment memory cards
6 or flash drives to ensure they are properly loaded into the tally
7 server.

8

9 4. a. The Secretary of State shall require each of the counties
10 implementing the paper ballot voting system under section 1 of this
11 act, P.L. , c. (C.) (pending before the Legislature as this bill), to
12 conduct a risk-limiting audit for each election as provided in this
13 section.

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

24 c. The Secretary of State, in consultation with the county
25 Boards of Elections and Superintendents of Elections, shall
26 promulgate the rules and regulations necessary to implement and
27 administer the requirements of this section. In connection with the
28 promulgation of the rules and regulations, the secretary shall
29 consult recognized statistical experts, equipment vendors, and
30 county clerks, and shall consider best practices for conducting risk-
31 limiting audits.

32 d. As used in this section:

33 (1) "Incorrect outcome" means an outcome that is inconsistent
34 with the election outcome that would be obtained by conducting a
35 full recount by human inspection of the human-readable portions of
36 the paper ballot.

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

41

42 5. The State may appropriate the funds necessary to purchase
43 new equipment, software, and hardware for the paper ballot voting
44 system and to meet the costs of implementing this act, P.L. ,
45 c. (C.) (pending before the Legislature as this bill). The counties
46 shall be permitted to sell decommissioned voting machines,
47 equipment, and software to other states to recoup funds. The

1 Department of State shall apply for grant funding from the United
2 States Election Assistance Commission to help offset these costs.

3

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

6 b. The commission shall be composed of 12 members to be
7 appointed as follows:

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

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

10 (3) The Director of the Division of Elections in the Department
11 of State, or the designee therefor, and the Director of the New
12 Jersey Office of Homeland Security and Preparedness, or the
13 designee thereof;

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

16 (5) Two members of the General Assembly, appointed by the
17 Speaker thereof, who shall not be members of the same political
18 party; and

19 (6) Four members of the New Jersey Association of Election
20 Officials, appointed by the Governor, two of whom shall be County
21 Clerks, who shall not be members of the same political party, one of
22 whom shall be a county Superintendent of Elections and one of
23 whom shall be a member of a County Board of Elections, who shall
24 not be members of the same political party.

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

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

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

44 e. The commission shall be entitled to call to its assistance and
45 avail itself of the services of the employees of the Department of
46 State, and to employ such stenographic and clerical assistance and
47 incur traveling and other miscellaneous expenses as may be

1 necessary in order to perform its duties, within the limit of funds
2 available to it for its purposes.

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

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

20
21 7. Section 1 of P.L. 2007, c.349 (C.19:61-9) is repealed.

22
23 8. This act shall take effect 180 days following the date of
24 enactment, but the Department of State in conjunction with any
25 other applicable departments and local government units may take
26 anticipatory actions prior to the enactment of this bill.

27
28

29 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 requires that whenever a county replaces its electronic
35 voting machines, it must replace them with a paper ballot voting
36 system as described in the bill.

37 The paper ballot voting system will include the following
38 components: a voter at the polls will mark a paper ballot either by
39 hand, or by using a ballot marking device, or both, which will be
40 tabulated using voting equipment certified by the State. The voter
41 will vote independently, unless the voter is entitled to request and
42 has requested assistance to vote pursuant to guidelines under the
43 Americans with Disabilities Act, and in that case the voter shall be
44 assisted. The bill requires the voting equipment to provide a “cast
45 vote record,” and to adhere to the federal Election Assistance
46 Commission’s Voluntary Voting System Guidelines.

47 The bill provides that, prior to verification of the official election
48 results by the County Boards of Elections or Superintendents of

1 Elections, as the case may be, the boards or superintendents would
2 be required to (1) compare and reconcile the cast vote record with
3 the number of voters who signed in at the polling place and who
4 voted by mail-in, provisional, and military or overseas ballots; (2)
5 compare and reconcile precinct totals with countywide results to
6 ensure that they add up to the correct amount; and (3) review, and
7 account for, all voting equipment memory cards or flash drives to
8 ensure they are properly loaded into the tally server.

9 The bill also requires counties to conduct a risk-limiting audit for
10 each election, which is an audit protocol that makes use of
11 statistical methods and is designed to limit to acceptable levels the
12 risk of certifying a preliminary election outcome that constitutes an
13 incorrect outcome. This provision in the bill is modeled after the
14 risk-limiting audit statute in the State of Colorado.

15 Under the bill, the State is permitted to appropriate funds
16 necessary to purchase new equipment. Counties would be permitted
17 to sell decommissioned voting machines, equipment, and software
18 to other states to recoup funds, and the Department of State is to
19 apply for grant funding from the United States Election Assistance
20 Commission to help offset these costs.

21 In addition, the bill creates a permanent 12-member New Jersey
22 Election Security Commission, composed of cabinet officers from
23 the Executive Branch, members of the Senate and General
24 Assembly, and local officials from the New Jersey Association of
25 Election Officials. No later than four months following each general
26 election after the bill becomes law, the commission is to draft and
27 release a report on the security of elections occurring in this State
28 during the previous year. The report is to include the results from
29 the risk-limiting audit and the change to paper ballots as required by
30 the bill. The commission may make recommendations, if deemed
31 necessary, for the improvement of election security in this State.

32 The bill would take effect 180 days following the date of
33 enactment, but the Department of State in conjunction with any
34 other applicable departments and local government units may take
35 anticipatory actions prior to its enactment.