

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 3203**

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 24, 2021

The Assembly Appropriations Committee reports favorably Senate Bill No. 3203 SCS (1R), with committee amendments.

As amended by the committee, this bill establishes an in-person early voting procedure to allow voters to cast their votes at specially designated polling places before the day of certain primary and general elections. Under the bill, the early voting period would:

- (1) start on the 4th calendar day before a non-presidential primary election for a non-presidential general election and end on the second calendar day before that non-presidential primary election;
- (2) start on the 6th calendar day before a presidential primary election for a presidential general election and end on the second calendar day before that presidential primary election; and
- (3) start on the 10th calendar day before a general election and end on the second calendar day before that general election.

A municipality holding municipal elections on the second Tuesday in May, by an ordinance adopted by its governing body, may also conduct in-person early voting for those municipal elections, starting on the 4th calendar day before the regular municipal election and ending on the second calendar day before that regular municipal election.

Under the bill, in-person early voting will enable a registered voter to vote at a designated polling place before the day of an election using optical-scan voting machines that read hand-marked paper ballots or other voting machines that produce a voter-verifiable paper ballot. Designated polling places must be open for early voting on Monday through Saturday from at least 10 AM to 8 PM, and on Sunday from at least 10 AM to 6 PM. In real time using the electronic poll books each day during the early voting period, and prior to the start of the regularly scheduled election, each county board must make such changes as may be necessary to the voter's record in the Statewide voter registration system to indicate that a voter has voted in that election using the early voting procedure. A voter who participates in

early voting would not be permitted to vote by mail-in ballot or in person on election day.

The bill provides that each county board of elections is to designate at least three but not more than five early voting locations in each county, except that the county board must designate at least five but not more than seven public locations for early voting if the number of registered voters in the county is at least 150,000 but less than 300,000, and must designate at least seven but not more than 10 public locations for early voting if the number of registered voters in the county is 300,000 or more. A municipality that conducts May elections and that chooses to participate in early voting is to designate at least one but not more than three early voting locations. However, this provision would not be interpreted to prevent county boards of elections, at their discretion, from establishing additional locations in excess of the upper limits respectively set forth, provided, however, that the State will be required to provide reimbursement for the costs of locations up to and including the upper limits established, and would not be required to provide reimbursement for additional locations beyond those limits. Under the bill, the number of registered voters in each county must be determined ahead of the selection of early voting sites pursuant to a uniform standard to be developed by the Secretary of State. Whenever possible, early voting sites must be geographically located so as to ensure both access in the part of the county that features the greatest concentration of population, according to the most recent federal decennial census of the United States, and access in various geographic areas of the county. No public school building may serve as an early voting location. Once early voting locations are designated in each county, county boards of election must evaluate and, if deemed necessary, revise these locations in order to accommodate significant changes in the number of registered voters within each county, reflect the population distribution and density within each county, or because of similar circumstances. The Secretary of State may develop the criteria to be used by county boards of election to revise the location of early voting sites and must prescribe how often such revision must take place.

Under the bill, a voter would be permitted to vote at any early voting site in the voter's county or municipality.

The election officers responsible for conducting early voting would be the same as those responsible for conducting a general election. The number of such officers and their hours of service would be as determined by each county board of elections. The compensation for such officers would be as provided for by current law, or that required pursuant to Article I, paragraph 23 of the New Jersey Constitution, whichever is greater.

The bill provides that each county board will be responsible for forming and executing a written plan for the security of the voting machines, ballots, and election records used during the early voting

period, including voted ballots and election materials, based on guidelines established by the Secretary of State and submitted thereto no later than December 15 of each year. The written security plan is to ensure, to the greatest extent possible, the integrity of the voting process and the security of voting machines, voted ballots, and election records and materials used during the early voting period. The security plan must specify a chain of custody and security plan for voting machines and a chain of custody for the voted ballots, which must include the transfer of voted ballots to each county board of elections at the end of each early voting day for safekeeping. After the voted ballots are transferred to the county board of elections at the end of each early voting day, a county board may elect to impound those voted ballots on a secure server, or by any other means deemed appropriate by the Secretary of State. The voted ballots would not be canvassed until the closing of the polls on election day. The results of the voted ballots cast during early voting must remain confidential and would be disclosed only in accordance with the provisions of current law, regulations, and guidelines concerning the disclosure of election results, and a violation would be subject to the penalties established by law.

For the elections that early voting is available, the procedures concerning the conduct of voters at the polling place and the prohibition on electioneering within 100 feet of a polling place, will be as provided for in current law. Under the bill, challengers for early voting would be appointed as follows: (a) the chairperson of the county committee of a political party or the chairperson of the municipal committee of the political party, as the case may be, may appoint two challengers for each grouping of candidates choosing to be grouped together on the ballot for each early voting site in the chairperson's county or municipality, as the case may be. If two or more candidates choosing to be grouped together on the ballot do not belong to an organization represented by a county or municipal committee of any political party, as the case may be, the candidate listed on the highest position on the ballot for that grouping of candidates may appoint two challengers for that grouping of candidates for each early voting site in the county or municipality, as the case may be; (b) a candidate who has filed a petition for an office to be voted for at the primary election, and a candidate for an office whose name may appear upon the ballot to be used in any election, may act as a challenger. A candidate who is not grouped with any other candidate on the ballot may appoint two challengers for each early voting site at which the candidate is to appear on the ballot, but only two challengers would be allowed for each early voting site to represent all the candidates choosing to be grouped together on the ballot; and (c) whenever a public question appears on the ballot to be voted upon by the voters of an election district and application has been made by the proponents or opponents of such public question for

the appointment of challengers, the county board may in its discretion appoint two challengers each to represent such proponents or opponents at each early voting site. Only those challengers appointed under (a) through (c) would be permitted to be present at early voting sites.

The bill directs the Secretary of State to establish a printing on demand ballot and elections system. At a minimum, the system must be compatible with the Statewide voter registration system and any electronic poll books authorized under current law. Each polling place used for early voting would have a computer, tablet, or other electronic device to print provisional ballots for voters required to vote by provisional ballot in accordance to the provisions of Title 19 of the Revised Statutes or due to an equipment malfunction, or any other election related material, if needed. A computer, tablet, or other electronic device and the printer used to print election materials at a polling place would not be used unless it has been certified by the Secretary of State. The Secretary of State would adopt and publish standards and regulations governing the certification and use of computer, tablets, or other electronic devices and printers to print election materials at each polling place used for early voting. The Secretary of State would be prohibited from certifying a computer, tablet, or other electronic device or printer unless it is in compliance with the secretary's standards.

Under the bill, during the early voting period for the general election, the county clerk may provide for the electronic display of sample ballots at each early voting location. If a county clerk elects to provide for the electronic display of sample ballots at each early voting location, at a minimum, the electronic display would provide the sample ballot in the languages required by state or federal law for the county.

The bill also provides that, in addition to any publications required under Title 19 of the Revised Statutes, the Secretary of State and county boards of elections must publish on the Department of State's website and the respective county's website information concerning the early voting procedure. The early voting information must include, but may not be limited to, a notice to the public concerning their eligibility to participate in early voting, the duration of the early voting period, and the locations and hours of operation of specially designated polling places for early voting in each county.

Under current law, each commissioner of registration and board of elections may elect to use electronic poll books at a polling place on election day. Under the bill, each commissioner of registration and board of elections would be required to use electronic polls books during the early voting period and on election day. The bill also provides that each voter must sign the electronic poll book, and that a voter must be permitted to vote by provisional ballot if the electronic poll book ceases to operate.

Funds to pay for early voting would be provided to each county governing body and each non-partisan municipal governing body that approves early voting in such amounts as the State Treasurer and the Director of the Division of Budget and Accounting in the Department of the Treasury deem necessary to cover any additional costs incurred as a result of this bill. In addition, the bill appropriates from the General Fund to the Department of State the sum of \$2,000,000 for the printing on demand purposes as specified in the bill.

For the purpose of facilitating early voting as quickly and efficiently as possible, the bill also establishes an expedited State and local process for the procurement of qualified vendors to develop, implement, or produce any hardware, software, or equipment, any change to its Internet website, or any supporting systems ahead of the 2021 general election.

The bill would take effect immediately, but would apply to the 2021 general election and general elections thereafter; the 2022 primary election and primary elections thereafter; and, if adopted by a municipal governing body, a municipal election conducted in May 2022 and municipal elections conducted in May thereafter.

As amended and reported the Senate Committee Substitute for Senate Bill No. 3203 (1R) is identical to Assembly Bill No. 4830 (1R), which also was amended and reported by the committee

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) permit, rather than require, the Secretary of State to establish procedures for the counties to follow in verifying eligible voters, the manner for voters to vote during early voting, and the criteria for revising early voting locations;

(2) establish upper limits of five, seven, and 10 locations for early voting for each range of registered voters in each county, and an upper limit of three locations for a municipality conducting elections in May;

(3) provide that county boards of elections may, at their discretion, establish additional locations in excess of the upper limits, provided, however, that the State will be required to provide reimbursement for the costs of locations up to and including the upper limits, and will not be required to provide reimbursement for additional locations beyond those limits;

(4) allow places of public accommodation to be used as early voting locations;

(5) provide that early voting poll workers would receive the compensation established under current law, or that required pursuant to Article I, paragraph 23 of the New Jersey Constitution, whichever is greater;

(6) require the use of electronic poll books to update voters' records in real time during early voting, and remove the requirement to use paper poll books or paper signature copy registers;

(7) prohibit the disclosure of early voting results prior to canvassing on election day, and subject such disclosure to the penalties under current law;

(8) extend the deadline from 15 to 30 days following the effective date of the bill for county boards of elections to submit their plans to the Secretary of State;

(9) allow the Secretary of State to issue any new regulations that may be necessary to implement the provisions of this bill on an expedited basis;

(10) provide that the electronic display of sample ballots would be in the languages required by state or federal law for the county;

(11) require that a voter would be permitted to vote by provisional ballot if the electronic poll books cease to operate; and

(12) allow for an expedited state and local procurement process to facilitate early voting as quickly and efficiently as possible ahead of the 2021 general election.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the total cost of in-person early voting as prescribed in the bill is indeterminate and depends on many factors including decisions made regarding the number and type of voting machines that will be purchased; additional equipment needed (e.g. Americans with Disabilities Act (ADA)-compliant ballot marking devices and privacy booths); and the number of elections and the type of election held in any given year (i.e. non-presidential primary, presidential primary, and general election).

The Executive has not submitted a fiscal note for this bill. However, in 2020, the Department of State provided fiscal information for a bill that had many of the same elements relevant to this bill. First year equipment costs of this bill would be between \$4.6 million and \$8 million for optical-scan voting machines with ballot on demand printers or up to \$23 million to purchase other voting machines, up to \$20.5 million in start-up costs for electronic poll books, Statewide Voter Registration System Interface, ADA-compliant ballot marking devices, and privacy booths. In addition, depending on the type and number of elections in a year, the State would incur between \$400,000 and \$1.8 million in State reimbursement of county and municipal early voting operational costs.

The OLS notes that the actual cost of the bill will depend on any additional election costs applicable at that time, such as hardware accessories, specifically transfer cases, election management software, system training, Election Day support, election supplies, and maintenance and support costs that are not in the department's estimate. These costs may be substantial and in the millions of dollars. The OLS notes that the State costs could also be higher compared to the Department of State's estimate depending on whether the estimate for the optical-scan voting machine system includes software costs and

if the division's estimate for the other voting machines includes the cost to add voter-verifiable paper audit trail (VVPAT) capabilities, should the decision be made to purchase one or the other.

The Department of State indicated that allowing 6,400 individual election districts to vote in 115 larger voting locations will require each of those new locations to be able to provide different ballots to accommodate people voting for different candidates depending upon where they live. This will necessitate the purchase of ballot on demand printers (BDPs) that can process different ballots for different voting districts with different candidates running in each district and that can integrate with the electronic poll books and optical-scan voting machines, if those voting machines are chosen for purchase. The current voting machines, located at the estimated 6,400 election districts in New Jersey, can only process single ballot styles. The bill appropriates \$2 million from the General Fund to the Department of State for the purchase of BDPs.