

SENATE, No. 105

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 34 (Essex and Passaic)

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District 15 (Hunterdon and Mercer)

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SYNOPSIS

Requires replacement of all electronic voting machines used in State by district-based optical scan voting systems by June 5, 2018; makes appropriation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning voting systems, amending R.S.19:48-1 and
2 P.L.1973, c.82, supplementing Title 19 of the Revised Statutes,
3 and making an appropriation.
4

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

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

9 19:48-1. a. Any thoroughly tested and reliable voting
10 **【machines】** system may be adopted, rented, purchased or used,
11 which shall be so constructed as to fulfill the following
12 requirements:

13 (a) It shall secure to the voter secrecy in the act of voting;

14 (b) It shall provide facilities for such number of office columns,
15 not less than 40 and not exceeding 60, as the purchasing authorities
16 may specify and of as many political parties or organizations, not
17 exceeding nine, as may make nominations, and for or against as
18 many questions, not exceeding 30, as submitted;

19 (c) It shall, except at primary elections, permit the voter to vote
20 for all the candidates of one party or in part for the candidates of
21 one party or one or more parties;

22 (d) It shall permit the voter to vote for as many persons for an
23 office as he is lawfully entitled to vote for, but no more;

24 (e) It shall prevent the voter from voting for the same person
25 more than once for the same office;

26 (f) It shall permit the voter to vote for or against any question
27 he may have the right to vote on, but no other;

28 (g) It shall for use in primary elections be so equipped that the
29 election officials can stop a voter from voting for all candidates
30 except those of the voter's party;

31 (h) It shall correctly register or record and accurately count all
32 votes cast for any and all persons, and for or against any and all
33 questions;

34 (i) It shall be provided with a "protective counter" or
35 "protective device" whereby any operation of the **【machine】**
36 system before or after the election will be detected;

37 (j) It shall be so equipped with such protective devices as shall
38 prevent the operation of the **【machine】** system after the polls are
39 closed;

40 (k) It shall be provided with a counter which shall show at all
41 times during an election how many persons have voted;

42 (l) It shall be provided with a model, illustrating the manner of
43 voting on the **【machine】** system, suitable for the instruction of
44 voters;

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (m) It must permit a voter to vote for any person for any office,
2 except delegates and alternates to national party conventions,
3 whether or not nominated as a candidate by any party or
4 organization by providing an opportunity to indicate such names or
5 name;

6 (n) It shall be equipped with a permanently affixed box or
7 container of sufficient strength, size and security to hold all
8 emergency ballots and pre-punched single-hole envelopes and with
9 a clipboard and a table-top privacy screen;

10 (o) It shall not use mechanical lever machines or punch cards to
11 record votes.

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

15 It shall also be provided with one device for each party for
16 voting for all the presidential electors of that party by one
17 operation, and a ballot therefor containing only the words
18 "presidential electors for," preceded by the name of that party and
19 followed by the names of the candidates thereof for the offices of
20 President and Vice-President and a registering device therefor
21 which shall register the vote cast for such electors when thus voted
22 collectively.

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

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

1 individual paper record for each vote cast.】 (Deleted by
2 amendment, P.L. , c.) (pending before the Legislature as this
3 bill)
4 (cf: P.L.2009, c.17, s.1)
5

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

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

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

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

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

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

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

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

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

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

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

1 (2) The provisions of paragraph (1) of this subsection shall be
2 suspended until: (i) the Secretary of State and the State Treasurer
3 certify in writing that sufficient funds have been provided by the
4 federal government and received by the State to offset the entire
5 cost of ensuring that each voting machine used in this State
6 produces an individual permanent paper record for each vote cast;
7 or (ii) the annual appropriation act contains an appropriation of
8 sufficient funds to ensure that each voting machine used in this
9 State produces an individual permanent paper record for each vote
10 cast and such appropriated funds have not been reserved by the
11 Governor under a spending reduction plan; or (iii) the Secretary of
12 State and the State Treasurer certify in writing that sufficient funds
13 have been provided by the federal government and received by the
14 State, and the annual appropriation act contains an appropriation of
15 sufficient unreserved funds, to ensure, when such funds are
16 combined, that each voting machine used in this State produces an
17 individual paper record for each vote cast. ~~】 (Deleted by amendment~~
18 P.L. c.) (pending before the Legislature is this bill)
19 (cf: P.L.2009, c.17, s.2)

20

21 3. (New section) Beginning with the primary election for the
22 general election to be held on June 5, 2018, and for all elections
23 thereafter, elections shall be conducted using district-based optical
24 scan voting systems that accept and tabulate, in the polling place
25 where marked, a marked optical scan ballot card. On that date, the
26 use of any other voting system for that election and all subsequent
27 elections, including electronic touch screen voting systems or direct
28 recording electronic voting systems, also known as DRE voting
29 systems, shall be prohibited. Nothing in this section shall prohibit a
30 county board of elections from using an optical scan voting system
31 to record and tabulate at a central location, such as the offices of the
32 county board, the vote of voters voting by absentee ballot.

33 As used in this section, “district-based optical scan voting
34 system” means an electronic voting system in which the voter votes
35 by marking with a pencil, pen or other device, including a
36 designated marking device, a ballot card on which is printed the
37 names of candidates, office titles, political party designations when
38 applicable, and any public question, and the vote thus recorded is
39 read and tabulated either manually or by automatic tabulating
40 equipment.

41 a. One district-based optical scan voting system and one ballot
42 marking device shall be employed at each polling place in the State.
43 The Secretary of State shall prepare instructions on the proper use
44 of the district-based optical scan voting system to enable a voter to
45 mark a ballot card quickly and correctly, and these instructions shall
46 be posted in a prominent place at each polling place and in each
47 voting booth or place where voting occurs. The final tabulation of
48 the results of the vote in any election shall occur at the election

1 district after the time the polls close on the day of the election, in
2 the manner provided by law.

3 b. The ballot cards used in a district-based optical scan voting
4 system in an election shall constitute an individual permanent paper
5 record of each vote cast in that election, which shall be available for
6 inspection and verification by the voter at the time the vote is cast.
7 The cards shall constitute the vote of record and shall be used for,
8 and govern the result in, any recount of the election conducted
9 pursuant to R.S.19:28-1 et seq. and any audit of the election
10 conducted pursuant to section 1 of P.L.2007, c.349 (C.19:61-9).
11 The cards shall be preserved for two years following the day of the
12 election for which they were used.

13 c. The acquisition of sufficient district-based optical scan
14 voting systems and the deployment of such systems shall be on a
15 schedule established by the Secretary of State after consultation
16 with the county boards of election. The training of district board
17 workers on the use of district-based optical scan voting systems
18 shall be on a schedule established by the superintendent of elections
19 of each county, or the commissioner of registration, as may be
20 appropriate, after consultation with the Secretary of State.

21
22 4. (New section) a. Whenever the governing body of a county
23 acquires a district-based optical scan voting system, the vendor
24 from whom the voting system is acquired shall deposit with the
25 Secretary of State, the superintendent of elections, or the
26 commissioner of registration, as may be appropriate, as the licensee,
27 a copy of the system's software and source code and shall give the
28 licensee a perpetual license to use and modify the software and
29 source code used for the system. No voting system shall at any
30 time during an election contain or use any software, software patch
31 or other modification: (1) that has not been certified by the
32 Secretary of State, the superintendent of elections or the
33 commissioner of registration, as may be appropriate, for use in the
34 election; and (2) that has not been deposited with the Secretary of
35 State, the superintendent of elections or the commissioner of
36 registration, as may be appropriate.

37 The vendor shall also provide a copy of the software and source
38 code for the voting system to an independent third-party evaluator
39 selected by the Secretary of State, the superintendent of elections or
40 the commissioner of registration, as may be appropriate, and the
41 chairs of the county committees of the political parties whose
42 candidate for governor in the last succeeding gubernatorial election
43 received the greatest and next greatest number of votes. The
44 evaluator shall examine the software and source code and certify to
45 the Secretary of State that the voting system will record and count
46 votes as represented by the vendor. Any software or source code
47 that is a trade secret shall be treated as such, pursuant to current
48 law. The chairs of the county committees of the political parties

1 noted above may each designate an agent to examine the software
2 and source code to verify that the voting system will record and
3 count votes as represented by the vendor and such agents shall not
4 disclose the contents of the software or source code to anyone else.

5 b. (1) The Secretary of State, the superintendent of elections or
6 the commissioner of registration, as may be appropriate, to whom
7 the software and source code has been given pursuant to subsection
8 a. of this section shall: (a) hold such materials in escrow; (b)
9 provide such materials to the independent third-part evaluator and
10 agents designated by the chairs of the county committees of
11 political parties that are permitted to examine such materials
12 pursuant to subsection a. of this section; and (c) not disclose the
13 software or source code and related information regarding such to
14 any other person unless: (i) the person is a qualified person who has
15 entered into a nondisclosure agreement with respect to the software
16 or source code that meets the requirements of paragraph (3) of this
17 subsection; or (ii) the disclosure is required under federal law, in
18 which case the disclosure shall be in accordance with the terms and
19 conditions of such law.

20 (2) With respect to the disclosure of software and source code
21 required by paragraph (1) of this subsection, a “qualified person”
22 means any of the following: (a) a governmental entity with
23 responsibility for the administration of voting and election-related
24 matters for the purpose of reviewing, analyzing or reporting on the
25 software or source code; (b) a party to pre-election or post-election
26 litigation challenging the result of an election or the administration
27 or use of the software or source code used in an election, including
28 but not limited to election contests or challenges to the certification
29 of the software or source code, or an expert for a party to such
30 litigation, for the purposes of reviewing or analyzing the software
31 or source code to support or oppose the litigation, with all parties to
32 the litigation to have access to the software or source code for such
33 purposes; or (c) a person not described in this paragraph who
34 reviews, analyzes or reports on the software or source code solely
35 for an academic, scientific, technological or other investigation or
36 inquiry concerning the accuracy or integrity of the software or
37 source code.

38 (3) A nondisclosure agreement entered into with respect to
39 software or source code meets the requirements of this section if the
40 agreement: (a) is limited in scope to coverage of the software or
41 source code disclosed under paragraph (1) of this subsection and
42 any trade secrets and intellectual property rights related thereto; (b)
43 does not prohibit a signatory from entering into other nondisclosure
44 agreements or to review other software or source code under this
45 subsection; (c) exempts from coverage any information the
46 signatory obtained lawfully from another source or any information
47 in the public domain; (d) remains in effect for not longer than the
48 life of any trade secret or other intellectual property right related

1 thereto; (e) prohibits the use of injunctions barring a signatory from
2 carrying out any activity authorized under paragraph (2) of this
3 subsection, including injunctions limited to the period prior to a
4 trial involving the software or source code; (f) is silent as to
5 damages awarded for breach of the agreement, other than a
6 reference to damages available under applicable law; (g) allows for
7 the disclosure of evidence of a crime, including in response to a
8 subpoena or warrant; (h) allows the signatory to perform analyses
9 on the software or source code, including by executing the software
10 or source code, disclose reports and analyses that describe
11 operational issues pertaining to the software or source code,
12 including vulnerabilities to tampering, errors, risks associated with
13 use, failures as a result of use, and other problems, and describe or
14 explain why or how a voting system failed or otherwise did not
15 perform as intended; and (i) provides that the agreement shall be
16 governed by the trade secret laws of this State.

17 (4) As used in this section, the terms “software” and “source
18 code” mean the source code used for the trusted build and its file
19 signatures; a complete disk image of the pre-build, build
20 environment and any file signatures to validate that it is
21 unmodified; a complete disk image of the post-build, build
22 environment and any file signatures to validate that it is
23 unmodified; and all executable code produced by the trusted build
24 and any file signatures to validate that it is unmodified. The terms
25 “software” and “source code” shall not include “commercial-off-
26 the-shelf” software and hardware defined under the 2005 voluntary
27 voting system guidelines adopted by the federal Elections
28 Assistance Commission pursuant to section 222 of the “Help
29 America Vote Act of 2002,” Pub.L.107-252 (42 U.S.C. 15362).

30 c. The Secretary of State shall be responsible for developing
31 and implementing a plan to inform voters, the media and the general
32 public about the deployment and use of district-based optical scan
33 voting systems before the June 5, 2018 deadline established by this
34 section and for subsequent elections.

35
36 5. (New section) All provisions of law that concern electronic
37 voting systems, voting machines, ballots and election procedures
38 shall also apply to each district-based optical scan voting system
39 deployed for an election in this State, except as revised therein or as
40 may be modified by regulation by the Secretary of State due to the
41 nature and features of district-based optical scan voting systems.

42
43 6. (New section) Each district-based optical scan voting
44 system used in an election in this State shall:

45 a. before June 5, 2018 and periodically thereafter, be examined
46 by the Secretary of State and certified for use in elections in this
47 State pursuant to all applicable provisions of R.S.19:48-2 and all
48 applicable federal laws or guidelines;

1 The bill defines a district-based optical scan voting system as an
2 electronic voting system in which the voter votes by marking a
3 ballot card on which is printed the names of candidates, office titles,
4 political party designation when applicable, and any public
5 question, using a pencil, pen or other device, including a ballot
6 marking device. The vote thus recorded is read and tabulated
7 manually or by automatic tabulating equipment.

8 The bill requires one district-based optical scan voting system
9 and one ballot marking device at each polling place in the State.
10 The Secretary of State would prepare instructions on the proper use
11 of district-based optical scan voting systems to enable a voter to
12 mark a ballot card quickly and correctly, and these instructions
13 must be posted in a prominent place at each polling place and in
14 each voting booth. The final tabulation of the results of the vote in
15 any election would occur at the election district after the time the
16 polls close on the day of the election, in the manner provided by
17 law. The voted ballot cards would constitute an individual
18 permanent paper record of each vote cast in that election, and would
19 be available for inspection and verification by the voter at the time
20 the vote is cast, with the cards to constitute the vote of record and to
21 govern the result in any recount or audit of the election. The
22 acquisition of sufficient district-based optical scan voting systems
23 and the deployment of such systems would be on a schedule
24 established by the Secretary of State after consultation with the
25 county boards of election. The training of district board workers on
26 the use of district-based optical scan voting systems would be on a
27 schedule established by the superintendent of elections of each
28 county, or the commissioner of registration, as may be appropriate,
29 after consultation with the Secretary of State.

30 The bill further provides that whenever the governing body of a
31 county acquires a district-based optical scan voting system, the
32 vendor from whom the voting system is purchased must: (1) give
33 the Secretary of State, the superintendent of elections, or the
34 commissioner of registration, as may be appropriate, as the licensee
35 a copy of the software and source code and a perpetual license to
36 use and modify the software used for the system and prohibit the
37 use of any software, software patch or other modification not
38 certified by the Secretary of State, the superintendent of elections or
39 the commissioner of registration, as may be appropriate; (2) provide
40 a copy of the software and source code for the voting system to an
41 independent third-party evaluator selected by the Secretary of State,
42 the superintendent of elections or the commissioner of registration,
43 as may be appropriate, and the chairs of the county committees of
44 the political parties whose candidate for governor in the last
45 succeeding gubernatorial election received the greatest and next
46 greatest number of votes; and (3) permit the Secretary of State, the
47 superintendent of elections or the commissioner of registration, as
48 may be appropriate, to hold the software and source code of the

1 system in escrow and permit elections administrators, scientists,
2 litigators and academics to review the software and source codes if
3 the need arises.

4 The bill also provides that each district-based optical scan voting
5 system must, before June 5, 2018 and periodically thereafter, be
6 examined by the Secretary of State and certified for use in elections
7 pursuant to State law and all applicable federal laws or guidelines;
8 The system must conform to all requirements established in State
9 law and applicable federal laws or guidelines for the use of voting
10 systems in any election, and provide a mechanism that examines a
11 ballot card for overvotes, stray marks and other irregularities and
12 returns it to the voter at the polling place for correction of the error
13 before it is cast and tabulated. The system must also permit a voter
14 to twice receive a replacement ballot card if the voter wishes to
15 change any vote or in the event that the original ballot card or the
16 next subsequent ballot card is defective, spoiled or otherwise
17 incapable of recording the intended vote of the voter. To ensure
18 voter privacy, each polling place is to provide a booth or place for
19 the voter to mark his or her ballot in private, provide a booth or
20 place for an individual with disabilities to comprehend and mark his
21 or her ballot in private, which location must accommodate any
22 equipment necessary for that person to vote, and conform to such
23 other requirements as deemed necessary by the Secretary of State.

24 Finally, the bill requires the State to reimburse a county
25 governing body for the costs it incurs due to the bill, and
26 appropriates from the State General Fund to each county such sums
27 as the State Treasurer and the Director of the Division of Budget
28 and Accounting in the Department of the Treasury deem necessary
29 to acquire the number of district-based voting machines needed to
30 meet the June 5, 2018 deadline.

31 This bill is modeled on legislation passed in Minnesota in 2008.