

LEGISLATIVE FISCAL ESTIMATE
 [Second Reprint]
 SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 3203
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: MARCH 22, 2021

SUMMARY

- Synopsis:** Requires in person early voting period for certain elections; makes appropriation.
- Type of Impact:** Annual State expenditure increase; annual local expenditure and revenue increases.
- Agencies Affected:** Department of State, County Boards of Elections, County Clerks’ Offices, Municipal Clerks’ Offices.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditure Increase		Indeterminate	
Local Expenditure Increase		Indeterminate	
Local Revenue Increase		Indeterminate	

- 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.
- The OLS also notes that optical-scan voting machines that use paper ballots typically do not provide the same ability for voters with disabilities to vote privately and independently. These voters may need assistance from another person to mark the ballot. Or, to meet federal requirements and provide assistance to voters with disabilities, jurisdictions that use paper ballots may offer either an ADA ballot marking device or instead of optical-scan voting machines, a Direct-Recording Electronic (DRE) Voting Machine. DREs meet the federal requirements for allowing voters with disabilities to cast their votes privately and independently. DREs do not generate a paper ballot. However, they can be equipped with VVPAT that allows the voter to verify that the vote was recorded correctly.
- Funds to pay for in-person 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 Department of the Treasury deems necessary to cover any additional costs incurred as a result of this bill. However, the State will not be required to provide reimbursement to local governments for additional in-person early voting locations beyond the limits provided in the bill.

BILL DESCRIPTION

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.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive has not submitted a fiscal note for this bill. However, in 2020, it provided fiscal information for the substantively similar S-99 of 2020, which 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 approximately \$400,000 and \$1.8 million in State reimbursement of county and municipal early voting operational costs, such as the cost to operate polling locations and the costs to pay poll workers. The analysis regarding the cost of this bill was based on information from county offices and information from other states conducting similar projects. The division's rationale and detail of the costs are as follows:

- Polling: The legislation would require 115 polling locations as specified to be open for a minimum of eight to ten hours per day during the early voting period. There may be a charge for using a location. The total polling location cost per election is estimated to be:
 - \$25,875 per non-presidential primary assuming there are 115 locations that cost \$75 per day for 3 days;
 - \$43,125 per presidential primary assuming there are 115 locations that cost \$75 per day for 5 days;
 - \$60,375 per general election assuming there are 115 locations that cost \$75 per day for 7 days.
- Poll Workers: Early voting would require eight poll workers at each early voting location for 12 days at 10 hours per day, and on Sundays for eight hours per day. Poll worker compensation is estimated to be \$14.29 per hour. The total poll worker compensation costs per election are estimated to be approximately:
 - \$368,110 per non-presidential primary assuming eight poll workers at each of the 115 locations for 10 hours a day at \$14.29 per hour for 2 days and eight poll workers at each of the 115 locations for eight hours per day at \$14.29 per hours for one day;
 - \$631,046 per presidential primary assuming eight poll workers at each of the 115 locations for 10 hours a day at \$14.29 per hour for four days and eight poll workers at each of the 115 locations for eight hours per day at \$14.29 per hours for one day;
 - \$1,130,624 per general election assuming eight poll workers at each of the 115 locations for 10 hours a day at \$14.29 per hour for seven days and eight poll workers at each of the 115 locations for eight hours per day at \$14.29 per hours for two days.
- Optical-Scan Voting Machines: If the decision is made to purchase optical-scan voting machines, then to keep voter traffic flowing, the division estimates the bill will require four to five optical-scan voting machines per location per county, specifically three, five, or seven locations per county depending on the number of registered voters in each county resulting in 115 locations across all counties in the State. The cost to purchase optical-scan voting machines is estimated to be between \$5,000 and \$7,000 per machine resulting in total costs to purchase optical-scan voting machines to range between \$2.3 million and \$4.025 million.
- Ballot on Demand Printers: BDPs accommodate many different ballot styles. BDPs are printers that can produce voters' exact ballots "on demand" at early voting locations or Election Day polling places that serve multiple precincts. The division estimates, to keep voter traffic flowing, the bill will require four to five BDPs per location per county, specifically three, five, or seven location per county depending on the number of registered voters in each county resulting in 115 locations across all counties in the State. The cost to purchase BDPs is estimated to be between \$5,000 and \$7,000 per BDP resulting in total costs for BDPs to range between \$2.3 million and \$4.025 million.
- Other Voting Machines. If the decision is made to purchase voting machines other than optical scan, to keep voter traffic flowing, the bill will require the purchase of between 10 and 20 voting machines per location per county, specifically three, five, or seven locations per county depending on the number of registered voters in each county resulting in 115 locations across all counties in the State. The cost to purchase the voting machine hardware and software is estimated to be \$10,000 per voting machine resulting in total voting machine costs of between \$11.5 million and \$23 million.

- Electronic Poll Books: In order to process voters at the early voting locations and update the information to poll books for Election Day, the State will have to move from paper poll books to electronic poll books. An electronic poll book can cost between \$1,000 and \$3,000 apiece to purchase. There are approximately 6,400 election districts in the State and each one would require two poll books. The total cost to purchase two electronic poll books for each of 6,400 election districts at an estimated cost of \$1,500 per poll book is estimated to be \$19.2 million.
- ADA-Compliant Ballot Marking Devices for Optical Scan Voting Machine Option: The bill would require at least one ADA-compliant voting system in every location if the optical scan voting machine is purchased. This would require the purchase of additional voting equipment. Some of the larger locations would require more than one machine. The total cost for the devices is estimated to be \$750,000, assuming 150 ADA compliant voting systems at a cost of \$5,000 per device.
- Privacy Booths: The division estimates that at least one privacy booth per polling location would be needed. The total cost to purchase one privacy booth for each of 115 polling locations is estimated to be approximately \$12,650, assuming an average price of \$110 per privacy booth.
- Statewide Voter Registration System Interface: The Executive Branch estimates that it would cost approximately \$600,000 for a vendor to develop an electronic poll book interface with the Statewide Voter Registration System.

The division's estimate does not include licensing and maintenance fees, printing costs, or overtime for county and municipal employees.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that the total cost of in-person early voting as prescribed by the bill is indeterminate and depends on many factors including, but not limited to, decisions regarding the number and type of voting machines that will need to be purchased, the ancillary equipment (e.g. ADA-compliant ballot marking devices and privacy booths that will need to be purchased), as well as the number of elections and the type of election held in any given year: non-presidential primary, presidential primary, and general election.

The OLS notes that the actual costs could be higher depending on whether the division's estimate for the optical-scan voting machines includes software costs and if the division's estimate for other voting machines includes the cost to add VVPAT capabilities, should the decision be made to purchase other voting machines with VVPAT instead of optical-scan voting machines. Actual costs could also be higher depending on implementation and start-up costs, applicable at that time, that are not included in the division's estimate, such as hardware accessories like transfer cases, system training, Election Day support, election supplies, and maintenance and support costs. These costs can be substantial and in the millions of dollars.

The division has indicated to the OLS 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 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 the voting machines 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.

The OLS also notes that optical-scan voting machines that use paper ballots typically do not provide the same ability for voters with disabilities to vote privately and independently, either because of manual dexterity impairments, reduced vision or other disabilities that make paper hard to use. These voters may need assistance from another person to mark the ballot. Or, to meet federal requirements and provide assistance to voters with disabilities, jurisdictions that use paper ballots may offer either a ballot marking device or a DRE voting machine. DREs meet the federal requirements for allowing voters with disabilities to cast their votes privately and independently. DREs do not generate a paper ballot, however, they can be equipped with a VVPAT that allows the voter to verify that the vote was recorded correctly. Many older DREs do not come with a VVPAT. However, some election technology vendors can retrofit equipment with VVPAT printers. VVPATs look like a rolling receipt behind glass where voter's choices are indicated on paper.

The division also indicated that poll book technology reduces costs for overtime per election to administer early voting. At this time, it is not known how this will affect the demand for and cost of overtime, which may depend on early voter turnout. Turnout and the manner of implementation of poll book technology may change the estimated number of poll workers required at each early voting location thereby affecting poll worker and overtime costs.

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. However, the State will not be required to provide reimbursement to local governments for additional in-person early voting locations beyond the limits provided in the bill.

Costs for licensing fees, maintenance fees, and printing costs are not included in the estimate. The OLS notes that the estimate does not address costs that may arise if a municipality opts to conduct early voting for elections in May.

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This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).