

19:48-1
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2009 **CHAPTER:** 17

NJSA: 19:48-1 (Delays requirement that voting machines produce individual permanent paper record for each vote cast due to the State's critical economic situation and lack of appropriate technology)

BILL NO: A3648 (Substituted for S2547)

SPONSOR(S): Quigley and Schaer

DATE INTRODUCED: January 26, 2009

COMMITTEE: **ASSEMBLY:** State Government

SENATE:

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** February 5, 2009

SENATE: February 23, 2009

DATE OF APPROVAL: March 6, 2009

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FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Original version of bill enacted)

A3648

SPONSOR'S STATEMENT: (Begins on page 5 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

S2547

SPONSOR'S STATEMENT: (Begins on page 5 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

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FOLLOWING WERE PRINTED:

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LAW

P.L. 2009, CHAPTER 17, *approved March 6, 2009*
Assembly, No. 3648

1 AN ACT suspending the requirement that voting machines produce a
2 voter-verified paper record for each vote cast, and amending
3 R.S.19:48-1, P.L.1973, c.82 and P.L.2005, c.137.
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 machines
10 may be adopted, rented, purchased or used, which shall be so
11 constructed as to fulfill the following requirements:

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

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

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

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

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

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

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

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

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

36 (j) It shall be so equipped with such protective devices as shall
37 prevent the operation of the machine after the polls are closed;

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

40 (l) It shall be provided with a model, illustrating the manner of
41 voting on the machine, suitable for the instruction of 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 used in any election shall be provided with a
13 screen, hood or curtain, which shall be so made and adjusted as to
14 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 an
24 individual permanent paper record for each vote cast, which shall be
25 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

1 combined, that each voting machine used in this State produces an
2 individual paper record for each vote cast.

3 (cf: P.L.2008, c.18, s.1)

4
5 2. Section 3 of P.L.1973, c.82 (C.19:53A-3) is amended to read
6 as follows:

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

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

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

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

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

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

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

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

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

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

47 (2) The provisions of paragraph (1) of this subsection shall be
48 suspended until: (i) the Secretary of State and the State Treasurer

1 certify in writing that sufficient funds have been provided by the
2 federal government and received by the State to offset the entire
3 cost of ensuring that each voting machine used in this State
4 produces an individual permanent paper record for each vote cast;
5 or (ii) the annual appropriation act contains an appropriation of
6 sufficient funds to ensure that each voting machine used in this
7 State produces an individual permanent paper record for each vote
8 cast and such appropriated funds have not been reserved by the
9 Governor under a spending reduction plan; or (iii) the Secretary of
10 State and the State Treasurer certify in writing that sufficient funds
11 have been provided by the federal government and received by the
12 State, and the annual appropriation act contains an appropriation of
13 sufficient unreserved funds, to ensure, when such funds are
14 combined, that each voting machine used in this State produces an
15 individual paper record for each vote cast.

16 (cf: P.L.2008, c.18, s.2)

17
18 3. Section 3 of P.L.2005, c.137 (C.19:53A-3.1) is amended to
19 read as follows:

20 3. Unless federal funding is made available to pay for the
21 purchase or retrofit of a voting machine to produce a voter-verified
22 paper record as required by P.L.2005, c.137 (C.19:53A-3.1 et al.), a
23 county shall be reimbursed by the State for such costs upon
24 application for reimbursement to the Attorney General and approval
25 of the application by the Director of the Division of Budget and
26 Accounting in the Department of the Treasury, in accordance with
27 the provisions of Article VIII, Section II, paragraph 5 of the New
28 Jersey Constitution.

29 This provision shall be suspended until the conditions set forth in
30 paragraph (2), subsection b. of R.S.19:48-1 or paragraph (2) of
31 subsection i. of section 3 of P.L.1973, c.82 (C.19:53A-3) have been
32 met.

33 (cf: P.L.2005, c.137, s.3)

34
35 4. This act shall take effect immediately.
36
37

38 STATEMENT

39
40 The purpose of this bill is to suspend the requirement in current
41 law that by January 1, 2009 the voting machines used in this State
42 produce an individual permanent paper record for each vote cast.

43 Specifically, the bill provides that the January 1, 2009 deadline is
44 suspended until: a) the Secretary of State and the State Treasurer
45 certify in writing that sufficient funds have been provided by the
46 federal government and received by the State to offset the entire
47 cost of ensuring that each voting machine used in this State
48 produces an individual permanent paper record for each vote cast;

1 or b) the annual appropriation act contains an appropriation of
2 sufficient funds to ensure that each voting machine used in this
3 State produces an individual permanent paper record for each vote
4 cast and such appropriated funds have not been reserved by the
5 Governor under a spending reduction plan; or c) the Secretary of
6 State and the State Treasurer certify in writing that sufficient funds
7 have been provided by the federal government and received by the
8 State, and the annual appropriation act contains an appropriation of
9 sufficient unreserved funds, to ensure, when such funds are
10 combined, that each voting machine used in this State produces an
11 individual paper record for each vote cast.

12 This suspension is necessary because of the dire economic
13 situation in which the State finds itself currently. Recent estimates
14 reveal that the State will need to close a \$2.1 billion budget gap in
15 the 2009 fiscal year and a more severe gap in the 2010 fiscal year.
16 Although \$19 million in State funds had been set aside to help pay
17 the costs of retrofitting the direct recording electronic (DRE) voting
18 machines used in 18 of the State's 21 counties, this money is no
19 longer available for this purpose. The funds have been placed in
20 reserve to help the State meet its most urgent fiscal obligations and
21 balance its budgets, as required by the New Jersey Constitution.
22 Without this \$19 million, there are insufficient funds available
23 currently to pay for a retrofit of all the DRE voting machines or to
24 change to any other alternative voting system that produces a paper
25 trail of the votes cast by a voter in an election held in this State.

26

27

28

29

30 Delays requirement that voting machines produce individual
31 permanent paper record for each vote cast due to the State's critical
32 economic situation and lack of appropriate technology.

ASSEMBLY, No. 3648

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED JANUARY 26, 2009

Sponsored by:

Assemblywoman JOAN M. QUIGLEY

District 32 (Bergen and Hudson)

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

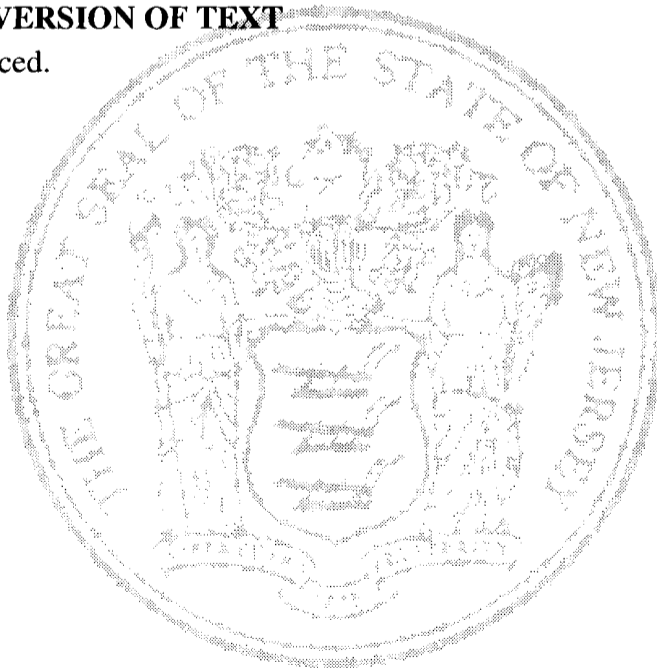
Senators Sweeney and O'Toole

SYNOPSIS

Delays requirement that voting machines produce individual permanent paper record for each vote cast due to the State's critical economic situation and lack of appropriate technology.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/24/2009)

1 AN ACT suspending the requirement that voting machines produce a
2 voter-verified paper record for each vote cast, and amending
3 R.S.19:48-1, P.L.1973, c.82 and P.L.2005, c.137.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
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8 1. R.S.19:48-1 is amended to read as follows:

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

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

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

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

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

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

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

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

36 (j) It shall be so equipped with such protective devices as shall
37 prevent the operation of the machine after the polls are closed;

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

40 (l) It shall be provided with a model, illustrating the manner of
41 voting on the machine, suitable for the instruction of voters;

42 (m) It must permit a voter to vote for any person for any office,
43 except delegates and alternates to national party conventions,
44 whether or not nominated as a candidate by any party or

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 organization by providing an opportunity to indicate such names or
2 name;

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

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

9 All voting machines used in any election shall be provided with a
10 screen, hood or curtain, which shall be so made and adjusted as to
11 conceal the voter and his action while voting.

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

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

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

47 (cf: P.L.2008, c.18, s.1)

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

3 3. Every electronic voting system, consisting of a voting device
4 in combination with automatic tabulating equipment, acquired or
5 used in accordance with this act, shall:

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

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

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

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

20 e. Permit each voter in primary elections to vote for candidates
21 in the party primary in which he is qualified to vote, and the
22 automatic tabulating equipment shall reject any votes cast for
23 candidates of another party;

24 f. Prevent the voter from voting for the same person more than
25 once for the same office;

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

29 h. When properly operated, record correctly and count
30 accurately every vote cast, including all overvotes or undervotes
31 and all affirmative votes or negative votes on all public questions or
32 referenda;

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

43 (2) The provisions of paragraph (1) of this subsection shall be
44 suspended until: (i) the Secretary of State and the State Treasurer
45 certify in writing that sufficient funds have been provided by the
46 federal government and received by the State to offset the entire
47 cost of ensuring that each voting machine used in this State
48 produces an individual permanent paper record for each vote cast;

1 or (ii) the annual appropriation act contains an appropriation of
2 sufficient funds to ensure that each voting machine used in this
3 State produces an individual permanent paper record for each vote
4 cast and such appropriated funds have not been reserved by the
5 Governor under a spending reduction plan; or (iii) the Secretary of
6 State and the State Treasurer certify in writing that sufficient funds
7 have been provided by the federal government and received by the
8 State, and the annual appropriation act contains an appropriation of
9 sufficient unreserved funds, to ensure, when such funds are
10 combined, that each voting machine used in this State produces an
11 individual paper record for each vote cast.

12 (cf: P.L.2008, c.18, s.2)

13

14 3. Section 3 of P.L.2005, c.137 (C.19:53A-3.1) is amended to
15 read as follows:

16 3. Unless federal funding is made available to pay for the
17 purchase or retrofit of a voting machine to produce a voter-verified
18 paper record as required by P.L.2005, c.137 (C.19:53A-3.1 et al.), a
19 county shall be reimbursed by the State for such costs upon
20 application for reimbursement to the Attorney General and approval
21 of the application by the Director of the Division of Budget and
22 Accounting in the Department of the Treasury, in accordance with
23 the provisions of Article VIII, Section II, paragraph 5 of the New
24 Jersey Constitution.

25 This provision shall be suspended until the conditions set forth in
26 paragraph (2), subsection b. of R.S.19:48-1 or paragraph (2) of
27 subsection i. of section 3 of P.L.1973, c.82 (C.19:53A-3) have been
28 met.

29 (cf: P.L.2005, c.137, s.3)

30

31 4. This act shall take effect immediately.

32

33

34

SPONSOR'S STATEMENT

35

36 The purpose of this bill is to suspend the requirement in current
37 law that by January 1, 2009 the voting machines used in this State
38 produce an individual permanent paper record for each vote cast.

39 Specifically, the bill provides that the January 1, 2009 deadline is
40 suspended until: a) the Secretary of State and the State Treasurer
41 certify in writing that sufficient funds have been provided by the
42 federal government and received by the State to offset the entire
43 cost of ensuring that each voting machine used in this State
44 produces an individual permanent paper record for each vote cast;
45 or b) the annual appropriation act contains an appropriation of
46 sufficient funds to ensure that each voting machine used in this
47 State produces an individual permanent paper record for each vote
48 cast and such appropriated funds have not been reserved by the

1 Governor under a spending reduction plan; or c) the Secretary of
2 State and the State Treasurer certify in writing that sufficient funds
3 have been provided by the federal government and received by the
4 State, and the annual appropriation act contains an appropriation of
5 sufficient unreserved funds, to ensure, when such funds are
6 combined, that each voting machine used in this State produces an
7 individual paper record for each vote cast.

8 This suspension is necessary because of the dire economic
9 situation in which the State finds itself currently. Recent estimates
10 reveal that the State will need to close a \$2.1 billion budget gap in
11 the 2009 fiscal year and a more severe gap in the 2010 fiscal year.
12 Although \$19 million in State funds had been set aside to help pay
13 the costs of retrofitting the direct recording electronic (DRE) voting
14 machines used in 18 of the State's 21 counties, this money is no
15 longer available for this purpose. The funds have been placed in
16 reserve to help the State meet its most urgent fiscal obligations and
17 balance its budgets, as required by the New Jersey Constitution.
18 Without this \$19 million, there are insufficient funds available
19 currently to pay for a retrofit of all the DRE voting machines or to
20 change to any other alternative voting system that produces a paper
21 trail of the votes cast by a voter in an election held in this State.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3648

STATE OF NEW JERSEY

DATED: JANUARY 26, 2009

The Assembly State Government Committee reports favorably Assembly Bill No. 3648.

This bill suspends the requirement in current law that by January 1, 2009, the voting machines used in this State produce an individual permanent paper record for each vote cast.

Specifically, the bill provides that the January 1, 2009 deadline is suspended until: (1) the Secretary of State and the State Treasurer certify in writing that sufficient funds have been provided by the federal government and received by the State to offset the entire cost of ensuring that each voting machine used in this State produces an individual permanent paper record for each vote cast; or (2) the annual appropriation act contains an appropriation of sufficient funds to ensure that each voting machine used in this State produces an individual permanent paper record for each vote cast and such appropriated funds have not been reserved by the Governor under a spending reduction plan; or (3) the Secretary of State and the State Treasurer certify in writing that sufficient funds have been provided by the federal government and received by the State, and the annual appropriation act contains an appropriation of sufficient unreserved funds, to ensure, when such funds are combined, that each voting machine used in this State produces an individual paper record for each vote cast.

The sponsors' statement attached to the bill indicates that the suspension is necessary because of the economic situation in the State. The State anticipates a \$2.1 billion budget gap in fiscal year 2009 and a more severe gap in fiscal year 2010. Although \$19 million in State funds had been set aside to help pay the costs of retrofitting the direct recording electronic (DRE) voting machines used in 18 of the State's 21 counties, this money is no longer available for that purpose. The funds have been placed in reserve to help the State meet its urgent fiscal obligations and balance its budgets, as required by the New Jersey Constitution. Without this \$19 million, there are insufficient funds available currently to pay for a retrofit of all the DRE voting machines or to change to any other alternative voting system that produces a paper trail of the votes cast by a voter in an election held in this State.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3648
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: FEBRUARY 10, 2009

SUMMARY

- Synopsis:** Delays requirement that voting machines produce individual permanent paper record for each vote cast due to the State's critical economic situation and lack of appropriate technology.
- Type of Impact:** Expenditure reduction to the State General Fund.
- Agencies Affected:** Division of Elections, Department of State.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
State Savings	\$19,000,000	\$0	\$0

- This bill suspends the requirement in current law that, by January 1, 2009, the voting machines used in this State produce an individual permanent paper record for each vote cast, until such time as the Secretary of State and the State Treasurer certify that sufficient federal funds, State funds, or a combination of the two are available to pay the entire cost of the requirement.
- The State appropriated a total of \$20 million (\$10 million in each of FY08 and FY09) to pay for the cost of retrofitting the existing voting machines with paper trail technology.
- Of this appropriation of State funds to pay for a voter verified paper audit trail (VVPAT) retrofit, \$19 million was reserved by inclusion in the January 5, 2009 Governor's Planned Spending Reduction proposal for Fiscal Year 2009.
- Therefore, as a result of the Governor's action and the provisions of this bill, the funds are no longer available or needed to fund a retrofit program and savings will result.

BILL DESCRIPTION

Assembly Bill No. 3648 of 2009 suspends the requirement in current law that, by January 1, 2009, the voting machines used in this State produce an individual permanent paper record for each vote cast.

Specifically, the bill provides that the January 1, 2009 deadline is suspended until: (1) the Secretary of State and the State Treasurer certify in writing that sufficient funds have been provided by the federal government and received by the State to offset the entire cost of ensuring that each voting machine used in this State produces an individual permanent paper record for each vote cast; or (2) the annual appropriation act contains an appropriation of sufficient funds to ensure that each voting machine used in this State produces an individual permanent paper record for each vote cast and such appropriated funds have not been reserved by the Governor under a spending reduction plan; or (3) the Secretary of State and the State Treasurer certify in writing that sufficient funds have been provided by the federal government and received by the State, and the annual appropriation act contains an appropriation of sufficient unreserved funds, to ensure, when such funds are combined, that each voting machine used in this State produces an individual paper record for each vote cast.

The sponsors' statement to the bill indicates that the suspension is necessary because of the economic situation in the State. The State anticipates a \$2.1 billion budget gap in fiscal year 2009 and a more severe gap in fiscal year 2010. Although \$19 million in State funds had been set aside to help pay the costs of retrofitting the direct recording electronic (DRE) voting machines used in 18 of the State's 21 counties, this money is no longer available for that purpose. The funds have been placed in reserve to help the State meet its urgent fiscal obligations and balance its budgets, as required by the New Jersey Constitution. Without this \$19 million, there are insufficient funds available currently to pay for a retrofit of all the DRE voting machines or to change to any other alternative voting system that produces a paper trail of the votes cast by a voter in an election held in this State.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

In order to provide funding for a VVPAT voting system in all of the 18 counties, the Executive Branch estimated that the cost would range between \$25 million and \$35 million. In order to provide funding to retrofit all of the existing machines, the State earmarked approximately \$15 million of federal HAVA money and appropriated a total of \$20 million (\$10 million in each of FY08 and FY09) of State funds. However, \$19 million of the State's appropriation for a VVPAT retrofit was included in the January 5, 2009 Governor's Planned Spending Reduction proposal for the current fiscal year. According to the proposal, "New Jersey is now experiencing the compounding fiscal effects of the national economic crisis. While our revenues are falling below projections, demand for government services among citizens impacted by the crisis is growing. These are painful cuts, but they are necessary to help fulfill our obligation to maintain a balanced budget." Thus, the \$19 million is no longer available to fund a VVPAT retrofit.

A3648

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Section: State Government

*Analyst: Kimberly McCord
Associate Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

1 or (ii) the annual appropriation act contains an appropriation of
2 sufficient funds to ensure that each voting machine used in this
3 State produces an individual permanent paper record for each vote
4 cast and such appropriated funds have not been reserved by the
5 Governor under a spending reduction plan; or (iii) the Secretary of
6 State and the State Treasurer certify in writing that sufficient funds
7 have been provided by the federal government and received by the
8 State, and the annual appropriation act contains an appropriation of
9 sufficient unreserved funds, to ensure, when such funds are
10 combined, that each voting machine used in this State produces an
11 individual paper record for each vote cast.

12 (cf: P.L.2008, c.18, s.2)

13

14 3. Section 3 of P.L.2005, c.137 (C.19:53A-3.1) is amended to
15 read as follows:

16 3. Unless federal funding is made available to pay for the
17 purchase or retrofit of a voting machine to produce a voter-verified
18 paper record as required by P.L.2005, c.137 (C.19:53A-3.1 et al.), a
19 county shall be reimbursed by the State for such costs upon
20 application for reimbursement to the Attorney General and approval
21 of the application by the Director of the Division of Budget and
22 Accounting in the Department of the Treasury, in accordance with
23 the provisions of Article VIII, Section II, paragraph 5 of the New
24 Jersey Constitution.

25 This provision shall be suspended until the conditions set forth in
26 paragraph (2), subsection b. of R.S.19:48-1 or paragraph (2) of
27 subsection i. of section 3 of P.L.1973, c.82 (C.19:53A-3) have been
28 met.

29 (cf: P.L.2005, c.137, s.3)

30

31 4. This act shall take effect immediately.

32

33

34 *SPONSOR'S* STATEMENT

35

36 The purpose of this bill is to suspend the requirement in current
37 law that by January 1, 2009 the voting machines used in this State
38 produce an individual permanent paper record for each vote cast.

39 Specifically, the bill provides that the January 1, 2009 deadline is
40 suspended until: a) the Secretary of State and the State Treasurer
41 certify in writing that sufficient funds have been provided by the
42 federal government and received by the State to offset the entire
43 cost of ensuring that each voting machine used in this State
44 produces an individual permanent paper record for each vote cast;
45 or b) the annual appropriation act contains an appropriation of
46 sufficient funds to ensure that each voting machine used in this
47 State produces an individual permanent paper record for each vote
48 cast and such appropriated funds have not been reserved by the

1 Governor under a spending reduction plan; or c) the Secretary of
2 State and the State Treasurer certify in writing that sufficient funds
3 have been provided by the federal government and received by the
4 State, and the annual appropriation act contains an appropriation of
5 sufficient unreserved funds, to ensure, when such funds are
6 combined, that each voting machine used in this State produces an
7 individual paper record for each vote cast.

8 This suspension is necessary because of the dire economic
9 situation in which the State finds itself currently. Recent estimates
10 reveal that the State will need to close a \$2.1 billion budget gap in
11 the 2009 fiscal year and a more severe gap in the 2010 fiscal year.
12 Although \$19 million in State funds had been set aside to help pay
13 the costs of retrofitting the direct recording electronic (DRE) voting
14 machines used in 18 of the State's 21 counties, this money is no
15 longer available for this purpose. The funds have been placed in
16 reserve to help the State meet its most urgent fiscal obligations and
17 balance its budgets, as required by the New Jersey Constitution.
18 Without this \$19 million, there are insufficient funds available
19 currently to pay for a retrofit of all the DRE voting machines or to
20 change to any other alternative voting system that produces a paper
21 trail of the votes cast by a voter in an election held in this State.