

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 5176

with committee amendments

# STATE OF NEW JERSEY

DATED: FEBRUARY 23, 2023

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 5176.

As amended by the committee, this bill requires county clerks, in consultation with county boards of elections, to periodically report the unofficial tally of election results on the night of any primary and general election and until the final tally thereafter.

Under current law, district boards of elections are required to post a notice every two hours on election day indicating the cumulative number of voters who have voted in the election by machine and provisional ballot. Current law also requires that the early voting and vote-by-mail voting results be reported at the election district level, unless such reporting would violate the privacy of the voter's vote, in which case the results are required to be reported in a manner that protects the voter's privacy.

This bill directs each county clerk, in consultation with the county board of elections of that county, to periodically report the unofficial tally of the election by 11:59 P.M. on the day of each primary and general election and by 9 P.M. of every day thereafter until all eligible ballots have been counted and the election is certified, but the bill would not require the county board of elections in each county to conduct the count of ballots on a daily basis. Each report required by the bill would detail, at the election district, ward, municipal, and county levels, the unofficial election tally using the following categories:

(a) for the in-person early voting period, the number of early voting machines or voting equipment deployed, the number of early voting machines or voting equipment remaining to be closed, and the total number of votes cast during the early voting period;

(b) for the election day vote, the number of election day voting machines or voting equipment deployed, the number of election day voting machines or voting equipment remaining to be closed, and the total number of votes cast in person on election day;

(c) for the vote-by-mail vote, the number of vote-by-mail ballots that have been issued, received and scanned into the Statewide Voter Registration System, counted, and the approximate number of other vote-by-mail ballots that have been received but that remain to be counted in that election; and

(d) the number of provisional ballots cast during the early voting period and on election day, and the number of those provisional ballots counted.

The bill also requires each county clerk, in consultation with the county board of elections of that county, to send the periodic reports to the Secretary of State. Under the bill, upon receiving each report, the Secretary of State would provide in an easily accessible location on the Internet site of the Division of Elections the county by county and Statewide totals for each voting category included in the reports. The bill specifies that the unofficial tally of election results and the daily reports would not be interpreted to serve as the legal basis for the contest of any election. The bill directs the Secretary of State, in consultation with county clerks and county boards of elections, to promulgate uniform guidelines for all county clerks to follow in creating the reports and postings required by the bill. The bill requires the Secretary of State to develop a template for all licensed voting machine vendors and poll book manufacturers in this State to follow to ensure that the voting machines and electronic poll books automatically generate the required reports as specified in the template and in a manner that is compatible with commonly-used election results viewing software and structure. The ability of the voting machines and electronic poll books to generate the required reports would be a condition for the certification and use of the voting machines and electronic poll books in this State. Any voting machine or electronic poll book previously certified for use in this State would be required to incorporate the ability to generate the required reports within 120 days of the Secretary of State's development of the template.

Under the bill, whenever the reporting requirements would cause a voter's privacy to be violated, the election results would be reported in a manner that maintains the privacy of the vote, provided that the election results posted on the respective websites would contain a disclosure stating that the results reported for some individual districts reflect measures to protect the privacy of the vote while the general tally accurately reflects the results.

#### COMMITTEE AMENDMENTS:

The amendments:

(1) delete language that would have required the final unofficial count of election day voting results by district to be posted as soon as practicable after the closing of the polls;

(2) delete references to ballots that "have yet to be received by the county board of elections;"

(3) provide that the bill's provisions would not be interpreted to require the county board of elections in each county to conduct the count of ballots on a daily basis;

(4) specify that the vote-by-mail reports would be required to include the number of vote-by-mail ballots "received and scanned into

the Statewide Voter Registration System” and “the approximate number of other vote-by-mail ballots that have been received but that remain to be counted,” in addition to those ballots issued and counted;

(5) create a separate report category for provisional ballots;

(6) specify that the unofficial tally of election results and the daily reports would not be interpreted to serve as the legal basis for the contest of any election; and

(7) require the Secretary of State to develop a template for all licensed voting machine vendors and poll book manufacturers in this State to follow to ensure that the voting machines and electronic poll books automatically generate the required reports as specified in the template and in a manner that is compatible with commonly-used election results viewing software and structure. The ability of the voting machines and electronic poll books to generate the required reports would be a condition for the certification and use of the voting machines and electronic poll books in this State. Any voting machine or electronic poll book previously certified for use in this State would be required to incorporate the ability to generate the required reports within 120 days of the Secretary of State’s development of the template.

**FISCAL IMPACT:**

This bill has not been certified for a fiscal note.