

SPECIAL ADOPTION

STATE

SECRETARY OF STATE

Electronic Poll Book Implementation

Special Adopted Repeal and New Rules: N.J.A.C. 15:10-7

Adopted: April 2, 2021, by the Hon. Tahesha Way, Secretary of State, Department of State.

Filed: April 2, 2021, as R.2021 d.042.

Authority: P.L. 2019, c. 80, and P.L. 2021, c. 40.

Effective Date: April 2, 2021.

Expiration Date: October 2, 2022.

Take notice that, on April 2, 2021, in compliance with P.L. 2021, c. 40, effective on March 30, 2021, the Department of State (Department) specially repealed N.J.A.C. 15:10-7, as adopted on July 31, 2019, and promulgated new rules to implement P.L. 2021, c. 40. The rules implement the use of electronic poll books by county commissioners of registration and county boards of elections to enable early voting. Pursuant to P.L. 2021, c. 40, the rules are effective upon filing by the Department with the Office of Administrative Law for a period of 18 months, or until the Department proposes to make them permanent through the formal rulemaking process pursuant to the New Jersey Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

P.L. 2021, c. 40 (Early Voting Law), signed by Governor Murphy on March 30, 2021, and effective immediately, added early voting in certain primary and general

elections in this State to the existing voting statutes. Early voting is to be conducted using electronic poll books and optical-scan voting machines that read hand-marked paper ballots or other voting machines that produce a voter-verifiable paper ballot.

P.L. 2019, c. 80 (2019 Act), signed and effective on May 2, 2019, permitted the use of electronic poll book systems in New Jersey. The 2019 Act allowed county commissioners of registration and county boards of elections to decide to use electronic poll book systems for an election, so long as the system has been certified by the Secretary of State (Secretary). The 2021 Early Voting Law sets the number of early voting sites per county at a minimum of between three and seven, and a maximum of between five and 10, depending on the number of registered voters within the county. The 2021 Early Voting Law allows counties to designate additional sites subject to county funding. At a minimum, the electronic book system must be able to perform all the functions performed using a paper polling record or signature copy register and be compatible with the Statewide Voter Registration System. The electronic poll book system also must meet security and audit standards delineated by the Secretary.

For the purpose of building experience with electronic poll book systems, the specially adopted new rules include creation of a pilot program allowing use of electronic poll book systems that are on the certification list in Indiana, Ohio, Pennsylvania, Texas, or Virginia. Where the Secretary has approved a commissioner of registration or board of election's request to pilot electronic poll book systems and the specific type of electronic poll book the county plans to utilize, the commissioner of registration or board of elections must provide at least two electronic poll books per polling place, along with a backup paper polling register or signature copy register on

the day of the election when required, pursuant to N.J.S.A. 19:31-37. Electronic poll book records must be retained for at least six years after the election.

Full text of the specially repealed rules may be found in the New Jersey Administrative Code at N.J.A.C. 15:10-7.

Full text of the specially adopted new rules follows:

SUBCHAPTER 7. ELECTRONIC POLL BOOKS

15:10-7.1 Purpose and scope

N.J.S.A. 19:31-35 through 38 allows for the use of electronic poll books at each polling place in each election district on the day of any election and during any day of early voting, in place of the paper polling record or signature copy register.

15:10-7.2 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

“Adjustments log” means an electronic record of all manual adjustments made to any e-poll book system data.

“Electronic poll book” or “e-poll book” means an electronic device that is used to access the electronic list of registered voters and associated signatures and used to check-in voters at polling places for an election.

“Electronic poll book system” or “e-poll book system” means all hardware including, but not limited to, electronic poll books, laptops, and peripherals, including scanners, printers, signature pads, routers, servers, removable media devices,

chargers, and batteries; software including, but not limited to, operating systems and vendor applications; and network infrastructure configured to support the creation of an e-poll book to verify registered voters at polling places for an election.

“Entity” means a corporation; sole proprietorship; partnership; corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners; limited liability company; nonprofit corporation; or any other form of business organization located either within or outside this State, but excluding any public or private institution of higher education.

“Multifactor authentication” means authentication using two or more factors to achieve authentication of a user, as defined pursuant to NIST 800-53.

“NIST 800-53” means the National Institute of Standards and Technology Special Publication 800-53, Revision 5 (September 23, 2020), published by the United States Department of Commerce, which publication addresses security and privacy controls for information systems and organizations and provides standard guidelines for information security practices. NIST 800-53 is adopted herein by reference, as amended and supplemented.

“Software installation/removal log” means an electronic record of software installed on, or removed from, an e-poll book system.

“System integrity failure log” means an electronic record of failures detected during the verification of files critical to the operation or security of an e-poll book system or an integrity issue found with any e-poll book system data.

“User access log” means an electronic record of all user access to an e-poll book system.

15:10-7.3 General requirements for e-poll book systems

(a) All e-poll book systems for the State of New Jersey must be approved by the Division of Elections prior to use. Subsequent changes or updates to an approved e-poll book system by the vendor must be submitted and approved prior to use.

(b) Each e-poll book system vendor must maintain documents proving that quality assurance testing was conducted by a National Institute of Standards and Technology (NIST)-certified laboratory or a U.S. Election Assistance Commission (EAC)-accredited Voting System Test Laboratory (VSTL) for compliance with this subchapter. These documents must be retained for a period of at least six years and be readily available for review at any time within the retention period.

(c) Each e-poll book system vendor must perform an annual system integrity and security assessment to ensure continual compliance with the technical requirements set forth at N.J.A.C. 15:10-7.5. This assessment must be conducted by a NIST-certified testing laboratory or an EAC-accredited VSTL. The assessment report must be submitted to the DGE and the Division of Elections and shall include:

1. The scope of the review detailing which system components were reviewed in the assessment;

2. The name and company affiliation of the individual(s) who conducted the assessment;

3. The date of the assessment;
4. The findings;
5. The recommended corrective actions, if applicable; and
6. The vendor's response to the findings and recommended corrective action.

(d) All physical components that comprise an e-poll book system must be physically locked during storage and transported in a method approved by the Division of Elections.

(e) If an e-poll book system is unavailable due to power loss or system failure, the voting location will revert to previously approved manual methods for checking in voters until the system is available.

(f) External connections to the e-poll book system are prohibited, unless approved in writing by the Director of the Division of Elections.

(g) An e-poll book system vendor must document and detail all settings, including those required for its system to function in compliance with all applicable rules for use in the State of New Jersey.

(h) An e-poll book system vendor shall not allow any person to develop, modify, repair, refurbish, or perform any technological or mechanical maintenance on an e-poll book system in use in New Jersey if that person has been convicted of any crime of dishonesty, including, but not limited to, criminal fraud or any felony or misdemeanor offense for which incarceration for up to one year is an authorized penalty.

(i) An e-poll book system vendor shall promote and maintain an awareness of the importance of securing the State's and counties' data among the e-poll book system vendor's employees, agents, and subcontractors.

15:10-7.4 Examination and testing of e-poll book systems by the Secretary of State

(a) Any entity owning, or having an interest in, any e-poll book system may apply to the Secretary of State for approval of an e-poll book system for use in the State of New Jersey. The Division of Elections shall establish a set of requirements, including information security standards, as recommended by the New Jersey Cybersecurity and Communications Integration Cell (NJCCIC) in the Office of Homeland Security and Preparedness and the Division of Gaming Enforcement (DGE) in the Department of Law and Public Safety, for the examination and testing, as well as set appropriate fees for costs associated therewith, of any e-poll book system to confirm that the e-poll book system meets all system and security requirements. The DGE shall invoice the e-poll book system vendor for the fees for costs associated with the examination and testing of the e-poll book system, and the vendor shall be responsible for the payment thereof. At the completion of any examination and testing pursuant to this section, and after the vendor's payment of the fees for costs associated with the examination and testing of the e-poll book system, the Secretary of State shall determine whether, in the Secretary's opinion (pursuant to N.J.A.C. 15:10-7.6), the e-poll book system can be safely used by the voters at elections under the conditions prescribed in this subchapter. If the Secretary determines that the e-poll book system can be so used,

the Secretary shall issue a certificate of approval. Any e-poll book system not so approved shall not be used at any election.

(b) The certificate of approval, or a certified copy thereof, shall be conclusive evidence that the e-poll book system complies with the provisions of this subchapter.

15:10-7.5 Technical requirements for e-poll book systems

(a) The e-poll book system must comport with N.J.S.A. 19:31-36.

(b) Password protected accounts must be used to access or operate the e-poll book system, including operating systems and applications.

(c) User accounts in an e-poll book system must follow NIST 800-53 standard guidelines for access control management and allow separation of duties by user according to the principle of least privilege. The guidelines include, but are not limited to, the requirement to identify and document functions, tasks, and responsibilities, including system maintenance, day-to-day computer operations, and security/system administration duties; as well as define system access authorizations to support separation of duties to prevent malevolent activity without collusion.

(d) Passwords used in an e-poll book system must follow standard guidelines for identity and authentication management best practices. This should include minimum requirements for non-privileged users and strong password requirements for privileged users and service accounts.

(e) Any administrative accounts or user accounts that have the ability to add, modify, or delete programs or data must use multifactor authentication.

- (f) Detailed network and system architecture diagrams showing all software and hardware must be submitted to the Division of Gaming Enforcement (DGE) for testing and examination.
- (g) The e-poll book system must prevent unauthorized devices from connecting to the system.
- (h) Remote access from outside the e-poll book system is not allowed without prior written authorization from the Director of the Division of Elections.
- (i) All network protocols, system services, and applications not required for the e-poll book system to function must be removed or, if they cannot be removed, disabled.
- (j) All network ports not required for the e-poll book system to function must be blocked by a firewall.
- (k) All cryptographic modules used in an e-poll book system must comply with the guidelines set forth in the System and Communications Protection section of NIST 800-53 under "Cryptographic Protection."
- (l) All network communications between components in the e-poll book system must be secured by following standard guidelines in the System and Communications Protection section of NIST 800-53, under "Transmission Confidentiality and Integrity." If wireless networks are used, standard guidelines under "Access Control/Wireless Access" of NIST 800-53 must be followed.
- (m) Any communications between the New Jersey Statewide Voter Registration System (NJSVRS) and e-poll book systems must be secured by following standard guidelines in the Access Control/Information Flow Enforcement section of NIST 800-53.

- (n) The e-poll book system must ensure voter information received from the NJSVRS has not been modified from the original.
- (o) The e-poll book system must only allow voters eligible to vote in the NJSVRS system to sign in.
- (p) All voter-related information stored by an e-poll book system, including backups, must be encrypted by following standard guidelines in the System and Communications Protection section of NIST 800-53 under “Protection of Information at Rest.”
- (q) Any use of cloud services must meet Federal Risk and Authorization Management Program (FedRAMP) “High Impact Level” standards and be located in a government cloud.
- (r) Any removable storage media and files stored on removable media used by the e-poll book system must follow standard guidelines in the Media Protection section of NIST 800-53.
- (s) All components of an e-poll book system that contain clocks must be synchronized to the correct time zone and local time by following standard guidelines in the System and Communications Protection section of NIST 800-53 for “System Time Synchronization.”
- (t) The e-poll book system must prevent a voter from being authorized to vote more than once in an election.
- (u) The e-poll book system must have a legible user interface (UI) for voters. The voter UI must offer a “help” option that provides all information required for the voter to properly use the system.

(v) A voter may only use the e-poll book system if that voter's information is in the system. If a voter's information is not in the system, a message must be displayed to the voter advising that their information is not available.

(w) A voter may view only their own information in an e-poll book system.

(x) The e-poll book system must automatically check, at least once per hour, and on demand by an administrator, to ensure only approved software and settings exist in the system and that the system is functioning without errors. If an issue is discovered, the e-poll book system must automatically record the error in a System Integrity Failure Log, pursuant to (bb) below. The e-poll book system must automatically halt operations on all affected devices, with a detailed error message displayed on each device.

Operations on all affected devices may only resume once the error has been resolved.

(y) The e-poll book system must allow external verification of its critical files in a manner approved by the DGE and the Division of Elections, pursuant to N.J.A.C. 15:10-7.6.

(z) The e-poll book system must use uninterruptable power supplies capable of providing enough time to completely process the last voter and shut down the system without losing any information.

(aa) The e-poll book system must, at a minimum, be capable of displaying the following error messages:

1. Low battery level detected on the device;
2. Failure during voter check in;
3. System connection failure;
4. System integrity failure; and
5. Hardware failure.

(bb) The e-poll book system must be capable of creating and maintaining the following logs:

1. A User Access Log that includes:

- i. The user name;
- ii. The user permission level;
- iii. The network address used;
- iv. The date and time of the start of access; and
- v. The date and time of the end of access;

2. A software installation/removal log that includes:

i. Whether any software or settings were installed, removed, or changed;

- ii. The date and time of the installation, removal, or change;
- iii. The identification of the software or setting;
- iv. The identity of the person performing the action;

3. A system integrity failure log, which includes:

- i. The file that failed an integrity check;
- ii. The location of the file;
- iii. A detailed description of the failure; and
- iv. The date and time of failure; and

4. An adjustment log that includes:

- i. The date and time the adjustment occurred;
- ii. The user who performed the adjustment;
- iii. A description of the adjustment; and

iv. The starting and ending values of any data altered as a part of the adjustment.

(cc) The e-poll book system must be capable of processing simultaneous voter check-ins that exceed expected loads when polling locations are at maximum capacity. This must be demonstrable with a load test.

(dd) The e-poll book system must generate reports that accurately reflect the data captured by the system.

15:10-7.6 Requirements for e-poll book system review

(a) The New Jersey Cybersecurity and Communications Integration Cell (NJCCIC) shall conduct a security review of any e-poll book system vendor that submits an e-poll book system to the Secretary of State for use in New Jersey. The security review shall include existing processes for the review of the State of New Jersey Security Due Diligence—Third-Party Information Security Questionnaire and Ownership Disclosure Form. The e-poll book system vendor shall cooperate with NJCICC's security review.

(b) The DGE shall conduct testing and examination of the e-poll book system to confirm that the e-poll book system meets all system and security requirements set forth in this subchapter.

(c) Any vendor proposing to offer a new or modified e-poll book system may only seek review of a system that is free of known regulatory or functional issues, problems, and abnormalities.

(d) For a submission to be considered complete and ready for review, the vendor must:

1. Submit in writing, to the Division of Elections, a request for e-poll book system approval. This request, written on the vendor's letterhead, must list the following:

i. All hardware devices to be reviewed;

ii. All software versions to be reviewed;

iii. All features to be reviewed;

iv. Any U.S. states or territories where this has already been approved for use; and

v. Email and telephone contact information for both administrative and technical questions;

2. Transport the following to the Division of Gaming Enforcement (DGE), at the vendor's expense:

i. Production samples of hardware devices being reviewed;

ii. Production versions of all software and firmware being reviewed;

iii. All additional software and hardware required to perform testing, including software capable of performing a load test with a configurable number of simultaneous voters;

iv. All manuals required to administrate and operate the e-poll book system;

v. Settings for the e-poll book system to comply with all applicable New Jersey rules;

vi. Copies of all quality assurance testing results for tests that were already performed;

vii. Source code for all software and firmware of products being reviewed;

and

viii. A detailed network architecture diagram of the e-poll book system;

3. Submit a copy of the vendor's information security plan to the DGE; and

4. Complete and submit the State of New Jersey Security Due Diligence–Third-Party Information Security Questionnaire and Ownership Disclosure Form to the NJCCIC.

(e) The review of an e-poll book system vendor and e-poll book system shall be completed no later than 60 days after a complete submission is received. The DGE shall provide the Secretary of State with the outcome of its testing and examination and a recommendation as to whether the e-poll system is compliant with the technical requirements. The NJCCIC shall provide the Secretary of State with the results of its security review and a recommendation as to whether the vendor is following information security best practices. The Secretary of State shall review the results of the DGE's testing and examination of the e-poll book system, as well as the recommendation of the DGE, and the outcome of the NJCCIC's security review of the e-poll book vendor, as well as the recommendation of the NJCCIC, and issue one of two possible letters stating the outcome of the review:

1. A certificate of approval letter stating the e-poll book system is approved for use in the State of New Jersey and all conditions required for its proper use; or

2. A rejection letter stating the product is not approved for use in the State of New Jersey. This letter shall list the deficiencies and problems with the submitted e-poll book system that prevented approval.

(f) Nothing in this section shall prohibit the Secretary of State from adding, modifying, or removing conditions in an approval letter issued, pursuant to (e)1 above, as necessary, to ensure the security, integrity, and functionality of the e-poll book system or of the electoral process in this State.

(g) The vendor shall be responsible for the removal of all items transported to the DGE for review.

15:10-7.7 Requirements for an e-poll book system pilot program

(a) An entity may utilize an e-poll book system pilot program prior to certification where:

1. County commissioners of elections and county boards of elections may, upon approval from the Division of Elections, use an e-poll book system in any election in their jurisdiction while the system is undergoing examination and review by the Secretary of State. All e-poll book systems shall adhere to the security protocols required by the Division of Gaming Enforcement (DGE) and Division of Elections. An e-poll book file shall be exported from the New Jersey Statewide Voter Registration System (NJSVRS) and shall be copied to a single-use removable drive that can be connected to the e-poll book system in order to download the voter registration data.

2. A county commissioner of registration and county board of elections shall utilize two e-poll books for each election district and shall maintain a backup paper polling record or signature copy register.

3. Any e-poll book system chosen by a county shall be on the certification list from at least one of the following states:

i. Indiana;

ii. Ohio;

iii. Pennsylvania;

iv. Texas; or

v. Virginia.