

7832--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

June 5, 2013

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Introduced by M. of A. CUSICK -- read once and referred to the Committee on Election Law -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to run-off elections in the city of New York; and providing for the repeal of such provisions upon the expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Legislative findings. The legislature finds and declares  
2     that the effective and timely administration of local elections in the  
3     city of New York is a matter of substantial state concern. In further-  
4     ance of this concern, the legislature finds that it is essential to the  
5     local democratic process to ensure that the board of elections in the  
6     city of New York utilizes voting machines that allow for the timely and  
7     orderly administration of elections. In order to modernize and update  
8     the voting systems utilized in New York State, the legislature passed  
9     the Election Reform and Modernization Act of 2005, which set forth  
10    requirements for electronic voting systems, including optical scanning  
11    voting machines, throughout the state. The implementation of these elec-  
12    tronic voting systems has brought the state into conformance with  
13    national standards for voting system performance and modernization. The  
14    state has a substantial interest in ensuring that elections in the city  
15    of New York are generally conducted with an electronic voting system  
16    that meets the above mentioned statewide standards. At the same time,  
17    the city of New York is uniquely situated in that a run-off primary is  
18    required to be held two weeks after the local primary election in  
19    certain circumstances. In recent elections administered with optical  
20    scanning voting machines, approved by the state board of elections, it  
21    has taken over two weeks for the board of elections in the city of New  
22    York to finalize election results. A series of one-time and immediate  
23    short-term changes to the current election law, as applied to the city

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 of New York, are therefore necessary to further the state's substantial  
2 concerns and ensure that the 4.2 million registered voters in the city  
3 of New York are able to exercise their voting rights in a timely and  
4 orderly primary election and run-off election, should a run-off be  
5 required.

6 S 2. Section 4-114 of the election law, as amended by chapter 4 of the  
7 laws of 2011, is amended to read as follows:

8 S 4-114. Determination of candidates and questions; county board of  
9 elections. The county board of elections, not later than the thirty-  
10 fifth day before the day of a primary or general election, or the  
11 fifty-third day before a special election, shall determine the candi-  
12 dates duly nominated for public office and the questions that shall  
13 appear on the ballot within the jurisdiction of that board of elections.  
14 PROVIDED, HOWEVER, IN ANY YEAR IN WHICH THERE HAS BEEN A RUN-OFF  
15 ELECTION IN THE CITY OF NEW YORK, THE BOARD OF ELECTIONS OF SUCH CITY  
16 SHALL, NOT LATER THAN THE TWENTY-EIGHTH DAY BEFORE THE GENERAL ELECTION  
17 IN THAT YEAR, DETERMINE THE CANDIDATES DULY NOMINATED FOR PUBLIC OFFICE  
18 AND THE QUESTIONS THAT SHALL APPEAR ON THE BALLOT WITHIN THE JURISDIC-  
19 TION OF THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK.

20 S 3. Subdivision 1 of section 7-200 of the election law, as amended by  
21 chapter 181 of the laws of 2005, is amended to read as follows:

22 1. The board of elections of the city of New York and other county  
23 boards of elections may adopt any kind of voting machine or system  
24 approved by the state board of elections, or the use of which has been  
25 specifically authorized by law; and thereupon such voting machine or  
26 system may be used at any or all elections and shall be used at all  
27 general or special elections held by such boards in such city, town or  
28 village and in every contested primary election in the city of New York  
29 and in every contested primary election outside the city of New York in  
30 which there are one thousand or more enrolled voters qualified to vote.  
31 No more than two types of voting machines or systems may be used by any  
32 local board of elections at a single election. Notwithstanding the other  
33 provisions of this subdivision, any local board of elections may borrow  
34 or lease for use on an experimental basis for a period of not more than  
35 one year each, voting machines or systems of any type approved by the  
36 state board of elections.

37 (A) (I) THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK SHALL DEPLOY  
38 AND UTILIZE OPTICAL SCANNING VOTING MACHINES APPROVED BY THE STATE BOARD  
39 OF ELECTIONS AT ALL PRIMARY ELECTIONS CONDUCTED PURSUANT TO SECTION  
40 8-100 OF THIS CHAPTER.

41 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD OF  
42 ELECTIONS IN THE CITY OF NEW YORK IS HEREBY AUTHORIZED TO PREPARE,  
43 DEPLOY AND UTILIZE MECHANICAL LEVER VOTING MACHINES AT ANY NON-FEDERAL  
44 PRIMARY ELECTION, CONDUCTED PURSUANT TO SECTION 8-100 OF THIS CHAPTER.  
45 THE PREPARATION, DEPLOYMENT AND UTILIZATION OF SUCH MECHANICAL LEVER  
46 MACHINES SHALL ONLY OCCUR AFTER SUCH BOARD OF ELECTIONS DETERMINES THE  
47 USE OF SUCH MECHANICAL LEVER MACHINES AT SUCH A NON-FEDERAL PRIMARY  
48 ELECTION IS NECESSARY TO ENSURE THE TIMELY AND ORDERLY ADMINISTRATION OF  
49 THE PRIMARY ELECTION, INCLUDING BUT NOT LIMITED TO A TIMELY VOTE COUNT.

50 (B) (I) THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK SHALL DEPLOY  
51 AND UTILIZE OPTICAL SCANNING VOTING MACHINES APPROVED BY THE STATE BOARD  
52 OF ELECTIONS IN ALL RUN-OFF ELECTIONS CONDUCTED PURSUANT TO SECTION  
53 8-100 OF THIS CHAPTER.

54 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD OF  
55 ELECTIONS IN THE CITY OF NEW YORK IS HEREBY AUTHORIZED TO PREPARE,  
56 DEPLOY AND UTILIZE MECHANICAL LEVER VOTING MACHINES AT ANY RUN-OFF

1 ELECTION, CONDUCTED PURSUANT TO SECTION 8-100 OF THIS CHAPTER. THE PREP-  
2 ARATION, DEPLOYMENT AND UTILIZATION OF SUCH MECHANICAL LEVER MACHINES  
3 SHALL ONLY OCCUR AFTER SUCH BOARD OF ELECTIONS DETERMINES THAT THE PREP-  
4 ARATION, DEPLOYMENT AND UTILIZATION OF OPTICAL SCANNING VOTING MACHINES  
5 APPROVED BY THE STATE BOARD OF ELECTIONS, AT SUCH RUN-OFF ELECTION IS  
6 IMPRACTICABLE GIVEN THE COSTS AND STATUTORY TIME CONSTRAINTS ASSOCIATED  
7 WITH THE PREPARATION, DEPLOYMENT AND UTILIZATION OF SUCH OPTICAL SCAN-  
8 NING MACHINES.

9 (C) SHOULD THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK UTILIZE SUCH  
10 MECHANICAL LEVER VOTING MACHINES PURSUANT TO PARAGRAPH (A) OR (B) OF  
11 THIS SUBDIVISION, IN ANY PRIMARY OR RUN-OFF ELECTION, PURSUANT TO  
12 SECTION 8-100 OF THIS CHAPTER, SUCH BOARD OF ELECTIONS MUST ALSO PROVIDE  
13 A VOTING SYSTEM THAT MEETS THE REQUIREMENTS OF PARAGRAPHS A, B AND C OF  
14 SUBDIVISION TWO OF SECTION 7-202 OF THIS TITLE IN EACH POLLING SITE.

15 S 4. Paragraph (b) of subdivision 1 of section 8-100 of the election  
16 law, as added by chapter 373 of the laws of 1978, is amended to read as  
17 follows:

18 (b) In the event a run-off primary election is required in the city of  
19 New York, it shall be held on the [second] THIRD Tuesday next succeeding  
20 the date on which the initial primary election was held.

21 S 5. Subdivision 1 of section 8-412 of the election law, as amended by  
22 chapter 155 of the laws of 1994, is amended to read as follows:

23 1. The board of elections shall cause all absentee ballots received by  
24 it before the close of the polls on election day and all ballots  
25 contained in envelopes showing a cancellation mark of the United States  
26 postal service or a foreign country's postal service, or showing a dated  
27 endorsement of receipt by another agency of the United States govern-  
28 ment, with a date which is ascertained to be not later than the day  
29 before election and received by such board of elections not later than  
30 seven days following the day of election, OR FOURTEEN DAYS FOLLOWING THE  
31 DAY OF THE GENERAL ELECTION IN THE CITY OF NEW YORK IN ANY YEAR IN WHICH  
32 THERE HAS BEEN A RUN-OFF ELECTION, to be cast and counted except that  
33 the absentee ballot of a voter who requested such ballot by letter,  
34 rather than application, shall not be counted unless a valid application  
35 form, signed by such voter, is received by the board of elections with  
36 such ballot.

37 S 6. Section 9-214 of the election law, the section heading and first  
38 undesignated paragraph as amended by chapter 286 of the laws of 1983,  
39 and the second undesignated paragraph as amended by chapter 4 of the  
40 laws of 2011, is amended to read as follows:

41 S 9-214. Transmission of statements of canvassing boards to state  
42 board of elections and secretary of state. The board of elections shall  
43 transmit by mail or cause to be delivered personally to the state board  
44 of elections, a certified copy of the statement of the canvassing board  
45 relating to the offices of electors of president and vice-president of  
46 the United States, United States senator, representatives in congress  
47 and state offices, including members of the state senate and assembly,  
48 and to the votes cast on any ballot proposal submitted to all the voters  
49 of the state, within twenty-five days after the election. If any certi-  
50 fied copy shall not be received by the state board on or before the  
51 twenty-fifth day following a general election, or a special election, it  
52 shall dispatch a special messenger to obtain such certified copy, and  
53 the board of elections, immediately upon demand of such messenger at its  
54 office, shall make and deliver a certified copy to such messenger who  
55 shall deliver it forthwith to the state board.

1 The board of elections shall transmit to the secretary of state within  
2 twenty-five days after a general election, and within twenty days after  
3 a special election, a list of the names and residences of all persons  
4 determined by the canvassing board to be elected to any county office.  
5 NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, IN ANY YEAR IN  
6 WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE CITY OF NEW YORK, THE  
7 BOARD OF ELECTIONS IN THE CITY OF NEW YORK SHALL TRANSMIT TO THE SECRE-  
8 TARY OF STATE NOT LATER THAN THIRTY DAYS AFTER THE GENERAL ELECTION IN  
9 THAT YEAR A LIST OF THE NAMES AND RESIDENCES OF ALL PERSONS DETERMINED  
10 BY THE CANVASSING BOARD TO BE ELECTED TO ANY COUNTY OFFICE.

11 The board of elections shall transmit to the state board, on or before  
12 the tenth day of December following an election for governor, a certi-  
13 fied tabulated statement, by election districts, of the official canvass  
14 of the votes cast for candidates for governor, to include, in the case  
15 of a candidate who was nominated by two or more parties or independent  
16 bodies, a separate statement of the number of votes cast for him as the  
17 candidate of each party or independent body by which he was nominated  
18 and if the county contains more than one assembly district or parts of  
19 more than one assembly district, a statement of the number of votes cast  
20 for governor by assembly district.

21 S 7. Paragraph (a) of subdivision 1 of section 10-108 of the election  
22 law, as amended by chapter 4 of the laws of 2011, is amended to read as  
23 follows:

24 (a) Ballots for military voters shall be mailed or otherwise distrib-  
25 uted by the board of elections, in accordance with the preferred method  
26 of transmission designated by the voter pursuant to section 10-107 of  
27 this article, as soon as practicable but in any event not later than  
28 thirty-two days before a primary or general election; twenty-five days  
29 before a New York city community school board district or city of  
30 Buffalo school district election; fourteen days before a village  
31 election conducted by the board of elections; and forty-five days before  
32 a special election. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS  
33 SECTION, IN ANY YEAR IN WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE  
34 CITY OF NEW YORK, BALLOTS FOR MILITARY VOTERS SHALL BE MAILED OR OTHER-  
35 WISE DISTRIBUTED BY THE BOARD OF ELECTIONS OF SUCH CITY IN ACCORDANCE  
36 WITH THE PREFERRED METHOD OF TRANSMISSION DESIGNATED BY THE VOTER PURSU-  
37 ANT TO SECTION 10-107 OF THIS ARTICLE, AS SOON AS PRACTICABLE BUT IN ANY  
38 EVENT NOT LATER THAN TWENTY-FIVE DAYS BEFORE A GENERAL ELECTION IN THAT  
39 YEAR. A voter who submits a military ballot application shall be enti-  
40 tled to a military ballot thereafter for each subsequent election  
41 through and including the next two regularly scheduled general elections  
42 held in even numbered years, including any run-offs which may occur;  
43 provided, however, such application shall not be valid for any election  
44 held within seven days after its receipt. Ballots shall also be mailed  
45 to any qualified military voter who is already registered and who  
46 requests such military ballot from such board of elections in a letter,  
47 which is signed by the voter and received by the board of elections not  
48 later than the seventh day before the election for which the ballot is  
49 requested and which states the address where the voter is registered and  
50 the address to which the ballot is to be mailed. The board of elections  
51 shall enclose with such ballot a form of application for military  
52 ballot. In the case of a primary election, the board shall deliver only  
53 the ballot of the party with which the military voter is enrolled  
54 according to the military voter's registration records. In the event a  
55 primary election is uncontested in the military voter's election  
56 district for all offices or positions except the party position of

1 member of the ward, town, city or county committee, no ballot shall be  
2 delivered to such military voter for such election; and the military  
3 voter shall be advised of the reason why he or she will not receive a  
4 ballot.

5 S 8. Subdivision 1 of section 10-114 of the election law, as amended  
6 by chapter 165 of the laws of 2009, is amended to read as follows:

7 1. The board of elections shall cause all military ballots received by  
8 it before the close of the polls on election day and all ballots  
9 contained in envelopes showing a cancellation mark of the United States  
10 postal service or a foreign country's postal service, or showing a dated  
11 endorsement of receipt by another agency of the United States government  
12 or are signed and dated by the voter and one witness thereto, with a  
13 date which is ascertained to be not later than the day before election  
14 and received by such board of elections not later than seven days  
15 following the day of a primary election and not later than thirteen days  
16 following the day of a general or special election to be cast and count-  
17 ed. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, IN ANY  
18 YEAR IN WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE CITY OF NEW YORK,  
19 THE BOARD OF ELECTIONS OF SUCH CITY SHALL CAUSE ALL MILITARY BALLOTS  
20 RECEIVED BY IT BEFORE THE CLOSE OF THE POLLS ON ELECTION DAY AND ALL  
21 BALLOTS CONTAINED IN ENVELOPES SHOWING A CANCELLATION MARK OF THE UNITED  
22 STATES POSTAL SERVICE OR FOREIGN COUNTRY'S POSTAL SERVICE, OR SHOWING A  
23 DATED ENDORSEMENT OF RECEIPT BY ANOTHER AGENCY OF THE UNITED STATES  
24 GOVERNMENT OR ARE SIGNED AND DATED BY THE VOTER AND ONE WITNESS THERETO,  
25 WITH A DATE WHICH IS ASCERTAINED TO BE NOT LATER THAN THE DAY BEFORE  
26 ELECTION DAY AND RECEIVED BY SUCH BOARD OF ELECTIONS NOT LATER THAN  
27 TWENTY DAYS FOLLOWING THE DAY OF A GENERAL ELECTION IN THAT YEAR TO BE  
28 CAST AND COUNTED.

29 S 9. The amendments to the election law set forth in this act shall  
30 apply notwithstanding any other provision of general, special or local  
31 law, including but not limited to any provision of law that would render  
32 the preparation, deployment and utilization of mechanical lever voting  
33 machines impracticable where the board of elections in the city of New  
34 York makes a determination with respect to such machines as authorized  
35 by subdivision 1 of section 7-200 of the election law as amended by  
36 section three of this act.

37 S 10. On or before July 1, 2014, the board of elections in the city  
38 of New York shall submit a report to the governor, temporary president  
39 of the senate, speaker of the assembly, minority leader of the senate,  
40 minority leader of the assembly, chair of the senate standing committee  
41 on elections, chair of the assembly standing committee on election law,  
42 mayor of the city of New York, and speaker of the New York city council,  
43 detailing a plan for administering effective and timely elections in the  
44 city of New York with a voting machine system that meets the require-  
45 ments of title 2 of article 7 of the election law and without the use of  
46 mechanical lever machines. Such plan shall address, at a minimum, train-  
47 ing of board of elections staff, including poll clerks and election  
48 inspectors in connection with the preparation, testing, deployment and  
49 utilization of optical scanning voting machines approved by the state  
50 board of elections, including further education and training regarding  
51 the needs of voters with disabilities, appropriate and effective methods  
52 for streamlining election night canvassing procedures, and appropriate  
53 and effective methods of ensuring full and fair voting machine access  
54 for all voters.

55 S 11. The board of elections in the city of New York shall adopt  
56 procedures regarding the preparation, deployment and utilization of

1 mechanical lever voting machines should such board of elections deter-  
2 mine under section three of this act that such lever voting machines  
3 shall be used. Such procedures shall seek to ensure that the canvass and  
4 recanvass of the mechanical lever voting machines occurs in a timely and  
5 efficient manner.

6 S 12. This act shall take effect immediately and shall expire and be  
7 deemed repealed December 31, 2013, except that section ten of this act  
8 shall expire and be deemed repealed August 1, 2014.