

STATE OF NEW YORK

3992

2023-2024 Regular Sessions

IN ASSEMBLY

February 8, 2023

Introduced by M. of A. CARROLL, PAULIN, DICKENS, REYES, SAYEGH, SIMON, DeSTEFANO, COOK, EPSTEIN, KELLES, WOERNER, L. ROSENTHAL, LUPARDO, JACKSON, RAJKUMAR, FORREST, BURDICK, DINOWITZ, BICHOTTE HERMELYN, THIELE, JACOBSON, FAHY, DURSO, GALLAGHER, MAMDANI, NORRIS, TAGUE, BURGOS, ANDERSON, BRABENEC, TAYLOR, BARRETT, McDONOUGH, ZINERMAN, COLTON, CLARK, SIMPSON, PRETLOW, GONZALEZ-ROJAS, DE LOS SANTOS, LUCAS, TAPIA, GANDOLFO, GLICK, ROZIC, GIBBS, SEAWRIGHT, J. A. GIGLIO -- Multi-Sponsored by -- M. of A. MIKULIN -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to construction of and requirements for voting machines and systems

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 7-104 of the election law is amended by adding a new subdivision 28 to read as follows:

28. The ballot shall be marked or printed on durable paper. For purposes of this section, "durable paper" is defined as paper capable of withstanding multiple counts and recounts by hand or machine without compromising the fundamental integrity of the ballots, and capable of retaining the information marked or printed on such paper for the full duration of a retention and preservation period set forth in section 3-222 of this chapter.

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

1. The board of elections of the city of New York and other county boards of elections may adopt any kind of voting machine or system approved by the state board of elections, or the use of which has been specifically authorized by law; and thereupon such voting machine or system may be used at any or all elections and shall be used at all general or special elections held by such boards in such city, town or village and in every contested primary election in the city of New York

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

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1 and in every contested primary election outside the city of New York in
2 which there are one thousand or more enrolled voters qualified to vote.
3 ~~[No more than two types of voting machines or systems may be used by any~~
4 ~~local board of elections at a single election.]~~ Notwithstanding the
5 other provisions of this subdivision, any local board of elections may
6 borrow or lease for use on an experimental basis for a period of not
7 more than one year each, voting machines or systems of any type approved
8 by the state board of elections.

9 § 3. Paragraphs b, e, j, s and t of subdivision 1 of section 7-202 of
10 the election law, as added by chapter 181 of the laws of 2005, are
11 amended and three new paragraphs u, v and w are added to read as
12 follows:

13 b. permit a voter to vote for any person for any office, whether or
14 not nominated as a candidate by any party or independent body ~~[without~~
15 ~~the ballot, or any part thereof, being removed from the machine at any~~
16 ~~time];~~

17 e. provide the voter an opportunity to privately and independently
18 mark and verify votes selected ~~[and the]~~ on an individual, voter-verifi-
19 able paper ballot and the ability to privately and independently change
20 such votes or correct any error before the ballot is cast and counted,
21 including by offering the voter a new paper ballot as many times as is
22 allowed by statute or regulation. For the purposes of this subdivision,
23 the term "individual, voter-verifiable paper ballot" means either: (i) a
24 paper ballot marked by the voter by hand; or (ii) a paper ballot marked
25 through the use of a nontabulating ballot marking device or system. For
26 the purposes of this title, a "ballot marking device" is a device that
27 provides voters, including voters with disabilities, the ability to mark
28 votes on physical, paper ballots privately and independently. For the
29 purposes of this title, a "nontabulating ballot marking device" is a
30 ballot marking device that does not tabulate or transmit votes or retain
31 any record of a voter's selections, other than the original paper
32 ballot, after the voter has finished marking the paper ballot and using
33 the device to review selections;

34 j. ~~[retain all paper ballots cast or produce and retain a voter veri-~~
35 ~~fied permanent paper record which shall be presented to the voter from~~
36 ~~behind a window or other device before the ballot is cast,]~~ for ballot
37 scanners, retain paper ballots in a manner intended and designed to
38 protect the privacy of the voter; for nontabulating ballot marking
39 devices, produce or process paper ballots in a manner intended and
40 designed to protect the privacy of the voter; such ballots ~~[or record]~~
41 shall allow a manual audit and shall be preserved in accordance with the
42 provisions of section 3-222 of this chapter;

43 s. permit alternative language accessibility pursuant to the require-
44 ments of section 203 of the Voting Rights Act of 1965 (42 U.S.C.
45 1973aa-1a) such that it must have the capacity to display the full
46 ballot in the alternative languages required by the federal Voting
47 Rights Act if such voting machine or system is to be used where such
48 alternative languages are required or where the local board deems such
49 feature necessary; ~~[and]~~

50 t. not include any device or functionality potentially capable of
51 externally transmitting or receiving data via the internet or via radio
52 waves or via other wireless means~~[-]~~;

53 u. be constructed so that, after the paper ballot is cast by the
54 voter, the voting machine or system never passes the cast ballot under a
55 printer that can print votes onto the ballot, including as a result of
56 unauthorized, malicious or faulty software or firmware;

1 v. be constructed so the configuration or functionality of a voting
2 machine or system does not include, within the same physical device,
3 both (i) ballot marking and (ii) tabulating or transmitting a voter's
4 selections at any time or retaining any record of a voter's selections,
5 other than the original paper ballot, after the voter has finished mark-
6 ing the paper ballot and using the device to review selections; and

7 w. not encode votes on a ballot, whether as a barcode, QR code or any
8 kind of recording code that cannot be verified by the voter without
9 using a code-reading device. For the purposes of this paragraph, a "code
10 reading device" is a device that reads and translates coded marks like
11 QR codes or barcodes into language that can be understood without any
12 kind of device.

13 § 4. Subdivision 4 of section 7-202 of the election law, as added by
14 chapter 181 of the laws of 2005, is amended and a new subdivision 5 is
15 added to read as follows:

16 4. Local boards of elections which obtain voting machines pursuant to
17 this chapter [~~may determine to~~] shall purchase [~~direct recording elec-~~
18 ~~tronic machines or optical scan machines~~] ballot scanners and nontabu-
19 lating ballot marking devices in conformance with the requirements of
20 this chapter.

21 5. Local boards of elections must provide every voter, at every poll-
22 ing place, both of the following options: (a) to hand mark a paper
23 ballot; or (b) to use a nontabulating ballot marking device or system to
24 mark a paper ballot. All paper ballots must be printed, scannable, and
25 include all relevant contests and candidates.

26 § 5. This act shall take effect immediately; provided, however, that
27 any local board of elections that purchased voting machines or systems
28 prior to such date which are not in compliance with the requirements of
29 paragraph u or v of subdivision 1 and subdivision 4 of section 7-202 of
30 the election law, may continue to use, maintain and replace such voting
31 machines and systems, but may replace them only with identical model
32 voting machines or systems made by the same manufacturer, or identical
33 model voting machines or systems with de minimis changes in such voting
34 machines' or systems' hardware, software, technical data package, or
35 data, the nature of which will not materially alter the voting machines'
36 or systems' reliability, functionality, capability, or operation; any de
37 minimis changes shall be approved by the state board of elections.