S T A T E O F N E W Y O R K

11354

I N A S S E M B L Y

June 3, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Millman) -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to the form of paper ballots and party emblems

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

Section 1. The section heading and subdivisions 1, 3, 4, 5, and 6 of section 7-106 of the election law, subdivision 4 as amended by chapter 9 of the laws of 1978, subdivision 5 as amended by chapter 244 of the laws of 2003 and subdivision 6 as amended by chapter 647 of the laws of 1982, are amended to read as follows and subdivisions 7, 8, 9 and 10 are renumbered subdivisions 8, 9, 10 and 11, respectively:

[Paper] ELECTION DAY PAPER ballots; form of.

1. Paper ballots WHICH ARE TO BE COUNTED BY A BALLOT SCANNER MAY CONSIST OF TWO OR MORE SHEETS WHICH ARE DIVIDED INTO PERFORATED SECTIONS WHICH CAN BE SEPARATED AT THE TIME THE BALLOT IS SCANNED. SUCH BALLOTS shall be printed on paper of a quality, size, color, and weight approved by the state board of elections.

3. Each ballot shall be printed on the [same] sheet with a stub which shall be separated therefrom by a [horizontal] line of perforations extending across the entire [width of the] ballot. On the face of the stub shall be printed [the instructions to the voter. On the back of the stub immediately above the center of the indorsement on the back of the ballot, shall be printed] "No....." the blank to be filled with consecutive number of ballots beginning with "No. 1", and increasing in regular numerical order.

4. On [the back of the] SUCH ballot[, below the line of perforations, just to the right of center, and outside when the ballot is folded, and on the front of the ballot, directly below the perforated line,] shall be printed the following indorsement, the blanks properly filled in:

[Official Ballot for General Officers (or whatever the case may be) County of ..... Assembly District

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

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(or ward and city or town) ..... Election District .....]

OFFICIAL BALLOT FOR (GENERAL, PRIMARY OR SPECIAL, AS APPLICABLE)
ELECTION
COUNTY OF .....
(ASSEMBLY OR LEGISLATIVE, AS APPLICABLE) DISTRICT .....
(WARD AND CITY OR TOWN ....., AS APPLICABLE).....
ELECTION DISTRICT .....

([Date of Election] INSERT DATE OF ELECTION.)
([Facsimile of the signature of officer or officers] INSERT NAMES OF ELECTION COMMISSIONERS providing the ballot.)

5. [On the stub at the top of the ballot or on the edge of such] THE FOLLOWING ballot INSTRUCTIONS shall be printed in heavy black type [the following instructions]:

INSTRUCTIONS

(1) Mark only with a [pen having blue or black ink or with a pencil having black lead] WRITING INSTRUMENT PROVIDED BY THE BOARD OF ELECTIONS.

(2) To vote for a candidate whose name is printed on this ballot [make a single cross X mark or a check V mark in one of] FILL IN the [squares to the right of an emblem opposite his or her name] (INSERT OVAL OR SQUARE, AS APPLICABLE) ABOVE OR NEXT TO THE NAME OF THE CANDIDATE.

(3) To vote for a person whose name is not printed on this ballot write or stamp his or her name [on a blank line under the names of the candidates for that office.] IN THE SPACE LABELED "WRITE-IN" THAT APPEARS (INSERT AT THE BOTTOM OF THE COLUMN OR THE END OF THE ROW, AS APPLICABLE) FOR SUCH OFFICE (AND, IF REQUIRED BY THE VOTING SYSTEM IN USE AT SUCH ELECTION, THE INSTRUCTIONS SHALL ALSO INCLUDE "AND FILL IN THE (INSERT OVAL OR SQUARE, AS APPLICABLE) CORRESPONDING WITH THE WRITE-IN SPACE IN WHICH THE VOTER HAS WRITTEN IN A NAME").

(4) To vote yes or no on a proposal [make a single X or V mark in the square opposite your vote], IF ANY, THAT APPEARS ON THE (INDICATE WHERE ON THE BALLOT THE PROPOSAL MAY APPEAR) FILL IN THE (INSERT OVAL OR SQUARE, AS APPLICABLE) THAT CORRESPONDS TO YOUR VOTE.

(5) Any other mark or writing, or any erasure made on this ballot outside the voting squares or blank spaces provided for voting will void this entire ballot.

(6) Do not overvote. If you select a greater number of candidates than there are vacancies to be filled, your ballot will be void for that public office [or], party position OR PROPOSAL.

(7) If you tear, or deface, or wrongly mark this ballot, return it and obtain another. Do not attempt to correct mistakes on the ballot by making erasures or cross outs. Erasures or cross outs may invalidate all or part of your ballot. Prior to submitting your ballot, if you make a mistake in completing the ballot or wish to change your ballot choices, you may obtain and complete a new ballot. You have a right to a replacement ballot upon return of the original ballot.

(8) AFTER COMPLETING YOUR BALLOT, INSERT IT INTO THE BALLOT SCANNER AND WAIT FOR THE NOTICE THAT YOUR BALLOT HAS BEEN SUCCESSFULLY SCANNED. IF NO SUCH NOTICE APPEARS, SEEK THE ASSISTANCE OF AN ELECTION INSPECTOR.

6. THE INSTRUCTIONS IN SUBDIVISION FIVE OF THIS SECTION MAY BE PRINTED ON THE FRONT OR BACK OF THE BALLOT OR ON A SEPARATE SHEET OR CARD. IF SUCH INSTRUCTIONS ARE NOT PRINTED ON THE FRONT OF THE BALLOT, THERE SHALL BE PRINTED ON THE BALLOT, IN THE LARGEST SIZE TYPE FOR WHICH THERE IS ROOM, THE FOLLOWING LEGEND: "SEE INSTRUCTIONS ON THE OTHER SIDE" OR "SEE ENCLOSED INSTRUCTIONS", WHICHEVER IS APPROPRIATE.

7. Each such ballot shall be printed in sections in which the candidates' names[, emblems] and political designations, the ballot proposals and other requisite matter shall each be boxed in by heavy black PERPENDICULAR lines OF EQUAL WIDTH. [On the ballot] IN EACH SUCH SECTION shall be voting OVALS OR squares [in] which voters may [make their voting marks] FILL IN. [All voting squares shall be bounded by heavy black lines, the perpendicular lines to be not less than one-sixteenth of an inch wide. The voting squares and the spaces occupied by the emblem shall have a depth and width of five-sixteenths of an inch. No voting] IF APPLICABLE, OVALS OR squares shall be provided [in front of] NEXT TO the blank spaces provided for a voter to write in a name.

S 2. Paragraphs (c) and (d) of subdivision 1 of section 7-122 of the election law, paragraph (c) as amended by chapter 259 of the laws of 1991, paragraph (d) as amended by chapter 9 of the laws of 1978, subparagraph 3 of paragraph (d) as amended by chapter 156 of the laws of 1994, subparagraph 4 of paragraph (d) as amended by chapter 352 of the laws of 1986, subparagraph 5 of paragraph (d) as amended by chapter 118 of the laws of 1985 and subparagraphs 6 and 7 of paragraph (d) as added by chapter 244 of the laws of 2003, are amended to read as follows:

(c) The indorsement shall be printed [on the front of the ballot and may also be printed on the back of the ballot just to the right of center, and outside when the ballot is folded] AND PROPERLY FILLED IN:

[Absentee Ballot for General (or Primary or Special) Election County of..... (Date of Election.) (Facsimile of the signature of officer or officers providing the ballot.)]

OFFICIAL ABSENTEE BALLOT FOR (GENERAL, PRIMARY OR SPECIAL, AS APPLICABLE)
ELECTION
COUNTY OF.....
(ASSEMBLY OR LEGISLATIVE, AS APPLICABLE) DISTRICT.....
(WARD AND CITY OR TOWN, AS APPLICABLE).....
(INSERT DATE OF ELECTION)
(INSERT NAMES OF ELECTION COMMISSIONERS PROVIDING THE BALLOT)

(d) On the front of the ballot PREPARED FOR COUNTING BY HAND, shall be printed in heavy black type the following instructions:

INSTRUCTIONS

1. Mark in pen or pencil.

2. To vote for a candidate whose name is printed on this ballot, make a single cross X mark or a single check, V mark in the voting square above the name of the candidate.

3. To vote for a person whose name is not printed on this ballot write or stamp [the] HIS OR HER name in the [blank] space [which] THAT appears at the bottom of the column [under the title of the office.] OR THE END OF THE ROW (INDICATE WHERE ON THE BALLOT THE WRITE-IN SPACE APPEARS) CONTAINING THE TITLE OF THE OFFICE.

4. To vote on a proposal make a cross X mark or a check V mark in one of the squares contained in the box setting forth such proposal.

5. Any other mark or writing, or any erasure made on this ballot outside the voting squares or blank spaces provided for voting will void this entire ballot.

6. Do not overvote. If you select a greater number of candidates than there are vacancies to be filled, your ballot will be void for that public office [or], party position OR PROPOSAL.

7. If you tear, or deface, or wrongly mark this ballot, call the board of elections at ([Insert] INSERT phone number here) for instructions on how to obtain a new ballot. Do not attempt to correct mistakes on the ballot by making erasures or cross outs. Erasures or cross outs may invalidate all or part of your ballot. Prior to submitting your ballot, if you make a mistake in completing the ballot or wish to change your ballot choices, you may obtain and complete a new ballot. You have a right to a replacement ballot upon return of the original ballot.

S 3. Section 7-104 of the election law, as amended by chapter 654 of the laws of 1985, subdivision 1 as amended by chapter 181 of the laws of 2005, paragraph (b) of subdivision 4 and subdivision 7 as amended, subdivision 8 as added and subdivisions 9 and 10 as renumbered by chapter 262 of the laws of 1986, and subdivision 6 as amended by chapter 79 of the laws of 1992, is amended to read as follows:

S 7-104. Ballots; form of, voting machine. 1. All ballots shall be printed and/or displayed in a format and arrangement, of such uniform size and style as will fit the ballot frame, and shall be in as plain and clear a type or display as the space will reasonably permit. Such type or display on the ballot shall satisfy all requirements and standards set forth pursuant to the federal Help America Vote Act.

2. The names of parties or independent bodies which contain more than fifteen letters may, whenever limitations of space so require, be printed on the ballot in an abbreviated form. In printing the names of candidates whose full names contain more than fifteen letters, only the surname must be printed in full. The officer or board charged with the duty of preparing the ballots shall request each such candidate to indicate, in writing, the shortened form in which, subject to this restriction, his name shall be printed. If no such indication is received from such candidate within the time specified in the request, such officer or board shall make the necessary determination.

3. [The face of the ballot shall be completely covered with a protective covering of smooth, hard, transparent material so that it shall be impossible to alter the face of the ballot without removing or breaking such covering.

4.] (a) The [party emblem for each political party represented on the machine, and the] party name or other designation, and a designating letter and number shall be affixed to the name of each candidate, or, in case of presidential electors, to the names of the candidates for president and vice-president of such party.

(b) The titles of offices may be arranged horizontally, with the names of candidates for an office and the slot or device for write-in ballots for such office arranged vertically under the title of the office, or the titles of offices may be arranged vertically, with the names of candidates for an office and the slot or device for write-in ballots for such office arranged horizontally opposite the title of the office.

(c) Each office shall occupy as many columns or rows on the machine as the number of candidates to be elected to that office.

[5.] 4. (a) The names of all candidates nominated by any party or independent body for an office shall always appear in the row or column

containing generally the names of candidates nominated by such party or independent body for other offices except as hereinafter provided.

(b) When the same person has been nominated for an office to be filled at the election by more than one party, the voting machine shall be so adjusted that his OR HER name shall appear in each row or column containing generally the names of candidates for other offices nominated by any such party.

(c) If such candidate has also been nominated by one or more independent bodies, his OR HER name shall appear only in each row or column containing generally the names of candidates for other offices nominated by any such party and the name [and emblem] of each such independent body shall appear in one such row or column to be designated by the candidate in a writing filed with the officer or board charged with the duty of providing ballots, or if such person shall fail to so designate, the names [and emblems] of such independent bodies shall appear in such row or column as such officer or board shall determine.

(d) If any person shall be nominated for any office by one party and two or more independent bodies his OR HER name shall appear on the voting machine twice; once in the row or column containing generally the names of candidates for other offices nominated by such party, and once in the row or column containing generally the names of candidates nominated by the independent body designated by such person in a writing filed with the officer or board charged with the duty of providing ballots and in connection with the name of such person in such row or column shall appear the name [and emblem] of each independent body nominating him OR HER or, if such person shall fail to so designate, the name of such candidate and the names [and emblems] of such independent bodies shall appear in such row or column as such officer or board shall determine.

(e) If any person is nominated for any office only by more than one independent bodies, his OR HER name shall appear but once upon the machine in one such row or column to be designated by the candidate in a writing filed with the officer or board charged with the duty of providing ballots, or if the candidate shall fail to so designate, in the place designated by the officer or board charged with the duty of providing ballots, and in connection with his OR HER name there shall appear the name [and emblem] of each independent body nominating him OR HER, but, where the capacity of the machine will permit, the name of such person shall not appear or be placed in a column or on a horizontal line with the names of persons nominated by a party for other offices.

[6.] 5. Notwithstanding the provisions of subdivision [five] FOUR of this section, the name of a person who is nominated for the office of governor, or state senator, or member of assembly, shall appear on the ballot [labels of the machine] as many times as there are parties or independent bodies nominating him OR HER, and there shall be a separate voting and registering device at each place in which such name shall appear.

[7. The machine shall be so adjusted that when levers or devices for voting, and slots or devices for write-in ballots, equal to the total number of persons to be elected to an office or position shall have been operated, all other such levers or devices for voting, and slots or devices for write-in ballots used in connection with that office or position shall be thereby locked. All levers or devices shall be locked in any space which does not contain the name of a candidate or a question to be voted on.

8.] 6. If any type of machine used in any county or city contains any feature, the use of which is neither required nor prohibited by the provisions of this chapter, the board of elections may, by resolution, require that one or more of such features shall be used in such county. Thereafter all machines of such type used in such county or city shall be operated in conformity with any such resolution. Any such resolution may thereafter be rescinded by such board and after being so rescinded may be re-adopted. Once re-adopted by any board of elections, such a resolution may not be rescinded again by such board.

[9] 7. The [board of elections shall provide a card or printed slip to be placed in the card holder which] BALLOT shall have printed upon it in black ink for each party or independent row, AT THE HEAD OF THE COLUMN OR THE BEGINNING OF THE ROW containing the names of candidates, the image of a closed fist with index finger extended pointing to the party or independent row. [Inset within the image of the fist on a white space] IN THE SAME SPACE, in black letters as large as the space will permit, shall be printed the name of the party or independent body and at the right of the fist and below the index finger shall be printed in black ink the emblem and the designating letters of the row or column.

[10.] 8. With respect to candidates for the offices of governor and lieutenant governor of a party or independent body, ballots shall be printed so that the names of such candidates for both offices shall appear in the same row or column, with the name of the candidate for governor appearing first and the [machine] BALLOT shall be so adjusted that both offices are voted for jointly and have but one designating letter or number.

S 4. Subdivisions 2, 3, 4, 5, 8, 9 and 10 of section 7-122 of the election law, subdivisions 2 and 3 as added and subdivisions 4 and 9 as renumbered by chapter 352 of the laws of 1986, subparagraphs 6 and 7 of paragraph (e) and subparagraphs 5 and 6 of paragraph (f) of subdivision 2 as added by chapter 244 of the laws of 2003, subdivision 4 as amended by chapter 647 of the laws of 1982, subdivisions 5 and 8 as amended by chapter 235 of the laws of 2000, subdivision 9 as amended by chapter 227 of the laws of 1983 and subdivision 10 as amended by chapter 216 of the laws of 1988, are amended to read as follows:

2. The following provisions shall apply to all absentee ballots prepared for counting by A ballot [counting machines] SCANNER and all other provisions of this chapter not inconsistent with this subdivision shall be applicable to such ballots[.]:

(a) The party emblem need not be printed next to the name of each candidate.

(b) [The blank spaces provided for the voter to write in a name may be on the back of the ballot.

(c)] The ballot proposals may be on the back of the ballot, or on a separate ballot.

[(d) The election district, the ward or legislative district if any, the town or city and the assembly district (in New York city and Nassau county) shall be written, stamped or printed on the back of each such ballot.

(e) If such ballot is a ballot which is marked with a writing instrument, the] (C) THE printed instructions to the voter shall read as follows:

INSTRUCTIONS

1. Mark only with [the] A PEN OR pencil [supplied with this ballot].

2. To vote for a candidate whose name is printed on this ballot, fill in the [voting square] (INSERT OVAL OR SQUARE, AS APPLICABLE) above [(]or next to[)] the name of the candidate.

3. To vote for a person whose name is not printed on this ballot, write [the] OR STAMP HIS OR HER name in the [blank] space [(indicate where on ballot the write-in line appears)] LABELED "WRITE-IN" THAT APPEARS (INSERT AT THE BOTTOM OF THE COLUMN OR THE END OF THE ROW, AS APPLICABLE) containing the title of the office[.] AND, IF REQUIRED BY THE VOTING SYSTEM IN USE AT SUCH ELECTION, THE INSTRUCTIONS SHALL ALSO INCLUDE "AND FILL IN THE (INSERT OVAL OR SQUARE, AS APPLICABLE) CORRESPONDING WITH THE WRITE-IN SPACE IN WHICH THE VOTER HAS WRITTEN A NAME."

4. To vote YES OR NO on a proposal, IF ANY, THAT APPEARS ON THE (INDICATE WHERE ON THE BALLOT THE PROPOSAL MAY APPEAR) fill in [one of the squares contained in] the [box setting forth such proposal] (INSERT OVAL OR SQUARE, AS APPLICABLE) THAT CORRESPONDS TO YOUR VOTE.

5. Any other mark or writing, or any erasure made on this ballot outside the voting squares or blank spaces provided for voting will void this entire ballot.

6. Do not overvote. If you select a greater number of candidates than there are vacancies to be filled, your ballot will be void for that public office [or], party position OR PROPOSAL.

7. If you tear, or deface, or wrongly mark this ballot, call the board of elections at ([Insert] INSERT phone number here) for instructions on how to obtain a new ballot. Do not attempt to correct mistakes on the ballot by making erasures or cross outs. Erasures or cross outs may invalidate all or part of your ballot. Prior to submitting your ballot, if you make a mistake in completing the ballot or wish to change your ballot choices, you may obtain and complete a new ballot. You have a right to a replacement ballot upon return of the original ballot.

[(f) If such ballot is a ballot in which holes are to be punched, the printed instructions to the voter shall read as follows:

INSTRUCTIONS

1. To vote for a candidate whose name is printed on this ballot, punch out the voting square (or circle) above (or next to) the name of the candidate.

2. To vote for a person whose name is not printed on this ballot, write the name in the blank space (indicate where on ballot write-in line appears) containing the title of the office.

3. To vote on a proposal, punch out one of the squares (or circles) contained in the box setting forth such proposal.

4. Any other mark or writing, or any erasure made on this ballot outside the voting squares (or circles) or blank spaces provided for voting will void this entire ballot.

5. Do not overvote. If you select a greater number of candidates than there are vacancies to be filled, your ballot will be void for that public office or party position.

6. If you tear, or deface, or wrongly mark this ballot, call the board of elections at (Insert phone number here) for instructions on how to obtain a new ballot. Prior to submitting your ballot, if you make a mistake in completing the ballot or wish to change your ballot choices, you may obtain and complete a new ballot. You have a right to a replacement ballot upon return of the original ballot.

(g)] (D) Such instructions may be printed on the front or back of the ballot or on a separate sheet or card. If such instructions are not printed on the front of the ballot, there shall be printed on the ballot, in the largest size type for which there is room, the following

legend: "See instructions on other side" or "See enclosed instructions", whichever is appropriate.

[(h)] (E) Such ballots which are to be counted by A ballot [counting machines] SCANNER may consist of two or more [cards] SHEETS, which are divided into perforated sections which can be separated at the time of canvassing.

3. [The board of elections shall deliver to each voter, together with each ballot which is marked with a writing instrument, an instrument whose markings can be read by such machines and together with each ballot in which holes are punched, an instrument suitable for punching the necessary holes in such ballot.

4.] The determination of the appropriate county board of elections as to the candidates duly designated or nominated for public office or party position whose name shall appear on the absentee ballot and as to ballot proposals to be voted on shall be made no later than the day after the state board of elections issues its certification of those candidates to be voted for at the general, special or primary election. The determinations of the state board of elections and the respective county boards of elections shall be final and conclusive with respect to such offices for which petitions or certificates are required to be filed with such boards, as the case may be but nothing herein contained shall prevent a board of elections, or a court of competent jurisdiction from determining at a later date that any such certification, designation or nomination is invalid and, in the event of such later determination, no vote cast for any such nominee by any voter shall be counted at the election.

5. The board of elections shall furnish with each absentee ballot an INNER AFFIRMATION envelope. On one side of the envelope shall be printed:

OFFICIAL ABSENTEE BALLOT
for
GENERAL (OR PRIMARY OR SPECIAL) ELECTION,

....., 20.....
Name of voter.....
Residence (street and number if any).....
City/or town of.....(village, if any).....
County of.....
Assembly district [(only in New York City and county of Nassau)].....
LEGISLATIVE DISTRICT (AS APPLICABLE).....
Ward (AS APPLICABLE).....
Election District.....
Party Enrollment (in case of primary election).....

8. On the reverse side of such INNER AFFIRMATION envelope shall be printed the following statement:

[STATEMENT OF ABSENTEE VOTER] AFFIRMATION

I do declare that I am a citizen of the United States, that I am duly registered in the election district shown on the reverse side of this envelope and I am qualified to vote in such district; that I will be unable to appear personally on the day of the election for which this ballot is voted at the polling place of the election district in which I am a qualified voter because of the reason given on my application heretofore submitted; that I have not qualified nor do I intend to vote

elsewhere, that I have not committed any act nor am I under any impediment which denies me the right to vote.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of absentee voter, I shall be guilty of a misdemeanor.

Date.....20..... .....
Signature or mark of voter

.....
Signature of Witness (required only if voter does not sign his own name)

.....
Address of Witness

9. The INNER AFFIRMATION envelope shall be gummed, ready for sealing, and shall have printed thereon, on the side opposite the statement, instructions as to the duties of the voter after the marking of the ballot, which instructions shall include a specific direction stating when such [envelope] BALLOT must be postmarked and when such [envelope] BALLOT must reach the office of the board of elections in order to be canvassed.

10. Each ballot envelope shall be enclosed in [a second] AN OUTER envelope addressed to the APPROPRIATE board of elections and bearing ON IT a specific direction that if an ORIGINAL application for AN absentee ballot is received with the ballot, such application must be completed by the voter and returned in [such] THE OUTER envelope together with the SEALED INNER AFFIRMATION envelope containing the absentee ballot WITHIN THE TIME LIMITS FOR RECEIPT OF THE ABSENTEE BALLOT ITSELF. Such [second envelope] INNER AFFIRMATION ENVELOPE AND OUTER ENVELOPE shall be enclosed in a third envelope addressed to the absentee voter. The [second] OUTER and third envelopes shall have printed on the face thereof the words "Election Material--Please Expedite".

S 5. This act shall take effect immediately.