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

6248

2009-2010 Regular Sessions

I N S E N A T E

October 26, 2009

Introduced by Sens. PERKINS, ADDABBO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the election law, the municipal home rule law and the administrative code of the city of New York, in relation to the determination of a winner of a primary election; and to repeal certain provisions of the election law and the administrative code of the city of New York relating thereto

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

Section 1. Section 6-160 of the election law is amended by adding a new subdivision 3 to read as follows:

3. THE INDIVIDUAL WHO RECEIVES THE HIGHEST PERCENTAGE OF THE TOTAL VOTES CAST AT THE PRIMARY SHALL BE DEEMED THE WINNER OF THE PRIMARY.

S 2. Section 6-162 of the election law is REPEALED.

S 3. Paragraph (b) of subdivision 1 of section 8-100 of the election law is REPEALED and paragraph (c), as relettered by chapter 373 of the laws of 1978, is relettered paragraph (b).

S 4. Paragraph d of subdivision 1 of section 15-104 of the election law, as amended by chapter 684 of the laws of 2006, is amended to read as follows:

d. Except as otherwise provided by law, to be elected in a village election, a candidate must receive more votes than any other candidate for the office. In the event of a tie at a village election, [a run-off election shall be conducted pursuant to the provisions of section 15-126 of this article; provided, however, that if all candidates receiving an equal number of votes agree to waive a run-off election,] the election shall be determined according to the provisions of paragraph [d] B of subdivision two of section 15-126 of this article.

S 5. Subdivision 2 of section 15-126 of the election law, as amended by chapter 684 of the laws of 2006, is amended to read as follows:

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

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2. a. The person or persons eligible and receiving the highest number of votes for an office shall be elected thereto.

b. In the event that more eligible persons than the number remaining to be elected receive for the same office or offices an equal number of votes, the [board of trustees shall conduct a run-off election. Such run-off election shall be held on the first Tuesday at least ten days after the final certification of such tie result, subject to the provisions of paragraph b of subdivision three of section 15-104 of this article, provided, however, that the only persons who shall be deemed nominated shall be those persons who shall have received such equal number of votes. The order of the candidates names on the ballot shall be determined by a drawing conducted by a village clerk, in the presence of all those persons who received such equal number of votes, or a representative of such persons.

c. Such run-off election may be waived and the selection made by lot as otherwise provided by this section if each person who shall have received such equal number of votes shall file with the village clerk, no later than two days after such final certification of such tie result, a written notice of consent that such selection be made by lot.

d. If a waiver of such run-off election shall occur, the] village clerk, no later than two days after receiving written notice [of consent that such selection be made by lot], shall certify such facts in writing to any supreme court justice within the judicial district in which such village is located and shall within three days summon the candidates before him or her and he or she shall by lot determine which of them shall be elected.

S 6. Section 16-116 of the election law is amended to read as follows:

S 16-116. Proceedings; provisions in relation thereto. A special proceeding under the foregoing provisions of this article shall be heard upon a verified petition and such oral or written proof as may be offered, and upon such notice to such officers, persons or committees as the court or justice shall direct, and shall be summarily determined. The proceeding shall have preference over all other causes in all courts. The petition in any such proceeding instituted by the state or other board of elections shall be verified by the persons specified in accordance with rules promulgated by the state board of elections. [In the city of New York, a proceeding relating to a run-off primary brought pursuant to this article shall have first preference over all other proceedings.]

S 7. Paragraph f of subdivision 1 of section 11 of the municipal home rule law, as amended by chapter 21 of the laws of 1992, is amended to read as follows:

f. Applies to or affects any provision of paragraph [(c)] (B) of subdivision one of section 8-100 of the election law, the labor law, sections two, three and four of chapter one thousand eleven of the laws of nineteen hundred sixty-eight, entitled "An act in relation to the maximum hours of labor of certain municipal and fire district firemen and the holidays of firemen and policemen, repealing certain sections of the labor law relating thereto, and to amend the municipal home rule law, in relation thereto," as amended, the volunteer [firemen's] FIRE-FIGHTER'S benefit law, or the [workmen's] WORKERS' compensation law or changes any provision of the multiple residence law or the multiple dwelling law, except that in a city of one million persons or more, the provisions of local law for the enforcement of the housing code which is not less restrictive than the multiple dwelling law may be applied in the enforcement of the multiple dwelling law.

S 8. Subdivision 10 of section 3-702 of the administrative code of the city of New York, as amended by local law number 12 of the city of New York for the year 2003, is amended to read as follows:

10. The term "covered election" shall mean any primary, [run-off primary,] special[, run-off special] or general election for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council.

S 9. Paragraph (f) of subdivision 1 of section 3-703 of the administrative code of the city of New York, as amended by local law number 105 of the city of New York for the year 2005, is amended to read as follows:

(f) not accept and his or her principal committee or authorized committees must not accept, either directly or by transfer, any contribution or contributions from any one individual, partnership, political committee, labor organization or other entity for all covered elections held in the same calendar year in which he or she is a participating candidate or a non-participating candidate which in the aggregate: (i) for the office of mayor, public advocate or comptroller shall exceed four thousand five hundred dollars, or (ii) for borough president, shall exceed three thousand five hundred dollars, or (iii) for member of the city council, shall exceed two thousand five hundred dollars; provided that a participating candidate and his or her principal committee or a non-participating candidate and his or her authorized committees may accept additional contributions which do not exceed one half the amount of the applicable limitation for any [run-off primary election,] additional day for voting held pursuant to section 3-108 of the New York state election law, special election to fill a vacancy, [run-off special election to fill a vacancy,] delayed or otherwise postponed election, or election held pursuant to court order which is a covered election and in which the candidate seeks nomination for election or election; and provided further that for the purposes of this paragraph, contributions made by different labor organizations shall not be aggregated or treated as contributions from a single contributor for purposes of the contribution limit that is set forth in this paragraph if those labor organizations make contributions from different accounts, maintain separate accounts with different signatories, do not share a majority of members of their governing boards, and do not share a majority of the officers of their governing boards; and provided further that if state law prescribes a contribution limitation of a lesser amount, this paragraph shall not be deemed to authorize acceptance of a contribution in excess of such lesser amount. The maximum contributions set forth in this paragraph shall be adjusted in accordance with subdivision seven of this section;

S 10. Subdivision 1-a of section 3-703 of the administrative code of the city of New York, as amended by local law number 67 of the city of New York for the year 2007, is amended to read as follows:

1-a. Notwithstanding any inconsistent provision of this section, a participating candidate or his or her principal committee may not accept, either directly or by transfer, any contribution or contributions for a covered election in which he or she is a participating candidate from a natural person who has business dealings with the city, as that term is defined in subdivision eighteen of section 3-702 of this chapter, if the aggregate of such contributions to such candidate from such person for all covered elections in the same calendar year exceeds: (i) for the office of mayor, public advocate or comptroller four hundred dollars; (ii) for borough president three hundred twenty dollars; and

(iii) for member of the city council two hundred fifty dollars; provided that a participating candidate or his or her principal committee may accept additional contributions which do not exceed one half the amount of the applicable limitation for any [run-off primary election,] additional day for voting held pursuant to section 3-108 of the New York state election law, special election to fill a vacancy, [run-off special election to fill a vacancy,] delayed or otherwise postponed election, or election held pursuant to court order which is a covered election and in which the candidate seeks nomination for election or election. Any contribution made pursuant to this section shall not be a matchable contribution. For purposes of this subdivision, "person" shall include any chief executive officer, chief financial officer and/or chief operating officer of an entity which has business dealings with the city, any person employed in a senior managerial capacity regarding such an entity, or any person with an interest in such an entity which exceeds ten percent of the entity. For purposes of this subdivision, the phrase "senior managerial capacity" shall mean a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals. Notwithstanding any provision of this subdivision, the limitations on contributions contained herein shall not apply to any contribution made by a natural person who has business dealings with the city to a participating candidate or his or her principal committee where such participating candidate is the contributor, or where such participating candidate is the contributor's parent, spouse, domestic partner, sibling, child, grandchild, aunt, uncle, cousin, niece or nephew by blood or by marriage.

S 11. Subdivision 5 of section 3-705 of the administrative code of the city of New York is REPEALED.

S 12. Paragraph (b) of subdivision 1 of section 3-706 of the administrative code of the city of New York, as amended by local law number 34 of the city of New York for the year 2007, is amended to read as follows:

(b) [(i) The expenditure limitation in a run-off primary election held pursuant to section 6-162 of the New York state election law or a run-off special election held to fill a vacancy shall be one half the amount of the applicable limitation provided for an election for such office pursuant to the provisions of paragraph (a) of this subdivision.

(ii)] The board shall promulgate rules to provide for a separate expenditure limit applicable to campaign expenditures for an additional day for voting held pursuant to section 3-108 of the New York state election law, an election held pursuant to court order, or a delayed or otherwise postponed election.

S 13. Subdivision 3 of section 3-706 of the administrative code of the city of New York, as amended by local law number 58 of the city of New York for the year 2004, subparagraph (iii) of paragraph (a) and subparagraph (iii) of paragraph (b) as amended by local law number 67 of the city of New York for the year 2007, is amended to read as follows:

3. (a) If any candidate in any covered election chooses not to file a certification as a participating or limited participating candidate pursuant to this chapter, and where the campaign finance board has determined that such candidate and his or her authorized committees have spent or contracted or have obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds half

the applicable expenditure limit for such office fixed by subdivision one of this section, then:

(i) such expenditure limit applicable to participating candidates and limited participating candidates in such election for such office shall be increased to one hundred fifty percent of such limit; and

(ii) the principal committees of such participating candidates shall receive payment for qualified campaign expenditures of five dollars for each one dollar of matchable contributions, up to one thousand two hundred fifty dollars in public funds per contributor (or up to six hundred twenty five dollars in public funds per contributor in the case of a special election); provided, however, that [(A) participating candidates in a run-off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B)] in no case shall a principal committee receive in public funds an amount exceeding two-thirds of the expenditure limitation provided for such office in subdivision one of this section.

(iii) for elections occurring after January first, two thousand eight, the campaign finance board shall promulgate rules to provide that the principal committees of such participating candidates shall receive payment for qualified campaign expenditures that will provide the highest allowable matchable contribution to be matched by an amount up to one thousand two hundred fifty dollars in public funds per contributor (or up to six hundred twenty five dollars in public funds per contributor in the case of special election); provided, however, that [(A) participating candidates in a run-off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B)] in no case shall a principal committee receive in public funds an amount exceeding two-thirds of the expenditure limitation provided for such office in subdivision one of this section.

(b) If any candidate in any covered election chooses not to file a certification as a participating or limited participating candidate pursuant to this chapter, and where the campaign finance board has determined that such candidate and his or her authorized committees have spent or contracted or have obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds three times the applicable expenditure limit for such office fixed by subdivision one of this section, then:

(i) such expenditure limit shall no longer apply to participating candidates and limited participating candidates in such election for such office; and

(ii) the principal committees of such participating candidates shall receive payment for qualified campaign expenditures of six dollars for each one dollar of matchable contributions, up to one thousand five hundred dollars in public funds per contributor (or up to seven hundred fifty dollars in public funds per contributor in the case of a special election); provided, however, that [(A) participating candidates in a run-off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B)] in no case shall a principal committee receive in public funds an amount exceeding one hundred twenty-five percent of the expenditure limitation provided for such office in subdivision one of this section.

(iii) for elections occurring after January first, two thousand eight, the campaign finance board shall promulgate rules to provide that the

principal committees of such participating candidates shall receive payment for qualified campaign expenditures that will provide the highest allowable matchable contribution to be matched by an amount up to one thousand five hundred dollars in public funds per contributor (or up to seven hundred fifty dollars in public funds per contributor in the case of special election); provided, however, that [(A) participating candidates in a run-off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B)] in no case shall a principal committee receive in public funds an amount exceeding one hundred twenty-five percent of the expenditure limitation provided for such office in subdivision one of this section.

S 14. Subdivision 6 of section 3-709 of the administrative code of the city of New York is REPEALED.

S 15. Paragraph (b) of subdivision 1 of section 3-709.5 of the administrative code of the city of New York is REPEALED and paragraphs (c) and (d) are relettered paragraphs (b) and (c).

S 16. Subdivision 4 of section 3-709.5 of the administrative code of the city of New York, as amended by local law number 58 of the city of New York for the year 2004, is amended to read as follows:

4. Organizations which are not affiliated with any political party or with any holder of or candidate for public office, which have not endorsed any candidate in the pending primary, special, OR general[, or run-off] election for the city-wide office shall be eligible to sponsor one or more of the required debates. The rules for conducting such debates shall be solely the responsibility of the organizations selected but shall not be made final without consultation with the campaign finance board. The organizations selected shall be responsible for choosing the date, time and location of the debates.

S 17. Subparagraph (ii) of paragraph (b) of subdivision 5 of section 3-709.5 of the administrative code of the city of New York, as amended by local law number 34 of the city of New York for the year 2007, is amended to read as follows:

(ii) If a debate sponsor has determined that a non-participating candidate has met all the non-partisan, objective, and non-discriminatory criteria applicable to participating candidates or limited participating candidates for access to any of the primary, general, or special election debates, the sponsor may invite that candidate to participate in such debate. [In the case of a run-off primary election or a run-off special election, the sponsor may invite a non-participating candidate to participate in such debate. However, if a non-participating candidate does not accept such invitation to debate or does not appear at such debate, the debate shall go forward as scheduled; provided, however, if there is only one participating candidate or limited participating candidate participating in any such debate, such debate shall be canceled.]

S 18. Subdivision 9 of section 3-709.5 of the administrative code of the city of New York, as amended by local law number 58 of the city of New York for the year 2004, is amended to read as follows:

9. If a candidate fails to participate in any debate required under this section before an election, the candidate shall be liable for return of any public matching funds previously received pursuant to the certification filed by the candidate in connection with the election for which such debate is held, shall be ineligible to receive any further matching funds for that election, and may be subject to a civil penalty pursuant to section 3-711. For purposes of this subdivision, each prima-

ry, general, OR special [or run-off] election shall be considered a separate election.

S 19. This act shall take effect immediately.