

3432

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. BRADLEY, CAHILL, GALEF, PAULIN, KAVANAGH --
Multi-Sponsored by -- M. of A. BRENNAN, DINOWITZ, GOTTFRIED, LATIMER,
MAYERSOHN, PERRY, WEISENBERG -- read once and referred to the Commit-
tee on Election Law

AN ACT to amend the election law, in relation to court proceedings
involving disputed election results

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

1 Section 1. The election law is amended by adding a new section 16-103
2 to read as follows:
3 S 16-103. PROCEEDINGS INVOLVING GENERAL OR SPECIAL ELECTION RESULTS.
4 1. AN AGGRIEVED CANDIDATE MAY CONTEST ANY SPECIAL OR GENERAL ELECTION IN
5 A PROCEEDING BROUGHT IN THE SUPREME COURT.
6 2. A PROCEEDING PURSUANT TO THIS SECTION SHALL BE INSTITUTED WITHIN
7 TWENTY DAYS AFTER THE ELECTION TO WHICH IT RELATES. ANY PARTY MAY DEMAND
8 THAT ISSUES OF FACT IN A PROCEEDING PURSUANT TO THIS SECTION BE DETER-
9 MINED BY JURY TRIAL. THE COURT SHALL GIVE THE PARTIES AN OPPORTUNITY TO
10 DEMAND A JURY TRIAL. FAILURE TO MAKE SUCH A DEMAND WITHIN THE TIME
11 LIMITED BY THE COURT, OR, IF NO SUCH TIME IS LIMITED, BEFORE THE TRIAL
12 BEGINS, SHALL BE DEEMED A WAIVER OF THE RIGHT TO TRIAL BY JURY.
13 3. IN A PROCEEDING PURSUANT TO THIS SECTION THE COURT SHALL ORDER A
14 NEW ELECTION IF CLEAR AND CONVINCING EVIDENCE DEMONSTRATES THAT FRAUD,
15 IRREGULARITY OR VOTING MACHINE FAILURE DEPRIVED THE AGGRIEVED CANDIDATE
16 OF A WINNING MARGIN OF VOTES. SUCH NEW ELECTION SHALL INCLUDE ALL DULY
17 ENROLLED VOTERS RESIDING IN THE POLITICAL SUBDIVISION EMBRACING THE
18 OFFICE CONTESTED. SUCH ELECTION SHALL BE HELD ON THE FIFTH TUESDAY AFTER
19 THE COURT'S ORDER IS ISSUED; PROVIDED, HOWEVER, IF THE FIFTH TUESDAY IS
20 A RELIGIOUS, FEDERAL OR STATE HOLIDAY THE NEW ELECTION SHALL BE HELD ON
21 THE NEXT SUCCEEDING TUESDAY THEREAFTER WHICH IS NOT A RELIGIOUS, FEDERAL
22 OR STATE HOLIDAY.

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

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1 4. ALL CANDIDATES ON THE BALLOT AT THE ORIGINAL ELECTION FOR THE
2 CONTESTED OFFICE SHALL BE ON THE BALLOT AT THE NEW ELECTION; PROVIDED,
3 HOWEVER, IF THE OFFICE CONTESTED IS ONE FOR WHICH A VOTER MAY CAST
4 MULTIPLE VOTES FOR TWO OR MORE CANDIDATES FOR THE SAME OFFICE, ANY
5 CANDIDATE FOR SUCH OFFICE WHOSE WINNING MARGIN AT THE ORIGINAL ELECTION
6 IS NOT BY CLEAR AND CONVINCING EVIDENCE SHOWN TO BE INVALID, SHALL HAVE
7 BEEN DULY ELECTED AT THE ORIGINAL ELECTION, AND THE NUMBER OF POSITIONS
8 TO BE ELECTED AT THE NEW ELECTION SHALL BE REDUCED ACCORDINGLY.

9 5. THE COURT MAY ISSUE AN INJUNCTION TO PREVENT A CANDIDATE FROM
10 WRONGLY ASSUMING OFFICE UNTIL SUCH TIME AS THE NEW ELECTION SHALL BE
11 HELD. THE PROVISIONS OF SECTION FIVE OF THE PUBLIC OFFICERS LAW SHALL
12 APPLY IN THE INTERIM.

13 6. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT RIGHTS OR REME-
14 DIES AVAILABLE PURSUANT TO THIS CHAPTER.

15 S 2. This act shall take effect immediately and shall apply to any
16 election held on or after such effective date.