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

6799

2011-2012 Regular Sessions

I N A S S E M B L Y

March 31, 2011

Introduced by M. of A. MOLINARO -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to allowing application by military voters for absentee ballots by electronic means

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

Section 1. Paragraphs (a) and (c) of subdivision 2 of section 8-400 of the election law, paragraph (a) as amended by chapter 263 of the laws of 1991 and paragraph (c) as amended by chapter 321 of the laws of 1988, are amended to read as follows:

(a) Application forms shall be furnished by and may be obtained from any board of elections at any time until the day before such election. FOR ANY ELECTIONS AFTER JANUARY FIRST, TWO THOUSAND TWELVE, APPLICATION FORMS SHALL BE MADE AVAILABLE FOR QUALIFIED MILITARY VOTERS BY ELECTRONIC MEANS WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, TELEFACSIMILE TRANSMISSION OR ELECTRONIC MAIL. Application forms shall also be supplied by the board of inspectors of the election district in which applicant is a qualified voter on all of the days provided for local registration. In addition, application forms shall be supplied upon the request of the person authorized to vote pursuant to this section, any such person's spouse, parent or child, a person residing with the applicant as a member of his household, or the applicant's duly authorized agent. Application forms sent outside of the United States to a country other than Canada or Mexico, shall be sent airmail. Any reference to "board of elections" in the remaining provisions of this section, except with respect to the furnishing and obtaining of applications for absentee ballots, means only the board of elections of the county or city in which the applicant is a qualified voter.

(c) All applications must be mailed OR, FOR MILITARY VOTERS, TRANSMITTED BY ELECTRONIC MEANS to the board of elections not later than the

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

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seventh day before the election for which a ballot is first requested or delivered to such board not later than the day before such election.

S 2. Subdivision 10 of section 8-400 of the election law, as amended by chapter 373 of the laws of 1986 and renumbered by chapter 40 of the laws of 2009, is amended to read as follows:

10. The state board of elections shall prescribe a standard application form for use under this section. The use of any application form which substantially complies with the provisions of this section shall be acceptable and any application filed on such a form shall be accepted for filing. THE STATE BOARD OF ELECTIONS SHALL ALSO PRESCRIBE A STANDARD APPLICATION FORM FOR WHICH APPLICATION MAY BE MADE BY MILITARY VOTERS BY ELECTRONIC TRANSMISSION INCLUDING, BUT NOT LIMITED TO, TELEFACSIMILE OR ELECTRONIC MAIL.

S 3. Section 8-406 of the election law, as amended by chapter 296 of the laws of 1988, is amended to read as follows:

S 8-406. Absentee ballots, delivery of. If the board shall find that the applicant is a qualified voter of the election district containing his residence as stated in his statement and that his statement is sufficient, it shall, as soon as practicable after it shall have determined his right thereto, mail to him at an address designated by him, or deliver to him, or to any person designated for such purpose in writing by him, at the office of the board, such an absentee voter's ballot or set of ballots and an envelope therefor. If the ballot or ballots are to be [sent] MAILED outside of the United States to a country other than Canada or Mexico, such ballot or ballots shall be sent by air mail. However, if an applicant who is eligible for an absentee ballot is a resident of a facility operated or licensed by, or under the jurisdiction of, the department of mental hygiene, or a resident of a facility defined as a nursing home or residential health care facility pursuant to subdivisions two and three of section two thousand eight hundred one of the public health law, or a resident of a hospital or other facility operated by the Veteran's Administration of the United States, such absentee ballot need not be so mailed or delivered to any such applicant but, may be delivered to the voter in the manner prescribed by section 8-407 of this [chapter] TITLE if such facility is located in the county or city in which such voter is eligible to vote.

S 4. Subdivision 1 of section 8-412 of the election law, as amended by chapter 155 of the laws of 1994, is amended to read as follows:

1. The board of elections shall cause all absentee ballots received by it before the close of the polls on election day and all ballots contained in envelopes showing a cancellation mark of the United States postal service or a foreign country's postal service, or showing a dated endorsement of receipt by another agency of the United States government, OR, IF ELECTRONICALLY TRANSMITTED, SHOWING A COMPUTER-GENERATED TIME AND DATE STAMP with a date which is ascertained to be not later than the day before election and received by such board of elections not later than seven days OR, IN THE CASE OF A MILITARY VOTER UTILIZING AN ABSENTEE BALLOT, THIRTY DAYS, following the day of election to be cast and counted except that the absentee ballot of a voter who requested such ballot by letter, rather than application, shall not be counted unless a valid application form, signed by such voter, is received by the board of elections with such ballot.

S 5. Subdivisions 7-a and 11 of section 10-106 of the election law, subdivision 7-a as added by chapter 348 of the laws of 1991 and subdivision 11 as amended by chapter 104 of the laws of 2010, are amended to read as follows:

7-a. If a federal post card OR ELECTRONICALLY TRANSMITTED application form is received from a person who is qualified to vote as a military voter but who has not previously registered pursuant to the provisions of this article, such federal post card OR ELECTRONICALLY TRANSMITTED application form shall be treated in all respects as an application for registration and enrollment as a military voter and for a military ballot pursuant to the provisions of this article. If such a federal post card OR ELECTRONICALLY TRANSMITTED application form is received from a person already registered as a military voter pursuant to the provisions of this article, such application shall be treated in all respects as an application for a military ballot pursuant to the provisions of this article.

11. A board of elections may send to any spouse, parent, or adult child, brother or sister of a military voter serving inside or outside of the continental limits of the United States, an application for a military ballot, in a form prescribed by the state board of elections. Such application shall be on a postcard addressed to OR SUBMITTED BY ELECTRONIC MEANS TO the appropriate board of elections and shall include the statement "I understand that this application will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn". Such application may be signed by the spouse, parent or adult child, brother or sister of such military voter. Upon receipt of such an application from such a relative of a military voter, the board of elections shall mail OR TRANSMIT ELECTRONICALLY a military ballot to such military voter together with an application for a military ballot and instructions that such application must be completed and returned together with the envelope containing the military ballot EITHER BY MAIL OR ELECTRONIC MEANS. No ballot sent to a military voter upon the application of a relative of such military voter shall be cast or canvassed unless a completed application for military ballot signed by such military voter is returned within the time limits for the receipt of the military ballot itself.

S 6. Subdivision 1 of section 10-108 of the election law, as amended by chapter 104 of the laws of 2010, paragraph (a) as amended by chapter 4 of the laws of 2011, is amended to read as follows:

1. (a) Ballots for military voters shall be mailed or otherwise distributed by the board of elections, in accordance with the preferred method of transmission designated by the voter pursuant to section 10-107 of this article, as soon as practicable but in any event not later than thirty-two days before a primary or general election; twenty-five days before a New York city community school board district or city of Buffalo school district election; fourteen days before a village election conducted by the board of elections; and forty-five days before a special election. A voter who submits a military ballot application shall be entitled to a military ballot thereafter for each subsequent election through and including the next two regularly scheduled general elections held in even numbered years, including any run-offs which may occur; provided, however, such application shall not be valid for any election held within seven days after its receipt. Ballots shall also be mailed OR TRANSMITTED ELECTRONICALLY to any qualified military voter who is already registered and who requests such military ballot from such board of elections in a letter OR ELECTRONIC TRANSMISSION, which is signed by the voter and received by the board of elections not later than the seventh day before the election for which the ballot is requested and which states the address where the voter is registered and

the address to which the ballot is to be mailed. The board of elections shall enclose with such ballot a form of application for military ballot. In the case of a primary election, the board shall deliver only the ballot of the party with which the military voter is enrolled according to the military voter's registration records. In the event a primary election is uncontested in the military voter's election district for all offices or positions except the party position of member of the ward, town, city or county committee, no ballot shall be delivered to such military voter for such election; and the military voter shall be advised of the reason why he or she will not receive a ballot.

(b) Upon the proclamation of a special election by the governor or otherwise pursuant to law, each board of elections shall, not later than three days after the establishment of the date of such special election, transmit by mail, facsimile transmission or electronic mail in accordance with the preferred method of transmission designated by the voter pursuant to section 10-107 of this article, a federal write-in absentee ballot to all military voters eligible to vote by military ballot in such special election.

(c) Each board of elections which is served with a court order restraining or enjoining the issuance of ballots in any election, other than a special election, in which any military voter is entitled to receive a ballot shall immediately notify the state board of elections of such fact and shall transmit in accordance with the preferred method of transmission designated by the voter, a federal write-in absentee ballot to all military voters eligible to vote in such election.

(d) A military voter who has received a federal write-in absentee ballot shall be entitled to receive a certified ballot notwithstanding the prior transmission of a federal write-in absentee ballot to such voter pursuant to paragraph (b) or (c) of this subdivision. Such certified military ballot shall be sent by the board of elections in accordance with the preferred method of transmission designated by the voter pursuant to section 10-107 of this article, or expedited mail if the military voter has not expressed a preference to receive same by facsimile transmission or electronic mail, and his or her request for a military ballot was made at least thirty-two days before the election.

S 7. Subdivisions 2 and 5 of section 10-109 of the election law, as amended by chapter 200 of the laws of 1996, are amended to read as follows:

2. If any ballot, application form or other mail OR ELECTRONIC TRANSMISSION sent to a military voter at his military address by the board of elections is returned by the post office OR COMPUTER SERVER as undeliverable, the board of elections shall ascertain whether the military voter is residing at the address given on his registration records as his permanent address. If he is residing at such address, the board shall not send him any further military ballots unless he applies for them in the regular way, giving a new military OR ELECTRONIC MAIL address. If such military voter is not residing at such permanent address, the board of elections shall send a confirmation notice to such military voter at his last military OR ELECTRONIC MAIL address pursuant to the provisions of section 5-712 of this chapter and shall place the registration of such voter in inactive status. However, if such a voter notifies the board of elections that he has moved to a new military address, OR IS USING A DIFFERENT ELECTRONIC MAIL ADDRESS, the board shall restore the registration of such voter to active status in the manner prescribed by section 5-213 of this chapter.

5. Upon cancelling the registration of a military voter pursuant to the provisions of section 5-400 of this chapter, the board of elections shall forthwith notify such voter at his last military address OR ELECTRONIC MAIL ADDRESS and at his permanent residence address of the fact of the cancellation, the reason therefor, and of his right to reregister pursuant to this article.

S 8. Section 10-112 of the election law, as amended by chapter 104 of the laws of 2010, is amended to read as follows:

S 10-112. Military voter; voting. The military voter shall mark the military ballot provided for in this article in the same manner as an absentee ballot. [After] IF UTILIZING MAIL, AFTER marking the ballot, he or she shall fold such ballot and enclose it in the inner affirmation envelope bearing the military voter's affirmation on the outside of the envelope and seal the envelope. He or she shall then sign the affirmation, with the blanks properly filled in. The inner affirmation envelope containing the military ballot shall then be inserted in the outer envelope addressed to the appropriate board of elections, which shall be mailed or personally delivered to such board of elections of his or her county of residence within the time limits provided by this chapter. IF UTILIZING ELECTRONIC MAIL, THE MILITARY VOTER SHALL FOLLOW THE INSTRUCTIONS CONTAINED ON THE BALLOT FORM.

S 9. Subdivision 1 of section 10-114 of the election law, as amended by chapter 165 of the laws of 2009, is amended to read as follows:

1. The board of elections shall cause all military ballots received by it before the close of the polls on election day and all ballots contained in envelopes showing a cancellation mark of the United States postal service or a foreign country's postal service, or showing a dated endorsement of receipt by another agency of the United States government or are signed and dated by the voter and one witness thereto, OR, IF ELECTRONICALLY TRANSMITTED, SHOWING A COMPUTER GENERATED TIME AND DATE STAMP, with a date which is ascertained to be not later than the day before election and received by such board of elections not later than [seven] THIRTY days following the day of a primary election and not later than thirteen days following the day of a general or special election to be cast and counted.

S 10. This act shall take effect immediately.