

5848

2011-2012 Regular Sessions

I N   S E N A T E

June 22, 2011

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Introduced by Sens. O'MARA, GRIFFO -- read twice and ordered printed,  
and when printed to be committed to the Committee on Rules

AN ACT to amend the election law, in relation to amending certain dead-  
lines to facilitate the timely transmission of ballots to military  
voters stationed overseas; and to amend the public officers law, in  
relation to filling vacancies in elective offices

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

1     Section 1. Section 4-110 of the election law, as amended by chapter  
2     434 of the laws of 1984, is amended to read as follows:  
3     S 4-110. Certification of primary election candidates; state board of  
4     elections. The state board of elections not later than [thirty-six]  
5     FIFTY-FOUR days before a primary election, shall certify to each county  
6     board of elections: The name and residence of each candidate to be voted  
7     for within the political subdivision of such board for whom a desig-  
8     nation has been filed with the state board; the title of the office or  
9     position for which the candidate is designated; the name of the party  
10    upon whose primary ballot his name is to be placed; and the order in  
11    which the names of the candidates are to be printed as determined by the  
12    state board. Where an office or position is uncontested, such certif-  
13    ication shall state such fact.  
14    S 2. Subdivision 1 of section 4-112 of the election law, as amended by  
15    chapter 4 of the laws of 2011, is amended to read as follows:  
16    1. The state board of elections, not later than [thirty-six]  
17    FIFTY-FOUR days before a general election, or fifty-three days before a  
18    special election, shall certify to each county board of elections the  
19    name and residence of each candidate nominated in any valid certificate  
20    filed with it or by the returns canvassed by it, the title of the office  
21    for which nominated; the name of the party or body specified of which he  
22    is a candidate; the emblem chosen to distinguish the candidates of the  
23    party or body; and a notation as to whether or not any litigation is

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

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pending concerning the candidacy. Upon the completion of any such litigation, the state board of elections shall forthwith notify the appropriate county boards of elections of the results of such litigation.

S 3. Section 4-114 of the election law, as amended by chapter 4 of the laws of 2011, is amended to read as follows:

S 4-114. Determination of candidates and questions; county board of elections. The county board of elections, not later than the [thirty-fifth] FIFTY-THIRD day before the day of a primary [or], general OR SPECIAL election, [or the fifty-third day before a special election,] shall determine the candidates duly nominated for public office and the questions that shall appear on the ballot within the jurisdiction of that board of elections.

S 4. Subdivision 1 of section 4-117 of the election law, as amended by chapter 288 of the laws of 2009, is amended to read as follows:

1. The board of elections, [between August first and August fifth of each year] NOT LESS THAN FORTY DAYS NOR MORE THAN FORTY-FIVE DAYS BEFORE THE PRIMARY ELECTION IN EACH YEAR, shall send by first class mail on which is endorsed "ADDRESS CORRECTION REQUESTED" and which contains a request that any such mail received for persons not residing at the address be dropped back in the mail, a communication, in a form approved by the state board of elections, to every registered voter who has been registered without a change of address since the beginning of such year, except that the board of elections shall not be required to send such communications to voters in inactive status. The communication shall notify the voter of the days and hours of the ensuing primary and general elections, the place where he OR SHE appears by his OR HER registration records to be entitled to vote, the fact that voters who have moved or will have moved from the address where they were last registered must re-register or, that if such move was to another address in the same county or city, that such voter may either notify the board of elections of his OR HER new address or vote by paper ballot at the polling place for his OR HER new address even if such voter has not re-registered, or otherwise notified the board of elections of the change of address. If the location of the polling place for the voter's election district has been moved, the communication shall contain the following legend in bold type: "YOUR POLLING PLACE HAS BEEN CHANGED. YOU NOW VOTE AT.....". The communication shall also indicate whether the polling place is accessible to physically disabled voters, that a voter who will be out of the city or county on the day of the primary or general election or a voter who is ill or physically disabled may obtain an absentee ballot, that a physically disabled voter whose polling place is not accessible may request that his OR HER registration record be moved to an election district which has a polling place which is accessible, the phone number to call for applications to move a registration record or for absentee ballot applications, the phone number to call for the location of registration and polling places, the phone number to call to indicate that the voter is willing to serve on election day as an election inspector, poll clerk, interpreter or in other capacities, the phone number to call to obtain an application for registration by mail, and such other information concerning the elections or registration as the board may include. In lieu of sending such communication to every registered voter, the board of elections may send a single communication to a household containing more than one registered voter, provided that the names of all such voters appear as part of the address on such communication.

1 S 5. Subdivision 1 of section 6-108 of the election law, as amended by  
2 chapter 160 of the laws of 1996, is amended to read as follows:

3 1. In any town in a county having a population of over seven hundred  
4 fifty thousand inhabitants, as shown by the latest federal decennial or  
5 special population census, party nominations of candidates for town  
6 offices shall be made at the primary preceding the election. In any  
7 other town, nominations of candidates for town offices shall be made by  
8 caucus or primary election as the rules of the county committee shall  
9 provide, except that the members of the county committee from a town may  
10 adopt by a two-thirds vote, a rule providing that the party candidates  
11 for town offices shall be nominated at the primary election. If a rule  
12 adopted by the county committee of a political party or by the members  
13 of the county committee from a town, provides that party candidates for  
14 town offices, shall be nominated at a primary election, such rule shall  
15 not apply to nor affect a primary held less than four months after a  
16 certified copy of the rule shall have been filed with the board of  
17 elections. After the filing of such a rule, the rule shall continue in  
18 force until a certified copy of a rule revoking the same shall have been  
19 filed with such board at least four months before a subsequent primary.  
20 Such a caucus shall be held no earlier than the first day on which  
21 designating petitions for the [fall] primary election may be signed.

22 S 6. Subdivisions 1 and 2 of section 6-147 of the election law, as  
23 amended by chapter 434 of the laws of 1984, are amended to read as  
24 follows:

25 1. The name of a person designated on more than one petition as a  
26 candidate for a party position to be filled by two or more persons shall  
27 be printed on the ballot with the group of candidates designated by the  
28 petition first filed unless such person, in a certificate duly acknowl-  
29 edged by him and filed with the board of elections not later than the  
30 [eighth] TENTH Tuesday preceding the primary election or five days after  
31 the board of elections mails such person notice of his designation in  
32 more than one group, whichever is later, specifies another group in  
33 which his name shall be printed.

34 2. A person designated as a candidate for the position of member of  
35 the county committee in more than one election district shall be deemed  
36 to have been designated in the lowest numbered election district unless  
37 such person, in a certificate duly acknowledged by him, and filed with  
38 the board of elections not later than the [eighth] TENTH Tuesday preced-  
39 ing the primary election or five days after the board of elections mails  
40 such person notice of his designation in more than one election district  
41 whichever is later, specifies that he wishes to be deemed designated in  
42 a different election district.

43 S 7. Subdivisions 1, 4, 5, 6, 9, 11, 12 and 14 of section 6-158 of the  
44 election law, subdivisions 1, 4, 11 and 12 as amended by chapter 434 of  
45 the laws of 1984, subdivision 6 as amended by chapter 79 of the laws of  
46 1992, and subdivision 9 as amended by chapter 517 of the laws of 1986,  
47 are amended to read as follows:

48 1. A designating petition shall be filed not earlier than the [tenth  
49 Monday] THIRTEENTH FRIDAY before, and not later than the [ninth Thurs-  
50 day] TWELFTH WEDNESDAY preceding the primary election.

51 4. A petition of enrolled members of a party requesting an opportunity  
52 to write in the name of an undesignated candidate for a public office or  
53 party position at a primary election shall be filed not later than the  
54 [eighth Thursday] ELEVENTH WEDNESDAY preceding the primary election.  
55 However, where a designating petition has been filed and the person  
56 named therein has declined such designation and another person has been

1 designated to fill the vacancy, then in that event, a petition for an  
2 opportunity to ballot in a primary election shall be filed not later  
3 than the [seventh Thursday] TENTH WEDNESDAY preceding such primary  
4 election.

5 5. A judicial district convention shall be held not earlier than the  
6 [Tuesday following the third Monday] FIRST TUESDAY in September preced-  
7 ing the general election and not later than the [fourth Monday] FIRST  
8 THURSDAY in September preceding such election.

9 6. A certificate of a party nomination made other than at the primary  
10 election for an office to be filled at the time of a general election  
11 shall be filed not later than seven days after the [fall] primary  
12 election, except that a certificate of nomination for an office which  
13 becomes vacant after the seventh day preceding such primary election  
14 shall be filed not later than fourteen days after the creation of such  
15 vacancy and except, further, that a certificate of party nomination of  
16 candidates for elector of president and vice-president of the United  
17 States shall be filed not later than fourteen days after the [fall]  
18 primary election, and except still further that a certificate of party  
19 nomination made at a judicial district convention shall be filed not  
20 later than the day after the last day to hold such convention and the  
21 minutes of such convention, duly certified by the chairman and secre-  
22 tary, shall be filed within seventy-two hours after adjournment of the  
23 convention. A certificate of party nomination for an office to be  
24 filled at a special election shall be filed not later than ten days  
25 following the issuance of a proclamation of such election.

26 9. A petition for an independent nomination for an office to be filled  
27 at the time of a general election shall be filed not earlier than  
28 [twelve] FOURTEEN weeks and not later than [eleven] THIRTEEN weeks  
29 preceding such election. A petition for an independent nomination for an  
30 office to be filled at a special election shall be filed not later than  
31 twelve days following the issuance of a proclamation of such election. A  
32 petition for trustee of the Long Island Power Authority shall be filed  
33 not earlier than seven weeks and not later than six weeks preceding the  
34 day of the election of such trustees.

35 11. A certificate of acceptance or declination of an independent nomi-  
36 nation for an office to be filled at the time of a general election  
37 shall be filed not later than the third day after the [eleventh] THIR-  
38 TEENTH Tuesday preceding such election except that a candidate who files  
39 such a certificate of acceptance for an office for which there have been  
40 filed certificates or petitions designating more than one candidate for  
41 the nomination of any party, may thereafter file a certificate of decli-  
42 nation not later than the third day after the primary election. A  
43 certificate of acceptance or declination of an independent nomination  
44 for an office to be filled at a special election shall be filed not  
45 later than fourteen days following the issuance of a proclamation of  
46 such election.

47 12. A certificate to fill a vacancy caused by a declination of an  
48 independent nomination for an office to be filled at the time of a  
49 general election shall be filed not later than the sixth day after the  
50 [eleventh] THIRTEENTH Tuesday preceding such election. A certificate to  
51 fill a vacancy caused by a declination of an independent nomination for  
52 an office to be filled at a special election shall be filed not later  
53 than sixteen days following the issuance of a proclamation of such  
54 election.

55 14. A vacancy occurring [before September twentieth of] NOT LESS THAN  
56 THREE MONTHS BEFORE THE NEXT GENERAL ELECTION IN any year in any office

1 authorized to be filled at a general election, except in the offices of  
2 governor, lieutenant-governor, or United States senator shall be filled  
3 at the general election held next thereafter, unless otherwise provided  
4 by the constitution, or unless previously filled at a special election.

5 S 8. Paragraph (a) of subdivision 1 of section 8-100 of the election  
6 law, as amended by chapter 17 of the laws of 2007, is amended to read as  
7 follows:

8 (a) A primary election[, to be known as the fall primary,] shall be  
9 held on the [first Tuesday after the second Monday] FOURTH TUESDAY in  
10 [September] AUGUST before every general election unless otherwise  
11 changed by an act of the legislature. In each year in which electors of  
12 president and vice president of the United States are to be elected an  
13 additional primary election, to be known as the [spring] PRESIDENTIAL  
14 primary, shall be held on the first Tuesday in February unless otherwise  
15 changed by an act of the legislature, for the purpose of electing deleg-  
16 ates to the national convention, members of state and county committees  
17 and assembly district leaders and associate assembly district leaders.

18 S 9. Subdivision 1 of section 9-211 of the election law, as added by  
19 chapter 181 of the laws of 2005, is amended to read as follows:

20 1. Within fifteen days after each general or special election, and  
21 within [seven] FIFTEEN days after every primary or village election  
22 conducted by the board of elections, the board of elections or a bipar-  
23 tisan committee appointed by such board shall manually audit the voter  
24 verifiable audit records from three percent of voting machines or  
25 systems within the jurisdiction of such board. Voting machines or  
26 systems shall be selected for audit through a random, manual process. At  
27 least five days prior to the time fixed for such selection process, the  
28 board of elections shall send notice by first class mail to each candi-  
29 date, political party and independent body entitled to have had watchers  
30 present at the polls in any election district in such board's jurisdic-  
31 tion. Such notice shall state the time and place fixed for such random  
32 selection process. The audit shall be conducted in the same manner, to  
33 the extent applicable, as a canvass of paper ballots. Each candidate,  
34 political party or independent body entitled to appoint watchers to  
35 attend at a polling place shall be entitled to appoint such number of  
36 watchers to observe the audit.

37 S 10. Paragraph (a) of subdivision 1 of section 10-108 of the election  
38 law, as amended by chapter 4 of the laws of 2011, is amended to read as  
39 follows:

40 (a) Ballots for military voters shall be mailed or otherwise distrib-  
41 uted by the board of elections, in accordance with the preferred method  
42 of transmission designated by the voter pursuant to section 10-107 of  
43 this article, as soon as practicable but in any event not later than  
44 [thirty-two] FORTY-FIVE days before a primary or general election[;  
45 twenty-five days before], a New York city community school board  
46 district or city of Buffalo school district election[; fourteen days  
47 before], OR a village election conducted by the board of elections; and  
48 forty-five days before a special election. A voter who submits a mili-  
49 tary ballot application shall be entitled to a military ballot thereaft-  
50 er for each subsequent election through and including the next two regu-  
51 larly scheduled general elections held in even numbered years, including  
52 any run-offs which may occur; provided, however, such application shall  
53 not be valid for any election held within seven days after its receipt.  
54 Ballots shall also be mailed to any qualified military voter who is  
55 already registered and who requests such military ballot from such board  
56 of elections in a letter, which is signed by the voter and received by

1 the board of elections not later than the seventh day before the  
2 election for which the ballot is requested and which states the address  
3 where the voter is registered and the address to which the ballot is to  
4 be mailed. The board of elections shall enclose with such ballot a form  
5 of application for military ballot. In the case of a primary election,  
6 the board shall deliver only the ballot of the party with which the  
7 military voter is enrolled according to the military voter's registra-  
8 tion records. In the event a primary election is uncontested in the  
9 military voter's election district for all offices or positions except  
10 the party position of member of the ward, town, city or county commit-  
11 tee, no ballot shall be delivered to such military voter for such  
12 election; and the military voter shall be advised of the reason why he  
13 or she will not receive a ballot.

14 S 11. Subdivision 4 of section 11-204 of the election law, as amended  
15 by chapter 4 of the laws of 2011, is amended to read as follows:

16 4. If the board of elections shall determine that the applicant making  
17 the application provided for in this section is qualified to receive and  
18 vote a special federal ballot, it shall, as soon as practicable after it  
19 shall have so determined, or not later than [thirty-two] FORTY-FIVE days  
20 before each general or primary [election and forty-five days before  
21 each] OR special election in which such applicant is qualified to vote,  
22 or three days after receipt of such an application, whichever is later,  
23 mail to him or her at the residence address outside the United States  
24 shown in his or her application, a special federal ballot, an inner  
25 affirmation envelope and an outer envelope, or otherwise distribute same  
26 to the voter in accordance with the preferred method of transmission  
27 designated by the voter pursuant to section 11-203 of this title. The  
28 board of elections shall also mail, or otherwise distribute in accord-  
29 ance with the preferred method of transmission designated by the voter  
30 pursuant to section 11-203 of this title, a special federal ballot to  
31 every qualified special federal voter who is already registered and who  
32 requests such special federal ballot from such board of elections in a  
33 letter, which is signed by the voter and received by the board of  
34 elections not later than the seventh day before the election for which  
35 the ballot is first requested and which states the address where the  
36 voter is registered and the address to which the ballot is to be mailed.  
37 The board of elections shall enclose with such ballot a form of applica-  
38 tion for a special federal ballot.

39 S 12. Subdivision 4 of section 16-102 of the election law, as added by  
40 chapter 135 of the laws of 1986, is amended to read as follows:

41 4. A final order INCLUDING THE RESOLUTION OF ANY APPEALS in any  
42 proceeding involving the names of candidates on ballots or voting  
43 machines shall be made, if possible, at least five weeks before the day  
44 of the election at which such ballots or voting machines are to be used,  
45 or if such proceeding is commenced within five weeks of such election,  
46 no later than the day following the day on which the case is heard.

47 S 13. Subdivisions 3 and 4 of section 16-104 of the election law,  
48 subdivision 3 as added by chapter 136 of the laws of 1978 and subdivi-  
49 sion 4 as amended by chapter 117 of the laws of 1985, are amended to  
50 read as follows:

51 3. A proceeding pursuant to subdivision two of this section must be  
52 instituted within [fourteen] SEVEN days after the last day to certify  
53 the wording of any such abstract or form of submission.

54 4. A final order INCLUDING THE RESOLUTION OF ANY APPEALS in any  
55 proceeding involving the contents of official ballots on voting machines  
56 shall be made, if possible, at least five weeks before the day of the

1 election at which such voting machines are to be used, or if such  
2 proceeding is commenced within five weeks of an election, no later than  
3 the day following the day on which the case is heard.

4 S 14. Subdivisions 1 and 4 of section 42 of the public officers law,  
5 subdivision 1 as amended by chapter 878 of the laws of 1946 and subdivi-  
6 sion 4 as amended by chapter 317 of the laws of 1954, are amended to  
7 read as follows:

8 1. A vacancy occurring [before September twentieth of] NOT LESS THAN  
9 THREE MONTHS BEFORE THE NEXT GENERAL ELECTION IN any year in any office  
10 authorized to be filled at a general election, except in the offices of  
11 governor or lieutenant-governor, shall be filled at the general election  
12 held next thereafter, unless otherwise provided by the constitution, or  
13 unless previously filled at a special election.

14 4. A special election shall not be held to fill a vacancy in the  
15 office of a representative in congress unless such vacancy occurs on or  
16 before the first day of July of the last year of the term of office, or  
17 unless it occurs thereafter and a special session of congress is called  
18 to meet before the next general election, or be called after [September]  
19 AUGUST nineteenth of such year; nor to fill a vacancy in the office of  
20 state senator or in the office of member of assembly, unless the vacancy  
21 occurs before the first day of April of the last year of the term of  
22 office, or unless the vacancy occurs in either such office of senator or  
23 member of assembly after such first day of April and a special session  
24 of the legislature be called to meet between such first day of April and  
25 the next general election or be called after [September] AUGUST nine-  
26 teenth in such year. If a special election to fill an office shall not  
27 be held as required by law, the office shall be filled at the next  
28 general election.

29 S 15. This act shall take effect January 1, 2012.