

8507

2011-2012 Regular Sessions

I N A S S E M B L Y

June 21, 2011

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

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. Paragraph b of subdivision 1 of section 4-108 of the
2 election law, as amended by chapter 117 of the laws of 1985, is amended
3 to read as follows:
4 b. Whenever any proposal, proposition or referendum as provided by law
5 is to be submitted to a vote of the people of a county, city, town,
6 village or special district, at an election conducted by the board of
7 elections, the clerk of such political subdivision, at least [thirty-
8 six] FIFTY-FIVE days prior to the election at which such proposal,
9 proposition or referendum is to be submitted, shall transmit to each
10 board of elections a certified copy of the text of such proposal, propo-
11 sition or referendum and a statement of the form in which it is to be
12 submitted. If a special election is to be held, such transmittal shall
13 also give the date of such election.
14 S 2. Section 4-110 of the election law, as amended by chapter 434 of
15 the laws of 1984, is amended to read as follows:
16 S 4-110. Certification of primary election candidates; state board of
17 elections. The state board of elections not later than [thirty-six]
18 FIFTY-FOUR days before a primary election, shall certify to each county
19 board of elections: The name and residence of each candidate to be voted
20 for within the political subdivision of such board for whom a desig-
21 nation has been filed with the state board; the title of the office or
22 position for which the candidate is designated; the name of the party
23 upon whose primary ballot his name is to be placed; and the order in

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

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1 which the names of the candidates are to be printed as determined by the
2 state board. Where an office or position is uncontested, such certifi-
3 cation shall state such fact.

4 S 3. Subdivision 1 of section 4-112 of the election law, as amended by
5 chapter 4 of the laws of 2011, is amended to read as follows:

6 1. The state board of elections, not later than [thirty-six]
7 FIFTY-FOUR days before a general election, or fifty-three days before a
8 special election, shall certify to each county board of elections the
9 name and residence of each candidate nominated in any valid certificate
10 filed with it or by the returns canvassed by it, the title of the office
11 for which nominated; the name of the party or body specified of which he
12 is a candidate; the emblem chosen to distinguish the candidates of the
13 party or body; and a notation as to whether or not any litigation is
14 pending concerning the candidacy. Upon the completion of any such liti-
15 gation, the state board of elections shall forthwith notify the appro-
16 priate county boards of elections of the results of such litigation.

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

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

26 S 5. Subdivision 1 of section 4-117 of the election law, as amended by
27 chapter 288 of the laws of 2009, is amended to read as follows:

28 1. The board of elections, [between August first and August fifth of
29 each year] NOT LESS THAN SIXTY-FIVE DAYS NOR MORE THAN SEVENTY DAYS
30 BEFORE THE PRIMARY ELECTION IN EACH YEAR, shall send by first class mail
31 on which is endorsed "ADDRESS CORRECTION REQUESTED" and which contains a
32 request that any such mail received for persons not residing at the
33 address be dropped back in the mail, a communication, in a form approved
34 by the state board of elections, to every registered voter who has been
35 registered without a change of address since the beginning of such year,
36 except that the board of elections shall not be required to send such
37 communications to voters in inactive status. The communication shall
38 notify the voter of the days and hours of the ensuing primary and gener-
39 al elections, the place where he OR SHE appears by his OR HER registra-
40 tion records to be entitled to vote, the fact that voters who have moved
41 or will have moved from the address where they were last registered must
42 re-register or, that if such move was to another address in the same
43 county or city, that such voter may either notify the board of elections
44 of his OR HER new address or vote by paper ballot at the polling place
45 for his OR HER new address even if such voter has not re-registered, or
46 otherwise notified the board of elections of the change of address. If
47 the location of the polling place for the voter's election district has
48 been moved, the communication shall contain the following legend in bold
49 type: "YOUR POLLING PLACE HAS BEEN CHANGED. YOU NOW VOTE AT.....".
50 The communication shall also indicate whether the polling place is
51 accessible to physically disabled voters, that a voter who will be out
52 of the city or county on the day of the primary or general election or a
53 voter who is ill or physically disabled may obtain an absentee ballot,
54 that a physically disabled voter whose polling place is not accessible
55 may request that his OR HER registration record be moved to an election
56 district which has a polling place which is accessible, the phone number

1 to call for applications to move a registration record or for absentee
2 ballot applications, the phone number to call for the location of regis-
3 tration and polling places, the phone number to call to indicate that
4 the voter is willing to serve on election day as an election inspector,
5 poll clerk, interpreter or in other capacities, the phone number to call
6 to obtain an application for registration by mail, and such other infor-
7 mation concerning the elections or registration as the board may
8 include. In lieu of sending such communication to every registered
9 voter, the board of elections may send a single communication to a
10 household containing more than one registered voter, provided that the
11 names of all such voters appear as part of the address on such communi-
12 cation.

13 S 6. Subdivision 1 of section 5-604 of the election law, as amended by
14 chapter 28 of the laws of 2010, is amended to read as follows:

15 1. The board of elections shall also cause to be published for each
16 election district a complete list of the registered voters of each
17 election district. Such list shall, in addition to the information
18 required for registration lists, include the party enrollment of each
19 voter. At least as many copies of such list shall be prepared as the
20 required minimum number of registration lists.

21 Lists for all the election districts in a ward or assembly district
22 may be bound together in one volume. The board of elections shall also
23 cause to be published a complete list of names and residence addresses
24 of the registered voters, including the party enrollment of each voter,
25 for each town and city over which the board has jurisdiction. The names
26 for each town and city may be arranged according to street and number or
27 alphabetically. Such lists shall be published before the first day of
28 [April] FEBRUARY. The board shall keep at least five copies for public
29 inspection at each main office or branch office of the board. Surplus
30 copies of the lists shall be sold at a charge not exceeding the cost of
31 publication.

32 S 7. Subdivision 1 of section 6-108 of the election law, as amended by
33 chapter 160 of the laws of 1996, is amended to read as follows:

34 1. In any town in a county having a population of over seven hundred
35 fifty thousand inhabitants, as shown by the latest federal decennial or
36 special population census, party nominations of candidates for town
37 offices shall be made at the primary preceding the election. In any
38 other town, nominations of candidates for town offices shall be made by
39 caucus or primary election as the rules of the county committee shall
40 provide, except that the members of the county committee from a town may
41 adopt by a two-thirds vote, a rule providing that the party candidates
42 for town offices shall be nominated at the primary election. If a rule
43 adopted by the county committee of a political party or by the members
44 of the county committee from a town, provides that party candidates for
45 town offices, shall be nominated at a primary election, such rule shall
46 not apply to nor affect a primary held less than four months after a
47 certified copy of the rule shall have been filed with the board of
48 elections. After the filing of such a rule, the rule shall continue in
49 force until a certified copy of a rule revoking the same shall have been
50 filed with such board at least four months before a subsequent primary.
51 Such a caucus shall be held no earlier than the first day on which
52 designating petitions for the [fall] primary election may be signed.

53 S 8. Subdivisions 1 and 2 of section 6-147 of the election law, as
54 amended by chapter 434 of the laws of 1984, are amended to read as
55 follows:

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

10 2. A person designated as a candidate for the position of member of
11 the county committee in more than one election district shall be deemed
12 to have been designated in the lowest numbered election district unless
13 such person, in a certificate duly acknowledged by him, and filed with
14 the board of elections not later than the [eighth] TENTH Tuesday preced-
15 ing the primary election or five days after the board of elections mails
16 such person notice of his designation in more than one election district
17 whichever is later, specifies that he wishes to be deemed designated in
18 a different election district.

19 S 9. Subdivisions 1, 4, 5, 6, 9, 11, 12 and 14 of section 6-158 of the
20 election law, subdivisions 1, 4, 11 and 12 as amended by chapter 434 of
21 the laws of 1984, subdivision 6 as amended by chapter 79 of the laws of
22 1992, and subdivision 9 as amended by chapter 517 of the laws of 1986,
23 are amended to read as follows:

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

27 4. A petition of enrolled members of a party requesting an opportunity
28 to write in the name of an undesignated candidate for a public office or
29 party position at a primary election shall be filed not later than the
30 [eighth Thursday] ELEVENTH WEDNESDAY preceding the primary election.
31 However, where a designating petition has been filed and the person
32 named therein has declined such designation and another person has been
33 designated to fill the vacancy, then in that event, a petition for an
34 opportunity to ballot in a primary election shall be filed not later
35 than the [seventh Thursday] TENTH WEDNESDAY preceding such primary
36 election.

37 5. A judicial district convention shall be held not earlier than the
38 [Tuesday following the third] FIRST Monday in [September] AUGUST preced-
39 ing the general election and not later than the [fourth] SECOND Monday
40 in [September] AUGUST preceding such election.

41 6. A certificate of a party nomination made other than at the primary
42 election for an office to be filled at the time of a general election
43 shall be filed not later than seven days after the [fall] primary
44 election, except that a certificate of nomination for an office which
45 becomes vacant after the seventh day preceding such primary election
46 shall be filed not later than fourteen days after the creation of such
47 vacancy and except, further, that a certificate of party nomination of
48 candidates for elector of president and vice-president of the United
49 States shall be filed not later than fourteen days after the [fall]
50 primary election, and except still further that a certificate of party
51 nomination made at a judicial district convention shall be filed not
52 later than the day after the last day to hold such convention and the
53 minutes of such convention, duly certified by the chairman and secre-
54 tary, shall be filed within seventy-two hours after adjournment of the
55 convention. A certificate of party nomination for an office to be

filled at a special election shall be filed not later than ten days following the issuance of a proclamation of such election.

9. A petition for an independent nomination for an office to be filled at the time of a general election shall be filed not earlier than [twelve] TWENTY-FOUR weeks and not later than [eleven] TWENTY-THREE weeks preceding such election. A petition for an independent nomination for an office to be filled at a special election shall be filed not later than twelve days following the issuance of a proclamation of such election. A petition for trustee of the Long Island Power Authority shall be filed not earlier than seven weeks and not later than six weeks preceding the day of the election of such trustees.

11. A certificate of acceptance or declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the third day after the [eleventh] TWENTY-THIRD Tuesday preceding such election except that a candidate who files such a certificate of acceptance for an office for which there have been filed certificates or petitions designating more than one candidate for the nomination of any party, may thereafter file a certificate of declination not later than the third day after the primary election. A certificate of acceptance or declination of an independent nomination for an office to be filled at a special election shall be filed not later than fourteen days following the issuance of a proclamation of such election.

12. A certificate to fill a vacancy caused by a declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the sixth day after the [eleventh] TWENTY-THIRD Tuesday preceding such election. A certificate to fill a vacancy caused by a declination of an independent nomination for an office to be filled at a special election shall be filed not later than sixteen days following the issuance of a proclamation of such election.

14. A vacancy occurring before [September twentieth of] AUGUST TWENTIETH IN any year in any office authorized to be filled at a general election, except in the offices of governor, lieutenant-governor, or United States senator shall be filled at the general election held next thereafter, unless otherwise provided by the constitution, or unless previously filled at a special election.

S 10. Paragraph (a) of subdivision 1 of section 8-100 of the election law, as amended by chapter 17 of the laws of 2007, is amended to read as follows:

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

S 11. Subdivision 1 of section 9-208 of the election law, as amended by chapter 163 of the laws of 2010, is amended to read as follows:

1. Within [fifteen] TWENTY-ONE days after each general, special or primary election, and within seven days after every village election conducted by the board of elections at which ballot scanners are used, the board of elections, or a bipartisan committee of or appointed by

1 said board shall, in each county using ballot scanners, make a record of
2 the serial number of each ballot scanner used in each election district
3 in such general, special or primary election. No person who was a candi-
4 date at such election shall be appointed to membership on the committee.
5 Such board of elections or bipartisan committee shall recanvass the
6 tabulated result tape from each ballot scanner used in each election
7 district by comparing such tape with the numbers as recorded on the
8 return of canvass. The said board or committee shall also make a recan-
9 vass of any election day paper ballots that have not been scanned and
10 were hand counted pursuant to subdivision two of section 9-110 of this
11 article and compare the results with the number as recorded on the
12 return of canvass. The board or committee shall then recanvass write-in
13 votes, if any, on ballots which were otherwise scanned and canvassed at
14 polling places on election night. The board or committee shall validate
15 and prove such sums. Before making such canvass the board of elections,
16 with respect to each election district to be recanvassed, shall give
17 notice in writing to the voting machine custodian thereof, to the state
18 and county chair of each party or independent body which shall have
19 nominated candidates for the said general or special election or nomi-
20 nated or elected candidates at the said primary election and to each
21 individual candidate whose name appears on the office ballot, of the
22 time and place where such canvass is to be made; and the state and coun-
23 ty chair of each such party or independent body and each such individual
24 candidate may send a representative to be present at such recanvass.
25 Each candidate whose name appears on the official ballot, or his or her
26 representative, shall have the right personally to examine and make a
27 record of the vote recorded on the tabulated result tape and any ballots
28 which were hand counted.

29 S 12. Subdivision 1 of section 9-211 of the election law, as added by
30 chapter 181 of the laws of 2005, is amended to read as follows:

31 1. Within [fifteen] TWENTY-ONE days after each general or special
32 election, and within [seven] TWENTY-ONE days after every primary or
33 village election conducted by the board of elections, the board of
34 elections or a bipartisan committee appointed by such board shall manu-
35 ally audit the voter verifiable audit records from three percent of
36 voting machines or systems within the jurisdiction of such board. Voting
37 machines or systems shall be selected for audit through a random, manual
38 process. At least five days prior to the time fixed for such selection
39 process, the board of elections shall send notice by first class mail to
40 each candidate, political party and independent body entitled to have
41 had watchers present at the polls in any election district in such
42 board's jurisdiction. Such notice shall state the time and place fixed
43 for such random selection process. The audit shall be conducted in the
44 same manner, to the extent applicable, as a canvass of paper ballots.
45 Each candidate, political party or independent body entitled to appoint
46 watchers to attend at a polling place shall be entitled to appoint such
47 number of watchers to observe the audit.

48 S 13. Paragraph (a) of subdivision 1 of section 10-108 of the election
49 law, as amended by chapter 4 of the laws of 2011, is amended to read as
50 follows:

51 (a) Ballots for military voters shall be mailed or otherwise distrib-
52 uted by the board of elections, in accordance with the preferred method
53 of transmission designated by the voter pursuant to section 10-107 of
54 this article, as soon as practicable but in any event not later than
55 [thirty-two] FORTY-FIVE days before a primary or general election[;
56 twenty-five days before], a New York city community school board

1 district or city of Buffalo school district election[; fourteen days
2 before], OR a village election conducted by the board of elections; and
3 forty-five days before a special election. A voter who submits a mili-
4 tary ballot application shall be entitled to a military ballot thereaft-
5 er for each subsequent election through and including the next two regu-
6 larly scheduled general elections held in even numbered years, including
7 any run-offs which may occur; provided, however, such application shall
8 not be valid for any election held within seven days after its receipt.
9 Ballots shall also be mailed to any qualified military voter who is
10 already registered and who requests such military ballot from such board
11 of elections in a letter, which is signed by the voter and received by
12 the board of elections not later than the seventh day before the
13 election for which the ballot is requested and which states the address
14 where the voter is registered and the address to which the ballot is to
15 be mailed. The board of elections shall enclose with such ballot a form
16 of application for military ballot. In the case of a primary election,
17 the board shall deliver only the ballot of the party with which the
18 military voter is enrolled according to the military voter's registra-
19 tion records. In the event a primary election is uncontested in the
20 military voter's election district for all offices or positions except
21 the party position of member of the ward, town, city or county commit-
22 tee, no ballot shall be delivered to such military voter for such
23 election; and the military voter shall be advised of the reason why he
24 or she will not receive a ballot.

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

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

50 S 15. Subdivision 4 of section 16-102 of the election law, as added by
51 chapter 135 of the laws of 1986, is amended to read as follows:

52 4. A final order INCLUDING THE RESOLUTION OF ANY APPEALS in any
53 proceeding involving the names of candidates on ballots or voting
54 machines shall be made, if possible, at least five weeks before the day
55 of the election at which such ballots or voting machines are to be used,

1 or if such proceeding is commenced within five weeks of such election,
2 no later than the day following the day on which the case is heard.

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

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

10 4. A final order INCLUDING THE RESOLUTION OF ANY APPEALS in any
11 proceeding involving the contents of official ballots on voting machines
12 shall be made, if possible, at least five weeks before the day of the
13 election at which such voting machines are to be used, or if such
14 proceeding is commenced within five weeks of an election, no later than
15 the day following the day on which the case is heard.

16 S 17. Subdivisions 1 and 4 of section 42 of the public officers law,
17 subdivision 1 as amended by chapter 878 of the laws of 1946 and subdivi-
18 sion 4 as amended by chapter 317 of the laws of 1954, are amended to
19 read as follows:

20 1. A vacancy occurring before [September] AUGUST twentieth of any year
21 in any office authorized to be filled at a general election, except in
22 the offices of governor or lieutenant-governor, shall be filled at the
23 general election held next thereafter, unless otherwise provided by the
24 constitution, or unless previously filled at a special election.

25 4. A special election shall not be held to fill a vacancy in the
26 office of a representative in congress unless such vacancy occurs on or
27 before the first day of July of the last year of the term of office, or
28 unless it occurs thereafter and a special session of congress is called
29 to meet before the next general election, or be called after [September]
30 AUGUST nineteenth of such year; nor to fill a vacancy in the office of
31 state senator or in the office of member of assembly, unless the vacancy
32 occurs before the first day of April of the last year of the term of
33 office, or unless the vacancy occurs in either such office of senator or
34 member of assembly after such first day of April and a special session
35 of the legislature be called to meet between such first day of April and
36 the next general election or be called after [September] AUGUST nine-
37 teenth in such year. If a special election to fill an office shall not
38 be held as required by law, the office shall be filled at the next
39 general election.

40 S 18. This act shall take effect January 1, 2013.