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

5677

2011-2012 Regular Sessions

I N S E N A T E

June 10, 2011

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to the retention of absentee ballots and the canvass of military and absentee ballots

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

Section 1. Subdivision 2 of section 8-412 of the election law, as amended by chapter 155 of the laws of 1994, is amended to read as follows:

2. Absentee ballots received by the board of elections [before the close of the polls on election day from voters whose applications were received by such board at least seven days before election day may] SHALL be [delivered to the inspectors of election in the manner prescribed by this chapter or] retained at the board of elections and cast and canvassed pursuant to the provisions of section 9-209 of this chapter [as such board shall, in its discretion, determine by resolution adopted at least thirty days before election day. All ballots received by the board of elections from voters whose applications were received by such board later than seven days before election day, all ballots received by such board between election day and the seventh day after election day, and all federal write-in ballots received from absentee voters, shall be retained at the board and shall be cast and canvassed in the same manner as other ballots retained by such board].

S 2. Paragraphs (a) and (c) of subdivision 2 of section 9-209 of the election law, as amended by chapter 104 of the laws of 2010 and subparagraph (i) of paragraph (a) as amended by chapter 163 of the laws of 2010, are amended to read as follows:

(a) (i) Upon assembling at the time and place fixed for such meeting, each central board of inspectors shall EXAMINE, cast, and canvass the envelopes and the ballots therein contained as nearly as practicable in

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

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the FOLLOWING manner [provided by this chapter for a board of inspectors to consider, cast, and canvass absentee ballot envelopes.]:

(A) IF A PERSON WHOSE NAME IS ON AN ENVELOPE AS A VOTER HAS ALREADY VOTED IN PERSON AT SUCH ELECTION, OR IF HIS OR HER NAME AND RESIDENCE AS STATED ON THE ENVELOPE ARE NOT ON A REGISTRATION POLL RECORD, OR THE COMPUTER GENERATED LIST OF REGISTERED VOTERS OR THE LIST OF SPECIAL PRESIDENTIAL VOTERS, OR IF THERE IS NO NAME ON THE ENVELOPE, OR IF THE ENVELOPE IS NOT SEALED, SUCH ENVELOPE SHALL BE LAID ASIDE UNOPENED.

(B) IF THERE IS MORE THAN ONE BALLOT ENVELOPE EXECUTED BY THE SAME VOTER, THE ONE BEARING THE LATER DATE OF EXECUTION SHALL BE ACCEPTED AND THE OTHER REJECTED. IF IT CANNOT BE DETERMINED WHICH ENVELOPE BEARS THE LATER DATE, THEN ALL SUCH ENVELOPES SHALL BE REJECTED.

(C) IF SUCH PERSON IS FOUND TO BE REGISTERED AND HAS NOT VOTED IN PERSON, AN INSPECTOR SHALL COMPARE THE SIGNATURE, IF ANY, ON EACH ENVELOPE WITH THE SIGNATURE, IF ANY, ON THE REGISTRATION POLL RECORD, THE COMPUTER GENERATED LIST OF REGISTERED VOTERS OR THE LIST OF SPECIAL PRESIDENTIAL VOTERS, OF THE PERSON OF THE SAME NAME WHO REGISTERED FROM THE SAME ADDRESS. IF THE SIGNATURES ARE FOUND TO CORRESPOND, SUCH INSPECTOR SHALL CERTIFY THERETO BY SIGNING HIS OR HER INITIALS IN THE "INSPECTOR'S INITIALS" LINE ON THE COMPUTER GENERATED LIST OF REGISTERED VOTERS OR IN THE "REMARKS" COLUMN AS APPROPRIATE.

(D) IF SUCH PERSON IS FOUND TO BE REGISTERED AND HAS NOT VOTED IN PERSON, AND IF NO CHALLENGE IS MADE, OR IF A CHALLENGE MADE IS NOT SUSTAINED, THE ENVELOPE SHALL BE OPENED, THE BALLOT OR BALLOTS WITHDRAWN WITHOUT UNFOLDING, AND THE BALLOT OR BALLOTS DEPOSITED IN THE PROPER BALLOT BOX OR BOXES, OR ENVELOPES, PROVIDED HOWEVER THAT, IN THE CASE OF A PRIMARY ELECTION, THE BALLOT SHALL BE DEPOSITED IN THE BOX ONLY IF THE BALLOT IS OF THE PARTY WITH WHICH THE VOTER IS ENROLLED ACCORDING TO THE ENTRY ON THE BACK OF HIS OR HER REGISTRATION POLL RECORD OR NEXT TO HIS OR HER NAME ON THE COMPUTER GENERATED REGISTRATION LIST; IF NOT, THE BALLOT SHALL BE REJECTED WITHOUT INSPECTION OR UNFOLDING AND SHALL BE RETURNED TO THE ENVELOPE WHICH SHALL BE ENDORSED "NOT ENROLLED." AT THE TIME OF THE DEPOSIT OF SUCH BALLOT OR BALLOTS IN THE BOX OR ENVELOPES, THE INSPECTORS SHALL ENTER THE WORDS "ABSENTEE VOTE" OR "MILITARY VOTE" IN THE SPACE RESERVED FOR THE VOTER'S SIGNATURE ON THE AFORESAID LIST OR IN THE "REMARKS" COLUMN AS APPROPRIATE, AND SHALL ENTER THE YEAR AND MONTH OF THE ELECTION ON THE SAME LINE IN THE SPACES PROVIDED THEREFOR.

(E) AS EACH ENVELOPE IS OPENED, IF ONE OR MORE OF THE DIFFERENT KINDS OF BALLOTS TO BE VOTED AT THE ELECTION ARE NOT FOUND THEREIN, THE CLERKS, OR INSPECTORS, SHALL MAKE A MEMORANDUM SHOWING WHAT BALLOT OR BALLOTS ARE MISSING. IF A BALLOT ENVELOPE SHALL CONTAIN MORE THAN ONE BALLOT FOR THE SAME OFFICES, ALL THE BALLOTS IN SUCH ENVELOPE SHALL BE REJECTED. WHEN THE CASTING OF SUCH BALLOTS SHALL HAVE BEEN COMPLETED THE CLERKS OR INSPECTORS SHALL ASCERTAIN THE NUMBER OF SUCH BALLOTS OF EACH KIND WHICH HAVE BEEN DEPOSITED IN THE BALLOT BOX BY DEDUCTING FROM THE NUMBER OF ENVELOPES OPENED THE NUMBER OF MISSING BALLOTS, AND SHALL MAKE A RETURN THEREOF. THE NUMBER OF ABSENTEE VOTERS' BALLOTS DEPOSITED IN THE BALLOT BOX SHALL BE ADDED TO THE NUMBER OF OTHER BALLOTS DEPOSITED IN THE BALLOT BOX, IN ORDER TO DETERMINE THE NUMBER OF ALL BALLOTS OF EACH KIND TO BE ACCOUNTED FOR IN THE BALLOT BOX.

(ii) If the board of inspectors determines that a person was entitled to vote at such election it shall cast and canvass such ballot if such board finds that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.

(iii) If the board of elections determines that a person was entitled to vote at such election, the board shall cast and canvass such ballot

if such board finds that the voter appeared at the correct polling place, regardless of the fact that the voter may have appeared in the incorrect election district.

(c) The following provisions shall apply to casting and canvassing of all such ballots which are counted by machine and all other provisions of this chapter with respect to casting and canvassing such ballots which are not inconsistent with this paragraph shall be applicable to such ballots.

(i) [Such ballots shall be counted by placing them, arranged by election district, in the counting machine.

(ii)] Such ballots may be separated into sections before being placed in the counting machine.

[(iii)] (II) Any write-in ballots and any ballots which cannot be counted by the machine shall be counted manually subject to all the applicable provisions of this chapter with respect to counting of ballots.

[(iv)] (III) The record of the vote counted by machine for each candidate and for and against each ballot proposal, printed by election district, shall be preserved in the same manner and for the same period as the returns of canvass for the election.

S 3. This act shall take effect immediately.