

7832

2013-2014 Regular Sessions

I N   A S S E M B L Y

June 5, 2013

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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 run-off elections in  
the city of New York; and providing for the repeal of such provisions  
upon the expiration thereof

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

1     Section 1. Legislative findings. The legislature finds and declares  
2     that the effective and timely administration of local elections in the  
3     city of New York is a matter of substantial state concern. In further-  
4     ance of this concern, the legislature finds that it is essential to the  
5     local democratic process to ensure that the board of elections in the  
6     city of New York utilizes voting machines that allow for the timely and  
7     orderly administration of elections. In order to modernize and update  
8     the voting systems utilized in New York State, the legislature passed  
9     the Election Reform and Modernization Act of 2005, which set forth  
10    requirements for electronic voting systems, including optical scanning  
11    voting machines, throughout the state. The implementation of these elec-  
12    tronic voting systems has brought the state into conformance with  
13    national standards for voting system performance and modernization. The  
14    state has a substantial interest in ensuring that elections in the city  
15    of New York are generally conducted with an electronic voting system  
16    that meets the above mentioned statewide standards. At the same time,  
17    the city of New York is uniquely situated in that a run-off primary is  
18    required to be held two weeks after the local primary election in  
19    certain circumstances. In recent elections administered with optical  
20    scanning voting machines, approved by the state board of elections, it  
21    has taken over two weeks for the board of elections in the city of New  
22    York to finalize election results. A series of one-time and immediate  
23    short-term changes to the current election law, as applied to the city  
24    of New York, are therefore necessary to further the state's substantial

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

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1 concerns and ensure that the 4.2 million registered voters in the city  
2 of New York are able to exercise their voting rights in a timely and  
3 orderly primary election and run-off election, should a run-off be  
4 required.

5 S 2. Section 4-114 of the election law, as amended by chapter 4 of the  
6 laws of 2011, is amended to read as follows:

7 S 4-114. Determination of candidates and questions; county board of  
8 elections. The county board of elections, not later than the thirty-  
9 fifth day before the day of a primary or general election, or the  
10 fifty-third day before a special election, shall determine the candi-  
11 dates duly nominated for public office and the questions that shall  
12 appear on the ballot within the jurisdiction of that board of elections.  
13 PROVIDED, HOWEVER, IN ANY YEAR IN WHICH THERE HAS BEEN A RUN-OFF  
14 ELECTION IN THE CITY OF NEW YORK, THE BOARD OF ELECTIONS OF SUCH CITY  
15 SHALL, NOT LATER THAN THE TWENTY-EIGHTH DAY BEFORE THE GENERAL ELECTION  
16 IN THAT YEAR, DETERMINE THE CANDIDATES DULY NOMINATED FOR PUBLIC OFFICE  
17 AND THE QUESTIONS THAT SHALL APPEAR ON THE BALLOT WITHIN THE JURISDIC-  
18 TION OF THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK.

19 S 3. Subdivision 1 of section 7-200 of the election law, as amended by  
20 chapter 181 of the laws of 2005, is amended to read as follows:

21 1. The board of elections of the city of New York and other county  
22 boards of elections may adopt any kind of voting machine or system  
23 approved by the state board of elections, or the use of which has been  
24 specifically authorized by law; and thereupon such voting machine or  
25 system may be used at any or all elections and shall be used at all  
26 general or special elections held by such boards in such city, town or  
27 village and in every contested primary election in the city of New York  
28 and in every contested primary election outside the city of New York in  
29 which there are one thousand or more enrolled voters qualified to vote.  
30 No more than two types of voting machines or systems may be used by any  
31 local board of elections at a single election. Notwithstanding the other  
32 provisions of this subdivision, any local board of elections may borrow  
33 or lease for use on an experimental basis for a period of not more than  
34 one year each, voting machines or systems of any type approved by the  
35 state board of elections.

36 (A) (I) THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK SHALL DEPLOY  
37 AND UTILIZE OPTICAL SCANNING VOTING MACHINES APPROVED BY THE STATE BOARD  
38 OF ELECTIONS AT ALL PRIMARY ELECTIONS CONDUCTED PURSUANT TO SECTION  
39 8-100 OF THIS CHAPTER.

40 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD OF  
41 ELECTIONS IN THE CITY OF NEW YORK IS HEREBY AUTHORIZED TO PREPARE,  
42 DEPLOY AND UTILIZE MECHANICAL LEVER VOTING MACHINES AT ANY NON-FEDERAL  
43 PRIMARY ELECTION, CONDUCTED PURSUANT TO SECTION 8-100 OF THIS CHAPTER.  
44 THE PREPARATION, DEPLOYMENT AND UTILIZATION OF SUCH MECHANICAL LEVER  
45 MACHINES SHALL ONLY OCCUR AFTER SUCH BOARD OF ELECTIONS DETERMINES THE  
46 USE OF SUCH MECHANICAL LEVER MACHINES AT SUCH A NON-FEDERAL PRIMARY  
47 ELECTION IS NECESSARY TO ENSURE THE TIMELY AND ORDERLY ADMINISTRATION OF  
48 THE PRIMARY ELECTION, INCLUDING BUT NOT LIMITED TO A TIMELY VOTE COUNT.

49 (B) (I) THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK SHALL DEPLOY  
50 AND UTILIZE OPTICAL SCANNING VOTING MACHINES APPROVED BY THE STATE BOARD  
51 OF ELECTIONS IN ALL RUN-OFF ELECTIONS CONDUCTED PURSUANT TO SECTION  
52 8-100 OF THIS CHAPTER.

53 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD OF  
54 ELECTIONS IN THE CITY OF NEW YORK IS HEREBY AUTHORIZED TO PREPARE,  
55 DEPLOY AND UTILIZE MECHANICAL LEVER VOTING MACHINES AT ANY RUN-OFF  
56 ELECTION, CONDUCTED PURSUANT TO SECTION 8-100 OF THIS CHAPTER. THE PREP-

ARATION, DEPLOYMENT AND UTILIZATION OF SUCH MECHANICAL LEVER MACHINES SHALL ONLY OCCUR AFTER SUCH BOARD OF ELECTIONS DETERMINES THAT THE PREPARATION, DEPLOYMENT AND UTILIZATION OF OPTICAL SCANNING VOTING MACHINES APPROVED BY THE STATE BOARD OF ELECTIONS, AT SUCH RUN-OFF ELECTION IS IMPRACTICABLE GIVEN THE COSTS AND STATUTORY TIME CONSTRAINTS ASSOCIATED WITH THE PREPARATION, DEPLOYMENT AND UTILIZATION OF SUCH OPTICAL SCANNING MACHINES.

(C) SHOULD THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK UTILIZE SUCH MECHANICAL LEVER VOTING MACHINES PURSUANT TO PARAGRAPH (A) OR (B) OF THIS SUBDIVISION, IN ANY PRIMARY OR RUN-OFF ELECTION, PURSUANT TO SECTION 8-100 OF THIS CHAPTER, SUCH BOARD OF ELECTIONS MUST ALSO PROVIDE A VOTING SYSTEM THAT MEETS THE REQUIREMENTS OF PARAGRAPHS A, B AND C OF SUBDIVISION TWO OF SECTION 7-202 OF THIS TITLE IN EACH POLLING SITE.

S 4. Paragraph (b) of subdivision 1 of section 8-100 of the election law, as added by chapter 373 of the laws of 1978, is amended to read as follows:

(b) In the event a run-off primary election is required in the city of New York, it shall be held on the [second] THIRD Tuesday next succeeding the date on which the initial primary election was held.

S 5. 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, 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 following the day of election, OR FOURTEEN DAYS FOLLOWING THE DAY OF THE GENERAL ELECTION IN THE CITY OF NEW YORK IN ANY YEAR IN WHICH THERE HAS BEEN A RUN-OFF 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 6. Section 9-214 of the election law, the section heading and first undesignated paragraph as amended by chapter 286 of the laws of 1983, and the second undesignated paragraph as amended by chapter 4 of the laws of 2011, is amended to read as follows:

S 9-214. Transmission of statements of canvassing boards to state board of elections and secretary of state. The board of elections shall transmit by mail or cause to be delivered personally to the state board of elections, a certified copy of the statement of the canvassing board relating to the offices of electors of president and vice-president of the United States, United States senator, representatives in congress and state offices, including members of the state senate and assembly, and to the votes cast on any ballot proposal submitted to all the voters of the state, within twenty-five days after the election. If any certified copy shall not be received by the state board on or before the twenty-fifth day following a general election, or a special election, it shall dispatch a special messenger to obtain such certified copy, and the board of elections, immediately upon demand of such messenger at its office, shall make and deliver a certified copy to such messenger who shall deliver it forthwith to the state board.

The board of elections shall transmit to the secretary of state within twenty-five days after a general election, and within twenty days after

1 a special election, a list of the names and residences of all persons  
2 determined by the canvassing board to be elected to any county office.  
3 NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, IN ANY YEAR IN  
4 WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE CITY OF NEW YORK, THE  
5 BOARD OF ELECTIONS IN THE CITY OF NEW YORK SHALL TRANSMIT TO THE SECRE-  
6 TARY OF STATE NOT LATER THAN THIRTY DAYS AFTER THE GENERAL ELECTION IN  
7 THAT YEAR A LIST OF THE NAMES AND RESIDENCES OF ALL PERSONS DETERMINED  
8 BY THE CANVASSING BOARD TO BE ELECTED TO ANY COUNTY OFFICE.

9 The board of elections shall transmit to the state board, on or before  
10 the tenth day of December following an election for governor, a certi-  
11 fied tabulated statement, by election districts, of the official canvass  
12 of the votes cast for candidates for governor, to include, in the case  
13 of a candidate who was nominated by two or more parties or independent  
14 bodies, a separate statement of the number of votes cast for him as the  
15 candidate of each party or independent body by which he was nominated  
16 and if the county contains more than one assembly district or parts of  
17 more than one assembly district, a statement of the number of votes cast  
18 for governor by assembly district.

19 S 7. Paragraph (a) of subdivision 1 of section 10-108 of the election  
20 law, as amended by chapter 4 of the laws of 2011, is amended to read as  
21 follows:

22 (a) Ballots for military voters shall be mailed or otherwise distrib-  
23 uted by the board of elections, in accordance with the preferred method  
24 of transmission designated by the voter pursuant to section 10-107 of  
25 this article, as soon as practicable but in any event not later than  
26 thirty-two days before a primary or general election; twenty-five days  
27 before a New York city community school board district or city of  
28 Buffalo school district election; fourteen days before a village  
29 election conducted by the board of elections; and forty-five days before  
30 a special election. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS  
31 SECTION, IN ANY YEAR IN WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE  
32 CITY OF NEW YORK, BALLOTS FOR MILITARY VOTERS SHALL BE MAILED OR OTHER-  
33 WISE DISTRIBUTED BY THE BOARD OF ELECTIONS OF SUCH CITY IN ACCORDANCE  
34 WITH THE PREFERRED METHOD OF TRANSMISSION DESIGNATED BY THE VOTER PURSU-  
35 ANT TO SECTION 10-107 OF THIS ARTICLE, AS SOON AS PRACTICABLE BUT IN ANY  
36 EVENT NOT LATER THAN TWENTY-FIVE DAYS BEFORE A GENERAL ELECTION IN THAT  
37 YEAR. A voter who submits a military ballot application shall be enti-  
38 tled to a military ballot thereafter for each subsequent election  
39 through and including the next two regularly scheduled general elections  
40 held in even numbered years, including any run-offs which may occur;  
41 provided, however, such application shall not be valid for any election  
42 held within seven days after its receipt. Ballots shall also be mailed  
43 to any qualified military voter who is already registered and who  
44 requests such military ballot from such board of elections in a letter,  
45 which is signed by the voter and received by the board of elections not  
46 later than the seventh day before the election for which the ballot is  
47 requested and which states the address where the voter is registered and  
48 the address to which the ballot is to be mailed. The board of elections  
49 shall enclose with such ballot a form of application for military  
50 ballot. In the case of a primary election, the board shall deliver only  
51 the ballot of the party with which the military voter is enrolled  
52 according to the military voter's registration records. In the event a  
53 primary election is uncontested in the military voter's election  
54 district for all offices or positions except the party position of  
55 member of the ward, town, city or county committee, no ballot shall be  
56 delivered to such military voter for such election; and the military

1 voter shall be advised of the reason why he or she will not receive a  
2 ballot.

3 S 8. Subdivision 1 of section 10-114 of the election law, as amended  
4 by chapter 165 of the laws of 2009, is amended to read as follows:

5 1. The board of elections shall cause all military ballots received by  
6 it before the close of the polls on election day and all ballots  
7 contained in envelopes showing a cancellation mark of the United States  
8 postal service or a foreign country's postal service, or showing a dated  
9 endorsement of receipt by another agency of the United States government  
10 or are signed and dated by the voter and one witness thereto, with a  
11 date which is ascertained to be not later than the day before election  
12 and received by such board of elections not later than seven days  
13 following the day of a primary election and not later than thirteen days  
14 following the day of a general or special election to be cast and count-  
15 ed. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, IN ANY  
16 YEAR IN WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE CITY OF NEW YORK,  
17 THE BOARD OF ELECTIONS OF SUCH CITY SHALL CAUSE ALL MILITARY BALLOTS  
18 RECEIVED BY IT BEFORE THE CLOSE OF THE POLLS ON ELECTION DAY AND ALL  
19 BALLOTS CONTAINED IN ENVELOPES SHOWING A CANCELLATION MARK OF THE UNITED  
20 STATES POSTAL SERVICE OR FOREIGN COUNTRY'S POSTAL SERVICE, OR SHOWING A  
21 DATED ENDORSEMENT OF RECEIPT BY ANOTHER AGENCY OF THE UNITED STATES  
22 GOVERNMENT OR ARE SIGNED AND DATED BY THE VOTER AND ONE WITNESS THERETO,  
23 WITH A DATE WHICH IS ASCERTAINED TO BE NOT LATER THAN THE DAY BEFORE  
24 ELECTION DAY AND RECEIVED BY SUCH BOARD OF ELECTIONS NOT LATER THAN  
25 TWENTY DAYS FOLLOWING THE DAY OF A GENERAL ELECTION IN THAT YEAR TO BE  
26 CAST AND COUNTED.

27 S 9. The amendments to the election law set forth in this act shall  
28 apply notwithstanding any other provision of general, special or local  
29 law, including but not limited to any provision of law that would render  
30 the preparation, deployment and utilization of mechanical lever voting  
31 machines impracticable where the board of elections in the city of New  
32 York makes a determination with respect to such machines as authorized  
33 by subdivision 1 of section 7-200 of the election law as amended by  
34 section three of this act.

35 S 10. On or before July 1, 2014, the board of elections in the city  
36 of New York shall submit a report to the governor, temporary president  
37 of the senate, speaker of the assembly, minority leader of the senate,  
38 minority leader of the assembly, chair of the senate standing committee  
39 on elections, chair of the assembly standing committee on election law,  
40 mayor of the city of New York, and speaker of the New York city council,  
41 detailing a plan for administering effective and timely elections in the  
42 city of New York with a voting machine system that meets the require-  
43 ments of title 2 of article 7 of the election law and without the use of  
44 mechanical lever machines. Such plan shall address, at a minimum, train-  
45 ing of board of elections staff, including poll clerks and election  
46 inspectors in connection with the preparation, testing, deployment and  
47 utilization of optical scanning voting machines approved by the state  
48 board of elections, including further education and training regarding  
49 the needs of voters with disabilities, appropriate and effective methods  
50 for streamlining election night canvassing procedures, and appropriate  
51 and effective methods of ensuring full and fair voting machine access  
52 for all voters.

53 S 11. This act shall take effect immediately and shall expire and be  
54 deemed repealed December 31, 2013, except that section ten of this act  
55 shall expire and be deemed repealed August 1, 2014.