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

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R. R. 285

2013-2014 Regular Sessions

I N A S S E M B L Y

June 5, 2013

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Election Law -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the special order of third reading

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature finds and declares that the effective and timely administration of local elections in the city of New York is a matter of substantial state concern. In furtherance of this concern, the legislature finds that it is essential to the local democratic process to ensure that the board of elections in the city of New York utilizes voting machines that allow for the timely and orderly administration of elections. In order to modernize and update the voting systems utilized in New York State, the legislature passed the Election Reform and Modernization Act of 2005, which set forth requirements for electronic voting systems, including optical scanning voting machines, throughout the state. The implementation of these electronic voting systems has brought the state into conformance with national standards for voting system performance and modernization. The state has a substantial interest in ensuring that elections in the city of New York are generally conducted with an electronic voting system that meets the above mentioned statewide standards. At the same time, the city of New York is uniquely situated in that a run-off primary is required to be held two weeks after the local primary election in certain circumstances. In recent elections administered with optical

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

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scanning voting machines, approved by the state board of elections, it has taken over two weeks for the board of elections in the city of New York to finalize election results. A series of one-time and immediate short-term changes to the current election law, as applied to the city of New York, are therefore necessary to further the state's substantial concerns and ensure that the 4.2 million registered voters in the city of New York are able to exercise their voting rights in a timely and orderly primary election and run-off election, should a run-off be required.

S 2. 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 day before the day of a primary or general 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. PROVIDED, HOWEVER, IN ANY YEAR IN WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE CITY OF NEW YORK, THE BOARD OF ELECTIONS OF SUCH CITY SHALL, NOT LATER THAN THE TWENTY-EIGHTH DAY BEFORE THE GENERAL ELECTION IN THAT YEAR, DETERMINE THE CANDIDATES DULY NOMINATED FOR PUBLIC OFFICE AND THE QUESTIONS THAT SHALL APPEAR ON THE BALLOT WITHIN THE JURISDICTION OF THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK.

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

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

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

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

(B) (I) THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK SHALL DEPLOY AND UTILIZE OPTICAL SCANNING VOTING MACHINES APPROVED BY THE STATE BOARD

OF ELECTIONS IN ALL RUN-OFF ELECTIONS CONDUCTED PURSUANT TO SECTION 8-100 OF THIS CHAPTER.

(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK IS HEREBY AUTHORIZED TO PREPARE, DEPLOY AND UTILIZE MECHANICAL LEVER VOTING MACHINES AT ANY RUN-OFF ELECTION, CONDUCTED PURSUANT TO SECTION 8-100 OF THIS CHAPTER. THE PREPARATION, 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 DETERMINE TO 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 DETERMINATION SHALL BE MADE ON OR BEFORE JULY TWENTY-SEVENTH, TWO THOUSAND THIRTEEN. SHOULD THE CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN THAT ADDED THIS PARAGRAPH TAKE EFFECT ON A DATE ON OR AFTER JULY SEVENTEENTH, TWO THOUSAND THIRTEEN, THEN SUCH DETERMINATION SHALL BE MADE WITHIN TEN DAYS AFTER SUCH DATE. IN NO EVENT SHALL SUCH DETERMINATION BE MADE AFTER AUGUST THIRTY-FIRST, TWO THOUSAND THIRTEEN.

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

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

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

(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. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, IN ANY YEAR IN WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE CITY OF NEW YORK, BALLOTS FOR MILITARY VOTERS SHALL BE MAILED OR OTHERWISE DISTRIBUTED BY THE BOARD OF ELECTIONS OF SUCH CITY 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 TWENTY-FIVE DAYS BEFORE A GENERAL ELECTION IN THAT YEAR. 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 to any qualified military voter who is already registered and who requests such military ballot from such board of elections in a letter, 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.

S 8. 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, 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 a primary election and not later than thirteen days following the day of a general or special election to be cast and counted. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, IN ANY YEAR IN WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE CITY OF NEW YORK, THE BOARD OF ELECTIONS OF SUCH CITY 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 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, WITH A DATE WHICH IS ASCERTAINED TO BE NOT LATER THAN THE DAY BEFORE ELECTION DAY AND RECEIVED BY SUCH BOARD OF ELECTIONS NOT LATER THAN TWENTY DAYS FOLLOWING THE DAY OF A GENERAL ELECTION IN THAT YEAR TO BE CAST AND COUNTED.

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

S 10. On or before July 1, 2014, the board of elections in the city of New York shall submit a report to the governor, temporary president of the senate, speaker of the assembly, minority leader of the senate, minority leader of the assembly, chair of the senate standing committee on elections, chair of the assembly standing committee on election law,

mayor of the city of New York, and speaker of the New York city council, detailing a plan for administering effective and timely elections in the city of New York with a voting machine system that meets the requirements of title 2 of article 7 of the election law and without the use of mechanical lever machines. Such plan shall address, at a minimum, training of board of elections staff, including poll clerks and election inspectors in connection with the preparation, testing, deployment and utilization of optical scanning voting machines approved by the state board of elections, including further education and training regarding the needs of voters with disabilities, appropriate and effective methods for streamlining election night canvassing procedures, and appropriate and effective methods of ensuring full and fair voting machine access for all voters.

S 11. The board of elections in the city of New York shall adopt procedures regarding the preparation, deployment and utilization of mechanical lever voting machines should such board of elections determine under section three of this act that such lever voting machines shall be used. Such procedures shall seek to ensure that the canvass and recanvass of the mechanical lever voting machines occurs in a timely and efficient manner and, to the extent practicable, in a manner not inconsistent with article 9 of the election law as in effect on January 1, 2010, as such article applied to elections conducted with mechanical lever voting machines.

S 12. This act shall take effect immediately and shall expire and be deemed repealed December 31, 2013, except that section ten of this act shall expire and be deemed repealed August 1, 2014.