STATE OF NEW YORK

1744

2019-2020 Regular Sessions

IN ASSEMBLY

January 16, 2019

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

AN ACT to amend the election law, in relation to vacancies for elective offices; to judicial proceedings for designating or nominating petitions and to ballots for primary and general elections

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 6-150 of the election law is amended to read as follows:

§ 6-150. Nomination; vacancy caused by death or disqualification, unfilled at time of general or special election. If a vacancy shall occur in a nomination, caused by disqualification or death of the candidate subsequent to [~~noon of the Tuesday~~] **thirty days** before a general or special election and prior to the closing of the polls on such election day, such vacancy shall not be filled, and the votes cast for such [~~deceased~~] candidate shall be canvassed and counted, and if he **or she** shall receive a plurality of the votes cast, a vacancy shall exist in the office for which such nomination was made to be filled in the manner provided by law for vacancies in office occurring by reason of death after election.

§ 2. Section 6-152 of the election law, as amended by chapter 234 of the laws of 1976, is amended to read as follows:

§ 6-152. Vacancies caused by death or disqualification and unfilled at time of primary election. If a vacancy shall occur in a designation of a candidate for nomination or election at a primary election, caused by the death or disqualification of a candidate subsequent to [~~noon of the seventh day~~] **thirty days** before the primary election and prior to the closing of the polls, such vacancy shall not be filled and the votes cast for such [~~deceased or disqualified~~] candidate shall be canvassed and counted, and, if he **or she** shall receive a plurality of the votes

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

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cast, another candidate may thereafter be nominated or the vacancy filled as provided by law or the rules of the party.

§ 3. Section 6-154 of the election law is amended by adding a new subdivision 4 to read as follows:

4. Each board of elections or the state board of elections as applicable shall make any determination required by this section no later than sixty days before the primary election in the case of challenges to designating or opportunity to ballot petitions and no later than seventy days before the general election in the case of challenges to nominating petitions and certificates of designation or nomination.

§ 4. Section 7-116 of the election law is amended by adding a new subdivision 8 to read as follows:

8. In cases where a name is added to or removed from the county board of elections' official ballot too late to make a complete compliance to these requirements feasible, the name may be added at the end of the row or column of candidates in all election districts, or removed from the ballot in all election districts without changing the previously arranged order of other names and without invalidating the election. Any inadvertent error in the order of names discovered too late to correct the order of the names on the ballots concerned shall not invalidate an election.

Except where a contest or candidate is removed from the ballot by court order too late to make complete compliance with this section feasible, the title of each public office or party position and the names of the candidates for such office or position appearing on any ballot used for elections over which the county board of elections has jurisdiction shall appear on such ballot immediately adjacent to one another, either horizontally or vertically; and no blank spaces shall separate the names of candidates actually running for an office or party position on such ballot, and no blank spaces shall separate any two such offices or positions which appear on such ballot in the same column or row.

§ 5. Subdivision 3 of section 7-122 of the election law, as amended by chapter 165 of the laws of 2010, is amended to read as follows:

3. The determination of the appropriate county board of elections as to the candidates duly designated or nominated for public office or party position whose name shall appear on the absentee ballot and as to ballot proposals to be voted on shall be made no later than the day after the state board of elections issues its certification of those candidates to be voted for at the general, special or primary election. The determinations of the state board of elections and the respective county boards of elections shall be final and conclusive with respect to such offices for which petitions or certificates are required to be filed with such boards, as the case may be but nothing herein contained shall prevent a board of elections, or a court of competent jurisdiction from determining at a later date that any such certification, designation or nomination is invalid and, in the event of such later determination, no vote cast for any such nominee by any voter shall be counted at the election. **Any order of a court of competent jurisdiction or determination by the board of elections changing the ballot as previously determined by the board of elections must be made and, where required, entered at least twenty days prior to the election. The order of a court of competent jurisdiction or determination of a board of elections to add a name or ballot proposal to the ballot shall require that only those voters who have not been sent absentee ballots prior to**

such change shall be sent ballots which reflect such addition or additions unless the court specifically otherwise orders.

§ 6. Subdivisions 1 and 2 of section 7-128 of the election law are amended to read as follows:

1. Each officer or board charged with the duty of providing official ballots for an election shall have sample ballots open to public inspection [~~five~~] fifty days, except in the case of extraordinary circumstances in which case on the earliest day practicable, before the election for which [~~they were~~] the ballots have been prepared and the official ballots open to such inspection [~~four~~] fifty days, except in the case of extraordinary circumstances in which case on the earliest day practicable, before such election except that the sample and official ballots for a village election held at a different time from a general election shall be open to public inspection at least two days before such election. During the times within which the ballots are open for inspection, such officer or board shall deliver to each voter applying therefor a sample of the ballot which he or she is entitled to vote.

2. Each officer or board charged with the duty of preparing ballots to be used [~~on~~] with voting machines in any election shall:

a. give written notice, by first class mail, to all candidates, except candidates for member of the county committee, who are lawfully entitled to have their names appear thereon, of the time when, and the place where, they may inspect the [~~voting machines~~] ballots to be used for such election. The candidates or their designated representatives may appear at the time and place specified in such notice to inspect such [~~machines~~] ballots, provided, however, that the time so specified shall [~~be not less than two~~] occur no later than forty-six days [~~prior to the date of~~] before the election at which the ballots will be used. A candidate, whose name appears on the ballot [~~for an election district~~] or his or her designated representative, may, in the presence of the election officer attending the [~~voting machine~~] ballot, inspect the [~~face of the machine~~] ballot to see that his or her ballot [~~label~~] position is in its proper place[~~, but at no time during the inspection shall the booth be closed~~] or places.

b. give written notice, by first class mail, to all candidates, except candidates for member of the county committee, who are lawfully entitled to have their names appear thereon, of the time when, and the place where, they may inspect the voting machines or systems to be used for such election. The candidates or their designated representatives may appear at the time and place specified in such notice to view the conduct of the logic and accuracy testing required to be performed on such voting machines or systems, provided however, that the time so specified shall be not less than twenty days prior to the date of the election.

§ 7. Section 7-130 of the election law is amended to read as follows:

§ 7-130. Ballots; examination by voters and instruction in use of voting machines or systems. One or more voting machines [~~which shall contain the ballot labels~~] or systems on which ballots shall be cast, showing the party [~~emblems~~] names and [~~title~~] titles of [~~officers~~] offices to be voted for, and which shall so far as practicable contain the names of the candidates to be voted for, shall be placed on public exhibition in some suitable place by the board of elections, [~~in charge of competent instructors,~~] for at least three days during the thirty days next preceding an election. No voting machine or system which is to be assigned for use in an election shall be used for such purpose after having been prepared and sealed for the election. During such public

exhibition, the counting mechanism of the machine **or system** shall be concealed from view and the doors**, if any,** may be temporarily opened only when authorized by the board or official having charge and control of the election. Any voter shall be allowed to examine such machine **or system**, and upon request shall be instructed in its use.

§ 8. Section 16-100 of the election law is amended by adding a new subdivision 3 to read as follows:

3. In view of the time required for boards of elections to reprint ballots and to conduct logic and accuracy testing required by title two of article seven of this chapter and regulations of the state board of elections, no court shall, except in extraordinary circumstances, enter a final order including the resolution of any appeals issued pursuant to subdivision four of section 16-102 of this article or subdivision four of section 16-104 of this article unless such order or determination shall be made in conformance with the time frame requirements of those sections.

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

4. A final order **including the resolution of any appeals** in any proceeding involving the names of candidates on ballots or voting [~~machines~~] **systems** shall**, except in extraordinary circumstances,** be made[~~, if possible,~~] at least [~~five weeks~~] **fifty-five days** before the day of the election at which such ballots or voting [~~machines~~] **systems** are to be used, or if such proceeding is commenced within [~~five weeks~~] **fifty-five days** of such election, no later than the day following the day on which the case is heard.

§ 10. Subdivisions 1, 3 and 4 of section 16-104 of the election law, subdivision 3 as added by chapter 136 of the laws of 1978 and subdivision 4 as amended by chapter 117 of the laws of 1985, are amended to read as follows:

1. The form and content of any ballot, or portion thereof, to be used in an election, and the right to use any emblem design, color, party or independent body name, may be contested in a proceeding instituted in the supreme court by any aggrieved candidate or by the chairman of any party committee or independent body. **A proceeding pursuant to this subdivision must be instituted within five days of the last date of the inspection of the ballot pursuant to paragraph (a) of subdivision two of section 7-128 of this chapter.**

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

4. A final order **including the resolution of any appeals** in any proceeding involving the contents of official ballots **to be used** on [~~voting machines~~] **ballot scanners** shall**, except in extraordinary circumstances,** be made[~~, if possible,~~] at least [~~five weeks~~] **twenty-five days** before the day of the election at which such [~~voting machines~~] **ballot scanners** are to be used[~~, or if such proceeding is commenced within five weeks of an election, no later than the day following the day on which the case is heard~~].

§ 11. This act shall take effect immediately.