STATE OF NEW YORK

6374

2019-2020 Regular Sessions

IN SENATE

June 6, 2019

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

AN ACT to amend the election law, in relation to the conducting of the presidential primary, to provide for the election of delegates to a national party convention or a national party conference in 2020, and the "Presidential" and "June" primary in such year; to amend the election law, in relation to electing delegates to a national party convention; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Paragraph (a) of subdivision 1 of section 8-100 of the election law, as amended by chapter 5 of the laws of 2019, is amended to read as follows:

(a) A primary election shall be held on the fourth Tuesday in June before every general election unless otherwise changed by an act of the legislature. Members of the state and county committees and assembly district leaders and associate district leaders and all other party positions to be elected shall be elected at such primary and all nominations for public office required to be made at a primary election in such year shall be made at such primary. In [~~each~~] **the** year **two thousand twenty** 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~~] **April twenty-eight, two thousand twenty** unless otherwise changed by an act of the legislature, for the purpose of electing delegates **and alternate delegates** to the national convention.

§ 2. Notwithstanding any inconsistent provisions of the election law, a rule or resolution of a state committee providing for the selection of delegates and alternate delegates to a national party convention or national party conference in the year 2020 shall select either section

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

LBD11640-03-9

three or section four of this act in order to conform to the rules of a national committee. A certified copy of such rule or resolution shall be filed with the state board of elections no later than 22 weeks before the presidential primary.

§ 3. The election law is amended by adding a new section 2-122-a to read as follows:

§ 2-122-a. National convention; national party conference. 1. The rules of the state committee of a party may provide that the delegates and alternate delegates to a national convention or national party conference be elected by a combination of all of the following methods:

a. By votes cast at a primary election for candidates for the office of president of the United States in which the names of candidates for such office appear on the ballot;

b. By votes cast at a primary election for candidates for the positions of delegate and alternate delegate to a national convention in districts no larger than congressional districts; and

c. By the state committee or a committee of the state committee at a meeting or convention called for such purpose as the rules of the party may provide.

2. If the rules of a state committee adopted pursuant to the provisions of this section provide for a primary election in which the office of president of the United States appears on the ballot, designation of candidates for such office shall be made pursuant to the provisions of sections 6-100, 6-118, 6-122 (except that such candidates need not be citizens of New York but only citizens of the United States), 6-130, 6-132 (except that references to a committee to fill vacancies shall be deemed references to a committee to receive notices), 6-134, 6-144, the provisions with respect to declinations in subdivisions one and two of section 6-146 (except that references to a committee to fill vacancies shall be deemed references to a committee to receive notices), 6-154, and subdivision one and the provision with respect to declinations in subdivision two of section 6-158 (except that such candidates may decline such designations not later than February tenth, two thousand twenty) of this chapter. The state board of elections shall forthwith notify the appropriate county boards of elections of any such declination filed.

3. Designating petitions, where required for candidates for the office of president of the United States to be voted on by voters of the entire state in a primary election, must be signed by not less than five thousand of the then enrolled voters of the party in the state.

4. If the rules of a state committee provide for a primary election in which the office of the president of the United States appears on the ballot, in addition to the spaces on the ballot with the names of the candidates designated for such office there may be a space with the word "uncommitted". The "uncommitted" space shall be listed on the ballot provided that a designating petition for such "uncommitted" space which meets the same requirements as a petition designating a candidate for the office of president of the United States is filed in the same manner as is required for such a petition.

5. a. The form of a petition requesting that an "uncommitted" space be listed on the ballot at a primary election for the office of president of the United States held pursuant to the provisions of this section shall be substantially as follows:

I, the undersigned, do hereby state that I am a duly enrolled voter of the ..... Party and entitled to vote at the next primary election of such party to be held on the ..... day of

..... 20..., that my place of residence is truly stated opposite my signature hereto, and I do hereby request that an "uncommitted" space be listed on the ballot at the primary election of such party for the office of president of the United States.

b. The appointment of a committee to receive notices shall be in the form prescribed for a petition for an opportunity to ballot. The signatures on the petition with all the required information and the signed statement of a witness or authentication by a person authorized to take oaths shall be in the form prescribed for a designating petition for such office.

6. a. If the rules of a state committee, adopted pursuant to the provisions of this section, provide that the positions of delegate and alternate delegate to a national convention appear on the ballot, designation of candidates for such positions shall be made pursuant to the provisions of sections 6-100, 6-118, 6-122, 6-130, 6-132 (except that references to a committee to fill vacancies shall be deemed references to a committee to receive notices), 6-134, 6-144, the provisions with respect to declinations in subdivisions one and two of section 6-146 (except that references to a committee to fill vacancies shall be deemed references to a committee to receive notices), 6-147, 6-154, and subdivision one and the provision with respect to declinations in subdivision two and subdivision three of section 6-158 of this chapter.

b. Candidates for the positions of district delegate and alternate district delegate to a national party convention pursuant to the provisions of this section shall be enrolled members of such party and residents of the district in which they are candidates. The board of elections with which a petition is filed shall conduct a prima facie review of the enrollment status of candidates for district delegate and alternate district delegate to determine ballot eligibility. The congressional districts used for the election of such delegates and alternate delegates shall be those districts in effect for the two thousand eighteen congressional elections.

c. Designating petitions for candidates for such positions must be signed by at least five hundred enrolled voters of the party residing in the district in which such candidates are designated, or by at least one-half of one percent (0.5%) of the then enrolled voters of such party in such district, whichever is less. Such petition signature requirement shall be computed using the official February first, two thousand nineteen enrollments published by the state board of elections.

d. The designating petition for any such candidate or candidates shall have printed thereon prior to the affixing of any signatures thereto, a legend naming the presidential candidate whom such candidates are pledged to support, or a legend that such candidates are uncommitted. Such legend shall be part of the title of such position.

e. No designating petition containing the names of more than one candidate for either such position shall be valid under this section, for purposes of delegates and alternate delegates, unless all such candidates for such positions have printed on such petition the legend that they are pledged to the same presidential candidate or unless all such candidates for such positions have printed on such petition the legend that they are uncommitted.

f. On the designating petition shall appear, in parenthesis, the letter (M) if the candidate identifies as male, the letter (F) if the candidate identifies as female or the letters (NB) if the candidate identifies as non-binary. No designating petition containing the names of more than one candidate for either such position shall be presump-

tively valid unless among the candidates for delegate as a group, and among the candidates for alternate as a group, the variance within each group between those identifying as male and those identifying as female shall be no greater than one.

g. In the event that a designating petition is filed for candidates for such positions listed as pledged to support a presidential candidate or as uncommitted, and the name of such presidential candidate, or the word uncommitted, will not appear on the ballot at the presidential primary election in two thousand twenty, then the petition designating such candidates for such positions shall be null and void and the names of such candidates for such positions shall not appear on the ballot.

h. Every board of elections with which designating petitions are filed pursuant to the provisions of this section shall, not later than four days after the last day to file such petitions, file with the state board of elections by express mail or by electronic transmission, a complete list of all candidates for delegate and alternate delegate together with their residence addresses, the districts in which they are candidates and the name of the presidential candidate whom they are pledged to support or that they are uncommitted. Such boards of elections shall, not later than the day after a certificate of declination or substitution is filed with respect to any such candidate, file such information with respect to such candidate with the state board of elections by electronic transmission.

7. a. The rules of a state committee adopted pursuant to the provisions of this section may provide that no candidate for the positions of delegate and alternate delegate may appear on the ballot as pledged to support a particular presidential candidate, or as uncommitted, unless the name of such candidate for such position appears on a certificate listing the names of those candidates for such positions who have filed statements of candidacy for such positions with the secretary of the state committee within the time prescribed by such rules and who, if their statements of candidacy contained a pledge of support of a presidential candidate, were not rejected by such presidential candidate. Such certificate shall also list the address and gender of each such candidate for delegate and alternate delegate and the district in which such candidate may appear on the ballot.

b. Such certificate shall be filed by the secretary of such state committee, with the board of elections with which the designating petitions for such candidates for such positions are required to be filed, not later than February eighteenth, two thousand twenty.

c. In the event that a designating petition for candidates for such positions, listed as pledged to support a presidential candidate, contains the names of one or more persons who have not been permitted by such presidential candidate to appear on the ballot as so pledged pursuant to the provisions of this section, then the names of such candidates shall not appear on the ballot but the names of other candidates on such petition who have been permitted by the presidential candidate to appear on the ballot shall be placed on the ballot provided that such candidates are otherwise eligible and that such petition is otherwise valid.

d. The state board of elections shall send a copy of the certificate required by section 4-110 of this chapter to the secretary of the state committee of each party conducting a primary pursuant to the provisions of this section not later than March fourth, two thousand twenty. Every other board of elections with which designating petitions for delegate and alternate delegate were filed pursuant to the provisions of this section shall, not later than March fifth, two thousand twenty, send a

list of the names and addresses of those candidates who will appear on the ballot to the secretary of each such state committee.

8. a. If the rules of a state committee adopted pursuant to the provisions of this section provide for an election in which candidates for the office of president of the United States and the word "uncommitted" and candidates for the positions of delegate and alternate delegate to a national convention appear on the ballot, such ballot shall be arranged in the manner prescribed by this section.

b. The name of each candidate for the office of president of the United States who has qualified to appear on the ballot and the word "uncommitted," if a valid designating petition to place such word on the ballot was filed with the state board of elections, shall appear in a separate row or column. The names of all the candidates for delegate to a national convention who filed designating petitions containing a legend naming the presidential candidate whom they are pledged to support or stating that they are uncommitted shall be listed in such row or column immediately under or adjacent to the name of such presidential candidate or the word "uncommitted," followed by the names of all candidates for alternate delegate to such convention who filed such petitions. If the number of candidates, or groups of candidates for delegate and alternate delegate who are pledged to support a particular presidential candidate or who are uncommitted is greater than the number who may be listed in one row or column and if there are more rows or columns available on the ballot than are required for the candidates for president who have qualified to appear on the ballot, then the board of elections shall use two rows or columns on such ballot to list the names of such candidates for delegate and alternate delegate.

c. The order of the names of candidates for the office of president and the word "uncommitted" on the ballot and the order of the names of candidates for the positions of delegate or alternate delegate within a particular row or column shall be determined pursuant to the provisions of subdivision three of section 7-116 of this chapter except that names of candidates for such positions who are designated by individual petitions and not in a group shall have their positions determined by lot in the same drawing as groups and except further that candidates or groups of candidates for delegates and alternate delegates designated by the same petition shall be treated as one group for the purposes of such determination by lot. The provisions of subdivision six of such section 7-116 of this chapter shall not apply to any election conducted pursuant to the provisions of this section.

d. Immediately following the name of each candidate for delegate and alternate delegate on the ballot shall appear, in parenthesis, the letter (M) if such candidate identifies as male, the letter (F) if such candidate identifies as female, or the letters (NB) if such candidate identifies as non-binary.

9. All primary elections conducted pursuant to the provisions of this section shall use only voting systems authorized by title two of article seven of this chapter.

10. Persons entitled to vote pursuant to section 11-200 of this chapter shall be entitled to sign designating petitions for, and vote in, any election held pursuant to the provisions of this section.

11. If the rules of a state committee provide for a primary election in which the office of president of the United States and the positions of delegate and alternate delegate to a national convention appear on the ballot pursuant to the provisions of this section, the state board of elections and the county boards of elections as the case may be shall

canvass the results of such primary election for such office and positions pursuant to the provisions of sections 9-200 and 9-202 of this chapter, and shall certify to the secretary of the state committee of such party the votes cast for each candidate for such office and positions in such primary election and the votes cast for the "uncommitted" preference, tallied separately by congressional districts, except that no candidate or "uncommitted" preference shall be certified as nominated or elected to any such office or position.

12. Except as provided in this section and party rules and regulations, all provisions of the election law, except any provisions of section 2-122 of this article which are inconsistent with this section and those sections and subdivisions of article six of this chapter not specified in this section, shall apply to elections conducted pursuant to this section.

§ 4. The election law is amended by adding a new section 2-122-b to read as follows:

§ 2-122-b. Presidential primary. 1. Applicability. The selection of delegates and alternate delegates from New York state to the national convention of the Republican party in each year in which electors of president and vice-president of the United States are to be elected shall be conducted pursuant to the provisions of this section. The state committee of any other political party may, by rule or resolution, opt to conduct the selection of delegates and alternate delegates in any such year in accordance with the provisions of this section. A certified copy of such rule or resolution shall be filed with the state board of elections no later than twenty weeks prior to the date of such election.

2. General provisions. The selection of delegates and alternate delegates to a national convention or conference of a political party pursuant to this section shall be determined by the votes cast at a statewide primary election for candidates for the office of president of the United States in which the names of candidates for such office appear on the ballot and the names of delegates and alternate delegates do not appear on such ballot. All delegates and alternate delegates to a national convention or conference of a political party from New York state shall be allocated to the candidate receiving the greatest number of votes at such presidential primary election. A political party shall certify to the state board of elections, at least sixteen weeks prior to the date of the presidential primary, the number of delegates to which such party is entitled pursuant to its rules. At-large delegates and alternate delegates shall be selected by the state committee of the political party in accordance with the rules of the national committee of such party and shall be allocated to the presidential candidate receiving the greatest number of votes at the statewide presidential primary election.

3. Ballot access methods. Candidates shall be eligible to appear on the ballot in a presidential primary election of a political party for the office of president of the United States pursuant to any of the following provisions:

a. Any candidate who has been certified as eligible to receive presidential primary matching fund payments pursuant to the provisions of 11 Code of Federal Regulations Part 9033, or any candidate who meets the eligibility criteria regarding matchable contributions established in 11 Code of Federal Regulations Part 9033.2(b)(3) regardless of whether such candidate actually applied for such matching fund payments, may request, by certificate filed and received by the state board of elections no sooner than sixteen weeks and not later than nine weeks prior to the

date of the presidential primary, that the name of such candidate appear on the ballot at the primary of such party in the state of New York for that year.

b. Any candidate may request, by certificate filed and received by the state board of elections no sooner than sixteen weeks and not later than nine weeks prior to the date of the presidential primary, that the name of such candidate appear on the ballot at the presidential primary of such party in the state of New York for the office of president of the United States. Such candidate shall be eligible to appear on the ballot of such party in the state of New York at the presidential primary election for that year if the state board of elections determines that the person is a nationally known and recognized candidate and the candidacy of such person for the party nomination for president is generally and seriously advocated or recognized according to reports in the national or state news media. Notwithstanding any inconsistent provision of law to the contrary, a request by a candidate to appear on the presidential primary ballot of a major political party shall be determined solely by the commissioners of the state board of elections who have been appointed on the recommendation of such political party or the legislative leaders of such political party, and no other commissioner of the state board of elections shall participate in such determination. The state board of elections shall act upon any such request no later than fifty-six days before the presidential primary.

c. Any candidate shall be eligible to appear on the presidential primary ballot pursuant to the provisions of article six of this chapter. Designating petitions shall be signed by not less than five thousand or five percent, whichever is less, of the then enrolled voters of the party in the state.

d. Presidential candidates determined eligible to appear on the presidential primary ballot may have their name removed from such primary ballot by filing a certificate with the state board of elections and received no later than fifty-six days before such primary election. After such date but before the seventh day before the presidential primary, presidential candidates may file a certificate with the state board of elections deeming any vote for such presidential candidate to be a void vote.

4. Election of delegates and alternate delegates from congressional districts. a. Any candidate eligible to appear on the presidential primary ballot pursuant to the provisions of subdivision three of this section shall file a certificate with the state board of elections received no later than nine weeks prior to the date of the presidential primary setting forth a complete slate of proposed delegates and alternate delegates for each delegate and alternate delegate position to be determined by the statewide primary election. The complete slate of delegates and alternate delegates shall consist only of enrolled members of such political party who reside in the congressional district they seek to represent and who have committed to support such candidate and shall be consistent with the rules of such party, including the rules of the national party, if applicable. The state board of elections shall review each such slate, and if it determines that such slate is not complete or is not otherwise in compliance with the provisions of this paragraph, it shall notify the candidate of any defects forthwith and provide such candidate with no less than three business days to cure any defects. A candidate eligible to appear on the ballot pursuant to the provisions of subdivision three of this section shall appear on such

presidential primary election ballot only upon the filing of a valid certificate in compliance with the provisions of this paragraph.

b. All delegates and alternate delegates, other than at-large delegates selected by the state committee of a political party, shall be allocated to the presidential candidate receiving the greatest number of votes at such presidential primary election. Such delegate positions shall be filled in accordance with the slate of delegates and alternate delegates set forth on the certificate filed pursuant to paragraph a of this subdivision; provided, however, that the state board of elections shall provide a candidate with a reasonable opportunity to fill any delegate or alternate delegate positions that have become vacant subsequent to the filing of such certificate. The state board of elections shall certify to the chairman of the state committee of such party, each candidate and the national committee of such party the slate of delegates and alternate delegates elected as a result of the primary election.

5. Election of at-large delegates and at-large alternate delegates. At-large delegates and at-large alternate delegates shall be selected by the New York republican state committee. All at-large delegates and at-large alternate delegates shall be allocated to the presidential candidate receiving the greatest number of votes cast for a presidential candidate at the presidential primary election.

6. All provisions of this chapter which are not inconsistent with this section shall be applicable to a primary election conducted pursuant to this section.

§ 5. Section 6-158 of the election law is amended by adding a new subdivision 1-a to read as follows:

1-a. A designating petition for a presidential primary election shall be filed not earlier than the thirteenth Monday before, and not later than the twelfth Thursday preceding the presidential primary election.

§ 6. Subdivision 6 of section 6-158 of the election law, as amended by chapter 5 of the laws of 2019, is amended to read as follows:

6. (a) A certificate of a party nomination made other than at the primary election for an office to be filled at the time of a general election shall be filed not later than thirty days after the **June** primary election, (b) except that a certificate of nomination for an office which becomes vacant after the seventh day preceding such primary election shall be filed not later than thirty days after the primary election or ten days after the creation of such vacancy, whichever is later, and (c) except, further, that a certificate of party nomination of candidates for elector of president and vice-president of the United States shall be filed not later than [~~seventy-four~~] **seventy-three** days after the **June** primary election, and (d) except still further that a certificate of party nomination made at a judicial district convention shall be filed not later than the day after the last day to hold such convention and the minutes of such convention, duly certified by the chairman and secretary, shall be filed within seventy-two hours after adjournment of the 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.

§ 7. Severability. If any sentence, clause, subparagraph, paragraph, subdivision, section or other part of this act, or the application thereof to any party, person or circumstances shall be held or adjudged by any court of competent jurisdiction to be invalid, such holding or judgment shall not affect, impair or invalidate the remainder or any portion of the remainder of this act, or the application of such section or part

of a section held or adjudged to be invalid, to any other person or circumstances, but shall be confined in its operation to the sentence, clause, subparagraph, paragraph, subdivision, section or other part of this act directly involved in the controversy in which such holding or judgment shall have been rendered, or to the party, person and circumstances therein involved.

§ 8. This act shall take effect immediately; provided, however, if this act shall have become a law after July 1, 2019, it shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2019; provided further that section six of this act shall take effect December 15, 2019; and provided further, this act shall expire December 31, 2020 when upon such date the provisions of this act shall be deemed repealed.