STATE OF NEW YORK

1116

2021-2022 Regular Sessions

IN ASSEMBLY

January 7, 2021

Introduced by M. of A. CAHILL -- Multi-Sponsored by -- M. of A. COLTON, DINOWITZ, GALEF -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to the preparation, contents and distribution of a paper pamphlet containing information relative to general elections; to repeal certain provisions of the election law, relating to distribution of copies of proposed amendments to the constitution or other propositions or questions; 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. Subdivisions 2 and 3 of section 4-116 of the election law are REPEALED.

§ 2. Paragraphs c and d of subdivision 1 of section 4-108 of the election law are REPEALED and subdivision 3, as added by chapter 234 of the laws of 1976, is amended to read as follows:

3. The attorney general shall advise in the preparation of such [~~abstract and such~~] form of submission.

§ 3. The opening paragraph of subdivision 1 of section 4-120 of the election law, as amended by chapter 413 of the laws of 2019, is amended to read as follows:

The board of elections shall publish once in each of the two weeks preceding a general election, or a special or village election conducted by the board of elections, a notice specifying the day of the election, and the public officers to be voted for within such county, or any part thereof at such election. The board of elections shall, as soon as practicable, but not less than two weeks prior to any special election, prominently display on its website the date and hours of the election, the offices to be voted on in the county, part of a county, or the city of New York, and a link to any poll site information or poll location tools, where available. Such information shall also be made available to

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

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local governments, municipalities, and community boards for publication on any public-facing internet website, web application, web domain or digital application, including a social network or search engine, to the extent that such publication is practicable. [~~If constitutional amendments, or questions are to be submitted to the voters of the state, the notice shall state that fact and that a copy of each such amendment or question may be obtained at the board of elections, by any voter.~~] Such publication shall be in two newspapers published within the county. If the county contains a city or cities, at least one of such newspapers shall be published in the city, or the largest city, if there be more than one.

§ 4. Subdivision 1 of section 4-128 of the election law, as amended by section 2 of part XX of chapter 55 of the laws of 2019, is amended to read as follows:

1. The board of elections of each county shall provide the requisite number of official and facsimile ballots, two cards of instruction to voters in the form prescribed by the state board of elections, **five copies of each ballot pamphlet,** at least one copy of the instruction booklet for inspectors, a sufficient number of maps, street finders or other descriptions of all of the polling places and election districts within the political subdivision in which the polling place is located to enable the election inspectors and poll clerks to determine the correct election district and polling place for each street address within the political subdivision in which the polling place is located, distance markers, tally sheets and return blanks, pens, pencils, or other appropriate marking devices, envelopes for the ballots of voters whose registration poll records are not in the ledger or whose names are not in the computer generated registration list, envelopes for returns, identification buttons, badges or emblems for the inspectors and clerks in the form prescribed by the state board of elections and such other articles of stationery as may be necessary for the proper conduct of elections, except that when a town, city or village holds an election not conducted by the board of elections, the clerk of such town, city or village, shall provide such official and facsimile ballots and the necessary blanks, supplies and stationery for such election.

§ 5. Subdivision 4 of section 5-204 of the election law is REPEALED and subdivisions 3, 5, 6, 7, 8, 9 and 10 are renumbered subdivisions 2, 3, 4, 5, 6, 7 and 8.

§ 6. Subdivision 2 of section 4-117 of the election law is REPEALED and subdivision 3 is renumbered subdivision 2.

§ 7. Article 7 of the election law is amended by adding a new title 3 to read as follows:

TITLE III

BALLOT PAMPHLET

Section 7-300. Legislative findings.
7-302. State board of elections to prepare ballot pamphlet.
7-304. Contents of ballot pamphlet.
7-306. Preparation of ballot proposal materials.
7-308. State immunity.
7-310. Printing.
7-312. Distribution.
7-314. Authorization to local communities.

§ 7-300. Legislative findings. The legislature hereby finds and declares that the purpose of this title and of the ballot pamphlet is to fully and fairly inform the electorate about the issues appearing on the ballot. The state board of elections shall undertake its responsibil-

ities in the manner best calculated to, and all the provisions herein shall be construed so as to accomplish that goal.

§ 7-302. State board of elections to prepare ballot pamphlet. It shall be the duty of the state board of elections, hereinafter referred to as the state board, to prepare and distribute a ballot pamphlet, in the manner set out in this title, for every general election conducted in the state in which a ballot proposal is on the ballot. Not later than January thirty-first of each year, the state board shall fix and announce the dates for all deadlines provided for by this title.

§ 7-304. Contents of ballot pamphlet. Each ballot pamphlet shall contain the following material and no other material. 1. An introductory statement shall be prepared by the state board explaining:

(a) The date and hours during which the polls will be open for the general election;

(b) Voter qualification requirements in New York state;

(c) When, where, and how to register to vote;

(d) When, where and how absentee ballots are obtained and used;

(e) Instructions on how to vote, including the use of affidavit ballots; and

(f) Any other general information on voting deemed necessary or useful to the electorate or otherwise consistent with the goals of this article by the state board.

2. The following statement, printed in boldface type, shall follow the introductory statement and precede materials related to ballot proposals:

IMPORTANT: This pamphlet contains information only on proposals which will be on the ballot statewide. There may also be proposals of local interest on the ballot in your community. For information on these proposals, contact your local board of elections and see your local newspaper. The arguments for and against the proposals do not constitute endorsement by the State of New York, nor does the State certify the accuracy or truth of any statement made in those materials.

3. Materials shall be prepared for each ballot proposal to be submitted to a statewide vote at the general election. Such materials shall be prepared as prescribed in section 7-306 of this title, and shall include the following:

(a) A true copy of the form of the ballot proposal, as it will appear on the ballot, set out in boldface or italic type at the top of the page;

(b) A concise, impartial, and understandable explanation, not to exceed five hundred words, stating the nature and effect of the ballot proposal;

(c) A statement not to exceed three hundred words, of the major arguments for its passage, clearly labelled as such;

(d) A statement not to exceed three hundred words, of the major arguments against its passage, clearly labelled as such;

(e) The full text of the ballot proposal, which shall be printed so as to indicate by the use of italic type the matter if any that would be added to the state constitution of law, and by the use of brackets the matter if any that would be deleted therefrom;

(f) An explanation of such use of italic type and brackets, as described in paragraph (e) of this subdivision; and

(g) The members of the committee that prepared the materials.

§ 7-306. Preparation of ballot proposal materials. 1. All materials required by paragraphs (a), (e), (f) and (g) of subdivision three of section 7-304 of this title shall be prepared by the state board of

elections, and all materials required by paragraphs (b), (c) and (d) of subdivision three of section 7-304 of this title with respect to each ballot proposal, shall be prepared by a separate committee consisting of seven members. The majority leader of the senate shall appoint two members to serve on such committee. The speaker of the assembly shall appoint two members to such committee. The minority leader of the senate and the minority leader of the assembly shall jointly appoint two additional persons to such committee. In making their appointments, the majority and the minority leaders of the senate and the speaker of the assembly and the minority leader of the assembly shall endeavor to create a committee with a broad range of opinions on the measure. The seventh member shall be the attorney general and shall serve as the chairperson of the committee. Vacancies shall be filled in the same manner as the original appointment. Members who are not state officials shall be entitled to actual and necessary expenses incurred in the performance of their duties.

2. The state board of elections shall make staff available to assist the committee in carrying out its responsibilities.

3. The committee must meet within ten days after each proposition has passed both houses of the legislature to determine who shall be the principal proponents and opponents of each measure. Such principal proponent or opponent may be a member of the committee or any registered voter in the state.

4. The committee shall announce with such notice as the state board shall specify, its preliminary draft of the explanatory statement and the arguments opposing and proposing the ballot proposals as provided for in paragraphs (b), (c) and (d) of subdivision three of section 7-304 of this title, not later than the date fixed by the state board pursuant to the provisions of section 7-302 of this title. Any person may file with the committee a written statement of suggested changes and all such statements submitted not later than the date fixed by the state board shall be considered by such committee.

5. In compliance with paragraphs (c) and (d) of subdivision three of section 7-304 of this title, the committee may select no more than two arguments advanced by proponents and opponents of every measure to be submitted to the voters. If no argument is deemed appropriate for selection, the committee may reserve the responsibility for composition of either or both. In making its selections, the committee shall give priority to arguments advanced by organizations over consideration of arguments advanced by individuals. The state board shall include in the ballot pamphlet on the same page as the printed argument relating to the measure, the name of the organization, if any, advancing the argument and whether the argument supports or opposes the measure. If the committee itself has written the argument, a disclaimer in substantially the same form shall be printed immediately below the argument:

The printing of this argument does not constitute an endorsement by the state of New York, nor does the state warrant the accuracy or truth of any statement made in the argument.

6. The committee may reject a statement or portions thereof, if it:

(a) contains any language that the committee, at its discretion, has construed not to accomplish the goals of this title;

(b) contains any language which may not be legally circulated through the mails; or

(c) is submitted after the date specified by the board.

7. Thereafter, the committee shall make any changes in the materials as it considers proper and shall file the final set of materials with

the state board not later than the date set by such board pursuant to the provisions of section 7-302 of this title.

8. The preliminary materials and the final set of materials shall be concurred on and certified by the committee or at least by four of its members. If a member does not concur, a statement shall show only that he dissents and where applicable, that he was appointed as a proponent or opponent of the measure.

9. The state board shall certify and make public the final contents of the ballot pamphlet no later than sixty days before the election at which the measure is to appear on the ballot.

§ 7-308. State immunity. No cause of action shall arise against the state of New York or any agency or employee thereof with respect to such ballot pamphlet except as caused by the negligence or willful acts of the state or of its agents or employees, nor may a cause of action arise against the state of New York or any agency or employee thereof by virtue of statements prepared by any committee constituted under section 7-306 of this title.

§ 7-310. Printing. 1. The state board shall cause the ballot pamphlet to be printed in as legible a manner as possible consistent with the purpose of this title. In the event that the state board determines that the printing of the ballot pamphlet would be more efficient and economical if done by the local boards of elections, the state board is hereby authorized to instruct all boards of elections to print the ballot pamphlet. Should the state board so instruct the boards of elections, it shall promptly reimburse each board for the actual cost of production incurred by said board.

2. The state board or the local boards of elections as provided for in subdivision one of this section, shall also prepare and cause to be printed, and distribute to such voters as it deems appropriate, a translation of the ballot pamphlet into Spanish and any other languages required to comply with the Voting Rights Act of 1965, as amended.

§ 7-312. Distribution. 1. There shall be no charge for single copies of the ballot pamphlet.

2. In every general election in which a ballot proposal is on the statewide ballot, the state board shall cause a copy of the ballot pamphlet to be distributed to at least one registered voter in each household. In the event the state board determines that distribution of the ballot pamphlet would be more efficient and economical if done by the local boards of elections, the state board is hereby authorized to instruct all boards of elections to distribute the ballot pamphlet to at least one registered voter in each household. Should the state board so instruct the boards of elections, it shall provide a sufficient number of ballot pamphlets to each board of elections and shall promptly reimburse each board for the actual cost of postage incurred by said board in distributing the pamphlet provided that said board utilize the lowest feasible postage rate charged by the United States postal service. The distribution of the ballot pamphlets to registered voters or households shall be made between twenty and forty days before the election to which they pertain.

3. Sufficient copies shall also be provided to boards of elections to permit each such board to supply five copies to each election district.

4. In addition to providing a sufficient number of copies of the pamphlet to comply with subdivisions two and three of this section, the state board shall cause to be printed at least fifty thousand additional copies and provide them to those persons, organizations and other entities that request them, at no charge, provided that the state board may

impose a charge for bulk orders of greater than five copies and may set limits on the total number of copies that any single individual, organization or other entity may obtain upon request.

§ 7-314. Authorization to local communities. The legislative bodies of all cities, towns and counties are hereby authorized to enact legislation consistent with the provisions of this title which would enable questions, propositions, and issues on the ballot in such cities, towns and counties to be presented to voters by means of a ballot pamphlet. Any such pamphlet may, with the approval of the state board, be mailed together with the statewide ballot pamphlet. The additional expense of preparing, printing and distributing such a pamphlet shall be paid by such city, town or county.

§ 8. Subdivision 2 of section 16-100 of the election law, as amended by section 4 of part E of chapter 399 of the laws of 2011, is amended to read as follows:

2. The county court is vested with jurisdiction to summarily determine any question of law or fact except proceedings as to a nomination or election at a primary election or a nomination at a judicial convention, proceedings as to the casting and canvass of ballots, proceedings for examination or preservation of ballots, proceedings as to the contents of statements on constitutional amendments, questions and propositions and proceedings to enforce the provisions of article fourteen of this chapter.

§ 9. The election law is amended by adding a new section 16-105 to read as follows:

§ 16-105. Proceedings as to the content of ballot pamphlets. 1. Any person eligible to vote on any ballot proposal contained in any ballot pamphlet prepared pursuant to title three of article seven of this chapter may institute a proceeding as to the factual accuracy of statements on constitutional amendments, questions and propositions. Any such proceeding shall be brought in the supreme court of the state of New York, Albany county.

2. A proceeding pursuant to subdivision one of this section must be instituted no later than ten days after the state board certifies the final contents of the ballot pamphlet. If the court finds that the form and contents do not comply with the requirements of article seven of this chapter, or finds by clear and convincing evidence that the language of the pamphlet is false or misleading, it shall order such changes as it deems necessary, provided that any changes so ordered will not substantially interfere with the printing and distribution of the pamphlet as required by law.

3. A final order in any proceeding under this section shall be made, if possible, at least fifty days before the general election for which the pamphlet was prepared.

§ 10. On or before March 1, 2027 the board of elections shall submit a report to the governor and the legislature evaluating the effectiveness of ballot pamphlets as a tool to increase voter awareness, registration and participation. Such report shall include statistics on voter participation both before and after ballot pamphlets were distributed and findings and recommendations on continuing and improving title III of article 7 of the election law.

§ 11. This act shall take effect April 1, 2023 and shall expire May 1, 2027, when upon such date the provisions of this act shall be deemed repealed.

REPEAL NOTE.--Subdivisions 2 and 3 of section 4-116 of the election law, proposed to be repealed by this act, provide for publication of proposed constitutional amendments.

Paragraphs c and d of subdivision 1 of section 4-108 of the election law, proposed to be repealed by this act, provide for a transmittal to county boards of an abstract of proposed constitutional amendments and for the form of the proposed constitutional amendment.

Subdivision 4 of section 5-204 of the election law, proposed to be repealed by this act, provides for distribution of copies of proposed constitutional amendments and questions at local registration.

Subdivision 2 of section 4-117 of the election law, proposed to be repealed by this act, provides for mailing copies of proposed constitutional amendments and questions to registered voters.