STATE OF NEW YORK

7439

2021-2022 Regular Sessions

IN ASSEMBLY

May 10, 2021

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

AN ACT to amend the election law, in relation to removing party lines from ballots for all elections that are not presidential or gubernatorial

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

Section 1. Section 7-104 of the election law, as amended by chapter 411 of the laws of 2019, is amended to read as follows:

§ 7-104. Ballots; form of. 1. All ballots shall be printed and/or displayed in a format and arrangement, of such uniform size and style as will fit the ballot, and shall be in as plain and clear a type or display as the space will reasonably permit, using only sans serif print fonts. Such type or display on the ballot shall satisfy all requirements and standards set forth pursuant to the federal Help America Vote Act.

2. [~~The~~] **For presidential and gubernatorial races for office, the** names of parties or independent bodies which contain more than fifteen letters may, whenever limitations of space so require, be printed on the ballot in an abbreviated form. In printing the names of candidates whose full names contain more than fifteen letters, only the surname must be printed in full. The officer or board charged with the duty of certifying the candidates for such office shall request each such candidate to indicate, in writing, the shortened form in which, subject to this restriction, his or her name shall be printed. If no such indication is received from such candidate within the time specified in the request, such officer or board shall make the necessary determination.

3. (a) The party name or other designation shall be affixed to the name of each candidate, or, in case of presidential electors, to the names of the candidates for president and vice-president of such party.

(b) [A] **For presidential and gubernatorial races for office, a** column/row designating number may be affixed to the name of each candi-

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

LBD08740-04-1

date, or in the case of presidential electors, to the names of the candidates for president and vice-president of such party.

(c) The titles of offices may be arranged horizontally, with the names of candidates for an office and the space, slot or device for write-in votes for such office arranged vertically under the title of the office, or the titles of offices may be arranged vertically, with the names of candidates for an office and the space, slot or device for write-in votes for such office arranged horizontally opposite the title of the office.

(d) Each office shall occupy as many columns or rows on the ballot as the number of candidates to be elected to that office[~~, except where candidate placements due to cross endorsements require additional columns or rows~~] **and shall be contained within its own section of the ballot**.

4. (a) The names of all candidates nominated [~~by any party or independent body for an office shall always appear in the row or column containing generally the names of candidates nominated by such party or independent body for other offices except as hereinafter provided~~] **shall appear only once per office to be filled at the election, except for presidential and gubernatorial races for office**.

(b) [~~When~~] **For presidential and gubernatorial races for office, the following may apply:**

(i) When the same person has been nominated for an office to be filled at the election by more than one party, the voting machine shall be so adjusted that his or her name shall appear in each row or column containing generally the names of candidates for other offices nominated by any such party.

[~~(c)~~] **(ii)** If such candidate has also been nominated by one or more independent bodies, his or her name shall appear only in each [~~row or~~] column containing generally the names of candidates for other offices nominated by any such party and the name of each such independent body shall appear in one such [~~row or~~] column to be designated by the candidate in a writing filed with the officer or board charged with the duty of certifying the candidates for such office, or if such person shall fail to so designate, the names of such independent bodies shall appear in such [~~row or~~] column as such officer or board shall determine.

[~~(d)~~] **(iii)** If any person shall be nominated for any office by one party and two or more independent bodies his or her name shall appear on the ballot twice; once in the [~~row or~~] column containing generally the names of candidates for other offices nominated by such party, and once in the [~~row or~~] column containing generally the names of candidates nominated by the independent body designated by such person in a writing filed with the officer or board charged with the duty of certifying the candidates for such office and in connection with the name of such person in such [~~row or~~] column shall appear the name of each independent body nominating him or her or, if such person shall fail to so designate, the name of such candidate and the names of such independent bodies shall appear in such [~~row or~~] column as such officer or board shall determine.

[~~(e)~~] **(iv)** If any person is nominated for any office only by more than one independent bodies, his or her name shall appear but once upon the machine in one such [~~row or~~] column to be designated by the candidate in a writing filed with the officer or board charged with the duty of providing ballots, or if the candidate shall fail to so designate, in the place designated by the officer or board charged with the duty of certifying the candidates for such office, and in connection with his or

her name there shall appear the name of each independent body nominating him or her, but, where the capacity of the ballot will permit, the name of such person shall not appear or be placed in a column [~~or on a horizontal line~~] with the names of persons nominated by a party for other offices.

5. Notwithstanding the provisions of subdivision four of this section, the name of a person who is nominated for the office of **president or** governor[~~, or state senator, or member of assembly,~~] shall appear on the ballot as many times as there are parties or independent bodies nominating him or her, and there shall be a separate voting position at each place in which such name shall appear.

6. If any type of machine used in any county or city contains any feature approved by the state board of elections, the use of which is neither required nor prohibited by the provisions of this chapter, the board of elections may, by resolution, require that one or more of such features shall be used in such county. Thereafter all machines of such type used in such county or city shall be operated in conformity with any such resolution. Any such resolution may thereafter be rescinded by such board and after being so rescinded may be re-adopted. Once re-adopted by any board of elections, such a resolution may not be rescinded again by such board.

7. [~~The~~] **For presidential and gubernatorial races for office, the** ballot shall have printed upon it in black ink for each [~~party or independent row, at the head of the column or the beginning of the row containing the names of candidates~~] **candidate**, the name of the **candidate and the name of each** party or independent body and the designating letter of the row or column.

8. With respect to candidates for the offices of governor and lieutenant governor of a party or independent body, ballots shall be printed so that the names of such candidates for both offices shall appear in the same row or column, with the name of the candidate for governor appearing first and the ballot shall be so adjusted that both offices are voted for jointly [~~and have but one designating number if such column/row designating numbers are utilized~~].

9. In those counties in which ballots are required by federal law, or otherwise, to be provided in a language other than English, there shall be versions of the ballot printed in English and in each of the additional languages required so that each version of the ballot shall contain English and no more than two other languages. The county board of elections in such counties shall instruct, in their poll worker training and materials, the procedures to be followed to ensure that each voter receives a ballot with the appropriate language as determined by the state board.

10. Each ballot shall contain instructions for marking the ballot. The instructions shall be printed in line lengths no wider than five inches. Ballot instructions may be printed on the front or back of the ballot or on a separate sheet or card. If such instructions are not printed on the front of the ballot, there shall be printed on the ballot, in the largest size type practicable, the following legend: "See instructions on the other side" or "See instructions (insert where instructions are found)", whichever is appropriate.

11. The offices appearing on all ballots shall be listed in the customary order.

12. If two or more candidates are nominated for the same office for different terms, the term for which each is nominated shall be printed as a part of the title of the office.

13. The text for ballot instructions shall be substantially as follows, so that it accurately reflects the ballot layout:

INSTRUCTIONS

Mark the (insert "oval" or "square") to the left of the name of your choice. (Provide illustration of correctly-marked voting position here.) To vote for a candidate whose name is not printed on the ballot, (insert "mark the oval (or square) to the left of 'write-in' and print the name clearly" or "print the name clearly in the box labeled 'write-in'"), staying within the box. Any mark or writing outside the spaces provided for voting may void the entire ballot. The number of choices is listed for each contest. Do not mark the ballot for more candidates than allowed. If you do, your vote in that contest will not count. If you make a mistake, or want to change your vote, ask a poll worker for a new ballot.

14. The state board of elections shall provide line drawing illustrations to supplement these instructions. At a minimum, an illustration of the correct way to mark the ballot shall be provided, but nothing in this section shall be construed to limit the board in providing additional illustrations.

15. When a question or proposal is included on the ballot, instructions substantially like the following shall be included:

Instructions for Voting on Questions and Proposals

To vote on a question or proposal, mark the (insert "oval" or "square") to the (insert "left", "above" or "below") of your choice. If you make a mistake, or want to change your vote, ask a poll worker for a new ballot.

16. When a question or proposal appears on the back of the ballot, there shall appear on the front of the ballot words or a symbol indicating that the voter should turn over the ballot.

17. The voting oval or square shall be to the left of the name of the candidate.

18. All text, including the name of each candidate as provided in subdivision three of this section, shall be printed using standard capitalization in accordance with instructions provided by the state board of elections and shall not be printed using all capital letters.

19. The ballot shall use one font or font family with enough variations for all text needs.

20. "Vote for one" or "Vote for up to ....." (the blank space to be filled with the number of persons to be nominated for the office or elected to the position), as applicable, shall be printed immediately below each office title appearing on the ballot.

21. No party emblems shall be printed on the ballot.

22. The names of candidates for the same office shall appear on the same page and in the same column or columns or row or rows of that page of a printed ballot, and may not be separated by a perforation.

23. All text, including the title of each office and the name of each candidate, shall be printed flush left and shall not be centered on the ballot or in any column or row appearing on the ballot; provided however, in a multi-column or multi-row contest, the title and number of allowable selections to be made for each such office may be centered.

24. If used, shading shall be used consistently, so as to differentiate instructions from ballot section dividers and contest information.

25. Above, below, or to the right of the name of each candidate, shall be printed, in less prominent type face than that in which the candidate's name is printed, the name of [~~the~~] **each** political party or independent body by which the candidate was nominated or designated.

26. All paper ballots of the same kind for the same polling place shall be identical.

27. To the extent practicable, the ballot shall also comply with the following specifications:

(a) The instructions in subdivision ten of this section shall be printed in the upper left hand corner of the front of the ballot;

(b) The name of each candidate shall be printed using a font size of not less than nine points;

(c) When the instructions are contained on the ballot, there shall be a clear delineation between the ballot instructions and the first office or ballot question or proposal through the use of white space, illustration, shading, color, font size, or bold type.

§ 2. Section 7-116 of the election law, subdivisions 2, 3, 4 and 6 as amended by chapter 411 of the laws of 2019, subdivision 3-a as added by chapter 143 of the laws of 1996, subdivision 5 as amended by chapter 279 of the laws of 1992, and subdivision 7 as added by chapter 173 of the laws of 2017, is amended to read as follows:

§ 7-116. Ballots; order of names on. 1. In printing the names of candidates on the ballot **for presidential and gubernatorial races for office**, the candidate or candidates of the party which polled for its candidate for the office of governor at the last preceding election for such office the highest number of votes, shall be **the first** row or column [~~A or one~~] and the candidates of the other parties shall be placed on such ballot in descending order of such votes.

[~~2. The officer or board who or which prepares the ballot shall determine the order in which shall appear, below the names of party candidates the nominations made only by independent bodies. Such officer or board also shall determine the order in which shall be printed the names of two or more candidates nominated by one party or independent body, for an office to which two or more persons are to be elected; provided, however, that any such candidate may, by a writing filed with such board or officer not later than three business days after the adjournment of the convention or one week after the primary election nominating him or her, or otherwise not later than two days after the filing of the petition or certificate nominating him or her, demand that such order be determined by lot, and in that case such order shall be so determined, upon two days notice by mail given by such board or officer to each candidate for such office. The state board of elections shall perform the duties required by this subdivision in all cases affecting nominations filed in its office.~~

~~3. The officer or board with whom or which are filed the designations for a public office or party position shall determine by lot, upon two days notice by mail given by such board or officer to each candidate for such office or position and to the committee, if any, named in the designating petition, the order in which shall be printed on the official primary ballot, under the title of the office or position, the names of candidates for public office, the names of candidates for a party position to which not more than one person is to be elected, and the groups of names of candidates for party position where two or more persons are to be elected thereto and any petition designates two or more persons therefor, provided, however, that whenever groups of names for more than one party position are designated by the same petition,~~

~~the order in which they shall be printed on the official primary ballot shall be determined by a single lot. Candidates for delegate or delegates and alternate delegate or delegates to conventions designated by the same petition shall, for the purpose of this subdivision, be treated as one group. The names of candidates, if any, for a party position to which two or more persons are to be elected, who are designated by individual petitions and not in a group shall be printed after such group or groups, in such order between themselves, as such officer or board shall determine by lot upon the notice specified in this subdivision. The names within a group of candidates designated for party position by one petition shall be printed in the same order in which they appear in the petition, unless they appear in a different order on different pages of the petition, in which case their order within the group shall be determined by such officer or board by lot upon the notice specified in this subdivision. Candidates for members of a state committee designated by a single petition shall, for the purposes of this subdivision, be treated as one group. However, the notice to a committee of the drawing need not be mailed to more than five members, if there be that many, and as to offices or party positions for which designating petitions are filed with the board of elections of the city of New York the notice shall be given to the committees only.~~

~~3-a. The state board of elections shall prescribe the method, or two or more alternative methods, for making the determinations by lot required by subdivisions two and three of this section. Each county board of elections shall adopt one of such methods at least ninety days before any election to which such method shall apply.~~

~~4.~~] **2. In printing the names of candidates on the ballot for all other elections, the candidate or candidates of the party which polled for its candidate for the office at the last preceding election for such office the highest number of votes, shall be the first row or column and the candidates of the other parties shall be placed on such ballot in descending order of such votes.**

3. If a vacancy in a designation or nomination be filled after the making, in the manner provided in this section, of a determination of the order in which the names of candidates for the office or position are to be printed, to the extent practicable, the name of the candidate designated or nominated to fill such vacancy shall be printed in the place so determined for the original candidate.

[~~5.~~] **4.** The titles of public offices shall appear on ballots for primary elections in the same consecutive order that they will appear on the general election ballot. The titles of the party positions shall appear in the following order: member of state committee, assembly district leader, associate assembly district leader, members of county committee in the city of New York, delegate or delegates to conventions, alternate delegate or delegates to conventions, and members of county committee in counties outside of the city of New York. Where, pursuant to the rules of the county committee, the party position involved is that of assembly district leader or associate assembly district leader for a part of an assembly district, such part shall be so indicated in the title on the ballot.

[~~6.~~] **5.** (a) In cases where a name is added to or removed from the ballot by court order too late to make a complete adjustment to these requirements feasible, the name may be added at the end of the list 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.

(b) Except where a contest or candidate is removed from the ballot by court order too late to make complete compliance with this paragraph 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 primary 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.

[~~7.~~]**6.** Whenever a county board of elections or the board of elections in the city of New York must conduct a primary election in the respective county or the city of New York in which separate contests for both male and female candidates for the same party position are to be printed upon the ballots, the respective county board of elections or the board of elections in the city of New York shall determine by lot whether to first print the contest for the male candidates or the contest for the female candidates. After such determination, the same order shall be used for all ballots printed by the board of elections for the entire county or city of New York and for all contests where there are elections separated by male and female candidates for the same party position.

§ 3. Section 2-104 of the election law, subdivision 1 as amended by chapter 659 of the laws of 1994 and subdivision 2 as amended by chapter 234 of the laws of 1976, is amended to read as follows:

§ 2-104. County committee; creation. 1. The county committee of each party shall be constituted by the election in each election district within such county of at least two members and of such additional members, not in excess of two, as the rules of the county committee of the party within the county or the statement filed pursuant hereto may provide for such district, proportional to the [~~party~~] vote in the district for governor at the last preceding gubernatorial election, or in case the boundaries of such district have been changed or a new district has been created since the last preceding gubernatorial election, proportional to the [~~party~~] vote cast for member of assembly or in the event there was no election for member of assembly, then proportional to the number of enrolled voters of such party in such district on the list of enrolled voters last published by the board of elections, excluding voters in inactive status**; provided that each party which nominated such candidate for such office shall receive the same proportion**. In a county in which no additional members are provided for by the rules of the county committee or the statement filed pursuant hereto the voting power of each member shall be in proportion to such [~~party~~] vote or, if the election district which such member represents was created or changed since the last election for member of assembly, proportional to such party enrollment. In a county in which additional members are so provided for, on the basis of the [~~party~~] vote or enrollment in election districts within such county, each member shall have one vote. Each member of a county committee shall be an enrolled voter of the party residing in the county and the assembly district from which or in the assembly district containing the election district in which such member is elected except that a member of a county committee who, as a result of an alteration of assembly district lines, no longer

resides within such assembly district may continue to serve for the balance of the term to which he was elected.

2. If, pursuant to section one of article thirteen of the constitution, such committee or a state convention of the party shall provide by rule for equal representation of the sexes on such committee, the rules of such committee relative to additional members, either from election districts or at large, shall be formulated and applied in such manner that the whole membership shall consist of an even number, equally divided between the sexes. When any such rule provides for equal representation of the sexes, the designating petitions and primary ballots shall list candidates for such party positions separately by sexes.

3. Notwithstanding the provisions of subdivision one of this section, a county committee of a party shall be legally constituted if twenty-five per centum of the committeemen required to be elected in such county, as provided in subdivision one of this section, have been elected.

§ 4. Section 6-124 of the election law, as amended by chapter 876 of the laws of 1977, is amended to read as follows:

§ 6-124. Conventions; judicial. A judicial district convention shall be constituted by the election at the preceding primary of delegates and alternate delegates, if any, from each assembly district or, if an assembly district shall contain all or part of two or more counties and if the rules of the party shall so provide, separately from the part of such assembly district contained within each such county. The number of delegates and alternates, if any, shall be determined by party rules, but the number of delegates shall be substantially in accordance with the ratio, which the number of votes cast for the [~~party~~] candidate for the office of governor, [~~on the line or column of the party~~] at the last preceding election for such office, in any unit of representation, bears to the total vote cast at such election for such candidate [~~on such line or column~~] in the entire state; **provided that each party which nominated such candidate for such office shall receive the same proportion**. The number of alternates from any district shall not exceed the number of delegates therefrom. The delegates certified to have been elected as such, in the manner provided in this chapter, shall be conclusively entitled to their seats, rights and votes as delegates to such convention. When a duly elected delegate does not attend the convention, his place shall be taken by one of the alternates, if any, to be substituted in his place, in the order of the vote received by each such alternate as such vote appears upon the certified list and if an equal number of votes were cast for two or more such alternates; the order in which such alternates shall be substituted shall be determined by lot forthwith upon the convening of the convention. If there shall have been no contested election for alternate, substitution shall be in the order in which the name of such alternate appears upon the certified list, and if no alternates shall have been elected or if no alternates appear at such convention, then the delegates present from the same district shall elect a person to fill the vacancy.

§ 5. This act shall take effect one year after it shall have become a law and shall apply to all elections which occur on or after such date.