STATE OF NEW YORK

309--B

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. MYRIE, ADDABBO, BAILEY, BIAGGI, BRESLIN, BROUK, COMRIE, COONEY, GIANARIS, HARCKHAM, HINCHEY, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, MAY, MAYER, PARKER, REICHLIN-MELNICK, RIVERA, SALAZAR, SKOUFIS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Elections in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to construction of and requirements for voting machines and systems

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 is amended by adding a new subdivision 28 to read as follows:

28. The ballot shall be marked or printed on durable paper. For purposes of this section, "durable paper" is defined as paper capable of withstanding multiple counts and recounts by hand or machine without compromising the fundamental integrity of the ballots, and capable of retaining the information marked or printed on such paper for the full duration of a retention and preservation period set forth in section 3-222 of this chapter.

§ 2. 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

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

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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.

§ 3. Paragraphs b, e, j, s and t of subdivision 1 of section 7-202 of the election law, as added by chapter 181 of the laws of 2005, are amended and three new paragraphs u, v and w are added to read as follows:

b. permit a voter to vote for any person for any office, whether or not nominated as a candidate by any party or independent body [~~without the ballot, or any part thereof, being removed from the machine at any time~~];

e. provide the voter an opportunity to privately and independently **mark and** verify votes selected [~~and the~~] **on an individual, voter-verifiable paper ballot and the** ability to privately and independently change such votes or correct any error before the ballot is cast and counted**, including by offering the voter a new paper ballot as many times as is allowed by statute or regulation. For the purposes of this subdivision, the term "individual, voter-verifiable paper ballot" means either: (i) a paper ballot marked by the voter by hand; or (ii) a paper ballot marked through the use of a nontabulating ballot marking device or system. For the purposes of this title, a "ballot marking device" is a device that provides voters, including voters with disabilities, the ability to mark votes on physical, paper ballots privately and independently. For the purposes of this title, a "nontabulating ballot marking device" is a ballot marking device that does not tabulate or transmit votes or retain any record of a voter's selections, other than the original paper ballot, after the voter has finished marking the paper ballot and using the device to review selections**;

j. [~~retain all paper ballots cast or produce and retain a voter verified permanent paper record which shall be presented to the voter from behind a window or other device before the ballot is cast,~~] **for ballot scanners, retain paper ballots in a manner intended and designed to protect the privacy of the voter; for nontabulating ballot marking devices, produce or process paper ballots** in a manner intended and designed to protect the privacy of the voter; such ballots [~~or record~~] shall allow a manual audit and shall be preserved in accordance with the provisions of section 3-222 of this chapter;

s. permit alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a) such that it must have the capacity to display the full ballot in the alternative languages required by the federal Voting Rights Act if such voting machine or system is to be used where such alternative languages are required or where the local board deems such feature necessary; [~~and~~]

t. not include any device or functionality potentially capable of externally transmitting or receiving data via the internet or via radio waves or via other wireless means[~~.~~]**;**

u. be constructed so that, after the paper ballot is cast by the voter, the voting machine or system never passes the cast ballot under a

printer that can print votes onto the ballot, including as a result of unauthorized, malicious or faulty software or firmware;

v. be constructed so the configuration or functionality of a voting machine or system does not include, within the same physical device, both (i) ballot marking and (ii) tabulating or transmitting a voter's selections at any time or retaining any record of a voter's selections, other than the original paper ballot, after the voter has finished marking the paper ballot and using the device to review selections; and

w. not encode votes on a ballot, whether as a barcode, QR code or any kind of recording code that cannot be verified by the voter without using a code-reading device. For the purposes of this paragraph, a "code reading device" is a device that reads and translates coded marks like QR codes or barcodes into language that can be understood without any kind of device.

§ 4. Subdivision 4 of section 7-202 of the election law, as added by chapter 181 of the laws of 2005, is amended and a new subdivision 5 is added to read as follows:

4. Local boards of elections which obtain voting machines pursuant to this chapter [~~may determine to~~] shall purchase [~~direct recording electronic machines or optical scan machines~~] ballot scanners and nontabulating ballot marking devices in conformance with the requirements of this chapter.

5. Local boards of elections must provide every voter, at every polling place, both of the following options: (a) to hand mark a paper ballot; or (b) to use a nontabulating ballot marking device or system to mark a paper ballot. All paper ballots must be printed, scannable, and include all relevant contests and candidates.

§ 5. This act shall take effect immediately; provided, however, that any local board of elections that purchased voting machines or systems prior to such date which are not in compliance with the requirements of paragraph u or v of subdivision 1 and subdivision 4 of section 7-202 of the election law, may continue to use, maintain and replace such voting machines and systems, but may replace them only with identical model voting machines or systems made by the same manufacturer, or identical model voting machines or systems with de minimis changes in such voting machines' or systems' hardware, software, technical data package, or data, the nature of which will not materially alter the voting machines' or systems' reliability, functionality, capability, or operation; any de minimis changes shall be approved by the state board of elections.