STATE OF NEW YORK

1860

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. L. ROSENTHAL, DINOWITZ, PAULIN, EPSTEIN -- read once and referred to the Committee on Election Law

AN ACT to amend the election law and the public officers law, in relation to creating a special primary election to take place prior to a special election and mandating the governor to proclaim all special elections within ten days of the vacancy

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

Section 1. Section 6-114 of the election law is amended to read as follows:

§ 6-114. Party nominations; special election. Party nominations for an office to be filled at a special election shall be made [~~in the manner prescribed by the rules of the party~~] **at a special primary election pursuant to section 6-161 of this article, at which the candidate receiving the most votes shall be the nominee of the party**.

§ 2. The election law is amended by adding a new section 6-161 to read as follows:

§ 6-161. Special primary elections. 1. The special primary election shall take place on the first Tuesday occurring at least thirty days but no more than thirty-six days prior to the special election.

2. Designating petitions for a primary nomination shall be subjected to the same form and rules set out in sections 6-132 and 6-134 of this article. Designating petitions shall be filed within twelve days of the date the governor proclaims the need for a special election.

3. Notwithstanding section 6-136 of this article, the required amount of signatures for a designating petition, pursuant to this section, shall be five hundred for a state senatorial district and two hundred fifty for an assembly district.

4. Petitions for independent nominations shall be filed within fifteen days of the date the governor proclaims the need for a special election. Notwithstanding section 6-138 of this article, the required amount of

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

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signatures for a designating petition, pursuant to this section, shall be one thousand for a state senatorial district and five hundred for an assembly district.

§ 3. Subdivisions 1, 3 and 4 of section 42 of the public officers law, subdivision 1 as amended by chapter 5 of the laws of 2019, subdivision 3 as amended by chapter 164 of the laws of 2022 and subdivision 4 as amended by chapter 320 of the laws of 2021, are amended and a new subdivision 4-b is added to read as follows:

1. A vacancy occurring three months before the general election in any year in any office authorized to be filled at a general election, except in the offices of governor [~~or~~], lieutenant-governor, **state senator or member of assembly,** shall be filled at the general election held next thereafter, unless otherwise provided by the constitution, or unless previously filled at a special election.

3. Upon the failure to elect to any office, except that of governor or lieutenant-governor, at a general or special election, at which such office is authorized to be filled, or upon the death or disqualification of a person elected to office before the commencement of his or her official term, or upon the occurrence of a vacancy in any elective office which cannot be filled by appointment for a period extending to or beyond the next general election at which a person may be elected thereto, the governor shall, unless otherwise provided for by authorized local law, resolution or ordinance, make proclamation of a special election to fill such office within ten days of the occurrence of a vacancy, specifying the district or county in which the election is to be held, and the day thereof, which shall be: a. [~~not less than seventy nor more than eighty~~] **ninety** days **or on the first Tuesday following the ninety days** from the date of the proclamation to fill a vacancy in the office of a representative in congress or for a vacancy in any other office that is not in the state senate or assembly; and b. not less than forty days nor more than fifty days from the date of the proclamation to fill a vacancy in the state senate or assembly, provided, however, that the governor may issue a proclamation to fill any subsequent vacancy in the state senate or assembly for the same date as any previously scheduled special election as long as the proclamation is issued at least thirty days before the occurrence of the special election.

4. a. A special election shall not be held to fill a vacancy in the office of a representative in congress unless such vacancy occurs on or before the first day of July of the last year of the term of office, or unless it occurs thereafter and a special session of congress is called to meet before the next general election, or be called after [~~three months before the general election in such year.~~

~~b. A special election shall not be held to fill a vacancy in the office of state senator or in the office of member of assembly, unless the vacancy occurs before the first day of April of the last year of the term of office, or unless the vacancy occurs in either such office of senator or member of assembly after such first day of April and a special session of the legislature be called to meet between such first day of April and the next general election or be called after three months before the next general election in such year.~~

~~c. A special election shall not be held to fill a vacancy in any other office subject to a proclamation by the governor pursuant to subdivision three of this section unless the vacancy occurs before the first day of April of the last year of the term of office~~] **September nineteenth of such year**.

[~~d.~~] **b.** If a special election to fill an office shall not be held as required by law, the office shall be filled at the next general election.

4-b. If a vacancy occurs in the office of state senator or in the office of member of assembly between one hundred eighty and ninety days prior to an annual primary election or if a vacancy occurs between one hundred eighty and ninety days prior to a general election, the special election shall be held on the day of the annual primary election or general election respectively, with the special primary election to be held on the first Tuesday occurring at least thirty days but no more than thirty-six days prior to the special election.

§ 4. If any section of this act or any part thereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder or any other section or part thereof.

§ 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.