

Examining New York's 2019 Voting Reforms

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In 2019, the New York State Legislature passed more than forty pieces of legislation amending the Election Law. By comparison, the Legislature averaged around ten amendments to the Election Law per year over the last twenty years. Addressing issues related to campaign finance, running for office, voter registration, and access to the polls, the 2019 voter reforms affect the many dimensions of public elections. This policy paper will outline the various enactments that amended the Election Law during the 2019 legislative session and discuss how these changes may affect the operations of local governments.

Voter Registration

While the right to vote is guaranteed by the United States Constitution to all citizens of the United States, as with any constitutional protection, states may impose reasonable time, place, and manner restrictions on this right. Among the most visible constraints associated with the right to vote is the obligation to register as a voter before attempting to exercise the right. In New York State, a person may register to vote if they are (1) a citizen of the United States, or will be by the day of the election, (2) at least eighteen years old, and (3) a resident of the State and of the county, city, or village for at least thirty days before the election.¹ Because registration is the first, and potentially the most onerous, impediment to voting, the Legislature advanced proposals to amend both the State Constitution and the Election Law to expedite and facilitate the registration process.

Elimination of Advance Voter Registration

In addition to the durational residency requirement placed on prospective voters, the State Constitution requires voters to register to vote at least ten days before an election.² New York is among the majority of states that require voters to register by a deadline prior to Election Day.³ However, eliminating pre-registration would enable qualified individuals to register and vote on the same-day, including Election Day, or on any date during the early voting period.

Researchers from the University of Wisconsin-Madison found that voter turnout is significantly enhanced in states that allow voters to register and vote on the same day by “eliminating one bureaucratic step in the voting process and providing voting opportunities to individuals who become interested late in the campaign.”⁴ As of January 2019, seventeen states and the District of Columbia had enacted same-day registration.⁵ In each of these jurisdictions, a voter’s identification and residence must be verified by presenting a current driver’s license, identification card or, in some instances, by producing a recent paycheck or utility bill indicating the voter’s residence.

To effectuate same-day registration in New York State, the Legislature advanced a constitutional amendment that would eliminate the ten-day registration requirement.⁶ Amending the State Constitution, however, is a lengthy process. Before the State may authorize same-day registration, the Legislature must advance the same legislation in the 2021-2022 legislative session, and then the electorate must approve the matter at a statewide referendum. If the constitutional amendment is ultimately authorized, the Legislature will likely task the State Board of Elections with developing the necessary regulations to establish same-day registration, which would be implemented by the county boards of elections.

Authorization of Voter Pre-Registration

Pre-registering young voters is another tool states use to boost voter turnout.⁷ While many states have adopted some form of pre-registration for younger voters, the age at which a young person may pre-register varies. In New York, anyone who is at least sixteen years old and is otherwise qualified to vote will be able to pre-register to vote after January 1, 2020.⁸ While eliminating the ten-day voter registration requirement requires a change to the State's Constitution, authorizing pre-registration was achieved by amending the Election Law.

Chapter 2 of the Laws of 2019 adds Section 5-507 to the Election Law to authorize pre-registration. Notably, the statute also requires local boards of education to adopt policies that will encourage student voter registration. Voters between eighteen and twenty-nine are the members of the electorate that are least likely to participate in public elections. Not only is pre-registration designed to specifically increase voting among the youngest voters, the Legislature has chosen to proactively engage this demographic in the electoral process.

Transferring Voter Registration

Charged with ensuring fair and unobstructed elections, election officials rely on voter registration as an important safeguard to maintaining the integrity of the election process. However, when voters move they do not always update their residences with their respective county boards of elections. While State law authorized transfers of voter registration and enrollment within a county or city, it did not authorize transfers outside of these areas.⁹ Without statewide transfers of voter registration, prospective voters were required to again complete the requirements of voter registration in advance of an election when they move. As discussed above, administrative obstacles generally diminish voter turnout.

Chapter 3 of the Laws of 2019 amends Election Law § 5-208 to require the State Board of Elections to automatically transfer the registration and enrollment of voters appearing on the statewide voter list. Additionally, this legislation instructs the State Board to establish regulations to assist in transferring voter registration between counties. Statewide transfers of voter registration became effective in March. This change will affect counties and their conduct of elections, but will have minimal impact on cities and villages, including those villages that conduct their own elections.

Electronic Voter Registration

Consistent with the Legislature's goal of facilitating and accelerating voter registration, the Enacted State Budget authorized online voter registration.¹⁰ Pursuant to the legislation's enacting clause, online voter registration will be made available by the State Board of Elections by April 2021 and will allow voters to submit voter registration applications through an electronic voter registration system. Thirty-seven other states and the District of Columbia have already implemented online voter registration, which, according to the National Conference of State Legislatures, "supplement[s] the traditional paper-based process...Online voter registration follows essentially the same process, but instead of filling out a paper application, the voter fills out a form via an Internet site, and that paperless form is submitted electronically to election officials."¹¹

Automatic Voter Registration

While increasing voter registration opportunities will undoubtedly contribute to expanded voter registration in New York State, automatic voter registration is by far the most consequential policy pursued by the Legisla-

ture. According to a 2019 study conducted by the Brennan Center for Justice, automatic registration “markedly increases the number of voters being registered...ranging from 9 to 94 percent.”¹² Automatic voter registration often engages a state’s department of motor vehicles or other government agencies that interface with the public to present an opportunity to enroll residents in voter registration through an automated process.¹³

New York’s automatic voter registration will integrate voter registration within designated State agencies’ applications for service or assistance. Rather than requiring voters to register separately, agencies selected by the State Board of Elections that provide applications for service or assistance that contain a voter’s qualifying information will automatically enroll the applicant unless the applicant affirmatively declines voter registration enrollment.¹⁴

Due to a drafting error that would have impermissibly required non-citizens to register to vote, the Legislature abandoned its efforts to authorize automatic voter registration during the final hours of the 2019 legislative session. In a joint statement from Senate Majority Leader Andrea Stewart-Cousins and Assembly Speaker Carl Heastie, the Legislature explained that it would take action to implement automatic voter registration in 2020 and would be made available by the State Board of Elections by its original effective date in 2021.¹⁵

Access to the Ballot Box

Despite the Legislature’s efforts to make voter registration manageable and readily available to the residents of New York State, a voter’s opportunity to exercise the right may nonetheless be constrained by a wide range of practical realities that impede a resident’s ability to vote. To address these concerns the Legislature also adopted numerous proposals that attempt to ensure access to the polls and provide voters with an assortment of opportunities to cast their ballots.

Expanded Absentee Voting

Absentee voting is limited by the State Constitution to voters that meet certain requirements.¹⁶ A voter may only cast an absentee ballot if they are (a) absent from the county of their residence, or (b) unable to appear personally at the polling place because of illness or physical disability.¹⁷ Individuals that are the primary caretakers of individuals who are ill or physically disabled also qualify for absentee ballots under this standard.¹⁸ A variety of other reasons, however, may prevent a prospective voter from being able to personally appear at the polling place. Seeking to alleviate this hindrance to receiving an absentee ballot, the Legislature initiated the procedure required to amend the Constitution to eliminate the preconditions associated with absentee voting.¹⁹ As with removing the ten-day voter registration requirement, the Legislature must advance the same legislation again in the 2021-2022 legislative session, and then the electorate must approve the matter at a statewide referendum.

Early Voting

In addition to no-excuse absentee voting, the Legislature established in-person early voting beginning 10 days before any general, primary, run-off, or special election. Election Law § 8-600 now requires county boards of election to designate at least one early voting place for every fifty thousand registered voters in the county. Counties must have at least one early voting polling place, but are not required to have more than seven early-voting locations.²⁰

Any voter that is eligible and registered to vote may cast their ballot at the early voting polls, and early voters are subject to the same challenge procedures as voters on Election Day. Codified by Chapter 6 of the Laws of 2019, the early voting provisions of the Election Law will become operative in November 2019 and apply to all elections thereafter. Villages that conduct their own elections pursuant to Article 15 of the Election Law and village elections conducted by a county board of election on a date other than the date of the State’s general election are specifically exempted from early voting.²¹ Early voting will be required for village and city elections that are conducted by county boards of elections on general election day.

How county boards of elections will charge cities and villages for the cost of early voting remains to be seen. Early voting will largely depend on the use of electronic poll books to ensure registration and voting records are maintained accurately and prevent redundancy. The 2019 Enacted State Budget authorized electronic poll books and included a \$14.7 million appropriation to the State Board of Elections for implementations costs, with any remaining funds being made available to local boards of elections to reimburse the costs associated with maintaining the software and cyber security of electronic poll books.²² The Budget also included \$10 million to reimburse counties for early voting operations. The New York State Association of Counties (NYSAC) anticipates that the cost of early voting, including the financing of electronic poll books and ensuring the safety and security of electronic data and polling sites, will range from \$500,000 to \$1 million per county outside of New York City.²³

Consolidated Primary Day and Consistent Polling Hours for All Elections

Ensuring compliance with the Federal Military and Overseas Voter Empowerment Act, the Legislature authorized the consolidation of primary day for all federal, State, and local elections to the fourth Tuesday in June.²⁴ The Election Law had previously prohibited State and local primaries from being conducted at the same time as federal primaries, but separate primary days frustrated the ability of military voters to receive and return ballots within the required time for primary elections. This amendment also changes the deadlines to file primary and independent nominating petitions with county boards of elections. By moving and combining primary elections, all military voters are ensured ballot access. Additionally, consolidating all primary elections will result in significant cost savings to county boards of elections.

Establishing even more consistency in elections, Election Law § 8-100 was amended to establish consistent polling hours from 6:00 a.m. to 9:00 p.m. at all primary, general, and special elections that are conducted by county boards of elections. This does not affect the times for early voting. While this change will not impact village elections conducted pursuant to Article 15 of the Election Law, it will change the poll hours for city and village elections conducted by the county boards of elections. Again, increased poll hours and hours worked by election inspectors and poll workers will have a fiscal impact, but how county boards of elections will charge cities and villages for any added expense is unknown. This provision will effect all elections held after April 30, 2020.

Paid Leave to Vote

As part of the 2019-2020 Enacted State Budget, the Legislature approved amendments to Election Law § 3-110 that expanded the requirement that employees be granted time off to vote without loss of pay. These changes became effective on April 12 under Chapter 55 of the Laws of 2019. Specifically, all public and private employees who are registered voters may, without loss of pay for up to three hours, take off as much working time as will enable them to vote at any election. Employees may only take time to vote at the beginning or end of their working shifts and must notify their employer at least two working days before the day of the election that they require time off to vote.

Prior to this most recent enactment, employees were entitled to paid time off only when they did not have “sufficient time outside [their] working hours within which to vote.” The ability to take time to vote was determined by whether the employee had four consecutive hours either before or after their shift during which the polls were open and the employee was able to vote. Additionally, employees were entitled to two hours without loss of pay, but the amendments increase the privilege by one hour.

As public employers, cities and villages are now required to grant up to three hours of paid leave to an employee wishing to vote at any election. The expansion of time off for voting under Election Law § 3-110 applies to all elections that are conducted pursuant to the Election Law. This includes village elections, which are conducted pursuant to Article 15 of the Election Law. However, the provisions of Section 3-110 will not apply to school board elections and special district elections that are conducted pursuant to the Education Law and Town Law, respectively.

Despite that general rule, some school board elections are conducted pursuant to the Election Law. Therefore, whether a voter is entitled to time off from work to cast a ballot at a school board election will depend on which statute a particular school board utilizes. Similarly, if a special district in a Town conducts its elections pursuant to the Election Law, these elections would also fall under section 3-110, and employees wishing to receive paid leave should be granted that request. Given these nuances, clarifying guidance is expected from the State Board of Elections. However, several bills that would restore the requirement that an employee have inadequate time off to vote in order to receive paid leave have been introduced by the Legislature, stating that such time off is likely unnecessary given the expanded access to the polls enacted by the Legislature's other voter reforms.²⁵

The statute does not provide a method for an employer to deny an employee paid time to vote. Similarly, there is no procedure employees must use to demonstrate that the time is required. Determining misuse of paid time off to vote will be extremely challenging, and any misapplication of the time should be managed pursuant to the city or village employee policy.

Changes to Campaigning

In addition to the voter enfranchisement reforms acted on by the Legislature during the 2019 Legislative Session, the Senate and Assembly also addressed candidates' activities and matters relating to campaign finance.

Deadline for Election Filings

Chapter 5 of the Laws of 2019 made an important change to the deadline to submit and accept papers that are required to be filed under the Election Law in addition to consolidating primary day. When a candidate for public office is attempting to appear on a ballot in New York State, he or she must file a variety of statements and papers with the county board of elections, or in the case of a village that conducts its own election, with the village clerk. These papers include petitions and certificates of party designation, petitions of independent body nomination, certificates of acceptance, and objections and specifications of objections to party designation and independent body nomination, which must be filed with the county board of elections or with the village clerk's office between the hours of 9:00 a.m. and 5:00 p.m.²⁶

The statute provides no authority to submit these papers electronically, therefore the documents must be submitted to the county board of elections office or to the village clerk's office in their original form by the various deadlines provided in the Election Law.²⁷ The statute had provided that a filing was timely anytime it was received, as long as it was postmarked by the deadline. This caused tremendous uncertainty because it delayed the entire process of nominating and challenging candidates. Helping to alleviate that ambiguity, the law now requires postmarked papers or papers submitted through other delivery services to be received not later than 2 business days after the filing deadline.²⁸ As the deadline to contest a petition remains two days after the last day to file or two days after the petition is received by the board of elections or the village clerk, the time to challenge petitions is now finite.

It is extremely important that all city and village candidates for elected office understand the new filing requirements. Any failure of the post office, UPS, FedEx, or other means of delivery, to deliver the papers within the required deadline is a fatal defect to the filing. Consequently, candidates must factor that into their decision of how to file these necessary papers. Additionally, village clerks have no authority to accept any papers received later than two business days after the filing deadline, even if the postmark was on or before the date the filing was due.

The Legislature also advanced an amendment to the Election Law that would require the board of elections and villages conducting their own elections in Westchester County to accept petitions of designation and nomination until midnight on the deadline to receive those papers. This would require village clerk offices to remain open until midnight on the last day to receive petitions for designation or nomination. The proposal passed both houses of the Legislature, but has not yet been acted on by the Governor.

Campaign Finance Reforms

NYCOM has a policy of not providing guidance on matters relating to campaign finance, as these are political questions and NYCOM is a nonpartisan organization. However, it is important to note two significant changes related to campaign finance that may affect village and city candidates for elected office. First, Chapter 4 of the Laws of 2019 extends some of the existing restrictions imposed on corporations to limited liability corporations relative to political donations. Additionally, the statute now requires LLCs to disclose political expenditures and contributions to the State Board of Elections and attribute the proportion of the payments made to each LLC member's ownership stake.

The other important change made to campaign finance in New York State involves primarily, although certainly not exclusively, female candidates. Sponsored by Senator Shelley Mayer and Assemblywoman Linda Rosenthal, the proposal would authorize the use of campaign funds for childcare expenses incurred as a result of the candidate's campaign or in the execution of his or her duties of public office or party position.²⁹ The sponsors stated, "As we encourage more women to run for elected office, we must be responsive to issues that predominantly affect women." This change to the Election Law was approved by the Governor in late July and will become effective in September.

Conclusion

In addition to the many voter and election reforms discussed here, the State Legislature has also authorized measures that will simplify the design and layout of ballots,³⁰ provide special ballots to victims of domestic violence,³¹ improve Election Day processes,³² and clarify requirements imposed on candidates for public office.³³ For more information relating to the 2019 election and voting reforms in New York State or to obtain copies of the legislative enactments and proposals discussed here, please contact NYCOM Counsel Rebecca Ruscito at (518) 463-1185 or by email at rebecca@nycom.org.

Endnotes

1. N.Y. Const. Art. II, § 1. See also, Election Law § 5-102(1). Pursuant to Election Law § 5-102(2), the durational resident requirement will not prohibit an otherwise qualified voter from voting for president and vice president of the United States.
2. N.Y. Const. Art. II, § 5.
3. National Conference of State Legislatures, *Same Day Voter Registration*, Apr. 17, 2019, <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.
4. Barry C. Burden, et. al, *The Effects and Costs of Early Voting, Election Day Registration and Same Day Registration in the 2008 Elections*, Report presented to the Pew Charitable Trusts, December 21, 2009, at 5, available at https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2009/uwisconsin1pdf.pdf.
5. *Same Day Voter Registration*, supra note 4.
6. N.Y. Legis. Sen. S1048 Reg. Sess. 2019-2020 (2019).
7. National Conference of State Legislatures, *Preregistration for Young Voters*, Feb. 2, 2019, <http://www.ncsl.org/research/elections-and-campaigns/preregistration-for-young-voters.aspx>.
8. Chapter 2 of the Laws of 2019.
9. Chapter 659 of the Laws of 1994.
10. *Voter Enfranchisement Modernization Act, Part CCC of Chapter 55 of the Laws of 2019*.
11. National Conference of State Legislatures, *Online Voter Registration*, Oct. 10, 2018 <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>.
12. Kevin Morris and Peter Dunphy, *AVR Impact on State Voter Registration*, Brennan Center for Justice at NYU School of Law (2019), available at https://www.brennancenter.org/sites/default/files/publications/2019_04_AVR_Report_Final_0.pdf.
13. National Conference of State Legislatures, *Automatic Voter Registration*, Apr. 22, 2018, available at <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>.
14. N.Y. Legis. Sen. S6457A Reg. Sess. 2019-2020 (2019).
15. *Joint Statement from Senate Majority Leader Andrea Stewart-Cousins and Assembly Speaker Carl Heastie* (June 20, 2019), available at <https://nyassembly.gov/Press/files/20190620f.php>.

16. N.Y. Const. Art. II, § 2.
17. *Id.* See also, Election Law § 8-400.
18. Election Law § 8-400(1)(b).
19. N.Y. Legis. Sen. S1049 Reg. Sess. 2019-2020 (2019).
20. Election Law § 8-600(2)(a).
21. Election Law § 8-600(1).
22. Chapter 54 of the Laws of 2019.
23. Stephen J. Acquario, Executive Director of the New York State Association of Counties, *Statement in Response to Passage of Early Voting Legislation* (Jan. 14, 2019), available at http://www.nysac.org/blog_home.asp?display=809.
24. Election Law § 8-100.
25. See, N.Y. Legis. Assem. A7505 Reg. Sess. 2019-2020 (2019); N.Y. Legis. Assem. A7836 Reg. Sess. 2019-2020 (2019); N.Y. Legis. Sen. S5314 Reg. Sess. 2019-2020 (2019).
26. Election Law § 1-106(1).
27. *Id.*
28. Chapter 5 of the Laws of 2019; see also, Election Law § 1-106(1).
29. N.Y. Legis. Assem. A1108B Reg. Sess. 2019-2020 (2019).
30. See, Part XX of Chapter 55 of the Laws of 2019; N.Y. Legis. Assem. A112A Reg. Sess. 2019-2020 (2019); N.Y. Legis. Assem. A163 Reg. Sess. 2019-2020 (2019); N.Y. Legis. Assem. A7606 Reg. Sess. 2019-2020 (2019); N.Y. Legis. Sen. S2300A Reg. Sess. 2019-2020 (2019).
31. N.Y. Legis. Assem. A219A Reg. Sess. 2019-2020 (2019).
32. See, N.Y. Legis. Assem. A202 Reg. Sess. 2019-2020 (2019); N.Y. Legis. Assem. A1320A Reg. Sess. 2019-2020 (2019); N.Y. Legis. Assem. A1454 Reg. Sess. 2019-2020 (2019); N.Y. Legis. Assem. A1525A Reg. Sess. 2019-2020 (2019); Uniform Election Night Procedure Act, N.Y. Legis. Assem. A2264 Reg. Sess. 2019-2020 (2019).
33. N.Y. Legis. Assem. A111 Reg. Sess. 2019-2020 (2019); N.Y. Legis. Assem. A1641 Reg. Sess. 2019-2020 (2019); N.Y. Legis. Assem. A4668 Reg. Sess. 2019-2020 (2019); N.Y. Legis. Assem. A5219 Reg. Sess. 2019-2020 (2019).