

# New York State Assembly | Sheldon Silver, Speaker



## 2009 ANNUAL REPORT

committee on

### **Election Law**

Joan L. Millman, Chairperson

December 15, 2009

Honorable Sheldon Silver  
Speaker of the Assembly  
New York State Assembly  
State Capitol  
Albany, New York 12248

Dear Mr. Speaker:

It is with great pleasure that I present to you the 2009 Annual Report of the Assembly Standing Committee on Election Law. In 2009, the Committee had an active and successful session that resulted in the enactment of 12 new or amended provisions in the Election Law.

The Assembly continues to promote the public's participation in elections by advancing bills that address the special needs of various voter constituencies. Several of the new chapters address barriers to voter participation that have been Assembly priorities for years including the needs of military voters, non-English speaking voters and voters who cannot vote at the polls because they are primary caretakers for one or more ill or disabled individuals.

The Assembly once again led the way on efforts to promote the fair administration of elections and to reduce the disputes that arise over uncertainties in the Election Law. The legislature also rejected or clarified court decisions that create an unnecessary burden on election administrators or require impossible results.

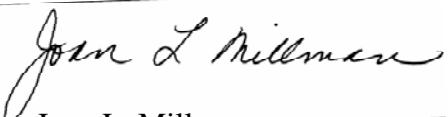
New York State is expected to transition to new voting machines in 2010 in compliance with the Help America Vote Act and the Assembly Committee continues to evaluate current law to identify and promote changes in the law that will facilitate a smooth transition to the new optical scan voting machines.

Although a number of Assembly priorities did not become law this year, the Assembly remains committed to providing optional partial public financing of certain

election campaigns in this state, poll site accessibility, and the wider availability of absentee ballots that cannot be challenged on minor technicalities.

As always, the most important goal of this Committee is to assure the public that our electoral system is structurally honest and fair to all the people of this state. This Committee's oversight of election administration, including implementation of the Help America Vote Act, and its promotion of reform initiatives, constitutes an ongoing effort towards that goal. I anticipate the 2010 Session will include a vigorous debate concerning changes that may be required by the new voting machines, as well as measures that will enable more voters to participate in our democracy. I look forward to the challenges that such a debate will bring and to your continued support throughout the year.

Sincerely,



Joan L. Millman  
Chairperson  
Election Law Committee

**2009 ANNUAL REPORT  
of the  
New York State Assembly  
Standing Committee on Election Law**

**Joan Millman  
Chairperson**

**MEMBERS**

**MAJORITY**

Sandra Galef  
Jeffrey Dinowitz  
Joseph Lentol  
Michael Gianaris  
Adam Bradley  
Jose Peralta  
Michael Benjamin  
Donna Lupardo  
Barbara Lifton  
Brian Kavanagh  
Alec Brook-Krasny

**MINORITY**

Marcus Molinaro  
Joel Miller  
Rob Walker  
Fred Thiele

**STAFF**

Seth H. Agata, Assistant Secretary for Program and Policy

Kathleen O'Keefe, Team Counsel

Laurie Barone, Analyst

Joann D. Butler, Team Executive Secretary

## TABLE OF CONTENTS

	PAGE
I. INTRODUCTION AND SUMMARY.....	5
II. HIGHLIGHTS OF THE 2009 LEGISLATIVE SESSION.....	7
III. 2009 COMMITTEE INITIATIVES WHICH PASSED THE ASSEMBLY BUT WERE NOT CONSIDERED BY THE SENATE.....	9
IV. BILLS WHICH PASSED BOTH HOUSES BUT VETOED BY THE GOVERNOR.....	12
V. APPENDICES	
APPENDIX A-SUMMARY OF ACTION ON ALL BILLS REFERRED TO THE COMMITTEE ON ELECTION LAW.....	13
APPENDIX B-2009 CHAPTERS.....	14
APPENDIX C-2009 VETOS.....	16

## **I. INTRODUCTION AND SUMMARY**

### **Committee Jurisdiction**

The jurisdiction of the Assembly Standing Committee on Election Law includes all legislation that affects elections on the national, state and local levels, including ballot access, voter registration and enrollment, voter education and outreach, campaign financing and related administrative procedures of the State Board of Elections and local boards of elections.

### **Executive Summary**

In 2009, twelve bills reported by the Standing Committee on Election Law and passed by the Assembly became law. One bill (A584-a), requiring poll sites to be accessible to physically disabled voters, was passed by both the Senate and the Assembly but was vetoed by the governor.

Among the twelve new laws are three that address the special needs of certain voter constituencies. Beginning with a law in 2005, and reenacted each year since, were provisions in the Election Law that sought to make it more likely that a military voter's paper ballot would arrive on time in primary and general elections and be counted. In 2009, the Assembly revisited this issue and introduced a bill making permanent and far more comprehensive changes to the provisions in the Election Law that affects all military and, for the first time, other overseas ballots. The Assembly bill allows a military or overseas voter to request an absentee ballot by facsimile transmission or electronic mail and provides that the new legislation apply to special elections for the first time. After passage in the Assembly, the Senate passed the bill and, upon its return to the Assembly, it was immediately delivered to the governor and quickly signed into law.

Other groups of voters will also benefit from new laws enacted this past year. Russian speakers in New York City will find information in Russian on the New York City Board of Elections Web site, and primary caretakers of one or more ill or disabled individuals will now qualify for an absentee ballot.

The Election Law Committee once again led the way on efforts to promote the fair administration of elections by requiring procedures that promote the opportunity for voters to have their petition signatures and their votes counted and to reduce the disputes that arise over uncertainties in the Election Law by codifying specific rulings by the state's highest court. The Legislature rejected a mid-level court decision that would impose a significant burden on the New York City Board of Elections when reviewing petitions and another mid-level court decision that would require that lever voting machines use a write-in ballot configuration that is impossible.

New York State is expected to transition to new voting machines in 2010 in compliance with the Help America Vote Act (HAVA). This year, the Committee continued to assess whether legislation is needed to assist local boards of elections in implementing HAVA by monitoring federal legislation, the administration of elections by local boards of elections, regulations promulgated by the State Board of Elections, developments in the federal lawsuit brought by the Department of Justice against New York and input from the public, both formal and informal. The Legislature passed and the governor signed two bills to reflect changes in the law with respect to paper ballots, anticipating that these changes will promote a smooth transition to the new optical scan voting machines. More needs to be done in 2010 to assist this transition and the Assembly continues to promote changes, particularly in the recruitment of poll inspectors.

A number of Assembly priorities did not become law this year, and the Election Law Committee remains committed to promoting these initiatives, including optional partial public financing of certain election campaigns in this state, poll site accessibility, special election law reforms that will make it possible for victims of domestic violence to safely cast their vote, and absentee ballots that cannot be challenged on minor technicalities.

## **II. HIGHLIGHTS OF THE 2009 LEGISLATIVE SESSION**

### **Authorizes the use of titles, initials or abbreviations of names as signatures on absentee ballots. (A.1001, Paulin; Chapter 40)**

This law provides for the use of titles, initials or customary abbreviations of the given names of a signer or witness to an absentee ballot request letter, absentee ballot application or an absentee ballot envelope. Titles, initials or customary abbreviations of the given names of a signer or witness can no longer invalidate signatures or witness statements provided that the identity of the signer or witness can be established by reference to the signature and whose name appears in the registration poll ledgers. This legislation also adds that the use of titles, initials or customary abbreviations of given names does not affect the validity of the signature on the ballot envelope with regard to the signature corresponding to the signature on the registration poll record.

### **Provides that designating petitions and independent nominating petitions may not contain candidates for the same public office from different political subdivisions. (A.1436, Wright; Chapter 71)**

This law provides that petitions may not contain the names of two or more candidates for the same public office for two or more different political subdivisions.

### **Extends certain provisions relating to the election ballot, canvassing write-in votes. (A.6825, Wright; Chapter 116)**

This law extends for one additional year the authority of local boards of elections, when necessary for reasons of ballot configuration and efficient election administration, to provide write-in vote opportunities in elections for party positions only when a valid petition for an opportunity to ballot is filed. Write-in vote opportunities must still be provided with respect to each contested nomination for public office.

### **Military voting. (A.8376, Silver; Chapter 165)**

This law permits military voters and other overseas voters to apply for and obtain a paper ballot for primary, general and special elections by facsimile transmission or electronic mail and to extend the time frame for returning such ballots.

### **Provides for Russian language voting materials. (A.1559, Colton; Chapter 244)**

This law mandates the board of elections in a city of over 1 million (New York City) provide the same information in Russian that it provides in languages other than English on its Website. It must also produce and disseminate citywide a booklet that includes; (a) a voter registration form in English with instructions in Russian; (b) instructions in Russian regarding the criteria and application process for obtaining an absentee ballot; and (c) a section with general voter information in Russian including frequently asked questions.

**Independent nominating petitions. (A.4959, V. Lopez; Chapter 246)**

This law amends the independent nomination petition contained in section 6-140 of the Election Law by striking the language, “I am also duly qualified to sign the petition” from the statute.

**Counting of affidavit ballots. (A.4962, V. Lopez; Chapter 248)**

This law requires the counting of a voter’s ballot when the voter appears at the correct polling place but the wrong election district.

**In relation to checks of registrants and information notice by mail. (A.2481-a, Pretlow; Chapter 288)**

This law allows the board of elections to mail certain notices out between August 1<sup>st</sup> and August 5<sup>th</sup> of each year to ensure timely delivery of notice to the voters.

**Absentee ballot voting for primary care givers, (A.3367-a, Englebright; Chapter 426)**

This law allows people who desire to vote who are unable to do so because of caring for a loved one prevents them from personally appearing and voting. This law will allow these people to apply for an absentee ballot so that they can care for their loved ones and still be able to exercise their right to vote.

**Determining the minimum number of voting machines used in polling places, (A.8492, Ramos; Chapter 462)**

This law reflects the fact that the electronic voting machines which will replace the current voting machines used in New York can tabulate multiple official ballots and that this feature should be considered when determining how many machines are needed at a poll site.

**In relation to paper ballots. (A.8527, Skartados; Chapter 464)**

This law amends the Election Law to provide that paper ballots may be printed and arranged in a manner that allows them to be counted by a voting machine approved by the State Board of Elections.

**Enabling voters to vote in the correct polling place. (A.1002-C, Paulin; Chapter 489)**

This law provides a voter claiming to live within an election district in which the voter seeks to vote be advised of the proper polling place and election district.

### **III. 2009 COMMITTEE INITIATIVES WHICH PASSED THE ASSEMBLY BUT WERE NOT CONSIDERED BY THE SENATE**

#### **Requiring voter approval for the abolition or modification of term limits for certain elected offices. (A.1224-c, Jeffries)**

This bill would require that in any political subdivision where the term of office of an elected official has been limited by referendum, the legislative body with jurisdiction over the term limited elected office may adopt a resolution to abolish or modify the term limit and such resolution shall be submitted to the appropriate qualified electors.

#### **Employment of election inspectors. (A.1308, Wright)**

This bill would authorize the board of elections to employ election inspectors to work half-day shifts with adjusted compensation, provided, however, that at least one inspector from each of the two major political parties is present at the poll site for the entire time that the polls are open.

#### **Enacts the “voting rights notification and registration act”. (A.2266-a, Wright)**

This bill would enact the “Voting Rights Notification and Registration Act” to remove illegal barriers that prevent convicted felons from registering to vote when they have served their sentence of incarceration and are eligible to do so and to provide such individuals the information needed to register.

#### **Provides ballots for all elections shall be made available in Braille, upon request of a blind or visually impaired voter. (A.3738, Koon)**

This bill would enable blind and visually impaired persons to request Braille or large-print absentee ballots to be sent to their home or such persons can request that accessible ballots be available at their polling places. Currently, blind or visually impaired people must have someone assist them when filling out absentee ballots because they are simply not produced in accessible formats. This bill would allow these people to vote independently and it no longer means that someone else has to be trusted with their vote.

#### **Special ballots for victims of domestic violence. (A.3910, Gabryszak)**

Chapter 702 of 1996 permits victims of domestic violence who have fled the family residence because of danger to themselves or members of their families to cast their votes at the Board of Elections by paper ballot, rather than being required to appear at the polling place, where their abusers might be able to stalk them. However, Chapter 702 did not contain definitions of “domestic violence” or “family members”. This new legislation would clarify that domestic violence includes such wrongful acts as “harassment” and “menacing” as well as actual physical abuse.

**Provides that an affidavit ballot shall also constitute an application to register to vote. (A.4015-a, Kavanagh)**

This bill provides that the affidavit ballot envelope be designed to serve as an application for registration and enrollment, and that if a prospective voter who completes the affidavit is determined by the Board of Elections not to be registered or enrolled as the voter claims, that the voter shall be registered or have his enrollment changed pursuant to the information on the affidavit envelope.

**Permitting 17 -year -old students to be election inspectors and poll clerks during elections. (A.4467, Brodsky)**

This bill would provide the authority for enrolled students at least 17 years of age, upon consent from their school district and parents (or legal guardians), to serve as election inspectors and poll clerks during elections.

**Simplifies the absentee ballot. (A.5276-a, Galef)**

This legislation would permit the simplification of the absentee ballot process by removing the requirement of certain information.

**Using certain buildings as polling places accessible to persons with disabilities. (A.5707, Weinstein)**

This bill would expand the pool of available handicapped accessible polling places by mandating that buildings which obtain tax abatements or exemptions or other public benefits must be made available for use as polling places.

**Authorizing registration records of victims of domestic violence to be kept confidential in certain cases. (A.7016, Eddington)**

Under current state law, local boards of election must provide the address of any registered voter, as long as the request is written and the applicable law is cited. Often, victims of domestic violence that have moved and wish to keep their new address out of the hands of their abuser simply do not register to vote because of the availability of their registration information to others. This legislation would keep these records separate and apart from other registration records, thus affording domestic violence victims the security they deserve.

**Making changes to the application for absentee ballots. (A.7347, Galef)**

This legislation will provide voters with more opportunities to apply for an absentee ballot by permitting the use of telefax or other written instrument in addition to the currently required means of a letter.

**Appointment of commissioners of election. (A.8525, Russell)**

This bill is intended to preserve the bipartisan nature of all boards of elections, as required by the New York State Constitution, by making the political party nomination of a board of elections commissioner effective within 30 days of the nomination when the legislative body fails to act on the nomination and there are no members of the legislative body who are members of the party making the nomination.

**Providing information to be included on statewide voter registration application forms. (A.8526, Gordon)**

This bill would provide for the inclusion via registration application of a telephone number and email address if the voter wants to be contacted.

**The purchase or lease of election equipment, supplies and ballots in the city of New York. (A.8540, Hyer-Spencer)**

This bill would allow the New York City Board of Elections to use its expertise in the procurement of equipment, supplies and ballots while requiring it to comply with rules regarding competitive bidding.

**The deadline for publication of enrollment list. (A.8541, Lifton)**

This legislation would repeal the existing deadline for publishing the enrollment list in a presidential primary year and set the deadline of April 1 as it is in non-presidential primary years.

**Authorizes the board to set standards for the change of mailing address and requires a candidate to provide the board with depository information. (A.8693, Stirpe)**

This bill would simplify the process for updating a mailing address on a political committee's statement establishing the committee and, for the first time, would require that a candidate who does not establish a political committee provide the State Board of Elections with his or her depository name and address.

**Enacts the “2010 Campaign Finance Reform Act”. (A.8902, Silver)**

This bill would provide optional partial public financing of certain election campaigns in this state and mandate the identification of the source of certain political communications.

#### **IV. 2009 BILLS WHICH PASSED BOTH HOUSES BUT VETOED BY THE GOVERNOR**

##### **VETO NUMBER 60**

###### **Requiring polling places to be accessible to physically disabled voters. A.584-a, Cahill)**

This law, if signed, would have provided for the accessibility of polling places for physically disabled voters and established basic accessibility guidelines to ensure consistency and encourage substantial compliance at polling sites.

## APPENDIX A

### **SUMMARY OF ACTION ON ALL BILLS REFERRED TO THE COMMITTEE ON ELECTION LAW**

<u>FINAL ACTION</u>	<u>ASSEMBLY BILLS</u>	<u>SENATE BILLS</u>	<u>TOTAL BILLS</u>
<b>BILLS REPORTED WITH OR WITHOUT AMENDMENT</b>			
TO FLOOR; NOT RETURNING TO COMMITTEE	15	0	15
TO FLOOR; RECOMMITTED AND DIED	3	0	3
TO WAYS AND MEANS	8	0	8
TO CODES	2	0	2
TO RULES	17	0	17
TO JUDICIARY	0	0	0
<b>TOTAL</b>	<b>45</b>	<b>0</b>	<b>45</b>
<b>BILLS HAVING COMMITTEE REFERENCE CHANGED</b>			
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>SENATE BILLS SUBSTITUTED OR RECALLED</b>			
SUBSTITUTED		6	6
RECALLED		0	0
<b>TOTAL</b>		<b>6</b>	<b>6</b>
<b>BILLS DEFEATED IN COMMITTEE</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>BILLS NEVER REPORTED, HELD IN COMMITTEE</b>	<b>212</b>	<b>5</b>	<b>217</b>
	0	0	0
<b>BILLS HAVING ENACTING CLAUSES STRICKEN</b>	<b>3</b>	<b>0</b>	<b>3</b>
<b>MOTIONS TO DISCHARGE LOST</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL BILLS IN COMMITTEE</b>	<b>260</b>	<b>11</b>	<b>271</b>
<b>TOTAL NUMBER OF COMMITTEE MEETINGS HELD</b>	<b>6</b>		

**APPENDIX B**  
**2009 CHAPTERS**

<b><u>BILL NUMBER</u></b>	<b><u>SPONSOR</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>CHAPTER NUMBER</u></b>
A.1001	Paulin	Authorizes the use of titles, initials or abbreviations of names as signatures on ballots.	40
A.1002-c	Paulin	Provides that a voter claiming to live within an election district in which the voter seeks to vote being advised of the proper polling place and election district	489
A.1436	Wright	Provides that designating petitions and independent nominating petitions may not contain candidates for the public office from different political subdivisions.	71
A.6825	Wright	Extends certain provisions relating to the election ballot, canvassing write-in votes.	116
A.8376	Silver	Allows a military voter to apply for a military ballot by facsimile transmission or electronic mail; extends time for receipt of special federal and military ballots.	165
A.1559	Colton	Directs board of elections in New York City to furnish voting materials in Russian language as well as in English.	244
A.4959	V. Lopez	Reestablishes the sole qualification for a witness to an independent nominating petition as a qualified voter of the state of NY.	246
A.4962	V. Lopez	Requires the counting of an affidavit ballot of an eligible voter if the voter appeared at the correct polling place but in the incorrect ED.	248
A.2481	Pretlow	Relates to the checks of registrants and information notice by mail.	288
A.3367	Englebright	Makes provisions for primary care givers to vote in general elections and school elections by absentee ballots.	426

## **2009 CHAPTERS**

<b><u>BILL NUMBER</u></b>	<b><u>SPONSOR</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>CHAPTER NUMBER</u></b>
A.8492	Ramos	Relates to the qualifications used by the board of elections for establishing the minimum number of voting machines.	462
A.8527	Skartados	Relates to ballots which are counted by machine and states the manner in which ballots are to be delivered.	464

## **APPENDIX C**

### **2009 BILL VETO**

<b><u>BILL NUMBER</u></b>	<b><u>SPONSOR</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>VETO NUMBER</u></b>
A.584-a	Cahill	Requires polling places to be accessible to physically disabled voters.	60