



State of New Jersey

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2002

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I. MEMBERS AND STAFF OF THE COMMISSION IN 2002

The members of the Commission are:

Albert Burstein, Chairman, Attorney-at-Law

Hugo M. Pfaltz, Jr., Vice Chairman, Attorney-at-Law

John Adler, Chairman, Senate Judiciary Committee, Ex officio

Peter A. Buchsbaum, Attorney-at-Law

Stuart Deutsch, Dean, Rutgers Law School - Newark, Ex officio
Represented by **Bernard Bell**, Professor of Law

Vito A. Gagliardi, Jr., Attorney-at-Law

William L. Gormley, Chairman, Senate Judiciary Committee, Ex officio

Linda R. Greenstein, Chairman, Assembly Judiciary Committee, Ex officio

Patrick Hobbs, Dean, Seton Hall Law School, Ex officio
Represented by **William Garland**, Professor of Law

Rayman Solomon, Dean, Rutgers Law School - Camden, Ex officio,
Represented by **Grace Bertone**, Attorney-at-Law

The staff of the Commission is:

John M. Cannel, Executive Director

John J. A. Burke, Assistant Executive Director

Laura C. Tharney, Associate Counsel

Judith Ungar, Associate Counsel

II. HISTORY AND PURPOSE OF THE COMMISSION

New Jersey has a tradition of law revision. The first Law Revision Commission was established in 1925 and it produced the Revised Statutes of 1937. The Legislature, however, intended the work of revision and codification to continue after the enactment of the Revised Statutes. As a result, the Law Revision Commission continued in operation. After 1939, its functions passed to a number of successor agencies, most recently the Legislative Counsel.¹

In 1985, the Legislature transferred the functions of statutory revision and codification to the newly created² New Jersey Law Revision Commission,³ which commenced work in 1987. Since that time, the Commission has filed 58 reports with the Legislature, 28 of which have been enacted into law. In addition to the reports already considered by the Legislature, several recommendations are now pending, including a comprehensive revision of New Jersey's election law prepared in an effort to update the law and to comply with recent federal mandates.

¹ N.J.S.A. 52:11-61.

² The Law Revision Commission was created by L.1985, c.498, and charged with the duty to:

a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it for the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to

(1) Remedy the defects, (2) Reconcile conflicting provisions found in the law, and (3) Clarify confusing and excise redundant provisions found in the law;

b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;

c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and

d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant to its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

³ L.1985, c. 498.

The objective of the Commission is to simplify, clarify and modernize New Jersey statutes. Pursuant to that objective, the Commission conducts an ongoing review of the statutes in order to identify areas that require revision. The scope of the revision performed by the Commission includes the correction of inconsistent, obsolete and redundant statutes, as well as comprehensive modifications of select areas of the law.

Before choosing an area of the law for revision, the Commission considers recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and public officers. Once a revision project begins, the Commission extensively examines local law and practices, and the law of other jurisdictions. The Commission also consults with experts in the particular area of the law, and seeks input from individuals and organizations familiar with the practical operation and impact of the existing statutes. The Commission continues its efforts to obtain input from these various sources throughout the drafting process. When a revision is completed, it is submitted to the New Jersey Legislature.

The Commission's work has been published in law journals, cited by the New Jersey Courts in several reported opinions, and has been used by law revision commissions in other states.

The meetings of the Commission are open to the public and the Commission actively solicits public comment on its tentative reports, which are widely distributed to interested persons and groups. In 1996, the Commission established a website where its current projects and its reports are available to the public on the Internet at <http://www.lawrev.state.nj.us>.

III. FINAL REPORTS AND RECOMMENDATIONS

A final report contains the decision of the Commission on a particular area of the law. The report contains an analysis of the subject, proposed statutory language and appropriate commentary. A final report is approved and adopted after the public

has had an opportunity to comment on tentative drafts of the report, and is filed with the Legislature. After filing, the Commission and its staff work with the Legislature to draft the report in bill form and to facilitate its enactment.

In 2002, the New Jersey Law Revision Commission published one final report and issued one final recommendation to the Legislature.

A. Games of Chance

In the latter part of 2002, the Commission published a Final Report and Recommendations Relating to Games of Chance. This Final Report recommended a thorough revision of the law regulating bingo, raffles and amusement games, collectively referred to as "legalized games of chance." (See Appendix A) The law concerning legalized games of chance comprises Title 5, Chapter 8, of the New Jersey Statutes.

In its present form, the law is repetitive and in some cases, self-contradictory. It is also overly detailed, including certain provisions more appropriately left to administrative regulations. The effect of these deficits is a law concerning legalized games of chance that is inaccessible to everyone except the experts who have puzzled their way through it frequently enough to understand its complexities. Given the subject matter covered by the law, however, it is important that it be understood by a far broader range of individuals, including volunteers for charitable organizations that use bingo and raffles for fundraising, and the business people who run amusement games.

The officials who administer the current law told the Commission that it frequently causes confusion since its requirements are unclear. The revised statutory language that was proposed by the Commission represents an attempt to replace the confusing provisions with clear, concise language.

The report also recommends substantive simplification of the law and modifications designed to harmonize the provisions of the law with community expectations.

Presently, licensing for legalized games of chance is a two-step process. The process involves applications to, and approvals by, both a state regulatory commission and the municipality in which the game will take place. That process was described as unnecessarily complex and burdensome for an individual seeking a license. The Commission's report recommends streamlining the process and making the Legalized Games of Chance Commission responsible for all licensing, eliminating the requirement of a separate municipal license. A municipality retains the power to decide whether it will permit bingo, raffles, or amusement games within its boundaries, and will be given notice of applications for licenses. If the municipality objects to an application, the license may not be granted without a hearing.

Finally, the Commission recommends substantive changes to the current law so that it more accurately reflects community expectations and current practices. Current law, for example, has been held to restrict games designed primarily to be played by children if the available prize, however trivial, is affected by the child's success in playing the game. It was recognized that these games are found throughout the state in arcades designed primarily for children, in contravention of the present law. In addition, current law can be interpreted to forbid merchandise promotions where certain purchasers are given free merchandise or prizes. Such promotions, however, are common throughout the State. Some soft drink companies, for example, offer the consumer a free bottle of the beverage where the label or cap of the bottle purchased so indicates. The proposed statute acknowledges the current practice in these areas and exempts children's games and merchandise giveaways from regulation. Current law also limits amusement games to certain shore and resort locations, and to agricultural fairs and exhibitions. Amusement games, however, are found throughout the state at fairs and festivals. The proposed statute recognizes this, and permits the games at fairs of ten days duration or less.

B. Uniform Mediation Act

In 2001, the Commission published its Tentative Report on the Uniform Mediation Act. At its 2001 annual meeting, the National Conference of Commissioners on Uniform State Laws approved the Uniform Mediation Act (UMA) and recommended

its enactment by state legislatures. The UMA was the result of a joint project of the NCCUSL and the Mediation Section of the American Bar Association. The project was motivated by the belief that effective mediation requires all parties to be confident that anything that takes place during mediation is not disclosed later in any subsequent legal or administrative proceeding. The UMA would assure that confidence by enacting the broadest possible evidentiary privilege in every state. The UMA creates a privilege against disclosure of any "mediation communication" by (1) parties to the mediation, (2) the mediator, and (3) non-parties, such as experts, who attend the mediation. The privilege would apply in any judicial, administrative, or legislative proceeding and in any arbitration. The privilege would apply unless waived by all parties to the mediation and by the mediator. Exceptions to the privilege are few and set out in detail.

New Jersey law provides substantial protection to the confidentiality of mediation. The Rules of Evidence make any offer of compromise of a disputed claim inadmissible on the validity or amount of the claim. *N.J.R.E.* 408 In addition, New Jersey Court Rules provide that "no disclosure made by a party during mediation shall be admitted as evidence against that party in any civil, criminal, or quasi-criminal proceeding." *R.* 1:40. Neither of these protections is a privilege, however, and both are narrower than the protection provided by the UMA since the UMA privilege applies to more than court proceedings.

In 2002, the Commission issued a final recommendation to the Legislature supporting the enactment of the UMA after concluding that a uniform state law is necessary to protect mediation.

IV. TENTATIVE REPORTS

A tentative report represents the first settled attempt of the Commission to revise an area of law. It is the product of lengthy deliberations, but it is not final. A tentative report is distributed to the general public for comment. The Commission considers these comments and amends its report.

In 2002, the Commission published two tentative reports.

A. Election Law

In December of 2002 the Commission published a Tentative Report and Recommendations Relating to Election Law (See Appendix B). This Report represents the latest development in a project approved by the Commission in 2001 which began with an in-depth examination of New Jersey law, federal election law, the law of other states, and institutional and academic reports on election law and procedures. Following the lead of recently enacted federal legislation, the project reforms the administration of elections, establishes a statewide voter registration database, simplifies and makes more efficient the procedures regulating absentee and provisional ballots, and creates a legal infrastructure flexible enough to accommodate ongoing improvements to voting systems resulting from anticipated technological developments.

During the course of the project, the Commission widely distributed a draft tentative report, seeking the comments of election officials, other government officials, and interested members of the public. All comments received were considered by the Commission during the preparation of the Tentative Report.

The recently released Tentative Report substantially revised certain aspects of the New Jersey law regulating elections, presently found at *N.J.S.A. 19:1-1* to *N.J.S.A. 19:60-12*. The New Jersey law regarding elections is divided into three areas, each pertaining to a different aspect of the electoral process and each consisting of numerous statutory sections. The first area of the law concerns the way an individual obtains a place on a ballot, the second concerns the manner in which an individual actually casts a vote, and the third pertains to election contributions and expenditures. The Tentative Report addresses the first and second areas.

The initial impetus for the revision was the 2000 Presidential election, which revealed problems with state election systems that caused both the federal and state governments to re-examine their statutory law.

The re-examination of New Jersey's Election law revealed that much of it was enacted in the 1930's and, while the Legislature has amended it since that time, the statute does not presently reflect recent developments in technology or mirror current

election practices. The law contains provisions that are no longer necessary or appropriate, while failing to reflect the impact of technological advances on election procedures and the time periods necessary to accomplish certain tasks.

In addition, recent federal law imposes certain requirements on the states, including the implementation of a statewide voter registration system. *Help America Vote Act of 2002*, P.L. 107-252 (42 U.S.C.15301 et seq.). The New Jersey registration system is presently distributed through the twenty-one counties.

The New Jersey Legislature previously recognized the need to reform New Jersey Election Law and at the time of the dissemination of the draft tentative report there were more than 70 pending bills pertaining to election issues.

In its present form, New Jersey Election Law consists of two complete volumes of the New Jersey Statutes. Many provisions contained in those volumes are based upon obsolete and discontinued voting systems, such as paper ballots and lever machine balloting, and are duplicative. Several provisions, although they deal with one subject, are scattered throughout Title 19. Other provisions are overly detailed, including details better left to administrative rule making, while at the same time leaving gaps in coverage. The result is an unclear body of law not easily accessible to the government officials and other professionals who must rely upon it.

The Tentative Report contains recommendations to update New Jersey's law, to reflect current realities of the voting process and to allow for further modification, including the use of new voting systems and technologies, in order to increase access to the vote and to make it easier for a citizen to vote.

First, unlike existing law, the Tentative Report uses machine neutral language. Paper ballots are used in only two counties and lever machine balloting no longer is widely used. Since voting technology continues to develop, the machine neutral language does not anchor the law in any single category of voting system that the passage of time may render obsolete.

Second, the Tentative Report recommends the adoption of a statewide voter registration system. This recommendation comports with the new federal law. In addition to the requirements of the federal law, the transition to a central official file to voter registration records is warranted in New Jersey as a result of the dense and highly mobile population and the small number of counties. Statewide voter

registration permits voters who move from one county to another to vote in their new location as easily as they could if they had simply moved within their voting district.

Third, the Tentative Report creates the Commission on Elections. While the day-to-day responsibilities associated with elections will continue to be handled by personnel at the county level, the Commission is necessary to oversee the proposed statewide registration. In addition, the state level Commission would enforce the provisions of the statute and impose uniformity in voting. Given the nature of the questions to be addressed in the area of election law, and the manner in which technology may continue to spur modifications to voting systems, detailed, specific directions regarding voting are more appropriately established by regulation than by statute. Rather than providing detailed statutory language, the Report establishes general principles and leaves the detail of administration to the rule making authority of the Commission. This approach avoids unduly restraining government officials and gives them the flexibility to adjust New Jersey practices to changing voting realities.

The Tentative Report also recommends other significant changes such as expansion of the availability of absentee voting. The Report discontinues the current requirement that a voter provide a reason for voting by absentee ballot, and permits such voting on request. Various groups who presented information to the Commission asked that absentee voting be available without requiring justification.

B. Distressed Property

In 2001, the Commission approved a project to draft legislation designed to address the adverse economic effects of distressed real property. The project resulted from the absence of existing law enabling municipal government to take possession of and repair dilapidated buildings, and from the lack of an effective method to appoint receivers to manage and restore residential investment property. Existing New Jersey statutes pertaining to distressed property generally apply to property that lacks economic value, and requires demolition not rehabilitation, or property that belongs to legislatively drawn redevelopment areas. Properties that, if restored, represent an attractive investment fall outside the law's scope.

The Legislature has enacted a number of statutes giving government the power and funding to reverse problems posed by urban blight. These statutes, however, developed by historical accident and, while they were amended from time to time, they lack coherence. The lack of coherence is exacerbated by numerous codes and rules adopted by the Commissioner of Community Affairs to implement the various statutes. Unfortunately, the resulting morass of statutes and regulations had limited effect, as evidenced by the persistence of vacant, abandoned and deteriorating buildings.

The Distressed Property Act focuses on individual problem properties. A single distressed property has the capacity to reduce the value of contiguous properties, beginning a domino effect leading to areas of decayed buildings. The best solution is to compel a sale of a distressed property to interested and financially qualified buyers with a business plan to rehabilitate the property. For residential investment property,

the draft legislation gives courts the authority to appoint a receiver with broad powers to manage and rehabilitate the property.

The draft Act requires code enforcement officials to prepare an inventory of distressed properties. A property placed on the inventory is subject to sale or receivership depending on property type. Municipal governments or persons have the right to make an application to the Superior Court to compel a sale of the property or to appoint a receiver. The statute also gives municipal government the option to forego the sale of tax certificates to prevent encumbrance of the property with additional debt.

Because the draft legislation affects rights of property owners and lien holders, it contains various due process protections.

V. WORK IN PROGRESS

The most important ongoing work of the Commission concerns election law. While a Tentative Report was released in December, work continues in order to address the issues raised by various individuals who have supplied comments to the Commission in response to the Tentative Draft. This work must be given the highest priority so that the State of New Jersey can meet January 1, 2004 and January 1, 2006 deadlines for compliance with federal law.

Work also continues on the subject of title recordation. In 2001, the Commission published a Tentative Report and Recommendations Relating to the Recordation of Title Documents. The Commission's approval of the project to revise the statutes on recording of title documents was partly motivated by the enactment of the Electronic Signatures in Global and National Commerce Act (E-sign), 15 *U.S.C.* §7001 *et seq.*, and the New Jersey enactment of the Uniform Electronic Transactions Act (UETA), L.2001, c.116. This legislation requires the acceptance of electronic

alternatives to paper documents. E-sign and UETA encourage the development of systems that will accept electronic deeds and mortgages without disruption of the system for recording title documents. The Tentative Report deleted references to particular methods of recording and indexing so that the law does not refer to particular technology used in recording. Comments to the Tentative Report have suggested that this approach was insufficient. The Commission's current drafts provide for a method to establish a single, statewide standard for electronic submission of documents. A new Tentative Report should be filed in Spring 2003.

In addition to the previously mentioned projects, the Commission decided to review certain of its older reports on which no legislative action was taken, and bring those reports up-to-date so that they may be resubmitted for action. Transportation is the first of those projects, others will follow. Tentative Reports on transportation were published in the early 1990s, but final reports were never prepared. The initial section of the Transportation project, Aviation, should be completed during the first half of 2003, and other parts completed later in the year.

Another of the Commission's projects for 2003 is the Motor Vehicle project. The Commission has determined that certain sections of Title 39 are appropriate candidates for revision, including the sections containing driving offenses, because the basic statutory provisions were drafted in the 1920s, and others have accreted over time. The result is layered statutes, with overlapping and obsolete provisions.

Weights, Measures and Containers is an additional area that has been selected for review by the Commission in 2003. Much of this Title is nearly a century old and some of it is anachronistic.

State of New Jersey



New Jersey Law Revision Commission

FINAL REPORT AND RECOMMENDATIONS

relating to

GAMES OF CHANCE

September 2002

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APPENDIX A

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Introduction

This report recommends a thorough revision of the law regulating bingo, raffles and amusement games, collectively called "legalized games of chance." The law on these games now comprises Title 5, Chapter 8, of the New Jersey Statutes. This law is repetitive and, in some cases, self-contradictory. It is also overly detailed, including provisions better left to administrative regulations. The effect of these deficits is to make the law on legalized games of chance inaccessible to all but those experts who have puzzled through it frequently enough to understand its complexities. However, it is important that this law be understood by the people who are regulated by it: volunteers for charitable organizations that use bingo and raffles and the business people who run amusement games. Officials who administer the current law have told the Commission that it often causes confusion as to what is required. The revised statutes proposed are an attempt to put the law into clear, concise language.

This report also recommends simplification of the substance of the law regulating legalized games of chance. At present, licensing is a two-step process, involving applications to, and approvals by, both the state regulatory commission and the municipality in which the game will take place. That process involves unnecessary complication for the person who must acquire a license. This report recommends instead, that the Legalized Games of Chance Commission be responsible for all licensing and no municipal license be required. A municipality retains the power to decide whether it will permit bingo, raffles, or amusement games to be permitted within its territory. A municipality is also given notice of applications for amusement games licenses. If the municipality objects, the license may not be granted without a hearing.

The Commission also recommends substantive changes to bring the law into harmony with current community expectations. Present law has been held to restrict games designed primarily for children if the prize, however trivial, is affected by the child's success in playing the game. However, these games are found throughout the state in arcades designed primarily for children. Present law can also be interpreted to forbid merchandise promotions where certain purchasers are given free merchandise or prizes. However, such promotions are common. For example, some soft drink companies give a free bottle where the label or cap of the bottle purchased so indicates. The proposed statute would accept current practice and exempt children's games and merchandise giveaways from regulation. Current law also limits amusement games to certain shore and resort localities, and to agricultural fairs and exhibitions. However, these games are also found throughout the state at fairs and festivals. The proposed statute would allow amusement games at fairs of ten days duration or less.

Chapter 1. Legalized Games of Chance Control Commission

1-1. Definitions

As used in this act:

"Amusement game" is a game of chance:

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- (1) played for entertainment,
- (2) in which the player participates actively,
- (3) the outcome of which is not controlled by the operator; and
- (4) operated so that the sale of right to play, the event determining win or loss, and the award of prize, all occur as a continuous sequence at the time and place that players are present.

“Bingo” means the game of chance defined in the N.J. Const. Art. IV, Sect. VII, par. 2(A).

“Commission” means the Legalized Games of Chance Control Commission.

“Game of chance” is a game in which:

- (1) players pay to participate;
- (2) winners are determined by chance, skill or combination of the two; and
- (3) prizes are awarded to winners; and
- ~~(4) the cost of the prizes is derived from the amount paid by players.~~

“Raffle” means a game of chance conducted by the drawing for prizes or by the allotment of prizes by chance. "Draw raffle" is one in which the winners are determined by a drawing. "Non-draw raffle" is any other kind of raffle, and includes an amusement game.

“Organization” means any group licensed to operate games of chance under the Bingo Licensing Law or under the Raffles Licensing Law.

Source: 5:8-25, 5:8-49.2, 5:8-51, 5:8-101, N.J. Const. Art IV, Sect. VII, par. 2(A).

Comment

This section streamlines language of the source provisions and adds definitions for "amusement game", "bingo" and "raffle." Originally, the director of the Division of Alcoholic Beverage Control served as the Amusement Games Control Commissioner. N.J.S. 5:8-78. By Reorganization Plan No. 004-1992 at 24 N.J.R. 4462, which reorganized the Department of Law and Public Safety, the Amusement Games Control Commission was abolished and its statutory functions were transferred to the Legalized Games of Chance Control Commission.

The Constitutional definition of bingo is a game of chance "played with cards bearing numbers or other designations, five or more in one line, the holder covering numbers as objects, similarly numbered, are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such a card...."

1-2. Legalized Games of Chance Control Commission; members

a. The Legalized Games of Chance Control Commission shall be in the Department of Law and Public Safety.

b. The Commission shall consist of five citizens of the State who do not hold public office, appointed by the Governor with the advice and consent of the Senate. Not more than three of the appointees shall belong to the same political party.

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c. Members of the Commission shall be appointed for terms of five years. Members may serve on the Commission beyond their appointed terms until their successors are appointed and qualify.

d. The Governor shall fill any vacancies which arise for unexpired terms.

e. The members of the Commission shall serve without compensation and shall be reimbursed for their expenses.

f. The Commission shall choose a chairperson and a secretary. The secretary need not be a member of the Commission.

Source: 5:8-1; 5:8-2, 5:8-3, 5:8-4, 5:8-5.

Comment

Subsections (a) and (b) are substantially identical to 5:8-1. Subsections (c), (d), (e) and (f) streamline and combine 5:8-2, 5:8-3, 5:8-4 and 5:8-5.

1-3. Expenses and personnel

a. The Commission may incur expenses and may engage an executive officer and other necessary staff.

b. Investigators employed by the Commission need not be subject to Title 11A, Civil Service.

Source: 5:8-21, 5:8-94.

Comment

This section clarifies the language of its source provisions and deletes unnecessary repetition.

1-4. Legalized Games of Chance Control Commission Fund

a. The Legalized Games of Chance Control Commission Fund is a nonlapsing fund in the Department of the Treasury. Except as otherwise provided by law, all fees, penalties or fines collected by the Legalized Games of Chance Control Commission pursuant to the Bingo Licensing Law, Raffles Licensing Law and Amusement Games Licensing Law shall be deposited in the fund.

b. All interest on money in the fund shall be credited to the fund. The State Treasurer shall administer the fund.

c. At the end of each fiscal year the necessary amount for the Commission shall be appropriated from the fund to the Department of Law and Public Safety.

Source: 5:8-21.1.

Comment

This section streamlines the language of the 1994 source provision and adds the Amusement Games Licensing Law.

1-5. Study of licensing laws; Commission reports and recommendations

a. The Commission shall study the operation and administration of the licensing laws to discover defects, abuses and evasions, and to recommend improvements, and shall study similar laws of other states.

b. The Commission shall report annually its recommendations to the Governor, the President of the Senate and the Speaker of the General Assembly. The Commission may make interim reports immediately if it discovers matters requiring immediate change in the laws.

Source: 5:8-12, 5:8-13, 5:8-23, 5:8-85, 5:8-86, 5:8-96.

Comment

This section combines and streamlines related provisions.

1-6. Administrative regulations; forms; fees

a. The Commission shall adopt regulations governing (1) registration and licensing under the Bingo Licensing Law and the Raffles Licensing Law, and certification and licensing under the Amusement Games Licensing Law, and (2) the operation of games under the licenses.

b. The Commission shall file a copy of each regulation it adopts in the office of the Secretary of State before the regulation becomes effective and shall make copies available to municipalities operating under this act.

c. The Commission shall prescribe forms necessary for uniform administration of the laws.

d. The Commission shall establish fees for registrations, licenses and other services at a level that will raise funds necessary to defray expenses of the Commission and of staff administering the Bingo Licensing Law, the Raffles Licensing Law and the Amusement Games Licensing Law. The Commission shall transmit one half of the fee for a Bingo, Raffle or Amusement Game License to the municipality that accepted the application for the license to defray the cost of accepting the application and supervising the operation of the licensed activity.

Source: 5:8-6, 5:8-7, 5:8-79, 5:8-79.1, 5:8-80.

Comment

This section combines the source provisions.

Chapter 2. Games of Chance; General Provisions

2-1. Legalized games of chance; immunity from prosecution for gambling

A person who is licensed or otherwise authorized by this act to operate a game of chance or to allow its operation on premises the person owns, shall not be liable to prosecution or conviction for violation of N.L.S. 2C:37-1 or 2C:37-3. This immunity shall not extend to any game of chance under a license obtained by fraud.

Source: 5:8-40, 5:8-67.

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Comment

This section greatly condenses the source provisions and updates the statutory citations. There is no parallel provision applicable to amusement games, but it is implicit that licensed amusement games cannot be prosecuted as gambling.

2-2. Supervision

The Commission shall supervise administration of the Bingo Licensing Law, the Raffles Licensing Law and the Amusement Games Licensing Law. The municipality in which the licensed activity is conducted shall supervise the operation of bingo, raffles and amusement games.

Source: 5:8-6, 5:8-79.

Comment

This provision derives from one of the duties of the Commission listed in the source provisions.

2-3. Inspection; suspension; revocation; summary proceeding

a. Agents of the municipality and of the Commission shall have the right of entry into, and inspection of, premises where bingo games, raffles or amusement games are being operated or held. Agents of the municipality and of the Commission, with a judicially issued warrant, shall have the right of entry into, and inspection of, premises where equipment for the games' operation is kept for use.

b. If, during inspection, agents observe a violation of this act or Commission regulations, the agents may suspend operation of games on the premises until the violation is corrected.

c. The Commission, after notice and hearing, may suspend or revoke a license for violation of this act or Commission regulations.

d. The Commission also, after giving a licensee opportunity to be heard, may:

(1) issue a letter of reprimand regarding any conduct which the Commission judges not to warrant formal action;

(2) assess and enforce civil penalties;

(3) order any person who violated a law or regulation to refrain from future violations or to make necessary corrections to the operation of games of chance;

(4) order any person who violated a law or regulation to restore to any person money or property wrongly taken;

(5) order a person, as a condition for a continued, reinstated or renewed license, to secure medical or other professional treatment necessary to discharge licensee functions properly; and

(6) revoke a license for violation of provisions of the license, regulations and this chapter.

e. The Commission, in addition to any other proceeding, may bring an action in Superior Court for an injunction to prohibit violations of this law or of Commission regulations.

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The court shall not suspend or revoke a license or a registration certificate issued by the Commission.

Source: 5:8-9, 5:8-30, 5:8-30.1, 5:8-57, 5:8-57.1, 5:8-82.

Comment

This section streamlines language of the source sections, deleting the enumeration of the court's options ("may assess a civil penalty..., may order restoration..., may enter such orders as may be necessary..."). Subsection (a) adds a "judicially issued warrant" as a prerequisite for entry into, and inspection of, premises where equipment is kept for use.

2-4. Investigations and hearings; subpoenas

a. The Commission shall investigate the administration of this act and complaints concerning violations.

b. A majority of Commission members may hold investigations and hearings in or out of the State, and by subpoena may compel attendance of witnesses and production of documents relating to games of chance under the licensing laws.

c. If a person disobeys a subpoena commanding attendance in an investigation or hearing, or refuses to answer a question or to exhibit documentary evidence when ordered, the Commission may apply to the Superior Court for an order directing the person to comply with the subpoena or order.

d. If the court determines that the person illegally refused to comply with a subpoena or an order of the Commission, it may order the person to comply and may punish failure to obey the court order as a contempt of the court.

Source: 5:8-8, 5:8-14, 5:8-16, 5:8-17, 5:8-85, 5:8-87, 5:8-89, 5:8-90.

Comment

This section streamlines and combines source sections.

2-5. Witness privilege

a. No person shall be excused from testifying or producing any document in any investigation or hearing on the ground that the required testimony or documentary evidence may tend to incriminate or subject the person to penalty.

b. No person shall be prosecuted, punished or subjected to penalty or forfeiture for testimony or documentary evidence produced under oath, except for perjury.

c. A witness shall be privileged from arrest in civil action, during necessary attendance before the Commission, at any place required by subpoena, and while traveling to and from those places.

Source: 5:8-15, 5:8-18, 5:8-91.

Comment

Subsection (a) and (b) are substantially identical to 5:8-15; Subsection (c) is substantially identical to 5:8-18 and 5:8-91. The section requires witnesses to testify before the Commission notwithstanding the constitutional privilege against self-incrimination. That requirement is constitutionally permissible because

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of the automatic use immunity provided by subsection (b). See, e.g., Hirsch v. N.J. State Bd. of Med. Exam., 252 N.J. Super. 596, 606-608 (App. Div. 1991).

2-6. Registration of qualified organizations

a. An organization that desires to apply for a license to operate or hold a bingo game or raffle shall first apply for registration with the Commission.

b. The following kinds of organizations are qualified to register:

(1) Associations of bona fide veterans of the United States Armed Forces;

(2) Charitable, religious or fraternal organizations, civic and service clubs, and senior citizen associations or clubs;

(3) Educational associations including nonprofit corporations organized for the sole purpose of making loans to students from a single New Jersey school district to defray the costs of post-secondary education;

(4) Volunteer fire companies and first aid or rescue squads.

c. If the Commission determines that the organization is qualified, ~~registered as a charitable or an exempt organization,~~ and is in compliance with all regulations, the Commission shall register the organization and assign it an identification number.

Source: 5:8-6, 5:8-51.3.

Comment

This section details the registration process, which precedes the licensing procedure for bingo and raffles. In the present law, the requirement of registration is buried in the section relating generally to duties of the Commission. The inclusion in Subsection (b)(3) of certain education loan corporations is derived from 5:8-51.3 which became effective in 1997.

2-7. Bingo and raffle equipment; approved lessor of equipment

a. Equipment used in operating or holding a bingo game or a raffle shall be:

(1) owned, or used free of charge, by the licensee; or

(2) leased by the licensee for an amount which conforms to Commission regulations and is specified in a statement annexed to the application for the license to operate a bingo game or a raffle, and is leased from a person approved as a lessor of equipment.

b. A person shall be approved as a lessor of equipment if the Commission finds the lessor to be of good moral character and free from criminal conviction. The Commission may have access to criminal records for this purpose. If the lessor is a corporation, all of its officers and each stockholder holding 10% or more of outstanding stock, must be approved as to good moral character and freedom from conviction.

c. The Commission may consider violation of this act evidence of lack of good moral character.

Source: 5:8-6, 5:8-34, 5:8-49.6, 5:8-52, 5:8-61.

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Comment

This new section describes the securing of Commission approval of a rentor of equipment for use in bingo games or in raffles. Subsection (c) provides one objective criterion for determining "good moral character."

2-8. Statement of receipts, expenses; records

a. An organization which operates or holds a bingo game, a raffle or an amusement game and its members who are in charge shall file quarterly with the Commission a verified statement showing:

- (1) the gross receipts derived from each game of chance operated including receipts connected with participation in the game;
- (2) each item of expense incurred or paid;
- (3) each item of expenditure made or to be made;
- (4) the name and address of each person to whom each item has been or is to be paid, with a detailed description of the merchandise purchased or services rendered;
- (5) the net profit derived from each game of chance and the uses to which the net profit has been or is to be applied; and
- (6) a list of prizes offered or given with their respective values.

b. Each licensee shall maintain records necessary to substantiate the report.

Source: 5:8-37, 5:8-64, 5:8-98.

Comment

This section renders the block source provisions more easily readable.

2-9. Examination of records and person; disclosure

a. The municipality and the Commission may examine:

- (1) the records of any licensed organization relating to transactions connected with operating or holding bingo games or raffles; and
- (2) any manager, officer, director, agent, member or employee regarding a licensed bingo game or raffle.

b. Information received shall be disclosed only as necessary to enforce the act.

Source: 5:8-38, 5:8-65.

Comment

This section renders the text of the source sections more readable.

2-10. Civil penalties

a. A person who violates the Bingo Licensing Law, or the Raffles Licensing Law or the Amusement Games Licensing Law or a regulation administered by the Commission shall be

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liable to a civil penalty not exceeding \$7,500.00 for the first offense and not exceeding \$15,000.00 for each subsequent offense. A person who violates the Amusement Games Licensing Law or a regulation administered by the Commission shall be liable to a penalty not exceeding \$250.00 for the first offense and not exceeding \$500.00 for each subsequent offense. Each violation shall constitute a separate offense, but a subsequent offense shall be deemed to exist only if an administrative or court order has been entered in a prior proceeding.

b. Civil penalties may be enforced by the Attorney General pursuant to the Penalty Enforcement Law.

c. Organizations that are registered with the Commission and hold a valid identification number shall not be subject to the provisions of this section.

Source: 5:8-30.2, 5:8-57.2, 5:8-82.

Comment

This section deletes details of process; see N.L.S. 2A:58-10 though -12 regarding summary proceeding for collection of statutory penalties.

2-11. Prosecution for violations

a. The Commission may institute prosecutions for violations of the Bingo Licensing Law, the Raffles Licensing Law, and the Amusement Games Licensing Law.

b. A person who makes false statements in any application or report to the Commission or who violates any provision of this chapter or of any license term may be prosecuted as a disorderly person.

c. A person convicted of being a disorderly person, in addition to other imposed penalties, shall forfeit any license issued under this act and shall be ineligible to apply for a license under this act for one year after forfeiture.

Source: 5:8-10, 5:8-83, 5:8-41, 5:8-68.

Comment

Subsection (a) derives from source provisions 5:8-10 and 5:8-83. Subsections (b) and (c) delete the listing of particular kinds violations, but since all are included within the general language that is retained, they are substantially identical to 5:8-41 and 5:8-68.

~~2-12. Advertising~~

~~The Commission shall adopt regulations for advertising bingo and raffles. The regulations shall prohibit:~~

~~a. any advertisement from containing any false or misleading statement regarding the game;~~

~~b. any advertisement from causing undue or unfair competition between organizations registered with the Commission that are operating competing games, and~~

~~c. the excessive use of the proceeds derived from any game for advertising subsequent games.~~

~~Source: 5:8-63.1.~~

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Comment

~~The provision is substantially similar to 5:8-63.1 which became effective in 1996. It has been extended to cover both bingo and raffles.~~

Chapter 3. Bingo Licensing Law

3-1. Short title

This chapter shall be known as the “Bingo Licensing Law.”

Source: 5:8-24.

Comment

This section is substantially identical to its source.

3-2. Municipal adoption of Bingo Licensing Law; resubmission; form of question

a. The Bingo Licensing Law shall remain inoperative in a municipality until approved by the voters of the municipality.

b. Within 10 days after a municipality adopts the Bingo Licensing Law, it shall file a copy of the ordinance adopting the law with the Commission.

c. If a petition signed by at least 15% of the total votes cast at the preceding general election in the municipality, requesting that the question of adopting the Bingo Licensing Law be submitted to the voters, is filed with the municipal clerk, the question shall be submitted to the voters of the municipality at the next general election occurring at least 45 days after the filing date.

d. At any election where the question of adoption of this act shall be submitted, the question upon the official ballots shall read: “Shall the ‘Bingo Licensing Law’ be adopted within this municipality?”

e. In any municipality where a majority of votes is cast against adopting the Bingo Licensing Law, if a required petition is filed, the question may not be submitted again until the third general election after the election at which the law was rejected is held.

Source: 5:8-22, 5:8-42, 5:8-44, 5:8-45.

Comment

Subsection (a) is substantially identical to 5:8-42. Details on the conduct of the 1954 referendum found in 5:8-43 have been deleted as executed. Subsection (b) derives from 5:8-22. Subsections (c) and (e) derive from 5:8-44. Subsection (d) derives from 5:8-45. Current 5:8-46 which states that a majority of votes cast is necessary for adoption, has been deleted as unnecessary.

3-3. Rescinding the Bingo Licensing Law

a. In any municipality in which the Bingo Licensing Law has become operative, if a petition signed by at least 15% of the total number of votes cast at the preceding general election in the municipality, requesting that the question of rescinding the Bingo Licensing Law be submitted to the voters, is filed with the municipal clerk, the question shall be submitted to the

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voters of the municipality at the next general election occurring at least 45 days after the filing date.

b. At any election where the question of rescinding the Bingo Licensing Law is submitted to the voters, the question upon the official ballots shall read: "Shall the 'Bingo Licensing Law' within the municipality be rescinded?"

c. If the majority of votes cast are in favor of the rescission of the Bingo Licensing Law, it shall be rescinded and it shall cease to be operative within the municipality.

d. No petition for submission of the question of adoption of the Bingo Licensing Law or its rescission shall be submitted to the municipality's voters earlier than the general election in the third calendar year after the vote on rescission.

Source: 5:8-47, 5:8-48, 5:8-49.

Comment

Subsection (a) is a streamlined version of 5:8-47. Subsection (b) is substantially identical to 5:8-48. Subsections (c) and (d) contain the substance of 5:8-49.

3-4. Application for license to operate or hold a bingo game; fees; issuance; duration; display; amendment

a. ~~If An applicant, whether to be paid or unpaid, for a license to operate or hold a bingo game files shall file a written application with the municipality. The municipality shall forward the application with its recommendation to the Commission. If the applicant is registered with the Commission, and pays any required fee, the Commission shall issue a license upon determining that the applicant is qualified, has paid the license fees set by regulations and is not in violation of regulations.~~

b. A license shall be effective for no more than one year and shall be displayed conspicuously on site during the entire time the game of chance operates.

c. A license may be amended, upon application to the Commission if the proposed subject lawfully could have been included in the original license, and upon payment of any proper additional license fee.

Source: 5:8-26, 5:8-27, 5:8-29.

Comment

This section greatly condenses the source provisions by removing the details of what information the application requires. It provides that the Commission alone, rather than both the Commission and municipalities, shall issue licenses for bingo games. Subsection (b) incorporates the requirement to display the license.

3-5. Licensing of registered organizations; proceeds of games

a. The Commission may license a registered organization to operate or hold bingo games in any municipality that has adopted the Bingo Licensing Law.

b. ~~The Commission may issue regulations specifying games and devices substantially equivalent to bingo and may license their operation under this chapter.~~

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c. The entire net proceeds of the bingo games shall go to educational, charitable, patriotic, religious or public-spirited uses and in the case of senior citizen groups, to their support.

Source: 5:8-25.

Comment

This section transfers licensing authority from municipalities to the Commission. Unlike the source provision, it does not describe how to play bingo, leaving the details to common knowledge and regulations. See also the definition of "bingo" in Section 1-1.

3-6. Limitations on operation or holding of games

Bingo games licensed under this act shall not operate or be held:

- a. ~~on Sunday unless permitted by municipal ordinance;~~
- b. with persons below the age of 18 years as ~~participants~~ players, unless only non-money prizes are awarded;
- c. ~~more often than six days per week; nor~~
- d. any place where alcoholic beverages are sold or served to players during the games.

Source: 5:8-31, 5:8-32, 5:8-33.

Comment

This section combines three source provisions, and deletes unnecessary detail (i.e., definition of "Sunday"). Subsection (c) changes six days per month to six days per week. Note Assembly Bill 2176, introduced March 6, 2000, which proposes this change. The Bill also would change the content of Subsection (d) to read: "Alcoholic beverages shall not be served to any bingo player during the conduct of the game."

3-7. Prizes

a. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar ~~day~~ week that the winner is determined.

b. ~~Any prizes above \$25,000 may be awarded only when the entire amount is insured by a company approved by the Commission.~~

c. The Commission may regulate the amounts of prizes that may be awarded.

Source: 5:8-27, 5:8-35.

Comment

Subsection (a) is substantially identical to a portion of 5:8-35. Subsections (b) and (c) are new. They delete specific dollar limitations on prizes and allow the Commission to limit prizes by regulation. The insurance requirement is taken from a parallel provision on raffles, 5:8-62.

3-8. Persons operating or holding bingo; compensation; equipment; expenses; rents; regulations

a. No person shall operate or hold licensed bingo except:

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- (1) an active member of the licensed group,
- (2) a member of a group which is an auxiliary to the licensed group,
- (3) a person compensated by the licensed group, who is approved by the Commission for that purpose, or
- (4) a person who is compensated for bookkeeping or accounting services as provided in Commission regulations.

b. A person lawfully may operate bingo for two or more affiliated licensees of which the person is an active member. The Commission by regulation shall determine affiliation.

c. Bingo equipment shall be owned absolutely or used without payment of compensation by the licensee or leased for a rental which is specified in the statement annexed to the application for the licensee and conforms to the schedule of authorized rentals prescribed by Commission regulation and the lessor shall have been approved by the Commission as to good moral character and freedom from conviction of crime.

d. Expenses shall be paid only when incurred in reasonable amounts for items and services necessary for operating or holding bingo.

e. Rent for premises used in connection with operating or holding bingo games shall not be paid in excess of the amount specified in the statement annexed to the application for a license to operate bingo and approved by the Commission.

f. A licensee may pay reasonable compensation to a person approved by the Commission for services rendered in connection with operating bingo. The regulations shall include provisions which: establish the qualifications, the duties which may be performed and the compensation which may be paid; require that a person receive approval of the Commission prior to rendering compensable services; provide that an active member of the organization shall oversee the rendering of services; and prohibit the payment of compensation to any person who is an active member of the organization or of an auxiliary or affiliated organization. The Commission, in order to determine that a person is of good moral character and free from conviction, may have access to criminal records for that purpose.

Source: 5:8-34, 5:8-34.1.

Comment

This section streamlines the language of 5:8-34 as amended in 1999. Subsection (b) is substantially like 5:8-34.1.

3-9. Bingo premises; license for rentor of premises to operator of bingo

- a. Premises used for licensed bingo shall be:
 - (1) owned by the licensee operating the bingo game,
 - (2) owned by another person licensed to operate bingo, or
 - (3) rented by the licensee from an approved rentor licensed by the Commission.
- b. A person seeking a license as an approved rentor shall file an application in a form specified by the Commission.
- c. A license as an approved rentor shall not be granted:

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(1) when any person whose signature or name appears in the application is not the real party in interest or when the person signing or named in the application is an undisclosed agent or trustee for the real party in interest; and

(2) unless the Commission determines that the applicant, and if the applicant is not the owner, the owner of the premises, and if the applicant or owner is a corporation, all of its officers and each of its stockholders owning 10% or more of its issued and outstanding stock, are of good moral character and have not been convicted of a crime.

d. The Commission may consider a violation of this act as evidence of lack of good moral character.

e. When the Commission is satisfied that the required person qualifies, the Commission shall issue a license to the applicant as an approved rentor for the premises specified in the application, upon payment of the license fee. The license shall be valid until revoked, suspended or modified by the Commission. The licensed rentor shall pay the fee for each occasion bingo games are operated in the licensed premises.

f. The Commission may issue a temporary permit to a license applicant pending final action on the application. A temporary permit shall be valid for a maximum of 180 days.

Source: 5:8-49.3, 5:8-49.4, 5:8-49.5, 5:8-49.6, 5:8-49.7.

Comment

This new section combines portions of a number of source provisions. Subsection (a) is new.

Chapter 4. Raffles Licensing Law

4-1. Short title

This chapter shall be known as the “Raffles Licensing Law.”

Source: 5:8-50.

Comment

This section is substantially identical to its source.

4-2. Municipal adoption of Raffles Licensing Law; resubmission; form of question

a. The Raffles Licensing law shall remain inoperative in a municipality until approved by the voters of the municipality.

b. Within 10 days after a municipality adopts the Raffles Licensing Law, it shall file a copy of the ordinance adopting the law with the Commission.

c. If a petition signed by at least 15% of the total number of votes cast at the preceding general election in the municipality, requesting that the question of adopting the Raffles Licensing Law be submitted to the voters, is filed with the municipal clerk, the question shall be submitted to the voters of the municipality at the next general election occurring at least 45 days after the filing date.

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d. At any election where the question of adoption of this act shall be submitted, the question upon the official ballots shall read: “Shall the ‘Raffles Licensing Law’ be adopted within this municipality?”

e. In any municipality where a majority of votes is cast against adopting the Raffles Licensing Law, if a required petition is filed, the question may not be submitted again until the third general election after the election at which the Law was rejected is held.

Source: 5:8-22, 5:8-69, 5:8-71, 5:8-72.

Comment

Subsection (a) is substantially identical to 5:8-69. Details on the conduct of the 1954 referendum found in 5:8-70 have been deleted as executed. Subsection (b) derives from 5:8-22. Subsection (d) derives from 5:8-72. Subsections (c) and (e) derive from 5:8-71. Current 5:8-73 which states that a majority of votes cast is necessary for adoption, has been deleted as unnecessary.

4-3. Rescinding the Raffles Licensing Law

a. In any municipality in which the Raffles Licensing Law has become operative, if a petition signed by at least 15% of the total number of votes cast at the preceding general election in the municipality, requesting that the question of rescinding the Raffles Licensing Law be submitted to the voters, is filed with the municipal clerk, the question shall be submitted to the voters of the municipality at the next general election occurring at least 45 days after the filing date.

b. At any election where the question of rescinding the Raffles Licensing Law is submitted to the voters, the question upon the official ballots shall read: “Shall the ‘Raffles Licensing Law’ within the municipality be rescinded?”

c. If the majority of votes are cast in favor of the rescission of the Raffles Licensing Law, its adoption shall be rescinded and it shall cease to be operative within the community.

d. No petition for submission of the question of adoption of the Raffles Licensing Law or its rescission shall be submitted to the municipality’s voters earlier than the general election in the third calendar year after the vote on rescission.

Source: 5:8-74, 5:8-75, 5:8-76.

Comment

Subsection (a) is a streamlined version of 5:8-74. Subsection (b) is substantially identical to 5:8-75. Subsections (c) and (d) contain the substance of 5:8-76.

4-4. Application for license to operate or hold a raffle; fees; issuance; duration; display; amendment

a. ~~If An applicant, whether to be paid or unpaid, for a license to operate or hold a raffle files shall file a written application with the municipality. The municipality shall forward the application with its recommendation to the Commission. If the applicant is registered with the Commission, and pays any required fee, the Commission shall issue a license upon determining that the applicant is qualified, has paid the license fees set by regulations and is not in violation of regulations.~~

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b. A license shall be effective for no more than one year and shall be displayed conspicuously on site during the entire time the raffle operates.

c. A license may be amended, upon application to the Commission if the proposed subject lawfully could have been included in the original license, and upon payment of any proper additional license fee.

Source: 5:8-52, 5:8-53, 5:8-54, 5:8-55, 5:8-56.

Comment

This section greatly condenses the source provisions by removing the details of what information the application requires. It provides that the Commission alone, rather than both the Commission and municipalities, shall issue licenses for raffles. Subsection (b) incorporates the requirement to display the license.

4-5. Licensing of registered organizations

a. The Commission may license a registered organization to operate raffles in a municipality that has adopted the Raffles Licensing Law.

b. The entire net proceeds of the raffles shall go to educational, charitable, patriotic, religious or public-spirited uses and, in the case of senior citizen groups, to their support.

c. The Commission may adopt regulations authorizing licensees to hold events known as:

(1) "armchair races" at which wagers are placed on the outcome of previously-filmed horse races and wagers do not know the results in advance, ~~when the prize awarded consists of merchandise or raffle tickets only, and not cash;~~ and

(2) "casino nights" at which players use chips or scrip purchased from the licensee to wager in games of chance known as blackjack, under/over, beat-the-dealer, chuck-a-luck, craps, roulette, bingo or similar games approved by the Commission, ~~when the chips or scrip are redeemable for merchandise or raffle tickets only, and not for cash.~~

d. The regulations shall establish the frequency with which armchair races and casino nights may be held, the rules of the games, the specific types and values of prizes which may be offered, the qualifications of the individuals conducting the games and other requirements which the Commission may deem pertinent.

e. No license shall be required for a registered organization operating a raffle for a door prize of donated merchandise valued under \$400 when no extra charge is made, ~~no other game of chance is operated;~~ the proceeds are devoted to the uses approved in this section and receipts are reported as required.

f. No license shall issue under this act for operating any game of chance which may be licensed under the Bingo Licensing Law except when bingo is operated in conjunction with a casino night.

Source: 5:8-51, 5:8-54.

Comment

This section transfers licensing authority from municipalities to the Commission. Subsection (b) allows the use of proceeds for support of the licensed charitable organization. Under current law, that use may be restricted to senior citizen organizations. Subsections (c) and (d) were added by the Legislature in

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1999. Subsection (e) is substantially similar to current law, except that \$50 has been increased to \$400. Subsection (f) derives from 5:8-54. It has no counterpart in the Bingo Licensing Law.

4-6. Limitations on operation of raffles

The Commission may regulate the kinds of raffles that may be operated under this chapter.

~~Raffles licensed under this act shall not be operated:~~

~~a. on Sunday unless permitted by municipal ordinance, nor~~

~~b. more often than six days per week.~~

~~Source: 5:8-58, 5:8-60.~~

Comment

The section combines two source provisions and deletes unnecessary detail (i.e., definition of “Sunday,” repetition of phrase “games of chance operated under license issued under this act”). Subsection (b) changes the current limit of six days per month to six per week. This change is proposed in Assembly Bill 2176.

4-7. ~~Persons under 18 not allowed to participate~~

~~a. No person under the age of 18 years shall be permitted to participate in any manner in any game of chance not conducted by a drawing, except that a person under the age of 18 years shall be permitted to play a game of chance not conducted by a drawing when the prize consists of merchandise only and does not include money.~~

~~b. No person under the age of 18 years shall be permitted to participate in any manner in any licensed game of chance conducted by a drawing, except to play an on-premises draw raffle, including a Penny auction, when any prize consists of merchandise only.~~

~~c. “Penny auction” means an event at which multiple items of merchandise, or gift certificates, but not cash, are raffled by drawing the winning ticket from a container designated for each item into which players seeking to win that item have placed tickets, with all tickets having been sold for the same price or different prices and each ticket placed in a container having an equal chance of winning.~~

~~Source: 5:8-59, 5:8-60.2.~~

Comment

The Legislature amended the source provision to allow persons under 18 to play draw raffles for merchandise prizes. Subsection (c) derives from 5:8-60.2 which became effective in 1998.

4-8. Cash prizes; retail value of prizes

a. No prize shall be given in cash except as authorized by Commission regulation.

b. The aggregate retail value of all prizes given by raffles operated by one licensee under this act, except as provided in subsection (c), in any year shall not exceed \$500,000 the amount allowed by Commission regulations, but the limit shall not apply to any raffle with respect to which all tickets, shares or rights to participate are sold only to persons present, the

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winners determined, and the prizes awarded, on the same occasion or if the prizes are wholly donated.

c. The maximum prize in a golf hole-in-one contest shall not exceed ~~\$1,000,000~~ ~~the amount allowed by Commission regulations~~. Any prizes above \$25,000 may be awarded only when the entire amount is escrowed or insured by a company approved by the Commission. The prize shall be paid as an annuity with a payout over a maximum period of 20 years. Ancillary prizes awarded shall have an aggregate retail value no greater than that provided by subsection (b) and shall also be subject to the provisions of subsection (d).

d. No prize having a retail value greater than that prescribed by Commission regulation shall be awarded in any raffle conducted by a drawing, or for each spin of the wheel or other allotment by chance.

Source: 5:8-62.

Comment

This section is substantially similar to its source. Subsection (c) concerning a golf hole-in-one contest was added in 1996.

4-9. Regulations; prizes; discount tickets; non-draw raffles

The Commission shall adopt regulations allowing registered organizations to:

a. offer as a raffle prize any lawful personal or professional service that the Commission determines to be an appropriate raffle prize, and the value of which is within the limits set by the Commission;

b. offer as a raffle prize a gift certificate redeemable for live, edible seafood the value of which is within the limits set by the Commission;

c. offer a discount to any person purchasing two or more tickets, rights or shares for a draw raffle; and

d. use a big six wheel, a big eight wheel or other wheel to determine the winner of a non-draw raffle.

Source: 5:8-60.3.

Comment

This new section became effective in 1998.

4-10. Persons operating or holding a raffle; compensation; equipment; expenses; rents

a. No person shall operate or hold a licensed raffle except:

(1) an active member of the licensed group,

(2) a member of a group which is an auxiliary to the licensed group,

(3) a person compensated by the licensed group, who is approved by the Commission, or

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(4) a person who is compensated for bookkeeping or accounting services as provided in Commission regulations.

b. Raffles shall be operated or held only with equipment owned absolutely or used without payment of compensation by the licensee or shall be leased for a rental, which amount is specified in the statement annexed to the application for the license and conforms to the schedule of authorized rentals prescribed by Commission regulation and the lessor has been approved by the Commission as to good moral character and freedom from conviction of crime.

c. Expenses shall be paid only when incurred in reasonable amounts for items and services necessary for operating or holding the raffle.

d. Rent for premises used in connection with operating or holding raffles shall not be paid in excess of the amount specified in the statement annexed to the application for a license to operate a raffle.

e. A licensee may pay reasonable compensation to a person approved by the Commission for services rendered in connection with operating a raffle. The regulations shall include provisions which: establish the qualifications, the duties which may be performed and the compensation which may be paid; require that a person receive approval of the Commission prior to rendering compensable services; provide that an active member of an organization shall oversee the rendering of services; and prohibit the payment of compensation to any person who is an active member of the organization or of an auxiliary or affiliated organization. The Commission, in order to determine that a person is of good moral character and free from conviction, may have access to criminal records for that purpose.

Source: 5:8-61.

Comment

This section streamlines the language of 5:8-61 and incorporates 1999 amendments which allow a non-member of a licensed group to be paid to operate or assist in operating games, if the person is approved by the Commission. Subsection (b) concerns equipment used in operating games and is more expansive than the corresponding section (4-7) pertaining to bingo. The 1999 amendment added a new subsection, here designated (e), which states the scope of relevant regulations.

4-11. Statement for approved rentor of premises used for raffle

No rental shall be paid for the use of any premises for operating a raffle unless the amount of the rental to be charged conforms to the Commission-authorized amount and is written in the statement annexed to the application for a license to operate a raffle, and the rentor is approved by the Commission as being of good moral character and free from conviction of crime. If the rentor is a corporation, all of its officers and each of its stockholders who hold 10% or more of its outstanding stock, must be of good moral character and free from criminal conviction.

Source: 5:8-27, 5:8-34.

Comment

Unlike the more stringent license requirement for a rentor of premises to an operator of bingo, the rentor of premises used for a raffle need only be satisfactory to the Commission based on the statement annexed to the application for a license to operate a raffle.

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4-12. Pamphlet

The Commission shall produce and make available to any qualified organization, upon request, a pamphlet which describes in plain language the rights, duties and responsibilities of organizations conducting raffles and the manner in which raffles are to be conducted.

Source: 5:8-60.4.

Comment

This new section became effective in 1998.

4-13. Violation of rules of conduct; oral or written warning

Prior to initiating administrative action or bringing charges against an organization qualified to conduct raffles for a violation which relates to operation of the game or awarding of prizes, the Commission shall first issue an oral or written warning and offer the organization the opportunity to cease the conduct which constitutes the violation.

Source: 5:8-60.5.

Comment

This new section became effective in 1998.

4-14. On-premises ~~50-50~~ cash draw raffle

a. A registered organization may conduct an on-premises ~~50-50~~ cash draw raffle without a license but must declare the receipts in its required quarterly reports. An on-premises ~~50-50~~ cash draw raffle is a raffle conducted by a drawing for cash, in which all tickets are sold only to persons present at the place of drawing with the winner determined there and the prize awarded ~~equals fifty percent of the amount received for all tickets sold.~~

b. An organization registered by the Commission to conduct raffles may conduct an on-premises ~~50-50~~ cash draw raffle on unlimited occasions as long as the value of the prize awarded for each does not exceed \$400, in any and ~~the raffle is conducted in a municipality in which the Raffles Licensing Law is operative.~~

Source: New.

Comment

This new section reflects the substance of the first two subsections of Assembly Bill 725. This section would allow certain nonprofit organizations to conduct an unlimited number of on-premises 50-50 cash draw raffles without the payment of a per-occasion fee.

Chapter 5. Amusement Games Licensing Law

5-1. Short title

This chapter shall be known as the "Amusement Games Licensing Law."

Source: 5:8-100.

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Comment

This section is substantially identical to its source.

5-2. Municipal disapproval of Amusement Games Licensing Law; resubmission; form of question

a. The Amusement Games Licensing Law shall remain inoperative in a municipality until approved by the voters of the municipality.

b. Within 10 days after a municipality adopts the Amusement Games Licensing Law, it shall file a copy of the ordinance adopting the law with the Commission.

c. If a petition signed by at least 15% of the total votes cast at the preceding general election in the municipality, requesting that the question of adopting the Amusement Games Licensing Law be submitted to the voters, is filed with the municipal clerk, the question shall be submitted to the voters of the municipality at the next general election occurring at least 45 days after the filing date.

d. At any election where the question of adoption of this act shall be submitted, the question upon the official ballots shall read: "Shall the 'Amusement Games Licensing Law' be adopted in this municipality?"

e. In any municipality where a majority of votes is cast against adopting the Amusement Games Licensing Law, if a required petition is filed, the question may not be submitted again until the third general election after the election at which the law was rejected is held.

Source: 5:8-116.

Comment

This section, though simplified, is substantially identical to 5:8-116. It provides that the Amusement Games Licensing Law is not operative in a municipality until approved by that municipality.

5-3. Rescinding disapproval of the Amusement Games Licensing Law

a. In any municipality in which the Amusement Games Licensing Law has been become operative, if a petition signed by at least 15% of the total number of votes cast at the preceding general election in the municipality, requesting that the question of rescinding the Amusement Games Licensing Law be submitted to the voters, is filed with the municipal clerk, the question shall be submitted to the voters of the municipality at the next general election occurring at least 45 days after the filing date.

b. At any election where the question of rescinding the Amusement Games Licensing Law is submitted to the voters, the question upon the official ballots shall read: "Shall the 'Amusement Games Licensing Law' within the municipality be rescinded?"

c. If the majority of votes cast are in favor of the rescission of the Amusement Games Licensing Law, it shall be rescinded and the law shall cease to be operative within the municipality.

d. No petition for submission of the question of adoption of the Amusement Games Licensing Law shall be submitted to the municipality's voters earlier than the general election in the third calendar year after the vote on rescission.

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Source: New.

Comment

This section provides for rescinding the Amusement Games Licensing Law and is patterned on the analogous sections for rescinding the Bingo Licensing Law and the Raffles Licensing Law.

5-4. Place of games

Licensed amusement games may be operated only in the following locations:

- a. an amusement park at a seashore or other resort area;
- b. ~~an agricultural fair or exhibition held by an association organized for the purpose of holding agricultural fairs or exhibitions.~~
- c. a fair or carnival, ~~operated by an educational, charitable, patriotic, religious or public-spirited or senior citizen association registered with the Commission,~~ approved by the municipality and having a duration of ten days or less.

~~b. No license shall be required for a children's amusement game that gives prizes in the form of coupons that may be redeemed for merchandise provided the value of all coupons given for winning a single game is less than the price charged to play the game. The value of a coupon is the retail value of any item of merchandise divided by the number of coupons necessary for the item.~~

Source: 5:8-101.

Comment

This section is based on the parts of 5:8-101 that restrict the places where licensed games may be held. However, the section is not identical to its source. It follows widespread practice by allowing games at fairs and carnivals. Subsection (b) is new. It is designed to exempt children's amusement centers from the location restrictions even when the prize for participation in a game varies with the score achieved. New Jersey is the only state that treats this kind of children's games as gambling and regulates them.

5-5. Certification of games

- a. An amusement game must be certified as permissible by the Commission before a license to operate the game may issue. A certification shall be effective for all licenses issued for the specific kind of game named in the certification.
- b. Commission regulations shall list the amusement games that have been certified, describe each game and may limit the number or kind of prizes that may be awarded for the game.
- c. Any person may apply to the Commission for certification of a game not already certified. Applications shall be made on the form and with the fee prescribed by regulations.
- d. An amusement game shall not be certified if it:
 - (1) is deceptive or unfair to participants, or
 - (2) unfairly competes with games of chance operated under the Bingo Licensing Law or the Raffles Licensing Law.
- e. The commission shall not certify as an amusement game:

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- (1) pool selling, the keeping of a gambling resort, or betting on horse racing,
- (2) betting on the outcome of any athletic game or contest in which the player does not actively participate;
- (3) bingo or raffles ~~other than draw raffles, where prizes have a value not exceeding \$15.00.~~

Source: 5:8-79, 5:8-113, 5:8-112.

Comment

Certification of permissible games is unique to amusement games; there is no counterpart in the Bingo or Raffle laws. This section combines, in streamlined form, the three source sections.

5-6. Application for license to operate an amusement game; fees; hearing; issuance; duration; display; amendment

a. ~~If An applicant for a license to operate an amusement game files shall file a written application with the municipality. The municipality shall forward the application with its recommendation to the Commission. and pays any required fee, The Commission shall send a copy of the application to the municipality in which the game will be operated.~~

(1) ~~If the municipality concurs in recommends acceptance of the application or does not object to the application within 10 days, the Commission shall issue a license upon determining that the applicant is qualified and has paid the license fees set by regulations.~~

(2) ~~If the municipality objects to the application, the Commission after notice to the applicant and the municipality, shall hold a hearing and issue a license upon determining that the applicant is qualified and has paid the license fees.~~

d. ~~A license shall be effective for no more than one year and shall be displayed conspicuously on site during the entire time the game of chance operates.~~

e. ~~A license may be amended, upon application to the Commission if the proposed subject lawfully could have been included in the original license, and upon payment of any proper additional license fee and notice to the municipality.~~

Source: 5:8-101, 5:8-102, 5:8-103, 5:8-104, 5:8-105.

Comment

This section provides that the Commission alone, rather than both the Commission and the municipalities, shall issue licenses for amusement games.

5-7. Qualifications for license to operate an amusement game

a. ~~An application for a license to operate an amusement game shall not be approved unless the applicant, and the officers, directors and stockholders of any corporation holding 10% or more of the capital stock of a corporate applicant, or the partners or members of a partnership or association applicant, are of good moral character and have not been convicted of a crime, or, if convicted of a crime, the disqualification has been removed by the Commission.~~

b. ~~No license shall issue for premises licensed under an alcoholic beverage license.~~

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Source: 5:8-103.

Comment

Subsection (a) greatly condenses the source provision and raises 5% to 10%. Subsection (b) is new and without a statutory source. It reflects current practice. See NIAC 13:3-1.7.

5-8. Contents of license

A license shall specify:

- a. the name and address of the licensee,
- b. the place at which the games are to be operated,
- c. the particular games that will be operated,
- d. the days and hours of permitted operation, and
- e. the term of the license.

Source: 5:8-103, 5:8-105.

Comment

This section condenses the source provisions.

5-9. Restriction on time of operation of amusement game

No game shall operate at a time prohibited by municipal ordinance.

Source: New.

Comment

No statute explicitly forbids operation of amusement games at times prohibited by municipal ordinance. Current practice, as reflected in NIAC 13:3-1.6., does.

5-10. Charges; prizes

- a. All amusement game prizes shall be merchandise.
- b. All prizes shall be awarded at the conclusion of the game.
- c. The Commission, by regulation:
 - (1) may set the amount which a licensee may charge for playing a game, and
 - (2) shall set the value of a merchandise prize that may be given in a game.

Source: 5:8-107.

Comment

This section is substantially similar to the source provision.

5-11. Reports by licensee

The Commission may require licensees to submit periodical reports and may specify their form, contents and filing times.

Source: 5:8-98.

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Comment

This section condenses the source provision.

5-12. Merchandise giveaways

No license shall be required for a manufacturer or seller of a product to give free merchandise or other prizes to randomly selected purchasers of the product if the only cost to the purchaser to be eligible for the prize is the ordinary cost of the product.

Source: New.

Comment

This section allows the unlicensed giveaway of prizes which otherwise could be construed as illegal gambling. Examples include promotions where winners are indicated by bottlecap inserts, and drawings where a winning customer's purchase price is refunded.

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5-12. Gambling transactions unlawful

~~a. Gambling means staking or risking something of value upon an agreement or understanding that the actor will receive something of value in the event of a certain outcome:~~

~~(1) of a game in which the outcome depends wholly, or in part, on chance through the use of a mechanism understood to produce a random result, including cards, dice, wheels, drawings and the like;~~

~~(2) on a game or contest of skill, if the average participant is unlikely to have the skill to influence the outcome substantially; or~~

~~(3) on a future contingent event not under the actor's control or influence.~~

~~b. Gambling shall not include:~~

~~(1) investments in ordinary financial instruments;~~

~~(2) contracts of insurance;~~

~~(3) tournaments of recognized games or sports; or~~

~~(4) giving free merchandise or other prizes to randomly selected purchasers of the product by a manufacturer or seller if the only cost to the purchaser to be eligible for the prize is the ordinary cost of the product.~~

~~All wagers, bets or stakes made to depend upon any race or game, or upon any gaming by lot or chance, or upon any lot, chance, casualty or unknown or contingent event;~~

~~c. Gambling shall be unlawful.~~

Source: New.

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State of New Jersey

N J L R C

New Jersey Law Revision Commission

TENTATIVE REPORT

relating to

ELECTION LAW

DECEMBER 2002

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS MUST BE RECEIVED BY THE COMMISSION NOT LATER THAN FEBRUARY 16, 2003.

Please send comments concerning this tentative report or direct any related inquiries, to:

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APPENDIX B

Introduction

The Tentative Report and Recommendations on Elections substantially revises certain aspects of the New Jersey law regulating elections. *N.J.S.A. 19:1-1 to N.J.S.A. 19:60-12*. At the present time, the New Jersey law regarding elections may be divided into three areas, each pertaining to a different aspect of the electoral process and each consisting of numerous statutory sections. The first area of the law concerns the way an individual obtains a place on a ballot. The second area of the law concerns the manner in which an individual actually casts a vote. The third area of the law pertains to election contributions and expenditures.

The Tentative Report addresses the first and second of the three areas briefly described above.

The initial impetus for the revision was the result of the 2000 Presidential election which revealed problems with state election systems causing federal and state governments to re-examine their statutory law. New Jersey Election law originally was enacted in the 1930s. While the Legislature has amended Title 19 since that time, the statute does not presently track more recent developments in technology or mirror current election practices. The law still contains provisions that are neither necessary or appropriate, while failing to reflect the impact of technological advances on either the procedures or the time periods necessary to accomplish certain tasks. Further, recent federal law imposes certain requirements on the states, including the implementation of a statewide voter registration system. *Martin Luther King, Jr. Equal Protection of Voting Rights Act of 2002*, P.L. 107-252. The New Jersey registration system is presently distributed through the twenty-one counties.

The New Jersey Legislature has recognized the need to reform New Jersey Election law. S. 628 and S. 2074, 2001 Leg., 2001-2002 Sess. (N.J. 2002). At the time of the dissemination of the first Tentative Report there were more than 70 pending bills pertaining to election issues.

New Jersey Election Law consists of two complete volumes of the New Jersey statutes found at Title 19. Many provisions contained in those volumes are based upon obsolete and discontinued voting systems, such as paper ballots and lever machine balloting, and are duplicative. Several provisions, although they deal with one subject, are scattered throughout Title 19. Some provisions are overly detailed, including details better left to administrative rule making, while other provisions leave gaps in coverage. The result is an unclear body of law not easily accessible to the government officials and other professionals who must rely upon it.

The Tentative Report contains recommendations to update New Jersey's law, to reflect current realities of the voting process and to allow for further modification, including the use of new voting systems and technologies, in order to increase access to the vote and to make it easier for a citizen to vote.

First, unlike existing law, the Report uses machine neutral language. Paper ballots are used in only two counties and lever machine balloting no longer is widely used. Since voting technology continues to develop, the machine neutral language does not anchor the law in any single category of voting system that the passage of time may render obsolete.

Second, the Report recommends the adoption of a statewide voter registration system. This recommendation comports with the new federal law. In addition to the requirements of the federal law, the transition to a central official file of voter registration records is warranted in New Jersey as a result of the dense and highly mobile population and the small number of counties. Statewide voter registration permits voters who move from one county to another to vote in their new location as easily as they could if they had simply moved within their voting district.

Third, the Report creates the Commission on Elections. While the day-to-day

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responsibilities associated with elections will continue to be handled by personnel at the county level, the Commission is necessary to oversee the proposed statewide registration. In addition, the state level Commission would enforce the provisions of the statute and impose uniformity in voting. Given the nature of the questions to be addressed in the area of election law, and the manner in which technology may continue to spur modifications to voting systems, detailed, specific directions regarding voting are more appropriately established by regulation than by statute. Rather than providing detailed statutory language, the Report establishes general principles and leaves the detail of administration to the rule making authority of the Commission. This approach avoids unduly restraining government officials and gives them the flexibility to adjust New Jersey practices to changing voting realities.

The Report also recommends other significant changes such as expansion of the availability of absentee voting. The Report discontinues the current requirement that a voter provide a reason for voting by absentee ballot, and permits such voting on request. Various groups who presented information to the Commission asked that absentee voting be available without requiring justification.

This Report is to be interpreted in a manner consistent with federal law, including the *Martin Luther King, Jr. Equal Protection of Voting Rights Act of 2002*, P.L. 107-252. Any implementation of the provisions of this report should be undertaken with an awareness of the deadlines imposed by that new federal statute, which requires that every state comply with the provisional voting and voting information requirements, the registration by mail requirements, and the computerized statewide voter registration provisions by January 1, 2004, unless a waiver is granted for the latter; and with the voting systems standards by January 1, 2006.

CHAPTER 1. ADMINISTRATION

19A:1-1. County Board of Elections; membership

a. There shall be four members of the County Board of Elections appointed by the Governor. The Governor's appointments shall be the two persons who are nominated jointly by the chairperson and vice chairperson of the county committee and the state committee members of each of the two certified political parties that at the preceding general election cast the largest number and second largest number of votes for members of the General Assembly in that county. Each of the Governor's appointments shall serve for a term of four years beginning on July first. Each member shall serve until a successor is appointed and qualified. Vacancies shall be filled for the unexpired term only.

b. No person who holds elective public office shall be eligible to serve as a member of the County Board during the term of that elective office. Except as set forth above, holding a party office shall not disqualify a person from serving as a member of the County Board. The position of a member of the County Board shall be deemed vacant if the member becomes a candidate for an office to be voted on at any election, other than as a member of a county or state committee or as a delegate or alternate delegate to a national political convention. Candidacy shall be determined by the filing of a petition of nomination, accepted by the member.

Source: 19:6-17; 19:6-18.

COMMENT

The section is substantially identical to its sources except that it clarifies that the two parties from which the members of the Board are appointed are those that received the highest numbers of votes in the county. Section 9:6-18 is unclear as to whether the two parties are the two highest in the county or the state as a whole.

19A:1-2. County Board employees

The County Board may appoint employees necessary to carry out duties prescribed by law. The compensation of the employees shall be as recommended by the County Board and approved by the Board of Chosen Freeholders of the county. In counties of the first class, employees shall be in the competitive class of Civil Service.

Source: 19:6-17.

COMMENT

The section is similar to the provisions of its source.

19A:1-3. Superintendent and Deputy Superintendent of Elections

a. There shall be a Superintendent of Elections and Deputy Superintendent of Elections in counties where these offices have previously been established. Any other county may establish these offices by action of the county government. Once established, the offices of Superintendent of Elections and Deputy Superintendent of Elections shall not be abolished.

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b. The offices shall be filled by suitable persons, nominated by the Governor with the advice and consent of the Senate, who shall hold office for the term of five years from the date of appointment and until their successors are appointed and have qualified. The terms of the Superintendent and Deputy Superintendent shall run concurrently. The Deputy Superintendent shall not be from the same political party as the Superintendent. Vacancies shall be filled in the same manner as original appointments, but shall be for the unexpired terms only. Any person filling a vacancy shall be from the same party as the original appointee.

c. The Superintendent shall receive a salary set by the county. The annual salary of each Deputy Superintendent shall be 90% of what the Superintendent receives.

Source: 19:32-1.

COMMENT

Except for one change, this section is substantially identical to its source. The single change is that under this section, any county may establish the offices of Superintendent and Deputy Superintendent. Under current law, only counties of the second and fifth classes have that power.

19A:1-4. Administrator and Deputy Administrator of Elections

There shall be an Administrator and Deputy Administrator of Elections in counties that do not have a Superintendent of Elections and Deputy Superintendent of Elections. The offices shall be filled by suitable persons selected by the County Board of Elections. The Deputy Administrator of Elections shall not be from the same political party as the Administrator of Elections.

Source: New

COMMENT

While this section is new, it is in accord with current practice. Most counties that do not have a Superintendent have an Administrator. Other counties have officials performing the same function but with different titles.

19A:1-5. Powers of County Board and Superintendents or Administrators of Elections

a. The County Boards shall conduct all elections in their counties, in accordance with law and the regulations of the Commission on Elections and shall exercise other powers and duties prescribed by this Title and other law.

b. The Superintendents and Administrators of Elections, in accordance with law and the regulations of the Commission on Elections, shall:

- (1) Register voters;
- (2) Maintain elections records, systems, equipment and supplies;
- (3) Be responsible for the printing and distribution of ballots for each election; and
- (4) Exercise other powers and duties prescribed by this Title and other law.

Source: New.

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COMMENT

The section clarifies the role of the County Boards and Superintendents and Administrators in relation to the Commission on Elections and each other. It is generally in accord with existing statutory provisions and practice.

19A:1-6. County Board, Superintendent, Administrator: office; equipment

Each county shall provide the County Board of Elections, and the Superintendent and Deputy Superintendent or Administrator and Deputy Administrator of Elections with suitable offices, furniture and other equipment that the County Board and Superintendent or Administrator finds necessary. County Boards and Superintendents or Administrators and their Deputies may purchase necessary office equipment, furniture, books, materials and other supplies and articles. The county shall pay for the purchases and for the expenses of the Board and the Superintendent or Administrator and their employees.

Source: 19:6-21.

COMMENT

The section is substantially similar to existing statutory provisions.

19A:1-7. Organization meeting; chairman; secretary

Each County Board of Elections shall meet and organize prior to March 15, electing one member as chairman and one as secretary. The secretary shall not be from the same certified political party as the chairman. If a chairman is not elected, the member senior in service on the County Board shall be the chairman except that the post of chairman shall be rotated each year between the two certified political parties. If a secretary is not elected, the member senior in service of the other certified political party shall be the secretary.

Source: 19:6-22.

COMMENT

The section simplifies and condenses the existing statutory language.

19A:1-8. Oath of office of members

Prior to commencing duties, each member of the County Board shall subscribe to an oath of office.

Source: 19:6-23.

COMMENT

The section condenses the existing statutory provision.

19A:1-9. Commission on elections; appointment; term; vacancies

a. The Commission on Elections shall exercise the powers and duties prescribed by this Title and other applicable law.

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b. There shall be eight members of the Commission appointed by the Governor, with the advice and consent of the Senate. No more than three of the Governor's appointments shall be members of the same political party. Two members of the Commission shall be individuals who have not been members of a certified political party for at least five years prior to their appointment, and have not held any party office or position with a certified political party during that time. Each of the Governor's appointments shall serve for a term of four years beginning on July first. Each member shall serve until a successor is appointed and qualified. Vacancies shall be filled for the unexpired term only.

c. No person who holds elective public office shall be eligible to serve as a member of the Commission during the term of that elective office. Except as set forth above, holding a party office shall not disqualify a person from serving as a member of the Commission. The position of a member of the Commission shall be deemed vacant if the member becomes a candidate for an office to be voted on at any election, other than as a member of a county or state committee or as a delegate or alternate delegate to a national political convention. Candidacy shall be determined by the filing of a petition of nomination, accepted by the member.

d. The Governor shall designate one appointee to serve as chairman of the Commission. The members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties under this law. For the purpose of complying with the provisions of Article V, Section IV, Paragraph 1 of the New Jersey Constitution, the Commission is allocated within the Department of Law and Public Safety; but the Commission shall be independent of any supervision or control by the Department. The assignment, direction, discipline and supervision of all the employees of the Commission except as otherwise provided in this Title, shall be fully determined by the Commission or by officers and employees to whom the Commission has delegated power.

Source: 19:44A-5.

COMMENT

The section is similar to the current statutory language except that it calls for the creation of a Commission on Elections rather than the Election Law Enforcement Commission. While setting forth a requirement for more Commission members and longer terms of service than the current Election Law Enforcement Commission, this section preserves the language limiting the number of members of the Commission who may be of the same political party. The section adds a provision calling for some members of the Commission to be individuals who are not affiliated with a certified political party, as defined by 19A:10-1. The Commission included this provision tentatively in the hope that it would elicit public comment on the subject that would assist in determining whether to retain the language. Additionally, this section retains the limitation on serving on the Commission while holding elective public office but clarifies that holding a party office does not disqualify an individual from serving.

19A:1-10. Duties of Commission; executive director

a. The Commission on Elections shall have general supervisory powers over the conduct of all elections by the County Boards, Superintendents and Administrators of Elections and it shall have rule-making authority in accordance with the Administrative Procedures Act.

b. The Commission shall appoint a full-time executive director, legal counsel and hearing officers. The executive director and legal counsel shall serve at the pleasure of the Commission. A hearing officer shall be terminable by the Commission only for good cause. The executive

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director, legal counsel and the hearing officer shall not be within the classified service of the civil service by virtue of their appointment. The Commission may delegate appointment of hearing officers to the executive director. The Commission shall appoint other employees necessary to carry out the purposes of this Title; these employees shall be in the classified service of the civil service and shall be appointed in accordance with and shall be subject to the provisions of Title 11A, Civil Service.

c. The Commission and its executive director shall administer all elections in a uniform and fair manner to promote full exercise of the franchise, and to ensure efficient administration and prevent election fraud. For good cause shown, the Commission may permit a county or individual district to conduct a particular election in a manner that deviates from the uniform standard provided that the goals of fairness, full exercise of the franchise, efficiency and the prevention of fraud are met.

d. The Commission shall:

(1) Adopt regulations to implement the provisions of this Title in accordance with the provisions of the Administrative Procedure Act.

(2) Develop forms necessary under the provisions of this Title.

(3) Maintain for a minimum of 10 years centralized records of all papers filed with the Commission and all public questions appearing on any ballot in the State.

(4) Permit copying of any report required to be submitted pursuant to this Title and charge no more than the actual cost of making and providing the copies.

(5) Publish an annual report to the Legislature before May 1 each year, and provide sufficient copies for distribution to the general public.

(6) Develop and supervise training programs for election officials.

(7) Prescribe qualifications and recommend salary ranges for all employees of County Superintendent or Administrator of Elections and County Boards of Elections.

(8) Provide information regarding voter registration procedures and ballot procedures to be used by absent uniformed service voters and overseas voters with respect to federal elections pursuant to federal law.

(9) Provide any information, records or reports required by federal law including records required to show the amount and disposition of federal funds received by the State pursuant to federal law.

e. The Commission is designated as the state entity responsible for election functions when federal law requires a single such entity.

f. The Commission and executive director shall promptly forward to the Attorney General or to the appropriate county prosecutor any information concerning violations of this Title.

Source: New.

COMMENT

This section is patterned on 19:44A-6 relating to the Election Law Enforcement Commission. It defines the supervisory powers of the Commission, and its rulemaking authority, upon which other provisions of the revised statutory scheme rely. The provision emphasizes that while the Commission has

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regulatory authority and certain specified powers it will be county election officials who conduct elections. The section abbreviates the existing statutory provisions and deletes, as not pertinent, the subsection on nominations or elections that become void and the subsections on enforcement. This section clarifies that of the non-civil service employees to be appointed to carry out the purposes of the statute, the hearing officers are terminable only for good cause. This section also clarifies that while one of the goals of the revised statute is to promote statewide uniformity in election matters, the Commission does have discretion to permit a county or a district to conduct an election in a manner different from the uniform standard provided that the goals of the statute are met. This would permit a locality to test a different method of conducting an election to determine its efficacy. This section also contains language intended to comply with the provisions of the most recent federal law regarding to elections, and to clarify that although the county entities retain responsibility for the day-to-day operations, the Commission has primary responsibility at the State level for insuring compliance with all federal law. Among the other duties of the Commission is the responsibility to hear and decide disputes as more specifically set forth in specific sections of the statute. Any such determination of the Commission may be challenged by application to the Superior Court, Appellate Division, as an appeal from a state agency.

19A:1-11. Administrative complaint procedure

a. The Commission on Elections shall hear and decide complaints of violations of Title III of P.L. 107-252 of federal law and establish and maintain a uniform, non-discriminatory administrative complaint procedure to address these complaints.

b. The Commission may consolidate complaints filed pursuant to this section and, at the request of any complainant, may hold a hearing on the record.

c. Commission determinations shall be made public. If the Commission determines that any provision of the applicable federal law has been violated, the appropriate remedy shall be provided.

d. The Commission shall make a final determination on a complaint within 90 days of the date of the filing of the complaint unless the complainant consents to a longer period of time within which to decide the matter. If the Commission fails to do so, the matter shall be resolved within 60 days thereafter pursuant to an alternative dispute resolution procedure established by the Commission for this purpose at which any materials comprising the record shall be available.

Source: New.

COMMENT

This section is new, and was added to comply with the provisions of the of the most recent federal law regarding to elections.

19A:1-12. Sitting on all election days

The County Board of Elections shall sit on the days of all elections at the office of the County Board from 6:00 a.m. and until all of the duties of the Board have been concluded. However, if duties have not been completed by midnight, the Board may adjourn its work to the following day.

Source: 19:6-25.

COMMENT

The section clarifies the procedure that may be followed if the duties of the County Board have not been concluded "between the hours of 6:00 A.M. and midnight" on the day of the election.

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19A:1-13. Poll officials; appointment and assignment

a. The County Board of Elections shall appoint a sufficient number of poll officials to conduct each election. Poll officials shall be residents of the county in which they are appointed. Poll officials may be appointed for a particular municipality or for the county. Officials appointed for a municipality may be assigned to any district within that municipality; officials appointed for the county may be assigned to any district in the county.

b. The County Board shall assign four poll officials to each election district except that it shall assign six officials to any election district in which there are more than 900 registered voters. The Board shall appoint the poll officials thirty days before the election in which they will serve. The officials in each district shall include at least one member of each certified political party and shall include equal numbers of members of the certified political parties. Other poll officials may be persons who have not been members of either certified political party for at least five years prior to the appointment, and have not held any party office or position with a certified political party during that time.

c. In election districts in which census data establishes that the primary language of ten percent or more of the registered voters is a language other than English, the County Board shall appoint two members who are fluent in that language.

d. Poll officials who are appointed to serve for the entire day of election shall be paid \$200. Poll officials who are appointed to serve for part of the day shall be paid a pro-rata amount per hour. The Commission on Elections may adjust the rate of pay after it has been in effect for at least five years.

Source: 19:6-1; 19:6-7; 19:45-6(d).

COMMENT

The section substitutes "poll officials" for "members of the district board of elections" reflecting the current practice that the persons who conduct an election are poll workers assigned to districts where needed rather than a continuing administrative board for a particular district. As a result, the term of office of officials (19:6-8) has been deleted. Subsection (a) is based on 19:6-7 but allows appointment of election officials for the whole county rather than for a particular municipality. The subsection also eliminates the requirement that an official be certified for a particular district 25 days before an election. "Certified political parties" is a term defined by section 19A:10-1. Unlike current law, the section does not require that poll officials be members of the two certified political parties unless these people are unavailable. Instead it requires a balance among poll officials who are identified with a political party. It allows the use of independent poll workers without restriction. Subsection (c) substitutes the phrase "a language other than English" for the word "Spanish" in 19:6-1 to reflect the contemporary reality in New Jersey of increasing numbers of speakers of different primary languages.

Subsection (d) is derived from 19:45-6(d). The distinction between pay for school elections and other elections has been eliminated as the time the polls will be open will now be the same for all elections. However, the hourly rate is retained to allow poll officials to be employed for less than the whole day if that seems desirable.

19A:1-14. Poll officials; duties; oath; training

a. The poll officials assigned to a district shall conduct the election in the district and shall keep the polls open on Election Day during the times prescribed in this Title.

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b. Prior to commencing duties, each poll official shall subscribe to an oath prescribed by the Commission on Elections. All new poll officials shall be required to attend a training session supervised by the County Boards of Elections. All poll officials shall attend training sessions at least once every three years.

Source: 19:6-11.

COMMENT

The section clarifies the duties of local poll officials, and calls for the periodic training of election officials.

19A:1-15. Poll officials; removal

a. The County Board may dismiss any poll official for cause or for failure to attend training sessions.

b. A poll official shall be deemed to have resigned if the official becomes a candidate for an office to be voted on at any election for which the official was appointed to serve. Candidacy shall be determined by the filing of a petition of nomination, accepted by the official.

Source: 19:6-4; 19:6-5; 19:6-12.

COMMENT

Subsection (a) substantially follows 19:6-4 and 19:6-5 but clarifies that the failure to attend training sessions constitutes cause for dismissal in addition to other acts or omissions that may be deemed to constitute cause. Subsection (b) follows 19:6-12.

19A:1-16. Chairman and secretary

Before beginning their duties on Election Day, poll officials assigned to a district shall meet and elect one official as chairman, and one as secretary. The secretary shall not be from the same certified political party as the chairman. If a chairman is not elected, the official senior in service on the board shall be the chairman. If a secretary is not elected, the official senior in service of the other certified political party shall be the secretary.

Source: 19:6-10.

COMMENT

The section streamlines existing statutory language and, in the interest of consistency, modifies the terminology to refer to a chairman and secretary rather than a judge and an inspector.

19A:1-17. Police assigned to polls

The municipal governing body in charge of the police department may assign police to any district. Any police officer assigned shall, under the direction of the election officials, enforce the election laws, maintain order during Election Day, and assist the officials in transporting the results and election equipment. For good cause, the County Board of Elections may request that an individual police officer not be assigned to a particular polling place. The poll officials assigned to a district may request that an officer assigned to a particular polling place leave the polling area; the officer shall comply pending a final determination by the County Board.

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Source: 19:6-16; 19:15-8.

COMMENT

The section is substantially like the existing statutory provision, although it has been streamlined. It also has been modified to indicate that while the municipal governing body normally may assign police to any district; it is within the power of the County Board to request for good cause that a particular officer not be assigned to a particular polling place. This section also clarifies that the officer may be asked to leave by the poll officials for the district, and that the officer shall comply pending a final determination.

19A:1-18. Calculation of time

If the date on which any action must be taken pursuant to the election law falls on a Saturday, Sunday or legal holiday, the time within which the action may be taken shall run until the end of the next day that is neither a Saturday, Sunday nor legal holiday.

Source: 19:11-1.

COMMENT

This section is substantially similar to 19:11-1.

CHAPTER 2. Statewide Voter Registration Database

19A:2-1. Statewide voter registration database; website

a. The Commission on Elections shall establish, administer and maintain a statewide voter registration database continuously available to every Superintendent or Administrator of Elections and County Board of Elections and to other agencies approved by the Commission. The registration database shall be the official record for the conduct of all elections held in this state. The Commission shall also maintain a website that allows any person to obtain a registration form and provides information of general importance to voters.

b. The Commission shall prescribe a uniform statewide voter registration form and shall require county election offices, voter registration agencies, armed forces recruitment offices, qualified educational institutions and individuals to use that form to register a voter in the central database.

c. The Commission shall make rules to implement the registration database and website consistent with the objectives of enhancing the uniformity of the administration of elections, decreasing the public cost of maintaining the voter registration records, applying the most advanced technology available to simplify voter registration and protecting the integrity of the voting process.

Source: New.

COMMENT

This section provides for statewide registration records. It requires the Commission on Elections to design and implement an electronic database of voter registration records that is on-line and available to designated officials, a concept entirely novel to New Jersey. The section generally follows current law as to the contents of records. *See* 19:31-3.1; 19:31-3.3; 19:31-10.1. However, the Commission on Elections has regulatory power to dictate the content of records and the methods of record keeping. It is understood that the current voter records will need to be transferred and that details regarding the transition of those records will be addressed by the Commission in regulations.

19A:2-2. Minimum components of the registration database

a. The central database shall have the following minimum components:

(1) An electronic network that links all county election offices and the Division of Motor Vehicles and may link voter registration agencies, and other approved departments of government. Only State and county election offices may add, delete or modify the records contained in the database.

(2) A computer program to compare the voter registration records with records contained in the computer databases of the Division of Motor Vehicles and such federal agencies as are required by law. The computer program may also compare records with other agencies approved by the Commission on Elections, such as those responsible for maintaining records regarding an individual's death or criminal conviction.

(3) An interactive computer program allowing access to records contained in the registration database by persons authorized by the Commission to add, delete, modify or print a

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voter registration record, and to update the central database daily so that the records reflect the name of each registered voter without duplication and the names of ineligible or unregistered voters are removed. The database shall contain safeguards to ensure that the names of eligible voters are not removed in error.

(4) A search program capable of verifying registered voters and their required information by name, driver's license number, unique numeric identifier and street address.

b. The Commission shall:

(1) Specify how to convert existing voter registration records in the counties to electronic files to be used in the central database.

(2) Specify the persons authorized to access records contained in the registration database.

(3) Provide adequate technological security measures to prevent unauthorized access to the records contained in the registration database.

(4) Examine the suitability of a system capable of permitting registered voters to cast a ballot in their voting district from any polling place in this state.

Source: New; 19:31-15; 19:31-16.

COMMENT

This section establishes minimum requirements to enable state registration records to be available in every county and to specify the transition from a paper-based to an electronic records system, while attempting to provide adequate security for the information that will be available electronically. Most important, the Commission on Elections must design a database that interfaces with other voter registration sources, such as the Division of Motor Vehicles, social agencies and the federal requirements for uniformed and overseas citizens. 42 U.S.C. 1973ff. This section states that even though other offices may be connected with the registration database, only election offices may add, delete, or modify the records.

19A:2-3. Uniform statewide voter registration form

a. The uniform statewide voter registration form must elicit the following information from the applicant:

- (1) Full name,
- (2) Date of birth,
- (3) Citizenship,
- (4) Address of legal residence,
- (5) Mailing address, if different,
- (6) County of legal residence,
- (7) Party affiliation, if applicable,
- (8) Name and address of last registration, and
- (9) New Jersey driver's license number, if the applicant has been issued a license; if not, the last four digits of the applicant's Social Security number.

b. The uniform statewide voter registration form shall be used for any of the following purposes:

- (1) Initial registration,
- (2) Change of address,
- (3) Change of name, and
- (4) Change of party affiliation.

c. The uniform statewide voter registration form shall contain a declaration whereby the applicant swears that the applicant is:

- (1) A United States citizen,
- (2) 18 years of age on or before the next election, and
- (3) Not under the supervision of the Department of Corrections for an indictable offense.

d. The form shall set forth the penalties that may be imposed for submitting false or fraudulent information.

e. The applicant must sign the form.

f. The Commission on Elections shall develop instructions for completing the form and attach them to the form, prepare the form and instructions in English and in any other language that it finds is the primary language of a substantial number of persons eligible to register to vote. The Commission may specify additional information on the form or instructions. The instructions shall state that if the form is submitted other than in person, the applicant will be required to present identification when the applicant first votes and if the applicant is unable to do so, the applicant may vote using a provisional ballot.

g. The Commission shall print the uniform statewide voter registration forms, distribute them to county election offices, voter registration agencies, armed forces recruitment offices and qualified educational institutions. The form also must be available upon request to applicants and available on the website.

Source: 19:31-6.4.

COMMENT

Except as required by the Uniformed and Overseas Citizens Absentee Voting Act, the Commission on Election must develop a single uniform registration form for use throughout the state. This section is similar to 19:31-6.4; it specifies the items of information that the uniform registration form must contain, but leaves the design of the form to the Commission. The reference to the Secretary of State has been changed to the Commission on Elections. Subsection (f) has been broadened because languages other than English and Spanish may be required. Subsection (g) has been broadened to reflect the current requirement that forms are distributed and accepted by a variety of public agencies. A requirement has been added that forms be available at educational institutions and on the Commission on Elections' website. Subsection (h) of the source, which dealt with determining when an application made through a motor vehicle office was made within time requirements, was deleted. Other sections now deal with that matter.

19A:2-4. Federal registration form

a. The Commission on Elections shall accept the Federal Post Card Application to register applicants covered by the Uniformed and Overseas Citizens Absentee Voting Act or any federal successor statute or successor federally required or recommended voter registration form.

b. The Uniformed and Overseas Citizens Absentee Voting Act or any federal successor statute supersedes any inconsistent provision of this statute.

Source: New.

COMMENT

This section acknowledges that federal law recommends, and all states have adopted, the use of the Federal Post Card Application for use by uniformed and active military personnel and civilian overseas voters. Hence, the Commission on Elections should continue the practice of using the FPCA for purposes of voter registration. However, use of this registration form does not result in different treatment of these voter registration records in terms of content and unique numeric identifier. While the supremacy clause of the United States Constitution states that federal law trumps inconsistent state law, that principle is restated here to reduce confusion and to alert state election officials to relevant federal law.

19A:2-5. Persons entitled to register to vote

a. Any person may register to vote who:

- (1) Is a citizen of the United States,
- (2) Is 18 years of age or older,
- (3) Has not been disqualified from voting, and
- (4) Is a resident of this State.

b. A person shall be permitted to vote at an election if the person has been registered to vote at least 30 days before the election and has resided in the county for 30 days at the time of the election. A person who has not resided in the county for a period of 30 days before an election may, in a Presidential election year, vote for President and Vice-President of the United States on a provisional ballot.

c. A person may vote in an election district only if the person is registered to vote at an address in that district and either resides in that district or resided in that district 30 days before the election.

Source: 19:31-1; 19:31-5; 19:31-6.1; 19:31-29.

COMMENT

Subsection (a) is similar to 19:31-1; the residence requirement is derived from 19:31-5. The residence requirement has been moved to subsection (b) because under current law a person may register within 30 days of an election, but then may not vote in the election. See 19:31-5 and 19:31-6.1. The New Jersey Constitution, however, permits such an individual to vote for President and Vice-President on a provisional ballot. See, Art. 2, Sec. 1, para. 3. Material in 19:31-5 making registration permanent regardless of whether a person has failed to vote has been deleted as unnecessary. Other sections limit the grounds for removing a voter's name from registration. The federal Uniformed and Overseas Citizens Absentee Voting Act overrides inconsistent provisions of this section. For example, an overseas voter is entitled to vote in Federal elections regardless of how long the voter has not resided in New Jersey and even if that voter does not intend to reside in the State in the future.

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19A:2-6. Registration

a. A person may register to vote by completing a statewide uniform voter registration form and submitting that form to a voter registration agency or mailing that form to the Commission on Elections.

b. Voter registration agencies are:

(1) An agency or office serving as a food stamp issuer, pursuant to P.L.1988, c.79 (C.44:8-153 et seq.) and the "Food Stamp Act of 1977," Pub.L.95-113 (7 U.S.C. s.2011 et seq.);

(2) An agency or office providing or administering assistance under the "New Jersey Medical Assistance and Health Services Program," pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and 42 U.S.C. s.1395 et seq.;

(3) An agency or office distributing food pursuant to the special supplemental food program for women, infants and children (WIC), established pursuant to P.L.1987, c.261 (C.26:1A-36.1 et seq.) and Pub.L. 95-267 (42 U.S.C. s.1786);

(4) An agency or office administering assistance under the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.);

(5) An office of the Division of Developmental Disabilities, established pursuant to section 2 of P.L.1985, c.145 (C.30:6D-24), in the Department of Human Services;

(6) An office of the Office of Disability Services, established pursuant to section 3 of P.L.1999, c.91 (C.30:6E-3), in the Department of Human Services;

(7) A recruitment office of the Armed Forces of the United States, subject to any agreement between this State and the Secretary of Defense of the United States for the joint development and implementation, as provided under subsection (c) of section 7 of Pub.L.103-31 (42 U.S.C. s. 1973gg-6), of procedures for applying at those offices to register to vote;

(8) An office of the Division of Vocational Rehabilitation Services of the New Jersey Department of Labor;

(9) An office of the Commission for the Blind and Visually Impaired of the New Jersey Department of Human Services;

(10) A county welfare agency or county board of social services established pursuant to the provisions of chapter 1 or chapter 4 of Title 44 of the Revised Statutes;

(11) The office of a County Superintendent or Administrator of Elections; and

(12) The office of the municipal clerk of municipalities of this State.

c. A voter registration agency shall inquire of members of the public whether they are registered to vote. Any member of the public who is not registered and does not express a decision not to register shall be provided with a uniform statewide voter registration form and instructions.

Source: 19:31-6; 19:31-6.3; 19:31-6.11.

COMMENT

Most of the section is derived from 19:31-6. Though generalized, the section is similar to current law.

19A:2-7. Acceptance of registration

a. The Commission on Elections shall adopt procedures to accept or reject a completed and submitted uniform statewide registration form, and may delegate that authority to county election offices or voter registration agencies. Periodic reports detailing the number of registration forms rejected, and the reason for the rejections, shall be made and retained by the Commission for five years.

b. An accepted uniform statewide registration form shall be indexed and identified by the voter's driver's license number. If the voter has not been issued a driver's license number, then the Commission shall generate a unique numeric identifier, including the last four digits of the voter's Social Security number, to index and to identify the voter registration record contained in the central database.

c. If the Commission finds that the form is not in order or that the person is ineligible to vote, the Commission shall notify the person of the reasons for any refusal to register the person.

d. A voter is registered to vote as of the date that a registration form is filed with the Commission, a Superintendent or Administrator of Elections, or an approved agency unless the form is rejected. If the registration form is filed with the Commission, or a Superintendent or Administrator of Elections, unless the form is rejected, the information shall be immediately entered into the registration database.

Source: 19:31-6.5.

COMMENT

This section is similar to 19:31-6.5. Small changes have been made to reflect an electronic statewide voter registration database and the fact that the information should be immediately entered into it.

19A:2-8. Voter registration record

A voter registration record shall include:

- a. The name of the voter,
- b. Date of registration,
- c. Date of birth,
- d. Driver's license number or, if the voter is not licensed to drive in this state, a unique numeric identifier,
- e. Voting history for last four years,
- f. Address of voter,
- g. The voter's election district,
- h. The voter's signature; and

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i. Whether or not the voter has applied for absentee or other pre-election day voting in lieu of voting in person on Election Day.

Source: 19:31-3.1; 19:31-3.3; 19:31-10.1.

COMMENT

The direct source sections concern only those counties that have adopted modern information methods. Other sections provide detailed requirements for books of records. This section has been generalized to apply functional requirements for all counties and has been supplemented to give the Commission on Elections regulatory power over the content of records and the methods of record keeping. Subsection (i) references the language of 19A:6-2 which states that a voter opting to cast a pre-Election Day ballot may not vote in person at the polls on Election Day except as prescribed by federal law.

19A:2-9. Purging of records contained in the registration database

a. The State Registrar of Vital Statistics shall file with the Commission on Elections, at least monthly, a list of persons who have died during the preceding interval. The list shall contain the name, the address, the date of birth and the date of death of the deceased person.

b. The Prosecutor of each county shall file with the Commission, at least monthly, a list of all names, addresses and dates of birth of all persons sentenced to imprisonment or probation for a crime. The list shall also contain the date of the judgment of conviction and the sentence imposed by the court.

c. The Commission shall agree with the United States Postal Service or its licensee to receive information provided by the Postal Service concerning the change by any Postal Service customer of that customer's address.

d. Any person may petition the Commission to remove the name of a voter registered in the central database because the person has died, is ineligible to vote or does not reside at the registered address. The Commission shall specify a uniform petition form.

e. The Commission shall communicate with the federal office that maintains lists of military personnel covered under the Uniformed and Overseas Citizens Absentee Voting Act to ascertain the active military status of registered voters.

f. The Commission shall comply with any applicable provisions of federal law regarding the removal of persons who have not responded to a notice attempting to confirm their address and who have not voted in two consecutive general elections for federal office.

g. Upon receipt of the information as provided by this section, the Commission shall investigate and verify the accuracy of the information, and correct the registration database. However, corrections shall not be made during the 30 day period before an election, and a voter may not be removed from registration unless the voter is notified and given an opportunity to challenge removal.

Source: 19:31-15; 19:31-16; 19:31-16.1; 19:31-17; 19:31-19.

COMMENT

This section attempts to capture the substance of 19:31-15; 19:31-16; 19:31-16.1 and 19:31-17 and the requirements contained in the federal law for removal of individuals from the database. The limitations on changes during the 30 days before an election is intended to insure that the statewide registration database will be identical to the records used for an election.

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19A:2-10. Use of the registration database during elections

The County Superintendent or Administrator of Elections shall produce polling records for each district 21 days before any election. Records for each registered voter shall include the voter's name, address, registration number and signature accessible by alphabetical order, address and registration number. Records shall include a signature space to allow comparison of signatures but the registration process at the polling place may provide for another method of verifying the identity of the voter, approved by the Commission. The polling record shall also allow entry of other information required by law and of any challenge and its determination. In a primary election, the voter registration record shall include the political party of the voter. The Commission shall retain polling records for two years.

Source: 19:31-18; 19:31-18.1; 19:31-18.3.

COMMENT

This section is substantially identical to 19:31-18, but provides for registration lists in computer accessible form.

19A:2-11. Confidentiality of registration records of victims of domestic violence

A person who is (1) a victim of domestic violence who has obtained a permanent restraining order against a defendant pursuant to section 13 of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-29) and fears further violent acts by the defendant, or (2) a victim of stalking, or member of the immediate family of such a victim as defined by paragraph (3) of subsection a. of section 1 of P.L.1992, c.209 (C.2C:12-10), who is protected under the terms of a permanent restraining order issued pursuant to section 3 of P.L.1996, c.39 (C.2C:12-10.1) and who fears bodily injury from the defendant against whom that order was issued, shall be allowed to register to vote without disclosing the person's street address. Such a person shall leave the space for a street address on the uniform statewide registration application blank and shall, instead, attach to the application a copy of the permanent restraining order and a note which indicates that the person fears future violent acts by the defendant and which contains a mailing address, post office box or other contact point where mail can be received by the person. Upon receipt of the person's voter registration application, the Commission of Elections shall provide the person with a map of the municipality showing the various voting districts. The person shall indicate the voting district in which he or she resides and shall be permitted to vote in that district. If the person changes residences, the person shall complete a new registration application in the manner described above.

Any person who makes public any information which has been provided by a victim of domestic violence, or by a victim of stalking or the family member of such a victim, concerning the mailing address, post office box or other contact point of the victim or family member or the election district in which the victim or family member resides, is guilty of a crime of the fourth degree.

Source: 19:31-3.2.

COMMENT

This section is substantially identical to its source.

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19A:2-12. Public availability of voter registration lists

a. Except as set forth in 19A:2-11, the Commission on Elections shall provide each county clerk access to the name, place of residence and party affiliation for the persons registered to vote in any district in the county.

b. Except as set forth in 19A:2-11, the list of names, place of residence and party affiliation of registered voters shall be a public record, and the county clerk shall permit any person to obtain a copy of that list in a computer accessible form and may charge a fee for production of lists based on the actual cost of production.

c. Any individual or the Attorney General may bring an action for injunctive relief to prevent the improper use of the information contained in the voter registration list, including commercial solicitation.

Source: 19:31-18; 19:31-18.3.

COMMENT

Subsection (a) is derived from 19:31-18 but, due to changes in technology, provides constant access to lists instead of providing that lists are made available at a particular time. Subsection (b) is derived from 19:31-18.3. The current section 19:31-18.1 has been moved from this section dealing with permanent registration of voters, to the criminal section of the law in the interest of consistency since all other sections of the election law that include criminal penalties are included there. This section also has been changed to provide that registration lists be provided in computer accessible form. The automatic supply of lists to certain party officials has been deleted because copies of computerized records should be available at insignificant cost. Note that the Governor, by Executive Order, has suggested that address information not be made public. Barring action by the Legislature in this area, the information will continue to be made accessible as indicated above as a result of the significance of the availability of that information in the election context.

CHAPTER 3. VOTING SYSTEMS

19A:3-1. Voting systems; requirements for all systems

Every voting system used in this state shall:

- a. Assure to the voter secrecy in the act of voting and the vote cast, and provide a private place to conceal the voter while voting.
- b. Assist voters in voting as they intend and minimize the likelihood of mistake.
- c. Permit the voter to vote for any candidate, and for as many candidates or on as many questions, as the voter is lawfully entitled to vote for, but no more.
- d. Notify the voter if more than one candidate has been improperly selected for a single office, advise the voter of the effect of multiple votes, and provide the opportunity for the voter to correct the ballot before it is cast.
- e. Permit the voter to verify the votes selected before the ballot is cast.
- f. Provide the voter with the opportunity to change the ballot before it is cast.
- g. Prevent the voter from voting for the same person more than once for the same office.
- h. Allow primary election officials to limit voting to primary contests within a voter's party.
- i. Correctly record and count all votes cast regarding all candidates and questions.
- j. Produce a permanent paper record after a vote is cast and afford a manual audit capacity.
- k. Include protective devices and procedures to prevent any operation of the system before or after the election and to prevent any change in the record of votes cast in the election.
- l. Be accessible for individuals with disabilities in a manner that provides those voters with the same opportunity for access and participation in the voting process as other voters as required by with federal law.
- m. Provide alternate language accessibility in accordance with federal law.
- n. Include a method or mechanism to show, at all times during an election, how many persons have voted.
- o. Meet any requirement of federal law, including requirements regarding permissible error rates.

Source: 19:48-1.

COMMENT

This section is based on 19:48-1, which establishes requirements for voting machines, but the scope of the section has been broadened to include any kind of voting system. In addition, three of the standards are new. Subsection (b) expresses a standard that has existed in practice though not in the statute: that a voting system should be clear, easy to use, and minimize voting mistakes. Issues raised in other states during the 2000 presidential election emphasize the importance of this consideration. Subsection (g) includes new language concerning the prevention of change in the record of votes after the election. At present that matter is dealt with in other sections by specific procedures for paper ballots and

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mechanical machines. Since those procedures are not relevant to most systems now in use, a generalized standard is appropriate. Added language reflects the requirements of the federal law.

19A:3-2. Approval of voting systems

a. A voting system shall not be used in the State unless it has been approved by the Commission on Elections.

b. The Commission shall approve only voting systems meeting the requirements of this chapter.

c. In the interest of uniformity, the Commission may decline to approve a system that offers no significant advantage over currently approved systems.

d. The Commission may, in the interest of uniformity and quality, withdraw approval of systems previously approved. In making a decision to withdraw approval of a currently approved voting system, the Commission shall consider the expenditure made by a district for the system.

e. Through approval and disapproval of voting systems, the Commission shall try to make the process of voting and the appearance of voting systems as uniform as possible throughout the State.

Source: New.

COMMENT

This section carries forward the policy of Title 19, chapter 48, which requires that voting machines may not be used unless they are of a kind approved by State authority. The section transfers that authority from special committees within the Attorney General's Office to the Commission on Elections. Subsection (d) gives the Commission the explicit power to remove systems from the approved list. The Attorney General's Office may have that power now but it is not stated in current statutes and it has never been exercised.

Subsection (d) requires the Commission on Elections to use the power to regulate the voting systems in use to progress toward a time when all voting systems have the same appearance and require the same actions by voters. Similarity of voting systems will reduce confusion and mistakes when voters move from one county to another.

19A:3-3. Regulations for use of voting systems

When it approves a voting system, the Commission on Elections shall enact regulations for the use of the system that will assure that it will be used in accordance with the requirements of this Title. Regulations shall include:

- a. The arrangement of the room in which voting takes place;
- b. Procedures for checking the system before the beginning of voting;
- c. Instructions to voters on use of the system;
- d. Procedures to determine whether a valid vote has been cast;
- e. Procedures to be used to ascertain vote totals and to transmit those totals to the County Board of Elections; and

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f. Procedures to secure the system after the close of voting to prevent tampering with the system and to allow recounts when ordered.

Source: New.

COMMENT

This section requires that the Commission promulgate regulations for the use of any system that it approves. Current statutes provide detailed procedures for the use of paper ballots and mechanical voting machines. However, no such procedures exist in statute or regulation for the newer machines now used in the majority of counties. Without these procedures, a system that has the capacity to work well may be used in ways that do not assure that voters actually cast the votes they think they are casting, or that only the votes cast during Election Day are counted or that tallies are preserved to allow for recounts. Static voting system technology until about twenty years ago allowed procedures to be established by statute, but the current speed of change makes establishment of procedure by regulation the better approach.

19A:3-4. Selection of voting system

a. A county may use any voting system selected by the County Board of Elections and the Superintendent or Administrator of Elections and approved by the Commission on Elections.

b. The Superintendent or Administrator and the County Board shall follow the Commission regulations for the voting system selected.

Source: New.

COMMENT

Again, this section carries forward the policy of Title 19, chapter 48, that a county may not use a voting system that has not been approved. Subsection (b) enforces the regulations required by the previous section to assure that the system chosen will be used in a way that meets the general requirements of this chapter.

CHAPTER 4. BALLOTS

19A:4-1. Commission responsible for ballot format

a. The Commission on Elections shall prepare a single general form of ballot for each election that shall include positions for the names of all candidates and any public questions to be voted on at such election. The same format of ballot shall be utilized statewide and the format of the ballot shall be the same for pre-election day ballots, voting system ballots used on Election Day, provisional ballots, and sample ballots. If the same format of ballot cannot be used, the ballot shall approximate as closely as possible the single form of ballot.

b. The Commission shall determine the size and format of the ballot, the type of print, the necessary instructions to voters, and other similar matters of form.

c. Ballots shall be designed to facilitate fairness, simplicity, and clarity in the voting process. Ballots shall be designed to make it easy for a voter to communicate intent.

d. The ballots shall include candidates nominated by political parties and by petition, and also shall allow a method to write in the names of candidates.

e. In primary elections, there shall be separate ballots for each political party, identifying the party.

Source: 19:14-2; 19:14-2.1; 19:14-3; 19:14-4; 19:14-5; 19:14-6; 19:14-7; 19:14-12; 19:14-16; 19:15-27; 19:15-28; 19:15-29; 19:15-31; 19:23-23; 19:23-25; 19:23-28; 19:49-2.

COMMENT

This section replaces sections of the law that detail, the design and form of the ballot. Many of those sections, enacted in the 1930s and 1940s, were applicable primarily to paper ballots, which are no longer widely used as official ballots. In keeping with other revisions to the election law, this section clarifies that the Commission on Elections shall, by regulation rather than statute, prepare a single form of ballot to be used, as nearly as possible, throughout the State.

This section also condenses language pertaining to ballots, found throughout the statutory provisions pertaining to election, and combines it into a single section of the law both for clarification and to eliminate duplication.

19A:4-2. Form of official ballots; instructions

a. Each ballot shall identify the election, the name of the municipality, the election district, and the date of the election. For school elections, the ballot shall also identify the name of the school district and the municipalities comprising that district.

b. Each ballot shall contain instructions for the voter, including: the manner in which votes are to be cast, including write-in votes; and the number of candidates to be elected to each office.

c. The contents of each ballot shall be legible. The text of the various section headings shall be clearly differentiated from the remaining text of the ballot.

d. The ballot for a district shall be prepared in English and any other language that the County Board finds is the primary language of ten percent of the registered voters in the district and in any other language if required by federal law. The percentage of registered voters whose

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primary language is other than English shall be determined from the most recent United States census data.

Source: 19:14-3; 19:14-4; 19:14-6; 19:14-10; 19:14-16.

COMMENT

This section indicates basic information to be included on the ballot and offers limited general guidelines for the Commission regarding the design of the ballot while leaving the details to be addressed by the Commission by regulation.

19A:4-3. Arrangement of titles of office

a. The title of each office to be filled at an election shall be arranged on the ballot in the following order: President and Vice-President of the United States; member of the United States Senate; member of the House of Representatives; Governor; member of the State Senate; members of the General Assembly; county executive; sheriff; county clerk; surrogate; register of deeds and mortgages; county supervisor; members of the board of chosen freeholders; mayor and members of municipal governing bodies, and any other titles of office. For primary elections, the ballot shall also include the delegates and party positions.

b. The title of each office and the candidates for that office shall be set apart from the titles of the other offices and the candidates for those offices on the ballot. The title of an office and the candidates for that office shall be organized so that they are differentiated from other offices and candidates based on ballot position. Candidates sharing a party affiliation, designation or slogan shall likewise be differentiated from competing candidates based on ballot position. The method of differentiation may be the use of rows and columns.

c. When Presidential Electors are to be elected, their names shall not appear on the ballot. Instead, the names of the candidates for President and Vice President shall appear together in pairs.

Source: 19:14-8; 19:14-8.1; 19:14-10; 19:23-24; 19:23-26.1; 19:49-2.

COMMENT

Subsection (a) is substantially identical to the second paragraph of 19:14-8 and to 19:14-10. Subsection (b) is derived from other sections of the prior law that called for the arrangement of candidates and titles in rows and columns. Subsection (c) is derived from 19:14-8.1, but has been simplified and shortened.

19A:4-4. Position on ballot; procedure

a. In a general election, each of the political parties that made party nominations in the primary election shall be chosen for the initial two or more certified political party positions on the general election ballot, and the other parties shall be chosen for the remaining ballot positions. Qualified candidates from non-certified political parties shall be arranged in the same manner as those from the certified parties. Other candidates shall, to the extent possible, be arranged in a similar manner, with candidates who share a party affiliation, designation or slogan grouped together as appropriate and differentiated from competing candidates.

b. The Commission on Elections shall select a method to be used by the County Boards of Elections to determine the placement of political parties and candidates on any ballot in a fair

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and equitable manner. In other elections, all ballot positions shall be chosen by the same method selected by the Commission.

c. If the Commission fails to determine a method before the ballot is to be prepared the position on the ballot shall be determined by the drawing of lots, first to determine the placement of the political parties, then to determine the placement of candidates' names for the various offices. The name of the first party or candidate drawn shall occupy the first position on the ballot, the name of the next party or candidate drawn shall occupy the next position, and so on. The manner of drawing the lots shall be as follows:

(1) Paper slips with the names of each political party or candidate for office, as appropriate, shall be placed in capsules of the same size, shape, color and substance;

(2) The capsules shall be placed in a covered box with an opening in the top large enough to allow the capsules to be drawn out;

(3) The box shall be shaken to thoroughly mix the capsules;

(4) One member of the County Board shall draw each capsule separately from the box without knowledge of which capsule is being drawn; and

(5) The person making the drawing shall open the capsule and announce the name in it publicly.

Source: 19:14-12; 19:14-13; 19:23-24.

COMMENT

Subsection (a) is derived from the initial section of 19:14-6. Subsection (b) clarifies that candidates from non-certified political parties, and other candidates, are to be treated for ballot arrangement purposes in the same way as those from certified parties. "Certified political parties" is a term defined by section 19A:10-1. Subsection (c) is substantially derived from 19:14-12 but it has been simplified and shortened. The goal was not to limit the selection of the position on the ballot to the capsule method that has been in effect for more than 50 years, but to leave that familiar method substantially in place in the event that the Commission selects no new method.

19A:4-5. Witnesses to selection of position on ballot by County Board of Elections

a. Any voter of the county shall be allowed to witness the selection of placement of the political parties and the names of candidates on the ballot.

b. The selection of the placement of the names of candidates on a ballot shall take place on a date and time to be determined in advance by the Commission on Elections.

c. If the Commission fails to select new dates and times:

(1) The selection of placement of the political parties and the names of candidates on the general election ballot shall be held at 3 o'clock in the afternoon of the 85th day prior to the day of the election.

(2) The selection of placement of the names of candidates in a primary or other election ballot shall be held at 3 o'clock in the afternoon of the 43rd day prior to the day of the election.

Source: 19:14-12; 19:23-24.

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COMMENT

This section affords the Commission the opportunity to modify the date and time by which the parties and candidates are placed on the ballot, but retains the existing procedure for general and primary elections in the event that the Commission does not. Subsection (c)(2) adds a deadline for the placement of candidates for an election that is not a general or primary election by applying the primary election deadline to those other elections.

19A:4-6. Names of candidates on ballot

- a. Only qualified candidates shall appear on a ballot.
- b. The name of a candidate shall appear only once upon the ballot for the same office.
- c. When no nomination for an office has been made, that fact shall be indicated on the ballot.

Source: 19:14-2; 19:14-2.1; 19:14-9; 19:14-12; 19:23-25.

COMMENT

This section derives from several sections of current law that address basic issues pertaining to the names of candidates on the ballot. Those provisions have been simplified and shortened.

19A:4-7. Grouping of candidates; permissible descriptive language

a. A group of candidates in a primary election or a group of candidates in any election who are not candidates of a certified political party may request that their names be grouped together on the ballot in a single column or row. The County Board of Elections shall comply with the request unless it is impractical to do so.

b. Any candidate in a primary election, or a candidate in any other election who is not a candidate of a certified political party, may request that a slogan of not more than six words appear with that candidate's name on the ballot. The candidate shall include this request with the candidate's petition for nomination. If two candidates or groups select the same designation, the candidate or group whose petition was last filed shall be required to select a different designation. No designation or slogan shall include the name of any person or incorporated association unless the written consent of that person or association is filed with the petition of nomination. Several candidates for nomination who have requested that their names be grouped together may request that a common designation or slogan be applied to all of them.

c. A candidate who is nominated for the same office by more than one political party shall appear on the ballot in only one of the party positions for which the candidate was nominated. The candidate may choose to include on the ballot the words "Indorsed by" followed by the names of the other parties or political entities that also provided nominations. The candidate must notify the County Board of any selection and designations no later than seven days after the primary election; otherwise the County Board will make those choices.

d. The ballot may not include as part of a candidate's name, any honorary or assumed title or prefix, but may include in the candidate's name any nickname or familiar form of the proper name of the candidate.

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Source: 19:14-9; 19:23-17; 19:14-18; 19:23-18; 19:23-25; 19:23-25.1.

COMMENT

This section derives from several sections of current law, which addressed the appearance of the names of candidates on the ballot. While substantially similar to the source sections, the provisions collected here have been simplified and shortened.

19A:4-8. Public questions

Any public question to be submitted to the voters shall be printed in a separate space on the ballot with appropriate instructions to the voter. All public questions to be voted on by the voters of the entire State shall appear before any other public questions on the ballot in the order certified by the Secretary of State. All public questions to be voted on only by voters of a particular county shall appear after any statewide public questions, in the order determined by the County Board by the same neutral procedure utilized for determining the position of political parties and candidates. All other public questions shall appear last, in the order determined by the County Board by that same neutral procedure.

Source: 19:14-2; 19:14-13; 19:14-14.

COMMENT

This subsection is substantially similar to 19:14-13, although the order of the placement of the questions has been modified to go from those questions with the broadest geographic scope, to those with the least broad geographic scope. It is noted that there are Constitutional provisions pertaining to the appearance of public questions on the ballot, including a requirement of publication, that are not duplicated here.

19A:4-9. Preparation of ballot

a. The Commission on Elections shall fix the deadline for the preparation of the official ballot for each election. The County Board of Elections shall prepare the ballot by that date and shall submit it to the Commission for approval. The Commission shall consider whether the ballot is clear and understandable to voters and shall inform the County Board of its decision promptly. If the Commission fails to fix a deadline for an election, the deadlines shall be as follows:

(1) The contents of the official ballot for a general election shall be prepared no later than the 43rd day prior to the election.

(2) The contents of the official ballot for a primary or other election shall be prepared no later than the 35th day prior to the election.

b. The County Board shall keep a copy of the official ballot on file and open to public inspection until the sample ballots have been distributed.

Source: 19:14-1.

COMMENT

This section affords the Commission the opportunity to change the deadline for the preparation of the official ballot for each election in the event that the circumstances giving rise to the old deadlines are no longer applicable. The section retains the existing deadline for the general election in the event that the Commission does not, and adds a deadline for the primary and other elections, which were not previously

set forth in the law. This section also requires that each County Board submit ballots to the Commission for approval.

19A:4-10. Correction of errors

a. When it appears that an error or omission has occurred in the preparation of any ballots by the County Board, the Board may make any required corrections.

b. If the County Board fails to correct the error or omission, any voter resident in the county may present to a judge of the Superior Court in that county a verified petition setting forth the asserted error or omission. If the Court is satisfied that an error or omission has occurred, the Court may order that the Board make any necessary corrections.

Source: 19:14-20; 19:23-29.

COMMENT

This section is substantially similar to 19:14-20 and 19:23-29, but adds a provision that the County Board may, on its own initiative, correct errors as appropriate.

19A:4-11. Number of provisional and emergency ballots

The Commission on Elections shall specify a number of provisional and emergency ballots to be available in any election. That number shall be based on information provided by each County Superintendent or Administrator of Elections.

Source: 19:14-18; 19:14-19; 19:23-22.4; 19:23-27; 19:49-3.

COMMENT

This section requires the Commission to specify the number of provisional and emergency ballots to be available for any election based on information provided by the County Superintendent or Administrator in which the Superintendent or Administrator anticipates its needs based on the voting history in the district and/or other sources of information. The numbers of ballots other than provisional or emergency that are required to be on hand are to be determined by the Commission as required by other sections of the law.

19A:4-12. Sample ballot format

a. The Commission on Elections shall determine the format of the sample ballots for each election and any instructions provided to the voters with sample ballots. The format of sample ballots for each election shall, as nearly as possible, be identical to the format of the official ballot for that election. The sample ballot shall be identified as merely a sample copy of the official ballot, not to be used for voting.

b. The sample ballot shall, in addition to any other information it contains, advise the voter of the date of the election and the location where the voter may vote on election day.

Source: 19:14-22; 19:23-31.

COMMENT

This section provides limited general guidelines for the Commission regarding the format of the sample ballot while leaving the details to be addressed by the Commission.

19A:4-13. Preparation and distribution of sample ballots

a. The County Superintendent or Administrator of Elections shall cause the sample ballots to be printed for each election.

b. The sample ballots shall be printed in English and in any other language that the County Board finds is the primary language of ten percent of the registered voters in the district and in any other language if required by federal law.

c. By the eighth day prior to an election, the County Superintendent or Administrator shall mail a sample ballot to each voter who was registered to vote in that election as of the 30th day prior to the election.

d. On the portion of the ballot visible during mailing, or the outside of the envelope in which the ballot is mailed, the sample ballot shall state that it is a sample ballot, the election for which it is a sample ballot, the name of the municipality, the election district, and the date of the election. For school elections, the ballot shall also identify the name of the school district and the municipalities comprising that district. The portion of the ballot or envelope visible during mailing shall also state that if the ballot is not delivered in two days, it shall be returned to the County Superintendent or Administrator, and shall not be forwarded to the voter at any other address than that appearing on the ballot or envelope.

d. The County Superintendent or Administrator shall also provide sufficient sample ballots so that at least five sample ballots are posted and available for review in each polling place on Election Day.

Source: 19:14-21; 19:23-30; 19:14-21; 19:14-23; 19:14-24; 19:14-25; 19:23-30; 19:23-32; 19:23-33; 19:23-34; 19:23-35; 19:49-4; 19:60-10.

COMMENT

This section provides limited general guidelines regarding the preparation of sample ballots, while leaving the details to be addressed by the Commission based on information provided to it by the County Boards. This section derives from diverse sections of current law concerning the distribution of sample ballots. While substantially similar to the previous language, the provisions collected here have been simplified, shortened, and modified to reflect the role of the County Board and the Superintendent or Administrator. The language of this section also eliminates distinctions in the distribution method in different districts.

19A:4-14. Preservation of envelopes or ballots returned by postmaster

The County Superintendent or Administrator shall forward to the Commission on Elections all envelopes and sample ballots returned by the postal service. These envelopes or ballots shall be used to update the statewide voter registration database.

Source: 19:14-26; 19:23-36; 19:23-37.

COMMENT

This subsection is substantially similar to sections of current law, but eliminates the time periods for which the returned ballots or envelopes are to be retained and variations in the retention process from county to county.

19A:4-15. Referendum information

Any question or proposition submitted to the voters at an election shall be shown on the sample ballot as it will appear on the official ballot. The information provided to the voters shall be sufficient to inform them of the impact of the question or proposition on the existing law.

Source: 19:14-27; 19:14-28; 19:14-29; 19:14-30; 19:14-31; 19:14-32.

COMMENT

This section eliminates sections of current law that have ceased to be applicable but are still included in the statute, and offers limited guidance regarding the presentation of a question or proposition.

CHAPTER 5. VOTING PROCEDURE

19A:5-1. Dates of elections

The dates for elections are as follows:

- a. Primary elections and elections of the State and county committees of the political parties shall be held on the Tuesday after the first Monday in June.
- b. General elections and any partisan election not specifically identified herein shall be held on the Tuesday after the first Monday in November. Unless otherwise provided by law, all elective public offices and all public questions shall be voted upon on the date established for general elections.
- c. All non-partisan elections, including fire district elections, and school elections shall be held together on the third Tuesday in April.
- d. Special elections, including run-off elections, shall be held on the dates required by the statutory section dealing specifically with those elections.

Source: New; 19:3-2; 19:3-3.

COMMENT

This section is included to increase the uniformity and efficiency of the electoral process in the State. The dates selected for elections are, for the most part, those already set forth in the relevant statutes. School elections and the non-partisan elections have been consolidated on the same day since they are generally held less than one month apart. Holding these elections together will reduce cost to the municipalities and school boards and should increase the number of persons voting. Since the timing of school elections is closely tied to budgetary issues, the school election date was selected for the combined election.

19A:5-2. Time polls open

- a. The polling place for a district shall be open from 6:00 a.m. to 8:00 p.m. for all elections except that if the election is solely a school or fire district election, the school board or fire district may set the time polls open at no later than 12 noon.
- b. Any person who is at the polling place or on line to vote at the time for closing the polls shall be allowed to vote. Any person who is not at the polling place or on line to vote at the time for the closing of the polls but who is permitted to vote after the closing of the polls, by court order or otherwise, shall vote by provisional ballot.
- c. Poll officials shall report to the polling place forty-five minutes before polls open. At no time from the opening of the polls to the completion of the canvass shall there be fewer than two poll officials present in the polling place, except that during a school election there shall always be at least one poll official present.

Source: 19:15-1; 19:15-2; 19:15-9; 19:52-1.

COMMENT

Subsection (a) is new and it removes potentially confusing variations in the times that polls are open for various elections. Subsection (b) is substantially identical to 19:15-9. Subsection (c) is simplified but is substantively similar to parts of 19:52-1.

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19A:5-3. Rescheduling of elections; natural disaster

a. If, as the result of a natural disaster or other extraordinary occurrence, it appears that a substantial number of persons will be prevented from voting, the Commission on Elections, a Superintendent or Administrator of Elections or a County Board of Elections may bring a summary action in Superior Court to extend voting hours in the districts affected. Notice shall be given by the official bringing the action to the individuals or entities affected, including the Attorney General and the other officials authorized to bring such an action. If the court is satisfied that extension of voting hours is necessary for persons who intended to vote to have a fair opportunity to vote, it shall order extension of hours.

b. If as the result of a natural disaster or other extraordinary occurrence, it appears that it will be impossible to conduct an election on the day set, the Commission may bring a summary action in Superior Court to change the day of the election. If the court is satisfied that the election cannot be conducted on the day set, it shall order a new date for the election not less than two weeks or more than a month after the original date.

Source: New.

COMMENT

There is no provision in current law allowing a court to extend the hours of an election or to reschedule an election when a natural disaster or other extraordinary occurrence requires that action. Recent occurrences in other states as well as problems in New Jersey in the past make the inclusion of such a provision desirable.

19A:5-4. Polling places

a. The County Superintendent or Administrator of Elections shall select a polling place for each election district in the county at a place convenient to voters in the district. In selecting polling places, the Superintendent or Administrator shall give preference to schools and other public buildings. Whenever possible, the polling place for a district shall be the same location for all elections.

b. If the County Superintendent or Administrator of Elections is not able to select a polling place for an election district, application shall be made to the Commission on Elections to select the location.

c. The polling place for a district shall be accessible to the elderly and to persons with disabilities unless the Commission:

(1) Determines that an emergency exists that makes the use of an accessible place impossible without interference with the efficient administration of the election; or

(2) Grants a waiver based on determination that all potential polling places have been surveyed and no accessible polling place is available, and the municipality is not able to make a place temporarily accessible in or near the election district.

d. If the Commission, acting pursuant to subsection (b), allows the use of a polling place that cannot be made accessible, the Commission shall, by regulation, provide for an alternate method of accessible voting.

Source: 19:8-3; 19:8-3.1.

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COMMENT

Subsection (a) is derived from 19:8-3 but has been simplified to remove formal requirements that the municipality transmit a list of recommended places and that the board certify each place. Subsection (b) is substantially similar to identical to 19:8-3.1 but has been greatly simplified and shortened.

19A:5-5. Poll officials; equipment

a. The polling place for a district shall be staffed with a sufficient number of poll officials to allow the efficient conduct of the election.

b. The polling place shall be equipped with a voting system approved by the Commission on Elections and shall be arranged in the manner approved by Commission regulations.

c. An American Flag approximately three feet by five feet shall be displayed at the outside entrance of the polling place.

d. Each polling place shall publicly post a sample ballot, information regarding polling places and hours, instructions for the voter on how to vote, instructions regarding mail-in registration, and other information required by federal law.

Source: 19:6-1; 19:8-5; 19:8-6; 19:8-7; 19:8-8; 19:8-9; 19:8-10; 19:15-3; 19:15-4.

COMMENT

Subsection (a) gives discretion to the board of elections to decide on the number of poll officials necessary to conduct the election. Current statutes specify that there be four district officials. See, 19:6-1. Subsection (b) is new. Current statutes provide for either mechanical voting machines or paper ballots. Most counties now use electronic voting systems approved pursuant to Title 19, Chapter 53A. The subsection allows the use of any approved system. Subsection (c) is substantially identical to 19:8-5. Subsection (d) is new, and is included to incorporate certain of the provisions of the proposed federal legislation.

19A:5-6. Persons permitted in polling place

The only persons who shall be allowed to be in the polling place during an election are:

- a. Candidates,
- b. Authorized challengers,
- c. Persons present for the purpose of voting and their dependent children,
- d. Police officers detailed to be present pursuant to this title, to preserve the peace and enforce the election law,
- e. Persons connected with a simulated election for minors if one has been authorized by the County Board of Elections; and
- f. Other officials and individuals necessary to conduct the election.

Source: 19:15-8.

COMMENT

This section, though reorganized and simplified, is substantially similar to 19:15-8. The group of “officials and individuals necessary to conduct the election” is intended to include not only poll officials,

but members of the County Board of Elections, the Commission, and others who may have a proper reason for being present at the polling place.

19A:5-7. Identity of voter; signature comparison

a. The Commission on Elections may establish a system of voting that does not require a person to vote in person in his or her district. The Commission may also establish a system of voter identification to be used as an alternative to signature comparison.

b. Unless the Commission has acted pursuant to subsection (a), a person who seeks to vote shall go to the polling place for the district where he or she is qualified to vote and shall state his or her name and address to the election officials. In a primary election, the person shall also announce the primary in which the person wishes to vote. If the officials find that the person is registered to vote in that district, they shall announce the name of the person, have the person sign the form established by the Commission and compare the signature with the sample signature in the registration records. If the officials find from the comparison that the person is the person registered to vote, and if the election officials do not find that the person is not qualified to vote in the district, the person shall be authorized to vote.

c. If a person is unable to sign the form, other means of identification established by the Commission shall be used.

d. If a person has registered by mail, and has not voted since the current registration, the election officials shall require that the person present valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the person. If the voter fails to supply proper identification, the voter shall be permitted to vote using a provisional ballot.

Source: 19:31A-8; 19:23-46.

COMMENT

This section, though reorganized simplified and condensed, contains most of the substance of 19:31A-8. However, detailed requirements and forms have been deleted, and the Commission on Elections has been given authority to establish forms and procedures. The requirement that an individual announce the primary in which he or she wishes to vote is taken from 19:23-46.

19A:5-8. Voting using provisional ballot

a. If election officials find that a person seeking to vote is properly registered to vote in another district, the officials may direct the person to the polling place for that district and shall, in any case, permit the person to vote using a provisional ballot.

b. If a person seeking to vote asserts that he or she is qualified to vote and registered but election officials cannot find a record of the person's registration, the person shall be permitted to vote using a provisional ballot. Prior to the use of the provisional ballot, the election official shall make an effort to determine if the records pertaining to the person's qualification to vote are available. If the election official is unable to determine if the person is qualified, or if the available information suggests that the person is not qualified, the voter shall be informed that the provisional ballot may not be counted unless a successful application is made to the Superior Court.

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c. Any person who votes using a provisional ballot shall first sign a written affirmation indicating that the person is a registered voter in the jurisdiction in which the person desires to vote, and that the person is eligible to vote in the current election.

d. The election officials shall send the provisional ballot to the County Board of Elections, which shall review the matter and count the provisional ballot if it finds that the person was qualified to vote.

e. An election official shall provide to any person casting a provisional ballot written information explaining that the voter may determine, by accessing a free access notification system, whether the vote was counted or not and, if not, why not. The written material shall also inform voters that they may apply to the Superior Court to request that their vote be counted by following the procedure set forth in 19A:7-8.

f. The free access system made available by the Commission on Elections to inform provisional voters of the status of their vote shall be secure and confidential and the integrity of any information collected by the system protected. Access to information pertaining to an individual ballot shall be limited to the person who cast that ballot.

Source: New.

COMMENT

While there is no provision of current law similar to this section, parts (a) and (b) reflect current practice. Sections (c), (e) and (f) are new and are included to incorporate certain of the provisions of the proposed federal legislation.

19A:5-9. Application for permission to vote

a. A person who has been denied permission to vote on the day of election for any reason may apply to a Superior Court judge for permission to vote. No papers need be filed; the court shall entertain oral applications. The applicant may appear pro se or with counsel. A challenger or an election official may appear or be represented by counsel. The challenged voter may testify as to facts establishing eligibility to vote, and shall furnish a copy of any information considered by the election officials that was provided to the voter. The rules of evidence shall not apply to these proceedings. The judge shall grant the application and provide the challenged voter with written authorization to vote on that day if the judge finds the following facts established by a preponderance of the evidence that the applicant is a qualified voter and either:

(1) The applicant is properly registered at his or her current address; or

(2) The applicant was properly registered at a prior address at the time of the last election in which the applicant voted but has moved within the state and in good faith attempted to register at the new address within time by completing a registration form and mailing it to the Commission on Elections or delivering it to a registration agency no later than 30 days before the election.

b. The judge of the Superior Court shall file the record of the proceeding in the office of the county clerk of the county. The record shall be an open and public record. The county shall pay all costs and expenses of such proceedings.

Source: 19:15-18.3.

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COMMENT

This section is substantially identical to 19:15-18.3, but it removes the distinction between challenges from the superintendent of elections' challenge list and other challenges.

19A:5-10. Voting

a. No person who has a right to vote at any election shall be arrested by virtue of civil process on the day on which the election is held.

b. When a person has been authorized to vote, the voter shall be permitted to enter the voting booth. A voter shall leave the booth immediately after voting, and shall not remain in the voting booth longer than two minutes. A voter who has emerged from the voting booth shall not be permitted to reenter it.

c. Only one voter at a time shall be permitted in the voting booth to vote. A voter shall be permitted to be accompanied into the voting booth by a dependent child.

d. A person who is unable to vote without assistance because of inability to read or write, blindness or other physical disability may have assistance by a person selected by the voter or by two election officials who are not members of the same political party.

e. Other than as provided by 19A:5-2(b), any person who, for any reason, including a federal or state court order, votes after the polls close, shall vote only by provisional ballot. The provisional ballot of any person who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for the closing of the polls shall be held apart from other provisional ballots cast by persons not affected by the order.

Source: 19:4-4; 19:31A-8; 19:52-3.

COMMENT

Subsections (a) and (b), though much simplified, retain the substance of 19:52-3. Subsection (d), simplified, is substantively similar to a provision in 19:31A-8. Subsections (c) and (e) are new and are included to incorporate certain of the provisions of the proposed federal legislation.

19A:5-11. Tabulating votes

As soon as the polls have closed, election officials shall tabulate the votes cast in the manner provided by regulations of the Commission on Elections for the voting system used. Two election officials who are not of the same certified political party shall perform each step in the tabulation process. Tabulation shall be done without unnecessary delay and within the view of the challengers present.

The tabulation shall be transmitted without delay to the County Board of Elections in a manner approved by the Commission. The County Board shall transmit a tabulation of the votes cast in any election for state or federal office or for any statewide public question to the Commission.

Source: 19:16-2; 19:16-3; 19:16-4; 19:16-5; 19:16-6; 19:16-7; 19:16-8; 19:16-9; 19:16-10; 19:23-49; 19:23-50; 19:52-5; 19:52-6; 19:53A-8.

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COMMENT

This section derives from diverse sections of current law, which address the tabulation of the votes and the transmission of that information after voting has concluded. The provisions collected here have been simplified and shortened.

19A:5-12. Basis of certification

At every election, the persons qualified for the offices to be filled and for whom the greatest number of votes were cast shall be elected to the offices. If the election results in a tie vote, a runoff election shall be held to determine who is elected to the office in question.

A public question shall be approved when the percentage of voters required by the statute authorizing the proposal of such public question properly votes in favor of its approval.

Source: 19:3-4; 19:3-6.

COMMENT

This section is substantially similar to 19:3-4 and 19:3-6, but the language has been simplified. The provision pertaining to a runoff election is new.

19A:5-13. Certification of election results

a. After it receives and tabulates the votes, the Commission on Elections shall certify the result of any election for state or federal office or for any statewide public question, and the County Board of Elections shall certify the result of any other election.

b. The election results for any state office or statewide public question shall be certified to the Secretary of State.

c. The election results for any countywide office or public question, or any matter voted on by the voters of more than one municipality, shall be certified to the appropriate county clerk.

d. The election results for any election in which a single municipality or any part thereof is voting shall be certified to the appropriate municipal clerk.

e. School elections shall be certified as set forth in the Education Law.

f. In addition to certifying the election results to the proper government officials, the Commission or the County Board, as appropriate, shall also issue a certificate to each successful candidate, which certificate shall serve as prima facie evidence of the right to hold the office to which the candidate shall have been determined to be elected.

g. The election results for members of the United States Senate or House of Representatives shall be certified to the Governor who shall sign the certificate and affix the State seal and transmit the certificate to the clerk of the United States Senate or the House of Representatives.

h. The election results for the President and Vice President of the United States shall be certified to the Governor who shall sign the certificate and affix the State seal and transmit the certificate to the electors of this State.

Source: 19:16-8; 19:16-9; 19:16-10; 19:17-1; 19:17-2; 19:17-3; 19:19-8; 19:19-9; 19:19-10; 19:19-11; 19:19-12; 19:19-13; 19:19-15; 19:19-16; 19:19-17; 19:20-1; 19:20-2;

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19:20-3; 19:20-4; 19:20-5; 19:20-6; 19:20-7; 19:20-8; 19:20-9; 19:21-1; 19:21-2; 19:21-3; 19:21-4; 19:21-5; 19:21-6; 19:21-7; 19:22-1; 19:22-2; 19:22-3; 19:22-4; 19:22-5; 19:22-6; 19:22-7; 19:22-8; 19:22-9; 19:23-49; 19:23-50; 19:23-51; 19:23-52; 19:23-53.

COMMENT

This section derives from sections of current law concerning the certification of election results. The provisions collected here have been simplified and shortened, and set forth the role of the Commission on Elections and the County Boards of elections.

19A:5-14. Securing the voting system

After the district election officials have tabulated the votes, they shall secure the voting system in the manner provided by regulations of the Commission on Elections. The system shall be secured in a way that will allow a recount of votes if one is ordered.

Source: 19:18-1; 19:18-2; 19:18-3; 19:18-4; 19:18-6; 19:18-7; 19:18-7; 19:18-8; 19:52-5; 19:52-6; 19:52-6.1; 19:52-7; 19:53A-14.

COMMENT

This section derives from sections of current law which address securing voting systems. The provisions collected here have been simplified and shortened, and they reflect the role of the Commission on Elections in establishing the specific procedures to be followed.

19A:5-15. Recount

a. Within ten days of an election, a candidate or any ten voters may apply to a Superior Court for a recount of the votes cast at the election in any district or districts.

b. The Court shall order a recount and set the procedure for the recount and shall fix the amount of money required to be deposited with the court as security for the expense of the recount. The amount shall be based on the projected cost of the recount but shall not exceed \$25 per election district to be recounted.

c. If, as a result of the recount, the result of an election or public question is changed, the court shall order the result corrected. A copy of the order shall be filed with the Commission on Elections.

d. The full cost of the recount shall be borne by the State if:

(1) The difference between the vote totals of the top two candidates is less than one-half of one percent of the total votes cast, or

(2) As a result of the recount, the result of an election is changed.

Otherwise, the cost of the recount in any district in which the difference in the vote between the top two candidates or the vote total for a public question is not changed by ten percent or more of the total number of votes cast in that district shall be paid out of the deposit made by the candidate for that district.

Source: 19:28-1; 19:28-2; 19:28-3; 19:28-4; 19:28-5; 19:28-6; 19:28-7; 19:28-8.

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COMMENT

Subsection (a) is substantially identical to 19:28-1. The portions of Subsections (b) that concern the security deposit are substantially identical to provisions in 19:28-2. The subsection also allows the judge to set the terms of the recount. Though stripped of procedural detail, that provision is substantially similar to 19:28-3. Subsection (c) is a simplification of sections 19:28-4 through 19:28-8. Subsection (d) is substantially similar to the part of 19:28-2 that concerns cost of the recount.

19A:5-16. Preserving election equipment and records

a. The Commission on Elections shall adopt regulations establishing the custody of election equipment and supplies and a schedule for the destruction of documents or other records pertaining to elections.

b. When not in use for an election, the equipment and supplies necessary for the conduct of an election shall be maintained by the County Superintendent or Administrator of Elections.

c. All documents or other records of the results of an election shall be maintained until the time period within which to certify or challenge any aspect of that election has passed and until such time as they may be destroyed in the manner and pursuant to the schedule adopted by the Commission, whichever is longer.

Source: 19:10-1; 19:18-1; 19:18-2; 19:18-3; 19:18-4; 19:18-5; 19:18-6; 19:18-7; 19:18-8; 19:19-14; 19:26-1; 19:26-2.

COMMENT

This section derives from sections of current law which address the preservation of equipment, supplies, documents and other records of elections. The provisions collected here have been simplified, shortened and modified to reflect the fact that paper ballots and the associated equipment are no longer widely used for elections. This section also has been modified to reflect the role of the Commission on Elections in establishing the specific procedures to be followed.

19A:5-17. Responsibility for cost of elections

a. All costs of conducting general and primary elections shall be paid by the County Board of Elections.

b. Special costs of municipal, school and fire district elections shall be paid by the municipality, school board or fire district. Costs allocable to one entity will be borne by that entity; shared costs will be divided between the entities evenly. Other costs of municipal, school and fire district elections shall be paid by the County Board.

c. "Special costs" shall mean:

- (1) The pay of election officials hired to conduct the election;
- (2) Any cost of transportation of voting machines to the voting districts paid to private contractors;
- (3) Any overtime pay of county employees necessary to conduct the election;
- (4) Printing costs for ballots paid to private contractors;
- (5) Mailing sample ballots; and

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(6) Any other costs paid by the County Board directly resulting from the election.

d. "Special costs" shall not include:

- (1) Allocated cost of county employees; or
- (2) Allocated cost of county equipment and supplies.

Source: New.

COMMENT

While Chapter 45 of Title 19 contains provisions on the costs of elections, none of them regulate the division of costs among the counties, school boards and municipalities for non-partisan elections. Current practice varies. This section is intended to settle this issue.

CHAPTER 6. ABSENTEE AND OTHER PRE-ELECTION DAY VOTING PROCEDURES

19A:6-1. Pre-Election Day voting

a. The Commission on Elections shall establish procedures to allow any registered voter of New Jersey to vote during the 14-day period prior to Election Day subject to the requirements of this section.

b. The Commission shall design, print and distribute a uniform pre-Election Day request to vote form and these forms shall be available to the public at all County Superintendents or Administrators of Elections and registration agencies. These forms shall be available by written or electronic request and may be delivered by written or electronic methods.

c. The Commission shall establish deadlines for filing a pre-Election Day request to vote form, but shall not set a deadline earlier than seven days prior to the date of the Election.

Source: 19:57-1 et seq.

COMMENT

This section replaces existing absentee ballot law that requires a civilian voter to state a reason why that voter cannot appear at the poll on Election Day. Because the law applies to voters physically present in the state on Election Day, the term "absentee" is a misnomer. The Commission elected to dispense with the requirement that a voter provide a reason to obtain an absentee ballot since, as a practical matter, election officials do not subject the request form to a merit review. The liberalized absentee ballot is more accurately described as a procedure to cast a ballot prior to Election Day. Persons covered by federal law, military and overseas voters are treated separately in Section 6 since federal law defines these terms and sets minimum requirements.

19A:6-2. Approving or rejecting a pre-Election Day vote request

a. A voter who wants to vote by pre-Election Day ballot shall complete and sign a pre-Election Day request to vote form requesting either a written ballot or permission to vote in person at the County Board of Elections. The form shall be mailed or delivered to the County Superintendent or Administrator of Elections for the county in which the voter is registered. A voter may request to vote by pre-Election Day ballot for the next four regularly scheduled general elections on a single form.

b. The County Superintendent or Administrator of Elections shall approve a pre-Election Day request to vote form if the voter signs the form, is registered, and is qualified by law to vote.

c. If a voter has registered by mail, and has not voted since the current registration, the voter shall submit, with the pre-Election Day request to vote, a photocopy of valid photo identification or a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the person. If the voter fails to supply proper identification, the ballot submitted shall be treated as a provisional ballot.

d. If the form is approved, the County Superintendent or Administrator of Elections shall mark the voter registration record of the voter in the statewide registration database to show that the voter has opted to cast a pre-Election Day ballot. Except as prescribed by federal law, that voter shall not be permitted to vote in person at the polls on Elections Day.

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e. If the County Superintendent or Administrator of Elections rejects the request, it shall inform the voter of the reason and provide an opportunity for the voter to challenge that decision.

Source: 19:57-10.

COMMENT

This section specifies the requirements that a request to vote prior to Election Day is granted if the voter is registered, otherwise qualified by law to vote and eligible to vote in the particular election for which the request is made. A voter who is granted the option to vote prior to Election Day is barred from voting in person at the polls. This bar is also reflected in the language of 19A:2-8, which clarifies that the voter registration database shall include an indication of whether the voter has requested a pre-Election Day ballot.

19A:6-3. Pre-Election Day voting procedure

a. The Superintendent or Administrator of Elections shall print and distribute a pre-Election Day ballot in a form approved by the Commission on Elections and identical to the ballot used on the day of Election. The ballot shall be available at least 30 days prior to the date of the Election.

b. The Commission shall establish procedures to permit in-person pre-Election Day voting at designated places where the voter may vote by using an approved voting machine rather than a paper ballot.

Source: 19:57-4.1; 19:57-5; 19:57-8.

COMMENT

This section omits from the statute the specific requirements as to the content of the request form and the ballot and the methods by which voters may obtain a request form and cast a ballot. Since an objective of election law reform is the reduction of paper ballots, this section requires the Commission on Elections to develop procedures to allow voters to cast a pre-Election Day ballot by machine at designated offices.

19A:6-4. Verification and secrecy of ballot

a. The Commission on Elections shall establish procedures to ensure the secrecy of pre-Election Day ballots submitted to a County Board of Elections, and to ensure that the voter voting by pre-Election Day ballot is the registered voter whose request to vote prior to the date of election was granted. The Commission may use an inner and outer envelope whereby the inner envelope contains the voter's marked paper ballot, is signed and sealed and placed in the outer envelope for delivery to the approved office.

b. The Commission shall establish procedures that do not require a notarized witness signature, an address, a postmark, or other formality not necessary to confirm the identity of the voter.

c. If a voter casts a pre-Election Day ballot at a designated voting machine, the Commission shall apply the same methods of voter identification used at a polling place on Election Day.

Source: 19:57-17; 19:57-19; 19:57-20; 19:57-21; 19:57-22; 19:57-23; 19:57-24.

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COMMENT

This section replaces the statutory requirements for handling absentee ballots. It leaves the details to the regulations of the Commission on Elections. However, it imposes the standards of secrecy and verification.

19A:6-5. Counting the pre-Election Day vote

Every pre-Election Day ballot received by an approved office prior to the close of the Election Day shall be counted unless that voter is shown to have died prior to Election Day or that vote is successfully challenged.

Source: 19:57-26; 19:57-30.

COMMENT

This section follows existing law.

19A:6-6. Pre-Election Day voting by persons covered under federal law

a. The Commission on Elections shall establish procedures to comply with the Uniformed and Overseas Citizens Absentee Voting Act, or successor federal law, and to meet the non-mandatory recommendations of that Act to simplify and facilitate the request and submission of absentee ballots for use by absent uniformed services voters.

b. Persons covered by subsection (a) shall be entitled to vote by pre-election day ballot in all elections held in this state provided they otherwise meet the requirements to vote in that particular election.

Source: New.

COMMENT

New Jersey has adopted the Federal Post Card Application to permit absent uniformed services voters and overseas voters to cast their ballots absentee. 42 U.S.C. 1973ff. The UOCAVA was amended by P.L. 107-107; 2001, 115 Stat. 1012. The Commission shall continuously review and conform registration and absentee procedures for voters covered by the UOCAVA.

19A:6-7. Rule making authority

The Commission on Elections shall adopt rules to implement this Chapter.

Source: New.

COMMENT

The Commission on Elections must develop rules defining the mechanics of implementing the pre-Election Day ballot procedures.

CHAPTER 7. CHALLENGERS AND CHALLENGES

19A:7-1. Appointment of challengers

a. The following persons may appoint challengers:

(1) A candidate may appoint two challengers for each election district in which the candidate's election is to be held.

(2) The chairman of the county committee of a certified political party that has nominated candidates in an election in a district greater than a single municipality may appoint two challengers for each election district in which the election will be held.

(3) The chairman of the municipal committee of a certified political party that has nominated candidates in an election within the municipality may appoint two challengers for each election district in which the election is to be held.

(4) The proponent and the opponent of a public question may appoint two challengers for each election district in which the public question is to be voted on.

b. No person may be appointed a challenger who is not a registered voter.

c. A list of the challengers appointed shall be filed with the County Board of Elections no later than 14 days prior to the election at which the challengers are to act.

Source: 19:7-1; 19:7-2; 19:7-3.

COMMENT

This language is substantially similar to the source sections, but has been simplified and shortened.

19A:7-2. Permits to challengers

a. The County Board of Elections shall issue a permit and an identifying badge for each person appointed a challenger.

b. Each permit shall authorize the person to act as a challenger in any district in the county in which the election for which the challenger was appointed will take place.

c. At the request of the person who nominated a challenger, the permit for that challenger may be revoked and a permit issued in its place for a different challenger at any time up to and including the day of election.

Source: 19:7-4.

COMMENT

This substance of the section is similar to the source section, except for one important change: subsection (b) permits a challenger to act in any district in the county in which the election for which the challenger was appointed will take place, rather than limiting a challenger to a single district.

19A:7-3. Identification of challengers

A challenger shall wear the badge furnished by the County Board of Elections that identifies the candidate, political officer or other person who appointed the challenger.

Source: 19:7-6.

COMMENT

This language is substantially similar to the source section, but has been simplified and shortened.

19A:7-4. Powers of challengers

a. A challenger may be present in the voting place and shall be provided a place to sit where the challenger can hear the names of persons seeking to vote announced.

b. A challenger may be present and may witness the confirmation of voter identification.

c. A challenger may challenge the right to vote of any person.

d. A challenger may be present when the votes are counted, including when pre-election day votes are counted, and may challenge the counting or rejecting of any ballot or part of any ballot.

e. A challenger may not address voters directly unless authorized to do so by a poll official.

Source: 19:7-5; 19:15-17; 19:15-22.

COMMENT

This language is substantially similar to the source section, but has been simplified and shortened. It should be noted that the term “voting place” includes polling places used for pre-election day voting.

19A:7-5. Number of challengers

Unless the County Board of Elections gives written permission, no more than one challenger appointed by a single person shall be present at any time in any election district. If the Board permits more than one challenger to be present at any time, it shall permit a like number of challengers to be present on behalf of any opposing candidate, party or public question.

Source: 19:7-6.1.

COMMENT

This language is substantially similar to the source section, but has been simplified and shortened.

19A:7-6. Basis for challenge

A person seeking to vote may be challenged only on the ground that the person is ineligible or disqualified from voting.

Source: 19:4-1.

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COMMENT

The principle announced by this section is not explicitly stated in current law, but it is fairly implied by 19:4-1.

19A:7-7. Challenges

a. An authorized challenger or a poll official may challenge a person's right to vote, stating the ground for the challenge and including the information on which the challenge is based. A challenge may not be made because of a person's race, color, national origin, expected manner of casting a vote or place of residence other than residence necessary to satisfy requirements for voting in the district.

b. When a person's authority to vote is challenged, the poll officials present at the polling place shall question the person and decide the challenge. The person shall be allowed to vote unless the poll officials find that the person is not qualified to vote in the district from statements of the person seeking to vote or evidence of public records.

c. If the poll officials find that a person seeking to vote is not qualified to vote in the district but the person disputes that finding, the person shall be permitted to vote on a provisional ballot. The poll officials shall send the ballot and a record of the information on which the finding was made to the County Board of Elections, which shall review the matter and count the provisional ballot unless it finds that the person was not qualified to vote in the district.

d. As set forth in 19A:5-8(e) a poll official shall provide to any individual casting a provisional ballot written information explaining that the voter may determine, by accessing a free notification system, whether the vote was counted or not and if not, why not. The written material shall also inform the voter that the voter may apply to the Superior Court to request that the vote be counted following the procedure set forth in 19A:7-8.

Source: 19:15-18; 19:15-22; 19:15-23; 19:15-24; 19:23-48; 19:53C-3.

COMMENT

This section differs from its source in providing a stricter standard for accepting challenges. For the most part, subsection (a) is not changed in substance from 19:15-18. The requirement to supply information on which the challenge is based is similar to the requirement of an affidavit where a challenge is granted. See, 19:15-18.2. Subsection (b) is new in requiring a finding based on reliable information before a person is denied a right to vote. However, the affidavit requirement of current 19:15-18.2 has a similar effect. Subsection (c) is also new. At present, the only recourse for a voter who has been successfully challenged is to go to court. See, 19:15-18.3. This section removes the distinction between challenges from the superintendent of elections' challenge list and other challenges. The purpose of a statewide registration database is to make every effort to keep registration information current and accurate. Reliance on a mailing and challenges where letters are returned is an inefficient manner in which to disclose voters who have moved and errors in the postal system may cause problems for qualified voters. For that reason, the section treats all challenges alike.

19A:7-8. Application by challenged voter to Superior Court

a. A voter who has been challenged and found not qualified to vote, even if permitted to vote provisionally, may contest the challenge in the Superior Court seeking a determination that the voter is qualified and an order that the provisional ballot be counted.

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b. No papers need be filed; the court shall hear oral applications. The challenged voter may appear pro se or represented by counsel. The challenger may appear or be represented by counsel. The rules of evidence shall not apply to these proceedings.

c. At the time of the hearing, the challenged voter shall be permitted to state the facts the voter believes establish eligibility to vote and to provide a copy of the certifications signed at the time of the challenge.

d. The judge shall grant the application of the voter, and provide the voter with written confirmation of the authorization to vote, requiring that the voter's provisional ballot be counted, if the judge finds that the challenged voter:

(1) Is a citizen of the United States and a resident of this State, and has been for at least 30 days before the election,

(2) Is at least 18 years of age,

(3) Has not been convicted of a crime which would disenfranchise a person under the laws of this State, and

(4) Was either properly registered to vote at the location at which the voter attempted to vote, made a proper good faith attempted to register within the time prescribed by law, or was properly registered at the time of the last election at which the voter voted, but has since moved and in good faith attempted to register at the new address within the time prescribed by law.

e. The judge hearing the application of the voter shall cause a full record of the proceedings to be made, transcribed, and filed in the office of the County Board, which record shall be a public record.

f. All costs and expenses of the Superior Court proceedings and the preparation of the transcript shall be paid by the county.

Source: 19:15-18.3; 19:15-19; 19:15-20; 19:15-21.

COMMENT

For the most part, the section is identical in substance to 19:15-18.3. Applicability of the court procedure is broadened in two respects. First, persons who have been allowed to vote on a provisional ballot are given the explicit authority to seek a court determination of their right to have the vote counted. Since all persons who claim a right to vote are to be given provisional ballots, without such a provision the section would be a nullity. Even though current law does not contain this provision, courts now entertain actions to require that a provisional vote be counted. Second, the limitation in current law as to persons on the challenge list prepared by the Superintendent of Elections has been deleted. Current practice does not seem to be in accord with that limitation and there is no basis to deny any person denied the right to vote quick and efficient recourse to the courts.

CHAPTER 8. PETITIONS FOR NOMINATION

19A:8-1. Direct petition and primary election

Candidates for public office, other than electors for President and Vice President of the United States, shall be nominated directly by petition, or at the primary for the general election held pursuant to this title.

Source: 19:13-1; 19:23-8.

COMMENT

This section is substantively identical to provisions of 19:13-1 and the nomination by petition language should be read to include candidates in a primary election now covered by 19:23-8.

19A: 8-2. To whom petition addressed

a. Petitions naming candidates for office to be filled by voters of the entire State, of any congressional district, of any political division or district greater than a single county, or for election to the Senate or General Assembly, shall be addressed to the Commission on Elections.

b. Petitions nominating candidates for office to be filled by voters of a single county, part of a county but more than a single municipality, and all other petitions naming candidates to be voted for at the general election, shall be addressed to the county clerk.

c. Petitions nominating candidates for office to be filled by voters of a single municipality, or part of a municipality, and not to be voted for at the general election, shall be addressed to the municipal clerk.

Source: 19:13-3; 19:23-6.

COMMENT

Subsections (a) and (b) are substantively identical to provisions of 19:13-3 and 19:23-6 although the prior reference to the Secretary of State has been replaced with a reference to the Commission on Elections. Subsection (c) is new; it is intended to provide for non-partisan municipal elections.

19A:8-3. Contents of petition

a. A petition shall:

(1) Set forth the name and place of residence of each candidate, the political party in whose primary the candidate seeks to be nominated, and the title of the office for which each candidate is named.

(2) Include a statement that the petitioners are legally qualified to vote for the offices named in the petition, that they have not signed any other petition for these offices, and that they pledge themselves to support and vote for the candidates named.

(3) State in not more than three words the slogan of the party or principles to be printed on the ballots with the names of the candidates. The slogan shall not contain the name of any

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political party entitled to participate in the primary election, any derivative of the party name, or any part thereof.

(4) Be arranged to contain sufficient spacing between the signature lines of the petition to permit each signer to provide his or her printed name, place of residence and signature.

b. A petition nominating electors for President and Vice President of the United States may include the names of the candidates for President and Vice President for whom the electors are to vote, but the petition or petitions shall not include the names of any candidates for President or Vice President who have been nominated at a convention of a political party, as defined by this title.

Source 19:13-4; 19:23-7.

COMMENT

This section is substantively similar to the parts of 19:13-4 and 19:23-7 that regulate the contents of a petition. Other parts of the section, dealing with limitations on nomination by petition, have been moved to the section on that subject.

19A:8-4. Signatures to petition; number; addresses

a. A petition for nomination for a statewide office shall require signatures of a number of legally qualified voters of this State equal to 2% of the entire vote cast for members of the General Assembly at the preceding general election or 800 voters, whichever is less.

b. A petition for nomination for an office elected from a district or political subdivision shall require signatures of a number of legally qualified voters of this State equal to 2% of the entire vote cast for members of the General Assembly at the preceding general election in that district or political subdivision or 100 voters, whichever is less.

c. The place of residence of each voter signing a petition shall be included with the signature.

d. A voter may sign no more than one petition for each officer to be elected.

e. Not all of the names of the petitioners need be signed to a single petition.

Source: 19:13-5; 19:13-6; 19:23-8; 19:23-10.

COMMENT

Subsections (a) and (b) are substantially identical to provisions of 19:13-5. Another part of that statute providing separately for the number of signatures requires in new districts was deleted as unnecessary. Subsections (c) and (d) incorporate the provisions of 19:13-6. The language regarding petitioner for a primary, which had stricter signature requirements, was revised to be consistent with this language.

19A:8-5. Certification of petition

Each petition shall be accompanied by an affidavit that the petition is made in good faith and that the affiant believes that the signers are duly qualified voters.

Source: 19:13-7; 19:23-11.

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COMMENT

This section is substantially similar to 19:13-7 and 19:23-11, but incorporates three changes. The requirement that the affiant be a signer of the petition has been deleted, as has the requirement that the affiant witness all of the signatures made on the petition, and the requirement of a written affidavit has been made explicit.

19A:8-6. Acceptance of nomination by candidate

A petition shall not be filed unless it is accompanied by acceptance of nomination consisting of:

- a. A written acceptance of the nomination signed by the candidate;
- b. The oath of allegiance prescribed by statute taken by the candidate before an officer authorized to take oaths in this State;
- c. A certification that the candidate is a resident of and a legal voter in the jurisdiction of the office for which the nomination is made.

Source: 19:13-8; 19:23-15.

COMMENT

This section is substantively similar to the parts of 19:13-8 and 19:23-15 that regulate the certifications that must accompany a petition. Other parts of the section, dealing with limitations on who may accept nominated by petition, have been moved to the section on restrictions on nomination by petition.

19A:8-7. Restrictions on nomination by petition

- a. A petition for direct nomination, including a petition filed to fill a vacancy, shall not nominate to any elective public office a candidate who unsuccessfully sought the nomination of a political party to that office in the primary election held in the same calendar year.
- b. No such petition shall undertake to nominate any candidate who has accepted the nomination for the primary for such position.
- c. A candidate shall not sign an acceptance for more than one petition of nomination under this chapter.
- d. A candidate shall not sign an acceptance for a petition for the office of member of the House of Representatives in more than one congressional district in the same calendar year.

Source: 19:13-8; 19:13-8.1; 19:23-15.

COMMENT

Subsection (a) is substantively identical to 19:13-8.1. Subsection (b) is substantively identical to part of 19:13-4. Subsections (c) and (d) are substantively identical to part of 19:13-8.

19A:8-8. Time for filing petitions

- a. Petitions and certifications and acceptances nominating electors of candidates for President and Vice President of the United States, shall be filed with the Commission on Elections before 4:00 p.m. of the 99th day preceding the general election.

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b. Petitions and certifications and acceptances for other offices for which primary elections are held shall be filed with the officer to whom they are addressed before 4:00 p.m. of the day of the holding of the primary election.

c. Petitions and certifications and acceptances for offices for which primary elections are not held shall be filed with the officer to whom they are addressed before 4:00 p.m. of the 60th day preceding the date of election.

d. Petitions and certifications and acceptances for a candidate for nomination in a primary election shall be filed with the officer to whom they are addressed before 4:00 p.m. of the 60th day preceding the date of the primary election.

Source: 19:13-9; 19:23-14.

COMMENT

Subsections (a) and (b) are substantively identical to the time provisions of 19:13-9 and are similar to the provisions of 19:23-14 except that the reference to the Secretary of State has been replaced with a reference to the Commission on Elections. Subsection (c) has been added to provide for non-partisan elections.

19A:8-9. Receipt of petitions

a. All filed petitions, and determinations of various officers regarding objections to those petitions and the validity of the petitions, shall be open under proper regulations for public inspection.

b. The officer who receives a petition shall notify the Commission on Elections of the names of all candidates, other than candidates for federal office, nominated by petition and any other information required by the Commission and shall notify the Commission immediately upon the withdrawal of a petition of nomination.

Source: 19:13-9.

COMMENT

This section is substantively identical to provisions of 19:13-9.

19A:8-10. Objection to petition

a. Every petition of nomination in apparent conformity with the provisions of this Title shall be deemed to be valid unless an objection to it is filed in writing with the officer with whom the original petition was filed not later than the fourth day after the last day for filing petitions.

b. If an objection is made to a petition, the officer shall immediately give notice of the objection to the candidate who may be affected by the objection, mailed to the candidate at the address given in the petition of nomination.

c. Unless a court orders otherwise, the officer with whom the petition is filed shall make a determination regarding the validity of the objection in a summary way. For this purpose, the officer may subpoena witnesses and take testimony or depositions. In the case of petitions nominating electors of candidates for President and Vice President of the United States, the Commission on Elections shall file a determination in writing by the 93rd day before the general

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election. In other cases, the officer shall file a determination in writing on or before the tenth day after the last day for the filing of petitions.

d. A candidate may challenge the officer's determination by filing a verified complaint with the Superior Court. If the complaint concerns a petition for electors of candidates for President and Vice President of the United States, it shall be filed at least 95 days before the general election. In other cases, the complaint shall be filed on or before the 12th day after the last day for the filing of petitions. The court shall hear the matter in a summary manner and shall order any relief that is necessary to protect and enforce the rights of candidates. The court's order or determination shall be filed within three days after the filing of the complaint.

Source: 19:13-10; 19-13-11; 19-13-12.

COMMENT

Subsections (a) and (b) are substantively identical to 19:13-10. Subsection (c) is substantially identical to 19:13-11 except that the reference to the Secretary of State has been replaced with a reference to the Commission on Elections. Subsection (d) is substantially identical to 19:13-12. While there is no apparent reason for the small differences in time periods for determination of objections between presidential and other petitions, these differences have been preserved.

19A:8-11. Amendment of petitions; time

a. If a petition of nomination is defective, except as to the number of signatures, the officer with whom the petition has been filed shall promptly notify the candidates setting forth the nature of the defect and the date before which the petition may be amended.

b. A candidate whose petition of nomination, certification or acceptance is defective may amend as necessary, but may not add signatures. The amendment may be made by filing a new or substitute document. A proper amendment shall be treated as if filed on the date of the filing of the original document.

c. Any amendment of petitions for electors for candidates for President and Vice President of the United States shall be made on or before the 93rd day before the general election. Any amendment of other petitions shall be made on or before the tenth day after the last day for the filing of petitions.

d. This provision shall be liberally construed to protect the interest of candidates.

Source: 19:13-13; 19:23-19; 19:23-20.

COMMENT

This section is substantively identical to provisions of 19:13-13 but it incorporates language drawn from 19:23-19 calling for notification of a candidate regarding a defective petition and modifies the deadline for amending petitions previously included in 19:23-20.

19A:8-12. Nomination of presidential and vice presidential electors and candidates

a. In presidential election years, the State committee of a political party shall meet at the call of its chairman, within one week following the closing of the party's national convention, to nominate candidates for electors of President and Vice-President of the United States.

b. The nominations shall be certified in writing and shall contain the name and place of residence of each person nominated, and the names of the candidates for President and Vice-

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President for whom such electors are to vote. The nominations may state the designation of the party the nominating body represents. The State committee may also appoint a committee to fill vacancies among candidates for elector, and include the names and addresses of the committee in the certificate.

c. The certificate shall be signed by the State chairman and shall be accompanied with an affidavit of the State chairman that he or she is the State chairman of the political party and that the certificate and statements contained in it are true to the best of knowledge and belief. The certificate shall be accompanied by statements that the persons named in the certificate accept nominations and by the oaths of allegiance prescribed by statute.

d. The certificate of nomination and acceptances shall be filed with the Commission on Elections not later than one week after the nomination of electors of President and Vice-President of the United States.

e. The procedure for objections to the certificates of nomination, the determination of the validity of objections, the correction of defective certificates, and the presentation of certificates and any attached documents, shall be the same as for direct petitions of nominations.

Source: 19:13-15.

COMMENT

Though simplified, this section is substantively similar to provisions of 19:13-15. Subsection (b) requires that the names of the candidates for President and Vice President be included in the certification. At present, that is allowed but not required. In section (d), the reference to the Secretary of State was replaced with a reference to the Commission on Elections.

19A:8-13. Declined nomination

a. A person may decline nomination for election to public office by filing a signed and acknowledged writing with the officer with whom the original petition or certificate of nomination was filed at least 30 days before the day of the election.

b. In the case of the nomination of electors of President and Vice-President of the United States by the State committee of a political party the officer to whom the notification of declination is given shall inform the committee appointed by the State committee to fill vacancies, or if there is no such committee, the chairman of the State committee.

c. In all other cases, the officer to whom the notification of declination is given shall inform at least five of the persons who signed the original petition that the nomination has been declined.

Source: 19:13-16; 19:13-17.

COMMENT

Subsection (a) is substantively identical to provisions of 19:13-16. Subsections (b) and (c) are substantively identical to provisions of 19:13-17.

19A:8-14. Filling vacancies generally

a. When a person declines nomination, if a nomination petition or certificate is insufficient or inoperative, or if a nominee dies, becomes disabled, is convicted of an offense that

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would preclude the candidate from holding office, withdraws, becomes ineligible, or vacates nomination for any other reason, the vacancy may be filled as provided in this section.

b. If the candidate vacating the nomination was nominated directly by petition, the successor shall be nominated in the same manner by direct petition. The new petition of nomination must be filed not later than 25 days before the day of election.

c. If the candidate was nominated by a primary election:

(1) For a statewide office, the candidate shall be selected and certified by the State committee of the political party in which the vacancy occurred;

(2) For a countywide office, the candidate shall be selected and certified by the county committee of the political party in which the vacancy occurred;

(3) For an office with a district comprised of parts of two or more counties, the candidate shall be selected and certified by members of the county committees of the party where the vacancy occurred who represent those portions of the counties comprising the district;

(4) For an office with a district comprised of part of a county, the candidate shall be selected and certified by those members of the county committee of the party where the vacancy occurred who represent those portions of the county comprising the district.

d. A selection shall be made pursuant to subsection (c) and a statement of the selection shall be filed not later than the 25th day before the election.

e. If the vacancy is for a candidate for elector of the President and Vice-President of the United States, the vacancy shall be filled by the committee to whom power was delegated to fill vacancies, or, if no committee was delegated that power, by the State committee of the political party that nominated the elector whose nomination is vacated. A statement of the selection of a candidate shall be filed not later than the 25 days before the election.

f. If there is no candidate on the primary election ballot of a political party for nomination for election to a public office in the general election and no write-in candidate for nomination for that office is certified as nominated at the primary election, a vacancy shall not be deemed to exist and the provisions of this section allowing vacancies to be filled shall not be applicable.

g. If a replacement candidate is selected to fill a vacancy less than 45 days before the election, the party that selects the candidate shall pay any cost associated with reprinting and remailing ballots.

h. No changes to the ballot shall be permitted less than 25 days before the election.

Source: 19:13-18; 19:13-19; 19:13-20; 19:13-20.1; 19:13-21.

COMMENT

Subsection (a) is substantively identical to provisions of 19:13-18. Subsection (b) is substantively identical to provisions of 19:13-19. Subsections (c) and (d) are derived from 19:13-20, but the detailed procedures specified in that section have been deleted as unnecessary. Subsection (e) is substantively identical to 19:13-20(c). Subsection (f) is substantively similar to 19:13-21, but the detailed procedures specified in that section have been deleted as unnecessary. Subsection (g) is substantively similar to 19:13-20.1. Subsection (h) was included to reflect the payment of costs rule adopted by the Court in *New Jersey Democratic Party, Inc. v. Samson*, --- N.J. --- (2002). Subsection (i) was added to clarify that there is a time

after which no changes to the ballot will be permitted regardless of whether or not an event has occurred that would normally justify such a change, including matters such as the death or withdrawal of a candidate.

19A:8-16. Statement to county clerks of nominations; vacancies

a. Not later than 86 days before an election, the Commission on Elections shall certify and forward to the county clerks a statement of candidates for election in the county. This statement shall contain the names and residences of the candidates, the offices for which they were nominated, and the names of the parties or the political appellation under which they were nominated. Candidates nominated directly by petition, without distinctive political appellation, shall be certified as independent candidates.

b. If a vacancy has occurred among the candidates whose petitions or certificate of nomination are on file with the Commission, the name of the person who has been nominated to fill the vacancy shall be inserted in the statement of candidates. If a vacancy occurs or is filled after the statement is sent, a corrected statement shall be forwarded to the county clerks immediately.

Source: 19:13-22; 19:13-23.

COMMENT

Subsection (a) is substantively identical to provisions of 19:13-22. Subsection (b) is substantively identical to provisions of 19:13-23 except that the reference to the Secretary of State has been replaced with a reference to the Commission on Elections.

CHAPTER 9. OFFICES, VACANCIES AND PUBLIC QUESTIONS

19A:9-1. Incompatible offices

a. No person shall hold at the same time more than one of the following offices: elector of President and Vice-President of the United States, member of the United States Senate, member of the United States House of Representatives, member of the New Jersey Senate or General Assembly, county clerk, register, surrogate or sheriff.

b. No person shall be elected a member of the House of Representatives, or an elector of President and Vice-President, who is an officer or employee of the United States or of the State of New Jersey.

c. No person may accept a nomination by petition or consent to the acceptance of a nomination in a petition for a primary election for more than one office to be filled at the same general election if the simultaneous holding of the two offices would be prohibited by the Constitution of the State of New Jersey.

Source: 19:3-5; 19:3-5.1

COMMENT

This section is substantially similar to the language of parts of 19:3-5 and 19:3-5.1.

19A:9-2. Qualification of presidential and vice-presidential electors

No person shall be elected an elector of the President or Vice-President of the United States unless that person is qualified to be a voter of the State, is at least 25 years of age, and has been a United States citizen for at least seven years by the date of the election.

Source: 19:3-5.

COMMENT

This section is substantially similar to the language of parts of 19:3-5.

19A:9-3. Void nomination or election

If a candidate for public office fails to file any statement or oath required by law, or files a false statement, the nomination or election of the candidate shall be void unless it appears from the evidence presented at proceedings conducted in the Superior Court that:

a. The act complained of was not committed by the candidate or with the candidate's knowledge or consent and the candidate took all reasonable means to prevent the commission of the offense;

b. The act complained of was trivial and that the candidate in all respects complied with the law; or

c. Any act or omission of the candidate arose from accidental miscalculation or some other similar reasonable cause; and not from lack of good faith, and it would be unjust to require the candidate to forfeit the nomination or election to office.

Source: 19:3-7; 19:3-9.

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COMMENT

This section is substantially similar to the language of 19:3-7 and 19:3-9 but has been simplified and shortened.

19A:9-4. Effect of void nomination

a. If a court determines that the nomination of any candidate at a primary election is void, and if the determination is made at least 30 days before the election, the court shall order that the name of the candidate not appear on the ballot, and the name of the candidate receiving the next highest number of votes at the primary shall be placed on the ballot.

b. If a determination that a nomination is void is made after the time within which modifications may be made to the ballot, and the candidate is elected, that election is void.

Source: 19:3-10; 19:3-11; 19:3-12; 19:3-13.

COMMENT

The language of this section is substantially similar to the language of 19:3-10, 19:3-11, and 19:3-12 but it has been simplified and shortened.

19A:9-5. Effect of void election to public office

a. If the determination is made that an election to a public office is void, no certification of election shall be delivered and if a certificate has been delivered, that certificate shall be void.

b. If the determination is made that an election to public office is void after the candidate has been inducted into office:

(1) A certified copy of the record of the determination shall be sent to the Attorney General of the State who shall have a duty to institute appropriate proceedings for the vacation of the office if no other such proceedings have been instituted.

(2) If the record pertains to the election of any candidate for the offices of United States Senator, member of Congress, State Senator or member of the General Assembly, the Attorney General shall, in lieu of instituting proceedings, send the certified copy of the record to the United States Senate, the House of Representatives, the State Senate, or the General Assembly, as appropriate.

(3) If the record pertains to the election of an individual to a party office, the Attorney General shall, in lieu of instituting proceedings, send to the appropriate party body a certified copy of the judgment and determination of the Court declaring the election void so that the certificate of election delivered to the candidate having the next highest number of votes shall be honored by that body. Any delegate to a national convention served with a certified copy of the judgment and determination of the Court declaring the election void shall surrender the certificate to the Clerk of the Superior Court without delay.

c. The copy of any record forwarded by the Attorney General to a legislative body shall be forwarded within five days of the receipt by the Attorney General if the legislative body is in session, or, if not, on the first day of the legislative session.

Source: 19:3-14; 19:3-15; 19:3-16; 19:3-17; 19:3-18; 19:3-19.

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COMMENT

The language of this section is substantially similar to the language of 19:3-14, 19:3-15, 19:3-16, 19:3-17; 19:3-18; and 19:3-19 but it has been simplified and shortened.

19A:9-6. Vacation of office

a. When the nomination or election of a person to public office has been declared null and void, that person shall be removed from the office.

b. The Attorney General may institute an action in lieu of prerogative writ to remove from office any person whose nomination or election is void.

c. Nothing shall abridge the right of a claimant to any office to institute an action in lieu of prerogative writ for the recovery of an office.

Source: 19:3-23; 19:3-24.

COMMENT

The language of this section is substantially similar to the language of 19:3-23 and 19:3-24 but it has been simplified and shortened.

19A:9-7. Appointments after declaration of nomination void or removal from office

a. A candidate whose nomination or election has been annulled or set aside shall not, during the period fixed by law as the term of such office, be appointed to fill a vacancy which occurs in such office.

b. Any person removed from or deprived of office for an offense shall not, during the period fixed by law as the term of the office, or the period fixed by law as the next term of the office, be appointed to fill a vacancy which may occur in the office.

c. This section shall not apply to appointments to any office the qualifications for which are prescribed by the Constitution of this State or of the United States.

Source: 19:3-20; 19:3-21; 19:3-22.

COMMENT

The language of this section is substantially similar to the language of 19:3-20, 19:3-21, and 19:3-22 but it has been simplified and shortened.

19A:9-8. What constitutes a vacancy

An office to which a person has been nominated or elected shall be deemed vacant if:

a. The person dies, resigns or is unqualified for office.

b. The person shall remove or be removed from office because the nomination or election was declared void.

c. The person elected or appointed to any office shall, during the term for which elected or appointed, be elected or appointed to an incompatible office as defined by statute and shall

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accept the new office. The person shall not be permitted to qualify or take the new office until formally relinquishing the initial office.

d. A person is elected to two or more offices at an election. The person may accept only one of the offices and the others shall be deemed vacant.

Source: 19:3-25.

COMMENT

The language of this section is similar to the language of 19:3-25 but it has been simplified and shortened. The provision concerning a vacancy in the Senate or the General Assembly as a result of unexcused absence or failure to take the seat has been removed as more properly addressed by constitutional provisions and the rules of those bodies. The provision suggesting that a vacancy was created as the result of an equal number of votes cast for two or more persons was removed and replaced with a provision inserted elsewhere which calls for a run-off election under those circumstances.

19A:9-9. Elections to fill vacancies

A vacancy in the office of United States Senator or Representative, State Senator or Member of the General Assembly, any county office, except of a member of the Board of Chosen Freeholders or of any municipal office elected at a general election that occurs six months or more before the end of a term shall be filled in the following manner:

a. If the vacancy occurs at least 64 days before the date of the primary election, the vacancy shall be filled at the next general election in the ordinary manner provided by law.

b. If the vacancy is in the office of United States Senator, and the vacancy occurs between the date 63 days before the primary election and the date of the general election, the Governor may designate by proclamation either (1) that the vacancy be filled at the subsequent general election or (2) that a special election be held to fill the vacancy. If a special election is to be held, the special primary election shall be held between 65 and 71 days after the proclamation and the special general election shall be held 49 days after the special primary election.

c. If the vacancy is in any other office to which this section applies, and the vacancy occurs less than 63 days before the primary election and at least 51 days before the general election, the vacancy shall be filled at the general election and no primary shall be held. Each political party may designate its candidate in the manner used to fill vacancies for candidates nominated at primary elections.

d. Notwithstanding subsections (a) and (c), if the vacancy is in the office of a state legislator and the election to fill the vacancy would be the same general election as to select a successor for a new term, there shall no election to fill the vacancy.

Source: 19:27-4; 19:27-6; 19:27-10.1; 19:27-11

COMMENT

This section is an amalgam of its source sections. While it has been extensively rearranged and reworded, and parts have been deleted as unnecessary, the section makes no substantive change from prior law with one exception: the opening language includes a provision that elections to fill vacancies will only be held if the vacancy occurs when there are six months left in the term. That is the current rule for the U.S. Senate. 19:27-4. In some cases, involving the U.S. House of Representatives, the equivalent time period is one year. There is no similar limitation for county and local offices. Subsection (a) is the general rule stated in 19:27-4 and implied in 19:27-10.1 and 19:27-11. Subsection (b) is derived from 19:27-4. Subsection (c) is

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found in 19:27-4, 19:27-10.1 and 19:27-11. Subsection (d) is a special rule for state legislators now found in 19:27-11.1.

19A:9-10. Filling vacancies within six months of end of term

A vacancy in the office of United States Senator or Member of Congress, State Senator or Member of the General Assembly, any county office, except of a member of the Board of Chosen Freeholders or of any municipal office elected at a general election that occurs less than six months before the end of a term shall be filled in the following manner:

a. If the vacancy is in the office of United States Senator, it shall be filled at the subsequent general election unless the vacancy happens within thirty days of the next preceding election, in which case it shall be filled by election at the next succeeding election unless the Governor deems it advisable to call a special election for the filling of the vacancy. The Governor may make a temporary appointment of a senator from this State whenever a vacancy shall occur as a result of any cause other than the expiration of the term, and such appointee shall serve as a Senator until an election shall have been held to fill the position, and a certificate of election delivered to the individual elected.

b. If a vacancy occurs in the representation of New Jersey in the United States House of Representatives, it shall be the duty of the Governor to issue a writ of election to fill the vacancy unless the term of service for the vacant office will expire within 6 months after the happening of the vacancy.

c. A vacancy happening in a public office other than that of United States Senator, Member of Congress, State Senator, or Member of the General Assembly shall be filled at the general election next succeeding the vacancy unless the vacancy happens within 30 days of the next preceding election, in which case it shall be filled by election at the next succeeding election.

Source: 19:3-26; 19:3-27; 19:3-29.

COMMENT

The language of this section is substantially similar to the language of 19:3-27, 19:3-27 and 19:3-29 but it has been simplified and shortened.

19A:9-11. Interim successor; Senate or General Assembly

a. If a vacancy occurs with respect to a member of the Senate or General Assembly who was elected as the candidate of a political party that at the preceding general election for members of the General Assembly received the largest number of votes or the next largest number of votes in the State for members of the General Assembly, the vacancy shall be filled for the interim period pending the election and qualification of a permanent successor, or for remainder of the term if the vacancy cannot be filled by election under this law. The interim successor shall be selected within 35 days by the appropriate political party's county committee or committees in the same manner prescribed for selecting candidates to fill vacancies among candidates nominated at primary elections.

b. Members of the political party's county committee or committees who are empowered to select a candidate for the vacated office shall only nominate a candidate from the

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floor during the selection meeting and shall present written evidence of the nominee's acceptance of the nomination.

c. A statement of the selection of the successor shall be certified to and filed with the Secretary of State. The Secretary of State shall thereupon, without delay, issue a certificate of selection based upon that filed statement of selection to the interim successor and to presiding officer of the house of the Legislature in which the vacancy occurred.

d. If a vacancy occurs with respect to a member of the Senate or General Assembly who was not elected as the candidate of a political party that at the preceding general election for members of the General Assembly received the largest number of votes or the next largest number of votes in the State for members of the General Assembly, the office shall remain vacant pending expiration of the term.

Source 19:27-11.2; 19:27-11.3; 19:27-11.4.

COMMENT

Subsections (a) and (c) are derived from 19:27-11.2. Though they have been simplified, they do not represent any substantive change from prior law. Subsection (b) is substantially identical to 19:27-11.3. Subsection (d) is substantially identical to 19:27-11.4. This section raises Constitutional issues. While the section mirrors the current statute, the State Constitution provides a different method of filling vacancies. See, New Jersey Constitution Art. 4 §4 ¶1. It would be advisable to amend the State Constitution to reflect the substance of this section.

19A:9-12. Filling vacancies among presidential electors

If a vacancy occurs among Electors for President and Vice President of the United States, the vacancy shall be filled by vote of the remaining Electors.

COMMENT

There is no current provision for vacancies among Electors. Presumably, if an elector died during the period between the election and the casting of electoral votes, New Jersey would cast one fewer vote. This section would prevent that result.

CHAPTER 10. PARTY ORGANIZATIONS

19A:10-1. Powers of certified political parties; party columns on official ballot

a. A political party that polls 10% of the votes cast in the State for members of the General Assembly at the preceding general election shall be a certified political party and shall be entitled to:

- (1) Nominate candidates for public office at primary elections;
- (2) Have its candidates listed in a column or columns on the ballot in the general election designated with the name of the party; and
- (3) Elect party committees at primary elections.

b. Other political parties may nominate candidates by petition and the names of the candidates shall be printed in a column or columns on the ballot in the general election designated "Nomination by Petition" followed by the designation of the political party of which the candidates are members.

Source: 19:5-1.

COMMENT

This section is substantially similar to 19:5-1, but it has been rearranged and simplified in the interest of clarity. The current law contains language affording certified party status to an entity as long as it does not "fail[] to poll at any primary election for a general election at least ten per centum (10%) of the votes cast in the State for members of the General Assembly". That language is not clear, and it may limit party status to the two current parties contrary to the balance of the language of the statute. In addition, this section distinguishes between "certified political parties" who meet the 10% threshold, and other recognized political parties that may run individual candidates or slates of candidates in various areas throughout the State but do not meet that threshold.

19A:10-2. Membership and organization of county and municipal committees

a. The members of the county committees of a certified political party shall be elected annually at that party's primary for the general election. The county committee shall consist of members elected from geographic districts in the county. Members of the county committee shall reside in the districts from which they are elected for the duration of their term. No person shall be qualified to be a member of the county committee of a certified political party unless the person is registered as a member of that certified political party or registers as a member of that certified political party within ten days after being elected. In its bylaws, the county committee shall determine the districts from which members are elected and the number of members to be elected from each district. If the county committee does not provide the information required by this section, then the county committee shall consist of two members from each district within the county. The chairman of the county committee of each certified political party shall, before April 1, certify to the County Board of Elections the election districts constituting each district and the number of committee members to be elected from each.

b. The members of the county committee shall take office on the first Saturday following their election. The annual meeting of each county committee shall be held within 10 days after the primary election, at a time and place designated in a notice mailed by the chairman of the

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outgoing county committee to each member-elect. At the annual meeting, the members of the committee shall elect a chairman and vice chairman to hold office for one year and until a successor is elected.

c. A vacancy in the office of a member of the county committee shall be filled for the unexpired term by the municipal committee of the municipality where the vacancy occurs.

d. The members of the municipal committee of a certified political party shall consist of the members of the county committee resident in the municipality.

Source: 19:5-2; 19:5-3; 19:23-54; 19:23-56; 19:23-57.

COMMENT

Subsections (a), (b) and (c) of this section are derived from 19:5-3, but they incorporate several changes. Throughout the section, references requiring equal numbers of committeemen and committeewomen have been deleted. The source section allowed the county committee to decide the districts of committee members; subsection (a) gives the committee more discretion by allowing multi-member districts and adds a new default provision in the event that the committee fails to set forth, in its bylaws, the number of members to elect from each district and the districts from which members are to be elected. In subsection (b), the county committee is given more flexibility in the date of the annual meeting.

Subsection (d) is derived from 19:5-2, but most of the source has been eliminated as unnecessarily duplicative of parallel provisions relating to the county committees.

19A:10-3. Members and organization of state committees; national committee members

a. The members of the State committees of a certified political party shall be elected every four years at that party's primary for the general election in which a Governor is to be elected. The State committee shall consist of members elected from geographic districts in the state. Members of the State committee shall reside in the districts from which they are elected for the duration of their term. No person shall be qualified to be a member of the state committee of a certified political party unless the person is registered as a member of that certified political party or registers as a member of that certified political party within ten days after being elected. In its bylaws, a State committee shall determine the districts from which members are elected and the number of members to be elected from each district. If the state committee does not provide the information required by this section, then the state committee shall consist of two members from each State Senate district within the county. The chairman of the State committee of each political party shall notify the Commission on Elections of any change in districts or the number of members elected from a district. Before April 1 in a year in which a gubernatorial election will be held, the chairman shall certify to the County Boards of Elections the election districts constituting each district and the number of committee members to be elected from each.

b. The members of the State committee shall take office on the first Saturday following their election. A meeting of the State committee shall be held within ten days after the primary election at a time and place designated in a notice mailed by the chairman of the outgoing county committee to each member-elect. At that meeting, the members of the committee shall elect a chairman and vice chairman to hold office for four years, and until a successor is elected.

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c. Members of the State committee shall serve for four years and until their successors are elected. A vacancy in the office of a member of the State committee shall be filled for the unexpired term by the members of the county committee of the certified political party in the county in which the vacancy occurs.

d. The State committee shall choose the members of the national committee of its certified political party.

Source: 19:5-4; 19:5-4.1; 19:23-54; 19:23-56; 19:23-57.

COMMENT

This section is derived from 19:5-4 and 19:5-4.1, but some change has been made in the way the committee is elected. Section 19:5-4 allows the state committee to choose among three methods of representation. That provision is superseded by 19:5-4.1 which allows the State committee to adopt a different method by bylaw and certify that method to the Secretary of State.

In place of that provision, a State committee is given authority to decide the districts from which members will be elected and the number of members to be elected from each district. In addition, references requiring equal numbers of committeemen and committeewomen have been deleted. Subsection (a) adds a new default provision in the event that the committee fails to set forth in its bylaws the number of members to elect from each district and the districts from which members are to be elected.

In subsection (b), the day of the start of State committee terms is made consistent with that of county committees. The State committee is also given more flexibility in setting the date of its initial meeting.

Other parts of the section are identical in substance to provisions of 19:5-4.

19A:10-4. Access to financial records of state, county and municipal committees

a. Between the time a member of a county committee of a certified political party is elected and the annual meeting of the county committee, any elected member may request by certified mail:

(1) Access to the complete financial records of the county committee;

(2) A copy of the balance sheet of the county committee showing the assets and liabilities of the county committee as of the close of business on the date of the primary election;

(3) Access to the complete financial records of the municipal committee of the municipality from which the member was elected;

(4) A copy of the balance sheet of the municipal committee of the municipality from which the member was elected showing the assets and liabilities of the municipal committee as of the close of business on the date of the primary election.

b. Between the time a member of a State committee of a political party is elected and the first meeting of the State committee, any elected member may request by certified mail:

(1) Access to the complete financial records of the State committee;

(2) A copy of the balance sheet of the State committee showing the assets and liabilities of the State committee as of the close of business on the date of the primary election;

c. A committee member who requests access to records or a copy of a balance sheet shall receive the access or copy requested within 48 hours of the receipt of the request.

Source: 19:5-2.1; 19:5-3.1; 19:5-4a.

COMMENT

This section is an amalgam of the three source sections. It makes no substantive change.

19A:10-5. Delegates to the national convention

a. In a year in which primary elections are to be held for the election of delegates to the national conventions of certified political parties, the chairman of the State committee of each certified political party shall notify the Commission on Elections, on or before March 1, of the number of delegates-at-large and the number of alternates-at-large to be elected to the next national convention of the party throughout the State, and of the number of delegates and alternates to be chosen to the convention in the respective congressional districts or other territorial subdivisions of the State.

b. If a State chairman fails to file notice, the Commission on Elections shall ascertain such facts from the call for its national convention issued by the National or State committee.

c. The Commission on Elections shall, on or before March 20 of that year, certify to the County Board of each county the number of delegates and alternates-at-large to be chosen by each party and the number of delegates and alternates to be chosen in each congressional district or other territorial subdivision of the State, composed in whole or in part by that county.

d. Notwithstanding any provision of this Title, national and State party rules shall govern the selection of delegates and alternates to national party conventions, provided the State chairman of the certified political party notifies the Commission on Elections prior to March 1 of the year in which delegates and alternates are elected of the applicable party rules governing the delegate selection process. The Commission on Elections shall notify the county clerks prior to April 1 of the year in which delegates and alternates are elected of the applicable party rules, if any, which apply to matters within their jurisdiction. Pursuant to this section, the Commission on Elections shall issue to the County Boards uniform regulations governing the delegate selection process.

Source: 19:24-1; 19:24-2.

COMMENT

Subsections (a) and (b) are substantially identical to 19:24-1. Subsections (c) and (d) are substantially identical to 19:24-2.

19A:10-6. Nomination of delegates by petition

a. Candidates for election as delegates or alternates to the national conventions of certified political parties shall be nominated by petition in the manner provided for the nomination of candidates at a primary election for the general election except as otherwise provided in this section.

b. Candidates for the position of delegates or alternates may be grouped together, if they so request in their petitions, and may also have the name of the candidate for President

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whom they favor placed opposite their names or opposite their group, if they so request in their petitions and if the written consent of the candidate for President is endorsed on their petitions, under the caption "Choice for President."

c. Not fewer than 100 members of each certified political party may file with the Commission on Elections at least 57 days prior to the primary election for the general election in any year of a national convention a petition requesting that the name of a person therein indorsed shall be printed on the primary ticket of such political party as candidate for the position of delegate-at-large or alternate-at-large, to be chosen by the party voters throughout the State to the national convention of that party, or as a delegate or alternate to be chosen to that convention by the voters of any congressional district.

d. The signers to the petition for any delegate-at-large or alternate-at-large shall be legal voters resident in the State; and the signers for any delegate or alternate from any Congressional district shall be voters of such district.

e. The Commission on Elections shall not later than the 48th day preceding the primary election for the general election certify to each County Clerk and County Board such nominations for delegates and alternates-at-large and the nominations for delegate or alternate for any Congressional district.

Source: 19:24-3; 19:24-4; 19:24-5.

COMMENT

Subsection (a) is substantially identical to 19:24-3. Subsection (b) is substantially identical to 19:24-5. The remaining subsections are substantially similar to the language of 19:24-4.

19A:10-7. Maintenance of party organization

A State committee, county committee or municipal committee of a certified political party may receive and disburse moneys for the general purposes of maintaining the organization during the year. The expenses for maintenance of organization shall be confined to acquisition of suitable quarters for meetings of the committee, for stationery, for hiring of necessary clerks, for notices of the meetings of the committee, for giving publicity to the policies and candidates, and other expenses incidental to the maintenance of the organization.

Source: 19:5-5.

COMMENT

This section makes no substantive change is the source sections.

CHAPTER 11. PRIMARIES

19A:11-1. Notice of requirements to vote in primary election

a. The County Superintendent or Administrator of Elections in each county shall cause a notice to be published in each municipality in a newspaper or newspapers circulating therein. The notice shall be published once during each of the two calendar weeks preceding the week in which the 50th day before the primary election occurs.

b. The published notice shall inform the public of the criteria for voting in a primary election and the procedure for registering as a member of a certified political party.

c. The notice shall also state the time and location where a person may obtain certified political party affiliation declaration forms.

d. The cost of the publishing of the required notices shall be paid by the respective counties.

Source: 19:23-45.1; 19:23-45.2.

COMMENT

This section is substantially similar to 19:23-45.1 and 19:23-45.2. Although other sections of the statute calling for the publication of notice of an election and the publication of notice regarding challengers have been eliminated, this section was carried forward since the information pertaining to primaries may not be as familiar to the voters.

19A:11-2. Primary elections; voting; petitions; registration

a. A person may not vote in a certified political party's primary election or sign a petition for a candidate to appear on the ballot in a certified party's primary if the person is a member of the county committee of another certified political party or a public official or public employee holding any office or public employment to which the person was elected or appointed as a member of another certified political party.

b. A person may not vote in a certified political party's primary election unless the person:

(1) Was registered as a member the certified political party at least 40 days before the primary election;

(2) Was registered as a member the certified political party at the time the person registered to vote; or

(3) Is not registered as a member of any certified political party.

c. A person may not sign a petition for a candidate to appear on the ballot in a certified political party's primary election unless the person is registered as a member the certified political party or is not registered as a member of any certified political party.

d. A person may register as a member of a certified political party by:

(1) By registering or by changing existing registration and requesting registration in that certified political party; or

(2) By voting in a primary of that certified political party.

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Source: New; 19:23-25; 19:23-45.

COMMENT

Subsection (a), with subsection (c), regulates who may vote in a primary election, continuing the substance of 19:23-45. That section bars members of other political parties from voting in a party's primary unless they change their party affiliation 50 days before the primary election.

Subsection (b) follows the interpretation of 19:23-7 in *Lesniak v. Budzash*, 133 N.J. 1 (1993) which allows a person to sign a petition for a candidate to run in a primary election even though the person is not registered in the party. Sections 19:23-6 through 19:23-17 state all the requirements of a petition to run in a primary election, repeating those that apply to all petitions; this subsection does not repeat those requirements.

This section also includes the provisions of 19:23-25 and 19:23-45.

19A:11-3. Committee on vacancies candidate nominated by petition

a. The signers of a petition may, in their petition, name three persons as a committee on vacancies to fill a vacancy caused by the death, resignation or disqualification of the person indorsed as a candidate in the petition.

b. If a vacancy occurs, the committee may file a certificate stating the name of the candidate nominated by the petition, the office for which the candidate was nominated, the cause of the vacancy, the name of the substitute candidate and that the candidate is a member of the same political party as the original candidate, the fact that the committee is authorized to fill vacancies and any other information required to be given in an original petition of nomination. The certificate executed, sworn to and filed by the members of the committee shall have the same effect as the original petition of nomination and shall be accompanied by the oath of allegiance prescribed by law.

c. The certificate shall be filed at least 48 days before election and shall be filed with:

(1) The Commission on Elections in the case of officers to be voted for by the voters of the entire State or a portion of the state involving more than one county or any congressional district,

(2) The county clerk in the case of officers to be voted for by the voters of the entire county or any part of a county involving more than one municipality, or

(3) With the municipal clerk in the case of officers to be voted for by the voters of the entire municipality or any part of it.

Source: 19:23-12.

COMMENT

This section is substantially identical to 19:23-12.

19A:11-5. Acceptance by a person nominated as a write-in candidate

a. Any person nominated for an office at the primary as a write-in candidate shall file the oath of allegiance prescribed by law and an acceptance of nomination stating that the person:

(1) Is qualified for the office;

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- (2) Is a resident and a legal voter of the jurisdiction of the office; and
- (3) Consents to stand as a candidate at the general election.

b. The acceptance of nomination and oath shall be filed within seven days after the primary with the county clerk in the case of county and municipal offices and with the Commission on Elections for all other offices.

Source: 19:23-16.

COMMENT

This section is substantially identical to 19:23-16.

19A:11-6. Certification of primary election results generally

Unless otherwise specified, the results of a primary election shall be certified in the same manner as those for general elections.

Source: 19:23-55.

COMMENT

In keeping with the effort to make election procedures more uniform where appropriate, this section standardizes the process of certifying election results.

CHAPTER 12. SPECIAL, RUNOFF AND RECALL ELECTIONS

19A:12-1. Special elections

a. Unless otherwise provided, candidates for public office to be voted for at any special election shall be nominated and the special election conducted and the results ascertained and certified in the same manner as provided for general elections.

b. Candidates to be voted for at a special election shall be nominated by members of the same certified political party by petition.

c. Special elections shall be called for by the Governor by means of a writ of election in the nature of a proclamation.

d. The County Superintendent or Administrator of Elections in each county shall cause a notice of any special election to be published in each affected municipality in a newspaper or newspapers circulating therein. Notice shall be published once during each of the two calendar weeks preceding the election.

COMMENT

Subsection (a) is substantially similar to 19:27-1. Subsection (b) is substantially the same as 19:27-3. Subsection (c) is substantially similar to 19:27-5. Subsection (d) is drawn from 19:27-9.

19A:12-2. Runoff elections

a. A runoff election shall be held as set forth in the section pertaining to special elections.

b. A runoff shall be held if the election results in a tie vote.

c. The candidates to be voted for at a runoff election shall be the top two candidates, or the group of candidates among whom it is impossible to determine the person for whom the greatest number of votes was cast.

d. In addition to any circumstances set forth in the statute for which a runoff election is required, a runoff election shall also be held if no votes are cast for a particular position at any given election.

Source: New.

COMMENT

This section is new and is included to clarify the manner and the circumstances under which runoff elections are to be held.

19A:12-3. Recall authorized

Pursuant to the provisions of the New Jersey Constitution, the people of the State of New Jersey may recall any United States Senator or Representative elected from this State, and any state or local elected official.

Source: 19:27A-2.

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COMMENT

This section is substantially similar to 19:27A-2. This provision is retained because it is included in the current statute and in the New Jersey Constitution (*New Jersey Constitution* Art. 1, ¶ 2); however, it raises serious constitutional issues since a State may not change the term of a federal official any more than it may change the qualifications for a federal official. *See, United States Constitution*, Art. I, §4, cl. 1; and *see, for example, Cook v. Gralike*, 531 U.S. 510 (2001); *Foster v. Love*, 522 U.S. 67 (1997).

19A:12-4. Notice of intention to recall

a. Before collecting any signatures on a recall petition, the sponsors of a recall petition shall file a notice of intention to recall with the Secretary of State for recall of a State or Federal official or the County Clerk or with the County Clerk for recall of any other official. The notice of intention shall contain the following information:

(1) The name and office of the official sought to be recalled;

(2) The name and address of at least three sponsors of the recall petition who constitute a recall committee representing the signers of the recall petition;

(3) A statement certified by each member of the recall committee that the member is registered in the district which the named official represents or serves, supports the recall of the named official and accepts the responsibilities associated with serving on the recall committee; and

(4) A statement as to whether the recall election shall be held at the next general or regular election, or at a special election.

b. The procedures to initiate a recall election may be commenced not earlier than the 50th day before the completion of the first year of the term of office by the official sought to be recalled.

Source: 19:27A-6.

COMMENT

This section incorporates most of the provisions of 19:27A-6.

19A:12-5. Review of notice of intention to recall

a. A Secretary of State or County Clerk who receives a notice of intention to recall, shall review it for compliance with the statutory requirements and, if it is found to comply, shall return a certified copy of the approved notice to the recall committee within three business days of the receipt of the notice. If the recall committee has requested that the recall election be held at a special election, the Superintendent or Administrator shall also prepare an estimate of the cost of conducting recall election and shall return that information to the recall committee with the certified copy of the notice.

b. Within five business days of the approval of the notice of intention, the Secretary of State or County Clerk shall serve a copy of the notice on the official sought to be recalled by personal delivery or certified mail. Within two weeks of approving the notice, the Secretary of State or County Clerk shall cause a copy of the notice to be printed in a newspapers circulating

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within the district, and shall retain an affidavit setting forth the manner of service and proof of publication.

c. Within five business days of being served with the notice of intention, the official to be recalled may file an answer consisting of not more than 200 words with the Secretary of State or County Clerk, or a written acknowledgement of receipt of a copy of the notice. Within two business days of the filing of the written answer or acknowledgement, the Superintendent or Administrator shall serve a copy on the recall committee by personal delivery or certified mail, or shall inform the recall committee that no such answer or acknowledgment was timely filed.

d. If the notice of intention is found not to be in compliance, the Superintendent or Administrator shall, within three business days of the receipt of the notice, return the notice and advise the recall committee in writing of any deficiencies, allowing the recall to file a corrected notice of intention.

e. The original notice of intention shall be retained by the Superintendent or Administrator and shall be available for public inspection and copying for a period of not less than five years.

Source: 19:27A-7.

COMMENT

This section is substantially similar to 19:27A-7, but it has been simplified and shortened.

19A:12-6. Form and content of recall petition

a. The Commission on Elections shall prepare a single form of recall petition.

b. The recall petition shall identify the name of the official sought to be recalled and the office held by that official, and shall include the information contained in the notice of intention filed by the recall committee and any response to the notice, as well as identifying information for three members of the recall committee. No statement of reasons or grounds for the recall is required.

c. All petitions shall be reviewed by the Secretary of State or County Clerk prior to use. The Secretary of State or County Clerk shall review the petition within three business days of receipt, and, if approved, shall affix a statement of approval to the first page of the petition and return it to the recall committee.

d. Signers of a recall petition shall include their signatures, printed name, place of residence, the date on which the petition was signed, and confirmation that the signer has read the petition.

e. Every circulator of a petition shall sign the petition.

f. Only signatures appearing on a proper recall petition may be counted to determine whether a recall election shall be held.

Source: 19:27A-8.

COMMENT

This section is substantially similar to 19:27A-8, but it has been simplified and shortened. The requirement that a petition contain a response to the notice of petition raises serious constitutional issues. *See, Pacific Gas and Elec. Co. v. Public Utilities Comm'n of California*, 475 U.S. 1 (1986) *reh'g den.* 475 U.S.

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1133 and *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974) which deal with “compelled speech”. The provision is included because it is part of the current law.

19A:12-7. Petition circulators

a. Only individuals who are registered voters in the district which the official sought to be recalled represents or serves may be petition circulators.

b. The bottom of each page of a recall petition shall include an affidavit signed by the circulator of that page of the petition which includes:

(1) The name and place of residence of the circulator;

(2) A statement indicating that the circulator assumed responsibility for the circulation of that page of the petition, witnessed the signatures on that page, and that the petition was circulated in good faith; and

(3) The dates between which all signatures on that page were collected.

c. If a solicitation for signatures to a recall petition is presented to prospective petition signers by a paid print advertisement or paid mailing, or if a recall petition is presented to such a prospective signer by a paid circulator, the solicitation or petition, respectively, shall disclose prominently in a statement printed in at least 10-point type (1) the identity of the person paying for the printed or personal solicitation, and (2) that the circulator is paid. The Election Law Enforcement Commission shall promulgate such rules and regulations as are necessary to implement the provisions and effectuate the purposes of this subsection.

Source: 19:27A-8; 19:27A-10.

COMMENT

This section is substantially similar to 19:27A-10, but it has been simplified and shortened. Subsection (c) is lifted directly from 19:27A-8(i) without modification.

19A:12-8. Signatures required for recall petition; filing of petition

a. A petition demanding an election to determine whether an official shall be recalled from office shall be signed by at least 25% of the voters registered to vote at the general election preceding the date of the notice of intention to recall in the district which the official represents or serves.

b. A recall petition for a State or Federal official or for the County Clerk shall be filed with the Secretary of State. Other recall petitions shall be filed with the County Clerk.

c. A recall petition shall not demand an election to recall more than one official.

Source: 19:27A-5.

COMMENT

This section is substantially similar to 19:27A-5 with the addition of subsection (d) which includes language previously found in 19:27A-6(b).

19A:12-9. Deadlines for petitions

a. The required number of signatures shall be collected and the completed petition filed with the Secretary of State or County Clerk within 320 days of notice of the approval the notice of intention to recall if the official sought to be recalled is the Governor or a United States Senator and within 160 if any other official is sought to be recalled.

b. If a completed petition is not filed with the time period indicated above, the petition is void and may not be used in connection with any other recall effort.

c. The Secretary of State or County Clerk shall determine whether or not the petition contains the required number of signatures within ten business days of the filing of the completed petition. If a petition contains an insufficient number of signatures or fails to comply with any other provision of law, it is void.

Source: 19:27A-10; 19:27A-11.

COMMENT

This section contains the requirements of 19:27A-10 and 19:27A-11, but it has been simplified and shortened.

19A:12-10. Challenges to determination of signatures

The official sought to be recalled, or the recall committee may file a written objection to the determination by the Secretary of State or County Clerk as to whether the petition contains the required number of signatures and otherwise complies with the provisions of law. The Secretary of State or County Clerk shall, upon request of either of the parties, provide a copy of the recall petition and allow examination of the original petition during regular business hours.

The Secretary of State or County Clerk shall pass upon the validity of an objection in an expedited manner. The decision of the Secretary of State or County Clerk may be challenged by filing an action in the Superior Court, which shall hear and decide the matter on an expedited basis. When the determination of the Secretary of State or County Clerk is challenged with regard to a recall petition requiring more than 1,000 signatures, the parties may use a statistically valid sampling method to demonstrate that the petition contains a sufficient or an insufficient number of signatures, the results of which shall constitute a rebuttable presumption as to the validity of the petition.

Source: 19:27A-12.

COMMENT

This section is substantially similar to 19:27A-12, but it has been simplified and shortened.

19A:12-11. Time of election

a. A recall election shall not be held until after the official sought to be recalled has served one year of the current term of office.

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b. A recall election shall not be held within six months of the election for a successor to the official sought to be recalled.

Source: 19:27A-4.

COMMENT

This section is substantially similar to 19:27A-4, but has been shortened.

19A:12-12. Recall election

a. If it is determined that a petition complies with the statute, the Secretary of State or County Clerk shall issue a certificate as to the sufficiency of the petition to the recall committee and shall serve a copy of the certificate on the official sought to be recalled by personal delivery or certified mail. The Secretary of State or County Clerk shall also cause a notice to be printed in a newspaper circulating within the district stating the information contained in the certificate. The notice shall be published once in the 30 days preceding the close of registration for the election, and once in the 30 days preceding the election.

b. A certificate shall contain:

- (1) The name and office of the official sought to be recalled;
- (2) The number of signatures required to cause a recall election to be held for that office;
- (3) Confirmation that a valid recall petition was properly filed and that a recall election will be held;
- (4) The date and time when the election will be held if the official does not resign.

c. The recall election shall be held on a date to be determined as follows:

(1) If the petition specifies that the recall election be a special election, the Secretary of State or County Clerk shall select the Tuesday that is between 60 and 66 days after the service of the certificate. If that Tuesday falls within 28 days of any other election, it shall be held on the first Tuesday thereafter that does not fall within 28 days of an election.

(2) If the petition specifies that the recall election be a general election and the office is one ordinarily filled at a general election, it shall be held at the next general election that is no less than 60 days after the service of the certificate.

(3) If the petition specifies that the recall election be a general election and the office is one ordinarily filled at an election other than a general election, it shall be held at either the next general election or the next regular election for that office that is no less than 60 days after the service of the certificate.

d. A recall election shall not be held until after the official sought to be recalled has served one year of the current term of office. A recall election shall not be held within six months before the election for a successor to the official sought to be recalled.

Source: 19:27A-13.

COMMENT

This section is substantially similar to 19:27A-13, but it has been simplified and shortened.

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19A:12-13. Recall ballot; filling vacancies

a. The ballot used at a recall election shall ask if the official in question should be recalled from the particular office held. The sample ballot, but not the actual ballot, shall include any statement of reasons prepared by the recall committee and any answer by the official. If a successor is to be chosen at the recall election, the ballot shall include the nominees for successor to the name and title of the elected official sought to be recalled in the event that official is recalled.

b. If the official sought to be recalled is the Governor or a member of the Legislature, no nominees for successor shall be included on the ballot; the vacancy in those offices shall be filled in the same manner as any other vacancy occurring in those offices.

c. For all other officials normally elected at general elections, candidates for successor may be nominated by each certified political party within fourteen days after the service of the certificate in the same manner as candidates are selected to fill vacancies among candidates for a primary election. Candidates for successor may also be nominated by petition within that same period in the same manner as candidates are nominated by petition for a general election. For all officials normally elected at nonpartisan elections, all nominations shall be by petition within fourteen days after the service of the certificate.

Source: 19:27A-15.

COMMENT

This section is substantially similar to 19:27A-15, but it has been simplified and shortened.

19A:12-14. Election results; further petitions

a. If a majority of the votes cast on the question of the recall of an elected official are in the affirmative, the term of office of that official shall terminate upon the certification of the election results. Where nominees are voted on at the time of the recall election, the nominee receiving the greatest number of votes shall succeed to the office and shall serve for the remainder of the unexpired term. If a majority of the votes cast are in the negative, the elected official shall continue in office.

b. An elected official sought to be recalled who is not recalled as the result of a recall election shall not again be subject to recall until having served one year from the date of the recall election.

c. If the elected official is recalled, or resigns after the filing of a notice of intention to recall, the official shall not be eligible to fill the vacancy in that office for the remainder of that term but shall be eligible to be elected as that official's own successor in the event that the official is recalled.

Source: 19:27A-16.

COMMENT

This section is substantially similar to 19:27A-16, but it has been simplified and shortened. The provision barring a recall committee from sponsoring a second attempt to recall the targeted official has been deleted as it is unnecessary and raises Constitutional questions.

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19A:12-15. Campaign committees and contributions

a. Except as otherwise provided in this section, a recall committee shall be treated as a candidate committee for the purposes of "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.), except that all contributions received by a recall committee shall be used only for (1) the payment of campaign expenses incurred in the course of and directly related to the committee's effort to promote the recall or the passage of the question of recall at the recall election, (2) the payment of overhead and administrative expenses related to the operation of the committee, or (3) the pro-rata repayment of contributors.

b. Except as provided in subsection c. of this section:

(1) An elected official sought to be recalled who receives contributions and makes expenditures for the purpose of opposing a recall effort shall establish a "recall defense committee," which shall be separate from, but subject to the same organizational and filing requirements and limitations on the receipt of contributions applicable to any candidate committee under "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.), except that a recall defense committee shall be permitted to receive without limit contributions from the candidate committee or joint candidates committee of the elected official sought to be recalled. A recall defense committee, for all purposes relating to campaign finance, shall be in addition to any candidate committee or joint candidates committee which an official sought to be recalled may by law establish. If an elected official sought to be recalled transfers funds from the official's candidate committee or joint candidates committee to the official's recall defense committee, a new election cycle shall be deemed to begin with respect to the candidate committee or joint candidates committee after the recall election is held or the recall effort fails and such official shall be permitted to solicit and receive contributions thereto, including contributions from prior contributors, up to the limits imposed by P.L.1973, c. 83 (C. 19:44A-1 et seq.). A recall defense committee may be formed at any time after an official sought to be recalled is served with either form of notice provided for by subsection e. of this section. All contributions received by a recall defense committee shall be used only for (a) the payment of campaign expenses incurred in the course of and directly related to the committee's effort to oppose the recall effort or the passage of the question of recall at the recall election, (b) the payment of the overhead and administrative expenses related to the operation of the committee, or (c) the pro-rata repayment of contributors; and

(2) Any nominee to succeed that elected official shall be treated as a candidate for the purposes of "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.).

c. The limits on contributions established by 2 U.S.C. § 441a shall apply to a federal elected official sought to be recalled, a candidate to succeed such an official and a recall committee seeking to recall a federal elected official.

d. A Governor who is sought to be recalled shall not be entitled to public support pursuant to P.L.1974, c. 26 (C. 19:44A-27 et seq.) for the purpose of opposing the recall effort.

e. Neither a recall committee nor a recall defense committee shall solicit or accept contributions in connection with a recall effort until after either: (1) the recall committee serves

written notice of the recall effort on the official sought to be recalled by personal service or certified mail, with a copy thereof filed with the recall election official; or (2) a copy of an approved notice of intention is served on the official sought to be recalled as provided in subsection b. of section 7 of this act. If a recall committee notifies an official sought to be recalled of its intention to initiate a recall effort by the method described in paragraph (1) of this subsection, it must file a notice of intention within 30 days of the date the notice is served on the official or cease the solicitation, acceptance and expenditure of funds.

f. Contributions to a recall committee by a candidate committee or joint candidates committee of a candidate who was defeated by the official sought to be recalled at the last election for that office shall be subject to the limits on contributions established by "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.).

g. A recall committee shall submit, at the time of its initial filing with the Election Law Enforcement Commission, in addition to its depository account registration information, a registration statement which includes:

(1) The complete name or identifying title of the committee and the general category of entity or entities, including but not limited to business organizations, labor organizations, professional or trade associations, candidates for or holders of public offices, political parties, ideological groups or civic associations, the interests of which are shared by the leadership, members, or financial supporters of the committee;

(2) The mailing address of the committee and the name and resident address of a resident of this State who shall have been designated by the committee as its agent to accept service of process; and

(3) A descriptive statement prepared by the organizers or officers of the committee that identifies:

(a) The names and mailing addresses of the persons having control over the affairs of the committee, including but not limited to persons in whose name or at whose direction or suggestion the committee solicits funds;

(b) The name and mailing address of any person not included among the persons identified under subparagraph (a) of this paragraph who, directly or through an agent, participated in the initial organization of the committee;

(c) In the case of any person identified under subparagraph (a) or subparagraph (b) who is an individual, the occupation of that individual, the individual's home address, and the name and mailing address of the individual's employer, or, in the case of any such person which is a corporation, partnership, unincorporated association, or other organization, the name and mailing address of the organization; and

(d) Any other information which the Election Law Enforcement Commission may, under such regulations as it shall adopt pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), require as being material to the fullest possible disclosure of the economic, political and other particular interests and objectives which the committee has been organized to or does advance. The commission shall be informed, in writing, of any change in the information required by this paragraph within three days of the occurrence of the change.

h. In accordance with the Election Law Enforcement Commission's regular reporting schedule, the commission may, by regulation, require a recall committee or a recall defense committee to file during any calendar year one or more additional cumulative reports of such contributions received and expenditures made to ensure that no more than three months shall elapse between the last day of a period covered by one such report and the last day of the period covered by the next such report.

Source: 19:27A-15.

COMMENT

This section is unchanged from section 19:27A-15. No changes are recommended at this time since the election contribution and expenditure aspects of election law are not being revised at this time.

CHAPTER 13. CONTEST OF NOMINATIONS OR ELECTIONS

19A:13-1. Petition to contest result of election

a. A petition to contest the result of an election involving an office or proposition voted upon by the voters of the whole State may be signed by at least 25 voters or by any defeated candidate. A petition to contest the result of any other election may be signed by at least 15 voters or by any defeated candidate.

b. A petition shall be verified by the oath of at least two of the petitioners or by the candidate filing it. If the receipt of illegal votes or the rejection of legal votes at the polls is alleged, the names and election districts of the persons who voted improperly, or whose proper votes were rejected, shall be included in the petition.

c. The petition shall be accompanied by a bond or cash deposit in the amount of \$500 available to pay all costs to the State in the case of a contested proposition, or to the person declared elected in other cases if the election is confirmed

d. A petition to contest the result of an election shall be filed in the Superior Court and shall be heard by a Judge of the Superior Court selected by the Chief Justice of the Supreme Court.

Source: 19:29-2.

COMMENT

This section is substantially similar to 19:29-2, but it has been simplified and shortened.

19A:13-2. Grounds for contest

The nomination or election of any person to any public office or party position, or the approval or disapproval of any public proposition, may be contested by any of the voters affected thereby upon at least one of the following grounds:

a. Misconduct, fraud or corruption on the part of any election official sufficient to affect the result; misconduct shall not be held sufficient to set aside an election unless the rejection of the vote of the district in question would change the result as to the office in question.

b. Ineligibility for office of the person who has been declared elected;

c. The offering, by the person who has been declared elected, of a bribe or reward to a voter or election official for the purpose of procuring election;

d. The receipt of illegal votes or the rejection of legal votes at the polls sufficient to change the result of the election of the election;

e. Error in the counting of the votes or declaring the result of the election if such an error would change the result of the election;

f. The payment, promise to pay or expenditure of any money or other thing of value, or the incurring of any liability for expenditure in excess of the amount permitted by statute regarding elections for any purpose or in any manner not authorized by statute; or

g. Any other cause which would change the result of the election.

APPENDIX B

Source: 19:29-1.

COMMENT

This section is substantially similar to 19:29-1.

19A:13-3. Time for filing petition

a. Except as provided in subsection (b) and (c), a petition contesting a nomination, election to party office, shall be filed not later than 10 days after the primary election and a petition contesting any election to office, or the approval or disapproval of any proposition shall be filed not later than 30 days after the election.

b. If the basis for the contest is discovered from documents filed after the election, the petition may be filed 10 days after the documents are filed in the case of a primary, or 30 days after the documents are filed in the case of another election.

c. A petition may be filed within 10 days after the result of a recount has been determined or announced.

Source: 19:29-3.

COMMENT

This section is substantially similar to 19:29-3.

19A:13-4. Notice of petition; trial; judgment; costs

a. The Court shall hold a hearing on the matter between 15 and 30 days after the petition is filed. The matter shall be tried without a jury.

b. The petition and notice of the hearing shall be served by the contestant on the person declared elected or, in the case of a proposition, on the entity who caused the proposition to be printed on the ballot, at least 10 days prior to the trial date.

c. If an election is confirmed, the contestants shall pay the costs, and if judgment is entered against a person declared elected, that person may be required to pay the costs. If a contestant successfully challenges the approval or disapproval of a proposition, the State, county or municipality may be required to pay costs.

Source: 19:29-4; 19:29-5; 19:29-8; 19:29-10; 19:29-14.

COMMENT

This section is substantially similar to 19:29-4, but it has been simplified and shortened. Language from 19:29-5 regarding the trial of the matter without a jury was incorporated into this section, but the other specific procedural requirements for the trial contained in sections 19:29-6 and 19:29-7 have been eliminated as more properly established by the Court Rules rather than by the election law statute. Language from 19:29-8 was added regarding the insufficiency of misconduct to set aside the election unless setting aside the district results would change the election. The language regarding costs is drawn from 19:29-14.

APPENDIX B

19A:14-1. Ordinance or resolution for submitting question

a. If the governing body of a municipality or county wishes to determine the sentiment of voters on a question or policy pertaining to the government and if there is no other statute setting forth a procedure to submit the question to the voters at an election, the governing body may adopt an ordinance or resolution at a regular meeting that a proposition be placed on the ballot at the next general election. The proposition shall be filed with the County Board not later than 74 days before the election.

b. On the presentation to the governing body of a municipality or county of a petition signed by 10% or more of the voters of that political subdivision qualified to vote at the last general election requesting that the governing body determine the sentiment of voters on a question or policy pertaining to the government and reasonably related to the subject of the governing body's ordinance or resolution, the governing body shall adopt an ordinance or resolution at its next regular meeting regular meeting that the proposition included in the petition be placed on the official ballots at the next general election. The proposition shall be filed with the County Board not later than 60 days before the election.

c. The ballots cast for and against a public question submitted in the manner described above shall be tabulated and transmitted in the same manner provided by law for other votes.

d. The result of the election with regard to the question submitted in the manner described above is to be considered an expression of sentiment by the voters, and shall not bind any governing body.

Source: 19:37-1; 19:37-1.1; 19:37-3; 19:37-4.

COMMENT

This section is substantially similar to 19:37-1, 19:37-1.1, 19:37-3 and 19:37-4, but it has been simplified and shortened.

VOTING OFFENSES – TO BE COMPILED IN THE CRIMINAL CODE

2C:31-1. Illegal voting

A person commits a crime of the fourth degree if that person knowingly:

- a. Votes in an election in which the person is not eligible to vote;
- b. Registers as a voter when the person is not eligible to register;
- c. Votes more than once in an election;
- d. Votes as another person; or
- e. Votes in violation of the voting procedures established by law.

A person who knowingly signs a nominating petition or other petition relating to an election when the person is not eligible to sign the petition commits a disorderly person's offense.

Source: Various.

COMMENT

This section establishes crimes directly related to voting. Subsection (a) generally forbids voting in an election when one is not eligible to vote. That prohibition comprehends a range of illegal acts. It includes not only voting when not registered, but also voting in a party primary when not authorized to vote in that election.

Subsections (b) and (c) forbid the unauthorized registering to vote and signing of election petitions. These activities are closely related to voting but are not forbidden under subsection (a). Subsections (d), (e) and (f) forbid kinds of illegal voting that are not included in subsection (a). A person may be eligible to vote in an election, but if that person votes more than once or votes as someone other than the voter or votes in a manner contrary to established voting procedures, the voter commits an offense under one of these subsections.

This section generalizes the substance of a large number of current particular offenses into a few coherent categories. Current statutes are specific and overlapping. Subsection (a) is the subject of 19:34-12, 19:34-20 and 18A:14-78. Particular acts constituting voting when not authorized to do so are made criminal by 18A:14-67, 18A:14-70, 18A:14-77, 18A:14-86, 19:23-45, 19:34-22 and 19:57-37. Subsection (b) is the subject of 19:34-20 and 18A:14-67. Subsection (c) is the subject of 19:34-2 and, insofar as signing petitions is a kind of voting, the sections relating to subsection (a). Subsection (d) and (e) are the subject of 18A:14-67, 18A:14-78, 18A:14-86, 19:34-12 and 19:34-20. Subsection (f) is a generalization of many particular statutes requiring adherence to particular voting procedures. See for example, 18A:14-53 and 19:34-7.

2C:31-2. Tampering with voting system

a. A person commits a crime of the third degree if that person tampers with a voting system, ballots or election records with the purpose to change the record of votes cast.

b. A person commits a crime of the fourth degree if that person possesses a key to a voting machine knowing that election officials do not authorize the possession.

Source: 19:53-1.

APPENDIX B

COMMENT

This section is based on 19:53-1, which specifically forbids tampering with voting machines and the unauthorized possession of voting machine keys. It has been broadened to include tampering with ballots and election records. These activities are separately forbidden by a large number of other sections. See e.g. 18A:14-77.

2C:31-3. Interfering with voting

a. A person commits a crime of the fourth degree if, without lawful authorization, that person knowingly obstructs an election or hinders another person from voting, registering as a voter, or signing a nominating petition or other petition relating to an election.

b. A person commits a crime of the fourth degree if that person offers a benefit to another person with purpose to induce the person to refrain from voting, registering to vote, or signing a nominating petition or other petition relating to an election.

c. A person commits a crime of the third degree if that person engages in three or more instances of the conduct prohibited by subsections (a) or (b).

d. A person who accepts a benefit forbidden by subsection (b) commits a disorderly persons offense.

Source: Various.

COMMENT

This section gathers together all of the offenses which involve interfering with voting. Subsection (a) prohibits obstructing an election or hindering a person from voting. It replaces a large number of offenses, many of them very specific as to means or as to the relationship between the person hindering and the voter. Subsections (b) and (c) make it an offense to bribe a person not to vote or to accept such a bribe. These subsections supplement the Criminal Code provision on bribery, 2C:27-2. The Code provision makes it an offense to offer a benefit in exchange for a vote but does not deal with the problem of offering a benefit not to vote.

2C:31-4. Electioneering at polls

A person commits a disorderly persons offense if, within 100 feet of a polling place at which an election is being held, that person:

a. Distributes campaign material;

b. Solicits support for a person or matter which is the subject of the election; or

c. Displays a political badge other than an official badge distributed by election officials.

Source: 18A:14-81, 18A:14-85, 19:34-15, 19:34-19.

COMMENT

The section is similar in substance to the four source sections. Subsection (a) is derived from 19:34-15. Subsection (b) is derived from 19:34-15 and 18A:14-81. Subsection (c) is derived from 19:34-19 and 18A:14-85. See also 18A:14-72 which generally prohibits electioneering at the polls.

APPENDIX B

2C:31-5. Ballot secrecy

A person who tampers with a voting system or ballots to determine how a voter has voted, or who induces the voter to distinguish the record of that person's vote from others, commits a disorderly persons offense.

Source: Various.

COMMENT

At present, a number of sections make it an offense to induce a voter to mark his ballot outside of the voting booth or to make distinguishing marks on a ballot. See e.g. 19:34-10 and 18A:14-76. Although the problem of ballot secrecy is lessened with the advent of voting machines, the problem persists to a limited degree. This section has generalized the current law and makes it an offense to tamper with a voting machine or ballots to determine how a person has voted or induce a person to distinguish that person's vote in any manner.

2C:31-6. Betting on elections

A person who bets on the outcome of an election commits a disorderly persons offense.

Source: 18A:14-87.

COMMENT

This section continues the substance of the source statute. A similar prohibition applicable to elections generally is found in 19:34-24. That section does not include a criminal penalty perhaps because prior to 1979 gambling generally was punishable as a misdemeanor. Compare 2A:112-7 (repealed 1979) with its replacement, 2C:37-2.

2C:31-7. Improper use of voting registration list

A person who uses a voter registration list for commercial solicitation of voters commits a disorderly persons offense.

Source: 19:31-18.1

COMMENT

This section moves the criminal provisions of 19:31-18.1 from the section of the law dealing with permanent registration of voters, to the criminal section of the law in the interest of consistency since all other sections of the election law that include criminal penalties are included in this Chapter. Section 19A:2-12 still references a private right of action for injunctive relief.

N J L R C

New Jersey Law Revision Commission

TENTATIVE REPORT

relating to

THE DISTRESSED PROPERTY ACT

JUNE 2002

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS MUST BE RECEIVED BY THE COMMISSION NOT LATER THAN SEPTEMBER 6, 2002.

Please send comments concerning this tentative report or direct any related inquiries, to:

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Introduction

In 2001, the Commission approved a project to draft legislation designed to ameliorate the adverse economic effects of distressed real property. The project resulted from the perceived deficiencies of existing law to enable municipal government to take possession of and repair dilapidated buildings, and from the lack of an effective method to appoint receivers to manage and restore residential investment property. New Jersey statutes generally apply to properties that lack virtually any economic value, and hence require demolition, not rehabilitation, or belong to legislatively drawn redevelopment areas. Particular properties that are declining but, if restored, represent an attractive investment, fall outside the law's scope.

The Legislature has enacted: (1) the Unfit Building Act, ~~N.J.S.A. 40:48-2.3 through N.J.S.A. 40:48-2.12~~; (2) the State Uniform Construction Code, ~~N.J.S.A. 52:27D-119 et seq.~~; (3) the Local Redevelopment and Housing Law, ~~N.J.S.A. 40A:12-1 et seq.~~ and other statutes giving government the power and funding to reverse the problems posed by urban blight. The plethora of statutes developed by historical accident and amended from time to time, lack coherence. In addition, the Commissioner of Community Affairs may adopt codes or rules to implement many statutes. The morass of statutes and regulations have had limited effect as evidenced by the persistence of vacant, abandoned and deteriorating buildings.

The draft legislation called the "Distressed Property Act" centers on individual problem properties. A single distressed property has the capacity to reduce the value of contiguous properties and start a domino effect leading to areas of decayed buildings. The best solution to solve the problems posed by distressed properties is to compel a court ordered sale of properties to financially qualified buyers having an interest in and business plan to rehabilitate the property. In addition, for residential investment property, the draft legislation gives courts the authority to appoint a receiver with broad powers to manage and rehabilitate the property. Because the draft legislation affects rights of property owners and lien holders, the draft legislation contains an escalating scale of due process protections to vindicate constitutionally protected rights.

The Distressed Property Act requires code enforcement officials to prepare an inventory of distressed properties. A property placed on the inventory is subject to sale or receivership depending on property type. Municipal governments or persons have the right to make an application with the Superior Court to compel a sale of the property or to appoint a receiver. The statute also gives municipal government the option to forego the sale of tax certificates to prevent encumbrance of the property with additional debt often held by professional investors lacking any incentive to redevelop or repair the property. The statute protects the due process rights of property owners and lien holders of record.

1. Definitions

a. For the purposes of this Act:

1. “commercial property” is a structure containing a usable area, 75% of which is used, or approved for use as, non-residential space or facilities;
2. “developed real property” is a parcel of real property containing a completed or partially constructed building or structure;
3. “residential property” is developed real property that is not commercial property;
4. “residential investment property” is non-owner occupied developed property having more than three housing units for rent and is not commercial property.

b. Commercial property is vacant if neither the owner nor a tenant occupies or conducts business on that property, or in any separate parts of the property constituting at least 25% or more of the square footage of the property’s floor area available for lease, for a period of twelve consecutive months. Residential investment property is vacant if tenants do not occupy at least 25% of the units available for rent.

c. A property is neglected if:

1. real estate taxes are in arrears on a commercial property for four or more consecutive quarters, or for a residential property for six or more consecutive quarters;
2. after notice and an opportunity to correct, the property continues to violate an applicable statute or code provision involving a health or safety standard;
3. the property has been adjudicated a private or public nuisance and the adjudication remains in effect;
4. the property is the object of a pattern of consistent, ongoing code violations, caused by persons or events beyond the owner’s control, occurring over a period of more than one year even if individual code violations are abated; or
5. the property is a partially constructed building and the construction permit is ineffective.

Source: New

COMMENT

This section defines the terms used in the Act and by result sets the parameters of the statute. The term “developed real property” is used broadly to indicate only that the real property must contain a structure. However, the structure does not have to be completed as specified by subsection (c)(5). The Act covers partially completed buildings to provide a remedy to accelerate the development of incomplete commercial and residential property.

Commercial property is defined by the primary function of the property based on the measure of “usable area.” If 75% of the usable area of the property is actually used, or approved for use as, commercial property, then the real property is “commercial” under the Act. Residential property is any property that is not captured within the definition of commercial property. However, where the residential property is not occupied by the owner and contains three or more units for rent, the property is “residential

investment property.” The distinction is necessary because the Act provides for receivership of residential investment property that is distressed property.

The Act contains two triggers, either the property is vacant or the property is neglected. The vacant “trigger” applies only to commercial property or to residential investment property. Subsection (b) states that commercial property is vacant if the owner or the tenant uses less than 25% of the available leasing area. Examples of vacant property within this definition include commercial property where the ground floor is tenanted but the remainder of the building is empty or residential investment property where less than 75% of the available units are unoccupied and unleased.

However, residential property that is vacant but not neglected is not a distressed property. The requirement of “neglect” for residential property avoids deeming a residential property a “distressed property” solely due to an absent owner. Hence, if an owner pays taxes and otherwise complies with the law governing the property, the fact that the property is empty does not result in a designation of “distressed property.”

Subsection (c) specifies the bases for finding that a property is neglected.

2. Identification of distressed properties

a. A distressed property is developed real property that, in the case of commercial or residential investment property, is vacant or neglected, or, in the case of residential property, is neglected.

b. The code enforcement official of a municipality shall identify distressed properties and maintain an inventory of such properties in the municipality. The identification of each property on the inventory shall include the owner’s name, the street address of the property and the basis for finding that it is a distressed property. The code enforcement official shall continuously update the inventory of distressed properties by adding to the municipality’s inventory of distressed properties.

c. A person may report a property to the code enforcement official claiming that it is a distressed property. The code enforcement official shall determine within thirty days of the report whether the property is a distressed property under this Act and, if so, shall add it to the municipality’s inventory of distressed properties.

Source: New

COMMENT

The section identifies how a property is initially identified as a distressed property. Subsection (b) obligates the code enforcement official of each municipality to identify distressed property as defined under Section 1. The code enforcement official’s finding must include the owner’s name, street address of the property and the basis for the determination. The finding then is followed by a warning to the owner under Section 3 and is the starting point for creating the municipality’s inventory of distressed properties. Private persons may report a real property as a distressed property. That report requires the code enforcement official to investigate the claim and make a determination of whether the reported property is a distressed property. Allowing private persons to inform the municipality of potential properties gives private persons an incentive to pursue remedies under the Act and provide a market solution to problem properties.

3. Warning before adding property to inventory

a. Before adding a property to the distressed property inventory, the code enforcement official shall warn the owner of the property, the legal or natural person named in the current tax record for that property, that the property has been determined to be distressed property. The warning shall:

1. identify the conditions for finding that the property is a distressed property, including an identification of the deficiencies in the property;
2. state the date the property was determined to be a distressed property;
3. establish a reasonable deadline for eliminating the complained-of conditions;
and;
4. provide that, if the complained-of conditions are not corrected, the property will be listed on the municipality's distressed property inventory, making it subject to sale or receivership.

b. The warning shall also inform the owner that he has a right to object to the property being designated a distressed property within thirty days of the date of the notice.

c. If the owner of the property does not object to the claim that the property is a distressed property or fails to correct the complained-of conditions, the code enforcement official shall place the property on the municipality's inventory of distressed properties.

d. The code enforcement official shall send the written warning to the address of the owner specified in the tax record and post the warning on the property. The warning is effective whether the owner actually receives it.

COMMENT

This section requires the code enforcement official to notify the owner of real property and lien holders, including judgment creditors, that the code enforcement official has determined the property to be a "distressed property." The notice is called a warning.

The warning tells the owner of the property, as identified in the tax records, why the code enforcement official has preliminarily determined that the property is a distressed property. The warning specifies the conditions of the property underlying the code enforcement official's finding, and sets forth a time table within which the owner must correct the complained-of conditions or object to the determination. The warning is mailed to the owner's last known address as indicated in the tax records and is physically posted on the property.

The warning gives the owner an opportunity to correct the conditions complained of and alerts the owner that, if the conditions are unabated, the municipality or any interested person has the authority to ask the court to order a sale of the property under Section 5(b). In the case of residential investment property, the municipality or any interested person has the authority to ask the court to appoint a receiver to manage and operate the building. The notice requirement gives the owner a pre-litigation remedy to contest the code enforcement official's initial finding.

Should the owner fail to object to the finding or fail to correct applicable statutory or code violations, subsection (c) requires that the code enforcement official place the property on the municipality's inventory of distressed properties making that property subject to the remedies of this Act.

4. Municipal hearing

a. If the owner objects to the determination that his property is a distressed property, or to the time period within which to correct the conditions, the code enforcement official shall provide a hearing.

b. An objection is made if, within 21 days of the date the notice was sent, the owner files a written notice of objection to the code enforcement official specifying the reason for the objection.

c. The code enforcement official shall conduct a hearing affording the owner the opportunity to submit oral and written evidence that the property is not a distressed property. The owner may be represented by counsel.

d. Within ten calendar days of the hearing date, the code enforcement official shall render a written decision on the matter and provide a copy of that decision to the owner. If the code enforcement official finds that the property is distressed, the decision shall state the reason for upholding the original finding and shall state the reason for rejecting all objections raised at the hearing or previously submitted in writing.

COMMENT

This section outlines the procedure to be followed by the owner and municipality to vindicate the owner's right to be heard and to present evidence in support of his objection. The owner has a right to appeal the decision of the municipality to the Superior Court, Law Division under Rule 4:71 (Appeals from Local Agencies).

5. List of distressed properties; remedy

a. The current inventory of distressed properties shall be available for public review at the office of the municipal clerk or other location as is specified by the municipality, including placement on any Web site published by the municipality and shall be a public record.

b. A municipality or any person may file a summary action with the Superior Court seeking an order to sell a distressed property or appoint a receiver to manage and operate distressed and occupied residential investment real property. The initial filing in the summary action must include a complaint, an appraisal of the property and a copy of the municipal determination that the property is distressed. In actions to appoint a receiver, the initial filing may name a receiver subject to the approval of the Court.

c. The owner, or lien holder, may file a summary action with the Superior Court seeking an order requiring the removal of a property from the municipality's distressed property inventory. The owner or lien holder must demonstrate that the property was improperly placed on the inventory of distressed properties and that the property is no longer vacant or neglected.

Source: New

COMMENT

This section establishes the inventory of distressed properties. Placing a property on the inventory has legal consequences. Any person or the municipality may bring an action under this Act to force the sale

of the property or to have the court appoint a receiver to operate residential investment property. Due process requirements to the owner are satisfied as follows. First, under Section 3, the code enforcement official has given prior notice to the owner that the property is a "distressed property." That notice included an opportunity to correct and a right to object entitling the owner to a municipal hearing. Second, if the property is placed on the inventory, subsection (c) gives the owner a second opportunity to have that property removed by bringing a summary action before the appropriate court. N.J.S.A. 47:1A-1 et seq.

6. Court Proceeding

a. Except as in subsection (b), the Superior Court shall, after notice and a hearing, enter an order authorizing the sale of the distressed property if the court finds that: (1) the owner and lien holders have been served with the complaint; and (2) the plaintiff has adequate financial ability and plan to rehabilitate the building or complete the building if not completed. If sale is ordered, the Superior Court retains jurisdiction to approve the contract of sale.

b. The Superior Court shall enter an order appointing a receiver to manage and operate distressed property if the court finds that: (1) the real property is occupied residential investment property, (2) the party submits a plan to remedy defects, (3) the party demonstrates that the rent roll of the building in accordance with the plan approved by the court is sufficient to carry its cost, including mortgages, cost of repair and payment of taxes and (4) the owner is unwilling or unable to repair the property.

c. A lien holder may file, simultaneously with or prior to filing his answer, a motion to remove the distressed property from the municipal inventory if the motion is supported by evidence showing that the lien holder is willing to correct the deficiencies in the property and has the financial ability to complete the repairs. After a hearing, the court may remove the matter from its active calendar if the court finds that the lien holder has provided evidence of financial capacity to correct the deficiencies and a reasonable timetable for completing the repairs. The court shall retain jurisdiction and shall return the matter to its active calendar if the lien holder violates any term of the order holding the action in abeyance.

Source: New

COMMENT

This section sets the findings the court must make prior to entering an order compelling the sale of the property or appointing a receiver of the property if it is occupied residential investment property. First, the court must find that the plaintiff has served the owner and all lien holders of record with the complaint as required by New Brunswick Savings Bank v. Markowski, 123 N.J. 402 (1991). Second, the court must find, based on proofs established by the plaintiff, that, at the time the complaint was filed, the property was a vacant or neglected property and remains a distressed property. If the court makes these findings, then it may enter an order compelling the sale of the property or appointing a receiver. An action for receivership applies only to residential investment property. The party bringing that action has the burden to prove that the rent roll of the building is sufficient to pay expenses and to rehabilitate the building. The party shall name a receiver to manage the building as provided under subsection (b) of Section 5.

7. Sale

a. The municipality shall sell the property at a public auction subject to commercially reasonable terms where the down payment shall not exceed 10%, conventional financing is acceptable and the closing takes place within the time period agreed to by buyer and seller.

b. The contract of sale of the property shall be subject to approval by the court that has retained jurisdiction over the matter. The court shall approve the contract of sale when the contract is made in good faith, is commercially reasonable and contains a rehabilitation plan.

c. The proceeds of the sale shall be distributed to the lien holders in order of their priority; any surplus shall be distributed to the owner. The buyer shall receive the property free of all liens on the property.

Source: New

COMMENT

This section instructs the municipality to sell the property by public auction without specifying the exact manner of sale. The objective is to yield the best price; hence the down payment shall not exceed 10% percent to open the bidding process to non-professional investors. This provision is meant to prohibit the setting of terms such as the minimum down payment requirement of 20% of the bid required to participate in a sheriff's auction and the short time period in which to pay the full purchase price of the property acquired at auction. E.g., N.J.S.A. 2A:17 et seq. These terms generally limit the market of potential buyers to professional investors.

Subsection (b) requires court approval of the contract of sale if the contract of sale is made in good faith and its terms are commercially reasonable.

Subsection (d) states existing law that the proceeds of the sale are distributed according to the order of priority established by other law. The owner gets any surplus. Provided all lien holders are notice, the buyer receives clear title to the property, except where the law provides otherwise such as federal tax liens.

8. Receivership

a. A receiver shall have the authority to preserve, repair and operate the real property until the real property is returned to the owner or sold under Section 7. The authority includes the ability to obtain loans and grants to carry out the objectives of receivership and to place liens upon the property.

b. After appointment, a receiver shall submit periodic progress reports to the court according to court-set reporting requirements.

Source: New

COMMENT

This section identifies the powers of the receiver. The receiver is given broad and general power to carry out his task of correcting defects or rehabilitating the residential investment property.

9. Tax certificates

A municipality may forego the sale of tax certificates on distressed properties selectively by individual properties, or for all distressed properties on the municipality's inventory of distressed properties, provided the municipality makes this determination under N.J.S. 54:5-114.1.

Source: New

APPENDIX C

COMMENT

This section gives municipalities the option of not selling tax certificates on distressed properties. These sales may be made to professional investors having no interest in or incentive to rehabilitate the property. The result is property encumbered with high interest rate tax certificates. Tax certificate sales exacerbate the problem of distressed properties by increasing their financial risk and by discouraging any person from buying and fixing the problem property.

10. How owner retakes property after appointment of receiver

a. Prior to the sale of the property, an owner of a residential investment property in receivership may petition the court to obtain the return of his property subject to an order of the court appointing a receiver if the owner:

1. demonstrates that the owner has the financing and capacity required to rehabilitate and maintain the building;
2. submits a plan to inspect and repair future defects, which plan includes regular inspections;
3. pays off any costs incurred by the receiver to correct defects or rehabilitate the real property that were not taken from the rent roll; and
4. pays, in the discretion of the Court, other costs and fees associated with the property that were incurred by the receiver or any person who filed a summary action seeking the sale of the property or the appointment of the receiver.

Source: New

COMMENT

This section specifies the conditions of return required of an owner of distressed property that is residential investment property subject to receivership.