



MEMORANDUM OF OPPOSITION AND PROPOSAL FOR CHAPTER AMENDMENT

Fifteen Day ‘Received By’ Deadline for Absentee Requests — S264 / A5783

VoteEarlyNY opposes the enactment of **S264 / A5783** as currently drafted because it significantly curtails access to a ballot for any eligible voter who can’t appear in person. However, if this bill is to become law, we recommend a fair chapter amendment to ameliorate the two most anti-voter impacts, while still achieving the purpose of the proposal.

As drafted, this law will restrict access to absentee ballots during the most active timeframe before an election, when voters are making and executing their plan to vote. The bill rolls back the deadline for all remote absentee ballot requests by more than a week, from the current voter-centric rule that allows requests made online or by mail (*postmarked*) 7 days before an election, to a rule that disqualifies requests if they are *received by* Boards less than FIFTEEN days before an election.

For the reasons set forth below, we recommend a chapter amendment agreement as follows (a proposed bill draft and introducers’ memo are included *infra*, Appendix A):

1. Retain the voter-friendly ‘mailbox rule’ for all absentee ballot requests—a clear “mailed to or submitted and received by” deadline for mailed or electronically submitted requests, rather than shifting to an uncertain (and harder to comply with) “received by” deadline.
2. Permit these (remote) absentee ballot requests so long as they are mailed to or submitted and received by the board of elections not later than the ELEVENTH day prior to an election, i.e., the end of day on the Friday prior to the start of the Early Voting period, instead of cutting off remote absentee access more than two weeks prior to an election.

The purpose of this legislation as set out in the Introducers’ Memo is: “to conform deadlines for mailing of absentee ballot applications to comply with United States Postal Service (USPS) guidelines in order to assure the timely delivery of election mail” However, as Postmaster General Louis DeJoy boasted in the USPS post-Election 2020 analysis:

*“We delivered 99.89 percent of ballots within seven days, consistent with the guidance we provided voters throughout the election cycle and delivered 97.9 percent of ballots from voters to election officials within three days. Overall, on average, we delivered ballots to voters in 2.1 days. Most importantly, on average, we delivered ballots from voters to election officials in just 1.6 days.”*¹

¹ UNITED STATES POSTAL SERVICE, DELIVERING THE NATION'S ELECTION MAIL IN AN EXTRAORDINARY YEAR 2, 18 (2021), https://about.usps.com/newsroom/national-releases/2021/usps_postelectionanalysis_1-12-21_georgia.pdf.

In 2020, USPS lawyers specifically confirmed in Federal Court that the “two-day service standard” applied to New York election mail.² According to NCSL, enacting this law would make New York a national outlier, as only one state had a longer pre-election deadline in 2020 for absentee requests made by mail.³ By contrast, in 5 states ballots are automatically delivered to all voters, but among states that require voters to request a ballot, New York’s current deadline of 7 days is fairly typical.

In addition, if this bill is enacted a mailed ballot request will now need to be “*received by*” the Board no later than the 15th day before election day, instead of “*mailed to*” the Board by the 7th day prior, requiring action by the voter several days before even this much earlier deadline to ensure the request is *received* timely. This policy change moves New York away from the voter friendly mailbox rule (“mailed to”), unfairly shifting the burden to voters for unreasonable (and unsubstantiated) Board of Elections or USPS logistical delays entirely outside the voter’s control.

This burden-shifting also departs from the election law’s safe-harbor policy of protecting civil rights by (counting) ballots mailed on Election Day, affording voters seven days for ballots to arrive, and thirteen days for military and special federal ballots. NY Elect. law §§ 8-412(1); 10-114(1); 11-212(1). In light of the fundamental rights at stake—the lack of viable voting alternatives for many citizens hoping (self-selecting) to vote absentee, a new policy that attempts to rebalance administrative burdens by rolling back key deadlines must also safeguard the voter’s interests.

However, from a civil-rights, civic-education, and even a campaign’s field perspective, ***were this to become law as drafted, nobody can actually inform or advise voters when they must mail their ballot request by to comply with the election law, i.e., to ensure the request is timely.***

Also, the proposal makes no carveout for and overbroadly applies the new 15-day cutoff to *online* requests for a ballot. Online requests are increasingly popular in every facet of modern life. This trend will continue increase over time as generations of new voters displace older ones. Online requests eliminate one or more legs of snail mail and greatly streamlined absentee ballot administration in 2020,⁴ permitting a shorter timeframe than 15 days. As noted, the ballots themselves need only to be postmarked by Election Day to be valid (the same pro-voter policy we advocate for retaining here for remote absentee requests). The uncertainties that may exist for requests made by snail-mail are not analogous to online requests and the confirmation numbers they generate instantaneously. That this 2021 legislation curtails the deadline for online requests with the same broad-brush used to curtail mail requests, despite the data from the USPS on timely deliveries begs the question of reasonable service standards not of the USPS, but of our local Boards, which simply don’t require fifteen days to process and deliver ballots.

Although a voter *might* still be able to go in person to vote after the mail and online request deadline passes (as has always been the law), the population of voters who self-select to vote absentee *and*

² *Gallagher v. NYS Bd. of Elections*, 477 F. Supp. 3d 19 (S.D.N.Y. 2020), at *30, <https://casetext.com/case/gallagher-v-ny-state-bd-of-elections-1> (“Within the five boroughs of New York City the postal service promises a “two-day service standard,” which means that over 98 percent of mail placed in a collection box or delivered to a post office will arrive within two days, excluding Sundays.”).

³ NCSL, *VOPP: Table 5: Applying for an Absentee Ballot, Including Third-Party Registration Drives*, <https://bit.ly/2PpiaPj>.

⁴ NYC CAMPAIGN FINANCE BOARD, VOTER ANALYSIS REPORT 2020-2021, 66, <https://bit.ly/3iclGXR>.

who make such requests remotely are indicating that they may be unable to appear in person or unwilling to do so if they can at all avoid it. Such voters may lack the transportation or mobility to do so, or they may need (or prefer) to avoid the uncertainty of crowds and very long lines that are hallmarks of in-person voting in certain communities. For some voters and family circumstances, including during a health crisis, voting from home may be the best and most dignified option.

Rolling back the deadline for requesting a ballot will not impact all voters equally. Those on the permanent absentee voting list, persons who rarely move residences, and high-propensity voters most attuned to the political calendar will be least likely to be tripped up by this surprisingly early deadline. Voters with more resources, more scheduling flexibility, and ready transportation options will be best positioned to pursue alternatives if needed. But various already-marginalized communities of voters and those who tune in closer to an election and want to exercise their rights will be impacted most by this roll back. The absentee request option will cut off just at the point in the cycle when many voters wish to avail themselves of it.

As has been widely reported, since the 2020 election state lawmakers across the U.S. are pursuing hundreds of bills in dozens of states to restrict access to voting, many regarding absentee access. New York has been on a different path, incrementally modernizing voting rules and expanding fair access while safeguarding integrity. As drafted, this bill sends the wrong message at the wrong time. As New York moves toward an election model where voters have the option to vote remotely, the State has an opportunity to adopt best practices and avoid needlessly overbroad restrictions and pre-mature access cutoffs like the one proposed here.

All stakeholders share the goal of designing a system built for the modern era that meets the needs of New York's present and future voters, and ensures a resilient voting system in times of emergency or unforeseen circumstances.

For the aforementioned reasons, *VoteEarlyNY* opposes the enactment of S264 / A5783 as currently drafted, because it significantly curtails access to a ballot for any eligible voter who can't appear in person. However, if this bill is to become law, we recommend the following fair chapter amendment to ameliorate the most anti-voter impacts, while still achieving the purpose of the proposal.

Thank you for your consideration.

APPENDIX A

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EXPLANATION—Matter in ALL CAPS italics (underscored) is proposed for chapter amendment. Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to absentee voting application deadlines.

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

Section 1. Paragraph (c) of subdivision 2 of section 8-400 of the election law, as amended by chapter 321 of the laws of 1988, is amended to read as follows:

c) All applications requesting an absentee ballot by mail must be ~~[mailed to]~~ MAILED TO OR SUBMITTED AND received by the board of elections not later than the ~~[seventh]~~ ELEVENTH fifteenth day before the election for which a ballot is first requested ~~[or delivered to]~~. Applications for an absentee ballot that will be delivered in person at the board of elections to the voter or to an agent of the voter must be received by such board not later than the day before such election.

§ 2. Paragraph (d) of subdivision 2 of section 8-400 of the election law, as amended by chapter 138 of the laws of 2020, is amended to read as follows:

(d) The board of elections shall mail an absentee ballot to every qualified voter otherwise eligible for such a ballot, when such voter requests an absentee ballot from such board of elections in writing in a letter, telefax indicating the address, phone number and the telefax number from which the writing is sent or other written instrument, or an electronic application submitted by the voter by electronic mail or through an electronic transmittal system or web portal established by the state board of elections or city or county board of elections, which is MAILED TO OR SUBMITTED AND received by the board of elections not later than the ~~[seventh]~~ ELEVENTH fifteenth day before the election for which the ballot is first requested and which states the address where the voter is registered and the address to which the ballot is to be mailed; provided, however, a military voter may request a military ballot or voter registration application or an absentee ballot application in a letter as provided in subdivision three of section 10-106 of this chapter; and provided further, a special federal voter may request a special federal ballot or voter registration application or an absentee ballot application in a letter as provided in paragraph d of subdivision one of section 11-202 of this chapter. The board of elections shall enclose with such ballot a form of application for absentee ballot if the applicant is registered with such board of elections.

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§ 3. Paragraph (d) of subdivision 2 of section 8-400 of the election law, as separately amended by chapters 97 and 104 of the laws of 2010, is amended to read as follows:

(d) The board of elections shall mail an absentee ballot to every qualified voter otherwise eligible for such a ballot, who requests such an absentee ballot from such board of elections in writing in a letter, telefax indicating the address, phone number and the telefax number from which the writing is sent or other written instrument, which is signed by the voter and MAILED TO OR SUBMITTED AND received by the board of elections not [~~earlier than the thirtieth day nor~~] later than the [~~seventh~~] ELEVENTH-fifteenth day before the election for which the ballot is first requested and which states the address where the voter is registered and the address to which the ballot is to be mailed; provided, however, a military voter may request a military ballot or voter registration application or an absentee ballot application in a letter as provided in subdivision three of section 10-106 of this chapter; and provided further, a special federal voter may request a special federal ballot or voter registration application or an absentee ballot application in a letter as provided in paragraph d of subdivision one of section 11-202 of this chapter. The board of elections shall enclose with such ballot a form of application for absentee ballot if the applicant is registered with such board of elections.

§ 4. This act shall take effect immediately, provided that the amendments to paragraph (d) of subdivision 2 of section 8-400 of the election law made by section two of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 7 of chapter 91 of the laws of 2020, as amended, when upon such date the provisions of section three of this act shall take effect.

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**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER:

SPONSOR: MYRIE

TITLE OF BILL:

An act to amend the election law, in relation to absentee voting application deadlines

PURPOSE:

The purpose of this bill is to assure the timely delivery of election mail while ensuring fair and meaningful access to the ballot for any eligible voter who is unable or unwilling to appear in person.

SUMMARY OF PROVISIONS:

Section 1 of the bill amends Election Law 8-400(2)(c) to require that applications for absentee ballots be **mailed to or submitted and received by** the board of elections not later than the **eleventh** day before the day of an election, rather than the seventh day ~~for which a ballot is first requested~~. Section one also requires in-person requests for absentee ballots be delivered to the voter or to an agent of the voter no later than the day before such election.

Section 2 amends Paragraph (d) of subdivision 2 of section 8-400 of the elections law to conform to the receipt date for absentee ballot requests to the **eleventh** day requirement set forth in Section one of the bill.

Section 3 amends Paragraph (d) of subdivision 2 of section 8-400 of the election law, as separately amended by chapters 97 and 104 of the laws of 2010 to conform required receipt dates for absentee ballot requests made in writing to the **eleventh** day provision set forth in section one of the bill.

Section 4 sets forth the effective date.

JUSTIFICATION:

To ensure that the **ballots** of all qualified voters who wish to exercise their constitutional right to vote by absentee ballot are **processed, delivered, and returned in a timely manner** ~~counted~~, the ~~time~~ deadlines for **requesting mailing** absentee **ballots** ~~applications~~ must take account of **necessary board of elections processing and USPS**

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service timeframes. ~~guidelines for ensuring the timely delivery of mail.~~

LEGISLATIVE HISTORY:

S264 of 2021
S8916 of 2019-20

FISCAL IMPLICATIONS:

~~Not yet determined.~~ **None to the State.**

EFFECTIVE DATE:

This act shall take effect immediately, provided that the amendments to paragraph (d) of subdivision 2 of section 8-400 of the election 3 law made by section two of this act shall be subject to the expiration 4 and reversion of such paragraph pursuant to section 7 of chapter 91 of 5 the laws of 2020, as amended, when upon such date the provisions of 6 section three of this act shall take effect.