

State of New Jersey

**N J L R C**

**New Jersey Law Revision Commission**

**FINAL REPORT AND RECOMMENDATIONS**

relating to

**ELECTION LAW**

MARCH 2003

**NEW JERSEY LAW REVISION COMMISSION**

153 Halsey Street, 7th Fl., Box 47016

Newark, New Jersey 07102

(tel.) 973-648-4575

(fax) 973-648-3123

email: [njlrc@njlrc.org](mailto:njlrc@njlrc.org)

website: <http://www.NJLRC.org>

## Introduction

The Final 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).

The New Jersey election law 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 (*N.J.S.A.* 19:1-1 through 19:3-29, *N.J.S.A.* 5-1 *et seq.* and *N.J.S.A.* 19:12-1 through 19:13-23). The second area of the law concerns the manner in which an individual casts a vote (*N.J.S.A.* 19:4-1 *et seq.*, *N.J.S.A.* 19:6-1 through 19:11-1, *N.J.S.A.* 19:14-1 through 19:37-5 and *N.J.S.A.* 47-1 through 19:60-12). The third area of the law pertains to election contributions and expenditures (*N.J.S.A.* 19:39-1 through 46-14). The Report addresses the first and second of these three areas.

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

Examination of the New Jersey statutes revealed that New Jersey election law was an appropriate candidate for revision. Originally enacted in the 1930s, the statute does not presently address recent developments in technology or mirror current election practices. While the Legislature has amended Title 19 since that time, the law has retained provisions that are neither necessary nor appropriate, while failing to reflect the impact of technological advances on current procedures or the time periods necessary to accomplish certain tasks.

In addition, recent federal law pertaining to elections imposes requirements on the states that necessitate changes to New Jersey's election law. Significantly, the *Help America Vote Act of 2002*, Pub. L. 107-252, requires the implementation of a statewide voter registration system. The New Jersey registration system is presently distributed through the twenty-one counties. The federal law also requires the widespread availability of provisional voting, increased accessibility of voting machines, an opportunity for voters to verify and correct their ballots before casting their votes, the discontinuation of obsolete voting methods and the increased use of available technologies, and the implementation of an administration complaint procedure for violations of federal voting law. The revised statutes incorporate the changes required by federal law while at the same time endeavoring to clarify, simplify and streamline the election process.

The New Jersey Legislature has clearly recognized the need to reform New Jersey Election law. At the time of the dissemination of the Commission's first Comprehensive Tentative Report in June of 2002, there were more than 70 pending bills pertaining to election issues. More than 30 bills dealing with election law issues have already been introduced in the 2002-2003 Legislative Session.

Presently, New Jersey Election Law consists of two complete volumes of the New Jersey statutes found at Title 19. Many of its provisions pertain to obsolete voting systems, such as paper ballots and lever machine balloting, which are no longer widely used. Other provisions are duplicative and some, although they deal with one subject, are scattered throughout Title 19. In addition, some sections of the statute are overly detailed and include details better left to administrative rule making, while others leave gaps in coverage. The result is an unclear body of law not easily accessible to the government officials and others who must rely upon it. It is likely that the current statutes are even less accessible to concerned citizens who have limited contact with its provisions and are unfamiliar with its subtleties and with the various local practices that have developed over the years.

The Commission's Final Report contains recommendations to update New Jersey's law, to bring it into compliance with federal mandates, to reflect current realities of the voting process, and to allow for further modification of voting systems and technologies. The goal is to increase access to the vote and to make it easier for a citizen to vote. To do so, the Report, unlike existing law, uses machine neutral language. The current statute focuses primarily on the use of paper ballots and lever machine balloting. At this time, however, paper ballots are used in only two counties and lever machine balloting is no longer widely used. The lesson learned from the current statutes is that since voting technology continues to develop, the use of machine-neutral language is useful since it does not tie the law to a single voting system the passage of time may render obsolete.

The Report recommends the adoption of a statewide voter registration system. This recommendation complies 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 with its dense and highly mobile population and its relatively 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.

The Report also creates a Commission on Elections. While the day-to-day responsibilities associated with elections will continue to be handled by personnel at the county level, the state-level entity is necessary to oversee the proposed statewide registration. In addition, the Commission would enforce the provisions of the statute to achieve more statewide uniformity in all aspects of the electoral process.

The Report also recommends other significant changes including the expansion of the availability of absentee voting. The Report eliminates 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.

The comments received by the Commission in response to the extensive distribution of its Tentative Reports suggest that most of the recommendations contained in this Report are acceptable to the individuals throughout the State who would be affected by the implementation of the proposed changes. Prompt consideration of the remaining issues by the Legislature should allow for the resolution of those limited issues in time to allow New Jersey to comply with the federal mandates within the deadlines imposed by the federal law.

This Report is to be interpreted in a manner consistent with federal law, including the *Help America Vote 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 law, 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.

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## 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 and 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. 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.

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 political 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 election 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.

COMMENT

The section clarifies the role of the County Boards and Superintendents and Administrators in relation to the Commission on Elections and to 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 find 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 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. 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.

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 and 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 includes similar 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 since most New Jersey voters are not registered in a party. This section retains the limitation on serving on the Commission while holding elective public office but clarifies that, with the exception of the unaffiliated members, holding a party office does not disqualify an individual from serving. The Commission is created in part because federal law requires that each state implement a single computerized statewide voter registration list, maintained and administered at the state level, and a state level administrative complaint procedure. See, 42 U.S.C.15483 et seq and 42 U.S.C. 15511.

### **19A:1-9. Duties of Commission; employees**

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 director, legal counsel and hearing officers shall not be within the classified 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 Superintendents or Administrators 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 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 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:1-10. Administrative complaint procedure**

a. The Commission on Elections shall hear and decide complaints of violations of Title III of Pub. 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 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 most recent federal law regarding to elections. Federal law requires that any state that receives any federal funding pursuant to a program set forth in the Help America Vote Act of 2002 (Pub. L. 107-252) establish and maintain state-based administrative complaint procedure. See, 42 *U.S.C.*15511 et seq.

### **19A:1-11. 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.

### **19A:1-12. 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 10 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:1-13. 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.

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 requires the periodic training of election officials.

**19A:1-14. Poll officials; removal**

a. The County Board may dismiss any poll official for cause including 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:1-15. 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 in the district 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:1-16. 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.

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 specific officer not be assigned to a particular polling place. This section also clarifies that an officer may be asked to leave by the poll officials for the district, and that the officer shall comply pending a final determination.

**19A:1-17. 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 not a Saturday, Sunday or 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, every 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 from which any person may obtain a registration form and 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 the 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 online 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. Federal law requires that each state implement a single computerized statewide voter registration list maintained and administered at the state level. *See*, 42 *U.S.C.* 15483 et seq.

### **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 voter registration record, and to update the central database daily so that the records reflect the name of each registered voter without duplication and so that 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 selected election officials may add, delete, or modify the records. Federal law requires that each state implement a single computerized statewide voter registration list maintained and administered at the State level, and specifies certain minimum requirements for the database. See, 42 *U.S.C.* 15483 et seq.

### **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, as limited by 19A:10-2,

(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. The Commission shall 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, including any information required by federal law. 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 be responsible for printing the uniform statewide voter registration forms and distributing 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. Federal law requires certain information on the voter registration form and it is intended that all such information appear on the form, including requirements not duplicated here. See, 42 U.S.C. 15483. Completing a statewide uniform voter registration form and submitting that form in person to a voter registration agency will be considered an 'in-person' registration, even if the form is later mailed by the agency to the Commission on Elections, since the agency personnel will have the opportunity to confirm the identification of the prospective voter at the time that the registration form is submitted.

#### **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 and 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, ¶ 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. Federal law includes certain requirements for voting by provisional ballot and the language of this and other sections of the statute is intended to comply with those requirements. See, 42 U.S.C. 15482.

## **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. Completing a statewide uniform voter registration form and submitting that form in person to a voter registration agency will be considered an 'in-person' registration, even if the form is later mailed by the agency to the Commission on Elections, since the agency personnel will have the opportunity to confirm the identification of the prospective voter at the time that the registration form is submitted.

### **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 rejection of the uniform statewide registration form or 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. In conformance with federal law, the section requires the assignment of a unique identifying number for each voter. If the voter has a driver's license, the license number is used. If not, and the voter has a social

security number, the last four digits of the social security number are used as part of the identifying number. In the unlikely event that the voter has neither a driver's license nor a social security number, a unique identifier is still assigned independently for registration.

### **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. Political party affiliation,
- g. Address of voter,
- h. The voter's election district,
- i. The voter's signature; and
- j. 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**

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 (j) 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 the 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. Federal law requires that maintenance of the statewide voter registration list be performed on a regular basis and that the information contained in the information be coordinated with other agency databases within the State, and with the State motor vehicle authority and the federal Commissioner of Social Security. See, 42 *U.S.C.* 15483.

### **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, numeric identifier and signature accessible by alphabetical order, address and numeric identifier. 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. For 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. Federal law requires that local election officials have access to the information contained in the statewide voter registration database. See, 42 *U.S.C.* 15483.

### **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.

### **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 permitted by law, 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 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 (k)

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 mechanical machines. Since those procedures are not relevant to most systems now in use, a generalized standard is appropriate. Federal law now imposes minimum voting system standards, including certain general standards, and requirements pertaining to audit capacity, accessibility, error rates, and a uniform definition of what constitutes a vote. See, 42 *U.S.C.* 15481.

### **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 (e) 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. One of the goals of requiring Commission approval of voting systems is to insure consistent compliance with the federal standards.

### **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 to 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 the use of the system;
- d. Procedures to determine whether a valid vote has been cast;

e. Procedures to ascertain vote totals and to transmit those totals to the County Board of Elections; and

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. The Commission will need to make certain that any procedures created by regulation comply with federal law.

### **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 format 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 format 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 regarding 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 10 percent of the registered voters in

the district and in any other language if required by federal law. The percentage of registered voters whose 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. Candidates who are not members of certified political parties shall, to the extent possible, be arranged in a manner similar to those from the certified parties, 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 and equitable manner. Ballot positions in all elections 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 85<sup>th</sup> 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 43<sup>rd</sup> day prior to the day of the election.

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

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**

a. A group of candidates, other than members of a certified political party who have been nominated in a primary election, may request that their names be grouped together on the ballot in a single column or row. 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. The County Board of Elections shall comply with the request unless it is impractical to do so.

b. A request that candidates' names be grouped may be made in a letter signed by all such candidates delivered to the officer who receives nomination petitions no later than the last date on which petitions may be submitted.

Source: 19:14-9; 19:14-12; 19:14-18; 19:23-17; 19:23-18; 19:23-25; 19:23-25.1.

COMMENT

This section derives from several sections of current law, which address 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. This section clarifies that there can be grouping of candidates in any election.

**19A:4-8. Permissible descriptive language on ballot**

a. Any candidate, other than a candidate of a certified political party in a general election, may request that a party designation or slogan of not more than six words appear with that candidate's name on the ballot.

b. 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.

c. No designation or slogan shall include the name of any person or corporation unless the written consent of that person or corporation is filed with the petition of nomination. No designation or slogan used in a non-partisan or a general election shall contain the name of any certified political party, any derivative of that party name, or any part of it.

d. A request for a designation or slogan shall be included in a nominating petition or in a request for the grouping of candidates as provided in 19A:4-7.

e. 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.

f. No ballot for any election may 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.

Source: 19:14-9; 19:14-12; 19:14-18; 19:23-17; 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:4-9. 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. 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:4-10. 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 43<sup>rd</sup> 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 35<sup>th</sup> 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.

c. No changes to the ballot shall be permitted less than 25 days before the election.

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:4-11. 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:4-12. 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:4-13. 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:4-14. 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 10 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 30<sup>th</sup> 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:4-15. 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:4-16. 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.

### **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 (c), 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.

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 (c) 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 sample ballots, 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 new federal law. See, 42 *U.S.C.* 15482.

**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. The language pertaining to the identification requirements is taken from federal law. 42 *U.S.C.* 15483.

#### **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.

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:5-9.

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 provisions of the new federal law. See, 42 U.S.C. 15482.

### **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, even if permitted to vote provisionally, may apply to a Superior Court judge for permission to vote or for an order that the provisional ballot be counted.

b. No papers need be filed; the court shall hear oral applications. The applicant may appear pro se or be represented by counsel. The rules of evidence shall not apply to these proceedings.

c. At the time of the hearing, the applicant shall be permitted to state facts establishing eligibility to vote and to furnish a copy of any information considered by the election officials that was provided to the voter.

d. The judge shall grant the application or require that the voter's provisional ballot be counted, if the judge finds that the applicant:

(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) Is properly registered at his or her current address or 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.

e. 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; 19:15-19; 19:15-20; 19:15-21.

#### 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. 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.

### **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 person shall be permitted to enter the voting booth. A voter shall not remain in the voting booth longer than two minutes and shall leave the booth immediately after voting. 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. Subsection (e) is new and is included to incorporate provisions of the new federal law. See, 42 *U.S.C.* 15482.

### **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.

#### 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 county office or countywide 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; 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 10 days of an election, a candidate or any 10 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, set the procedure for the recount and 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 outcome of an election or public question is changed, the court shall order the outcome 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 outcome 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 10 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.

#### 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 outcome 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. Special 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
- (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 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.

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 for pre-election day voting 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.

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.

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:5-9.

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 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 in the manner set forth in 19A:5-9 seeking a determination that the voter is qualified and an order that the provisional ballot be counted.

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) 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 may:

(1) State in not more than six words the name of a party or slogan to be printed on the ballots with the names of the candidates. No slogan may be placed on the petition that does not meet the requirements for placement on the ballot pursuant to 19A:4-8.

(2) 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. 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 two percent 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 two percent 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.

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 99<sup>th</sup> day preceding the general election.

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 60<sup>th</sup> 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 60<sup>th</sup> 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 93<sup>rd</sup> day before the general 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 12<sup>th</sup> 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 93<sup>rd</sup> 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-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 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 by petition:

(1) if the petition is valid and provides for a committee on vacancies, the committee shall fill the vacancy as provided in this chapter; or

(2) otherwise, 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 25<sup>th</sup> 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 remaining ballots.

h. As set forth in section 19A:4-10, 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 (g) was included to reflect the payment of costs rule adopted by the Court in *New Jersey Democratic Party, Inc. v. Samson*, 175 N.J. 178 (2002). Subsection (h) 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:8-15. Committee on vacancies candidate nominated by petition**

a. If a petition provides for a committee on vacancies, and 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.

b. The certificate shall be filed at least 45 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: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.

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.

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 is 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 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 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 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 percent 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. Other political parties; registration**

A voter may register as a member of any certified political party or as a member of any party that has nominated a candidate for state or federal office by petition within the last four years.

Source: New.

#### COMMENT

This section is new, and is intended to recognize the right of voters to register as members of parties other than the certified political parties. See, *Council of Alternative Political Parties v. State, Division of Elections*, 344 N.J. Super. 245 (App. Div. 2001).

### **29A:10-3. 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 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:10-4. 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.

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:10-5. 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:10-6. 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:10-7. 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 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 48<sup>th</sup> 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:10-8. 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 50<sup>th</sup> 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 of the certified political party at least 40 days before the primary election;

(2) Was registered as a member of 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 of 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.

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. 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;
- (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:11-4. 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.

#### 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 50<sup>th</sup> 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 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. 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 percent 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.

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 filed 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.

### **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.

**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.

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.

## CHAPTER 14. NON-BINDING COUNTY OR MUNICIPAL REFERENDA

### **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 percent 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.

#### 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.

### **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.