

GOVERNOR'S PROGRAM BILL
2022

MEMORANDUM

An act to amend the election law, in relation to providing for the declination of a designation as a candidate or nomination for a party position under special circumstances

Purpose:

This bill would permit a person designated as a candidate for nomination or for party position, or nominated for an office, to decline the nomination when the person has been arrested or charged with one or more misdemeanors or felonies, either by the filing of an accusatory instrument in state court or by the filing of a criminal complaint or indictment in federal court. Additionally, the bill permits declination when the person has been convicted of one or more misdemeanors or felonies under state or federal law. The qualifying circumstances to be eligible for declination under this section must occur after such person's designation or nomination for office.

Summary of Provisions

Section one of the bill amends section 6-146 of the Election Law by adding a new subdivision 7. It permits a person designated as a candidate for nomination or for party position, or nominated for an office, to decline the nomination under specifically enumerated circumstances. To decline a nomination, the bill requires the candidate to sign and file the certificate of declination with the board of elections no later than the last day to certify ballot contests pursuant to section 4-110 and 4-112 of the Election Law.

A person is eligible to file a certificate of designation when the person has been arrested or charged with one or more misdemeanors or felonies, either by the filing of an accusatory instrument in a state court or of a criminal complaint or indictment in federal court, or when the person has been convicted of one or more misdemeanors or felonies under state or federal law, at any time after such person's designation or nomination for office.

Existing Law:

This is a new bill. The bill adds a new reason and a timeframe to decline a designation or nomination to the existing provisions of section 6-146 of the Election Law.

Following a declination that occurs under this section of law, a vacancy can be substituted up to four days following the declination pursuant to Election Law section 6-158.

Election Law Section 6-158(3) states that “A certificate to fill a vacancy in a designation caused by declination shall be filed not later than the fourth day after the last day to decline.” Any vacancy filled by declination under this new legislation provides a shorter time frame to fill a vacancy than one that occurs through death or disqualification, which can be filled up to ten days later, and as late as up to four days before the primary election.

The Election Law already contains several relevant notice provisions that make clear that a substitution to fill a vacancy can happen on or after the certification deadline in Election Law sections 4-110 and 4-112. Election Law section 6-146(2) delineates a process for notification to local boards of elections upon the declination of a candidate after the ballot has been finalized. Additionally, Election Law section 6-148 (6) states that “[w]hen a certificate of a new designation or nomination shall be filed with the state board of elections after such board has given official notice, pursuant to the provisions of this chapter, to the several boards of elections, of the names to appear on the ballot at the election to which such new designation or nomination applies, such board shall forthwith certify to the proper board of elections the name of the person designated.”

Justification:

Currently, a candidate who has been arrested, indicted or convicted of criminal charges between their nomination for office and the deadline for certifying the ballot on which they will appear cannot be removed from that ballot, even if they wish to do so voluntarily. This ensures that the candidate will remain on the ballot, with no chance to decline the nomination before the election begins, despite the fact that their arrest, indictment, or conviction may result in their inability or unwillingness to hold the office for which they have been nominated.

This scenario deprives voters of a fair choice during an election and dilutes the democratic process. Instead of being able to vote for a candidate who will assume the office they were nominated for, voters may be forced to consider candidates who are unwilling or unable to serve in the office for which they would appear on the ballot.

Democracy demands that voters should be entitled to vote for candidates who can properly assume office, and have not been arrested, indicted or convicted of criminal charges that may prevent them from serving in the office for which they are a candidate.

This bill will fix this problem by permitting candidates to decline a nomination when the person has been arrested, charged or convicted of one or more a misdemeanors or felonies in either state or federal court and provide a pathway for placing a new candidate on the ballot for voters to consider on Election Day.

Legislative History:

None.

Budget Implications:

None.

Effective Date:

This bill is effective immediately.