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2092

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## IN ASSEMBLY

January 17, 2017

Introduced by M. of A. KAVANAGH, WALKER, QUART, FAHY, OTIS, SIMON, ABINANTI, ROZIC, RYAN, GOTTFRIED, CUSICK, PAULIN, SKOUFIS -- Multi-Sponsored by -- M. of A. DINOWITZ, THIELE -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to establishing the "Uniform Election Night Procedure Act"

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Uniform Election Night Procedure Act".

3 § 2. Section 9-102 of the election law, as amended by chapter 334 of  
4 the laws of 2013, is amended to read as follows:

5 § 9-102. Canvass; general provisions for. 1. [~~Except in the city of~~  
6 ~~New York, as~~] As soon as the polls of the election are closed, the  
7 inspectors of election thereat shall, in the order set forth herein[~~+~~]:

8 (a) place an inspector at the ballot scanner to prevent further voting;

9 (b) reconcile the paper ballots pursuant to section 9-106 of this title;

10 (c) remove surplus ballots, if any, pursuant to section 9-108 of this

11 title; (d) scan the ballots contained in the emergency box or other

12 secure storage container pursuant to section 9-110 of this title; (e)

13 hand count and secure ballots that cannot be scanned pursuant to section

14 9-110 of this title; (f) initiate the ballot scanner, close the poll

15 mechanism, print the tabulated results tape, and post the results tape

16 or announce [~~the result~~] its contents or both; (g) remove one of the

17 portable memory devices from the ballot scanner for the purpose of

18 reporting the unofficial tally of election results pursuant to section

19 9-126 of this title; (h) post or announce the results of any hand counts

20 and sign the return of canvass pursuant to subdivisions 2 and 3 of this

21 section; [~~(g)~~] (i) close, lock and seal the machine; and [~~(h)~~] (j) sign

22 the close of poll certificate, as provided by the board of elections.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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~~1 [1-a. In the city of New York, as soon as the polls of the election  
2 are closed, the inspectors of election thereat shall, in the order set  
3 forth herein: (a) place an inspector at the ballot scanner to prevent  
4 further voting; (b) scan the ballots contained in the emergency box or  
5 other secure storage container pursuant to section 9-110 of this title,  
6 unless it is not possible to determine which such ballots should be so  
7 scanned because the accounting and reconciliation required by section  
8 9-106 of this title cannot be completed without first printing the  
9 results tape; (c) initiate the ballot scanner's close the poll mech-  
10 anism, print the tabulated results tape, and post the results tape or  
11 announce its contents or both; (d) remove one of the portable memory  
12 devices from the ballot scanner for the purpose of reporting the unoffi-  
13 cial tally of election results pursuant to section 9-126 of this title;  
14 (e) reconcile the paper ballots pursuant to section 9-106 of this title;  
15 (f) remove surplus ballots, if any, pursuant to this section and section  
16 9-108 of this title; (g) hand count and secure ballots that cannot be  
17 scanned pursuant to this section and section 9-110 of this title; (h)  
18 post or announce the results of any hand counts and sign the return of  
19 canvass pursuant to subdivisions two and three of this section; (i)  
20 close, lock and seal the machine; and (j) sign the close of poll certifi-  
21 cate, as provided by the board of elections.]~~

22 2. (a) The inspectors shall canvass the ballot scanner tabulated  
23 results by printing the results tape in the presence of the watchers and  
24 all other persons who may be lawfully within the polling place, giving  
25 full view of the tabulated results tape numbers. An inspector shall,  
26 under the scrutiny of an inspector of a different political party,  
27 either post the results tape or read and announce in the order of the  
28 offices as their titles are arranged on the tabulated results tape, in  
29 distinct tones the public office or party position, candidate name,  
30 political party and the results as shown on the tabulated results tape  
31 and then shall announce the number of write-in votes recorded for each  
32 office. The inspectors shall also in the same manner post or announce  
33 the results for each ballot proposal.

34 (b) The results on the tabulated results tape shall be entered on or  
35 the tabulated results tape (representing the aggregate results of votes  
36 cast on the ballot scanner or the results by election district as appli-  
37 cable) shall be affixed to the return of canvass for that ballot scanner  
38 or election district pursuant to section 9-120 of this title by an  
39 inspector under the scrutiny of an inspector of a different political  
40 party, in the space indicated. If any election day paper ballots were  
41 hand counted pursuant to this section and subdivision two of section  
42 9-110 of this title, an inspector shall, under the scrutiny of an  
43 inspector of a different political party, either post or read and  
44 announce the results of such hand count. The tally sheet of any such  
45 hand counting shall be signed by the inspectors conducting same and  
46 affixed to or recorded on the return of canvass. The return of canvass  
47 and tabulated results tape shall be signed by two inspectors of each  
48 major political party.

49 (c) The results tape shall include a certificate which the inspectors  
50 shall sign, stating the number of voters as shown on the public counter  
51 and the number on the protective counter.

52 (d) If the machine is provided with a removable electronic or comput-  
53 erized device which records the total of the votes cast on such machine  
54 (~~such device,~~ for purposes of this section a "portable memory  
55 device"), such device shall be removed from the machine after copies of  
56 the results tape, sufficient to meet the requirements of this chapter

1 and the regulations of the board of elections, have been produced. After  
2 the portable memory device is removed from the machine, the inspectors  
3 shall place such device in the secure envelope or other secure container  
4 provided for its return to the board of elections. Such secure container  
5 shall be signed by the inspectors upon the securing of the device there-  
6 in.

7 3. (a) During the canvass time any candidate or duly accredited watch-  
8 er who may desire to be present shall be admitted to the polling place.  
9 During the proclamation of the result, ample opportunity shall be given  
10 to any person lawfully present to compare the results so posted or  
11 announced with the sum of the votes appearing on the tabulated results  
12 tape and any hand counted election day ballots, if any, and any neces-  
13 sary corrections shall then and there be made on the return of canvass  
14 by the inspectors. Thereafter, the voting machine shall be closed and  
15 locked. The first copy of the results tape for each voting machine  
16 should be posted on the wall of the polling place forthwith; provided,  
17 however, that if only one copy of such results tape can be printed by  
18 any such machine at any election, such copy shall be used in preparation  
19 of the returns of canvass required by this title.

20 (b) Election day paper ballots that have not been scanned shall be  
21 canvassed and tallied pursuant to this section and sections 9-108 and  
22 9-110 of this title.

23 (c) At a primary election, the ballots of the parties represented on  
24 the board of inspectors shall be canvassed before the ballots of other  
25 parties are canvassed.

26 4. All types of ballots, enclosed in properly sealed envelopes respec-  
27 tively, and properly endorsed shall be filed with the original return of  
28 canvass, as provided for in section 9-106 of this title.

29 5. The inspector or other courier assigned by the board filing the  
30 returns shall deliver to the board or officer from whom received, the  
31 keys of the voting machine, enclosed in a sealed envelope having  
32 indorsed thereon a certificate of the inspectors stating the number of  
33 the machine, the election district(s), ward(s) or assembly district(s)  
34 where it has been used, the number on the seal and the number on the  
35 protective counter. In the city of New York, police officers or peace  
36 officers designated by the police commissioner of such city shall  
37 provide such delivery of the devices.

38 6. The room in which such canvass is made shall be clearly lighted,  
39 ingress and egress through the main entrance thereto shall be freely  
40 permitted, and such canvass shall be made in plain view of those enti-  
41 tled to be present. The ballots shall at all times be kept on top of the  
42 table and in plain view of all persons entitled to examine them, until  
43 they have been re-packaged and sealed for return to the board of  
44 elections as elsewhere provided. If requested by any person entitled to  
45 be present the inspectors shall, during the canvass of any ballots,  
46 exhibit to him or her the ballot then being canvassed, fully opened and  
47 in such a condition that he or she may fully and carefully read and  
48 examine it, but no inspector shall allow any ballot to be taken from his  
49 or her hand or to be touched by any person but an inspector.

50 § 3. Section 9-106 of the election law, as amended by chapter 334 of  
51 the laws of 2013, is amended to read as follows:

52 § 9-106. Official ballots; accounting for number used. After the polls  
53 of the election are closed and before any boxes or envelopes containing  
54 voted ballots are opened, the clerks, or if there be no clerks, two  
55 inspectors representing different parties designated by the chair, shall  
56 account for all of the paper ballots furnished to the election district

1 or poll site. On a reconciliation form supplied by the board of  
2 elections, they shall count, verify and record on such form the number  
3 of unused ballots, the number of ballots spoiled before delivery to  
4 voters in the poll site, the number of ballots spoiled and returned by  
5 voters and the number of affidavit ballots cast. These numbers shall be  
6 added to the number of ballots cast as recorded by the public counter  
7 number appearing on the ballot scanner screen(s) or results tape(s). The  
8 sum shall be recorded on the ballot reconciliation form. This resulting  
9 number shall be deducted from the number of ballots originally delivered  
10 to the election district or poll site, and the remainder number shall be  
11 determined to be the number of ballots secured in the emergency ballot  
12 box(es) or other secure storage container(s) provided by the board of  
13 elections. This remainder number shall be recorded on the ballot recon-  
14 ciliation form. If such remainder number is zero and there are no  
15 ballots in the emergency ballot box(es) or other such secure  
16 container(s), inspectors shall initiate the ballot scanners' close the  
17 polls mechanism and produce results tapes[~~, unless in the city of New~~  
18 ~~York such scanners' close the polls mechanism has already been initiated~~  
19 ~~and the results tapes already produced pursuant to paragraph (c) of~~  
20 ~~subdivision one a of section 9-102 of this title~~]. The clerks or inspec-  
21 tors shall then separate, label and place each type of ballot in the box  
22 or container provided by the board of elections, and securely lock or  
23 seal each such box or container and record such seal number on the  
24 ballot reconciliation form. They shall then sign such reconciliation  
25 form. If such remainder number is not zero or there are unscanned voted  
26 election day ballots in the emergency ballot box(es) or other such  
27 secure container(s), the inspectors or clerks shall proceed with the  
28 process provided for in section 9-108 and 9-110 of this title. Upon  
29 completion of such process, the clerks or inspectors shall then sepa-  
30 rate, label and place each type of ballot in the box(es) or container(s)  
31 provided by the board of elections, and securely lock or seal each such  
32 box(es) or container(s). They shall then sign such amended reconcil-  
33 iation form.

34 § 4. Section 9-110 of the election law, as amended by chapter 334 of  
35 the laws of 2013, is amended to read as follows:

36 § 9-110. Canvass; election day paper ballots that have not been  
37 scanned; method of. 1. Election day paper ballots that have not been  
38 scanned because a ballot scanner was not available or because the ballot  
39 has been abandoned by a voter at the ballot scanner shall be canvassed  
40 as follows: a bipartisan team of inspectors shall cast such ballots on a  
41 ballot scanner, if one is available, at the close of the polls before  
42 the tabulated results tape is printed. If a ballot does not scan because  
43 of an overvote or blank ballot warning on the ballot scanner screen, the  
44 inspectors shall cause the ballot scanner to eject such ballot to be  
45 hand counted pursuant to subdivision two of this section.

46 2. Election day paper ballots that cannot be scanned, as provided in  
47 subdivision one [~~or one a~~] of section 9-102 of this title as applicable  
48 and subdivision one of this section shall be canvassed as follows: The  
49 inspectors shall unfold each ballot of the kind then to be canvassed and  
50 shall place all such ballots upon the table in one pile face down. The  
51 chair shall take up each ballot in order, turn it face up and announce  
52 loudly and distinctly the vote registered on each section, in the order  
53 of the sections upon the ballot, or that the ballot is void or the  
54 section blank, as the case may be. If more than one person is to be  
55 elected to the same office or party position the chair, if the ballot is  
56 void or the ballot or section is wholly blank, shall announce as many

1 void or blank votes as there are persons to be elected to the office or  
2 party position. On a primary ballot a "section," as the term is used  
3 above, shall mean the space occupied by the title of an office or party  
4 position, names of candidates therefor and the voting squares therewith.  
5 The canvass of each ballot must be completed before the next ballot is  
6 taken up. When the tallies of the votes of all such ballots are proven,  
7 and the results announced, the inspectors shall affix tally sheets to or  
8 record the results from same on the return of canvass.

9 3. Nothing in this section shall be construed to require or permit  
10 affidavit ballots to be canvassed at the poll site on election day.

11 § 5. Subdivision 2 of section 9-112 of the election law, as amended by  
12 chapter 334 of the laws of 2013, is amended to read as follows:

13 2. A cross X mark or a check V mark, made by the voter, in a voting  
14 square at the left of a candidate's name, or the voter's filling in such  
15 voting square, ~~[or punching a hole in the voting square of a ballot~~  
16 ~~intended to be counted by machine,~~] shall be counted as a vote for such  
17 candidate.

18 § 6. Subdivision 1 of section 9-114 of the election law, as amended by  
19 chapter 334 of the laws of 2013, is amended to read as follows:

20 1. If objection be made to the counting of any ballot or as to any  
21 section of any such ballot, the board of inspectors shall forthwith and  
22 before canvassing any other ballot or section thereof, rule upon the  
23 objection. If the objection be continued after this ruling, the chair or  
24 an inspector under the scrutiny of an inspector of the opposite party  
25 shall write in ink upon the back of the ballot a memorandum of the  
26 ruling and objection. The memorandum of the ruling shall be in the words  
27 "Counted void", or "Counted blank", or "Counted for (naming the candi-  
28 date or candidates or the presidential ticket)", or, in the case of a  
29 ballot proposal "Counted for Proposal No.....," or "Counted against  
30 Proposal No.....", as the case may be. The memorandum of the  
31 objection shall be in the words "Objected to", followed by a brief  
32 statement of the nature of the objection, the name and address of the  
33 challenger and the signature of the chair or inspector.

34 § 7. Section 9-124 of the election law, as amended by chapter 334 of  
35 the laws of 2013, is amended to read as follows:

36 § 9-124. Returns of canvass, procedure after. 1. After the returns of  
37 the canvass are made out and signed, the inspectors shall enclose the  
38 ballot stubs, protested and void ballots and the ballots cast in affida-  
39 vit envelopes in [a] separate sealed [~~envelope~~] envelopes or [~~envelopes~~]  
40 containers and endorse thereon a certificate signed by each of them  
41 stating the number of the district and the number of ballots contained  
42 in such [~~envelope~~] envelopes or [~~envelopes~~] containers. The inspectors  
43 shall enclose the unscanned voted ballots canvassed in accordance with  
44 section 9-110 of this title in a separate sealed envelope or container  
45 and endorse thereon a certificate signed by each of them stating the  
46 number of the district, ballot scanner identification information and  
47 the number of ballots contained in such envelope or container. The  
48 inspectors shall then package and seal the other voted ballots and place  
49 them in one or more boxes or containers, and include within such boxes  
50 or containers one portable memory device from each ballot scanner pursu-  
51 ant to paragraph (d) of subdivision two of section 9-102 of this title,  
52 and any absentee, military, special federal, or special presidential  
53 ballots which may have been delivered to the poll site during election  
54 day, and securely lock and seal such boxes or containers. Notwithstand-  
55 ing the preceding sentence, such portable memory device from each ballot  
56 scanner with the corresponding results tape may be enclosed in a sealed

1 container and transported prior to and separately from other materials  
2 referenced in this section for the purpose of using such device to  
3 provide an unofficial tally of results as required by section 9-126 of  
4 this title.

5 2. Each box, envelope, or container containing the ballots and stubs,  
6 if any, and all items described in subdivision one of this section shall  
7 be deposited by an inspector designated for that purpose with the offi-  
8 cer or board from whom or which the board of inspectors received it. In  
9 the city of New York, every such box, envelope, or container shall be  
10 delivered at the polling place to police or peace officers designated by  
11 the police commissioner of such city, who shall deposit them with the  
12 board of elections.

13 3. (a) Except in the city of New York, the registration poll records  
14 or computer generated registration lists, the returns of canvass with  
15 results tapes and tally sheets, if any, annexed, the voted ballots,  
16 stubs, opened packages of unused ballots and ballot envelopes, any  
17 absentee, military, special federal, or special presidential ballots  
18 which may have been delivered to the poll site during election day, the  
19 challenge report records, keys and the package of protested and void  
20 ballots shall be filed with the board of elections.

21 (b) Records and supplies to be filed with a city, town or village  
22 clerk shall be so filed or delivered immediately after the completion of  
23 the returns of the canvass, by an inspector designated by the board of  
24 inspectors. Returns, papers and registration poll records or computer  
25 generated registration lists to be filed with the board of elections  
26 shall be so filed by the chairman of the board of inspectors within  
27 twenty-four hours after the completion of such returns. The person  
28 receiving such returns in the board of elections shall give to the  
29 person delivering the returns a receipt stating therein the date and  
30 hour of delivery, the name of the person making the delivery, and to  
31 whom said returns were delivered and shall keep a duplicate of said  
32 receipt on file in the office of the board of elections.

33 ~~(c) [The county legislative body of any county in the state except the~~  
34 ~~counties comprising the city of New York may, by a resolution, ordinance~~  
35 ~~or act as required, provide that all returns, papers, registration poll~~  
36 ~~records or computer generated registration lists, books, records, docu-~~  
37 ~~ments, and other election supplies and materials shall be filed by the~~  
38 ~~chairman of the board of inspectors of elections in a city or town and~~  
39 ~~in a village in which elections are conducted by the board of elections,~~  
40 ~~with the city, town or village clerk of such city, town or village in~~  
41 ~~the county within eighteen hours after the closing of the polls at any~~  
42 ~~primary, general, special or village election and the city, town or~~  
43 ~~village clerk upon receiving such returns, papers, registers or lists,~~  
44 ~~books, records, documents, and other election supplies and materials~~  
45 ~~shall give to the person making the delivery, a receipt stating therein~~  
46 ~~the date and hour of the delivery and the name of such person. Within~~  
47 ~~twenty-four hours after the closing of the polls at any primary, gener-~~  
48 ~~al, special or village election, the city, town or village clerk shall~~  
49 ~~file all returns, papers, registration poll records or computer gener-~~  
50 ~~ated registration lists, books, records, documents and other election~~  
51 ~~supplies and materials filed with him by the inspectors of the election~~  
52 ~~districts of the city, town or village, with the board of elections of~~  
53 ~~the county and the board of elections shall give to the city, town or~~  
54 ~~village clerk a receipt therefor stating therein the date and hour of~~  
55 ~~the delivery and the name of the person making the delivery and to whom~~

~~it was made, and shall keep a duplicate of said receipt on file in the office of the board of elections.~~

(d) In the city of New York, the board of inspectors shall deliver to police or peace officers designated by the police commissioner of such city, at the polling place the registration poll records or computer generated registration lists, challenge report, records, keys, other election supplies, including two copies of the returns of the canvass and any absentee, military, special federal, or special presidential ballots which may have been delivered to the poll site during election day, voted ballots, stubs, open packages of unused ballots and ballot envelopes. Such police or peace officers shall file the returns, the package of void and protested ballots, if any, and the absentee, military, special federal, special presidential~~,~~ ballots which may have been delivered to the poll site during election day; and emergency ballots, stubs and ballot envelopes, if any, within twenty-four hours after the close of the polls, in the office of the board of elections or its branch office within the borough, as the case may be.

§ 8. This act shall take effect immediately.