S T A T E O F N E W Y O R K

11352--A

I N A S S E M B L Y

June 3, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Millman, Molinaro) -- read once and referred to the Committee on Election Law -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the election law, in relation to canvassing votes; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 1 and 3 of section 4-134 of the election law, subdivision 1 as amended by chapter 91 of the laws of 1992, are amended to read as follows:

1. The board of elections shall deliver, at its office, to the clerk of each town or city in the county, except the cities of New York, Buffalo and Rochester and to the clerk of each village in the county in which elections are conducted by the board of elections, by the Saturday before the primary, general, village or other election for which they are required: the official and sample ballots; [envelopes containing absentee voters' ballots received not later than five o'clock in the afternoon of the Friday before the day of an election; unless such board of elections has determined by resolution adopted at least thirty days before election day not to deliver such absentee ballots to the inspectors of election at the polling place,] ledgers prepared for delivery in the manner provided in subdivision two of this section and containing the registration poll records of all persons entitled to vote at such election in such town, city or village, or computer generated registration lists containing the names of all persons entitled to vote at such election in such town, city or village; challenge reports prepared as directed by this chapter; sufficient applications for registration by mail; sufficient ledger seals and other supplies and equipment required by this article to be provided by the board of elections for each polling place in such town, city or village. [The board of elections shall deliver at its office to each town, city or village clerk those ballots from military and absentee voters received after five o'clock in the

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

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afternoon of the Friday before and before twelve o'clock noon on the Monday before the primary, general or other election for which they are required, unless such board of elections has determined by resolution adopted at least thirty days before election day not to deliver such ballots to the inspectors of election at the polling place, and the town, city or village clerk receiving such ballot envelope shall cause the same to be delivered to the inspectors of election of the election district as provided in this section.] The town, city or village clerk shall call at the office of such board of elections at such time and receive such ballots, supplies and equipment. In the cities of New York, Buffalo and Rochester the board of elections shall cause such ballots, supplies and equipment to be delivered to the board of inspectors of each election district approximately one-half hour before the opening of the polls for voting, and shall take receipts therefor.

3. Any envelope containing absentee voters' ballots on which the blanks have not been properly filled in [shall not be delivered to the town or city clerk or the board of inspectors as aforesaid but] shall be stamped to indicate the defect and shall be preserved by the board for at least one year after the receipt thereof.

S 1-a. Section 7-206 of the election law is amended by adding a new subdivision 4 to read as follows:

4. UPON THE DISCOVERY OF A DISCREPANCY DURING THE RECANVASS REQUIRED BY SUBDIVISION THREE OF SECTION 9-208 OF THIS CHAPTER, THE BALLOT SCANNER SHALL BE RETESTED PURSUANT TO 9 NYCRR 6210.2. NO BALLOT SCANNER SHALL BE RETURNED TO SERVICE UNTIL ANY SUCH DISCREPANCY HAS BEEN RESOLVED.

S 2. Subdivision 1 of section 9-102 of the election law, as amended by chapter 234 of the laws of 1976, is amended to read as follows:

1. As soon as the polls of the election are closed, the inspectors of election thereat shall, in the order set forth herein; a.) [lock the voting machine against voting] PLACE AN INSPECTOR AT THE BALLOT SCANNER TO PREVENT FURTHER VOTING; b.) [sign a certificate stating the number of voters as shown on the public counters, the number on the seal, the number registered on the protective counter, and that the voting machine is closed and locked] RECONCILE THE PAPER BALLOTS PURSUANT TO SECTION 9-106 OF THIS TITLE; c.) [account for the paper ballots used, if any] REMOVE SURPLUS BALLOTS, IF ANY, PURSUANT TO SECTION 9-108 OF THIS TITLE; d.) [canvass the machine vote] SCAN THE BALLOTS CONTAINED IN THE EMERGENCY BOX OR OTHER SECURE STORAGE CONTAINER PURSUANT TO SECTION 9-110 OF THIS TITLE; e.) [cast and canvass all the ballots] HAND COUNT AND SECURE BALLOTS THAT CANNOT BE SCANNED PURSUANT TO SECTION 9-110 OF THIS TITLE; F.) CLOSE THE POLL, PRINT THE TABULATED RESULT TAPE, ANNOUNCE THE RESULT AND SIGN THE RETURN OF CANVASS PURSUANT TO SUBDIVISIONS 2 AND 3 OF THIS SECTION; G.) CLOSE, LOCK AND SEAL THE MACHINE; AND H.) SIGN THE CLOSE OF POLL CERTIFICATE, AS PROVIDED BY THE BOARD OF ELECTIONS.

S 3. Subdivision 2 of section 9-102 of the election law, as amended by chapter 234 of the laws of 1976, paragraph (a) as amended by chapter 92 of the laws of 2001 and paragraph (c) as added by chapter 262 of the laws of 1986, is amended to read as follows:

2. (a) The inspectors shall canvass the machine vote by [opening the counting compartments] PRINTING THE BALLOT SCANNER TABULATED RESULTS TAPE in the presence of the watchers and all other persons who may be lawfully within the polling place, giving full view of [all] the [counter] TABULATED RESULT TAPE numbers. The [chairman] CHAIR of the board of inspectors shall, under the scrutiny of an inspector of a different political party, in the order of the offices as their titles are

arranged on the [machine] TABULATED RESULT TAPE, read and announce in distinct tones the [designating number and letter on each counter] PUBLIC OFFICE OR PARTY POSITION, CANDIDATE NAME, POLITICAL PARTY and the result as shown [by] ON the [counter number] TABULATED RESULT TAPE AND THEN SHALL ANNOUNCE THE AGGREGATE NUMBER OF WRITE-IN VOTES RECORDED FOR EACH OFFICE. [If the voting machine records write-in votes on a register or roll in a separately sealed compartment, a] THE board of elections [may, by resolution adopted at least thirty days before the date of an election, determine to] SHALL canvass the write-in votes cast for each office on the [write-in register or roll either] ELECTION DAY PAPER BALLOTS at the time of the recanvass conducted pursuant to section 9-208 of this article [or direct that the chairman of the board of inspectors shall, under the scrutiny of an inspector of a different political party, read the votes recorded for each office on the write-in ballots at the close of the polls]. [He] THE CHAIR shall also in the same manner announce the vote on each ballot proposal. The [vote as registered] RESULTS ON THE TABULATED RESULT TAPE shall be [entered on] ENTERED ON OR THE TABULATED RESULT TAPE SHALL BE AFFIXED TO the [returns] RETURN of canvass [in ink,] FOR THAT BALLOT SCANNER OR ELECTION DISTRICT PURSUANT TO SECTION 9-120 OF THIS TITLE, by an inspector[, other than the chairman], under the scrutiny of an inspector of a different political party, in the space [which has the same designating number and letter, after which the figures shall be verified by being called off in the same manner from the counters of the machine by an inspector of opposite political faith from the chairman] INDICATED; PROVIDED, HOWEVER, IF ANY ELECTION DAY PAPER BALLOTS WERE HAND COUNTED, THE RESULTS OF SUCH HAND COUNTING SHALL BE RECORDED ON THE RETURN OF CANVASS AND BE ADDED TO THE NUMBERS REPORTED FROM THE TABULATED RESULTS TAPE TO PRODUCE A SINGLE RESULT FOR EACH CANDIDATE AND BALLOT PROPOSAL. The return of canvass, which shall show the [total] AGGREGATE number of votes cast for each office, the number of votes cast for each candidate APPEARING ON THE BALLOT FOR EACH OFFICE AND THE AGGREGATE NUMBER OF WRITE-IN VOTES FOR EACH OFFICE, [as shown on his counter and the number of votes for persons not nominated] shall then be filled out. Such return AND TABULATED RESULT TAPE shall be signed by each inspector. [The counter compartment of the voting machine shall remain open until the official returns and all other reports have been fully completed and verified by the board of inspectors.]

(b) [If the machine is provided with a device for printing or photographing candidate and amendment counters, the printed or photographic record produced by the machine shall be the official return of the canvass and the result of the votes as shown thereon shall be proclaimed in the same manner as herein provided and ample opportunity shall be given to any person lawfully present to inspect such printed or photographic record. A] THE printed or photographic record produced by such machine shall include a certificate which the inspectors shall sign, stating [that the machine has been locked against voting and sealed;] the number of voters as shown on the public counter[; the number on the seal;] and the number on the protective counter.

(c) If the machine is provided with a removable electronic or computerized device which records the total of the votes cast on such machine, such device shall be removed from the machine after copies of the printed record, sufficient to meet the requirements of this chapter and the regulations of the board of elections, have been produced. After the device is removed from the machine, the inspectors shall [sign their names in the place provided on the seal on the outside of such device

and then place such device in the envelope or other container provided for its return to the board of elections] PLACE SUCH DEVICE IN THE SECURE ENVELOPE OR OTHER SECURE CONTAINER PROVIDED FOR ITS RETURN TO THE BOARD OF ELECTIONS. SUCH SECURE CONTAINER SHALL BE SIGNED BY THE INSPECTORS UPON THE SECURING OF THE DEVICE THEREIN.

S 4. Paragraph (a) of subdivision 2 of section 9-102 of the election law, as amended by chapter 647 of the laws of 1982, is amended to read as follows:

(a) The inspectors shall canvass the machine vote by [opening the counting compartments] PRINTING THE BALLOT SCANNER TABULATED RESULTS TAPE in the presence of the watchers and all other persons who may be lawfully within the polling place, giving full view of [all] the [counter] TABULATED RESULT TAPE numbers. The [chairman] CHAIR of the board of inspectors shall, under the scrutiny of an inspector of a different political party, in the order of the offices as their titles are arranged on the [machine] TABULATED RESULT TAPE, read and announce in distinct tones the [designating number and letter on each counter,] PUBLIC OFFICE OR PARTY POSITION, CANDIDATE NAME, POLITICAL PARTY AND the result as shown [by] ON the [counter number,] TABULATED RESULT TAPE and then shall [read] ANNOUNCE the AGGREGATE NUMBER OF WRITE-IN votes recorded for each office [on the write-in ballots]. [He] THE CHAIR shall also in the same manner announce the vote on each ballot proposal. The [vote as registered] RESULTS ON THE TABULATED RESULT TAPE shall be entered on OR THE TABULATED RESULT TAPE SHALL BE AFFIXED TO the [returns] RETURN of canvass [in ink,] FOR THAT BALLOT SCANNER OR ELECTION DISTRICT PURSUANT TO SECTION 9-120 OF THIS TITLE by an inspector[, other than the chairman], under the scrutiny of an inspector of a different political party, in the space [which has the same designating number and letter, after which the figures shall be verified by being called off in the same manner from the counters of the machine by an inspector of opposite political faith from the chairman] INDICATED; PROVIDED, HOWEVER, IF ANY ELECTION DAY PAPER BALLOTS WERE HAND COUNTED PURSUANT TO SUBDIVISION TWO OF SECTION 9-110 OF THIS TITLE, THE RESULTS OF SUCH HAND COUNTING SHALL BE RECORDED ON THE RETURN OF CANVASS AND BE ADDED TO THE NUMBERS REPORTED FROM THE TABULATED RESULTS TAPE TO PRODUCE A SINGLE TOTAL RESULT FOR EACH CANDIDATE AND BALLOT PROPOSAL. The return of canvass, which shall show the [total] AGGREGATE number of votes cast for each office, the number of votes cast for each candidate APPEARING ON THE BALLOT FOR EACH OFFICE AND THE AGGREGATE NUMBER OF WRITE-IN VOTES FOR EACH OFFICE, [as shown on his counter and the number of votes for persons not nominated] shall then be filled out. Such return AND TABULATED RESULT TAPE shall be signed by each inspector. [The counter compartment of the voting machine shall remain open until the official returns and all other reports have been fully completed and verified by the board of inspectors.]

S 5. Subdivision 3 of section 9-102 of the election law, as amended by chapter 647 of the laws of 1982, paragraph (a) as amended by chapter 262 of the laws of 1986, is amended to read as follows:

3. (a) During the canvass time any candidate or duly accredited watcher who may desire to be present shall be admitted to the polling place. [The proclamation of the result of the votes cast shall be deliberately announced in a distinct voice by the chairman of the board of inspectors who shall read the name of each candidate, with the designating number and letter of his counter, and the vote registered on such counter; also the vote cast for and against each ballot proposal.] During [such] THE proclamation OF THE RESULT, ample opportunity shall be

given to any person lawfully present to compare the results so announced with [the counter dials of the machine or the numbers on] the [printed or photographic record] SUM OF THE VOTES APPEARING ON THE TABULATED RESULT TAPE AND ANY HAND COUNTED ELECTION DAY BALLOTS, IF ANY, and any necessary corrections shall then and there be made ON THE RETURN OF CANVASS by the [board, after which] INSPECTORS. THEREAFTER, the [doors of the] voting machine shall be closed and locked. The first copy of the printed record for each voting machine [which does not have counters shall] SHOULD be posted on the wall of the polling place forthwith; provided, however, that if only one copy of such printed record can be printed by any such machine at any election, such copy shall be used in preparation of the statement of returns required by this title. [Before adjourning, the board shall, with the seal provided therefor, so seal the operating lever of the machine that the voting and counting mechanism will be prevented from operation.]

(b) [Paper] ELECTION DAY PAPER ballots [and emergency ballots cast during voting machine breakdowns which have been voted] THAT HAVE NOT BEEN SCANNED shall [then] be canvassed and tallied[, the vote thereon for each candidate and ballot proposal, announced and added to the vote as recorded on the return of canvass] PURSUANT TO SECTIONS 9-108 AND 9-110 OF THIS TITLE.

(c) [Absentee and military, special federal, and special presidential ballots shall then be canvassed and tallied, the vote thereon for each candidate announced and added to the vote as recorded on the statement of canvass and a final proclamation made as to the total vote received by each candidate and ballot proposal.

(d)] At a primary election, the ballots of the parties represented on the board of inspectors shall be canvassed before the ballots of other parties are canvassed.

S 5-a. Section 9-104 of the election law is REPEALED.

S 6. Section 9-106 of the election law is amended to read as follows:

S 9-106. [Paper] OFFICIAL ballots; accounting for number used. At the close of the polls and before any boxes or envelope containing voted ballots are opened, the clerks, or if there be no clerks, two inspectors representing different parties designated by the [chairman] CHAIR, shall [make up in duplicate in ink the ballot returns, which shall] account for all of the paper ballots furnished to the election district[, except the absentee, military and special presidential ballots accounted for pursuant hereto]. [They] ON A RECONCILIATION FORM SUPPLIED BY THE BOARD OF ELECTIONS, THEY shall count [and], verify AND RECORD ON SUCH FORM the number of [each kind of] unused ballots [and enter it upon the ballot returns. They shall then open the box or envelope, for], THE NUMBER OF ballots cancelled before delivery [and] TO VOTERS IN THE POLL SITE, THE NUMBER OF BALLOTS spoiled and returned by voters [, separate them into their several kinds, count all ballots of each kind and enter the several results upon the ballot returns] AND THE NUMBER OF AFFIDAVIT BALLOTS CAST. THESE NUMBERS SHALL BE ADDED TO THE NUMBER OF BALLOTS CAST AS RECORDED BY THE PUBLIC COUNTER NUMBER APPEARING ON THE BALLOT SCANNER SCREEN. THE SUM SHALL BE RECORDED ON THE BALLOT RECONCILIATION FORM. THIS RESULTING NUMBER SHALL BE DEDUCTED FROM THE NUMBER OF BALLOTS ORIGINALLY DELIVERED TO THE POLL SITE, AND THE REMAINDER NUMBER SHALL BE DETERMINED TO BE THE NUMBER OF BALLOTS SECURED IN THE EMERGENCY BALLOT BOX OR OTHER SECURE STORAGE CONTAINER PROVIDED BY THE BOARD OF ELECTIONS. THIS REMAINDER NUMBER SHALL BE RECORDED ON THE BALLOT RECONCILIATION FORM.

[They shall make the additions and subtractions called for by the returns and prove their figures. If adhesive pasters have been used for any office or party position, the return for the ballots for which the pasters were supplied shall contain a memorandum showing the number of pasters received, the number affixed to ballots and the number unused and returned.] Such clerks or inspectors shall then [tie securely in a separate package each kind of ballot and each kind of stub, counted as above provided, and shall plainly label, seal and return the same to] SEPARATE, LABEL AND PLACE EACH TYPE OF BALLOT IN the box [from which it was taken] OR CONTAINER PROVIDED BY THE BOARD OF ELECTIONS, and securely lock [and] OR seal [the] EACH SUCH box OR CONTAINER. [Such clerks or inspectors shall also securely tie all unused ballots in a sealed package. They shall also enter on the ballot return, the number of emergency ballots, if any, delivered to voters.] They shall then sign such [ballot returns] RECONCILIATION FORM.

S 7. Subdivision 1 of section 9-108 of the election law is amended to read as follows:

1. [The] FOR ALL ELECTION DAY PAPER BALLOTS CAST WHEN A BALLOT SCANNER IS NOT AVAILABLE, BALLOTS ABANDONED BY A VOTER AT THE BALLOT SCANNER, AS DEFINED IN 9 NYCRR 6210.13(A)(11)(A) OR BALLOTS SUBMITTED BY THE VOTER WHICH ARE OTHERWISE NON-MACHINE PROCESSABLE, AS DEFINED IN 9 NYCRR 6210.13(A)(8), THE board of inspectors, at the beginning of the canvass, shall count the NUMBER OF UNSCANNED ballots found in each [ballot] EMERGENCY box [without unfolding them, except so far as to ascertain] OR OTHER SECURE STORAGE CONTAINER PROVIDED BY THE BOARD OF ELECTIONS, ASCERTAINING that each ballot is single, and shall compare the number of ballots found in [each] SUCH box OR CONTAINER with the REMAINDER number [shown by the registration poll records, and the ballot returns to have been deposited therein] OF BALLOTS, AS DETERMINED PURSUANT TO SECTION 9-106 OF THIS TITLE.

S 8. Section 9-110 of the election law, as amended by chapter 647 of the laws of 1982, is amended to read as follows:

S 9-110. Canvass; ELECTION DAY PAPER ballots THAT HAVE NOT BEEN SCANNED; method of. [The method of canvassing ballots other than ballots upon ballot proposals] 1. ELECTION DAY PAPER BALLOTS THAT HAVE NOT BEEN SCANNED BECAUSE A BALLOT SCANNER WAS NOT AVAILABLE OR BECAUSE THE BALLOT HAS BEEN ABANDONED BY A VOTER AT THE BALLOT SCANNER SHALL BE CANVASSED AS FOLLOWS: A BIPARTISAN TEAM OF INSPECTORS SHALL CAST SUCH BALLOTS ON A BALLOT SCANNER, IF ONE IS AVAILABLE, AT THE CLOSE OF THE POLLS BEFORE THE TABULATED RESULT TAPE IS PRINTED. IF A BALLOT DOES NOT SCAN BECAUSE OF AN OVERVOTE OR BLANK BALLOT WARNING ON THE BALLOT SCANNER SCREEN, THE INSPECTORS SHALL CAUSE THE BALLOT SCANNER TO EJECT SUCH BALLOT TO BE HAND COUNTED PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

2. ELECTION DAY PAPER BALLOTS THAT CANNOT BE SCANNED, AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION shall be CANVASSED as follows: The inspectors shall unfold each ballot of the kind then to be canvassed and shall place all such ballots upon the table in one pile face down. The [chairman then] CHAIR shall take up each ballot in order, turn it face up and announce loudly and distinctly the vote registered on each section, in the order of the sections upon the ballot, or that the ballot is void or the section blank, as the case may be. If more than one person is to be elected to the same office or party position the [chairman] CHAIR, if the ballot is void or the ballot or section is wholly blank, shall announce as many void or blank votes as there are persons to be elected to the office or party position. On a primary ballot a "section," as the term is used above, shall mean the space

occupied by the title of an office or party position, names of candidates therefor and the voting squares therewith. The canvass of each ballot must be completed before the next ballot is taken up [except that in canvassing the ballots at a general election in an even numbered year the votes upon the first section of each ballot shall be canvassed first, and when the canvass of such section on each such ballot is completed the ballot shall be placed in a new pile]. When the tallies of the votes [on the first section] of all such ballots are proven, and the results announced, the inspectors' [returns of the vote thereon] shall [be filled out. The remaining sections of each such ballot shall then be canvassed, the canvass of each ballot to be completed before the next ballot is taken up] RECORD THE RESULTS ON THE RETURN OF CANVASS.

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE OR PERMIT AFFIDAVIT BALLOTS TO BE CANVASSED AT THE POLL SITE ON ELECTION DAY.

S 8-a. Section 9-208 of the election law, the section heading as amended by chapter 373 of the laws of 1978, subdivision 1 as amended by chapter 359 of the laws of 1989, and subdivision 2 as amended by chapter 9 of the laws of 1978, is amended to read as follows:

S 9-208. Provisions for recanvass of vote in every election district in the state; procedure in case of discrepancy. 1. Within fifteen days after each general, special or primary election, and within seven days after every village election conducted by the board of elections at which [voting machines] BALLOT SCANNERS are used, the board of elections, or a bipartisan committee of or appointed by said board[,] shall, in each county using [voting machines] BALLOT SCANNERS, make a record of the SERIAL number [on the seal and the number on the protective counter,] of each [voting machine] BALLOT SCANNER used in each election district in such general, special or primary election[, shall open the counter compartment of each of such machine, and, without unlocking such machine against voting, shall recanvass the vote cast thereon or, if the machine is provided with a device for printing or photographing the counters, such board or committee shall]. NO PERSON WHO WAS A CANDIDATE AT SUCH ELECTION SHALL BE APPOINTED TO MEMBERSHIP ON THE COMMITTEE. SUCH BOARD OF ELECTIONS OR BIPARTISAN COMMITTEE SHALL recanvass [such printed or photographic record or, if the machine is provided with a removable electronic or computerized device which records the vote cast on such machine and from which a printed copy of such vote may be made mechanically or electronically and also a device for printing or photographing such vote directly from the voting machine, such board or committee shall recanvass the vote] THE TABULATED RESULT TAPE FROM EACH BALLOT SCANNER USED IN EACH ELECTION DISTRICT by comparing [the vote on the printed copy of the canvass made from such removable device with the printed or photographed copy of the canvass made directly from the voting machine at the close of the polls] SUCH TAPE WITH THE NUMBERS AS RECORDED ON THE RETURN OF CANVASS. [No person who was a candidate at such election shall be appointed to membership on the committee.] The said board or committee shall [during such time,] ALSO make a recanvass of any [absentee and military, special federal, special presidential, emergency] ELECTION DAY PAPER BALLOTS THAT HAVE NOT BEEN SCANNED AND WERE HAND COUNTED PURSUANT TO SUBDIVISION TWO OF SECTION 9-110 OF THIS ARTICLE and COMPARE THE RESULTS WITH THE NUMBER AS RECORDED ON THE RETURN OF CANVASS. THE BOARD OR COMMITTEE SHALL THEN RECANVASS write-in VOTES, IF ANY, ON ballots which were OTHERWISE SCANNED AND canvassed at polling places on election night [and delivered to the board of elections by the person filing returns]. THE BOARD OR COMMITTEE SHALL VALIDATE AND PROVE SUCH SUMS. Before making such canvass

the board of elections, with respect to each election district to be recanvassed, shall give notice in writing to the voting machine custodian thereof, to the state and county [chairman] CHAIR of each party or independent body which shall have nominated candidates for the said general or special election or nominated or elected candidates at the said primary election and to each individual candidate whose name appears on [said machine] THE OFFICE BALLOT, of the time and place where such canvass is to be made; and the state and county [chairman] CHAIR of each such party or independent body and each such individual candidate may send a representative to be present at such recanvass. Each candidate whose name appears on [said machine] THE OFFICIAL BALLOT, or his OR HER representative, shall have the right personally to examine and make a [copy] RECORD of the vote recorded on [such machine] THE TABULATED RESULT TAPE and ANY ballots WHICH WERE HAND COUNTED.

2. If upon such recanvass, it shall be found that the original canvass of the returns OF AN ELECTION DISTRICT has been incorrectly made from any [machine or machines or upon the result of any absentee and military, special federal, special presidential, emergency or alleged write-in ballot] TABULATED RESULT TAPE PLUS ANY BALLOTS WHICH WERE HAND COUNTED, a statement in writing shall be prepared giving [in detail] THE DETAILS for [each such machine or total of such ballots or alleged write-in ballots cast, the] ANY CORRECTIONS MADE FOR SUCH ELECTION DISTRICT. THE result of the recanvass, and such statement shall be witnessed by the persons required to be present and shall be filed with the board of elections. Such recanvass of votes made pursuant hereto shall thereupon supersede the returns filed by the inspectors of election of the election district in which the canvass was made.

3. If upon [such] THE recanvass OF AN ELECTION DISTRICT, it shall be found that a discrepancy [still remains unaccounted for,] EXISTS BETWEEN THE NUMBER OF VOTERS WHO CAST A VOTE IN AN ELECTION DISTRICT AND THE NUMBER OF VOTES RECORDED ON THE TABULATED RESULTS TAPE PLUS ANY ELECTION DAY PAPER BALLOTS COUNTED BY HAND the board of elections, or the committee thereof, [with the assistance of the custodian of the machine, shall unlock the voting and counting mechanism of the machine and] shall proceed thoroughly to examine [and test the machine] ALL THE ELECTION DAY PAPER BALLOTS IN THAT ELECTION DISTRICT to determine [and reveal the true cause or causes, if any, of the discrepancy in] the [returns] RESULT from such [machine] ELECTION DISTRICT. [Before testing, the counters shall be reset at zero and each counter shall be operated at least one hundred times.] THE RESULT OF THIS EXAMINATION OF ELECTION DAY BALLOTS SHALL SUPERSEDE THE RETURNS FILED BY THE INSPECTORS OF ELECTION OF THE ELECTION DISTRICT IN WHICH THE CANVASS WAS MADE. After the completion of such examination [and test], the [custodian] BOARD OF ELECTIONS, OR THE COMMITTEE THEREOF, shall then and there prepare a statement in writing giving in detail the result thereof, and such statement shall be witnessed by the persons required to be present and shall be filed in the office of the board of elections.

S 8-b. The opening paragraph and subparagraph (i) of paragraph (a) of subdivision 2 of section 9-209 of the election law, as amended by chapter 104 of the laws of 2010, are amended to read as follows:

Before completing the canvass of votes cast in any primary, general, special, or other election at which voters are required to sign their registration poll records before voting, the board of elections shall proceed in the manner hereinafter prescribed to cast and canvass any absentee, military, special presidential, special federal or other special ballots [which were not cast and canvassed at the polling

place,] and any ballots voted by voters who moved within the county or city after registering, voters who are in inactive status, voters whose registration was incorrectly transferred to another address even though they did not move, [or] voters whose registration poll records were missing on the day of such election [or], voters who have not had their identity previously verified [or] AND VOTERS whose registration poll records did not show them to be enrolled in the party in which they claimed to be enrolled. Each such ballot shall be retained in the original envelope containing the voter's affidavit and signature, in which it is delivered to the board of elections until such time as it is to be cast and canvassed.

(i) Upon assembling at the time and place fixed for such meeting, each central board of inspectors shall cast and canvass the envelopes and the ballots therein contained as nearly as practicable in the manner provided by this chapter for a board of inspectors to consider, cast, and canvass absentee ballot envelopes [and ballots at the polling place].

S 9. Section 11-212 of the election law, as amended by chapter 165 of the laws of 2009, is amended to read as follows:

S 11-212. Special federal ballots; deadline for receipt[, and delivery to polling place]. All special federal ballots received by the board of elections before the close of the polls on election day [may be delivered to the inspectors of the election districts in which the voters are registered, in the manner prescribed by this chapter for absentee ballots, or] SHALL BE retained by the board of elections and cast and canvassed pursuant to section 9-209 of this chapter [as the board of elections, in its discretion, shall determine by resolution adopted at least thirty days before election day]. All ballots contained in envelopes showing a cancellation mark of the United States postal service or a foreign country's postal service, or showing a dated endorsement of receipt by another agency of the United States government, with a date which is ascertained to be not later than the day before election, shall be cast and counted if received by the board of elections not later than seven days following the day of a primary election or thirteen days following the day of a general or special election except that the special federal ballot of a voter who requested such ballot by letter, rather than application, shall not be counted unless a valid application form, signed by such voter, is received by the board of elections with such ballot. All ballots received by the board of elections and all federal write-in ballots received from special federal voters not later than seven days following the day of a primary election or thirteen days following the day of a general or special election, shall be retained at the board and shall be cast and canvassed in the same manner as other ballots retained by such board.

S 10. Section 11-300 of the election law, as amended by chapter 302 of the laws of 1990, is amended to read as follows:

S 11-300. Special ballots on account of religious scruples. A voter may deliver to the inspectors of election of the election district in which he is registered, or to the board of elections, at any time during the period in which an application for absentee ballot may be so delivered pursuant to the provisions of this chapter, a written statement of religious scruples against voting at a polling place located in a premises used for religious purposes. In the event the polling place for any such voter's election district shall be located in a premises used for religious purposes, the board of elections shall permit such voter to cast a special ballot, at an office of such board of elections, not

earlier than one week before the election and not later than the close of the polls on election day. Such ballots [may be delivered to the inspectors of election in the manner prescribed by this chapter for absentee ballots or] SHALL BE retained at the board of elections and cast and canvassed pursuant to the provisions of section 9-209 of this chapter [as such board shall, in its discretion, determine by resolution adopted at least thirty days before election day].

S 11. Section 11-302 of the election law, as amended by chapter 243 of the laws of 2003, is amended to read as follows:

S 11-302. Special ballots for board of election employees. A person who is an employee of the board of elections or who has been appointed to serve as an inspector of elections, poll clerk or election coordinator at a polling place other than the one at which he or she is registered to vote, may deliver to the inspectors of election of the election district in which he or she is registered, or to the board of elections, at any time during the period in which an application for an absentee ballot may be so delivered pursuant to the provisions of this chapter, a written statement that he or she will be unable to appear at the polling place for such election district on the day of an election because his or her duties as an employee of such board or as an inspector, poll clerk or election coordinator require him or her to be elsewhere. The board of elections shall provide such voter a special ballot not earlier than two weeks before the election and not later than the close of the polls on election day. Such cast ballots may be delivered to an office of such board of elections or to any board of inspectors not later than the close of the polls on election day. Such ballots [may be delivered to the inspectors of election in the manner prescribed by this chapter for absentee ballots or] SHALL BE retained at the board of elections and cast and canvassed pursuant to the provisions of section 9-209 of this chapter [as such board shall, in its discretion, determine by resolution adopted at least thirty days before election day].

S 12. Section 11-304 of the election law is REPEALED.

S 13. Section 11-306 of the election law, as amended by chapter 38 of the laws of 2010, is amended to read as follows:

S 11-306. Special ballots; victims of domestic violence. 1. A voter may deliver to the board of elections, at any time during the period in which absentee ballot applications may be delivered, a signed written statement swearing or affirming:

(a) that he or she is the victim of domestic violence;

(b) that he or she has left his or her residence because of such violence; and

(c) that because of the threat of physical or emotional harm to himself or herself or to family or household members, he or she wishes to cast a special ballot in the next election. The statement must include the voter's address of registration. The board of elections shall permit such a voter to cast a special ballot at an office of such board of elections not earlier than one week before the election and not later than the close of the polls on election day. Such ballots [may be delivered to the inspectors of election in the manner prescribed by this chapter for absentee ballots or] SHALL BE retained at the board of elections and cast and canvassed pursuant to the provisions of section 9-209 of this chapter [as such board shall, in its discretion, determine by resolution adopted at least thirty days before election day].

2. "Family or household members" mean the following individuals:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common regardless of whether such persons are married or have lived together at any time; or

(e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

S 14. Section 16-113 of the election law, as added by chapter 181 of the laws of 2005, is amended to read as follows:

S 16-113. [Audit of] PROCEEDING WITH RESPECT TO voter verifiable records. The supreme court, by a justice within the judicial district, or the county court, by a county judge within his or her county, by any candidate or his or her agent, may direct a manual audit of the voter verifiable audit records applicable to any candidate running for office within such judicial district or county where (1) the uniform statewide standard promulgated by regulation by the state board of elections pursuant to subdivision three of section 9-211 of this chapter with respect to discrepancies between manual audit tallies and voting machines or systems tallies requires a further voter verifiable record audit of additional voting machines or systems or all voting machines or systems applicable to such election, or (2) where evidence presented to the court otherwise indicates that there is a likelihood of a material discrepancy between such manual audit tally and such voting machine or system tally, OR A DISCREPANCY AS DEFINED IN SUBDIVISION THREE OF SECTION 9-208 OF THIS CHAPTER, which creates a substantial possibility that the winner of the election as reflected in the voting machine or system tally could change if a voter verifiable record audit of additional voting machines or systems or of all voting machines or systems applicable to such election were conducted.

S 15. This act shall take effect immediately, provided, however, that the amendments to paragraph (a) of subdivision 2 of section 9-102 of the election law made by section three of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 3 of chapter 92 of the laws of 2001, as amended, when upon such date the provisions of section four of this act shall take effect.