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

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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 opening of the polls

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

Section 1. Section 8-102 of the election law, paragraph (b) of subdivision 1 as amended by chapter 263 of the laws of 2003, paragraph (i) of subdivision 1 as amended by chapter 537 of the laws of 1985 and subdivision 2 as amended by chapter 9 of the laws of 1978, is amended to read as follows:

S 8-102. Polls; opening of. 1. The inspectors of election, and clerks, if any, shall meet at the polling place at least one-half hour before the time set for opening the polls of election. The inspectors of election shall:

(a) See that the American flag is displayed.

(b) Cause the facsimile ballots and voter information posting to be posted conspicuously within the polling place.

(c) Cause the distance markers to be placed at a distance of one hundred feet from the polling place.

(d) Establish a guard-rail by delineating and marking out the voting area by a suitable means. The [voting machine,] BALLOT SCANNER, BALLOT MARKING DEVICE, BALLOT BOXES AND SECURE STORAGE CONTAINERS, PRIVACY BOOTHS, ALL ballots and all equipment shall be kept within such guard-rail.

(e) Place the books, ballots and sample ballots, blanks, stationery and supplies so that they will be ready and convenient for use.

(f) Affix or attach to their clothing and cause the clerks, if any, to affix or attach to their clothing the proper identification buttons, badges or emblems issued by the board of elections pursuant to the provisions of this chapter. The inspectors and clerks shall wear no other buttons, badges or emblems which are similar in design.

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

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(g) See that the [voting] PRIVACY booths CONTAIN CONSPICUOUS INSTRUCTIONS ON HOW TO PROPERLY MARK BALLOTS AND THAT VOTERS are [supplied] PROVIDED with [pencils having black lead only] APPROPRIATE WRITING INSTRUMENTS FOR MARKING BALLOTS.

(h) Unlock [the] ALL ballot boxes AND SECURE STORAGE CONTAINERS TO BE USED TO HOLD ELECTION DAY PAPER BALLOTS, see that they are empty, allow them to be examined by the watchers present, and lock them up again in such a manner that the watchers and the persons just outside the guard-rail may see that the boxes are empty when re-locked; PROVIDED, HOWEVER, THE BALLOT BOXES OR SECURE STORAGE CONTAINERS HOLDING UNUSED BALLOTS SHALL BE INSPECTED TO CONFIRM THAT ONLY THE NUMBER OF UNUSED ELECTION DAY PAPER BALLOTS PROVIDED BY THE BOARD OF ELECTIONS ARE CONTAINED THEREIN.

(i) Inspect the [voting machine] BALLOT SCANNER AND BALLOT MARKING DEVICE to see that it is in good working order [and has a curtain]. INSPECT THE PLACEMENT OF PRIVACY BOOTHS to preserve the secrecy of voting; inspect the screen of the [voting booth] BALLOT SCANNER AND BALLOT MARKING DEVICE; inspect the polling place to make certain there is no way that anyone can view any VOTING action [of] BY a voter [inside] AT the [voting machine or] BALLOT SCANNER, BALLOT MARKING DEVICE, OR IN A PRIVACY booth; and affix a conspicuous notice, in the form prescribed by the state board of elections, in a prominent place [in] NEAR the [machine or] BALLOT SCANNER AND IN THE PRIVACY booth, instructing the voter [that,] ON HOW TO PROPERLY MARK A BALLOT in order to have his OR HER vote counted[, he must leave the voting levers in a down position when he operates the handle to open the curtain]. Such notice shall be printed in English and such other languages as the board of elections may determine to be appropriate.

(j) Announce that the polls are open for voting and the time when the polls will close.

2. The keys to the [voting machine] BALLOT SCANNER AND BALLOT MARKING DEVICE shall be delivered to the inspectors at least one-half hour before the time set for the opening of the polls, in a sealed envelope, on which shall be written or printed the BALLOT SCANNER OR BALLOT MARKING DEVICE SERIAL number and location of the [voting machine, the number of the seal, and the number registered on the protective counter] POLLING PLACE, as reported by the voting machine custodian. The envelope containing the keys shall not be opened until at least one inspector from each of the two parties shall be present in the polling place and shall have examined the envelope to see that it has not been opened. Before opening the envelope, [all the] SUCH election [officers] INSPECTORS present shall examine the SERIAL number on the [seal on the] machine, [also the number registered on the protective counter,] and shall see if they are the same as the numbers written on the envelope containing the keys. If found not to agree, the envelope must not be opened until the voting machine custodian, or other authorized person, shall have been notified and shall have [presented himself] ARRIVED at the polling place for the purpose of re-examining such machine and shall certify that it is properly arranged. If the [numbers] SERIAL NUMBER on the [seal and protective counter, are] MACHINE IS found to agree with the [numbers] NUMBER on the envelope, the inspectors, except as hereinafter provided, shall [open] TURN ON the [doors concealing the counters and, before the polls are open, each inspector shall carefully examine every counter and see that it registers zero and allow the watchers to examine them. If the machine is provided with a device for printing or photographing candidate and amendment counters, the door concealing the

counters shall not be opened and the] MACHINE. THE inspectors shall [instead] carefully examine the printed [or photographic] record produced by the machine to see that each counter registers zero, and shall allow watchers to examine the printed [or photographic] record. The inspectors shall then sign a certificate showing the delivery of the keys in a sealed envelope, the SERIAL number on the [seal] MACHINE, the number registered on the protective counter, [if] THAT all the counters are set at zero [(000), if] AND THAT the public counter is set at zero [(000), and if the ballot labels are properly placed in the machine]. The machine shall remain [locked] SECURED against voting until the polls are formally opened[,] and shall not be operated except by voters [in] WHEN voting OR BY ELECTION OFFICIALS UPON THE INSTRUCTIONS OF THE BOARD OF ELECTIONS. If any counter is found not to register zero [(000)], the inspectors of election shall immediately notify the [custodian who shall if practicable adjust the counters at zero (000), but if it shall be impracticable for the custodian to arrive in time to adjust such counters before the time set for opening the polls, the inspectors shall immediately make a written statement of the designating letter and number of such counter, together with the number registered thereon, and shall sign and post the same upon the wall of the polling place, where it shall remain throughout election day, and in filling out the return of canvass they shall subtract such number from the number then registered on such counter] BOARD OF ELECTIONS.

S 2. Subdivisions 1-a, 2 and 4 of section 8-104 of the election law, subdivision 1-a as added by chapter 263 of the laws of 2003, are amended to read as follows:

1-a. The election inspectors shall conspicuously post in the polling place before the opening of the polls, a voter information posting, which shall include: (a) the sample ballot and instructions for the use of [voting machines] BALLOT SCANNERS AND BALLOT MARKING DEVICES required pursuant to section 7-118 of this chapter; (b) [information regarding the date of the election] A STATEMENT THAT "TODAY IS ELECTION DAY" and the hours during which polling places will be open; (c) instructions on how to cast an affidavit ballot and a concise statement of a voter's right to such a ballot; (d) instructions relating to requirements for voting on [voting machines] BALLOT SCANNERS by those registrants who must provide identification pursuant to the federal Help America Vote Act of 2002; (e) instructions for first-time voters; (f) a voter's bill of rights describing voter's rights under applicable federal and state law, including the right of accessibility and alternate language accessibility; (g) information pertaining to voting by ELECTION DAY paper ballot, including information about the consequence of casting an overvote, steps to prevent unintentional undervoting and spoiled ballots; (h) instructions on how to contact the appropriate officials if a voter's right to vote or right to otherwise participate in the electoral process has been violated; and (i) general information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation. The state board of elections shall prescribe the form and content of the voter information posting, which may be comprised of one or more pages, provided each page shall be posted separately. The state board of elections shall prescribe an official version of such voter information posting for every language which appears on any general, primary or special election ballot in any election district in the state and for such other languages as such board, in its opinion, determines is appropriate. Such posting shall be used in all jurisdictions, and a separate posting shall be made by election inspectors for each language

appearing on the ballot and for such additional languages as the board of elections may require. A board of elections may modify or supplement the voter information posting used in its jurisdiction to provide additional or local information; provided, however, any such modification or supplementation shall be submitted to the state board of elections for prior approval.

2. The BALLOT boxes, OTHER SECURE STORAGE CONTAINERS and all official ballots shall be kept within the guard-rail, and at least six feet therefrom, from the opening of the polls until the [annnouncement] ANNOUNCEMENT of the result of the canvass and the signing of the inspectors' returns thereof. No person shall be admitted within the guard-rail during such period except the election officers, authorized watchers, persons admitted by the inspectors to preserve order or enforce the law, [and] voters duly admitted for the purpose of voting AND CHILDREN UNDER THE AGE OF SIXTEEN ACCOMPANYING THEIR VOTING PARENTS OR GUARDIANS; provided, however, that candidates voted for at the polling place may be within the guard-rail during the canvass.

4. After a ballot box [shall have] OR OTHER SECURE STORAGE CONTAINER HAS been locked for the purposes of election, it shall not be opened until it is opened at the close of the polls for purposes of canvass OR BY ELECTION OFFICIALS UPON THE INSTRUCTIONS OF THE BOARD OF ELECTIONS. Each inspector shall be responsible personally for the custody of each ballot box AND OTHER SECURE STORAGE CONTAINER and its contents from the time the election begins until the box OR CONTAINER is delivered, according to law, to the person entitled to receive it.

S 3. Section 8-202 of the election law, the section heading as amended by chapter 373 of the laws of 1978 and subdivision 1 as amended by chapter 91 of the laws of 1992, is amended to read as follows:

S 8-202. Board of inspectors; conduct of. 1. The [chairman] CHAIR of the board of inspectors theretofore appointed shall continue to act as such, and the inspectors shall act as a board, and a majority thereof shall decide questions. Two inspectors who are not of the same political faith shall have charge of the registration poll ledgers or computer generated registration lists, subject to inspection thereof by any inspector and his OR HER participation in the decision of any question. Of the inspectors in charge of the registration poll ledgers or computer generated registration lists, one shall be assigned to the duty of comparing the signatures of voters. Inspectors shall be assigned to the foregoing duties by majority vote of the board of inspectors, before the opening of the polls. Such assignments shall be by lot if a majority cannot agree. The duties of an inspector or clerk may be changed during the day. If there be clerks, the board of inspectors may direct a clerk, who is not otherwise engaged, to perform any duty of an inspector of the same party, except to vote upon a question to be decided by such board. Where an oath is required or permitted by this article at any election, any inspector may administer it. Where [voting machines] BALLOT SCANNERS, BALLOT MARKING DEVICES, PRIVACY BOOTHS, BALLOT BOXES OR OTHER SECURE STORAGE CONTAINERS are used, [one clerk or inspector] CLERKS OR INSPECTORS shall attend [each voting machine] SUCH BALLOT SCANNERS, BALLOT MARKING DEVICES, PRIVACY BOOTHS, BOXES OR CONTAINERS.

2. The exterior of [the voting machine] ANY BALLOT SCANNER, BALLOT MARKING DEVICE AND PRIVACY BOOTH and every part of the polling place shall be in plain view of the election inspectors and watchers. The [voting machine] BALLOT SCANNERS, BALLOT MARKING DEVICES, AND PRIVACY BOOTHS shall be placed at least four feet from the table used by the inspectors in charge of the poll books. The guard-rail shall be at least

three feet from the machine and the table used by the inspectors[, and shall have openings to admit voters to and from the machine. The voting machine shall be so located in the polling place that, unless its construction requires otherwise, the ballot labels on the face of the machine can be seen plainly by the election inspectors and the party watchers when the machine is not in use by voters]. The election inspectors shall not themselves be, or allow any other person to be, in any position or near any position, that will permit one to see or ascertain how a voter votes, or how he OR SHE has voted nor shall they permit any other person to be less than three feet from the [machine] BALLOT SCANNER, BALLOT MARKING DEVICE, OR PRIVACY BOOTH while [such machine is] occupied. The election [inspector or clerk] INSPECTORS OR CLERKS attending the [machine] BALLOT SCANNER, BALLOT MARKING DEVICE, OR PRIVACY BOOTH shall REGULARLY inspect the face of the [machine after each voter has cast his vote,] BALLOT SCANNER, BALLOT MARKING DEVICE, OR THE INTERIOR OF THE PRIVACY BOOTH to see that the [ballot labels are in their proper places and that the machine] BALLOT SCANNER, BALLOT MARKING DEVICE, OR PRIVACY BOOTH has not been [injured] DAMAGED or tampered with. During elections the door or other covering of the counter compartment of the machine shall not be unlocked or opened [or the counters exposed] except by a member of the board of elections, a voting machine custodian or any other person upon the specific instructions of [a member of] the board of elections.

S 4. Section 8-300 of the election law, subdivision 2 as amended by chapter 158 of the laws of 1996 and subdivision 3 as amended by chapter 181 of the laws of 2005, is amended to read as follows:

S 8-300. Voting; manner of. 1. The inspectors shall admit within the voting area only two voters at a time for each [voting machine or voting booth] BALLOT SCANNER, BALLOT MARKING DEVICE, OR PRIVACY BOOTH and shall ascertain whether each such voter is entitled to vote. If he OR SHE is found to be entitled to vote, he OR SHE shall be [admitted within the voting machine or booth and be] permitted TO PROCEED TO THE BALLOT SCANNER, BALLOT MARKING DEVICE, OR PRIVACY BOOTH to vote.

2. The operating of the [voting machine] BALLOT SCANNER by the voter while voting or the USE OF A PRIVACY BOOTH OR BALLOT MARKING DEVICE FOR marking [of his] A ballot shall be secret and obscured from all other persons except as provided by this chapter in cases of voting by assisted voters or in cases of children under the age of sixteen accompanying their voting parents or guardians.

3. No voter shall remain within a [voting machine] PRIVACY BOOTH OR AT A BALLOT SCANNER longer than a reasonable amount of time and if he or she shall refuse to leave after the lapse of such time, he or she shall be removed by the inspectors.

S 5. Subparagraph (ii) of paragraph (e) of subdivision 3 of section 8-302 of the election law, as amended by chapter 62 of the laws of 2010, is amended to read as follows:

(ii) He or she may swear to and subscribe an affidavit stating that he or she has duly registered to vote, the address in such election district from which he or she registered, that he or she remains a duly qualified voter in such election district, that his or her registration poll record appears to be lost or misplaced or that his or her name and/or his or her signature was omitted from the computer generated registration list or that he or she has moved within the county or city since he or she last registered, the address from which he or she was previously registered and the address at which he or she currently resides, and at a primary election, the party in which he or she is

enrolled. The inspectors of election shall offer such an affidavit to each such voter whose residence address is in such election district. Each such affidavit shall be in a form prescribed by the state board of elections, shall be printed on an envelope of the size and quality used for an absentee ballot envelope, and shall contain an acknowledgment that the affiant understands that any false statement made therein is perjury punishable according to law. Such form prescribed by the state board of elections shall request information required to register such voter should the county board determine that such voter is not registered and shall constitute an application to register to vote. The voter's name and the entries required shall then be entered without delay and without further inquiry in the fourth section of the challenge report or in the place provided at the end of the computer generated registration list, with the notation that the voter has executed the affidavit hereinabove prescribed, or, if such person's name appears on the computer generated registration list, the board of elections may provide a place to make such entry next to his or her name on such list. The voter shall then, without further inquiry, be permitted to vote an [emergency] AFFIDAVIT ballot provided for by this chapter. Such ballot shall thereupon be placed in the envelope containing his or her affidavit, and the envelope sealed and returned to the board of elections in the manner provided by this chapter for protested official ballots, including a statement of the number of such ballots.

S 6. Section 8-312 of the election law, the section heading as amended and subdivision 6 as added by chapter 464 of the laws of 2009, is amended to read as follows:

S 8-312. Voting; ELECTION DAY paper ballots, marking and casting, delivery to voter. 1. On receiving his OR HER ballot, the voter forthwith [and without leaving the inclosed space] shall retire alone, unless he [be] OR SHE IS entitled to assistance in voting OR IS ACCOMPANIED BY A CHILD UNDER SIXTEEN YEARS OF AGE, to an unoccupied [voting] PRIVACY booth and mark his OR HER ballot[,] using a [pen having blue or black ink or a pencil having black lead] WRITING INSTRUMENT SUPPLIED BY THE BOARD OF ELECTIONS. He OR SHE shall not occupy a PRIVACY booth more than five minutes if other voters are waiting to occupy it. If the voter wrongly marks, defaces or tears a ballot [or one of a set of ballots], he OR SHE may successively obtain others, one [set] BALLOT at a time, not exceeding three [sets] BALLOTS in all, upon returning to the inspectors or clerks each [set of ballots] BALLOT already received.

2. When the voter shall have [prepared his] MARKED THE ballot [or ballots], he OR SHE shall leave the PRIVACY booth with [each] THE ballot [folded so as to conceal the face thereof but to show the indorsement and facsimile of the official signature on the back, and keeping the same so folded, shall], proceed at once to the [inspector in charge of the ballot box, and shall offer] BALLOT SCANNER, INSERT such ballot [or ballots to such] INTO THE BALLOT SCANNER AND WAIT FOR THE NOTICE THAT THE BALLOT HAS BEEN SUCCESSFULLY SCANNED. IF NO SUCH NOTICE APPEARS, THE VOTER SHALL SEEK THE ASSISTANCE OF AN ELECTION inspector. [If the ballot or ballots are properly folded, and have no mark or tear visible on the outside thereof, except the printed number on the stub and the printed indorsement on the back, and if such number is the same as that entered in the registration poll record, as the number on the stub or stubs of the official ballot or set of ballots last delivered to him, such inspector shall receive such ballot or ballots, and after removing the stub or stubs therefrom in plain view of the voter, and without removing any other part of the ballot, and without unfolding the ballot or in any

way exposing any part of the face of the ballot below the stub, shall deposit each ballot in the proper ballot box for the reception of voted ballots of the kind so received, and the stubs in the box for detached stubs.]

3. Upon voting, the voter forthwith shall pass outside the guardrail, unless he OR SHE is a person authorized to remain for other purposes than voting.

4. When a person shall have received a paper ballot from any clerk, or inspector, as hereinbefore provided, he OR SHE shall be deemed to have commenced the act of voting, and if, after receiving such official ballot, he OR SHE shall leave the space inclosed by the guard-rail before the deposit of his OR HER ballot in the ballot [box] SCANNER, BALLOT BOX OR OTHER SECURE STORAGE CONTAINER, as hereinbefore provided, he OR SHE shall not be entitled to pass again within the guard-rail for the purpose of voting, or to receive any further ballots.

5. No ballot without the official indorsement shall be allowed to be deposited in the ballot [box except for emergency ballots as provided for herein] SCANNER OR, WHEN A BALLOT SCANNER IS INOPERABLE OR OTHERWISE UNABLE TO SCAN THE BALLOT, IN A BALLOT BOX OR OTHER SECURE STORAGE CONTAINER EXCEPT FOR EMERGENCY BALLOTS AS PROVIDED IN SUBDIVISION TWO OF SECTION 7-120 OF THIS CHAPTER. No person to whom any ELECTION DAY paper ballot shall be delivered shall leave the space within the guard-rail until after he OR SHE shall have SCANNED THE BALLOT, DEPOSITED THE BALLOT IN A BALLOT BOX OR OTHER SECURE STORAGE CONTAINER OR delivered [back all such ballots received by him either] THE BALLOT BACK to the inspectors or to the clerks.

6. [Paper] ELECTION DAY PAPER ballots being used with optical scan voting systems or intended to be counted by hand pursuant to subdivision one of section 7-200 of this chapter shall be delivered to the voter in a manner consistent with the rules and regulations promulgated by the state board of elections.

S 7. This act shall take effect immediately.