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

10175--B

R. R. 65

I N A S S E M B L Y

May 10, 2012

Introduced by M. of A. KAVANAGH -- read once and referred to the Committee on Election Law -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading -- again amended on special order of third reading, ordered reprinted, retaining its place on the special order of third reading

AN ACT to amend the election law, in relation to canvass procedures; and to repeal section 9-128 of the election law relating thereto

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

Section 1. This act shall be known and may be cited as the "election night poll site procedures act of 2012".

S 2. Section 9-100 of the election law, as amended by chapter 234 of the laws of 1976, is amended to read as follows:

S 9-100. Canvass; required. At the close of the polls the inspectors of election shall, in the order set forth herein, [lock the machine against voting] CLOSE POLLS, account for the paper ballots, canvass the machine, cast and canvass all the ballots, canvass and ascertain the total vote and they shall not adjourn until the canvass be fully completed.

S 3. Section 9-102 of the election law, subdivisions 1, 2, and 3 as amended by section 3 and paragraph (a) of subdivision 2 as amended by section 4 of chapter 163 of the laws of 2010, subdivisions 4 and 6 as amended by chapter 9 of the laws of 1978, is amended to read as follows:

S 9-102. Canvass; general provisions for. 1. [As] EXCEPT IN THE CITY OF NEW YORK, AS soon as the polls of the election are closed, the inspectors of election thereat shall, in the order set forth herein; [a.)] (A) place an inspector at the ballot scanner to prevent further voting; [b.)] (B) reconcile the paper ballots pursuant to section 9-106 of this title; [c.)] (C) remove surplus ballots, if any, pursuant to section 9-108 of this title; [d.)] (D) scan the ballots contained in the emergency box or other secure storage container pursuant to section 9-110 of this title; [e.)] (E) hand count and secure ballots that cannot be scanned pursuant to section 9-110 of this title; [f.)] (F) close the

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

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poll, print the tabulated [result] RESULTS tape, announce the result and sign the return of canvass pursuant to subdivisions 2 and 3 of this section; [g.)] (G) close, lock and seal the machine; and [h.)] (H) sign the close of poll certificate, as provided by the board of elections.

1-A. IN THE CITY OF NEW YORK, AS SOON AS THE POLLS OF THE ELECTION ARE CLOSED, THE INSPECTORS OF ELECTION THEREAT SHALL, IN THE ORDER SET FORTH HEREIN: (A) PLACE AN INSPECTOR AT THE BALLOT SCANNER TO PREVENT FURTHER VOTING; (B) SCAN THE BALLOTS CONTAINED IN THE EMERGENCY BOX OR OTHER SECURE STORAGE CONTAINER PURSUANT TO SECTION 9-110 OF THIS TITLE, UNLESS IT IS NOT POSSIBLE TO DETERMINE WHICH SUCH BALLOTS SHOULD BE SO SCANNED BECAUSE THE ACCOUNTING AND RECONCILIATION REQUIRED BY SECTION 9-106 OF THIS TITLE CANNOT BE COMPLETED WITHOUT FIRST PRINTING THE RESULTS TAPE; (C) INITIATE THE BALLOT SCANNER'S CLOSE THE POLL MECHANISM, PRINT THE TABULATED RESULTS TAPE, AND POST THE RESULTS TAPE OR ANNOUNCE ITS CONTENTS OR BOTH; (D) REMOVE ONE OF THE PORTABLE MEMORY DEVICES FROM THE BALLOT SCANNER FOR THE PURPOSE OF REPORTING THE UNOFFICIAL TALLY OF ELECTION RESULTS PURSUANT TO SECTION 9-126 OF THIS TITLE; (E) RECONCILE THE PAPER BALLOTS PURSUANT TO SECTION 9-106 OF THIS TITLE; (F) REMOVE SURPLUS BALLOTS, IF ANY, PURSUANT TO THIS SECTION AND SECTION 9-108 OF THIS TITLE; (G) HAND COUNT AND SECURE BALLOTS THAT CANNOT BE SCANNED PURSUANT TO THIS SECTION AND SECTION 9-110 OF THIS TITLE; (H) POST OR ANNOUNCE THE RESULTS OF ANY HAND COUNTS AND SIGN THE RETURN OF CANVASS PURSUANT TO SUBDIVISIONS TWO AND THREE OF THIS SECTION; (I) CLOSE, LOCK AND SEAL THE MACHINE; AND (J) SIGN THE CLOSE OF POLL CERTIFICATE, AS PROVIDED BY THE BOARD OF ELECTIONS.

2. (a) The inspectors shall canvass the [machine vote by printing the] ballot scanner tabulated RESULTS BY PRINTING THE results tape in the presence of the watchers and all other persons who may be lawfully within the polling place, giving full view of the tabulated [result] RESULTS tape numbers. [The chair of the board of inspectors] AN INSPECTOR shall, under the scrutiny of an inspector of a different political party, EITHER POST THE RESULTS TAPE OR READ AND ANNOUNCE in the order of the offices as their titles are arranged on the tabulated [result] RESULTS tape, [read and announce] in distinct tones the public office or party position, candidate name, political party and the [result] RESULTS as shown on the tabulated [result] RESULTS tape and then shall announce the [aggregate] number of write-in votes recorded for each office. The [chair] INSPECTORS shall also in the same manner POST OR announce the [vote on] RESULTS FOR each ballot proposal.

(B) The results on the tabulated [result] RESULTS tape shall be entered on or the tabulated [result] RESULTS tape (REPRESENTING THE AGGREGATE RESULTS OF VOTES CAST ON THE BALLOT SCANNER OR THE RESULTS BY ELECTION DISTRICT AS APPLICABLE) shall be affixed to the return of canvass for that ballot scanner or election district pursuant to section 9-120 of this title by an inspector[,] under the scrutiny of an inspector of a different political party, in the space indicated[; provided, however, if]. IF any election day paper ballots were hand counted pursuant to THIS SECTION AND subdivision two of section 9-110 of this title, [the results] AN INSPECTOR SHALL, UNDER THE SCRUTINY OF AN INSPECTOR OF A DIFFERENT POLITICAL PARTY, EITHER POST OR READ AND ANNOUNCE THE RESULTS OF SUCH HAND COUNT. THE TALLY SHEET of ANY such hand counting shall be SIGNED BY THE INSPECTORS CONDUCTING SAME AND AFFIXED TO OR 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 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, shall then be filled out. Such return] and tabulated [result] RESULTS tape shall be signed by TWO INSPECTORS OF each [inspector] MAJOR POLITICAL PARTY.

[(b)] (C) The [printed or photographic record produced by such machine] RESULTS TAPE shall include a certificate which the inspectors shall sign, stating the number of voters as shown on the public counter and the number on the protective counter.

[(c)] (D) 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, FOR PURPOSES OF THIS SECTION A "PORTABLE MEMORY DEVICE"), such device shall be removed from the machine after copies of the [printed record] RESULTS TAPE, sufficient to meet the requirements of this chapter and the regulations of the board of elections, have been produced. After the PORTABLE MEMORY device is removed from the machine, the inspectors shall 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.

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. During the proclamation of the result, ample opportunity shall be given to any person lawfully present to compare the results so announced with the sum of the votes appearing on the tabulated [result] RESULTS 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 inspectors. Thereafter, the voting machine shall be closed and locked. The first copy of the [printed record] RESULTS TAPE for each voting machine should be posted on the wall of the polling place forthwith; provided, however, that if only one copy of such [printed record] RESULTS TAPE can be printed by any such machine at any election, such copy shall be used in preparation of the [statement of] returns OF CANVASS required by this title.

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

(c) 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.

4. All types of ballots, enclosed in properly sealed envelopes respectively, and properly endorsed shall be filed with the original return of canvass, AS PROVIDED FOR IN SECTION 9-106 OF THIS TITLE.

5. The inspector OR OTHER COURIER ASSIGNED BY THE BOARD filing the returns shall deliver to the board or officer from whom received, the keys of the voting machine, enclosed in a sealed envelope having indorsed thereon a certificate of the inspectors stating the number of the machine, the election [district, ward or assembly district] DISTRICT(S), WARD(S) OR ASSEMBLY DISTRICT(S) where it has been used, the number on the seal and the number on the protective counter. IN THE CITY OF NEW YORK, POLICE OFFICERS OR PEACE OFFICERS DESIGNATED BY THE POLICE COMMISSIONER OF SUCH CITY SHALL PROVIDE SUCH DELIVERY OF THE DEVICES.

6. The room in which such canvass is made shall be clearly lighted, ingress and egress through the main entrance thereto shall be freely permitted, and such canvass shall be made in plain view of those entitled to be present. The ballots shall at all times be kept on top of the

table and in plain view of all persons entitled to examine them, until they have been [tied into bundles] RE-PACKAGED AND SEALED FOR RETURN TO THE BOARD OF ELECTIONS as elsewhere provided. If requested by any person entitled to be present the inspectors shall, during the canvass of any ballots, exhibit to him OR HER the ballot then being canvassed, fully opened and in such a condition that he OR SHE may fully and carefully read and examine it, but no inspector shall allow any ballot to be taken from his OR HER hand or to be touched by any person but an inspector.

S 4. Section 9-106 of the election law, as amended by chapter 163 of the laws of 2010, is amended to read as follows:

S 9-106. Official ballots; accounting for number used. [At the close of] AFTER the polls OF THE ELECTION ARE CLOSED and before any boxes or [envelope] ENVELOPES containing voted ballots are opened, the clerks, or if there be no clerks, two inspectors representing different parties designated by the chair, shall account for all of the paper ballots furnished to the election district OR POLL SITE. On a reconciliation form supplied by the board of elections, they shall count, verify and record on such form the number of unused ballots, the number of ballots [cancelled] SPOILED before delivery to voters in the poll site, the number of ballots spoiled and returned by voters 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] SCREEN(S) OR RESULTS TAPE(S). 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 ELECTION DISTRICT OR poll site, and the remainder number shall be determined to be the number of ballots secured in the emergency ballot [box] BOX(ES) or other secure storage [container] CONTAINER(S) provided by the board of elections. This remainder number shall be recorded on the ballot reconciliation form[.

Such]. IF SUCH REMAINDER NUMBER IS ZERO AND THERE ARE NO BALLOTS IN THE EMERGENCY BALLOT BOX(ES) OR OTHER SUCH SECURE CONTAINER(S), INSPECTORS SHALL INITIATE THE BALLOT SCANNERS' CLOSE THE POLLS MECHANISM AND PRODUCE RESULTS TAPES, UNLESS IN THE CITY OF NEW YORK SUCH SCANNERS' CLOSE THE POLLS MECHANISM HAS ALREADY BEEN INITIATED AND THE RESULTS TAPES ALREADY PRODUCED PURSUANT TO PARAGRAPH (C) OF SUBDIVISION ONE-A OF SECTION 9-102 OF THIS TITLE. THE clerks or inspectors shall then separate, label and place each type of ballot in the box or container provided by the board of elections, and securely lock or seal each such box or container. They shall then sign such reconciliation form. IF SUCH REMAINDER NUMBER IS NOT ZERO OR THERE ARE UNSCANNED VOTED ELECTION DAY BALLOTS IN THE EMERGENCY BALLOT BOX(ES) OR OTHER SUCH SECURE CONTAINER(S), THE INSPECTORS OR CLERKS SHALL PROCEED WITH THE PROCESS PROVIDED FOR IN SECTION 9-108 AND 9-110 OF THIS TITLE. UPON COMPLETION OF SUCH PROCESS, THE CLERKS OR INSPECTORS SHALL THEN SEPARATE, LABEL AND PLACE EACH TYPE OF BALLOT IN THE BOX(ES) OR CONTAINER(S) PROVIDED BY THE BOARD OF ELECTIONS, AND SECURELY LOCK OR SEAL EACH SUCH BOX(ES) OR CONTAINER(S). THEY SHALL THEN SIGN SUCH AMENDED RECONCILIATION FORM.

S 5. Subdivision 2 of section 9-108 of the election law is amended to read as follows:

2. If the ballots found in any box shall be more than the number of ballots so shown to have been deposited therein, such ballots shall all be replaced, without being unfolded, in the box from which they were taken, and shall be thoroughly mingled therein, and one of the inspectors shall, with his OR HER back to the box, publicly draw out as many ballots as shall be equal to such excess and, without unfolding them

forthwith shall enclose them in an envelope which he OR SHE shall then and there seal and endorse "excess ballots [from the box for ballots] for the general election, presidential electors, or party ballots or otherwise", as the case may be, and shall sign his OR HER name thereto, and place such envelope in the box for defective or spoiled ballots.

S 6. Section 9-110 of the election law, as amended by chapter 163 of the laws of 2010, is amended to read as follows:

S 9-110. Canvass; election day paper ballots that have not been scanned; method of. 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] RESULTS 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 OR ONE-A OF SECTION 9-102 AS APPLICABLE AND 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 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 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. When the tallies of the votes of all such ballots are proven, and the results announced, the [inspectors'] INSPECTORS shall AFFIX TALLY SHEETS TO OR record the results FROM SAME 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 7. Section 9-112 of the election law, subdivisions 1, 2, 4 and 5 as amended by chapter 352 of the laws of 1986, subdivision 6 as amended by chapter 647 of the laws of 1982, is amended to read as follows:

S 9-112. Canvass ballots; validity of ballot. 1. The whole ballot is void if the voter (a) does any act extrinsic to the ballot such as enclosing any paper or other article in the folded ballot or (b) defaces or tears the ballot except that a ballot card which is in perforated sections shall not be void because it has been separated into sections or (c) makes any erasure thereon or (d) makes any mark thereon other than a cross X mark or a check V mark in a voting square, or filling in the voting square, or [punching a hole in the voting square of a ballot intended to be counted by machine or] (e) writes, other than in the space provided, a name for the purpose of voting; except that an erasure or a mark other than a valid mark made in a voting square shall not make the ballot void, but shall render it blank as to the office, party position or ballot proposal in connection with which it is made. No ballot shall be declared void or partially blank because a mark thereon is

irregular in form. The term "voting square" shall include the voting space provided for a voter to mark his OR HER vote for a candidate or ballot proposal.

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

3. A vote shall be counted for a person whose name is written in under the title of an office or party position only if such name is written by the voter upon the ballot in the proper space provided therefor and only if such name is not printed under the title of such office or position. A voting mark before or after such written in name shall not invalidate the vote.

4. If, in the case of a candidate whose name appears on the ballot more than once for the same office, the voter shall make a cross X mark or a check V mark in each of two or more voting squares before the candidate's name, or fill in TWO OR MORE such voting squares [or punch out the hole in two or more voting squares of a ballot intended to be counted by machine,] only the first vote shall be counted for such candidate. If such vote was cast for the office of governor, such vote shall not be recorded in the tally sheet or returns in a separate place on the tally sheet as a vote not for any particular party or independent body.

5. If a voter makes a cross X mark or a check V mark in a voting square following the word "Yes" or the word "No", before a ballot proposal, or fills in such square, [or punches out the hole in a voting square of a ballot intended to be counted by machine,] such mark shall be counted in the affirmative or negative, as so indicated.

6. If the voter marks more names than there are persons to be elected or nominated for an office, or elected to a party position, or makes a mark in a place or manner not herein provided for, or if for any reason it is impossible to determine the voter's choice of a candidate or candidates for an office or party position or his OR HER vote upon a ballot proposal, his OR HER vote shall not be counted for such office or position or upon the ballot proposal, but shall be returned as a blank vote thereon.

S 8. Section 9-114 of the election law, subdivision 1 as amended by chapter 647 of the laws of 1982, is amended to read as follows:

S 9-114. Counting ballots; objections to. 1. If objection be made to the counting of any ballot or as to any section of any such ballot, the board of inspectors shall forthwith and [for] BEFORE canvassing any other ballot or section thereof, rule upon the objection. If the objection be continued after this ruling, the [chairman] CHAIR OR AN INSPECTOR UNDER THE SCRUTINY OF AN INSPECTOR OF THE OPPOSITE PARTY shall write in ink upon the back of the ballot a memorandum of the ruling and objection. The memorandum of the ruling shall be in the words "Counted void", or "Counted blank", or "Counted for (naming the candidate or candidates or the presidential ticket)", or, in the case of a ballot proposal "Counted for Proposal No.....," or "Counted against Proposal No.....", as the case may be. The memorandum of the objection shall be in the words "Objected to", followed by a brief statement of the nature of the objection, the name and address of the challenger and the signature of the [chairman] CHAIR OR INSPECTOR.

2. Any ballot to which objection is not taken but which is wholly blank or is void shall be indorsed in ink by the [chairman] CHAIR of the

board of inspectors OR AN INSPECTOR UNDER THE SCRUTINY OF AN INSPECTOR OF THE OPPOSITE PARTY with the words "Wholly blank" or "Void", as the case may be, and signed by the [chairman] CHAIR OR INSPECTOR.

3. When all the ballots of any one kind shall have been canvassed, the inspectors shall ascertain the total number of [wholly blank and void] ALL SUCH ballots and the number of ballots [as] to which any objection was taken and shall enter such numbers in the place provided therefor in the inspectors' returns of such canvass.

S 9. Subdivision 1 of section 9-116 of the election law, as amended by chapter 13 of the laws of 1988, is amended to read as follows:

1. As each vote for any office or position, or upon any ballot proposal, is announced, a clerk, or, if there be no clerks, an inspector, under the scrutiny of a clerk or inspector of opposite political [faith] PARTY immediately shall tally it in [black] ink, with a downward stroke from right to left upon the official tally sheet. Each such clerk or inspector, as he OR SHE tallies a vote, shall announce clearly the name of the person for whom he OR SHE tallies it, or that he OR SHE tallies the vote blank or void as the case may be, or, in the case of a ballot proposal, that he OR SHE tallies the vote "yes" or "no". When the name of a person voted for is not printed on the tally sheet, such clerks or inspectors shall write it in full thereon in ink in the place provided therefor.

S 10. Section 9-120 of the election law, subdivision 1 as amended by chapter 262 of the laws of 1986, is amended to read as follows:

S 9-120. Returns of canvass; generally. 1. Upon completing the canvass, the inspectors shall prepare their returns of the canvass[. They shall use therefor the] ON A printed form supplied to them [and, at an election which was not conducted on a voting machine which produces a printed or photographic record, they shall carefully insert thereon, in ink, the appropriate names, words and figures according to the directions printed in the form provided by this chapter] BY THE BOARD OF ELECTIONS. The [printed or photographic record produced by the voting machine] RESULTS TAPE(S) and the tally [sheets] SHEET(S) for any office, party position or ballot proposal, if separate from [the statement of return] SUCH FORM, shall be securely attached by the [chairman] CHAIR OR AN INSPECTOR UNDER THE SCRUTINY OF AN INSPECTOR OF THE OPPOSITE PARTY to such [statement of] FORM returns AND IT SHALL NOT BE NECESSARY TO TRANSCRIBE INFORMATION PROVIDED BY SUCH RESULTS TAPES ONTO SUCH FORM. [A printed or photographic record] RESULTS TAPE(S) or a tally [sheet] SHEET(S), when so annexed, or forming part of the same paper as the return, shall be treated as part of the return. The inspectors, and clerks, if any, shall subscribe in ink the certificate at the end of the set of returns. Each set of returns shall be securely sealed in an envelope properly endorsed on the outside by the inspectors. At an election at which voting machines are not used, the ballot boxes, if any, supplied by the board of elections, may when securely locked be used instead of sealed envelopes.

2. The form for the return or returns of the canvass shall be printed in a [form] FORMAT approved by the state board of elections. THE FORM OF SUCH RETURN OF CANVASS SHALL PROVIDE FOR THE TOTAL NUMBER OF VOTES FOR EACH CANDIDATE IN EACH CONTEST, OR UPON EACH BALLOT PROPOSAL, INCLUDING THE TOTAL NUMBER OF UNSCANNED VOTED BALLOTS CANVASSED IN ACCORDANCE WITH SECTION 9-110 OF THIS TITLE.

3. IN THE EVENT THAT THERE IS MORE THAN ONE ELECTION DISTRICT AT A POLLING PLACE, THE BOARD OF ELECTIONS MAY AUTHORIZE THE USE OF ONE OR MORE RETURNS OF CANVASS THAT CONSOLIDATE THE REPORT OF THE NUMBER OF

VOTES FOR EACH CANDIDATE, OR UPON EACH BALLOT PROPOSAL, FOR MORE THAN ONE ELECTION DISTRICT OR MORE THAN ONE BALLOT SCANNER, PROVIDED THAT SUCH CONSOLIDATED RETURNS OF CANVASS HAVE ATTACHED TO THEM THE RESULTS TAPE(S) PRODUCED BY THE BALLOT SCANNER(S) THAT IDENTIFY THE NUMBER OF VOTES FOR EACH CANDIDATE, OR UPON EACH BALLOT PROPOSAL, WITHIN EACH SUCH ELECTION DISTRICT AND EACH SUCH BALLOT SCANNER.

S 11. Section 9-122 of the election law, as amended by chapter 647 of the laws of 1982, is amended to read as follows:

S 9-122. Proclamation of result. Upon the completion of the canvass and of the returns of the canvass, the [chairman] CHAIR of the board of inspectors OR AN INSPECTOR UNDER THE SCRUTINY OF AN INSPECTOR OF THE OPPOSITE PARTY shall make public oral proclamation of the [whole] TOTAL number of votes cast at the election at the polling place for all candidates for each office, or, if it be a primary election, the [whole] TOTAL number of party votes of each party so cast for all candidates for each office or party position; upon each ballot proposal, if any[; the whole number of votes given for each person, with the title of the office or party position for which he was named on the ballot; and the whole number of votes given, respectively, for and against each such ballot proposal, if any] AND THE TOTAL NUMBER OF WRITE-IN VOTES RECORDED FOR EACH OFFICE. AS AN ALTERNATIVE TO SUCH ORAL PROCLAMATION, SUCH CHAIR OR INSPECTOR MAY CAUSE TO BE POSTED THE RESULTS TAPE(S), TALLY SHEET(S), AND ANY OTHER MATERIALS NECESSARY TO ASCERTAIN SUCH TOTAL NUMBERS OF VOTES CAST.

S 12. Section 9-124 of the election law, as amended by chapter 9 of the laws of 1978, subdivision 1 as amended by chapter 659 of the laws of 1994, subdivision 2 as amended by chapter 413 of the laws of 1991, and subdivision 3 as amended by chapter 91 of the laws of 1992, is amended to read as follows:

S 9-124. Returns of canvass, procedure after. 1. After the returns of the canvass are made out and signed, the inspectors shall enclose the protested[,] AND void [and wholly blank] ballots and the ballots cast in affidavit envelopes in a separate sealed envelope or envelopes and endorse thereon a certificate signed by each of them stating the number of the district and the number of ballots contained in such envelope or envelopes. THE INSPECTORS SHALL ENCLOSE THE UNSCANNED VOTED BALLOTS CANVASSED IN ACCORDANCE WITH SECTION 9-110 OF THIS TITLE IN A SEPARATE SEALED ENVELOPE AND ENDORSE THEREON A CERTIFICATE SIGNED BY EACH OF THEM STATING THE NUMBER OF THE DISTRICT AND THE NUMBER OF BALLOTS CONTAINED IN SUCH ENVELOPE. The inspectors shall then [tie up] PACKAGE and seal the other voted ballots and [return] PLACE them [to the ballot box which contained them] IN ONE OR MORE BOXES OR CONTAINERS, AND INCLUDE WITHIN SUCH BOXES OR CONTAINERS ONE PORTABLE MEMORY DEVICE FROM EACH BALLOT SCANNER PURSUANT TO PARAGRAPH (D) OF SUBDIVISION TWO OF SECTION 9-102 OF THIS TITLE, AND ANY ABSENTEE, MILITARY, SPECIAL FEDERAL, OR SPECIAL PRESIDENTIAL BALLOTS WHICH MAY HAVE BEEN DELIVERED TO THE POLL SITE DURING ELECTION DAY, and securely lock and seal [the box, except that at elections in which voting machines are used, absentee and military, special federal, special presidential and emergency ballots and stubs, if any, shall be sealed in the envelope or envelopes provided therefor] SUCH BOXES OR CONTAINERS. NOTWITHSTANDING THE PRECEDING SENTENCE, SUCH PORTABLE MEMORY DEVICE FROM EACH BALLOT SCANNER WITH THE CORRESPONDING RESULTS TAPE MAY BE ENCLOSED IN A SEALED CONTAINER AND TRANSPORTED PRIOR TO AND SEPARATELY FROM OTHER MATERIALS REFERENCED IN THIS SECTION FOR THE PURPOSE OF USING SUCH DEVICE TO PROVIDE AN UNOFFICIAL TALLY OF RESULTS AS REQUIRED BY SECTION 9-126 OF THIS TITLE.

2. Each box [or], envelope, OR CONTAINER containing the ballots and stubs, if any, AND ALL ITEMS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION shall be deposited by an inspector designated for that purpose with the officer or board from whom or which the board of inspectors received it[, together with the separate sealed package of unused ballots]. In the city of New York, every SUCH box [or], envelope [containing any ballots or stubs and the package of unused ballots], OR CONTAINER shall be delivered at the polling place[, at the conclusion of the canvass,] to [the] police or peace [officer] OFFICERS DESIGNATED BY THE POLICE COMMISSIONER OF SUCH CITY, who shall deposit them with the board of elections.

3. [The books, returns and other papers enumerated below shall be disposed of as follows, except as otherwise provided:

(a) In a city or town, except the city of New York and in a village in which elections are conducted by the board of elections, the] (A) EXCEPT IN THE CITY OF NEW YORK, THE registration poll records or computer generated registration lists, the returns OF CANVASS with RESULTS TAPES AND tally sheets, IF ANY, annexed, the [absentee and military, special federal, special presidential and emergency] VOTED ballots, stubs, OPENED PACKAGES OF UNUSED BALLOTS and ballot envelopes, ANY ABSENTEE, MILITARY, SPECIAL FEDERAL, OR SPECIAL PRESIDENTIAL BALLOTS WHICH MAY HAVE BEEN DELIVERED TO THE POLL SITE DURING ELECTION DAY, the challenge records and the package of protested[,] AND void [and wholly blank] ballots shall be filed with the board of elections[, and the flag shall be returned to it] IMMEDIATELY UPON THE CLOSE OF THE POLLS AND THE COMPLETION OF ALL RELATED TASKS IN COMPLIANCE WITH THIS TITLE.

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

(c) The county legislative body of any county in the state except the counties comprising the city of New York may, by a resolution, ordinance or act as required, provide that all returns, papers, registration poll records or computer generated registration lists, books, records, documents, and other election supplies and materials shall be filed by the chairman of the board of inspectors of elections in a city or town and in a village in which elections are conducted by the board of elections, with the city, town or village clerk of such city, town or village in the county within eighteen hours after the closing of the polls at any primary, general, special or village election and the city, town or village clerk upon receiving such returns, papers, registers or lists, books, records, documents, and other election supplies and materials shall give to the person making the delivery, a receipt stating therein the date and hour of the delivery and the name of such person. Within twenty-four hours after the closing of the polls at any primary, general, special or village election, the city, town or village clerk shall file all returns, papers, registration poll records or computer generated registration lists, books, records, documents and other election

supplies and materials filed with him by the inspectors of the election districts of the city, town or village, with the board of elections of the county and the board of elections shall give to the city, town or village clerk a receipt therefor stating therein the date and hour of 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 [the] police or peace [officer] 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, [the flag,] other election supplies, INCLUDING TWO COPIES OF the returns of the canvass and [the] ANY absentee [and], military, special federal, OR special presidential [and emergency ballots,] BALLOTS WHICH MAY HAVE BEEN DELIVERED TO THE POLL SITE DURING ELECTION DAY, VOTED BALLOTS, stubs, OPEN PACKAGES OF UNUSED BALLOTS and ballot envelopes. [The] SUCH police or peace [officer] OFFICERS shall file the returns, the package of void[,] AND protested [and wholly blank] ballots, if any, and the absentee [and], military, special federal, special presidential, 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.

(C) THE PERSON RECEIVING SUCH RETURNS IN THE BOARD OF ELECTIONS SHALL GIVE TO THE PERSON DELIVERING THE RETURNS A RECEIPT STATING THEREIN THE DATE AND HOUR OF DELIVERY, THE NAME OF THE PERSON MAKING THE DELIVERY, AND TO WHOM SAID RETURNS WERE DELIVERED AND SHALL KEEP A DUPLICATE OF SUCH RECEIPT ON FILE IN THE OFFICE OF THE BOARD OF ELECTIONS.

S 13. Section 9-126 of the election law, the section heading as amended by chapter 9 of the laws of 1978, subdivision 1 and paragraph (a) of subdivision 2 as amended by chapter 647 of the laws of 1982, subdivision 3 as added by chapter 262 of the laws of 1986, and paragraph (b) of subdivision 3 as amended by chapter 356 of the laws of 1986, is amended to read as follows:

S 9-126. [Return of canvass; delivery of results to police and unofficial] UNOFFICIAL tally of election results. 1. In an election district [of a city and] of the county of Nassau, the [chairman] CHAIR of the board of inspectors, upon the completion of the return of canvass, and the announcement thereof in a primary or general election, shall deliver to the police officer on duty at the polling place a statement signed by the board of inspectors stating the number of votes received by each person voted for and the number of votes cast for and the number of votes cast against each ballot proposal. Such officer forthwith shall convey the statement to the stationhouse of the police precinct in which such place of canvass is located, and shall deliver it inviolate to the officer in command thereof, who shall immediately transmit by telegraph, telephone or messenger, the contents of such statement to the officer commanding the police department of such [city or] county who shall immediately make the contents of such statement available for the press. [In the city of New York and the county of Nassau the chairman] THE CHAIR of the board of inspectors in each election district OF SUCH COUNTY shall make two copies of the statement hereinbefore provided for, which shall be taken to the police station, whence one such copy shall be transmitted without delay to police headquarters, or such other location as may be designated by the officer commanding the police department, where it shall be made immediately available to the press

for purposes of tabulation. The other copy shall be transmitted within twenty-four hours to the board of elections. All statements made pursuant to this section shall be preserved for six months by the police and shall be presumptive evidence of the result of such canvass.

2. (a) [In an election district outside of a city, except] EXCEPT in the county of Nassau, the [chairman] CHAIR of the board of inspectors, upon completion of the return of canvass and the announcement thereof, in a general or primary election, shall immediately communicate such results by telephone, or delivery, to the [county] board of elections. Such results shall include the number of votes received by each person voted for and the number of votes cast for and against each ballot proposal.

(b) The [county] board of elections shall remain open after the close of the polls and shall receive and tabulate the voting results [from throughout the county] as they are received. The board OF ELECTIONS shall MAKE SUCH UNOFFICIAL RESULTS AVAILABLE TO THE MEDIA AND THE STATE BOARD OF ELECTIONS, AND SHALL post running totals in a public place AND ON THE INTERNET as the results become known to it.

[(c)] 3. The results made public pursuant to this section [are to] SHALL be released as the unofficial tally and shall not be admissible in evidence in any action or proceeding contesting the result of any election.

[(d) Any police department of a city outside the city of New York and the county of Nassau receiving statements as provided in subdivision one of this section shall immediately communicate the contents thereof to the county board of elections at a location designated by it. In lieu of requiring the delivery of statements to the police in cities outside of the city of New York and the county of Nassau as provided in subdivision one of this section, a]

4. A county board of elections may require the [chairman] CHAIR of the board of inspectors in each election district [within such a city to make a return of the vote pursuant to the provisions of this subdivision] TO REPORT UNOFFICIAL ELECTION NIGHT RESULTS BY TELEPHONE, FAX OR OTHER MEANS. SUCH RESULTS SHALL INCLUDE THE TOTAL AGGREGATE NUMBER OF VOTES RECEIVED BY EACH PERSON VOTED FOR, THE TOTAL AGGREGATE NUMBER OF WRITE-INS AND THE NUMBER OF VOTES CAST FOR AND AGAINST EACH BALLOT PROPOSAL.

[3.] 5. (a) The board of elections of counties in which voting machines which have [removable electronic or computerized] PORTABLE MEMORY devices [which record the total of the votes cast on such machines] are used, may establish WRITTEN procedures CONSISTENT WITH THE PROVISIONS OF THIS SECTION AND FILED WITH THE STATE BOARD OF ELECTIONS by which such devices may be used [after the close of the polls] to provide the unofficial tally of results required by this section.

(b) Such procedures may include: the installation, at the board of elections or at town or city halls, police stations, sheriff's offices or other public buildings, of machines which record and transmit the totals recorded in such devices to the board of elections or directly to a representative of the press; the delivery of the devices from the polling places to such locations and the removal of such devices, by at least two clerks or other agents of such board of elections of opposite political parties, from the containers or envelopes in which they were sealed at the polling places and the insertion of such devices into such machines.

(c) IN THE CITY OF NEW YORK, UNLESS THE BOARD OF ELECTIONS OF SUCH CITY DESIGNATES TWO CLERKS OR OTHER AGENTS OF OPPOSITE POLITICAL PARTIES

FOR DELIVERY OF THE DEVICES FROM THE POLLING PLACES TO SUCH LOCATIONS, POLICE OFFICERS OR PEACE OFFICERS DESIGNATED BY THE POLICE COMMISSIONER OF SUCH CITY SHALL PROVIDE SUCH DELIVERY AS SOON AS PRACTICABLE.

(D) The board of elections shall provide containers, at all such locations other than the offices of such board, into which all such devices shall be placed by the clerks or other agents of such board of elections after they are removed from such machines. Such containers shall be sealed by such clerks or agents who shall also enter on a certificate which shall be printed on each such container, the total number of such devices placed in such container and the election districts from which such devices came. Such clerks shall also sign such certificate in the places provided.

[(d)] (E) Such containers shall be delivered to the board of elections by the public officials in whose offices such machines were installed within twenty-four hours after the closing of the polls [and the]. IN THE CITY OF NEW YORK, UNLESS THE BOARD OF ELECTIONS OF SUCH CITY DESIGNATES TWO CLERKS OR OTHER AGENTS OF OPPOSITE POLITICAL PARTIES FOR DELIVERY OF SUCH CONTAINERS TO THE BOARD OF ELECTIONS, POLICE OFFICERS OR PEACE OFFICERS DESIGNATED BY THE POLICE COMMISSIONER OF SUCH CITY SHALL DELIVER SUCH CONTAINERS. THE board of elections shall give such officials, POLICE OFFICERS, OR PEACE OFFICERS a receipt therefor which states therein the date and hour of delivery, the name of the person making the delivery and the name of the person to whom such delivery was made. The board of elections shall keep a duplicate of such receipt on file at the office of such board.

[(e)] (F) The cost of installing such machines at locations other than the board of elections and the cost of transmitting the results from such machines may be paid by the board of elections or by a representative of the press. If such results are transmitted from a location other than the board of elections directly to a representative of the press, such cost shall be paid by such representative of the press.

S 14. Section 9-128 of the election law is REPEALED.

S 15. This act shall take effect immediately and shall apply to any election held on or after the seventy-fifth day after it shall have become a law.