

5677

2011-2012 Regular Sessions

I N   S E N A T E

June 10, 2011

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Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to the retention of absentee ballots and the canvass of military and absentee ballots

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

1     Section 1. Subdivision 2 of section 8-412 of the election law, as  
2     amended by chapter 155 of the laws of 1994, is amended to read as  
3     follows:  
4     2. Absentee ballots received by the board of elections [before the  
5     close of the polls on election day from voters whose applications were  
6     received by such board at least seven days before election day may]  
7     SHALL be [delivered to the inspectors of election in the manner  
8     prescribed by this chapter or] retained at the board of elections and  
9     cast and canvassed pursuant to the provisions of section 9-209 of this  
10    chapter [as such board shall, in its discretion, determine by resolution  
11    adopted at least thirty days before election day. All ballots received  
12    by the board of elections from voters whose applications were received  
13    by such board later than seven days before election day, all ballots  
14    received by such board between election day and the seventh day after  
15    election day, and all federal write-in ballots received from absentee  
16    voters, shall be retained at the board and shall be cast and canvassed  
17    in the same manner as other ballots retained by such board].  
18    S 2. Paragraphs (a) and (c) of subdivision 2 of section 9-209 of the  
19    election law, as amended by chapter 104 of the laws of 2010 and subpara-  
20    graph (i) of paragraph (a) as amended by chapter 163 of the laws of  
21    2010, are amended to read as follows:  
22    (a) (i) Upon assembling at the time and place fixed for such meeting,  
23    each central board of inspectors shall EXAMINE, cast, and canvass the  
24    envelopes and the ballots therein contained as nearly as practicable in

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

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1 the FOLLOWING manner [provided by this chapter for a board of inspectors  
2 to consider, cast, and canvass absentee ballot envelopes.]:

3 (A) IF A PERSON WHOSE NAME IS ON AN ENVELOPE AS A VOTER HAS ALREADY  
4 VOTED IN PERSON AT SUCH ELECTION, OR IF HIS OR HER NAME AND RESIDENCE AS  
5 STATED ON THE ENVELOPE ARE NOT ON A REGISTRATION POLL RECORD, OR THE  
6 COMPUTER GENERATED LIST OF REGISTERED VOTERS OR THE LIST OF SPECIAL  
7 PRESIDENTIAL VOTERS, OR IF THERE IS NO NAME ON THE ENVELOPE, OR IF THE  
8 ENVELOPE IS NOT SEALED, SUCH ENVELOPE SHALL BE LAID ASIDE UNOPENED.

9 (B) IF THERE IS MORE THAN ONE BALLOT ENVELOPE EXECUTED BY THE SAME  
10 VOTER, THE ONE BEARING THE LATER DATE OF EXECUTION SHALL BE ACCEPTED AND  
11 THE OTHER REJECTED. IF IT CANNOT BE DETERMINED WHICH ENVELOPE BEARS THE  
12 LATER DATE, THEN ALL SUCH ENVELOPES SHALL BE REJECTED.

13 (C) IF SUCH PERSON IS FOUND TO BE REGISTERED AND HAS NOT VOTED IN  
14 PERSON, AN INSPECTOR SHALL COMPARE THE SIGNATURE, IF ANY, ON EACH ENVEL-  
15 OPE WITH THE SIGNATURE, IF ANY, ON THE REGISTRATION POLL RECORD, THE  
16 COMPUTER GENERATED LIST OF REGISTERED VOTERS OR THE LIST OF SPECIAL  
17 PRESIDENTIAL VOTERS, OF THE PERSON OF THE SAME NAME WHO REGISTERED FROM  
18 THE SAME ADDRESS. IF THE SIGNATURES ARE FOUND TO CORRESPOND, SUCH  
19 INSPECTOR SHALL CERTIFY THERETO BY SIGNING HIS OR HER INITIALS IN THE  
20 "INSPECTOR'S INITIALS" LINE ON THE COMPUTER GENERATED LIST OF REGISTERED  
21 VOTERS OR IN THE "REMARKS" COLUMN AS APPROPRIATE.

22 (D) IF SUCH PERSON IS FOUND TO BE REGISTERED AND HAS NOT VOTED IN  
23 PERSON, AND IF NO CHALLENGE IS MADE, OR IF A CHALLENGE MADE IS NOT  
24 SUSTAINED, THE ENVELOPE SHALL BE OPENED, THE BALLOT OR BALLOTS WITHDRAWN  
25 WITHOUT UNFOLDING, AND THE BALLOT OR BALLOTS DEPOSITED IN THE PROPER  
26 BALLOT BOX OR BOXES, OR ENVELOPES, PROVIDED HOWEVER THAT, IN THE CASE OF  
27 A PRIMARY ELECTION, THE BALLOT SHALL BE DEPOSITED IN THE BOX ONLY IF THE  
28 BALLOT IS OF THE PARTY WITH WHICH THE VOTER IS ENROLLED ACCORDING TO THE  
29 ENTRY ON THE BACK OF HIS OR HER REGISTRATION POLL RECORD OR NEXT TO HIS  
30 OR HER NAME ON THE COMPUTER GENERATED REGISTRATION LIST; IF NOT, THE  
31 BALLOT SHALL BE REJECTED WITHOUT INSPECTION OR UNFOLDING AND SHALL BE  
32 RETURNED TO THE ENVELOPE WHICH SHALL BE ENDORSED "NOT ENROLLED." AT THE  
33 TIME OF THE DEPOSIT OF SUCH BALLOT OR BALLOTS IN THE BOX OR ENVELOPES,  
34 THE INSPECTORS SHALL ENTER THE WORDS "ABSENTEE VOTE" OR "MILITARY VOTE"  
35 IN THE SPACE RESERVED FOR THE VOTER'S SIGNATURE ON THE AFORESAID LIST OR  
36 IN THE "REMARKS" COLUMN AS APPROPRIATE, AND SHALL ENTER THE YEAR AND  
37 MONTH OF THE ELECTION ON THE SAME LINE IN THE SPACES PROVIDED THEREFOR.

38 (E) AS EACH ENVELOPE IS OPENED, IF ONE OR MORE OF THE DIFFERENT KINDS  
39 OF BALLOTS TO BE VOTED AT THE ELECTION ARE NOT FOUND THEREIN, THE  
40 CLERKS, OR INSPECTORS, SHALL MAKE A MEMORANDUM SHOWING WHAT BALLOT OR  
41 BALLOTS ARE MISSING. IF A BALLOT ENVELOPE SHALL CONTAIN MORE THAN ONE  
42 BALLOT FOR THE SAME OFFICES, ALL THE BALLOTS IN SUCH ENVELOPE SHALL BE  
43 REJECTED. WHEN THE CASTING OF SUCH BALLOTS SHALL HAVE BEEN COMPLETED THE  
44 CLERKS OR INSPECTORS SHALL ASCERTAIN THE NUMBER OF SUCH BALLOTS OF EACH  
45 KIND WHICH HAVE BEEN DEPOSITED IN THE BALLOT BOX BY DEDUCTING FROM THE  
46 NUMBER OF ENVELOPES OPENED THE NUMBER OF MISSING BALLOTS, AND SHALL MAKE  
47 A RETURN THEREOF. THE NUMBER OF ABSENTEE VOTERS' BALLOTS DEPOSITED IN  
48 THE BALLOT BOX SHALL BE ADDED TO THE NUMBER OF OTHER BALLOTS DEPOSITED  
49 IN THE BALLOT BOX, IN ORDER TO DETERMINE THE NUMBER OF ALL BALLOTS OF  
50 EACH KIND TO BE ACCOUNTED FOR IN THE BALLOT BOX.

51 (ii) If the board of inspectors determines that a person was entitled  
52 to vote at such election it shall cast and canvass such ballot if such  
53 board finds that ministerial error by the board of elections or any of  
54 its employees caused such ballot envelope not to be valid on its face.

55 (iii) If the board of elections determines that a person was entitled  
56 to vote at such election, the board shall cast and canvass such ballot

1 if such board finds that the voter appeared at the correct polling  
2 place, regardless of the fact that the voter may have appeared in the  
3 incorrect election district.

4 (c) The following provisions shall apply to casting and canvassing of  
5 all such ballots which are counted by machine and all other provisions  
6 of this chapter with respect to casting and canvassing such ballots  
7 which are not inconsistent with this paragraph shall be applicable to  
8 such ballots.

9 (i) [Such ballots shall be counted by placing them, arranged by  
10 election district, in the counting machine.

11 (ii)] Such ballots may be separated into sections before being placed  
12 in the counting machine.

13 [(iii)] (II) Any write-in ballots and any ballots which cannot be  
14 counted by the machine shall be counted manually subject to all the  
15 applicable provisions of this chapter with respect to counting of  
16 ballots.

17 [(iv)] (III) The record of the vote counted by machine for each candi-  
18 date and for and against each ballot proposal, printed by election  
19 district, shall be preserved in the same manner and for the same period  
20 as the returns of canvass for the election.

21 S 3. This act shall take effect immediately.