

7925

2015-2016 Regular Sessions

I N A S S E M B L Y

June 1, 2015

Introduced by M. of A. KAVANAGH -- read once and referred to the Committee on Election Law

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

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Uniform Election Night Procedure Act".
3 S 2. Section 9-102 of the election law, as amended by chapter 334 of
4 the laws of 2013, is amended to read as follows:
5 S 9-102. Canvass; general provisions for. 1. [Except in the city of
6 New York, as] AS soon as the polls of the election are closed, the
7 inspectors of election thereat shall, in the order set forth herein[;]:
8 (a) place an inspector at the ballot scanner to prevent further voting;
9 (b) reconcile the paper ballots pursuant to section 9-106 of this title;
10 (c) remove surplus ballots, if any, pursuant to section 9-108 of this
11 title; (d) scan the ballots contained in the emergency box or other
12 secure storage container pursuant to section 9-110 of this title; (e)
13 hand count and secure ballots that cannot be scanned pursuant to section
14 9-110 of this title; (f) INITIATE THE BALLOT SCANNER, close the poll
15 MECHANISM, print the tabulated results tape, AND POST THE RESULTS TAPE
16 OR announce [the result] ITS CONTENTS OR BOTH; (G) REMOVE ONE OF THE
17 PORTABLE MEMORY DEVICES FROM THE BALLOT SCANNER FOR THE PURPOSE OF
18 REPORTING THE UNOFFICIAL TALLY OF ELECTION RESULTS PURSUANT TO SECTION
19 9-126 OF THIS TITLE; (H) POST OR ANNOUNCE THE RESULTS OF ANY HAND COUNTS
20 and sign the return of canvass pursuant to subdivisions 2 and 3 of this
21 section; [(g)] (I) close, lock and seal the machine; and [(h)] (J) sign
22 the close of poll certificate, as provided by the board of elections.
23 [1-a. In the city of New York, as soon as the polls of the election
24 are closed, the inspectors of election thereat shall, in the order set
25 forth herein: (a) place an inspector at the ballot scanner to prevent

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

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

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

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

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

49 (d) If the machine is provided with a removable electronic or comput-
50 erized device which records the total of the votes cast on such machine
51 ([such device,] for purposes of this section a "portable memory
52 device"), such device shall be removed from the machine after copies of
53 the results tape, sufficient to meet the requirements of this chapter
54 and the regulations of the board of elections, have been produced. After
55 the portable memory device is removed from the machine, the inspectors
56 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 POSTED OR announced with the sum of the votes appearing on the tabulated 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 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 results tape can be printed by any such machine at any election, such copy shall be used in preparation of the 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(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 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 3. Section 9-106 of the election law, as amended by chapter 334 of the laws of 2013, is amended to read as follows:

S 9-106. Official ballots; accounting for number used. After the polls of the election are closed and before any boxes or 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 spoiled before delivery to

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

31 S 4. Section 9-110 of the election law, as amended by chapter 334 of
32 the laws of 2013, is amended to read as follows:

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

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

1 position, names of candidates therefor and the voting squares therewith.
2 The canvass of each ballot must be completed before the next ballot is
3 taken up. When the tallies of the votes of all such ballots are proven,
4 and the results announced, the inspectors shall affix tally sheets to or
5 record the results from same on the return of canvass.

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

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

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

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

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

31 S 7. Section 9-124 of the election law, as amended by chapter 334 of
32 the laws of 2013, is amended to read as follows:

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

1 provide an unofficial tally of results as required by section 9-126 of
2 this title.

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

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

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

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

1 (d)] In the city of New York, the board of inspectors shall deliver to
2 police or peace officers designated by the police commissioner of such
3 city, at the polling place the registration poll records or computer
4 generated registration lists, challenge report, records, keys, other
5 election supplies, including two copies of the returns of the canvass
6 and any absentee, military, special federal, or special presidential
7 ballots which may have been delivered to the poll site during election
8 day, voted ballots, stubs, open packages of unused ballots and ballot
9 envelopes. Such police or peace officers shall file the returns, the
10 package of void and protested ballots, if any, and the absentee, mili-
11 tary, special federal, special presidential[,] BALLOTS WHICH MAY HAVE
12 BEEN DELIVERED TO THE POLL SITE DURING ELECTION DAY; and emergency
13 ballots, stubs and ballot envelopes, if any, within twenty-four hours
14 after the close of the polls, in the office of the board of elections or
15 its branch office within the borough, as the case may be.
16 S 8. This act shall take effect immediately.