STATE OF NEW YORK

7090

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. KAVANAGH -- 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 establishing the "Uniform Election Night Procedure Act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "Uniform Election Night Procedure Act".

§ 2. Section 9-102 of the election law, as amended by chapter 334 of the laws of 2013, is amended to read as follows:

§ 9-102. Canvass; general provisions for. 1. [~~Except in the city of New York, as~~] 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) reconcile the paper ballots pursuant to section 9-106 of this title; (c) remove surplus ballots, if any, pursuant to section 9-108 of this title; (d) scan the ballots contained in the emergency box or other secure storage container pursuant to section 9-110 of this title; (e) hand count and secure ballots that cannot be scanned pursuant to section 9-110 of this title; (f) initiate the ballot scanner, close the poll mechanism, print the tabulated results tape, and post the results tape or announce [~~the result~~] its contents or both; (g) 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; (h) post or announce the results of any hand counts and sign the return of canvass pursuant to subdivisions 2 and 3 of this section; [~~(g)~~] (i) close, lock and seal the machine; and [~~(h)~~] (j) 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,~~

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

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~~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 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 results tape numbers. 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 results tape, in distinct tones the public office or party position, candidate name, political party and the results as shown on the tabulated results tape and then shall announce the number of write-in votes recorded for each office. The inspectors shall also in the same manner post or announce the results for each ballot proposal.

(b) The results on the tabulated results tape shall be entered on or the tabulated 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. If any election day paper ballots were hand counted pursuant to this section and subdivision two of section 9-110 of this title, 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. The return of canvass and tabulated results tape shall be signed by two inspectors of each major political party.

(c) The 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.

(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 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 **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.

§ 3. Section 9-106 of the election law, as amended by chapter 334 of the laws of 2013, is amended to read as follows:

§ 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 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(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(es) or other secure storage container(s) provided by the board of elections. This remainder number shall be recorded on the ballot reconciliation form. 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 **and record such seal number on the ballot reconciliation form**. 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.

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

§ 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 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 of this title 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 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.

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

2. A cross X mark or a check V mark, made by the voter, in a voting square at the left of 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.

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

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 before canvassing any other ballot or section thereof, rule upon the objection. If the objection be continued after this ruling, the 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 chair or inspector.

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

§ 9-124. Returns of canvass, procedure after. 1. After the returns of the canvass are made out and signed, the inspectors shall enclose the **ballot stubs,** protested and void ballots and the ballots cast in affidavit envelopes in [~~a~~] separate sealed [~~envelope~~] **envelopes** or [~~envelopes~~] **containers** 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~~] **envelopes** or [~~envelopes~~] **containers**. The inspectors shall enclose the unscanned voted ballots canvassed in accordance with section 9-110 of this title in a separate sealed envelope **or container** and endorse thereon a certificate signed by each of them stating the number of the district**, ballot scanner identification information** and the number of ballots contained in such envelope **or container**. The inspectors shall then package and seal the other voted ballots and place 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 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, 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. In the city of New York, every such box, envelope, or container shall be delivered at the polling place to police or peace officers designated by the police commissioner of such city, who shall deposit them with the board of elections.

3. (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 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 **report** records**, keys** and the package of protested and void ballots shall be filed with the board of elections.

(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 police or peace 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, other election supplies, including two copies of the returns of the canvass and any absentee, military, special federal, or special presidential ballots which may have been delivered to the poll site during election day, voted ballots, stubs, open packages of unused ballots and ballot envelopes. Such police or peace officers shall file the returns, the package of void and protested ballots, if any, and the absentee, military, special federal, special presidential[~~,~~] **ballots which may have been delivered to the poll site during election day;** 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.

§ 8. This act shall take effect immediately.