

# STATE OF NEW YORK

7931

2021-2022 Regular Sessions

## IN ASSEMBLY

June 1, 2021

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

AN ACT to amend the election law, in relation to the canvassing of absentee, military and special ballots and ballots cast in affidavit envelopes; and to repeal certain provisions of such law related thereto

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

1 Section 1. Section 9-209 of the election law is REPEALED and a new  
2 section 9-209 is added to read as follows:

3 § 9-209. Canvass of absentee, military and special ballots, and  
4 ballots cast in affidavit envelopes. Before completing the canvass of  
5 votes cast in any primary, general, special, or other election at which  
6 voters are required to sign their registration poll records before  
7 voting, the board of elections shall proceed in the manner hereinafter  
8 prescribed to review, cast and canvass any absentee, military, special  
9 presidential, special federal or other special ballots and any ballots  
10 cast in affidavit envelopes. Each such ballot shall be retained in the  
11 original envelope containing the voter's affidavit and signature, in  
12 which it is delivered to the board of elections until such time as it is  
13 to be reviewed, in order to be cast and canvassed.

14 1. Central board of canvassers. Within four days of the receipt of an  
15 absentee, military or special ballot, the board of elections shall  
16 designate itself or such of its employees as it shall deem appropriate  
17 as a set of poll clerks to review such ballot envelopes. The board may  
18 designate additional sets of poll clerks and if it designates more than  
19 one such set shall apportion among all such sets the election districts  
20 from which such ballots have been received, provided that when reviewing  
21 ballots, all ballots from a single election district shall be assigned  
22 to a single set of clerks, and that each such set shall be divided  
23 equally between representatives of the two major political parties. Each

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

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1 such set of clerks shall be deemed a central board of canvassers for  
2 purposes of this section.

3 2. Review of absentee, military and special ballot envelopes. Within  
4 four days of the receipt of an absentee, military or special ballot  
5 before the election, and within one day of receipt on or after the  
6 election, each central board of canvassers shall examine the ballot  
7 affirmation envelopes as nearly as practicable in the following manner:

8 (a) If a person whose name is on a ballot envelope as a voter is not  
9 on a registration poll record, the computer-generated list of registered  
10 voters or the list of special presidential voters, or if there is no  
11 name on the ballot envelope, or if the ballot envelope was not timely  
12 postmarked or received, or if the ballot envelope is completely  
13 unsealed, such ballot envelope shall be set aside unopened for review  
14 pursuant to subdivision eight of this section with a relevant notation  
15 indicated on the ballot envelope notwithstanding a split among the  
16 central board of canvassers as to the invalidity of the ballot;  
17 provided, however, if the ballot envelope is completely unsealed, such  
18 voter shall receive notice pursuant to paragraph (h) of subdivision  
19 three of this section.

20 (b) If there is more than one timely ballot envelope executed by the  
21 same voter, the one bearing the later date of execution shall be  
22 accepted and the other rejected. If it cannot be determined which ballot  
23 envelope bears the later date, then all such ballot envelopes shall be  
24 rejected. When the board of elections has issued a second ballot it  
25 shall set aside the first ballot unopened to provide the voter time to  
26 return the second ballot. Notwithstanding the foregoing, if a ballot  
27 envelope for a voter was previously reviewed and opened, then the subse-  
28 quently received ballot envelope shall be set aside unopened.

29 (c) If such person is found to be registered, the central board of  
30 canvassers shall compare the signature, if any, on each ballot envelope  
31 with the signature, if any, on the registration poll record, the compu-  
32 ter-generated list of registered voters, or the list of special presi-  
33 dential voters, of the person of the same name who registered from the  
34 same address. If the signatures are found to correspond, such central  
35 board of canvassers shall certify thereto in a manner provided by the  
36 state board of elections.

37 (d) If such person is found to be registered and has requested a  
38 ballot, the ballot envelope shall be opened, the ballot or ballots with-  
39 drawn, unfolded, stacked face down and deposited in a secure ballot box  
40 or envelope. Upon such processing of the ballot, the voter's record  
41 shall be updated with a notation that indicates that the voter has  
42 already voted in such election. The board of elections shall adopt  
43 procedures, consistent with regulations of the state board of elections,  
44 to prevent voters from voting more than once and to secure ballots and  
45 prevent public release of election results prior to election day. Such  
46 procedures shall be filed with the state board of elections at least  
47 ninety days before they shall be effective.

48 (e) In the case of a primary election, the ballot shall be deposited  
49 in the box only if the ballot is of the party with which the voter is  
50 enrolled according to the entry on the back of his or her registration  
51 poll record or in the computer-generated registration list; if not, the  
52 ballot shall be rejected without inspection or unfolding and shall be  
53 returned to the ballot envelope which shall be endorsed "not enrolled".

54 (f) If the central board of canvassers determines that a person was  
55 entitled to vote at such election it shall prepare such ballot to be  
56 stacked face down and deposited in a secure ballot box or envelope

1 consistent with paragraph (d) of this subdivision if such board finds  
2 that ministerial error by the board of elections or any of its employees  
3 caused such ballot envelope not to be valid on its face.

4 (g) If the central board of canvassers splits as to whether a ballot  
5 is valid, it shall prepare such ballot to be cast and canvassed pursuant  
6 to this subdivision.

7 (h) As each ballot envelope is opened, if one or more of the different  
8 kinds of ballots to be voted at the election are not found therein, the  
9 central board of canvassers, shall make a memorandum showing what ballot  
10 or ballots are missing. If a ballot envelope shall contain more than one  
11 ballot for the same offices, all the ballots in such ballot envelope  
12 shall be rejected. When the review of such ballots shall have been  
13 completed, the central board of canvassers shall ascertain the number of  
14 such ballots of each kind which have been deposited in the ballot box by  
15 deducting from the number of ballot envelopes opened with the number of  
16 missing ballots, and shall make a return thereof. The number of voters'  
17 ballots deposited in the ballot box shall be added to the number of  
18 other ballots deposited in the ballot box, in order to determine the  
19 number of all ballots of each kind to be accounted for in the ballot  
20 box.

21 3. Curing ballots. (a) At the time a ballot affirmation envelope is  
22 reviewed pursuant to subdivision two of this section, the board of  
23 elections shall determine whether it has a curable defect.

24 (b) A curable defect includes instances where the ballot envelope: (i)  
25 is unsigned; (ii) has a signature that does not correspond to the regis-  
26 tration signature; (iii) has no required witness to a mark; (iv) is  
27 returned without a ballot affirmation envelope in the return envelope;  
28 (v) has a ballot affirmation envelope that is signed by the person that  
29 has provided assistance to the voter but is not signed or marked by the  
30 voter; or (vi) contains the signature of someone other than the voter  
31 and not of the voter.

32 (c) The board shall indicate the issue that must be cured on the  
33 ballot envelope and, within one day of such determination, send to the  
34 voter's address indicated in the registration records and, if different,  
35 the mailing address indicated on the ballot application, a notice  
36 explaining the reason for such rejection and the procedure to cure the  
37 rejection. The board shall also contact the voter by either electronic  
38 mail or telephone, if such information is available to the board in the  
39 voter's registration information, in order to notify the voter of the  
40 deficiency and the opportunity and the process to cure the deficiency.

41 (d) The voter may cure the aforesaid defects by filing a duly signed  
42 affirmation attesting to the same information required by the ballot  
43 affirmation envelope and attesting that the signer of the affirmation is  
44 the same person who submitted such ballot envelope. The board shall  
45 include a form of such affirmation with the notice to the voter. The  
46 affirmation shall be in a form prescribed by the state board of  
47 elections.

48 (e) Such cure affirmation shall be filed with the board no later than  
49 seven business days after the board's mailing of such curable rejection  
50 notice or the day before the election, whichever is later. Provided the  
51 board determines that such affirmation addresses the curable defect, the  
52 rejected ballot shall be reinstated and prepared for canvassing pursuant  
53 to subdivision two of this section. If the board of elections is split  
54 as to the sufficiency of the cure affirmation, such envelope shall be  
55 prepared for canvassing pursuant to paragraph (d) of subdivision two of  
56 this section.

1 (f) If the ballot envelope contains one or more curable defects that  
2 have not been timely cured, the ballot envelope shall be set aside for  
3 review pursuant to subdivision eight of this section.

4 (g) Ballot envelopes are not invalid and do not require a cure if: (i)  
5 a ballot envelope is undated or has the wrong date, provided it is post-  
6 marked on or prior to election day or is otherwise received timely by  
7 the board of elections; (ii) the voter signed or marked the ballot  
8 affirmation envelope at a place on the envelope other than the desig-  
9 nated signature line; (iii) a voter used a combination of ink (of any  
10 color) or pencil to complete the ballot envelope; (iv) papers found in  
11 the ballot envelope with the ballot are materials from the board of  
12 elections, such as instructions or an application sent by the board of  
13 elections; (v) an extrinsic mark or tear on the ballot envelope appears  
14 to be there as a result of the ordinary course of mailing or transmit-  
15 tal; or (vi) the ballot envelope is partially unsealed but there is no  
16 ability to access the ballot.

17 (h) When the board of elections invalidates a ballot affirmation  
18 envelope and the defect is not curable, the ballot envelope shall be set  
19 aside for review pursuant to subdivision eight of this section and the  
20 board shall notify the voter by mail, sent within three business days of  
21 such rejection, and by either electronic mail or telephone, if such  
22 information is available to the board in the voter's registration infor-  
23 mation, and notify the voter of other options for voting, and, if time  
24 permits, provide the voter with a new ballot.

25 (i) If a ballot affirmation envelope is received by the board of  
26 elections prior to the election and is found to be completely unsealed  
27 and thus invalid, the board shall notify the voter by mail, sent within  
28 three business days of such determination, and by either electronic mail  
29 or telephone, if such information is available to the board in the  
30 voter's registration information, and notify the voter of other options  
31 for voting, and, if time permits, provide the voter with a new ballot.

32 4. Review of federal write-in absentee ballots. (a) Such central  
33 board of canvassers shall review any federal write-in absentee ballots  
34 validly cast by an absentee voter, a military voter or a special federal  
35 voter for the offices of president and vice-president, United States  
36 senator and representative in congress. Such central board of canvass-  
37 ers shall also review any federal write-in absentee ballots validly  
38 cast by a military voter for all questions or proposals, public offices  
39 or party positions for which a military voter is otherwise eligible to  
40 vote as provided in section 10-104 of this chapter.

41 (b) Federal write-in absentee ballots shall be deemed valid only if:  
42 (i) an application for an absentee, military or special federal ballot  
43 was received from the absentee, military or special federal voter; (ii)  
44 the federal write-in absentee ballot was submitted from inside or  
45 outside the United States by a military voter or was submitted from  
46 outside the United States by a special federal voter; (iii) such ballot  
47 is received by the board of elections not later than thirteen days  
48 following the day of election or seven days after a primary election;  
49 and (iv) the absentee, military or special federal ballot which was sent  
50 to the voter is not received by the board of elections by the thirteenth  
51 day following the day of a general or special election or the seventh  
52 day after a primary election.

53 (c) If such a federal write-in absentee ballot is received after  
54 election day, the envelope in which it is received must contain: (i) a  
55 cancellation mark of the United States postal service or a foreign coun-  
56 try's postal service; (ii) a dated endorsement of receipt by another

1 agency of the United States government; or (iii) if cast by a military  
2 voter, the signature and date of the voter and one witness thereto with  
3 a date which is ascertained to be not later than the day of the  
4 election.

5 (d) If such a federal write-in absentee ballot contains the name of a  
6 person or persons in the space provided for a vote for any office, such  
7 ballot shall be counted as a vote for such person or persons. A vote for  
8 a person who is the candidate of a party or independent body either for  
9 president or vice-president shall be deemed to be a vote for both the  
10 candidates of such party or independent body for such offices. If such a  
11 ballot contains the name of a party or independent body in the space  
12 provided for a vote for any office, such ballot shall be deemed to be a  
13 vote for the candidate or candidates, if any, of such party or independ-  
14 ent body for such office. In the case of the offices of president and  
15 vice-president a vote cast for a candidate, either directly or by writ-  
16 ing in the name of a party or independent body, shall also be deemed to  
17 be votes for the electors supporting such candidate. Any abbreviation,  
18 misspelling or other minor variation in the form of the name of a candi-  
19 date or a party or independent body shall be disregarded in determining  
20 the validity of the ballot, if the voter's intention can be ascertained.

21 5. Nothing in this section prohibits a representative of a candidate,  
22 political party, or independent body entitled to have watchers present  
23 at the polls in any election district in the board's jurisdiction from  
24 observing, without objection, the review of ballot envelopes required by  
25 subdivisions two, three and four of this section.

26 6. Casting and canvassing of absentee, military and special ballots.  
27 (a) The following provisions shall apply to the casting and canvassing  
28 of all valid ballots received before, on or after election day and  
29 reviewed and prepared pursuant to subdivision two of this section, and  
30 all other provisions of this chapter with respect to casting and  
31 canvassing such ballots which are not inconsistent with this subdivision  
32 shall be applicable to such ballots.

33 (b) The day before the first day of early voting, the central board of  
34 canvassers shall scan all valid ballots previously reviewed and prepared  
35 pursuant to this section as nearly as practicable in the following  
36 manner:

37 (i) Such ballots may be separated into sections before being placed in  
38 the counting machine and scanned;

39 (ii) Upon completion of the scanning of such valid ballots, the scan-  
40 ners used for such purpose shall be secured, and no tabulation of the  
41 results shall occur until one hour before the close of the polls on  
42 election day. Any ballots scanned during this period shall be secured  
43 in the same manner as voted ballots cast during early voting or on  
44 election day. The board of elections shall adopt procedures to prevent  
45 the public release of election results prior to the close of polls on  
46 election day and such procedures shall be consistent with the regu-  
47 lations of the state board of elections and shall be filed with the  
48 state board of elections at least ninety days before they shall be  
49 effective;

50 (iii) Any valid ballots that cannot be cast on a scanner shall be held  
51 inviolable and unexamined and shall be duly secured until after the close  
52 of polls on election day when such ballots shall be examined and  
53 canvassed in a manner consistent with subdivision two of section 9-110  
54 of this article.

55 (c) After the close of the polls on the last day of early voting, the  
56 central board of canvassers shall scan all valid ballots received and



1 prepared pursuant to this section, and not previously scanned on the day  
2 before the first day of early voting, in the same manner as provided in  
3 paragraph (b) of this subdivision using the same or different scanners.

4 (d) In casting and canvassing such ballots, the board shall take all  
5 measures necessary to ensure the privacy of voters.

6 (e) The board of elections may begin to obtain tabulated results for  
7 all ballots previously scanned, as required by this subdivision, one  
8 hour before the scheduled close of polls on election day; provided,  
9 however, no unofficial tabulations of election results shall be publicly  
10 announced or released in any manner until after the close of polls on  
11 election day at which time such tabulations shall be added into the  
12 election night vote totals.

13 (f) Upon completing the casting and canvassing of any remaining valid  
14 ballots as hereinabove provided for any election district, the central  
15 board of canvassers shall thereupon, as nearly as practicable in the  
16 manner provided in this article for absentee, military and special  
17 ballots, verify the number of ballots so cast, tally the votes so cast,  
18 add such tally to the previous tally of all votes cast in such election  
19 district, and record the result.

20 (g) The record of the vote counted by each scanner and manually for  
21 each candidate and for and against each ballot proposal, printed by  
22 election district, shall be preserved in the same manner and for the  
23 same period as the returns of canvass for the election.

24 7. Post-election review and canvassing of affidavit ballots. (a)  
25 Within four business days of the election, the board of elections shall  
26 review all affidavit ballots cast in the election. If the central board  
27 of canvassers determines that a person was entitled to vote at such  
28 election it shall cast and canvass such affidavit ballot; provided,  
29 however, if the board of elections receives one or more timely absentee  
30 ballots from a voter who also cast an affidavit ballot at a poll site,  
31 the last such timely absentee ballot received shall be canvassed and the  
32 affidavit ballot shall be set aside unopened; and provided further, if a  
33 voter was issued an absentee ballot and votes in person via an affidavit  
34 ballot and the board does not receive such absentee ballot, the affida-  
35 vit ballot shall be canvassed if the voter is otherwise qualified to  
36 vote in such election.

37 (b) Affidavit ballots are valid when cast at a polling site permitted  
38 by law by qualified voters: (i) who moved within the state after regis-  
39 tering; (ii) who are in inactive status; (iii) whose registration was  
40 incorrectly transferred to another address even though they did not  
41 move; (iv) whose registration poll records were missing on the day of  
42 such election; (v) who have not had their identity previously verified;  
43 (vi) whose registration poll records did not show them to be enrolled in  
44 the party in which they are enrolled; and (vii) who are incorrectly  
45 identified as having already voted.

46 (c) Affidavit ballots are valid to the extent that ministerial error  
47 by the board of elections or any of its employees caused such ballot  
48 envelope not to be valid on its face.

49 (d) If the central board of canvassers determines that a person was  
50 entitled to vote at such election, the board shall cast and canvass such  
51 affidavit ballot if such board finds that the voter appeared at the  
52 correct polling place, regardless of the fact that the voter may have  
53 appeared in the incorrect election district and regardless of whether  
54 the voter's name was in the registration poll record.

55 (e) If the central board of canvassers finds that a voter submitted a  
56 voter registration application through the electronic voter registration

1 transmittal system pursuant to title eight of article five of this chap-  
2 ter and signed the affidavit ballot, the board shall cast and canvass  
3 such affidavit ballot if the voter is otherwise qualified to vote in  
4 such election.

5 (f) If the central board of canvassers determines that a person was  
6 entitled to vote at such election, the board shall cast and canvass such  
7 affidavit ballot if such board finds that the voter substantially  
8 complied with the requirements of this chapter. For purposes of this  
9 paragraph, "substantially complied" shall mean the board can determine  
10 the voter's eligibility based on the statement of the affiant or records  
11 of the board.

12 (g) If the central board of canvassers finds that the statewide voter  
13 registration list supplies sufficient information to identify a voter,  
14 failure by the voter to include on the affidavit ballot envelope the  
15 address where such voter was previously registered shall not be a fatal  
16 defect and the board shall cast and canvass such affidavit ballot.

17 (h) If the central board of canvassers finds that the voter registered  
18 or pre-registered to vote for the first time pursuant to title nine of  
19 article five of this chapter at least twenty-five days before a primary,  
20 appeared at such primary election, and indicated on the affidavit ballot  
21 envelope the intent to enroll in such party, the affidavit ballot shall  
22 be cast and canvassed if the voter is otherwise qualified to vote in  
23 such election.

24 (i) When the central board of canvassers determines that an affidavit  
25 ballot is invalid due to a missing signature on the affidavit ballot  
26 envelope, or because the signature on the affidavit ballot envelope does  
27 not correspond to the registration signature, such ballots shall be  
28 subject to the cure procedure in subdivision three of this section.

29 (j) At the meeting required pursuant to paragraph (a) of subdivision  
30 eight of this section, each candidate, political party, and independent  
31 body shall be entitled to object to the board of elections' determi-  
32 nation that an affidavit ballot is invalid. Such ballots shall not be  
33 counted absent an order of the court. In no event may a court order a  
34 ballot that has been counted to be uncounted.

35 (k) The board of elections shall enter information into the ballot  
36 tracking system, as defined in section 8-414 of this chapter, to allow a  
37 voter who cast a ballot in an affidavit envelope to determine if the  
38 vote was counted.

39 8. Post-election review of invalid absentee, military and special  
40 ballots. (a) Within four business days of the election, the board of  
41 elections shall designate itself or such of its employees to act as a  
42 central board of canvassers as provided in subdivision one of this  
43 section and meet to review absentee, military and special ballots deter-  
44 mined to be invalid pursuant to paragraph (a) of subdivision two of this  
45 section, ballot envelopes that were returned to the board as undelivera-  
46 ble, and ballot envelopes containing one or more curable defects that  
47 have not been timely cured.

48 (b) At least five days prior to the time fixed for such meeting, the  
49 board shall send notice by first class mail to each candidate, political  
50 party, and independent body entitled to have had watchers present at the  
51 polls in any election district in the board's jurisdiction. Such notice  
52 shall state the time and place fixed by the board for such post-election  
53 review.

54 (c) Each such candidate, political party, and independent body shall  
55 be entitled to appoint such number of watchers to attend upon each  
56 central board of canvassers as the candidate, political party, or inde-

1 pendent body was entitled to appoint at the election in any election  
2 district for which the central board of canvassers is designated to act.

3 (d) Upon assembling at the time and place fixed for such meeting, each  
4 central board of canvassers shall review the ballot envelopes determined  
5 to be invalid and set aside in the review required by subdivision two of  
6 this section, ballot envelopes that were returned as undeliverable, and  
7 ballot envelopes containing one or more curable defects that have not  
8 been timely cured.

9 (e) Each such candidate, political party, and independent body shall  
10 be entitled to object to the board of elections' determination that a  
11 ballot is invalid. Such ballots shall not be counted absent an order of  
12 the court. In no event may a court order a ballot that has been counted  
13 to be uncounted.

14 9. State board of elections; powers and duties for canvassing of  
15 absentee, military, special and affidavit ballots. The state board of  
16 elections shall promulgate rules and regulations necessary for the  
17 implementation of the provisions of this section. Such rules and regu-  
18 lations shall include, but not be limited to, provisions to (a) ensure  
19 an efficient and fair review process that respects the privacy of the  
20 voter, (b) ensure the security of the central count scanners used before  
21 election day, and (c) ensure that ballots cast as provided in this  
22 section are canvassed and counted as if cast on election day.

23 § 2. Section 9-211 of the election law, as amended by chapter 515 of  
24 the laws of 2015, subdivision 1 as amended by chapter 5 of the laws of  
25 2019, is amended to read as follows:

26 § 9-211. Audit of voter verifiable audit records. 1. Within fifteen  
27 days after each general or special election, within thirteen days after  
28 every primary election, and within seven days after every village  
29 election conducted by the board of elections, the board of elections or  
30 a bipartisan committee appointed by such board shall audit the voter  
31 verifiable audit records from three percent of voting machines or  
32 systems within the jurisdiction of such board. Such audits may be  
33 performed manually or via the use of any automated tool authorized for  
34 such use by the state board of elections which is independent from the  
35 voting system it is being used to audit. Voting machines or systems  
36 shall be selected for audit through a random, manual process. At least  
37 five days prior to the time fixed for such selection process, the board  
38 of elections shall send notice by first class mail to each candidate,  
39 political party and independent body entitled to have had watchers pres-  
40 ent at the polls in any election district in such board's jurisdiction.  
41 Such notice shall state the time and place fixed for such random  
42 selection process. The audit shall be conducted in the same manner, to  
43 the extent applicable, as a canvass of paper ballots. Each candidate,  
44 political party or independent body entitled to appoint watchers to  
45 attend at a polling place shall be entitled to appoint such number of  
46 watchers to observe the audit.

47 2. Within three days of any election, the board of elections or a  
48 bipartisan committee appointed by such board shall audit the central  
49 count ballot scanners by auditing the ballots from three percent of  
50 election districts that were tabulated by such scanners within the  
51 jurisdiction of such board by that time. All provisions of this section  
52 shall otherwise apply to such audit. To the extent additional ballots  
53 are tabulated through central count ballot scanners after the initial  
54 audit, three percent of election districts shall thereafter be audited  
55 as to the additional ballots tabulated. The certification of the canvass  
56 shall not await the completion of such additional audit; provided,



1 however, if upon the completion of such additional audit the criteria  
 2 are met for the results of the audit to replace the canvass then the  
 3 board of canvassers shall forthwith reconvene and adjust the canvass as  
 4 required.

5 3. The audit tallies for each voting machine or system shall be  
 6 compared to the tallies recorded by such voting machine or system, and a  
 7 report shall be made of such comparison which shall be filed in the  
 8 office of the state board of elections.

9 ~~[3-]~~ 4. The state board of elections shall, in accordance with subdi-  
 10 vision four of section 3-100 of this chapter, promulgate regulations  
 11 establishing a uniform statewide standard to be used by boards of  
 12 elections to determine when a discrepancy between the audit tallies and  
 13 the voting machine or system tallies shall require a further voter veri-  
 14 fiable record audit of additional voting machines or systems or a  
 15 complete audit of all machines or systems within the jurisdiction of a  
 16 board of elections. Any board of elections shall be empowered to order  
 17 that any such audit shall be conducted whenever any such discrepancy  
 18 exists.

19 ~~[4-]~~ 5. If a complete audit shall be conducted, the results of such  
 20 audit shall be used by the canvassing board in making the statement of  
 21 canvass and determinations of persons elected and propositions rejected  
 22 or approved. The results of a partial voter verifiable record audit  
 23 shall not be used in lieu of voting machine or system tallies.

24 ~~[5-]~~ 6. Notwithstanding subdivision four of this section, if a voting  
 25 machine or system is found to have failed to record votes in a manner  
 26 indicating an operational failure, the board of canvassers shall use the  
 27 voter verifiable audit records to determine the votes cast on such  
 28 machine or system, provided such records were not also impaired by the  
 29 operational failure of the voting machine or system.

30 § 3. Subdivision 5 of section 7-122 of the election law, as amended by  
 31 chapter 411 of the laws of 2019, is amended to read as follows:

32 5. There shall also be a place for two board of elections staff  
 33 members or inspectors of opposite political parties to indicate, by  
 34 placing their initials thereon, that they have checked and marked the  
 35 voter's poll record and a box labeled "BOE use only" for notations  
 36 required when the board of elections reviews affirmation ballot envel-  
 37 opes pursuant to section 9-209 of this chapter.

38 § 4. Subdivision 2-a of section 8-302 of the election law is renum-  
 39 bered subdivision 2-b and a new subdivision 2-a is added to read as  
 40 follows:

41 2-a. If a voter's name appears in the ledger or computer generated  
 42 registration list with a notation indicating that the board of elections  
 43 has issued the voter an absentee, military or special ballot, such voter  
 44 shall not be permitted to vote on a voting machine at an early voting  
 45 site or on election day but may vote by affidavit ballot.

46 § 5. Subdivisions 1, 4 and 5 of section 16-106 of the election law,  
 47 subdivision 1 as amended by chapter 659 of the laws of 1994, subdivision  
 48 5 as amended by chapter 359 of the laws of 1989, are amended to read as  
 49 follows:

50 1. The ~~[casting or canvassing or]~~ post-election refusal to cast: (a)  
 51 challenged ballots, blank ballots, or void ~~[or canvass]~~ ballots; (b)  
 52 absentee, military, special ~~[federal]~~, or federal write-in ~~[or]~~ ballots;  
 53 (c) emergency ballots; and (d) ballots voted in affidavit envelopes ~~[by~~  
 54 ~~persons whose registration poll records were not in the ledger or whose~~  
 55 ~~names were not on the computer generated registration list on the day of~~  
 56 ~~election or voters in inactive status, voters who moved to a new address~~

1 ~~in the city or county or after they registered or voters who claimed to~~  
2 ~~be enrolled in a party other than that shown on their registration poll~~  
3 ~~record or on the computer generated registration list and the original~~  
4 ~~applications for a military, special federal, federal write-in, emergen-~~  
5 ~~cy or absentee voter's ballot~~] may be contested in a proceeding insti-  
6 tuted in the supreme or county court, by any candidate or the chairman  
7 of any party committee, and by any voter with respect to the refusal to  
8 cast such voter's ballot, against the board of canvassers of the returns  
9 from such district, if any, and otherwise against the board of inspec-  
10 tors of election of such district. If the court determines that the  
11 person who cast such ballot was entitled to vote at such election, it  
12 shall order such ballot to be cast and canvassed, including if the court  
13 finds that ministerial error by the board of elections or any of its  
14 employees caused such ballot envelope not to be valid on its face.

15 4. The court shall ensure the strict and uniform application of the  
16 election law and shall not permit or require the altering of the sched-  
17 ule or procedures in section 9-209 of this chapter but may direct a  
18 recanvass or the correction of an error, or the performance of any duty  
19 imposed by [law] this chapter on such a state, county, city, town or  
20 village board of inspectors, or canvassers.

21 5. In the event procedural irregularities or other facts arising  
22 during the election suggest a change or altering of the canvass sched-  
23 ule, as provided for in section 9-209 of this chapter, may be warranted,  
24 a candidate may seek an order for temporary or preliminary injunctive  
25 relief or an impound order halting or altering the canvassing schedule  
26 of absentee, military, special or affidavit ballots. Upon any such  
27 application, the board or boards of elections have a right to be heard.  
28 To obtain such relief, the petitioner must meet the criteria in article  
29 sixty-three of the civil practice law and rules and show by clear and  
30 convincing evidence, that, because of procedural irregularities or other  
31 facts arising during the election, the petitioner will be irreparably  
32 harmed absent such relief. For the purposes of this section, allegations  
33 that opinion polls show that an election is close is insufficient to  
34 show irreparable harm to a petitioner by clear and convincing evidence.

35 6. A proceeding under subdivisions one and three of this section must  
36 be instituted within twenty days and under subdivision two, within thir-  
37 ty days after the election or alleged erroneous statement or determi-  
38 nation was made, or the time when the board shall have acted in the  
39 particulars as to which it is claimed to have failed to perform its  
40 duty, except that such a proceeding with respect to a village election  
41 must be instituted within ten days after such election, statement,  
42 determination or action.

43 § 6. Subdivision 4 of section 17-126 of the election law is amended to  
44 read as follows:

45 4. Before the closing of the polls, unfolds a ballot that a voter has  
46 prepared for voting, except as provided in section 9-209 of this chap-  
47 ter, is guilty of a misdemeanor.

48 § 7. Subdivisions 18, 20 and 21 of section 17-130 of the election law  
49 are amended to read as follows:

50 18. Not being lawfully authorized, makes or has in his possession a  
51 key to a voting [~~maching~~] machine which has been adopted and will be  
52 used in elections; or,

53 20. Intentionally opens [~~an absentee~~] a voter's ballot envelope or  
54 examines the contents thereof after the receipt of the envelope by the  
55 board of elections and before the close of the polls at the election  
56 except as provided in section 9-209 of this chapter; or,

1 21. [~~Wilfully~~] Willfully disobeys any lawful command of the board of  
2 inspectors, or any member thereof; or,  
3 § 8. This act shall take effect January 1, 2022 and shall apply to  
4 elections held on or after such date; provided, however, that paragraph  
5 (h) of subdivision 7 of section 9-209 of the election law, as added by  
6 section one of this act, shall take effect January 1, 2023.