



James A. Walsh
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director

40 STEUBEN STREET
ALBANY, N.Y. 12207-2108
Phone: 518/474-8100
www.elections.state.ny.us

Douglas A. Kellner
Co-Chair

Evelyn J. Aquila
Commissioner

Robert A. Brehm
Co-Executive Director

April 23, 2010

Mr. Robert Carey
Director, Federal Voting Assistance Program
Department of Defense
1155 Defense Pentagon
Washington, DC 20301-1155
Fax: 703-636-1352
E-mail: Robert.Carey@fvap.ncr.gov

RE: New York State MOVE Act Waiver Request

Dear Mr. Carey:

President Barack Obama signed into law the National Defense Authorization Act for FY 2010 on October 28, 2009. Subtitle H of that law (Military and Overseas Voter Empowerment (MOVE) Act) amended various parts of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 USC §§ 1973ff et seq.). Among these amendments is a provision requiring states to transmit absentee ballots to uniformed and overseas voters no later than 45 days prior to an election for Federal office (42 USC § 1973ff-1(a)(8)(a)). This provision takes effect on November 1, 2010. Under appropriate circumstances, the law provides the ability to seek waiver from this requirement.

Therefore, pursuant to 42 USC § 1973ff-1(g) New York State hereby submits its application for a waiver for the 2010 General Election from the 45 day pre-election requirement under subsection (a)(8)(A). This waiver application pertains only to the upcoming election and is not intended to be a request for a waiver for elections later than 2010.

It is my hope that New York State will receive a response prior to the statutory deadline of 65 days prior to the General Election, within which the law requires you to resolve all applications (42 USC § 1973ff-1(g)(3)(A)). The logistics surrounding the implementation of the above provisions are significant and time is clearly of the essence. If there are elements of this waiver provision that you believe might be improved, we look forward to discussing those elements at your earliest possible convenience with FVAP and the U.S. Department of Justice (DOJ).

Necessity for waiver request: New York State is unable to meet the 45-day pre-election requirement in 2010, attributable to an undue hardship.

New York recognizes the purpose of the 'time to vote' provision in the MOVE Act. The 'time to vote' provision is a laudable goal to ensure sufficient time for roundtrip ballot transmission for military and special federal voters and to allow the ballot to be received by the election official in time to be counted. New York State is committed to that goal, and believes that it has anticipated ways to achieve that goal through state law and the procedures explained in this waiver application.

However the statutory scheduling of the primary election (September 14, 2010), prohibits the sending of ballots 45 days before the November 2 General Election (September 18). For the following reasons, rescheduling the Primary Election would cause undue hardship on New York State, compromising our ability to safely and accurately conduct elections in 2010.

The administration of an election in New York is a challenge in any year. There are over 6,000 polling sites in the state and more than 100,000 election workers are hired to serve as inspectors, coordinators, trainers and voting machine technicians on election day. These 6,000 polling sites are reserved more than a year in advance of the primary election in order to ensure site availability, especially since many of the sites utilized frequently serve other community and/or governmental functions. Arrangements have also already been made for the election workers based on their availability for the September Primary Election. Rescheduling the Primary Election would require significant time and resources to confirm the availability of more than 100,000 trained election workers to serve on Election Day. Also, if the Primary Election were rescheduled, it is anticipated that a significant number of new workers will need to be recruited and trained, causing further undue hardship on New York State's resources, and compromising our ability to safely and accurately conduct elections in 2010.

In addition to the regular and routine challenges surrounding the administration of an election in New York State, 2010 poses additional unique challenges. The most significant issue is New York State's expected transition to full compliance with the Help America Vote Act (HAVA) of 2002 (Public Law 107-252) in 2010. New York State is fully committed to compliance with all aspects of HAVA, including the replacement of thousands of voting machines with ones that are HAVA compliant. The State and the State Board of Elections (State Board) have been subject to a federal court order since 2006 which requires that on or before the September 2010 primary election, the State and State Board fully comply with HAVA by meeting specific compliance milestones pursuant to a strict timetable which is monitored by the U.S. Department of Justice. This transition has been and remains a complicated and arduous one but we are on track to meet that deadline. Irrespective of the initial HAVA deadlines, the strict timelines in the court order place additional demands on election procurement and technical staff on the state and county level.

With an ever-increasing national focus on the election process, particularly in the areas noted above, the State Board is working increasingly closer with County Boards of Elections, and Federal, State and local agencies. We are developing pre-election and post-election requirements and procedures which address the new and changing needs of

the electorate and the overall election process, and are creating corresponding methods of responsible and consistent implementation. The scope of this agenda is tremendous, and includes the certification, acquisition, acceptance testing, deployment, and use of poll site optical scan voting systems throughout New York to replace mechanical lever voting machines, in addition to the support and monitoring of over 30,000 pieces of new voting equipment.

If New York were required to move the date of the September 14, 2010 Primary Election to an earlier date, such action would negatively impact the State's overall, multi-level 2010 compliance and technology transition efforts, causing significant voter confusion, and the failure to comply with our existing federal court order. New York can ill-afford the ramifications of the public's loss of confidence in its elections, nor can it sustain the penalties which could be levied by the federal court for its failure to meet already established milestones and deadlines.

Moreover, three voting jurisdictions within New York State, Bronx County, Kings (Brooklyn) County, and New York (Manhattan) County, are subject to the preclearance requirement of Section 5 of the Voting Rights Act whenever there is a change to voting processes. This requirement demands additional logistical coordination with the Department of Justice with respect to the introduction of new voting systems and policies and procedures utilized to conduct elections in New York State.

Finally, in 2010, New York State will experience a very busy election cycle with contests for every statewide office including Governor, Lieutenant Governor, Attorney General, Comptroller, all of the members of both houses of the State Legislature, State Supreme Court Justices in thirteen judicial districts, all Representatives in Congress, and both US Senate positions (for the first time since 1938), as well as numerous county-level and local jurisdiction elections.

Rescheduling the Primary Election would also cause undue hardship on New York State because a significant number of the dates throughout the entire political calendar are tied to the date of the Primary Election, including:

- filing of party calls (NYS Election Law §2-120);
- filing designating petitions (NYS Election Law §§6-134, 6-158, 6-120 and 6-164) and ballot access issues related to acceptance, authorization and administrative and judicial review of any objections;
- dates for holding state committee meetings to nominate candidates for statewide offices (NYS Election Law §§6-104, 6-108, 6-158, and 6-116);
- dates for holding judicial district conventions (NYS Election Law §6-158);
- dates to register to vote and still be eligible for the Primary Election (NYS Election Law §§5-210 and 5-208);
- requests for absentee ballots (NYS Election Law §§8-400, 8-412, 10-106, and Article 11, Title II); and
- campaign finance issues related to:
 - contribution limits within an election cycle;
 - dates for filing periodic and pre-primary election and post-primary election statements of campaign finance activity;

As a result, any change in the Primary Election date during an election year impacts the administration of elections in a number of different ways. And significantly, any proposed change to the election calendar during an election year would most certainly impact deadlines that have already passed, raising issues as to how to treat the due process rights of those candidates, political parties and voters who would be impacted by those deadlines. Provided herein are just a few examples of the impact that would occur if the date of the Primary Election needed to be changed, without providing adequate consideration, planning and public notice.

New York has been and remains committed to ensuring that military and special federal voters can cast an absentee ballot that will arrive timely and be counted. For several years, New York extended the effective date of a law that sought to address this issue. In 2008, anticipating this very issue, New York Election Law was amended to allow, for the first time, military and special federal voters to request a ballot by facsimile or email. It also permanently expanded the deadline for receipt of such ballots to 13 days after a general or special election. Finally, it made permanent the provision that allows a military voter to have a witness sign and date his or her ballot transmittal envelope instead of obtaining a postmark (Chapter 165 of the Laws of 2009; New York State Election Law § 9-209[1] [a], see Attachment A). As a result, under current New York law, military and special federal ballots would have 45 days to make the “round-trip” from the board of elections to the voter and back to the board of elections because boards of elections are required to send out military and special federal ballots 32 days before the General Election. New York’s plan, as described below, builds on the changes that were made in the Election Law last year.

Specific State Plan: New York State is fully committed to increasing the enfranchisement of military voters and special federal voters as required by the MOVE Act and is working to ensure that adequate time is provided for military voters and special federal voters to cast their ballots and have them counted. The State Board supported the statutory changes made by the NYS Legislature in 2009 (Chapter 165 of the Laws of 2009 referenced above). Such efforts to expand the round-trip time period have been supported by FVAP Director Bob Carey during congressional testimony on this important issue.

This year, knowing that a waiver would be necessary for the 2010 general election, the State Board of Elections has aggressively pursued or is pursuing the following steps toward achieving full implementation of the MOVE Act in New York:

- Consultation with FVAP liaisons, for guidance and advice.
 - November 2009, participated in conference call with FVAP liaisons to learn of proposed implementation RFQ.
 - December 2009, received further information from FVAP liaison on pending RFQ, efforts by FVAP and DOJ to develop State waiver instructions, and received copy of December 15th press release indicating FVAP Director Bob Carey’s intent to submit an RFQ on how vendors could develop two key products: a tool to guide the voter through the UOCAVA registration and absentee ballot request process; and another tool to guide them through receiving, marking, printing and sending an absentee ballot.

- Participation during January 2010 in NASS, NASED and the New York State Election Commissioners' Association Conferences, to learn from and share with colleagues.
 - Participation in NASED and NASS conference sessions related to MOVE Act implementation, in which FVAP Director Bob Carey reported on the status of the proposed FVAP coordinated effort.
- Informally reviewed vendor-proposed MOVE Act solutions in anticipation of the FVAP's RFQ coordinated program.
- Drafting New York's implementing legislation, aimed at ensuring compliance with other mandatory provisions of the MOVE Act in 2010 (A10681 Silver / S7466 Sampson, see Attachment B).
- Consultation with New York's Office of General Services, in preparation to proceed with any procurement necessary for New York to comply with MOVE, even if the FVAP is not prepared to do so at this time.
 - The State Board has expressed to FVAP an intent to participate in its proposed nationally coordinated MOVE Act solution. This preliminary review is based on the limited information provided by FVAP and a complete review and response is anticipated subsequent to receiving from FVAP additional program details.
 - In the event the FVAP coordinated solution is unable to meet the 2010 deadline or is not ready for a timely implementation, the State Board is proceeding with a NYS procurement to comply with MOVE with an interim implementation effort. We anticipate that the vendor selected by NYS will also participate in the coordinated FVAP program. As such, we anticipate that FVAP will credit or reimburse NYS for its initial MOVE compliance expenditure.
- March 16, 2010 FVAP's RFQ released – vendor response due date March 31.
- March 30, 2010, State Board staff participated in conference call with FVAP Director Bob Cary to receive update on RFQ and to reconfirm that New York was still waiting for the FVAP to complete its consultation with the U.S. Attorney General to develop guidelines for use in submitting a waiver request,. In this phone conference, we also became aware of the following information :
 - The FVAP significantly changed the proposed project scope, eliminating the plan to develop and provide a tool to guide voters through the UOCAVA registration and absentee ballot request process. FVAP will only select vendors to develop a tool to guide UOCAVA voters through receiving, marking, printing and sending an absentee ballot.
 - FVAP's determination to down-scope the project will require New York State to develop and implement a tool to guide voters through the UOCAVA registration and absentee ballot request process, in accordance with the federal MOVE Act mandate. New York State desires to implement a seamless link between the initial UOCAVA voter registration and absentee voter application process with the ballot delivery and tracking effort.
 - The removal of the original tool from the FVAP plan, which is necessary for MOVE Act compliance, while mandating in the RFQ a component to assist voters in marking a ballot, which is not a MOVE Act requirement, raises additional issues pertaining to cost, additional time to integrate multiple solutions into a seamless

effort that is not confusing to the voter or election administrators, as well as the additional planning, development and implementation time period needed for compliance in 2010 and creates delays in New York's implementation.

- Mr. Carey further clarified that the FVAP coordinated MOVE Act solution would be available ONLY through January 2011. As a result, New York State is initially planning to craft its own effort for MOVE Act compliance for elections for Federal office occurring after January 2011, should FVAP not receive necessary authorization or funding to extend the proposed interim Electronic Voting Support Wizard (EVSZ) pilot program beyond that time period.

Specific steps the State will take to provide sufficient time for UOCAVA voters to vote for the upcoming election:

- The number of military and overseas citizen voters affected: a calculation of UOCAVA voters supplied by FVAP earlier this year indicates that there are 60,076 Uniformed Service members, 22,459 family members of voting age, and approximately 238,200 overseas citizens who claim New York as their voting residence. From our 2008 report to the EAC, 83,422 UOCAVA ballots were sent out, of which 27.5% were military ballots and 72.5% were civilian. Of that number, 54,220 were returned (65%) for counting, of which 50,065 were actually counted (92.3%). New York State will use the elements detailed herein to work to ensure improved return-rate statistics for both military and special federal voters.
- Military and Special Federal ballots are projected to be available for transmission to qualified voters who have an approved application on file with their county board of elections not later than October 1.
- Due to recent state law changes anticipating the UOCAVA voter transmission issue, New York State provides a full 45 days between the date general election absentee ballots will be sent to UOCAVA voters and the date absentee ballots must be returned to be counted: 32-day pre-election delivery of ballots to military and special federal voters through receipt of voted ballots at local boards of elections by 13 days post-election.
- Given that some UOCAVA voters may not know that their ballots are accepted after Election Day, the State Board will be providing guidance to all county election officials and voters. That guidance will focus on clearly informing the UOCAVA voters of their new rights under New York and federal law and that their vote will count when a voted ballot is received up to 13 days post-general election. This will encourage the voters to submit their ballots – even close to Election Day.
 - Clarify information which must be contained on the outer envelope addressed to the board of elections and instructions for returning the sealed ballot envelope containing the marked ballot to the appropriate board within the timeframe for receipt of the ballot in order to be counted;
- Late counting is permitted and authorized pursuant to statute (Chapter 165 of the Laws of 2009, see New York State Election Law 9-209(1) (a)) increasing to 14 days after a general election or special election the time period to for county boards of elections to canvass such military and special federal ballots.

- New York State anticipates compliance with the MOVE Act requirements and to provide electronic transmission of blank ballots to UOCAVA voters by participating in the FVAP coordinated MOVE Act implementation solution. In the event the FVAP coordinated solution is unable to meet the 2010 deadline or is not ready for timely implementation, the State Board is proceeding with a NYS procurement to comply with MOVE. We anticipate that the vendor selected by NYS will also participate in the coordinated FVAP program. As such, we anticipate that FVAP will credit or reimburse NYS for its initial MOVE compliance expenditure and take over responsibility for future payment. The proposed/draft implementing plan provides for the electronic transmission of ballot applications, ballots, ballot envelope templates and related instructions.
- The proposed New York State legislation (A10681/S7466) expands the use of FWAB to provide:
 - For the board of elections to cast and canvass any federal write-in absentee ballots validly cast by a military voter for all proposals, public offices and party positions for which such voter is entitled to vote if the voter had received a certified ballot, and which would now include state and local contests.
 - That within 3 days of the scheduling of a special election or upon a court restraining the issuance of ballots, all military voters and special federal voters will be sent a federal write-in absentee ballot. Upon the certification of the ballot, all special federal voters will be sent such certified ballot via the preferred method of transmission, notwithstanding the prior transmission of the federal write-in absentee ballot.
 - Expedited mail transmission if the military voter has not expressed a preference to receive same by facsimile transmission or electronic mail, and his or her request for a military ballot was made at least thirty-two days before the election, and the certified ballot is transmitted after a FWAB has been issued.
 - That a FWAB may be returned 13 days after a general or special election.
- Provides cost-free expedited method for UOCAVA citizens to return voted ballot? YES, the FVAP coordinated MOVE Act implementation is expected to coordinate expedited return mail services for military voters. Further, several proposed vendor solutions provide links to overseas expedited mail delivery services which provide reduced-cost postage solutions.
- Provides central collection point within State for returned ballots? NO. However, the proposed coordinated MOVE Act solution for NYS would include mailing instructions with a sample outside return envelope containing the voter-specific county board of elections return mailing address.
- New York State will also designate State Board staff members to serve as liaison with FVAP to facilitate issue resolution and to provide FVAP with requested updates of activity and progress related to MOVE implementation. The State Board will provide outreach and assistance to county boards of elections on UOCAVA voting matters to help them comply with federal and state MOVE Act requirements. The State Board will also provide outreach to New York military bases and special federal citizen associations.
- In addition to its liaison work, the State Board will aggressively promote public information campaigns through traditional and new media to reach out to New

York military and special federal voters to ensure they have the information needed to get their ballots as early as possible and return them as early as possible. Further, the State Board will work with the Department of Defense to help New York military and special federal voters to give them accurate and timely information about the election and the races for which they are eligible to vote. The earlier the voter returns the ballot, the more likely it will be received in time to be counted.

Sufficient time for UOCAVA voters to receive the absentee ballot and return the ballot in time for counting and how the plan provides a substitute for the 45 day ballot transmission requirement for the upcoming election.

New York State anticipates compliance with the MOVE Act requirements and to provide electronic transmission of blank ballots to UOCAVA voters by participating in the FVAP coordinated MOVE Act implementation solution. In the event the FVAP coordinated solution is unable to meet the 2010 deadline or is not timely ready for implementation, the State Board is proceeding with a NYS procurement to comply with MOVE. We anticipate that the vendor selected by NYS will also participate in the coordinated FVAP program. As such, we anticipate that FVAP will credit or reimburse NYS for its initial MOVE compliance expenditure and take over responsibility for future payment. The proposed/draft implementation plan provides for the electronic transmission of ballot applications, ballots, ballot envelope templates and related instructions.

Military ballots and special federal ballots are required to be transmitted not later than 32 days (October 1) before the date of the November 2, 2010 General Election and may be returned in person to the county board of elections prior to the close of polls on election day or, if postmarked before election day – received not later than thirteen days after the election (November 15, 2010), thus providing a 45-day period to receive, vote and return a completed ballot to be counted. Testimony at the May 13, 2009 Senate Rules Committee hearing on the topic of military voting clearly reflected that if other precautions are taken, an appropriate ‘window’ of post-election acceptance of UOCAVA ballots should be an acceptable way to ensure such voters have enough ‘time to vote’. As referenced in that hearing, post-election acceptance of UOCAVA ballots is considered by many to be an appropriate ‘safety valve’ to provide time to have those ballots counted. The Congressional Research Service indicated that 63% of election officials contacted in their survey indicated that UOCAVA ballots were not counted because they were received too late¹. We believe the efforts described above as well as the 45 day roundtrip provisions will provide strong protections for military and special federal voters.

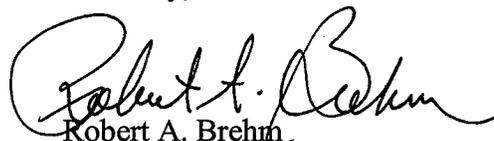
The 45-day period discussed above is consistent with the March 26, 2009 consent decree entered into by the State of New York and the U.S. Department of Justice which stated “providing a minimum of 30 days for the round-trip transit of absentee ballots to and from UOCAVA voters will ensure that overseas voters...have a reasonable opportunity to vote.” United States of America v State of New York, et al.; Civ. No. 1:09-cv-335GLS-RFT (USDC N. District of New York) (Consent Decree) (March 26,

¹ http://rules.senate.gov/public/?a=Files.Serve&File_id=fcb96f23-960d-4e3a-bcd4-84afe4e3b3f5 Page 2, line 62.

2009). Due to the other requirements in our comprehensive waiver submission, we believe we are providing additional benefits to our UOCAVA voters – beyond the minimum requirements of MOVE. We believe that on balance, New York will be more active in supporting UOCAVA voters than other states, through our waiver plan.

Thank you for your kind consideration of this request. Please contact me with any questions or if you require additional information.

Sincerely,



Robert A. Brehm
Co-Executive Director
Chief Election Official

RAB/dsm

cc: Hon. David A. Paterson, Governor
Hon. Thomas P. DiNapoli, Comptroller
Hon. Andrew M. Cuomo, Attorney General
Hon. Sheldon Silver, Speaker
Hon. John L. Sampson, Conference Leader
Hon. Dean G. Skelos, Senate Minority Leader
Hon. Brian Kolb, Assembly Minority Leader
Hon. Joan L. Millman, Chair, Assembly Election Law Committee
Hon. Joseph P. Addabbo, Jr., Chair, Senate Election Law Committee
Hon. Thomas W. Libous, Senate Election Law Committee
Hon. Marcus Molinaro, Assembly Election Law Committee
Hon. Thomas R. Wilkey, Executive Director, Election Assistance Commission
Hon. Douglas A. Kellner, Co-Chair, New York State Board of Elections
Hon. James A. Walsh, Co-Chair, New York State Board of Elections
Hon. Evelyn J. Aquila, Commissioner, New York State Board of Elections
Hon. Gregory P. Peterson, Commissioner, New York State Board of Elections
Todd D. Valentine, Co-Executive Director, New York State Board of Elections

ATTACHMENT A

CHAPTER TEXT:

LAWS OF NEW YORK, 2009

CHAPTER 165

AN ACT to amend the election law, in relation to military voting, and to amend chapter 237 of the laws of 2005 amending the election law relating to military voting, in relation to making such provisions permanent

Became a law July 11, 2009, with the approval of the Governor. Passed by a majority vote, three-fifths being present in the Assembly and a majority being present in the Senate.

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

Section 1. Paragraph (d) of subdivision 2 of section 8-400 of the election law, as added by chapter 216 of the laws of 1988, is amended to read as follows:

(d) The board of elections shall mail an absentee ballot to every qualified voter otherwise eligible for such a ballot, who requests such an absentee ballot from such board of elections in a letter, which is signed by the voter and received by the board of elections not earlier than the thirtieth day nor later than the seventh day before the election for which the ballot is first requested and which states the address where the voter is registered and the address to which the ballot is to be mailed; **provided, however, a military voter may request a military ballot in a letter as provided in subdivision three of section 10-106 of this chapter; and provided further, a special federal voter may request a special federal ballot in a letter as provided in paragraph d of subdivision one of section 11-202 of this chapter.** The board of elections shall enclose with such ballot a form of application for absentee ballot.

§ 2. Paragraph a of subdivision 1 of section 9-209 of the election law, as amended by chapter 237 of the laws of 2005, is amended to read as follows:

a. The board of elections shall designate itself or such of its employees as it shall deem appropriate as a set of poll clerks to cast and canvass such ballots, and fix a time and place for their meeting for such purpose, provided that such meeting shall be no more than [~~thirteen~~] **fourteen** days after a general **or special** election and no more than eight days after a [~~special or~~] primary election at which such ballots are voted. The board may designate additional sets of poll clerks and if it designates more than one such set shall apportion among all such sets the election districts from which such ballots have been received, provided that all such ballots from a single election district shall be assigned to a single set of clerks, and that each such set shall be divided equally between representatives of the two major political parties. Each such set of clerks shall be deemed a central board of inspectors for purposes of this section.

§ 3. Section 10-106 of the election law is amended by adding a new subdivision 3 to read as follows:

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

CHAP. 165

2

3. A military voter may apply for a military ballot by facsimile transmission pursuant to the Uniformed and Overseas Citizens Absentee Voting Act or electronic mail.

§ 4. Subdivision 1 of section 10-114 of the election law, as amended by chapter 237 of the laws of 2005, is amended to read as follows:

1. The board of elections shall cause all military ballots received by it before the close of the polls on election day and all ballots contained in envelopes showing a cancellation mark of the United States postal service or a foreign country's postal service, or showing a dated endorsement of receipt by another agency of the United States government or are signed and dated by the voter and one witness thereto, with a date which is ascertained to be not later than the day before election and received by such board of elections not later than seven days following the day of a primary [~~or special~~] election and not later than thirteen days following the day of a general or special election to be cast and counted.

§ 5. Subdivision 1 of section 11-202 of the election law is amended by adding a new paragraph d to read as follows:

d. A special federal voter may apply for a special federal ballot by facsimile transmission pursuant to the Uniformed and Overseas Citizens Absentee Voting Act or electronic mail.

§ 6. Section 11-212 of the election law, as amended by chapter 155 of the laws of 1994, is amended to read as follows:

§ 11-212. Special federal ballots; deadline for receipt, and delivery to polling place. All special federal ballots received by the board of elections before the close of the polls on election day may be delivered to the inspectors of the election districts in which the voters are registered, in the manner prescribed by this chapter for absentee ballots, or retained by the board of elections and cast and canvassed pursuant to section 9-209 of this chapter as the board of elections, in its discretion, shall determine by resolution adopted at least thirty days before election day. All ballots contained in envelopes showing a cancellation mark of the United States postal service or a foreign country's postal service, or showing a dated endorsement of receipt by another agency of the United States government, with a date which is ascertained to be not later than the day before election, shall be cast and counted if received by the board of elections not later than seven days following the day of a primary election or thirteen days following the day of a general or special election except that the special federal ballot of a voter who requested such ballot by letter, rather than application, shall not be counted unless a valid application form, signed by such voter, is received by the board of elections with such ballot. All ballots received by the board of elections [~~between election day and the seventh day after election day~~] and all federal write-in ballots received from special federal voters not later than seven days following the day of a primary election or thirteen days following the day of a general or special election, shall be retained at the board and shall be cast and canvassed in the same manner as other ballots retained by such board.

§ 7. Section 4 of chapter 237 of the laws of 2005 amending the election law relating to military voting, as amended by chapter 188 of the laws of 2008, is amended to read as follows:

§ 4. This act shall take effect immediately [~~and shall expire December 31, 2009, when upon such date the provisions of this act shall be deemed repealed~~].

§ 8. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

ATTACHMENT B

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION**

submitted in accordance with Assembly Rule III, Section 1(f)

- (X) Memo on original draft of bill
() Memo on amended bill

BILL NUMBER: **Assembly 10681**
 Senate 7466

SPONSORS: **Member(s) of Assembly: Silver**
 Senator(s): Sampson

TITLE OF BILL: An act to amend the election law, in relation to military ballots, special federal ballots and absentee ballots

PURPOSE OR GENERAL IDEA OF BILL: This bill would enact certain provisions that are required by federal law and is intended to increase the opportunity for military and special federal voters to cast their votes within a timeframe that allows those votes to be counted. It also streamlines the absentee ballot application to eliminate extraneous information that is not required by the New York Constitution.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 of the bill amends election law § 3-220(1) to provide that a voter's facsimile number will not be released for public inspection by the board of elections.

Section 2 of the bill amends election law § 7-123, which defines a military ballot. It would:

A) replace the existing military voter oath with the federal affirmation. This will eliminate the need to indicate if the military voter is a service person or the family member of a service person;

B) clarify what will be printed on the ballot envelope, including the sworn affirmation, voter identification information and instructions to the voter;

C) direct that the board of elections fill in the voter identification information on a ballot envelope that was received by a voter via mail before it is sent to the voter and fill in the voter identification information on a ballot envelope that was received by a voter electronically after it is received by the board;

D) clarify the instruction on the ballot envelope for returning an original signed ballot application to the appropriate board within the timeframe for receipt of the ballot itself;

E) provide that a military voter who designated a preference to receive

a ballot by electronic means shall receive instruction for creating a ballot envelop that contains all of the required information;

F) clarify when a ballot must be returned to the board in order to be counted and that a signed military ballot application shall not be returned in the ballot envelope to address an issue recently raised in Matter of Stewart v Chautauqua County Bd. of Elections (14 NY3d 139 [2010]);

G) clarify the information which must be contained on the outer envelope addressed to the board and instructions for returning the sealed ballot envelope containing the marked ballot and, if necessary, the original signed ballot application within the outer envelope;

H) provide that an outer envelope that is created by a military voter must include the language that allows the voter to have a witness's name and date instead of a postmark; and

I) provide that the ballot, ballot envelope and outer envelope be mailed to the voter in a third envelope or, if a voter has designated a preference for electronic transmission of ballot materials, that the voter be sent instructions for creating an outer envelope containing all necessary information.

Section 3 of the bill amends election law § 7-124, which defines a special federal ballot, to incorporate all the same changes that were made in section 2 of the bill for military ballots, except that the special federal voter outer envelope will not allow a witness instead of a postmark.

Section 4 of the bill amends election law § 8-400 to provide that:

A) a qualified voter may vote by absentee ballot if he or she is absent from the county (or city) of his or her residence on election day; unable to appear personally at the polling place of the election district in which he or she is a qualified voter because of illness or disability; a patient of a veteran's administration hospital; detained in jail awaiting action by a grand jury or awaiting trial, or confined in jail or prison after a conviction for an offense other than a felony, provided that he or she is qualified to vote in the election district of his or her residence;

B) a military voter may request, in addition to a military ballot, a voter registration and an absentee ballot in a letter or by facsimile or electronic mail;

C) the applicant would have to provide, in the application for an absentee ballot, his or her full name, date of birth, residence address, and a statement that the applicant is a registered voter. The applicant would also be required to provide a statement, as appropriate, that on the day of such election he or she expects in good faith to be absent for any of the reasons stated above in paragraph A;

D) the applicant would be able to apply for an absentee ballot covering more than one election, even if they occur in different calendar years, by providing the beginning and end dates of the absence.

Section 5 of the bill renumbers election law § 9-209 and amends the section to provide that:

A) the board of elections shall cast and canvass any federal write-in absentee ballots validly cast by a military voter for all questions, proposals, public offices and party positions for which such voter is entitled to vote;

B) a military voter may use a federal write-in absentee ballot from inside or outside the United States; and

C) a federal write-in absentee ballot may be returned 13 days after a general or special election and 7 days after a primary election.

Section 6 of the bill amends election law § 10-102(1) and (2) to conform the definition of "military service" and "military voter" to federal law.

Section 7 of the bill amends election law § 10-106(3), (4) and (11) to provide that a military voter may:

- A) request a voter registration application or a military ballot application by facsimile transmission or electronic mail;
- B) designate a preference for transmission of registration and ballot materials;
- C) obtain documents from the board of elections via the designated preferred method; and
- D) have a family member request a military ballot for a military voter stationed inside, as well as outside, the United States.

Procedures for transmitting documents to and receiving documents from military voters shall, to the extent practicable, protect the security and integrity of the process and the identity and personal data of the voter; provided that this paragraph shall not limit the information that may be obtained by the public pursuant to election law § 3-220.

Section 8 of the bill would add a new section 10-107 in the election law to authorize a military voter to designate a preferred method of transmission of registration and ballot materials. This designation will remain in effect until changed by the voter. Without such a designation, the default method is mail. If a voter designates another method but does not send a facsimile number or an email address, the materials would be sent by mail with a request for the omitted information. All communications with the voter will include the mailing address of the board of elections. Regardless of the designation, all original completed applications and ballots must be returned to the board of elections by mail or in person.

Section 9 of the bill amends election law § 10-108(1) to provide that military ballots will be sent to the voter via the preferred transmission method. In addition, within 3 days of the scheduling of a special election or upon a court restraining the issuance of ballots, all military voters will be sent a federal write-in absentee ballot. Upon the certification of the ballot, all military voters will be sent such certified ballot via the preferred method of transmission, notwithstanding the prior transmission of the federal write-in absentee ballot.

Section 10 of the bill amends election law § 10-112(1) to clarify the way a military voter will prepare the ballot for return to the board of elections.

Section 11 of the bill would add a new section 10-125 in the election law to prohibit the board of elections from refusing to accept voter registration applications, ballot applications, ballots or federal write-in absentee ballots solely on the basis of notarization requirements, paper type or envelope type.

This section also requires the boards of elections to establish a free access system by which a military voter may determine if the board of elections has received the voter's ballot.

Section 12 of the bill amends election law § 11-106(1) deletes outdated

language regarding the pasting of a special federal voters signature in the poll book and provides that application forms shall be in a form prescribed by the state board of elections.

Section 13 of the bill amends election law § 11-202(1)(d) and adds 2 new paragraphs (e) and (f) to provide that a special federal voter may:

- A) request a voter registration application or a special federal ballot application by facsimile transmission or electronic mail;
- B) designate a preference for transmission of registration and ballot materials; and
- C) obtain documents from the board of elections via the designated preferred method.

Procedures for transmitting documents to and receiving documents from special federal voters shall, to the extent practicable, protect the security and integrity of the process and the identity and personal data of the voter; provided that this paragraph shall not limit the information that may be obtained by the public pursuant to election law § 3-220.

Section 14 of the bill adds a new section 11-203 to election law to authorize a special federal voter to designate a preferred method of transmission of registration and ballot materials. This designation will remain in effect until changed by the voter. Without such a designation, the default method is mail. If a voter designates another method but does not send a facsimile number or an email address, the materials would be sent by mail with a request for the omitted information. All communications with the voter will include the mailing address of the board of elections. Regardless of the designation, all original completed applications and ballots must be returned to the board of elections by mail or in person.

Section 15 of the bill amends election law § 11-204(1), (2) and (4) to delete outdated language regarding the pasting of a special federal voters signature in the poll book and provides instead that application forms shall be in a form prescribed by the state board of elections. It also provides that the board of elections will contact or send materials to a special federal voter pursuant to the voter's preferred method of transmission.

Section 16 of the bill amends election law § 11-216 to add a new subdivision 3 to provide that within 3 days of the scheduling of a special election or upon a court restraining the issuance of ballots, all special federal voters will be sent a federal write-in absentee ballot. Upon the certification of the ballot, all special federal voters will be sent such certified ballot via the preferred method of transmission, notwithstanding the prior transmission of the federal write-in absentee ballot.

Section 17 of the bill adds section 11-219 and 11-220 to the election law. Section 11-219 would prohibit the board of elections from refusing to accept voter registration applications, ballot applications, ballots or federal write-in absentee ballots solely on the basis of notarization requirements, paper type or envelope type.

This section also requires the boards of elections to establish a free access system by which a military voter may determine if the board of elections has

received the voter's ballot.

Section 11-220 would clarify that the general provisions of the election law apply to the special federal voter except where they are inconsistent with the law specifically addressed to special federal voters; that the law should be liberally construed to allow special federal voters to vote and that the state board of elections may adopt regulations to effectuate the provisions addressed to special federal voters. These are the same provisions that currently exist for military voters in election law § 10-126.

Section 18 contains the effective date.

JUSTIFICATION: In New York, military voters are sent "military ballots" that are identical to the generic absentee ballot used in New York because military voters can vote in all federal, state and local races. However, the application and sworn statement required for a military ballot is different from that used by a generic absentee voter because the qualifications to receive a military ballot is different from the qualifications to receive an absentee ballot.

In contrast, overseas voters, American citizens that once lived in the United States but no longer do, are called special federal voters in New York and are sent "special federal ballots" that are different from generic absentee ballots. Pursuant to federal and state law, these voters may vote in federal races but not state and local races.

There is a growing concern nationwide about military and special federal voters' ability to cast an absentee ballot that will arrive timely and be counted. For several years, New York extended the effective date of a law that sought to address this issue. In 2008, New York law was amended to allow, for the first time, military and special federal voters to request a ballot by facsimile or email. It also permanently expanded the deadline for receipt of such ballots to 13 days after a general or special election and 7 days after a primary. Finally, it made permanent the provision that allows a military voter to have a witness sign and date his or her ballot transmittal envelope instead of obtaining a postmark.

In late 2009, Congress enacted and the President signed the National Defense Authorization Act (P.L. 111-84), which included the bipartisan Military and Overseas Voter Empowerment (MOVE) Act of 2009. The federal law is intended to provide minimal standards for absentee ballot transmission to military and overseas voters in federal elections to ensure that they have sufficient lead time to request, complete and return their absentee ballots. All states must comply with the federal requirements.

The federal law has 2 significant components that affect state election law:
(1) states must allow military voters to designate a preferred method of transmission to the voter of voting materials, including a form of electronic transmission; and
(2) states must send ballots to military and special federal voters 45 days before an election.

However, the federal law reflects the fact that at least 10 states, including

New York, have fall primary elections that may prevent the finalization of the general election ballot 45 days before that general election and, therefore, the 45 day time frame may be impossible to meet without moving the fall primary election. The law allows states to seek a hardship waiver of the 45 day requirement because of the date of the primary, because of a delay in generating ballots because of a legal contest or because the state constitution prohibits the state from complying with the time frame requirements. The state's Chief Election Official applies for the waiver from the Department of Defense, which consults the Attorney General and, if the state's comprehensive plan is sufficient, the waiver must be granted. The waiver is only good for the election for which it was submitted.

A number of the states with fall primary elections, including New Hampshire, Wisconsin and Hawaii, require that absentee ballots be returned by the voter to the board of elections no later than election day. This means that such states would have to send the ballots out 45 days before the election to meet the federal mandate. In contrast, in New York, the boards of elections could send out ballots 32 days before an election, as current law requires, because pursuant to the law that was enacted last year in New York, the deadline for receipt of such ballots is 13 days after a general or special election and 7 days after a primary. Therefore, in most circumstances, New York military and special federal ballots would have 45 days to make the "round trip" from the board of elections to the voter and back to the board of elections.

This bill would build on last year's law and form the basis for New York's comprehensive plan to support a waiver of the requirement that ballots be mailed to military and overseas voters 45 days before an election in every circumstance. It includes a number of provisions that will promote the timely receipt of military and special federal ballots. These include:

- (1) a requirement that a military and a special federal voter be sent a federal write-in absentee ballot:
 - a) within 3 days of the scheduling of a special election; or
 - b) whenever a board of elections is served with a court order restraining the timely issuance of ballots due to ongoing litigation;
- (2) a requirement that upon the conclusion of litigation affecting the content of the ballot within 32 days of the election, the board of elections must transmit a certified ballot to any military and special federal voter who previously was sent a federal write-in absentee ballot; and
- (3) authorization for military voters to use the federal write-in absentee ballot for state and local races.

This bill, when coupled with the new requirement that military and special federal voters must be allowed to designate a preferred method of transmission of voting materials to the voter, including by fax and email, will greatly reduce the round trip of military and special federal voters and promote the timely receipt of such ballots.

This bill also seeks to make voting less complicated and invasive for voters who qualify to vote by a generic absentee ballot. Article II, section 2 of the New York State Constitution permits absentee voting if the voter is absent from his or her county or unable to appear at the poll site because of illness or physical disability. However, the absentee ballot application currently contains a long list of required information that goes far beyond questions regarding absence, illness or physical disability.

This legislation provides for a streamlined absentee ballot application process by allowing qualified voters to apply for absentee ballots if

they meet the criteria without invading the privacy of the voter or creating technical traps that could be used to invalidate the ballot. This legislation would also provide absentee voters with the opportunity to apply for an absentee ballot for more than one election.

The absentee ballot application, like the military and special federal voter ballot applications, is the equivalent of a sworn statement and a voter's signature or mark should be sufficient to satisfy the constitutional mandate.

Overall, this is a bill that will promote greater participation in the democratic process in New York.

PRIOR LEGISLATIVE HISTORY: This is a new bill.

FISCAL IMPLICATION: Federal funding is available to pay for the voter interactive computer tool that county board of elections will use to send materials to voters via email. Counties will assume the cost of additional mailings.

EFFECTIVE DATE: This bill would take effect immediately.

STATE OF NEW YORK

S. 7466

A. 10681

SENATE - ASSEMBLY

April 14, 2010

IN SENATE -- Introduced by Sens. SAMPSON, ADAMS, ADDABBO, SQUADRON, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

IN ASSEMBLY -- Introduced by M. of A. SILVER, MILLMAN, MAGNARELLI, GALEF -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to military ballots, special federal ballots and absentee ballots

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

1 Section 1. Subdivision 1 of section 3-220 of the election law, as
2 amended by chapter 179 of the laws of 2005, is amended to read as
3 follows:

4 1. All registration records, certificates, lists, and inventories
5 referred to in, or required by, this chapter shall be public records and
6 open to public inspection under the immediate supervision of the board
7 of elections or its employees and subject to such reasonable regulations
8 as such board may impose, provided, however, that a voter's driver's
9 license number, department of motor vehicle non-driver photo ID number
10 [and], social security number and facsimile number shall not be released
11 for public inspection. No such records shall be handled at any time by
12 any person other than a member of a registration board or board of
13 inspectors of elections or board of elections except as provided by
14 rules imposed by the board of elections.

15 § 2. Section 7-123 of the election law, subdivisions 1, 2, 4-a, 5 and
16 6 as amended by chapter 290 of the laws of 1991, subdivision 3 as
17 amended by chapter 235 of the laws of 2000, subdivision 4 as amended by
18 chapter 247 of the laws of 1984, subdivision 4-b as added by chapter 262
19 of the laws of 2003 and subdivision 7 as added by chapter 237 of the
20 laws of 2005, and such section as renumbered by chapter 8 of the laws of
21 1978, is amended to read as follows:

22 § 7-123. Ballots; military voters. 1. The state board of elections,
23 after conferring with federal authorities, if any, authorized to act,
24 shall prescribe the form and cause to be printed by the appropriate

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

LBD16840-02-0

1 boards of elections or otherwise sufficient ballots for military voters
2 to be used at the election, subject to the following limitations:

3 2. The ballots for military voters shall be the same form as those to
4 be voted by absentee voters in the election district of the military
5 voter on election day. Any instructions that the state board of
6 elections deems pertinent shall accompany such ballots but shall not be
7 affixed thereto in any manner so as to leave any marks on such ballots
8 not found on absentee ballots.

9 3. ~~Each ballot shall be furnished with a ballot~~ The board of
10 elections shall furnish an inner affirmation envelope with each military
11 ballot upon which envelope shall be printed:

12 BALLLOT FOR MILITARY VOTER
13 ~~[STATEMENT]~~ AFFIRMATION

14 ~~(I do state (or affirm) that I am (MUST CHECK ONE)~~

15 ~~(a) in the actual military service of the State of New~~
16 ~~York, or of the United States~~

17 (b) the spouse

18 (c) parent

19 (d) child

20 of a voter in the actual military service of the State of New York or of
21 the United States, accompanying or being with such voter and a resident
22 of the same election district; that I am a citizen of the United States;
23 that on the date of the election for which this ballot is voted I will
24 be at least eighteen years of age and immediately preceding said date
25 will have been a resident of the county, city or village in which I
26 offer my vote for thirty days, that I have not voted any other ballot
27 for any candidate from any address other than hereinafter set forth; and
28 that I have not committed any act, nor am I under any impediment which
29 denies me the right to vote.

30 My voting residence in the State of New York is:
31 Street and Number, or R.F.D.
32 City, Village or Town
33 County

34 I hereby declare, that the foregoing is a true statement to the best
35 of my knowledge and belief, and I understand that if I make any material
36 false statement in the foregoing statement of military voter, I shall be
37 guilty of a misdemeanor.]

38 I swear or affirm, under penalty of perjury, that:

39 (a) I am a member of the uniformed services or merchant marine on
40 active duty or an eligible spouse, parent, child or dependent of such a
41 member, and

42 (b) I am a United States citizen, at least eighteen years of age (or
43 will be by the day of the election), eligible to vote in the requested
44 jurisdiction, and

45 (c) I have neither been convicted of a felony or other disqualifying
46 offense nor been adjudicated mentally incompetent, or if so, my voting
47 rights have been reinstated, and

S. 7466

3

A. 10681

1 (d) I am not registering, requesting a ballot, or voting in any other
2 jurisdiction in the United States, and

3 (e) My signature and date below indicate when I completed this docu-
4 ment, and

5 (f) The information on this form is true and complete to the best of
6 my knowledge.

7 I understand that a material misstatement of fact in the completion of
8 this document may constitute grounds for conviction of perjury.

9 Date 20....

10
11 Signature or mark of voter

12
13 Signature of Witness (required
14 only if voter does not sign his
15 or her own name)

16
17 Address of Witness

18 4. On the reverse side of the [ballot] inner affirmation envelope
19 [containing the statement of military voter] shall be printed:

20 TO BE FILLED IN BY THE BOARD OF ELECTIONS:

21 FOR.....ELECTION..... 20.....
22 County of.....
23 Name of voter.....
24 Voting residence (street and number, if any).....
25 City (or town) of..... Ward.....
26 Assembly District..... Election District.....
27 Party Enrollment (in case of primary election).....

28 IMPORTANT TO MILITARY VOTER: [Be sure to indicate in (a), (b), (c), or
29 (d), whether you are a serviceman or the spouse, parent or child of a
30 serviceman in the statement before you sign your name at the end of the
31 statement.] YOU MUST SIGN THE [STATEMENT] AFFIRMATION ON [THE REVERSE
32 SIDE OF] THIS ENVELOPE.

33 [4-a] 5. The information in subdivision four of this section shall be
34 filled in by the board of elections prior to the mailing of any military
35 ballot and envelopes if the military voter's preferred method of trans-
36 mission with the board of elections is by mail, or it may be filled in
37 by the board of elections upon the receipt of the returned military
38 ballot and envelope where the ballot and envelope have been transmitted
39 to the military voter other than by mail or in person.

40 6. The inner affirmation envelope, if delivered by mail or in person,
41 shall be gummed [7] and ready for sealing [7 and]. Such envelope, or any
42 created by the military voter who has received his or her ballot by
43 facsimile transmission or electronic mail in accordance with the
44 provisions of subdivision three-a of this section, shall have printed
45 thereon, on the side opposite the [statement,] affirmation, instructions
46 as to the duties of the military voter after the marking of the ballot [7
47 which]. Such instructions shall include [a] specific [direction]
48 directions stating that the [envelope] ballot must be returned in person
49 or mailed to the appropriate board of elections [and a specific direc-
50 tion stating], when [such] the outer envelope must be postmarked, if
51 mailed, and when such envelope, whether returned in person or mailed,

S. 7466

4

A. 10681

1 must reach such board of elections in order to be canvassed. Such inner
 2 affirmation envelope shall also include a direction that an application
 3 for a military ballot should not be enclosed in [~~such~~] the inner affir-
 4 mation envelope containing such ballot.

5 [~~4 b. Notwithstanding any inconsistent provision of law, the standard~~
 6 ~~affirmation prescribed by the presidential designee under the uniformed~~
 7 ~~and overseas citizens absentee voting act affirming that a material~~
 8 ~~misstatement of fact may constitute a violation of law shall be used on~~
 9 ~~any forms and envelopes requiring such an affirmation by a voter to~~
 10 ~~which such act applies.~~

11 5-] 7. If a military voter has designated a preference to receive his
 12 or her ballot by facsimile transmission or electronic mail pursuant to
 13 section 10-107 of this chapter, the transmission of the military voter's
 14 ballot shall include, together with all information and instructional
 15 materials that accompany ballot materials sent by the board of elections
 16 to other absentee voters, appropriate instructions as to the folding of
 17 same so as to create an inner affirmation envelope containing all of the
 18 information set forth in subdivisions three, four and six of this
 19 section.

20 8. Such [ballot] inner affirmation envelope [and] containing the mili-
 21 tary ballot shall be enclosed in [a second] an outer envelope, addressed
 22 to the appropriate board of elections, and bearing on it the words
 23 "Official Election Ballot--Via Air Mail" [and a]. The outer envelope
 24 shall include specific [direction] directions that if an original
 25 completed application for a military ballot [is received with such mili-
 26 tary ballot] has not already been returned in person or mailed to the
 27 military voter's board of elections, such application must be completed
 28 by the military voter and returned [in such envelope together with the
 29 envelope containing the military ballot] in the outer envelope with the
 30 sealed inner affirmation envelope containing the military ballot within
 31 the time limits for the receipt of the military ballot itself. Such
 32 envelope shall provide lines in the upper left corner for the military
 33 voter to write his or her name and complete military address.

34 [~~6-~~] 9. The [second] outer envelope addressed to the appropriate board
 35 of elections and the inner affirmation envelope which contains the
 36 ballot shall be mailed to the military voter in a third envelope on
 37 which is printed the words "Official Election Ballot--Via Air Mail".

38 [~~7-~~] 10. At the side opposite the address on the [second] outer envel-
 39 ope, below the gummed seal, for a ballot delivered by mail or in person,
 40 or below the flap for a ballot transmitted to the military voter by
 41 facsimile transmission or electronic mail, shall be printed:

42 This ballot was mailed on _____ which is not later than the
 43 (date)
 44 day before the election.

45 _____
 46 Signed (Witness)

_____ Date

47 11. If the military voter's preferred method of transmission is
 48 facsimile transmission or electronic mail, the electronic transmittal of
 49 the military voter's ballot materials shall include appropriate
 50 instructions as to the folding of same so as to create an outer envelope
 51 containing all of the information set forth in subdivisions eight and
 52 ten of this section.

S. 7466

5

A. 10681

1 § 3. Section 7-124 of the election law, as added by chapter 8 of the
 2 laws of 1978, subdivision 1 as amended by chapter 259 of the laws of
 3 1991, subdivisions 2 and 3 as amended by chapter 235 of the laws of
 4 2000, subdivision 4 as amended by chapter 99 of the laws of 1989 and
 5 subdivision 5 as amended by chapter 216 of the laws of 1988, is amended
 6 to read as follows:

7 § 7-124. Ballots [~~for~~]; special federal voters. 1. The ballots for
 8 special federal voters shall provide for voting for presidential and
 9 vice-presidential electors, United States senator, representative in
 10 congress, and delegates and alternate delegates to a national convention
 11 only and shall be in the form prescribed by this chapter for absentee
 12 ballots, except that on either the front or the back of the ballot shall
 13 be printed or stamped the words "Official Ballot--Special Federal
 14 Voter", provided, however, that at any election at which special federal
 15 voters may vote for all the offices and positions on the ballot, no such
 16 separate ballot shall be printed and the ballot for special federal
 17 voters shall be the same as the ballot provided to absentee voters in
 18 such election.

19 2. The board of elections shall furnish an inner affirmation envelope
 20 with each special federal ballot [~~an envelope. On one side of the~~] upon
 21 which envelope shall be printed:

22 I swear or affirm, under penalty of perjury, that:

23 (a) I am a United States citizen residing outside the United States,
 24 and

25 (b) I am at least eighteen years of age (or will be by the day of the
 26 election), eligible to vote in the requested jurisdiction, and

27 (c) I have neither been convicted of a felony or other disqualifying
 28 offense nor been adjudicated mentally incompetent, or if so, my voting
 29 rights have been reinstated, and

30 (d) I am not qualified to register, request a ballot, or vote in any
 31 other jurisdiction in the United States, and

32 (e) My signature and date below indicate when I completed this docu-
 33 ment, and

34 (f) The information on this form is true and complete to the best of
 35 my knowledge.

36 I understand that a material misstatement of fact in the completion of
 37 this document may constitute grounds for conviction of perjury.

38 Date..... 20.....

39
 40
 41 Signature or mark of voter

42
 43 Signature of Witness (required
 44 only if voter does not sign his
 45 own name).

46
 47 Address of Witness

48 3. On the reverse side of the inner affirmation envelope shall be
 49 printed:

50 [OFFICIAL BALLOT, SPECIAL FEDERAL VOTERS,] TO BE FILLED IN BY
 51 THE BOARD OF ELECTIONS

FOR.....ELECTION..... 20.....

S. 7466

6.

A. 10681

- 1 Name of voter
- 2 Residence from which vote is being cast:
- 3 Street and number
- 4 City or town
- 5 County
- 6 Assembly District or Ward
- 7 Election District
- 8 Party Enrollment (in case of primary election)

9 ~~[The date of the election and the name of the county shall be printed,~~
 10 ~~and the name of the voter, residence, name of town, number of ward or~~
 11 ~~assembly district, if any, and election district shall be either printed~~
 12 ~~or written or stamped in by the board] IMPORTANT TO SPECIAL FEDERAL~~
 13 ~~VOTER: YOU MUST SIGN THE AFFIRMATION ON THIS ENVELOPE.~~
 14 ~~[9. On the reverse side of such envelope shall be printed the follow-~~
 15 ~~ing statement:~~

16 ~~STATEMENT OF SPECIAL FEDERAL VOTER~~

17 ~~I do declare I am a qualified special federal voter of said district,~~
 18 ~~that I am not qualified and am not able to qualify to vote elsewhere~~
 19 ~~than as set forth on the reverse side of this envelope; that I have not~~
 20 ~~committed any act nor am I under any impediment which denies me the~~
 21 ~~right to vote.~~
 22 ~~I hereby declare that the foregoing is a true statement to the best of~~
 23 ~~my knowledge and belief, and I understand that if I make any material~~
 24 ~~false statement in the foregoing statement, I shall be guilty of a~~
 25 ~~misdemeanor.~~

26 Date..... 20.....

.....
 Signature or mark of voter

 Signature of Witness (required
 only if voter does not sign his
 own name)

 Address of Witness]

35 4. The information in subdivision three of this section shall be
 36 filled in by the board of elections prior to the mailing of any special
 37 federal ballot and envelopes if the special federal voter's preferred
 38 method of transmission with the board of elections is by mail, or it may
 39 be filled in by the board of elections upon receipt of the returned
 40 special federal ballot and envelope when the ballot and envelope have
 41 been transmitted to the special federal voter other than by mail or in
 42 person.

43 5. The inner affixation envelope, if delivered by mail or in person,
 44 shall be gummed[+] and ready for sealing[+and]. Such envelope, or any
 45 created by the special federal voter whose ballot was delivered by
 46 facsimile transmission or electronic mail in accordance with subdivision
 47 two-a of this section, shall have printed thereon, on the side opposite
 48 the [statement] affirmation, instructions as to the duties of the voter
 49 after the marking of the ballot[,-which]. Such instructions shall
 50 include [a] specific [direction] directions stating that the [envelope]
 51 ballot must be [delivered] returned in person or mailed to the appropri-

S. 7466

7

A. 10681

1 ate board of elections [~~and a specific direction stating~~], when [such]
2 the outer envelope must be [delivered or postmarked] postmarked, if
3 mailed, and when such envelope, [if so mailed] whether returned in
4 person or mailed, must reach such board of elections in order to be
5 canvassed. Such inner affirmation envelope shall also include a direc-
6 tion that an application for a special federal ballot should not be
7 enclosed in the inner affirmation envelope containing such ballot.

8 [~~5. Such envelope shall be enclosed in a second envelope bearing on it~~
9 ~~the address of the board of elections, the words "Official Election~~
10 ~~Balloting Material-Via Air Mail" and a specific direction that if an~~
11 ~~application for special federal ballot is received with the ballot, such~~
12 ~~application must be completed by the voter and returned in such envelope~~
13 ~~together with the envelope containing the special federal ballot.]~~

14 6. If a special federal voter has designated a preference to receive
15 his or her ballot by facsimile transmission or electronic mail pursuant
16 to section 11-203 of this chapter, the transmission of the special
17 federal voter's ballot shall include, together with all information and
18 instructional materials that accompany ballot materials sent by the
19 board of elections to other absentee voters, appropriate instructions as
20 to the folding of same so as to create an envelope containing all of the
21 information set forth in subdivisions two, three and five of this
22 section.

23 7. Such inner affirmation envelope containing the special federal
24 ballot shall be enclosed in an outer envelope addressed to the appropri-
25 ate board of elections, and bearing on it the words "Official Election
26 Ballot-Via Air Mail". The outer envelope shall include specific
27 directions that if an original completed application for a special
28 federal ballot has not already been delivered or mailed to the special
29 federal voter's board of elections, such application must be completed
30 by the special federal voter and returned in the outer envelope with the
31 sealed inner affirmation envelope containing the special federal ballot
32 within the time limits for the receipt of the special federal ballot
33 itself. Such envelope shall provide lines in the upper left corner for
34 the special federal voter to write his or her name and complete special
35 federal address.

36 8. The outer envelope addressed to the appropriate board of elections
37 and the inner affirmation envelope which contains the ballot shall be
38 mailed to the special federal voter in a third envelope on which is
39 printed the words "Official Election Ballot-Via Air Mail".

40 9. If the special federal voter's preferred method of transmission is
41 facsimile transmission or electronic mail, the electronic transmittal of
42 the special federal voter's ballot materials shall include appropriate
43 instructions as to the folding of same so as to create an outer envelope
44 containing all of the information set forth in subdivision eight of this
45 section.

46 § 4. Subdivision 1, paragraph (d) of subdivision 2, subdivisions 3 and
47 4 of section 8-400 of the election law, the opening paragraph of subdivi-
48 sion 1 as amended by chapter 359 of the laws of 1989, paragraph (c) of
49 subdivision 1 and subparagraph (iii) of paragraph (c) of subdivision 3
50 as amended by chapter 426 of the laws of 2009, paragraph (d) of subdivi-
51 sion 2 as amended by chapter 165 of the laws of 2009, subparagraph (i)
52 of paragraph (c) of subdivision 3 as amended by chapter 234 of the laws
53 of 1976, paragraph (d) of subdivision 3 as added by chapter 373 of the
54 laws of 1986, subdivision 4 as amended by chapter 163 of the laws of
55 1985, are amended to read as follows:

S. 7466

8

A. 10681

1 1. A qualified voter may vote as an absentee voter under this chapter
2 if, on the occurrence of any village election conducted by the board of
3 elections, primary election, special election, general election or New
4 York city community school board district or city of Buffalo school
5 district election, he ~~[will]~~ or she expects to be:

6 (a) ~~[unavoidably]~~ absent from the county of his or her residence, or,
7 if a resident of the city of New York absent from said city ~~because~~
8 ~~his duties, occupation, business, or studies require him to be elsewhere~~
9 ~~on the day of election]; or~~

10 (b) ~~[absent from such county or city because he is on vacation else-~~
11 ~~where on the day of election; or~~

12 ~~(c)]~~ unable to appear personally at the polling place of the election
13 district in which he or she is a qualified voter because of illness or
14 physical disability ~~[, whether permanent or temporary,]~~ or duties related
15 to the primary care of one or more individuals who are ill or physically
16 disabled, or because he or she will be or is a patient in a hospital; or

17 ~~[(d) he is a person entitled to a ballot because he is a qualified~~
18 ~~voter registered as]~~ (c), an inmate or patient of a veteran's adminis-
19 tration hospital; or

20 ~~[(e) absent from the county of his residence, or if a resident of the~~
21 ~~city of New York, absent from said city, because of his accompanying a~~
22 ~~spouse, parent or child who would be entitled to apply for the right to~~
23 ~~vote by absentee ballot if a qualified voter, or~~

24 ~~[(f)]~~ (d) absent from his or her voting residence because he or she is
25 detained in jail awaiting action by a grand jury or awaiting trial, or
26 confined in jail or prison after a conviction for an offense other than
27 a felony, provided that he or she is qualified to vote in the election
28 district of his or her residence.

29 (d) The board of elections shall mail an absentee ballot to every
30 qualified voter otherwise eligible for such a ballot, who requests such
31 an absentee ballot from such board of elections in a letter, which is
32 signed by the voter and received by the board of elections not earlier
33 than the thirtieth day nor later than the seventh day before the
34 election for which the ballot is first requested and which states the
35 address where the voter is registered and the address to which the
36 ballot is to be mailed; provided, however, a military voter may request
37 a military ballot or voter registration application or an absentee
38 ballot application in a letter as provided in subdivision three of
39 section 10-106 of this chapter; and provided further, a special federal
40 voter may request a special federal ballot or voter registration appli-
41 cation or an absentee ballot application in a letter as provided in
42 paragraph d of subdivision one of section 11-202 of this chapter. The
43 board of elections shall enclose with such ballot a form of application
44 for absentee ballot if the applicant is registered with such board of
45 elections.

46 3. The application for an absentee ballot when filed must contain in
47 each instance the following information:

48 (a) Applicant's full name, date of birth, and residence address,
49 including the street and number, if any, rural delivery route, if any,
50 mailing address if different from the residence address and his or her
51 town or city and an address to which the ballot shall be mailed.

52 (b) A statement that the applicant is a qualified and registered
53 voter ~~and that he does not know of any reason why he is no longer~~
54 ~~qualified to vote].~~

S. 7466

9

A. 10681

1 (c) A statement, as appropriate, that on the day of such election the
2 applicant expects in good faith to be in one of the following catego-
3 ries:

4 (i) ~~[unavoidably]~~ absent from the county of his or her residence, or
5 if a resident of the city of New York absent from said city ~~[-because~~
6 ~~his duties, occupation, business or studies require him to be elsewhere~~
7 ~~on such day, and where such duties, occupation, business or studies are~~
8 ~~not of such a nature as ordinarily to require such absence, a statement~~
9 ~~briefly describing the special circumstances requiring such absence~~
10 ~~and]; provided, however, if the applicant expects to be absent from such~~
11 ~~county or city for a duration covering more than one election and seeks~~
12 ~~an absentee ballot for each election, he or she shall state the dates~~
13 ~~when he or she expects to begin and end such absence; or~~

14 (ii) ~~[absent from the county of his residence, or if a resident of the~~
15 ~~city of New York absent from said city, because he will be on vacation~~
16 ~~elsewhere on such day, the dates upon which he expects to begin and end~~
17 ~~such vacation, the place or places where he expects to be on such vaca-~~
18 ~~tion, the name and address of his employer, if any, or if self-employed~~
19 ~~or retired a statement to such effect, or~~

20 ~~(iii)]~~ unable to appear at a polling place because of illness or phys-
21 ical disability or duties related to the primary care of one or more
22 individuals who are ill or physically disabled; or

23 ~~[(iv) entitled to a ballot because he is a qualified voter registered~~
24 ~~as] (iii) an inmate or patient of a veteran's [administration] adminis-~~
25 ~~tration hospital; or~~

26 ~~[(v)]~~ (iv) detained in jail awaiting action by a grand jury or await-
27 ing trial or confined in jail or prison after a conviction for an
28 offense other than a felony and stating the place where he or she is so
29 detained or confined ~~[-or~~

30 ~~(vi) absent from the county of his residence, or if a resident of the~~
31 ~~city of New York absent from said city, because of his accompanying his~~
32 ~~spouse, parent or child who falls within one of the foregoing catego-~~
33 ~~ries; a statement that the applicant resides in the same election~~
34 ~~district as such spouse, parent or child, the name and address of such~~
35 ~~spouse, parent or child, and, unless the application accompanies the~~
36 ~~application of such spouse, parent or child, the information as to the~~
37 ~~status of such spouse, parent or child required by the applicable cate-~~
38 ~~gory].~~

39 (d) Such application shall permit the applicant to apply for an absen-
40 tee ballot for either a primary election or the general election in any
41 year and for those persons who will be continuously absent from their
42 county of residence during the period between the fall primary election
43 and the general election in any year to apply for ballots for both such
44 elections in such year. A voter who applies for an absentee ballot
45 shall be sent an absentee ballot for any special election or winter
46 primary that occurs during the period of absence specified in the appli-
47 cation.

48 4. A voter who claims permanent illness or physical disability may
49 make application for an absentee ballot and the right to receive an
50 absentee ballot for each election thereafter as provided herein without
51 further application, by filing with the board of elections an applica-
52 tion which shall contain a statement to be executed by the voter ~~[show-~~
53 ~~ing the particulars of his illness or disability]~~. Upon filing of such
54 application the board of elections shall ~~[investigate the facts stated~~
55 ~~therein and if satisfied as to the truth thereof, shall]~~ cause the
56 registration records of the voter to be marked "Permanently Disabled"

S. 7466

10

A. 10681

1 and thereafter shall send an absentee ballot for each succeeding primary,
2 special or general election to such voter at his or her last known
3 address by first class mail with a request to the postal authorities not
4 to forward such ballot but to return it in five days in the event that
5 it cannot be delivered to the addressee. The mailing of such ballot for
6 each election shall continue until such voter's registration is
7 cancelled.

8 § 5. Section 9-209 of the election law, as amended by chapter 251 of
9 the laws of 1984, the section heading, the opening paragraph and para-
10 graph a of subdivision 2 as amended by chapter 179 of the laws of 2005,
11 paragraph a of subdivision 1 as amended by chapter 165 of the laws of
12 2009, subparagraph 3 of paragraph a of subdivision 2 as added by chapter
13 248 of the laws of 2009, paragraph b of subdivision 2 as added and para-
14 graphs c and e of subdivision 2 as relettered by chapter 94 of the laws
15 of 1987, subparagraph 1 of paragraph b of subdivision 2 as amended,
16 subparagraph 2 of paragraph b of subdivision 2 as added and subparagraph
17 3 of paragraph b of subdivision 2 as renumbered by chapter 155 of the
18 laws of 1994, paragraph c of subdivision 2 as added by chapter 352 of
19 the laws of 1986 and paragraph d of subdivision 2 as amended by chapter
20 79 of the laws of 1992, is amended to read as follows:

21 § 9-209. Canvass of absentee, military and special ballots and ballots
22 cast by voters with registration poll records missing on days of
23 election or voters who have not had their identity previously verified
24 or who have moved after registering. Before completing the canvass of
25 votes cast in any primary, general, special, or other election at which
26 voters are required to sign their registration poll records before
27 voting, the board of elections shall proceed in the manner hereinafter
28 prescribed to cast and canvass any absentee, military, special presiden-
29 tial, special federal or other special ballots which were not cast and
30 canvassed at the polling place, and any ballots voted by voters who
31 moved within the county or city after registering, voters who are in
32 inactive status, voters whose registration was incorrectly transferred
33 to another address even though they did not move, or voters whose regis-
34 tration poll records were missing on the day of such election or voters
35 who have not had their identity previously verified or whose registra-
36 tion poll records did not show them to be enrolled in the party in which
37 they claimed to be enrolled. Each such ballot shall be retained in the
38 original envelope containing the voter's affidavit and signature, in
39 which it is delivered to the board of elections until such time as it is
40 to be cast and canvassed.

41 1. [a-] (a) The board of elections shall designate itself or such of
42 its employees as it shall deem appropriate as a set of poll clerks to
43 cast and canvass such ballots, and fix a time and place for their meet-
44 ing for such purpose, provided that such meeting shall be no more than
45 fourteen days after a general or special election and no more than eight
46 days after a primary election at which such ballots are voted. The board
47 may designate additional sets of poll clerks and if it designates more
48 than one such set shall apportion among all such sets the election
49 districts from which such ballots have been received, provided that all
50 such ballots from a single election district shall be assigned to a
51 single set of clerks, and that each such set shall be divided equally
52 between representatives of the two major political parties. Each such
53 set of clerks shall be deemed a central board of inspectors for purposes
54 of this section.

55 [b-] (b) At least five days prior to the time fixed for such meeting,
56 the board shall send notice by first class mail to each candidate, poli-

S. 7466

11

A. 10681

1 tical party, and independent body entitled to have had watchers present
2 at the polls in any election district in the board's jurisdiction. Such
3 notice shall state the time and place fixed by the board for such
4 canvass.

5 ~~(c)~~ (c) Each such candidate, political party, and independent body
6 shall be entitled to appoint such number of watchers to attend upon each
7 central board of inspectors as such candidate, political party, or inde-
8 pendent body was entitled to appoint at such election in any one
9 election district for which such central board of inspectors is desig-
10 nated to act.

11 2. ~~(a)(i)~~ (a)(i) Upon assembling at the time and place fixed for such
12 meeting, each central board of inspectors shall cast and canvass the
13 envelopes and the ballots therein contained as nearly as practicable in
14 the manner provided by this chapter for a board of inspectors to consid-
15 er, cast, and canvass absentee ballot envelopes and ballots at the poll-
16 ing place.

17 ~~(ii)~~ (ii) If the board of inspectors determines that a person was
18 entitled to vote at such election it shall cast and canvass such ballot
19 if such board finds that ministerial error by the board of elections, or
20 any of its employees caused such ballot envelope not to be valid on its
21 face.

22 ~~(iii)~~ (iii) If the board of elections determines that a person was
23 entitled to vote at such election, the board shall cast and canvass such
24 ballot if such board finds that the voter appeared at the correct poll-
25 ing place, regardless of the fact that the voter may have appeared in
26 the incorrect election district.

27 ~~(b)(i)~~ (b)(i) Such board of inspectors shall also cast and canvass
28 any federal write-in absentee ballots validly cast by an absentee voter,
29 a military voter or a special federal voter for the offices of president
30 and vice-president, United States senator and representative in
31 congress. Such board of inspectors shall also cast and canvass any
32 federal write-in absentee ballots validly cast by a military voter for
33 all questions or proposals, public offices or party positions for which
34 a military voter is otherwise eligible to vote as provided in section
35 10-104 of this chapter.

36 ~~(ii)~~ (ii) Federal write-in absentee ballots shall be cast and
37 canvassed only if: (A) an application for an absentee, military or
38 special federal ballot was received from the absentee, military or
39 special federal voter at least thirty days before election day~~;~~;
40 (B) the federal write-in absentee ballot was submitted from inside or
41 outside the United States~~;~~ by a military voter or was submitted
42 from outside the United States by a special federal voter; (C) such
43 ballot is received by the board of elections not later than ~~(seven)~~
44 thirteen days following the day of election or seven days after a prima-
45 ry election; and ~~(if)~~ (D) the absentee, military or special federal
46 ballot which was sent to the voter is not received by the board of
47 elections by the ~~(seventh)~~ thirteenth day following the day of a general
48 or special election or the seventh day after a primary election.

49 (iii) If such a federal write-in absentee ballot is received after
50 election day, the envelope in which it is received must contain: (A) a
51 cancellation mark of the United States postal service or a foreign coun-
52 try's postal service~~;~~; (B) a dated endorsement of receipt by another
53 agency of the United States government~~;~~; or (C) if cast by a mili-
54 tary voter, the signature and date of the voter and one witness thereto
55 with a date which is ascertained to be not later than the day before
56 election day.

S. 7466

12

A. 10681

1 ~~(3-)~~ (iv) If such a federal write-in absentee ballot contains the name
2 of a person or persons in the space provided for a vote for any office,
3 such ballot shall be counted as a vote for such person or persons. A
4 vote for a person who is the candidate of a party or independent body
5 either for president or vice-president shall be deemed to be a vote for
6 both the candidates of such party or independent body for such offices.
7 If such a ballot contains the name of a party or independent body in the
8 space provided for a vote for any office, such ballot shall be deemed to
9 be a vote for the candidate or candidates, if any, of such party or
10 independent body for such office. In the case of the offices of presi-
11 dent and vice-president a vote cast for a candidate, either directly or
12 by writing in the name of a party or independent body, shall also be
13 deemed to be votes for the electors supporting such candidate. Any
14 abbreviation, misspelling or other minor variation in the form of the
15 name of a candidate or a party or independent body shall be disregarded
16 in determining the validity of the ballot, if the intention can be
17 ascertained.

18 ~~(c-)~~ (c) The following provisions shall apply to casting and canvass-
19 ing of all such ballots which are counted by machine and all other
20 provisions of this chapter with respect to casting and canvassing such
21 ballots which are not inconsistent with this paragraph shall be applica-
22 ble to such ballots.

23 ~~(1-)~~ (i) Such ballots shall be counted by placing them, arranged by
24 election district, in the counting machine.

25 ~~(2-)~~ (ii) Such ballots may be separated into sections before being
26 placed in the counting machine.

27 ~~(3-)~~ (iii) Any write-in ballots and any ballots which cannot be count-
28 ed by the machine shall be counted manually subject to all the applica-
29 ble provisions of this chapter with respect to counting of ~~[absentee]~~
30 ballots.

31 ~~(4-)~~ (iv) The record of the vote counted by machine for each candidate
32 and for and against each ballot proposal, printed by election district,
33 shall be preserved in the same manner and for the same period as the
34 returns of canvass for the election.

35 ~~(d-)~~ (d) Any person lawfully present may object to the refusal to cast
36 or canvass any ballot on the grounds that the voter is a properly quali-
37 fied voter of the election district, or in the case of a party primary
38 duly enrolled in such party, or to the casting or canvassing of any
39 ballot on the grounds that the voter is not a properly qualified voter
40 of the election district, or in the case of a party primary not duly
41 enrolled in such party, or otherwise not entitled to cast such ballot.
42 When any such objection is made, the central board of inspectors shall
43 forthwith proceed to determine such objection and reject or cast such
44 ballot according to such determination. If the board cannot agree as to
45 the validity of the ballot it shall set the ballot aside, unopened, for
46 a period of three days at which time the ballot envelope shall be opened
47 and the vote counted unless otherwise directed by an order of the court.

48 ~~(e-)~~ (e) Upon completing the casting and canvassing of ballots as
49 hereinabove provided for any election district, the central board of
50 inspectors shall thereupon, as nearly as practicable in the manner
51 provided in this chapter for absentee ballots, verify the number of
52 ballots so cast, tally the votes so cast, add such tally to the previous
53 tally of all votes cast in such election district, and announce the
54 result.

S. 7466

13

A. 10681

1 § 6. Subdivisions 1 and 2 of section 10-102 of the election law,
2 subdivision 2 as amended by chapter 373 of the laws of 1978, are amended
3 to read as follows:

4 1. "Military service" means the military service of the state, or of
5 the United States, including the army, navy, marine corps, air force,
6 coast guard, merchant marine and all components thereof, and the coast
7 and geodetic survey, the public health service, the national guard when
8 in the service of the United States pursuant to call as provided by law,
9 and the cadets or midshipmen of the United States Military Academy,
10 United States Naval Academy, United States Air Force Academy and United
11 States Coast Guard Academy.

12 2. "Military voter" means a qualified voter of the state of New York
13 who is in the actual military service, as defined in the preceding para-
14 graph of this section, and by reason of such military service is absent
15 from his election district of residence on the day of registration or
16 election, or a voter who is discharged from such military service within
17 thirty days of an election and the spouse, parent ~~and~~, child or
18 dependent of such voter accompanying or being with him or her, if a
19 qualified voter and a resident of the same election district.

20 § 7. Subdivisions 3, 4 and 11 of section 10-106 of the election law,
21 subdivision 3 as added by chapter 165 of the laws of 2009, subdivision 4
22 as amended by chapter 262 of the laws of 2003 and subdivision 11 as
23 amended by chapter 290 of the laws of 1991, are amended to read as
24 follows:

25 3. ~~[*]~~ (a) In addition to any other method of registering to vote or
26 of applying for a military ballot, a military voter may [apply for a]
27 request a voter registration application or military ballot application
28 by facsimile transmission to the board of elections or pursuant to the
29 Uniformed and Overseas Citizens Absentee Voting Act or by electronic
30 mail. When making such a request, the military voter may designate a
31 preference for transmission of such voter registration application and
32 military ballot application pursuant to section 10-107 of this article.

33 (b) The military ballot application shall allow the military voter to
34 designate a preference for transmission of the military ballot pursuant
35 to section 10-107 of this article.

36 (c) The procedures for receiving documents from and transmitting docu-
37 ments to a military voter shall, to the extent practicable, protect the
38 security and integrity of the military voter registration and military
39 ballot application request process and protect the privacy of the mili-
40 tary voter, including the voter's identity and other personal data.
41 Nothing in this paragraph shall limit the information that may be
42 obtained pursuant to section 3-220 of this chapter.

43 4. Not earlier than the ninetieth or later than the seventy-fifth day
44 before each general election, each county or city board of elections
45 shall send, in accordance with the preferred method of transmission
46 designated by the voter pursuant to section 10-107 of this article, to
47 each person who is registered as a military voter and to every other
48 military voter in such county or city for whom it has a military
49 address, an application for a military ballot for such general election
50 in a form prescribed by the state board of elections, which shall
51 include a place for such military voter to enroll in a party, ~~[on a~~
52 ~~postcard bearing]~~ and shall include the return address of such board of
53 elections [provided, however, the county or city board of elections
54 shall not send such an application to any person who has applied for a
55 military ballot and is entitled to receive such ballot for such
56 election].

S. 7466

14

A. 10681

1 11. A board of elections may send to any spouse, parent, or adult
2 child, brother or sister of a military voter serving inside or outside
3 of the continental limits of the United States, an application for a
4 military ballot, in a form prescribed by the state board of elections.
5 Such application shall be on a postcard addressed to the appropriate
6 board of elections and shall include the statement "I understand that
7 this application will be accepted for all purposes as the equivalent of
8 an affidavit and, if it contains a material false statement, shall
9 subject me to the same penalties as if I had been duly sworn". Such
10 application may be signed by the spouse, parent or adult child, brother
11 or sister of such military voter. Upon receipt of such an application
12 from such a relative of a military voter, the board of elections shall
13 mail a military ballot to such military voter together with an applica-
14 tion for a military ballot and instructions that such application must
15 be completed and returned together with the envelope containing the
16 military ballot. No ballot sent to a military voter upon the application
17 of a relative of such military voter shall be cast or canvassed unless a
18 completed application for military ballot signed by such military voter
19 is ~~[received with such]~~ returned within the time limits for the receipt
20 of the military ballot itself.

21 § 8. The election law is amended by adding a new section 10-107 to
22 read as follows:

23 § 10-107. Military voters; designation of means of transmission by
24 military voters. 1. A military voter may designate a preference to
25 receive a voter registration application, a military ballot application
26 or a military ballot by mail, facsimile transmission or electronic mail.
27 Such designation shall remain in effect until revoked or changed by the
28 military voter. If a military voter does not designate a preference,
29 the board of elections shall transmit the voter registration applica-
30 tion, military ballot application or military ballot by mail. If a
31 military voter designates a preference for facsimile transmission or
32 electronic mail but does not provide the necessary facsimile number or
33 e-mail address, the board of elections shall transmit the voter regis-
34 tration application, military ballot application or military ballot by
35 mail and request the omitted information. All communications to the
36 military voter shall include the mailing address of the board of
37 elections.

38 2. Irrespective of the preferred method of transmission designated by
39 a military voter, a military voter's original completed voter registra-
40 tion application, military ballot application and military ballot must
41 be returned by mail or in person notwithstanding that a prior copy was
42 sent to the board of elections by facsimile transmission or electronic
43 mail.

44 § 9. Subdivision 1 of section 10-108 of the election law, as amended
45 by chapter 262 of the laws of 2003, is amended to read as follows:

46 1. (a) Ballots for military voters shall be mailed or otherwise
47 distributed by the board of elections, in accordance with the preferred
48 method of transmission designated by the voter pursuant to section
49 10-107 of this article, not later than thirty-two days before a primary
50 or general election; twenty-five days before a New York city community
51 school board district or city of Buffalo school district election; ~~[and]~~
52 fourteen days before a village election conducted by the board of
53 elections; and twelve days before a special election. A voter who
54 submits a military ballot application shall be entitled to a military
55 ballot thereafter for each subsequent election through and including the
56 next two regularly scheduled general elections held in even numbered

S. 7466

15

A. 10681

1 years, including any run-offs which may occur; provided, however, such
2 application shall not be valid for any election held within seven days
3 after its receipt. Ballots shall also be mailed to any qualified mili-
4 tary voter who is already registered and who requests such military
5 ballot from such board of elections in a letter, which is signed by the
6 voter and received by the board of elections not later than the seventh
7 day before the election for which the ballot is requested and which
8 states the address where the voter is registered and the address to
9 which the ballot is to be mailed. The board of elections shall enclose
10 with such ballot a form of application for military ballot. In the case
11 of a primary election, the board shall deliver only the ballot of the
12 party with which the military voter is enrolled according to the mili-
13 tary voter's registration records. In the event a primary election is
14 uncontested in the military voter's election district for all offices or
15 positions except the party position of member of the ward, town, city or
16 county committee, no ballot shall be delivered to such military voter
17 for such election; and the military voter shall be advised of the reason
18 why he or she will not receive a ballot.

19 (b) Upon the proclamation of a special election by the governor or
20 otherwise pursuant to law, each board of elections shall, not later than
21 three days after the establishment of the date of such special election,
22 transmit by mail, facsimile transmission or electronic mail in accord-
23 ance with the preferred method of transmission designated by the voter
24 pursuant to section 10-107 of this article, a federal write-in absentee
25 ballot to all military voters eligible to vote by military ballot in
26 such special election.

27 (c) Each board of elections which is served with a court order
28 restraining or enjoining the issuance of ballots in any election, other
29 than a special election, in which any military voter is entitled to
30 receive a ballot shall immediately notify the state board of elections
31 of such fact and shall transmit in accordance with the preferred method
32 of transmission designated by the voter, a federal write-in absentee
33 ballot to all military voters eligible to vote in such election.

34 (d) A military voter who has received a federal write-in absentee
35 ballot shall be entitled to receive a certified ballot notwithstanding
36 the prior transmission of a federal write-in absentee ballot to such
37 voter pursuant to paragraph (b) or (c) of this subdivision. Such certi-
38 fied military ballot shall be sent by the board of elections in accord-
39 ance with the preferred method of transmission designated by the voter
40 pursuant to section 10-107 of this article, or expedited mail if the
41 military voter has not expressed a preference to receive same by facsim-
42 ile transmission or electronic mail, and his or her request for a mili-
43 tary ballot was made at least thirty-two days before the election.

44 § 10. Section 10-112 of the election law, subdivision 1 as amended by
45 chapter 290 of the laws of 1991, is amended to read as follows:

46 § 10-112. Military voter; voting. [~~1-~~] The military voter shall mark
47 the military ballot provided for in this article in the same manner as
48 an absentee ballot. After marking the ballot, he or she shall fold such
49 ballot and enclose it in the [~~ballot~~] inner affirmation envelope bearing
50 the military voter's [~~statement~~] affirmation on the outside of the
51 envelope and seal the envelope. He or she shall then sign the [~~state-~~
52 ment] affirmation, with the blanks properly filled in. The inner affir-
53 mation envelope containing the military ballot shall then be inserted in
54 the outer envelope addressed to the appropriate board of elections,
55 which shall be mailed or [~~otherwise~~] personally delivered to such board

S. 7466

16

A. 10681

1 of elections of his or her county of residence within the time limits
2 provided by this chapter.

3 § 11. The election law is amended by adding a new section 10-125 to
4 read as follows:

5 § 10-125. Military voters; prohibiting refusal to accept voter regis-
6 tration and military ballot applications, marked military ballots, and
7 federal write-in absentee ballots for failure to meet certain require-
8 ments. 1. A board of elections shall not refuse to accept and process
9 any otherwise valid voter registration application or military ballot
10 application (including the official post card form prescribed under
11 section 101 of the Uniformed and Overseas Citizens Absentee Voting Act
12 (42 USC 1973ff)) or marked military ballot submitted by mail or
13 personally delivered, solely on the basis of the following:

14 (a) Notarization requirements;

15 (b) Restrictions on paper type, including weight and size; or

16 (c) Restrictions on envelope type, including weight and size.

17 2. A board of elections shall not refuse to accept and process any
18 otherwise valid federal write-in absentee ballot submitted in any manner
19 by a military voter solely on the basis of the following:

20 (a) Notarization requirements;

21 (b) Restrictions on paper type, including weight and size; or

22 (c) Restrictions on envelope type, including weight and size.

23 3. The state board of elections, in coordination with county boards of
24 elections, shall develop a free access system by which a military voter
25 may determine whether the military ballot of the military voter has been
26 received by the appropriate board of elections.

27 § 12. Subdivision 1 of section 11-106 of the election law is amended
28 to read as follows:

29 1. The application forms shall [contains a detachable portion for the
30 applicant's signature, which portion shall be gummed on the back for
31 pastng in the list of special presidential voters, or, in lieu thereof,
32 the board of elections may cause to be made, under its supervision, a
33 photostatic copy of the applicant's signature as it appears on his
34 application, and in such case a photostatic copy of the applicant's
35 signature shall be pasted in the list of special presidential voters in
36 its proper place] be in a form prescribed by the state board of
37 elections.

38 § 13. Paragraph d of subdivision 1 of section 11-202 of the election
39 law, as added by chapter 165 of the laws of 2009, is amended and two new
40 paragraphs e and f are added to read as follows:

41 d. [A] In addition to any other method of registering to vote or of
42 applying for a special federal ballot, a special federal voter may
43 [apply for] request a voter registration application or request a
44 special federal ballot application by facsimile transmission to the
45 board of elections or pursuant to the Uniformed and Overseas Citizens
46 Absentee Voting Act or by electronic mail. When making such a request,
47 the special federal voter may designate a preference for transmission of
48 such voter registration application and special federal ballot applica-
49 tion pursuant to section 11-203 of this title.

50 e. The special federal ballot application shall allow the special
51 federal voter to designate a preference to receive the special federal
52 ballot pursuant to section 11-203 of this title.

53 f. The procedures for receiving documents from and transmitting docu-
54 ments to a special federal voter shall, to the extent practicable,
55 protect the security and integrity of the special federal voter regis-
56 tration and special federal ballot application request process and

S. 7466

17

A. 10681

1 protect the privacy of the special federal voter, including the voter's
2 identity and other personal data. Nothing in this paragraph shall limit
3 the information that may be obtained pursuant to section 3-220 of this
4 chapter.

5 § 14. The election law is amended by adding a new section 11-203 to
6 read as follows:

7 § 11-203. Special federal voters; designation of means of transmission
8 by special federal voters. 1. A special federal voter may designate a
9 preference to receive a voter registration application, a special feder-
10 al ballot application or a special federal ballot by mail, facsimile
11 transmission or electronic mail. Such designation shall remain in effect
12 until revoked or changed by the special federal voter. If a special
13 federal voter does not designate a preference, the board of elections
14 shall transmit the voter registration application, special federal
15 ballot application or special federal ballot by mail. If a special
16 federal voter designates a preference for facsimile transmission or
17 electronic mail but does not provide the necessary facsimile number or
18 e-mail address, the board of elections shall transmit the voter regis-
19 tration application, special federal ballot application or special
20 federal ballot by mail and request the omitted information. All communi-
21 cations to the special federal voter shall include the mailing address
22 of the board of elections.

23 2. Irrespective of the preferred method of transmission designated by
24 a special federal voter, a special federal voter's original completed
25 voter registration application, special federal ballot application and
26 special federal ballot must be returned by mail or in person notwith-
27 standing that a prior copy was sent to the board of elections by facsim-
28 ile transmission or electronic mail.

29 § 15. Subdivisions 1, 2 and 4 of section 11-204 of the election law,
30 subdivisions 1 and 2 as added by chapter 8 of the laws of 1978 and
31 subdivision 4 as amended by chapter 262 of the laws of 2003, are amended
32 to read as follows:

33 1. The registration application forms shall ~~contain detachable~~
34 ~~portions for the applicant's signature. Such portions shall be gummed on~~
35 ~~the back for pasting on the registration poll records and central file~~
36 ~~registration records. In lieu of such gummed portions the board of~~
37 ~~elections may cause to be made, under its supervision, photostatic~~
38 ~~copies of the applicant's signature as it appears on his application. In~~
39 ~~such case, photostatic copies of the applicant's signature shall be~~
40 ~~pasted in the proper places upon such registration poll records and~~
41 ~~central file registration records] be in a form prescribed by the state~~
42 board of elections.

43 2. Upon receipt of an application, the board of elections shall deter-
44 mine upon such inquiry as it deems proper whether the applicant has
45 answered all the questions contained in the application and whether the
46 applicant is legally qualified to receive and vote a special federal
47 ballot. If it finds he is not so qualified, the board shall reject the
48 application and shall notify the applicant of such rejection and give
49 the reason or reasons therefor in accordance with the preferred method
50 of transmission designated by the voter pursuant to section 11-203 of
51 this title. All investigations by the board of elections shall be
52 concluded and all determinations made not later than the twentieth day
53 before election.

54 4. If the board of elections shall determine that the applicant making
55 the application provided for in this section is qualified to receive and
56 vote a special federal ballot, it shall, as soon as practicable after it

S. 7466

18

A. 10681

1 shall have so determined, or not later than thirty-two days before each
2 general or primary election and twelve days before each special election
3 in which such applicant is qualified to vote, or three days after
4 receipt of such an application, whichever is later, mail to him or her
5 at the residence address outside the United States shown in his or her
6 application, a special federal ballot [and], an inner affirmation envel-
7 ope [therefor] and an outer envelope, or otherwise distribute same to
8 the voter in accordance with the preferred method of transmission desig-
9 nated by the voter pursuant to section 11-203 of this title. The board
10 of elections shall also mail, or otherwise distribute in accordance with
11 the preferred method of transmission designated by the voter pursuant to
12 section 11-203 of this title, a special federal ballot to every quali-
13 fied special federal voter who is already registered and who requests
14 such special federal ballot from such board of elections in a letter,
15 which is signed by the voter and received by the board of elections not
16 later than the seventh day before the election for which the ballot is
17 first requested and which states the address where the voter is regis-
18 tered and the address to which the ballot is to be mailed. The board of
19 elections shall enclose with such ballot a form of application for a
20 special federal ballot.

21 § 16. Section 11-216 of the election law is amended by adding a new
22 subdivision 3 to read as follows:

23 3. (a) Upon the proclamation of a special election by the governor or
24 otherwise pursuant to law, each board of elections shall, not later than
25 three days after the establishment of the date of such special election,
26 transmit by mail, facsimile transmission or electronic mail in accord-
27 ance with the preferred method of transmission designated by the voter
28 pursuant to section 11-203 of this title, a federal write-in absentee
29 ballot to all special federal voters eligible to vote by special federal
30 ballot in such special election.

31 (b) Each board of elections which is served with a court order
32 restraining or enjoining the issuance of ballots in any election, other
33 than a special election, in which any special federal voter is entitled
34 to receive a ballot shall immediately notify the state board of
35 elections of such fact and shall transmit in accordance with the
36 preferred method of transmission designated by the voter, a federal
37 write-in absentee ballot to all special federal voters eligible to vote
38 in such election.

39 (c) A special federal voter who has received a federal write-in absen-
40 tee ballot shall be entitled to receive a certified ballot notwithstand-
41 ing the prior transmission of a federal write-in absentee ballot to such
42 voter pursuant to paragraph (a) or (b) of this subdivision. Such certi-
43 fied special federal ballot shall be sent by the board of elections in
44 accordance with the preferred method of transmission designated by the
45 special federal voter pursuant to section 11-203 of this title, or expe-
46 ditated mail if the special federal voter has not expressed a preference
47 to receive same by facsimile transmission or electronic mail, and his or
48 her request for a special federal ballot was made at least thirty-two
49 days before the election.

50 § 17. The election law is amended by adding two new sections 11-219
51 and 11-220 to read as follows:

52 § 11-219. Special federal voters; prohibiting refusal to accept voter
53 registration and special federal ballot applications, marked special
54 federal ballots, and federal write-in absentee ballots for failure to
55 meet certain requirements. 1. A board of elections shall not refuse to
56 accept and process any otherwise valid voter registration application or

S. 7466

19

A. 10681

1 special federal ballot application (including the official post card
2 form prescribed under section 101 of the Uniformed and Overseas Citizens
3 Absentee Voting Act (42 USC 1973ff) or marked special federal ballot
4 submitted by mail or personally delivered, solely on the basis of the
5 following:
6 (a) Notarization requirements;
7 (b) Restrictions on paper type, including weight and size; or
8 (c) Restrictions on envelope type, including weight and size.
9 2. A board of elections shall not refuse to accept and process any
10 otherwise valid federal write-in absentee ballot submitted in any manner
11 by a special federal voter solely on the basis of the following:
12 (a) Notarization requirements;
13 (b) Restrictions on paper type, including weight and size; or
14 (c) Restrictions on envelope type, including weight and size.
15 3. The state board of elections, in coordination with county boards of
16 elections, shall develop a free access system by which a special federal
17 voter may determine whether the special federal ballot of the special
18 federal voter has been received by the appropriate board of elections.
19 § 11-220. Federal voting; applicability of general provisions. The
20 general provisions of this chapter shall apply to this article, except
21 as they are inconsistent herewith. The provisions of this article shall
22 be liberally construed for the purpose of providing special federal
23 voters the opportunity to vote. The state board of elections shall have
24 power to adopt and promulgate regulations to effectuate the provisions
25 of this article.
26 § 18. This act shall take effect immediately.