

STATE OF NEW YORK

6226

2021-2022 Regular Sessions

IN SENATE

April 15, 2021

Introduced by Sens. KRUEGER, HOYLMAN -- read twice and ordered printed,
and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to the exercise of powers
and duties of the board of elections of the city of New York and its
executive management

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

1 Section 1. The section heading and subdivision 3 of section 3-200 of
2 the election law, the section heading as amended by chapter 373 of the
3 laws of 1978, are amended and a new subdivision 8 is added to read as
4 follows:

5 Boards of elections; creation, qualifications of commissioners,
6 removal; additional qualifications and training in the city of New York.

7 3. In the city of New York the board shall consist of ten commission-
8 ers of election who shall be registered voters in the county for which
9 they are appointed and they shall be appointed by the city council of
10 the city of New York. Not more than two commissioners shall be regis-
11 tered voters of the same county. In addition, no later than December
12 thirty-first, two thousand twenty-one, the state board of elections
13 shall prescribe qualifications for the commissioners of election of the
14 board of elections of the city of New York. Such qualifications shall
15 apply to appointments made beginning thirty days after promulgation of
16 such qualifications and shall thereafter be reviewed by such board at
17 least every two years and updated as necessary. Such qualifications
18 shall be prescribed only after consideration of the skills and knowledge
19 necessary or useful for the exercise of the duties and responsibilities
20 of such commissioners, as well as the ability to recruit a sufficient
21 number of candidates to be commissioners.

22 8. In the city of New York the commissioners of election shall partic-
23 ipate in training conducted by the state board of elections regarding
24 their duties and responsibilities as commissioners of election, includ-

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

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ing training regarding election day operations, to be completed within sixty days after a commissioner commences performance of the duties of the office. Commissioners of election shall participate in such continuing training conducted by the state board of elections as may be required by such board to remain informed of best practices, regulatory and statutory changes relating to their duties and responsibilities, and any other continuing training as is necessary to fulfill the duties of the commissioners of election.

§ 2. The section heading of section 3-212 of the election law is amended and a new subdivision 6 is added to read as follows:

Boards of elections; organization, proceedings, reports and records; budget reporting in the city of New York.

6. If, at any time during the city fiscal year of the city of New York, the director of management and budget of such city determines that the expenditures of the board of elections of the city of New York are reasonably likely to exceed appropriations to such board for personnel services or other than personnel services for a quarter of the fiscal year, based upon a reasonable allotment by such director of such appropriations to such quarter, or for the entire fiscal year, such director shall provide written notice of such determination to the co-executive directors of such board, the mayor of such city, the speaker of the city council of such city, and the public advocate of such city, together with any relevant requests for additional data or information that the director determines to be material to such board's level of expenditures. Within twenty days of receiving such notice, such co-executive directors shall submit to such director, mayor, public advocate and speaker a projection of whether and by what amount it will exceed its appropriations for personnel services and other than personnel services for each quarter and the entire fiscal year, together with a detailed explanation of the needs justifying any such projected excess expenditures. Nothing in this subdivision shall be construed to prevent the director from requiring the furnishing of data and information, and answers to pertinent inquiries, at any time in accordance with section two hundred twenty-five of the New York city charter.

§ 3. Section 3-300 of the election law is amended to read as follows:

§ 3-300. Board employees; appointment. [~~Every~~ 1. Except as provided in subdivision two of this section, every board of elections shall appoint, and at its pleasure remove, clerks, voting machine technicians, custodians and other employees, fix their number, prescribe their duties, fix their titles and rank and establish their salaries within the amounts appropriated therefor by the local legislative body and shall secure in the appointment of employees of the board of elections equal representation of the major political parties. Every commissioner in each board of elections except for commissioners of the board of elections of the city of New York, may approve and at pleasure remove a deputy, establish his title and prescribe his duties. [~~In~~]

2. (a) Notwithstanding any provision of general, special or local law, in the city of New York, [~~the board of elections shall appoint an executive director and a deputy executive director whose duties it~~ co-executive directors who shall each be of separate major political parties and shall be appointed, and may be removed, in a manner set forth in paragraph (b) of this subdivision. The duty of the co-executive directors shall be to supervise the operations of the board of elections [~~under the supervision of such board~~] in accordance with this subdivision. The board of elections of the city of New York shall advise the co-executive directors on matters of policy affecting the administration of elections

1 in the city of New York. Except as expressly provided in this subdivi-
2 sion, such board shall exercise no executive power and perform no execu-
3 tive or administrative functions. Except as expressly provided in this
4 subdivision, such board shall make no individualized decisions concern-
5 ing the employment of any specific person or the registration, pre-re-
6 gistration, enrollment or qualifications of any specific voter or appli-
7 cant. Nothing in this subdivision shall be construed to require or
8 authorize the day-to-day supervision of the co-executive directors by
9 the board. The board may delegate powers and duties conferred upon the
10 board to the co-executive directors, to be exercised consistent with
11 paragraph (d) of this subdivision. One co-executive director shall
12 first be appointed for a term of two years and the other shall first be
13 appointed to a term of four years, with both terms commencing on March
14 first, two thousand twenty-two. Thereafter, each co-executive director
15 shall be appointed for a term of four years in the manner described in
16 paragraph (b) of this subdivision. In the case of a vacancy, a co-exe-
17 cutive director shall be appointed to serve the remainder of the unex-
18 pired term according to the original manner of appointment of the previ-
19 ous co-executive director.

20 (b)(1) For purposes of this paragraph and paragraph (e) of this
21 subdivision, the term "appointing authorities" shall mean the mayor of
22 the city of New York, the speaker of the city council of such city, and
23 the public advocate of such city, who shall act pursuant to this subdivi-
24 vision by concurring action of at least two of such officials, provided
25 that the mayor shall be one of the concurring officials.

26 (2) No earlier than the first day of January and no later than the
27 first day of February in two thousand twenty-two and in every calendar
28 year thereafter during which the four-year term of a co-executive direc-
29 tor is to expire, the commissioners of election for each political party
30 shall file one or more certificates of party recommendation with the
31 appointing authorities, as described in this paragraph.

32 (3) Party recommendations for co-executive director shall be made by
33 the commissioners of election for each political party. Such commission-
34 ers shall act jointly by majority vote to recommend no fewer than three
35 candidates for each position of co-executive director. If at any time a
36 vacancy occurs in the office of co-executive director other than by
37 expiration of term of office, or if a request for additional candidates
38 is made by the appointing authorities pursuant to subparagraph six of
39 this paragraph, party recommendations to fill such vacancy shall be made
40 within thirty days. If fewer than three candidates are recommended in a
41 timely manner by the commissioners of election for the applicable poli-
42 tical party acting jointly by majority vote, then the members of the
43 city council who are members of the applicable political party may, by
44 majority vote of such members, file certificates of party recommendation
45 with the appointing authorities within fifteen days after the expiration
46 of the time for filing by the commissioners of election, so as to
47 increase the total number of candidates to three.

48 (4) In addition to satisfying any other qualifications required for
49 local officers pursuant to the public officers law, candidates recom-
50 ended under this paragraph must be registered voters in the city of New
51 York. Further, no later than December thirty-first, two thousand twen-
52 ty-one, the state board of elections shall prescribe additional quali-
53 fications for the co-executive directors, which shall apply to recommen-
54 dations and appointments made thereafter. Such qualifications shall
55 thereafter be reviewed by such board at least every two years and
56 updated as necessary, and shall be prescribed only after consideration

1 of the skills and knowledge necessary or useful for the exercise of the
2 duties and responsibilities of the co-executive directors, as well as
3 the ability to recruit a sufficient number of candidates to be co-execu-
4 tive directors.

5 (5) The certificates filed shall be in such form and contain such
6 information as shall be prescribed by the state board of elections.

7 (6) The co-executive directors shall be appointed jointly by the
8 appointing authorities in accordance with this subdivision, from among
9 the candidates recommended pursuant to subparagraph three of this para-
10 graph; provided, however, that within thirty days after receipt of one
11 or more certificates of recommendation that include in the aggregate at
12 least three candidates, the appointing authorities may request the
13 submission of not less than two additional candidates, in which event
14 the process set forth in subparagraph two of this paragraph shall be
15 repeated. If the appointing authorities fail to jointly appoint any
16 person recommended for appointment as co-executive director pursuant to
17 this paragraph, within forty-five days after receipt of one or more
18 certificates of recommendation that include at least three candidates,
19 or within thirty days after receipt of one or more certificates that
20 include at least two additional candidates, then the commissioners of
21 election who are members of the political party which filed such certif-
22 icate may appoint one of the recommended candidates by a majority vote
23 of such commissioners. If a sufficient number of candidates, or of
24 additional candidates, are not recommended to the appointing authorities
25 by either the applicable commissioners of election or the applicable
26 members of the city council within the times prescribed by this para-
27 graph, then any holdover status of the incumbent co-executive director
28 shall terminate and the process required by this paragraph shall recom-
29 mence, unless the appointing authorities jointly appoint one of the
30 recommended candidates within fifteen days after the expiration of such
31 prescribed times.

32 (7) Notwithstanding any inconsistent provision of this paragraph, no
33 earlier than the first day of January and no later than the thirty-first
34 day of January in the last year of the term of a co-executive director,
35 the appointing authorities and commissioners of election for the appli-
36 cable political party, acting by a majority vote of such commissioners,
37 may agree to jointly issue a certificate of party recommendation and
38 appointment to reappoint such co-executive director to another term of
39 office. In such event, the process otherwise specified in subparagraphs
40 two, three and six of this paragraph shall not apply.

41 (8) A co-executive director may be removed from office for cause by
42 the appointing authorities. In addition, a co-executive director may be
43 removed without cause by the appointing authorities acting jointly with
44 the commissioners of election for the applicable political party, acting
45 by a majority vote of such commissioners. Any vacancy so resulting
46 shall be filled in the manner prescribed by this paragraph for filling
47 vacancies.

48 (9) The co-executive directors shall be subject to the training
49 requirements set forth in subdivision eight of section 3-200 of this
50 article, unless the state board of elections in its discretion
51 prescribes alternative or additional training for the co-executive
52 directors specific to their duties and responsibilities.

53 (c) The board shall have the power and duty to take the following
54 actions to the extent otherwise consistent with the jurisdiction of the
55 board pursuant to this chapter:

1 (1) make determinations regarding the nomination and designation of
2 candidates for public office and party positions pursuant to article six
3 or any other relevant provision of this chapter;

4 (2) make determinations regarding the form and content of ballots,
5 including but not limited to the determination of candidates and ques-
6 tions to appear on the ballot pursuant to section 4-114 of this chapter
7 and the certification of ballots pursuant to title one of article seven
8 or any other relevant provision of this chapter;

9 (3) adopt resolutions eliminating meetings for local registration
10 pursuant to subdivision six of section 5-202 of this chapter;

11 (4) make determinations concerning challenges to voter registration
12 and applications of voters unlawfully denied the right to register,
13 pursuant to title two of article five of this chapter;

14 (5) make determinations concerning the adoption and use of voting
15 machines or systems pursuant to section 7-200 of this chapter;

16 (6) canvass election results and perform all functions of the board of
17 canvassers in the city of New York, including but not limited to the
18 certification of election results, pursuant to article nine or any other
19 relevant provision of this chapter;

20 (7) take any action authorized by section 3-218 of this article;

21 (8) approve any contract where:

22 (i) such contract was let by a procurement method other than compet-
23 itive sealed bidding where the contract was awarded to the lowest
24 responsible bidder;

25 (ii) such contract provides for technical, consultant or personal
26 services;

27 (iii) the value of the contract exceeds or projects an annual expendi-
28 ture exceeding one million dollars for the fiscal year or where the
29 value of any contracts awarded to a single entity exceeds or is project-
30 ed to exceed one million dollars for the fiscal year; and

31 (9) promulgate regulations, issue orders and make decisions regarding
32 general policies affecting the administration of elections of the city
33 of New York.

34 (d) The co-executive directors shall collectively serve as the chief
35 executive for the board of elections of the city of New York and shall
36 collectively exercise all their powers and duties in a manner not incon-
37 sistent with the policies of the board. The co-executive directors may
38 collectively delegate powers and duties to the other, and may collec-
39 tively delegate powers and duties to employees in furtherance of the
40 purposes of this chapter, including but not limited to the ability to
41 exercise the powers and duties of a co-executive director in the event
42 of a vacancy. Such powers and duties shall include but not be limited
43 to:

44 (1) appointing, and at their pleasure removing, clerks, voting machine
45 technicians, custodians and other employees, fixing their number,
46 prescribing their duties, fixing their titles and rank and establishing
47 their salaries within the amounts appropriated therefor in the expense
48 budget of the city of New York, provided that this subparagraph shall
49 not affect the fixing of a daily rate of compensation pursuant to subdi-
50 vision one of section 3-420 of this article. They shall secure in the
51 appointment of employees equal representation of the major political
52 parties. In exercising the powers conferred by this paragraph with
53 respect to the appointment of employees, the co-executive directors
54 shall, in consultation with the New York city department of citywide
55 administrative services establish written policies and procedures on
56 personnel, including executive staff, other than those paid at a daily

1 rate pursuant to subdivision one of section 3-420 of this article, with-
2 in ninety days of the effective date of this paragraph. Such policies
3 and procedures shall include:

4 (i) specifications setting forth the qualifications for and the nature
5 and scope of the duties and responsibilities of each title, including
6 executive staff, with appointments to be made consistent with such spec-
7 ifications, provided that appointments shall secure equal representation
8 of the major political parties. Such specifications shall in addition to
9 securing such representation, give due weight to seniority, previous
10 trainings and experience, education and professional credentials, and
11 performance ratings where available. This paragraph shall not be
12 construed to require the preparation of administration of competitive
13 examination of eligible list for any title, nor shall it be construed to
14 require the termination of any individual employed by the board of
15 elections of the city of New York prior to the establishment of such
16 specifications;

17 (ii) policies protecting employees from retaliation for disclosing
18 information concerning acts of wrongdoing, misconduct, malfeasance of
19 other inappropriate behavior by an employee or board member;

20 (iii) policies providing for appropriate ongoing training of employ-
21 ees, including those individuals employed prior to the establishment of
22 such policies, with the purpose of ensuring that all employees have the
23 knowledge and experience to fulfill the duties of the position that they
24 hold; and

25 (iv) policies establishing an employee performance evaluation program
26 based upon evidence of work actually performed by employees as compared
27 with pre-established performance standards;

28 (2) exercising all the powers and duties delegated to boards of
29 elections, or specifically to the board of elections of the city of New
30 York, except where such powers and duties are expressly reserved for
31 such board pursuant to this subdivision, in all matters relating to
32 qualification of voters, voter registration and enrollment, cancellation
33 of voter registration, change of voter status and registration records
34 pursuant to article five of this chapter; in all matters relating to
35 creation and alterations of election districts pursuant to article four
36 of this chapter, and in all matters relating to designation of places
37 for registration and polling places pursuant to articles five and eight
38 of this chapter; and

39 (3) exercising the powers and duties delegated to boards of elections,
40 or specifically to the board of elections of the city of New York, in
41 all other matters related to the administration of elections in the city
42 of New York not otherwise specified in this subdivision.

43 (e) Notwithstanding any inconsistent provision of law, in lieu of any
44 otherwise applicable law concerning public conduct of business or
45 rendering of determinations by the co-executive directors, they shall
46 provide information to the board of elections of the city of New York
47 and the public in accordance with this paragraph.

48 (1) At regular meetings of such board conducted in accordance with
49 article seven of the public officers law, the co-executive directors
50 shall report to the commissioners of such board on the discharge of any
51 powers and duties exercised by the co-executive directors under para-
52 graph (d) of this subdivision as well as any additional relevant infor-
53 mation as may be requested by majority vote of such board. At such meet-
54 ings, a reasonable opportunity shall be provided to the public to
55 provide oral comment on the actions and operations of the board and its
56 staff.

1 (2) Not later than January thirty-first of each year, the co-executive
2 directors shall provide to the appointing authorities a report regarding
3 the actual performance of the board of elections of the city of New York
4 as an agency for the previous calendar year, relative to programmatic
5 goals and measures. Such report shall include such additional informa-
6 tion, and be presented in such form, as may be specified in writing by
7 the appointing authority and speaker and communicated to the co-execu-
8 tive directors no later than December first of the previous calendar
9 year, provided that any specification requiring the collection or main-
10 tenance of additional data not already collected or maintained shall be
11 specified at least three months prior to the anticipated commencement of
12 such collection or maintenance.

13 § 4. Subdivision 3 of section 4-136 of the election law, as amended by
14 chapter 155 of the laws of 2010, is amended to read as follows:

15 3. In the city of New York all leased or purchased equipment,
16 supplies, ballots, printing and publications, except newspaper notices
17 and advertisements, to be used or furnished by such board, may be
18 procured for it by the purchasing department or agency of such city as
19 if such board were an agency of such city. Such board shall comply with
20 the rules and regulations of the New York city procurement policy board
21 and applicable state law for all purchase contracts, including but not
22 limited to purchase of goods, services or technology.

23 § 5. Notwithstanding any inconsistent provision of this act, until the
24 first co-executive director of the applicable political party takes
25 office in accordance with section 3-300 of the election law, as amended
26 by section three of this act, the executive director or deputy executive
27 director of the board of elections of the city of New York appointed by
28 such board and representative of such party shall perform the functions
29 assigned to the applicable co-executive director by such section of the
30 election law, as amended by this act, or any other law. Further, while
31 remaining in office, such executive director and deputy executive direc-
32 tor shall be subject to removal and replacement by action of such board,
33 consistent with the provisions of section 3-300 of the election law as
34 such section was in existence prior to its amendment by this act. If a
35 co-executive director has not been appointed by May 1, 2022, the status
36 of the executive director or deputy executive director appointed by such
37 board and representative of the applicable political party shall termi-
38 nate, and the new position of co-executive director shall be deemed in
39 existence and vacant for all purposes after such date.

40 § 6. This act shall take effect on the sixtieth day after it shall
41 have become a law.