

STATE OF NEW YORK

6226--D

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2021-2022 Regular Sessions

IN SENATE

April 15, 2021

Introduced by Sens. KRUEGER, HOYLMAN, MAY, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Elections in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 Assembly, do enact as follows:

1 Section 1. Notwithstanding any inconsistent provision of law to the
2 contrary, on the effective date of this act the term of each commission-
3 er of the New York City Board of Elections, or any vacant position,
4 shall be deemed expired, and each such commissioner or vacant position
5 shall be replaced with new appointments made pursuant to this section.
6 In the city of New York, the county committee of each major political
7 party shall, within sixty days after the effective date of this act,
8 file a certificate of party recommendation with the clerk of the city
9 council of the city of New York recommending one qualified individual
10 for consideration to serve as a commissioner of elections. The city
11 council shall immediately, or as soon as practicable but no more than
12 thirty days thereafter, hold a public hearing on such recommendations,
13 and provided further, no more than thirty days thereafter confirm two
14 qualified individuals for such positions, who shall succeed those indi-
15 viduals whose terms shall have expired pursuant to this section.

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

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§ 2. The section heading and subdivision 3 of section 3-200 of the election law, the section heading as amended by chapter 373 of the laws of 1978, are amended to read as follows:

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

3. In the city of New York the board shall consist of [~~ten~~] two commissioners of election who [~~shall be registered voters in the county for which they are appointed and they~~] shall be appointed by the city council of the city of New York. [~~Not more than two commissioners shall be registered voters of the same county~~] No two commissioners may be residents of the same county or registered voters of the same party.

§ 3. Subdivisions 2 and 4 of section 3-204 of the election law, subdivision 2 as amended by chapter 453 of the laws of 1997, and subdivision 4 as amended by chapter 116 of the laws of 2010, are amended to read as follows:

2. (a) Party recommendations for election commissioner shall be made by the county committee or by such other committee as the rules of the party may provide, by a majority of the votes cast at a meeting of the members of such committee at which a quorum is present. If at any time a vacancy occurs in the office of any election commissioner other than by expiration of term of office, party recommendations to fill such vacancy shall be made by the county committee or by such other committee as the rules of the party may provide, by a majority of the votes cast at a meeting of the members of such committee at which a quorum is present.

(b) Party recommendations for election commissioner in the city of New York or to fill a vacancy in such office shall be made by the county committee or by such other committee as the rules of the party may provide, by a majority of the votes cast at a meeting of the members of such committee at which a quorum is present. Each party shall, within sixty days of a vacancy, file a certificate of party recommendation with the clerk of the city council of the city of New York recommending one individual for consideration to serve as a commissioner of elections. The city council shall immediately, or as soon as practicable but no more than thirty days thereafter, hold a public hearing on such recommendations and provided further, no more than thirty days thereafter confirm an individual for such position.

4. Commissioners of election shall be appointed by the county legislative body, or in the city of New York, by the city council following a public hearing. Provided, however, that if a legislative body shall fail to appoint any person recommended by a party for appointment as a commissioner pursuant to this section, within thirty days after the filing of a certificate of recommendation with such legislative body, then the members of such legislative body who are members of the political party which filed such certificate may appoint such person. And further provided, if there are no members of the legislative body who are members of the political party which filed such certificate, the appointment shall take effect upon the expiration of thirty days from the date that the certificate was filed. If none of the persons named in any of the certificates filed by a party are so appointed within sixty days after the filing of any such certificate, then such party may file another certificate within thirty days after the expiration of any such sixty day period recommending a different person for such appointment. If a party fails to file a certificate within the time prescribed by this section, the members of the legislative body who are members of such party may appoint any eligible person to such office.

§ 4. 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 executive director 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 executive director 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.

§ 5. 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 or her title and prescribe his or her duties. ~~[In]~~

2. There shall be equal representation of the major political parties among those employees of the board of elections charged with the duty of qualifying voters, distributing ballots to voters, or receiving, recording or counting votes at elections.

3. (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 shall be to supervise the operations of the board of elections under the supervision of such board]~~ shall be appointed and may be removed, in a manner set forth in paragraph (b) of this subdivision. It shall be their duty to supervise the operations of the board of elections in accordance with this subdivision. The executive director shall be selected following a nationwide search for qualified and experienced candidates. They shall serve a term of four years.

(b) The board of elections of the city of New York shall advise the executive director on matters of policy affecting the administration of elections in the city of New York. Except as expressly provided in this subdivision, such board shall exercise no executive power and perform no

1 executive or administrative functions. Except as expressly provided in
2 this subdivision, such board shall make no individualized decisions
3 concerning the employment of any specific person or the registration,
4 pre-registration, enrollment or qualifications of any specific voter or
5 applicant. Nothing in this subdivision shall be construed to require or
6 authorize the day-to-day supervision of the executive director by the
7 board. The board may delegate powers and duties conferred upon the board
8 to the executive director, to be exercised consistent with paragraph (e)
9 of this subdivision. In the case of a vacancy, an executive director
10 shall be appointed to serve the remainder of the unexpired term accord-
11 ing to the original manner of appointment of the previous executive
12 director.

13 (c)(1) For purposes of this paragraph and paragraph (f) of this
14 subdivision, the term "appointing authorities" shall mean the mayor of
15 the city of New York, the speaker of the city council of such city, and
16 the public advocate of such city, who shall act pursuant to this subdi-
17 vision by concurring action of at least two of such officials, provided
18 that the mayor shall be one of the concurring officials.

19 (2) No earlier than the first day of January and no later than the
20 first day of February in two thousand twenty-three and in every calendar
21 year thereafter during which the four-year term of the executive direc-
22 tor is to expire, the commissioners of election for each political party
23 shall file one or more certificates of party recommendation with the
24 appointing authorities, as described in this paragraph.

25 (3) Party recommendations for executive director shall be made by the
26 commissioner of election for each political party. Such commissioner
27 shall recommend no fewer than three candidates for the position of exec-
28 utive director. If at any time a vacancy occurs in the office of execu-
29 tive director other than by expiration of term of office, or if a
30 request for additional candidates is made by the appointing authorities
31 pursuant to subparagraph four of this paragraph, party recommendations
32 to fill such vacancy shall be made within thirty days. If fewer than
33 three candidates are recommended in a timely manner by the commissioner
34 of election for the applicable political party then the members of the
35 city council who are members of the applicable political party may, by
36 majority vote of such members, file certificates of party recommendation
37 with the appointing authorities within fifteen days after the expiration
38 of the time for filing by the commissioners of election, so as to
39 increase the total number of candidates to three. If the members of the
40 city council from one political party do not recommend any candidates,
41 the appointing authorities will choose from the list of candidates
42 submitted.

43 (4) Candidates considered for executive director must satisfy all
44 qualifications required for local officers pursuant to the public offi-
45 cers law. Further, no later than December thirty-first, two thousand
46 twenty-two, the state board of elections shall prescribe additional
47 qualifications for the position of executive director, which shall apply
48 to recommendations and appointments made thereafter. Such qualifications
49 shall thereafter be reviewed by such board at least every two years
50 and updated as necessary, and shall be prescribed only after consid-
51 eration of the skills and knowledge necessary or useful for the exercise
52 of the duties and responsibilities of the executive director, as well
53 as the ability to recruit a sufficient number of candidates to be execu-
54 tive director.

55 (5) The executive director shall be appointed jointly by the
56 appointing authorities in accordance with this subdivision, from among

1 the candidates recommended pursuant to subparagraph three of this para-
2 graph.

3 (6) Notwithstanding any inconsistent provision of this paragraph, no
4 earlier than the first day of January and no later than the thirty-first
5 day of January in the last year of the term of the executive director,
6 the appointing authorities and commissioners of election, may agree to
7 issue a certificate of party recommendation and appointment to reappoint
8 such executive director to another term of office. In such event, the
9 process otherwise specified in subparagraphs two, three and four of this
10 paragraph shall not apply.

11 (7) An executive director may be removed from office for cause by
12 the appointing authorities. In addition, an executive director may be
13 removed without cause by the appointing authorities acting jointly with
14 the commissioners of election. Any vacancy so resulting shall be
15 filled in the manner prescribed by this paragraph for filling vacancies.

16 (d) The board shall have the power and duty to take the following
17 actions to the extent otherwise consistent with the jurisdiction of the
18 board pursuant to this chapter:

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

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

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

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

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

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

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

39 (8) approve any contract where:

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

43 (ii) such contract provides for technical, consultant or personal
44 services;

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

49 (9) promulgate regulations, issue orders and make decisions regarding
50 general policies affecting the administration of elections of the city
51 of New York.

52 (e) The executive director shall serve as the chief executive for the
53 board of elections of the city of New York and shall exercise all their
54 powers and duties in a manner not inconsistent with the policies of a
55 board. The executive director may delegate powers and duties to a deputy
56 director and may delegate powers and duties to employees in furtherance

1 of the purposes of this chapter, including but not limited to the abili-
2 ty to exercise the powers and duties of the executive director in the
3 event of a vacancy. Such powers and duties shall include but not be
4 limited to:

5 (1) appointing, and at their pleasure removing, a deputy director,
6 clerks, voting machine technicians, custodians and other employees,
7 fixing their number, prescribing their duties, fixing their titles and
8 rank and establishing their salaries within the amounts appropriated
9 therefor in the expense budget of the city of New York, provided that
10 this subparagraph shall not affect the fixing of a daily rate of compen-
11 sation pursuant to subdivision one of section 3-420 of this article. In
12 exercising the powers conferred by this paragraph with respect to the
13 appointment of employees, the executive director shall, in consultation
14 with the New York city department of citywide administrative services
15 establish written policies and procedures on personnel, including execu-
16 tive staff, other than those paid at a daily rate pursuant to subdivi-
17 sion one of section 3-420 of this article, within ninety days of the
18 effective date of this paragraph. Such policies and procedures shall
19 include:

20 (i) specifications setting forth the qualifications for and the nature
21 and scope of the duties and responsibilities of each title, including
22 executive staff, with appointments to be made consistent with such spec-
23 ifications, provided that appointments shall secure equal representation
24 of the major political parties. Such specifications shall in addition to
25 securing such representation, give due weight to seniority, previous
26 trainings and experience, previous work for the board of elections or in
27 elections administration or in voting rights, education and professional
28 credentials, and performance ratings where available. This paragraph
29 shall not be construed to require the preparation of administration of
30 competitive examination of eligible list for any title, nor shall it be
31 construed to require the termination of any individual employed by the
32 board of elections of the city of New York prior to the establishment of
33 such specifications;

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

37 (iii) policies providing for appropriate ongoing training of employ-
38 ees, including those individuals employed prior to the establishment of
39 such policies, with the purpose of ensuring that all employees have the
40 knowledge and experience to fulfill the duties of the position that they
41 hold;

42 (iv) policies to require the posting of all vacant positions fourteen
43 days before interviews commence. All postings shall be on a publicly
44 accessible website, in the city record, or on an open data portal. Noth-
45 ing shall prevent the posting of vacancies on all three; and

46 (v) policies establishing an employee performance evaluation program
47 based upon evidence of work actually performed by employees as compared
48 with pre-established performance standards;

49 (2) exercising all the powers and duties delegated to boards of
50 elections, or specifically to the board of elections of the city of New
51 York, except where such powers and duties are expressly reserved for
52 such board pursuant to this subdivision, in all matters relating to
53 qualification of voters, voter registration and enrollment, cancellation
54 of voter registration, change of voter status and registration records
55 pursuant to article five of this chapter; in all matters relating to
56 creation and alterations of election districts pursuant to article four

1 of this chapter, and in all matters relating to designation of places
2 for registration and polling places pursuant to articles five and eight
3 of this chapter; and

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

8 (f) Notwithstanding any inconsistent provision of law, in lieu of any
9 otherwise applicable law concerning public conduct of business or
10 rendering of determinations by the executive director, they shall
11 provide information to the board of elections of the city of New York
12 and the public in accordance with this paragraph.

13 (1) At regular meetings of such board conducted in accordance with
14 article seven of the public officers law, the executive director shall
15 report to the commissioners of such board on the discharge of any powers
16 and duties exercised by the executive director under paragraph (e) of
17 this subdivision as well as any additional relevant information as may
18 be requested by majority vote of such board. At such meetings, a reason-
19 able opportunity shall be provided to the public to provide oral comment
20 on the actions and operations of the board and its staff.

21 (2) Not later than January thirty-first of each year, the executive
22 director shall provide to the appointing authorities a report regarding
23 the actual performance of the board of elections of the city of New York
24 as an agency for the previous calendar year, relative to programmatic
25 goals and measures. Such report shall include such additional informa-
26 tion, and be presented in such form, as may be specified in writing by
27 the city council and speaker and communicated to the executive director
28 no later than December first of the previous calendar year, provided
29 that any specification requiring the collection or maintenance of addi-
30 tional data not already collected or maintained shall be specified at
31 least three months prior to the anticipated commencement of such
32 collection or maintenance. Further, at least once annually, the execu-
33 tive director and elections commissioners shall present on the findings
34 of the report at a public hearing in front of the city council and
35 answer any questions or provide any additional follow up information
36 asked for by the council.

37 (3) For each election, the board shall track and report key voting and
38 election administration data, including: turnout by election district;
39 average wait times by poll site and election district; call volume by
40 poll site and types of complaints received; the type and frequency of
41 use of different voting methods, including absentee, early, and election
42 day voting, affidavit ballot usage rates; rates of and reasons for
43 ballot rejections; and, language interpreter staffing by language per
44 poll site.

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

47 3. In the city of New York all leased or purchased equipment,
48 supplies, ballots, printing and publications, except newspaper notices
49 and advertisements, to be used or furnished by such board, may be
50 procured for it by the purchasing department or agency of such city as
51 if such board were an agency of such city. Such board shall comply with
52 the rules and regulations of the New York city procurement policy board
53 and applicable state law for all purchase contracts, including but not
54 limited to purchase of goods, services or technology.

55 § 7. Notwithstanding any inconsistent provision of law, the current
56 board of elections commissioners for the city of New York shall perform

1 the functions assigned to the commissioners until the expiration of
2 their term.

3 § 8. Notwithstanding any inconsistent provision of this act, until the
4 executive director takes office in accordance with section 3-300 of the
5 election law, as amended by section five of this act, the executive
6 director or deputy executive director of the board of elections of the
7 city of New York appointed by such board and representative of such
8 party shall perform the functions assigned to the applicable executive
9 director by such section of the election law, as amended by this act, or
10 any other law. Further, while remaining in office, such executive
11 director and deputy executive director shall be subject to removal and
12 replacement by action of such board, consistent with the provisions of
13 section 3-300 of the election law as such section was in existence prior
14 to its amendment by this act. If an executive director has not been
15 appointed by May 1, 2023, the status of the executive director or deputy
16 executive director appointed by such board and representative of the
17 applicable political party shall terminate, and the new position of
18 executive director shall be deemed in existence and vacant for all
19 purposes after such date.

20 § 9. Severability. If any provision of this act is held invalid or
21 ineffective in whole or in part or inapplicable to any person or situ-
22 ation, such invalidity or holding shall not affect, impair or invalidate
23 other provisions or applications of this act that can be given effect
24 without the invalid provision or application, and all other provisions
25 thereof shall nevertheless be separately and fully effective, and to
26 this end the provisions of this act are declared to be severable.

27 § 10. This act shall take effect immediately; provided, however, that
28 sections one, three, four, and five of this act shall take effect Janu-
29 ary 1, 2023; and provided further, however, that sections six, seven and
30 eight of this act shall take effect on the sixtieth day after it shall
31 have become a law.