S T A T E O F N E W Y O R K

11640

I N A S S E M B L Y

July 6, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Kavanagh) -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to providing for a state board of elections enforcement unit and counsel

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 3 of section 3-100 of the election law, as amended by chapter 220 of the laws of 2005, is amended to read as follows:

3. The commissioners of the state board of elections shall have no other public employment. The commissioners shall receive an annual salary of twenty-five thousand dollars, within the amounts made available therefor by appropriation. The board shall, for the purposes of sections seventy-three and seventy-four of the public officers law, be a "state agency", and such commissioners shall be "officers" of the state board of elections for the purposes of such sections. Within the amounts made available by appropriation therefor, the state board of elections shall appoint two co-executive directors, [counsel] AN ENFORCEMENT COUNSEL, A DEPUTY ENFORCEMENT COUNSEL, WHO SHALL BE A MEMBER OF A DIFFERENT MAJOR POLITICAL PARTY THAN THE ENFORCEMENT COUNSEL, A SPECIAL COUNSEL, A DEPUTY SPECIAL COUNSEL, WHO SHALL BE A MEMBER OF A DIFFERENT MAJOR POLITICAL PARTY THAN THE SPECIAL COUNSEL, A DIRECTOR OF ELECTION OPERATIONS, A DEPUTY DIRECTOR OF ELECTION OPERATIONS, WHO SHALL BE A MEMBER OF A DIFFERENT MAJOR POLITICAL PARTY THAN THE DIRECTOR OF ELECTION OPERATIONS, A DIRECTOR OF PUBLIC INFORMATION, A DEPUTY DIRECTOR OF PUBLIC INFORMATION, WHO SHALL BE A MEMBER OF A DIFFERENT MAJOR POLITICAL PARTY THAN THE DIRECTOR OF PUBLIC INFORMATION and such other staff members as are necessary in the exercise of its functions, and may fix their compensation. [Anytime after the effective date of the chapter of the laws of two thousand five which amended this subdivision, the] THE commissioners or, in the case of a vacancy on the board, the commissioner of each of the major political parties shall appoint one co-executive director. Each co-executive director shall serve a term of four years. THE ENFORCEMENT COUNSEL AND THE SPECIAL COUNSEL SHALL EACH SERVE A TERM OF FOUR YEARS AND MAY ONLY BE REMOVED FOR CAUSE. ANY TIME AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND TEN AMENDING THIS SUBDIVISION, THE COMMISSIONERS, OR IN THE CASE OF A VACANCY ON THE

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

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BOARD, THE COMMISSIONER, OF EACH OF THE SAME MAJOR POLITICAL PARTY AS THE INCUMBENT ENFORCEMENT COUNSEL, DEPUTY ENFORCEMENT COUNSEL, SPECIAL COUNSEL, DEPUTY SPECIAL COUNSEL, DIRECTOR OF ELECTION OPERATIONS, DEPUTY DIRECTOR OF ELECTION OPERATIONS, DIRECTOR OF PUBLIC INFORMATION AND DEPUTY DIRECTOR OF PUBLIC INFORMATION, SHALL APPOINT SUCH COUNSELS, DIRECTORS AND DEPUTIES. Any vacancy in the office of co-executive director, ENFORCEMENT COUNSEL, DEPUTY ENFORCEMENT COUNSEL, SPECIAL COUNSEL, DEPUTY SPECIAL COUNSEL, DIRECTOR OF ELECTION OPERATIONS, DEPUTY DIRECTOR OF ELECTION OPERATIONS, DIRECTOR OF PUBLIC INFORMATION AND DEPUTY DIRECTOR OF PUBLIC INFORMATION, shall be filled by the commissioners or, in the case of a vacancy on the board, the commissioner of the same major political party as the vacating incumbent for the remaining period of the term of such vacating incumbent, FOR THE REMAINING PERIOD OF THE TERM OF SUCH VACATING INCUMBENT.

S 2. Subdivision 3, paragraph (c) of subdivision 9-A and subdivision 17 of section 3-102 of the election law, subdivisions 3 and 17 as amended by chapter 9 of the laws of 1978, paragraph (c) of subdivision 9-A as added by chapter 430 of the laws of 1997 and subdivision 17 as renumbered by chapter 23 of the laws of 2005, are amended to read as follows:

3. conduct any investigation necessary to carry out the provisions of this chapter, PROVIDED, HOWEVER, THAT THE STATE BOARD OF ELECTIONS ENFORCEMENT COUNSEL, ESTABLISHED PURSUANT TO SECTION 3-104 OF THIS ARTICLE, SHALL CONDUCT ANY INVESTIGATION NECESSARY TO ENFORCE THE PROVISIONS OF ARTICLE FOURTEEN OF THIS CHAPTER ON BEHALF OF THE BOARD OF ELECTIONS;

(c) establish [a] AN EDUCATIONAL AND training program on ALL REPORTING REQUIREMENTS INCLUDING BUT NOT LIMITED TO the electronic reporting process and make it EASILY AND READILY available to any such candidate or committee AND NOTIFY ANY SUCH CANDIDATE OR COMMITTEE OF THE AVAILABILITY OF THE MOST RECENT CAMPAIGN FINANCE HANDBOOK;

17. HEAR AND CONSIDER THE RECOMMENDATIONS OF THE STATE BOARD OF ELECTIONS ENFORCEMENT COUNSEL REGARDING THE ENFORCEMENT OF VIOLATIONS OF ARTICLE FOURTEEN OF THIS CHAPTER;

18. perform such other acts as may be necessary to carry out the purposes of this chapter.

S 3. Section 3-104 of the election law, subdivisions 1, 3, 4 and 5 as redesignated and subdivision 2 as amended by chapter 9 of the laws of 1978, is amended to read as follows:

S 3-104. State board of elections AND THE STATE BOARD OF ELECTIONS ENFORCEMENT COUNSEL; enforcement powers. 1. (A) THERE SHALL BE A UNIT KNOWN AS THE STATE BOARD OF ELECTIONS ENFORCEMENT UNIT ESTABLISHED WITHIN THE STATE BOARD OF ELECTIONS. THE HEAD OF SUCH UNIT SHALL BE THE ENFORCEMENT COUNSEL.

(B) The state board of elections shall have jurisdiction of, and be responsible for, the execution and enforcement of the provisions of [article fourteen of this chapter and other] statutes governing campaigns, elections and related procedures; PROVIDED HOWEVER THAT THE ENFORCEMENT COUNSEL SHALL HAVE SOLE AUTHORITY WITHIN THE STATE BOARD OF ELECTIONS TO INVESTIGATE ON HIS OR HER OWN INITIATIVE OR UPON COMPLAINT, ALLEGED VIOLATIONS OF ARTICLE FOURTEEN OF THIS CHAPTER AND ALL COMPLAINTS ALLEGING ARTICLE FOURTEEN VIOLATIONS SHALL BE FORWARDED TO THE ENFORCEMENT UNIT. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DIMINISH OR ALTER THE STATE BOARD OF ELECTIONS' JURISDICTION PURSUANT TO THIS CHAPTER.

2. Whenever [the state board of elections or other] A LOCAL board of elections shall determine, on its own initiative or upon complaint, or

otherwise, that there is substantial reason to believe a violation of this chapter or any code or regulation promulgated thereunder has [occurred] BEEN COMMITTED BY A CANDIDATE OR POLITICAL COMMITTEE THAT FILES STATEMENTS OR IS REQUIRED TO DO SO PURSUANT TO ARTICLE FOURTEEN OF THIS CHAPTER SOLELY WITH SUCH LOCAL BOARD, it shall expeditiously make an investigation which shall also include investigation of reports and statements made or failed to be made by the complainant and any political committee supporting his candidacy if the complainant is a candidate or, if the complaint was made by an officer or member of a political committee, of reports and statements made or failed to be made by such political committee and any candidates supported by it. [The state board of elections, in lieu of making such an investigation, may direct the appropriate board of elections to make an investigation.] The state board of elections may request, and shall receive, the assistance of the state police in any investigation it shall conduct.

3. [If, after an investigation, the state or other board of elections finds reasonable cause to believe that a violation warranting criminal prosecution has taken place, it shall forthwith refer the matter to the district attorney of the appropriate county and shall make available to such district attorney all relevant papers, documents, testimony and findings relevant to its investigation.

4. The state or other board of elections may, where appropriate, commence a judicial proceeding with respect to the filing or failure to file any statement of receipts, expenditures, or contributions, under the provisions of this chapter, and the state board of elections may direct the appropriate other board of elections to commence such proceeding.

5.] IF THE ENFORCEMENT COUNSEL DETERMINES THAT A VIOLATION OF SUBDIVISION ONE OF SECTION 14-126 OF THIS CHAPTER HAS OCCURRED WHICH COULD WARRANT A CIVIL PENALTY, THE ENFORCEMENT COUNSEL SHALL, UPON HIS OR HER DISCRETION, SEEK TO RESOLVE THE MATTER EXTRA-JUDICIALLY OR COMMENCE A SPECIAL PROCEEDING IN THE SUPREME COURT PURSUANT TO SECTION 16-114 OF THIS CHAPTER.

4. UPON RECEIPT OF A COMPLAINT AND SUPPORTING INFORMATION OR AN INTERNAL REFERRAL FROM THE ENFORCEMENT UNIT ALLEGING ANY OTHER VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER, THE ENFORCEMENT COUNSEL SHALL ANALYZE THE FACTS AND THE LAW RELEVANT TO SUCH COMPLAINT OR REFERRAL TO DETERMINE IF AN INVESTIGATION SHOULD BE UNDERTAKEN. THE ENFORCEMENT COUNSEL SHALL, IF NECESSARY, REQUEST ADDITIONAL INFORMATION FROM THE COMPLAINANT TO ASSIST SUCH COUNSEL IN MAKING THIS DETERMINATION. SUCH ANALYSIS SHALL INCLUDE THE FOLLOWING: FIRST, WHETHER THE ALLEGATIONS, IF TRUE, WOULD CONSTITUTE A VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER AND, SECOND, WHETHER THE ALLEGATIONS ARE SUPPORTED BY CREDIBLE EVIDENCE.

5. IF THE ENFORCEMENT COUNSEL DETERMINES THAT THE ALLEGATIONS CONTAINED IN A COMPLAINT, IF TRUE, WOULD NOT CONSTITUTE A VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER OR THAT THE ALLEGATIONS ARE NOT SUPPORTED BY CREDIBLE EVIDENCE, HE OR SHE SHALL: (A) NOTIFY THE DEPUTY ENFORCEMENT COUNSEL OF SUCH DETERMINATION AND (B) PUBLICLY NOTIFY THE STATE BOARD OF ELECTIONS OF SUCH DETERMINATION. IF THE STATE BOARD OF ELECTIONS PUBLICLY DETERMINES, AS PROVIDED IN THIS TITLE, THAT THE ALLEGATIONS, IF TRUE, WOULD CONSTITUTE A VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER AND THAT THE ALLEGATIONS APPEAR TO BE SUPPORTED BY CREDIBLE EVIDENCE, IT SHALL DIRECT THAT THE ENFORCEMENT COUNSEL CONDUCT AN INVESTIGATION. LACKING SUCH A DETERMINATION, THE ENFORCEMENT COUNSEL SHALL ISSUE A LETTER TO THE COMPLAINANT DISMISSING THE COMPLAINT.

6. IF THE ENFORCEMENT COUNSEL DETERMINES THAT THE ALLEGATIONS, IF TRUE, WOULD CONSTITUTE A VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER AND THAT THE ALLEGATIONS APPEAR TO BE SUPPORTED BY CREDIBLE EVIDENCE, HE OR SHE SHALL: (A) NOTIFY THE DEPUTY ENFORCEMENT COUNSEL OF (I) HIS OR HER INTENT TO RESOLVE THE MATTER EXTRA-JUDICIALLY DUE TO THE DE MINIMUS NATURE OF THE VIOLATION; OR (II) HIS OR HER INTENT TO COMMENCE AN INVESTIGATION, AND (B) PUBLICLY NOTIFY THE STATE BOARD OF ELECTIONS OF SUCH INTENT NO LATER THAN THE BOARD'S NEXT REGULARLY SCHEDULED MEETING. NOTIFICATION SHALL SUMMARIZE THE RELEVANT FACTS AND THE APPLICABLE LAW AND SHALL, TO THE EXTENT POSSIBLE, PROTECT FROM PUBLIC DISCLOSURE THE IDENTITY OF THE COMPLAINANT AND THE INDIVIDUAL SUBJECT TO THE COMPLAINT. THE DEPUTY ENFORCEMENT COUNSEL SHALL HAVE THE OPPORTUNITY TO REVIEW THE ENTIRE FILE OF ANY PRELIMINARY INVESTIGATION CONDUCTED BY THE ENFORCEMENT COUNSEL A MINIMUM OF TEN DAYS PRIOR TO SAID REGULARLY SCHEDULED MEETING OF THE BOARD AND TO SUBMIT A PUBLIC, WRITTEN CONCURRENCE WITH OR DISSENT FROM THE ENFORCEMENT COUNSEL'S PROPOSAL.

7. IF, UPON CONSIDERING THE ENFORCEMENT COUNSEL'S NOTICE OF INTENT TO COMMENCE AN INVESTIGATION AND THE DEPUTY ENFORCEMENT COUNSEL'S RECOMMENDATION, THE STATE BOARD OF ELECTIONS BELIEVES THAT THE ALLEGATIONS, IF TRUE, WOULD NOT CONSTITUTE A VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER, OR THE ALLEGATIONS ARE NOT SUPPORTED BY CREDIBLE EVIDENCE OR, THAT ON BALANCE, THE EQUITIES FAVOR A DISMISSAL OF THE COMPLAINT, THE BOARD SHALL PUBLICLY DIRECT THAT AN INVESTIGATION NOT BE UNDERTAKEN NO LATER THAN SIXTY DAYS AFTER THE RECEIPT OF NOTIFICATION FROM THE ENFORCEMENT COUNSEL OF HIS OR HER INTENT TO COMMENCE AN INVESTIGATION. IN DETERMINING WHETHER THE EQUITIES FAVOR A DISMISSAL OF THE COMPLAINT, THE STATE BOARD OF ELECTIONS SHALL CONSIDER THE FOLLOWING FACTORS: (A) WHETHER THE COMPLAINT ALLEGES A DE MINIMUS VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER; (B) WHETHER THE SUBJECT OF THE COMPLAINT HAS MADE A GOOD FAITH EFFORT TO CORRECT THE VIOLATION; AND (C) WHETHER THE SUBJECT OF THE COMPLAINT HAS A HISTORY OF SIMILAR VIOLATIONS. DETERMINATIONS OF THE STATE BOARD OF ELECTIONS TO DISMISS A COMPLAINT AND NOT PROCEED WITH A FORMAL INVESTIGATION SHALL BE VOTED UPON AS PROVIDED IN SUBDIVISION FOUR OF SECTION 3-100 OF THIS TITLE AT AN OPEN MEETING PURSUANT TO ARTICLE SEVEN OF THE PUBLIC OFFICERS LAW, AND SHALL BE MADE ON A FAIR AND EQUITABLE BASIS AND WITHOUT REGARD TO THE STATUS OF THE SUBJECT OF THE COMPLAINT.

8. ABSENT A TIMELY DETERMINATION BY THE STATE BOARD OF ELECTIONS THAT AN INVESTIGATION SHALL NOT BE UNDERTAKEN, THE ENFORCEMENT COUNSEL SHALL COMMENCE AN INVESTIGATION ON A TIMELY BASIS. IF THE ENFORCEMENT COUNSEL DETERMINES THAT ADDITIONAL INVESTIGATIVE POWERS, AS PROVIDED FOR IN SUBDIVISIONS FOUR, FIVE AND SIX OF SECTION 3-102 OF THIS TITLE, ARE NEEDED TO COMPLETE THE COUNSEL'S INVESTIGATION, HE OR SHE SHALL REQUEST SUCH ADDITIONAL POWERS FROM THE STATE BOARD OF ELECTIONS. SUCH POWERS SHALL BE GRANTED BY THE BOARD IN PUBLIC ONLY WHEN THE BOARD FINDS THAT FURTHER INVESTIGATION IS WARRANTED AND JUSTIFIED.

9. AT THE CONCLUSION OF ITS INVESTIGATION, THE ENFORCEMENT COUNSEL SHALL PROVIDE THE DEPUTY ENFORCEMENT COUNSEL AND THE STATE BOARD OF ELECTIONS WITH A WRITTEN RECOMMENDATION AS TO: (A) WHETHER SUBSTANTIAL REASON EXISTS TO BELIEVE A VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER HAS OCCURRED AND, IF SO, THE NATURE OF THE VIOLATION AND ANY APPLICABLE PENALTY, AS DEFINED IN SECTION 14-126 OF THIS CHAPTER, BASED ON THE NATURE OF THE VIOLATION; (B) WHETHER THE MATTER SHOULD BE RESOLVED EXTRA-JUDICIALLY; (C) WHETHER A SPECIAL PROCEEDING SHOULD BE COMMENCED IN THE SUPREME COURT TO RECOVER A CIVIL PENALTY; AND (D) WHETHER A REFERRAL SHOULD BE MADE TO A DISTRICT ATTORNEY PURSUANT TO SUBDIVISION

ELEVEN OF THIS SECTION BECAUSE REASONABLE CAUSE EXISTS TO BELIEVE A VIOLATION WARRANTING CRIMINAL PROSECUTION HAS TAKEN PLACE. THE DEPUTY ENFORCEMENT COUNSEL SHALL HAVE THE OPPORTUNITY TO REVIEW THE ENTIRE FILE OF ANY INVESTIGATION CONDUCTED BY THE ENFORCEMENT COUNSEL A MINIMUM OF TEN DAYS PRIOR TO SAID REGULARLY SCHEDULED MEETING OF THE BOARD AND TO SUBMIT A PUBLIC, WRITTEN CONCURRENCE WITH OR DISSENT FROM THE ENFORCEMENT COUNSEL'S RECOMMENDATION.

10. THE STATE BOARD OF ELECTIONS SHALL ACCEPT, MODIFY OR REJECT THE ENFORCEMENT COUNSEL'S RECOMMENDATION NO LATER THAN SIXTY DAYS AFTER RECEIPT OF SUCH RECOMMENDATION. IN MAKING ITS DETERMINATION, THE BOARD SHALL AGAIN CONSIDER: (A) WHETHER THE COMPLAINT ALLEGES A DE MINIMUS VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER; (B) WHETHER THE SUBJECT OF THE COMPLAINT HAS MADE A GOOD FAITH EFFORT TO CORRECT THE VIOLATION; AND (C) WHETHER THE SUBJECT OF THE COMPLAINT HAS A HISTORY OF SIMILAR VIOLATIONS. ALL SUCH DETERMINATIONS SHALL BE VOTED UPON AS PROVIDED IN SUBDIVISION FOUR OF SECTION 3-100 OF THIS TITLE AT AN OPEN MEETING PURSUANT TO ARTICLE SEVEN OF THE PUBLIC OFFICERS LAW, AND SHALL BE MADE ON A FAIR AND EQUITABLE BASIS, WITHOUT REGARD TO THE STATUS OF THE SUBJECT OF THE COMPLAINT.

11. (A) IF THE STATE BOARD OF ELECTIONS DETERMINES, AS PROVIDED IN SUBDIVISION TEN OF THIS SECTION, THAT SUBSTANTIAL REASON EXISTS TO BELIEVE THAT A PERSON, ACTING AS OR ON BEHALF OF A CANDIDATE OR POLITICAL COMMITTEE UNDER CIRCUMSTANCES EVINCING AN INTENT TO VIOLATE SUCH LAW, HAS UNLAWFULLY ACCEPTED A CONTRIBUTION IN EXCESS OF A CONTRIBUTION LIMITATION ESTABLISHED IN ARTICLE FOURTEEN OF THIS CHAPTER, WHICH COULD WARRANT A CIVIL PENALTY AS PROVIDED FOR IN SUBDIVISION THREE OF SECTION 14-126 OF THIS CHAPTER, THE BOARD SHALL DIRECT THE COMMENCEMENT OF A SPECIAL PROCEEDING IN THE SUPREME COURT.

(B) IF THE STATE BOARD OF ELECTIONS DETERMINES, AS PROVIDED IN SUBDIVISION TEN OF THIS SECTION THAT REASONABLE CAUSE EXISTS TO BELIEVE A VIOLATION WARRANTING CRIMINAL PROSECUTION HAS TAKEN PLACE, THE BOARD SHALL REFER THE MATTER TO A DISTRICT ATTORNEY AND SHALL MAKE AVAILABLE TO SUCH DISTRICT ATTORNEY ALL PAPERS, DOCUMENTS, TESTIMONY AND FINDINGS RELEVANT TO ITS INVESTIGATION.

12. UPON NOTIFICATION THAT A SPECIAL PROCEEDING HAS BEEN COMMENCED BY A PARTY OTHER THAN THE STATE BOARD OF ELECTIONS, PURSUANT TO SECTION 16-114 OF THIS CHAPTER, THE STATE BOARD OF ELECTIONS SHALL DIRECT THE ENFORCEMENT COUNSEL TO INVESTIGATE THE ALLEGED VIOLATIONS UNLESS OTHERWISE DIRECTED BY THE COURT.

13. THE ENFORCEMENT COUNSEL SHALL PREPARE A REPORT, TO BE INCLUDED IN THE ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE, SUMMARIZING THE ACTIVITIES OF THE UNIT DURING THE PREVIOUS YEAR. SUCH REPORT SHALL INCLUDE: (A) THE NUMBER OF COMPLAINTS RECEIVED; (B) THE NUMBER OF COMPLAINTS THAT WERE FOUND TO NEED INVESTIGATION AND THE NATURE OF EACH COMPLAINT; AND (C) THE NUMBER OF MATTERS THAT HAVE BEEN RESOLVED. THE REPORT SHALL NOT CONTAIN ANY INFORMATION FOR WHICH DISCLOSURE IS NOT PERMITTED.

14. The state board of elections may promulgate rules and regulations consistent with law to effectuate the provisions of this section.

S 4. The state of New York shall appropriate during each fiscal year to the New York state board of elections enforcement unit, not less than thirty-five percent of the appropriation available from the general fund for the state board of elections to pay for the expenses of such enforcement unit.

S 5. This act shall take effect immediately.