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I N  S E N A T E

March 7, 2014

Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the election law, in relation to the state board of elections chief enforcement counsel; and to amend the criminal procedure law, in relation to the chief enforcement counsel of the state board of elections

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

Section 1. Subdivision 1 of section 14-126 of the election law, as amended by section 3 of part E of chapter 399 of the laws of 2011, is amended to read as follows:

1. Any person who fails to file a statement required to be filed by this article shall be subject to a civil penalty, not in excess of one thousand dollars, to be recoverable in a special proceeding or civil action to be brought by the state board of elections [or other board of elections] CHIEF ENFORCEMENT COUNSEL PURSUANT TO SECTION 16-114 OF THIS CHAPTER. Any person who, three or more times within a given election cycle for such term of office, fails to file a statement or statements required to be filed by this article, shall be subject to a civil penalty, not in excess of ten thousand dollars, to be recoverable as provided for in this subdivision.

S 2. 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, 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

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

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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 GOVERNOR SHALL APPOINT A CHIEF ENFORCEMENT COUNSEL TO HEAD THE DIVISION OF ELECTION LAW ENFORCEMENT WHO SHALL HAVE A FIXED TERM OF FOUR YEARS, WITH THE ADVICE AND CONSENT OF THE SENATE, WITH SUCH CONSENT DETERMINED BY A VOTE OF THE SENATE WITHIN THIRTY DAYS OF THE NOMINATION BY THE GOVERNOR, AND SHALL BE REMOVED ONLY FOR GOOD CAUSE AND SOLELY BY THE GOVERNOR. THE CHIEF ENFORCEMENT COUNSEL SHALL HAVE SOLE AUTHORITY OVER PERSONNEL DECISIONS WITHIN THE ENFORCEMENT UNIT. ALL HIRING DECISIONS MADE BY THE CHIEF ENFORCEMENT COUNSEL SHALL BE MADE WITHOUT REGARD TO POLITICAL PARTY AFFILIATION. ANY VACANCY IN THE OFFICE OF CO-EXECUTIVE DIRECTOR 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.

S 3. Subdivision 3 and paragraph (c) of subdivision 9-A of section 3-102 of the election law, subdivision 3 as amended by chapter 9 of the laws of 1978 and paragraph (c) of subdivision 9-A as added by chapter 430 of the laws of 1997, 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 CHIEF ENFORCEMENT COUNSEL, ESTABLISHED PURSUANT TO SECTION 3-100 OF THIS ARTICLE, SHALL CONDUCT ANY INVESTIGATION NECESSARY TO ENFORCE THE PROVISIONS OF THIS CHAPTER;

(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;

S 4. 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; enforcement powers.

1. (A) THERE SHALL BE A UNIT KNOWN AS THE DIVISION OF ELECTION LAW ENFORCEMENT ESTABLISHED WITHIN THE STATE BOARD OF ELECTIONS. THE HEAD OF SUCH UNIT SHALL BE THE CHIEF 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 CHIEF ENFORCEMENT COUNSEL SHALL HAVE AUTHORITY WITHIN THE STATE BOARD OF ELECTIONS TO INVESTIGATE ON HIS OR HER OWN INITIATIVE OR UPON COMPLAINT ALLEGED VIOLATIONS OF SUCH STATUTES AND ALL COMPLAINTS ALLEGING VIOLATIONS SHALL BE FORWARDED TO THE ENFORCEMENT DIVISION OF ELECTION LAW ENFORCEMENT.

2. (A) 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 OR OTHER PERSON OR ENTITY THAT FILES STATEMENTS REQUIRED BY 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 candi-

date 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 LOCAL BOARD SHALL REPORT THE RESULTS OF ITS INVESTIGATION TO THE DIVISION OF ELECTION LAW ENFORCEMENT CHIEF ENFORCEMENT COUNSEL WITHIN NINETY DAYS OF THE START OF SUCH INVESTIGATION. THE CHIEF ENFORCEMENT COUNSEL MAY DIRECT THE LOCAL BOARD OF ELECTIONS AT ANY TIME TO SUSPEND ITS INVESTIGATION SO THAT THE DIVISION OF ELECTION LAW ENFORCEMENT CAN INVESTIGATE THE MATTER.

(B) The [state board of elections] CHIEF ENFORCEMENT COUNSEL 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.] 3. UPON RECEIPT OF A COMPLAINT AND SUPPORTING INFORMATION ALLEGING ANY OTHER VIOLATION OF THIS CHAPTER, THE CHIEF ENFORCEMENT COUNSEL SHALL ANALYZE THE COMPLAINT TO DETERMINE IF AN INVESTIGATION SHOULD BE UNDERTAKEN. THE CHIEF ENFORCEMENT COUNSEL SHALL, IF NECESSARY, OBTAIN ADDITIONAL INFORMATION FROM THE COMPLAINANT OR FROM OTHER SOURCES 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 THIS CHAPTER AND, SECOND, WHETHER THE ALLEGATIONS ARE SUPPORTED BY CREDIBLE EVIDENCE.

4. IF THE CHIEF ENFORCEMENT COUNSEL DETERMINES THAT THE ALLEGATIONS, IF TRUE, WOULD NOT CONSTITUTE A VIOLATION OF THIS CHAPTER OR THAT THE ALLEGATIONS ARE NOT SUPPORTED BY CREDIBLE EVIDENCE, HE OR SHE SHALL ISSUE A LETTER TO THE COMPLAINANT DISMISSING THE COMPLAINT.

5. THE CHIEF ENFORCEMENT COUNSEL SHALL HAVE THE POWER TO FULLY INVESTIGATE VIOLATIONS OF THIS CHAPTER, INCLUDING THE POWER TO ISSUE SUBPOENAS AND TO APPLY FOR SEARCH WARRANTS PURSUANT TO ARTICLE SIX HUNDRED NINETY OF THE CRIMINAL PROCEDURE LAW, AND, EXCEPT IN EXIGENT CIRCUMSTANCES, SHALL GIVE PRIOR NOTICE OF THE APPLICATION TO THE DISTRICT ATTORNEY OF THE COUNTY IN WHICH SUCH A WARRANT IS TO BE EXECUTED, AND IN SUCH EXIGENT CIRCUMSTANCES SHALL GIVE SUCH NOTICE AS SOON THEREAFTER AS IS PRACTICABLE; PROVIDED, HOWEVER THAT THE FAILURE TO GIVE NOTICE OF A SEARCH WARRANT APPLICATION TO A DISTRICT ATTORNEY SHALL NOT BE A GROUND TO SUPPRESS THE EVIDENCE SEIZED IN EXECUTING THE WARRANT. THE CHIEF ENFORCEMENT COUNSEL SHALL BE FURTHER AUTHORIZED TO USE THE FULL INVESTIGATIVE POWERS OF THE STATE BOARD OF ELECTIONS, AS PROVIDED FOR IN SUBDIVISIONS THREE, FOUR, FIVE AND SIX OF SECTION 3-102 OF THIS TITLE.

6. THE CHIEF ENFORCEMENT COUNSEL MAY, AFTER CONSULTATION WITH THE DISTRICT ATTORNEY AS TO THE TIME AND PLACE OF SUCH ATTENDANCE OR APPEARANCE, ATTEND IN PERSON ANY TERM OF THE COUNTY COURT OR SUPREME COURT HAVING APPROPRIATE JURISDICTION, INCLUDING AN EXTRAORDINARY SPECIAL OR

TRIAL TERM OF THE SUPREME COURT WHEN ONE IS APPOINTED PURSUANT TO SECTION ONE HUNDRED FORTY-NINE OF THE JUDICIARY LAW, OR APPEAR BEFORE THE GRAND JURY THEREOF, FOR THE PURPOSE OF MANAGING AND CONDUCTING IN SUCH COURT OR BEFORE SUCH JURY A CRIMINAL ACTION OR PROCEEDING CONCERNED WITH A CRIMINAL VIOLATION OF THIS CHAPTER. THE CHIEF ENFORCEMENT COUNSEL MAY REPRESENT, AND SHALL RECEIVE, THE ASSISTANCE OF THE STATE POLICE IN ANY INVESTIGATION HE OR SHE SHALL CONDUCT. IN SUCH CASE, SUCH CHIEF ENFORCEMENT COUNSEL OR HIS OR HER ASSISTANT SO ATTENDING MAY EXERCISE ALL THE POWERS AND PERFORM ALL THE DUTIES IN RESPECT OF SUCH ACTIONS OR PROCEEDINGS WHICH THE DISTRICT ATTORNEY WOULD OTHERWISE BE AUTHORIZED OR REQUIRED TO EXERCISE OR PERFORM.

7. (A) IF THE CHIEF ENFORCEMENT COUNSEL DETERMINES 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 THAT DOES NOT OTHERWISE WARRANT CRIMINAL PROSECUTION, HAS UNLAWFULLY ACCEPTED A CONTRIBUTION IN EXCESS OF A CONTRIBUTION LIMITATION ESTABLISHED IN ARTICLE FOURTEEN OF THIS CHAPTER OR HAS UNLAWFULLY VIOLATED ANY PROVISION OF THIS CHAPTER, THE CHIEF ENFORCEMENT COUNSEL SHALL SELECT A HEARING OFFICER, FROM A LIST OF PROSPECTIVE HEARING OFFICERS EACH APPROVED BY A TWO-THIRDS MAJORITY VOTE OF THE BOARD, TO WHOM HE OR SHALL SHALL PROVIDE A WRITTEN REPORT AS TO: (1) WHETHER SUBSTANTIAL REASON EXISTS TO BELIEVE A VIOLATION OF THIS CHAPTER HAS OCCURRED AND, IF SO, THE NATURE OF THE VIOLATION AND ANY APPLICABLE PENALTY, BASED ON THE NATURE OF THE VIOLATION; (2) WHETHER THE MATTER SHOULD BE RESOLVED EXTRA-JUDICIALLY; AND (3) WHETHER A SPECIAL PROCEEDING SHOULD BE COMMENCED IN THE SUPREME COURT TO RECOVER A CIVIL PENALTY. THE HEARING OFFICER SHALL MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW BASED ON A PREPONDERANCE OF THE EVIDENCE AS TO WHETHER A VIOLATION HAS BEEN ESTABLISHED AND WHO IS GUILTY OF SUCH VIOLATION ON NOTICE TO AND WITH AN OPPORTUNITY FOR THE INDIVIDUAL OR ENTITY ACCUSED OF ANY VIOLATIONS TO BE HEARD. THE CHIEF ENFORCEMENT COUNSEL SHALL ADOPT SUCH REPORT AND COMMENCE A SPECIAL PROCEEDING IN THE SUPREME COURT PURSUANT TO SECTIONS 16-100, 16-114 AND 16-116 OF THIS CHAPTER SHOULD THE FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORT THE COMMENCEMENT OF SUCH PROCEEDING. IF THE BOARD OF ELECTIONS FAILS TO PRODUCE A LIST OF ELIGIBLE HEARING OFFICERS, THE CHIEF ENFORCEMENT COUNSEL MAY COMMENCE A SPECIAL PROCEEDING AS PROVIDED HEREIN IN ACCORDANCE WITH RECOMMENDATIONS MADE IN HIS OR HER REPORT.

(B) IF THE CHIEF ENFORCEMENT COUNSEL DETERMINES, THAT REASONABLE CAUSE EXISTS TO BELIEVE A VIOLATION WARRANTING CRIMINAL PROSECUTION HAS TAKEN PLACE, THE CHIEF ENFORCEMENT COUNSEL SHALL COMMENCE A CRIMINAL ACTION OR REFER SUCH MATTER TO THE ATTORNEY GENERAL OR DISTRICT ATTORNEY WITH JURISDICTION OVER SUCH MATTER TO COMMENCE A CRIMINAL ACTION AS SUCH TERM IS DEFINED IN THE CRIMINAL PROCEDURE LAW.

8. 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 CHIEF ENFORCEMENT COUNSEL SHALL INVESTIGATE THE ALLEGED VIOLATIONS UNLESS OTHERWISE DIRECTED BY THE COURT.

9. THE CHIEF ENFORCEMENT COUNSEL SHALL PREPARE A REPORT, TO BE INCLUDED IN THE ANNUAL REPORT TO THE GOVERNOR, THE STATE BOARD OF ELECTIONS AND LEGISLATURE, SUMMARIZING THE ACTIVITIES OF THE UNIT DURING THE PREVIOUS YEAR.

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

S 5. Subdivision 32 of section 1.20 of the criminal procedure law, as amended by section 4 of part A of chapter 501 of the laws of 2012, is amended to read as follows:

32. "District attorney" means a district attorney, an assistant district attorney or a special district attorney, and, where appropriate, the attorney general, an assistant attorney general, a deputy attorney general, a special deputy attorney general, [or] the special prosecutor and inspector general for the protection of people with special needs or his or her assistants when acting pursuant to their duties in matters arising under article twenty of the executive law, OR THE CHIEF ENFORCEMENT COUNSEL OF THE STATE BOARD OF ELECTIONS WHEN ACTING PURSUANT TO HIS OR HER DUTIES IN MATTERS ARISING UNDER THE ELECTION LAW.

S 6. This act shall take effect on the ninetieth day after it shall have become a law.