

6776

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 proce-
dure 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 14-126 of the election law, as
2 amended by section 3 of part E of chapter 399 of the laws of 2011, is
3 amended to read as follows:
4 1. Any person who fails to file a statement required to be filed by
5 this article shall be subject to a civil penalty, not in excess of one
6 thousand dollars, to be recoverable in a special proceeding or civil
7 action to be brought by the state board of elections [or other board of
8 elections] CHIEF ENFORCEMENT COUNSEL PURSUANT TO SECTION 16-114 OF THIS
9 CHAPTER. Any person who, three or more times within a given election
10 cycle for such term of office, fails to file a statement or statements
11 required to be filed by this article, shall be subject to a civil penal-
12 ty, not in excess of ten thousand dollars, to be recoverable as provided
13 for in this subdivision.
14 S 2. Subdivision 3 of section 3-100 of the election law, as amended by
15 chapter 220 of the laws of 2005, is amended to read as follows:
16 3. The commissioners of the state board of elections shall have no
17 other public employment. The commissioners shall receive an annual sala-
18 ry of twenty-five thousand dollars, within the amounts made available
19 therefor by appropriation. The board shall, for the purposes of sections
20 seventy-three and seventy-four of the public officers law, be a "state
21 agency", and such commissioners shall be "officers" of the state board
22 of elections for the purposes of such sections. Within the amounts made
23 available by appropriation therefor, the state board of elections shall
24 appoint two co-executive directors, and such other staff members as are
25 necessary in the exercise of its functions, and may fix their compen-
26 sation. [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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1 two thousand five which amended this subdivision, the] THE commissioners
2 or, in the case of a vacancy on the board, the commissioner of each of
3 the major political parties shall appoint one co-executive director.
4 Each co-executive director shall serve a term of four years. THE GOVER-
5 NOR SHALL APPOINT A CHIEF ENFORCEMENT COUNSEL TO HEAD THE DIVISION OF
6 ELECTION LAW ENFORCEMENT WHO SHALL HAVE A FIXED TERM OF FOUR YEARS, WITH
7 THE ADVICE AND CONSENT OF THE SENATE, WITH SUCH CONSENT DETERMINED BY A
8 VOTE OF THE SENATE WITHIN THIRTY DAYS OF THE NOMINATION BY THE GOVERNOR,
9 AND SHALL BE REMOVED ONLY FOR GOOD CAUSE AND SOLELY BY THE GOVERNOR.
10 THE CHIEF ENFORCEMENT COUNSEL SHALL HAVE SOLE AUTHORITY OVER PERSONNEL
11 DECISIONS WITHIN THE ENFORCEMENT UNIT. ALL HIRING DECISIONS MADE BY THE
12 CHIEF ENFORCEMENT COUNSEL SHALL BE MADE WITHOUT REGARD TO POLITICAL
13 PARTY AFFILIATION. ANY VACANCY IN THE OFFICE OF CO-EXECUTIVE DIRECTOR
14 shall be filled by the commissioners or, in the case of a vacancy on the
15 board, the commissioner of the same major political party as the vacat-
16 ing incumbent for the remaining period of the term of such vacating
17 incumbent.

18 S 3. Subdivision 3 and paragraph (c) of subdivision 9-A of section
19 3-102 of the election law, subdivision 3 as amended by chapter 9 of the
20 laws of 1978 and paragraph (c) of subdivision 9-A as added by chapter
21 430 of the laws of 1997, are amended to read as follows:

22 3. conduct any investigation necessary to carry out the provisions of
23 this chapter, PROVIDED, HOWEVER, THAT THE STATE BOARD OF ELECTIONS CHIEF
24 ENFORCEMENT COUNSEL, ESTABLISHED PURSUANT TO SECTION 3-100 OF THIS ARTI-
25 CLE, SHALL CONDUCT ANY INVESTIGATION NECESSARY TO ENFORCE THE PROVISIONS
26 OF THIS CHAPTER;

27 (c) establish [a] AN EDUCATIONAL AND training program on ALL REPORTING
28 REQUIREMENTS INCLUDING BUT NOT LIMITED TO the electronic reporting proc-
29 ess and make it EASILY AND READILY available to any such candidate or
30 committee;

31 S 4. Section 3-104 of the election law, subdivisions 1, 3, 4 and 5 as
32 redesignated and subdivision 2 as amended by chapter 9 of the laws of
33 1978, is amended to read as follows:

34 S 3-104. State board of elections; enforcement powers.

35 1. (A) THERE SHALL BE A UNIT KNOWN AS THE DIVISION OF ELECTION LAW
36 ENFORCEMENT ESTABLISHED WITHIN THE STATE BOARD OF ELECTIONS. THE HEAD OF
37 SUCH UNIT SHALL BE THE CHIEF ENFORCEMENT COUNSEL.

38 (B) The state board of elections shall have jurisdiction of, and be
39 responsible for, the execution and enforcement of the provisions of
40 article fourteen of this chapter and other statutes governing campaigns,
41 elections and related procedures; PROVIDED HOWEVER THAT THE CHIEF
42 ENFORCEMENT COUNSEL SHALL HAVE AUTHORITY WITHIN THE STATE BOARD OF
43 ELECTIONS TO INVESTIGATE ON HIS OR HER OWN INITIATIVE OR UPON COMPLAINT
44 ALLEGED VIOLATIONS OF SUCH STATUTES AND ALL COMPLAINTS ALLEGING
45 VIOLATIONS SHALL BE FORWARDED TO THE ENFORCEMENT DIVISION OF ELECTION
46 LAW ENFORCEMENT.

47 2. (A) Whenever [the state board of elections or other] A LOCAL board
48 of elections shall determine, on its own initiative or upon complaint,
49 or otherwise, that there is substantial reason to believe a violation of
50 this chapter or any code or regulation promulgated thereunder has
51 [occurred] BEEN COMMITTED BY A CANDIDATE OR POLITICAL COMMITTEE OR OTHER
52 PERSON OR ENTITY THAT FILES STATEMENTS REQUIRED BY ARTICLE FOURTEEN OF
53 THIS CHAPTER SOLELY WITH SUCH LOCAL BOARD, it shall expeditiously make
54 an investigation which shall also include investigation of reports and
55 statements made or failed to be made by the complainant and any poli-
56 tical committee supporting his candidacy if the complainant is a candi-

1 date or, if the complaint was made by an officer or member of a poli-
2 tical committee, of reports and statements made or failed to be made by
3 such political committee and any candidates supported by it. [The state
4 board of elections, in lieu of making such an investigation, may direct
5 the appropriate board of elections to make an investigation.] THE LOCAL
6 BOARD SHALL REPORT THE RESULTS OF ITS INVESTIGATION TO THE DIVISION OF
7 ELECTION LAW ENFORCEMENT CHIEF ENFORCEMENT COUNSEL WITHIN NINETY DAYS OF
8 THE START OF SUCH INVESTIGATION. THE CHIEF ENFORCEMENT COUNSEL MAY
9 DIRECT THE LOCAL BOARD OF ELECTIONS AT ANY TIME TO SUSPEND ITS INVESTI-
10 GATION SO THAT THE DIVISION OF ELECTION LAW ENFORCEMENT CAN INVESTIGATE
11 THE MATTER.

12 (B) The [state board of elections] CHIEF ENFORCEMENT COUNSEL may
13 request, and shall receive, the assistance of the state police in any
14 investigation it shall conduct.

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

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

27 5.] 3. UPON RECEIPT OF A COMPLAINT AND SUPPORTING INFORMATION ALLEGING
28 ANY OTHER VIOLATION OF THIS CHAPTER, THE CHIEF ENFORCEMENT COUNSEL SHALL
29 ANALYZE THE COMPLAINT TO DETERMINE IF AN INVESTIGATION SHOULD BE UNDER-
30 TAKEN. THE CHIEF ENFORCEMENT COUNSEL SHALL, IF NECESSARY, OBTAIN ADDI-
31 TIONAL INFORMATION FROM THE COMPLAINANT OR FROM OTHER SOURCES TO ASSIST
32 SUCH COUNSEL IN MAKING THIS DETERMINATION. SUCH ANALYSIS SHALL INCLUDE
33 THE FOLLOWING: FIRST, WHETHER THE ALLEGATIONS, IF TRUE, WOULD CONSTITUTE
34 A VIOLATION OF THIS CHAPTER AND, SECOND, WHETHER THE ALLEGATIONS ARE
35 SUPPORTED BY CREDIBLE EVIDENCE.

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

40 5. THE CHIEF ENFORCEMENT COUNSEL SHALL HAVE THE POWER TO FULLY INVES-
41 TIGATE VIOLATIONS OF THIS CHAPTER, INCLUDING THE POWER TO ISSUE SUBPOE-
42 NAS AND TO APPLY FOR SEARCH WARRANTS PURSUANT TO ARTICLE SIX HUNDRED
43 NINETY OF THE CRIMINAL PROCEDURE LAW, AND, EXCEPT IN EXIGENT CIRCUM-
44 STANCES, SHALL GIVE PRIOR NOTICE OF THE APPLICATION TO THE DISTRICT
45 ATTORNEY OF THE COUNTY IN WHICH SUCH A WARRANT IS TO BE EXECUTED, AND IN
46 SUCH EXIGENT CIRCUMSTANCES SHALL GIVE SUCH NOTICE AS SOON THEREAFTER AS
47 IS PRACTICABLE; PROVIDED, HOWEVER THAT THE FAILURE TO GIVE NOTICE OF A
48 SEARCH WARRANT APPLICATION TO A DISTRICT ATTORNEY SHALL NOT BE A GROUND
49 TO SUPPRESS THE EVIDENCE SEIZED IN EXECUTING THE WARRANT. THE CHIEF
50 ENFORCEMENT COUNSEL SHALL BE FURTHER AUTHORIZED TO USE THE FULL INVESTI-
51 GATIVE POWERS OF THE STATE BOARD OF ELECTIONS, AS PROVIDED FOR IN SUBDI-
52 VISIONS THREE, FOUR, FIVE AND SIX OF SECTION 3-102 OF THIS TITLE.

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

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

12 7. (A) IF THE CHIEF ENFORCEMENT COUNSEL DETERMINES THAT SUBSTANTIAL
13 REASON EXISTS TO BELIEVE THAT A PERSON, ACTING AS OR ON BEHALF OF A
14 CANDIDATE OR POLITICAL COMMITTEE UNDER CIRCUMSTANCES EVINCING AN INTENT
15 TO VIOLATE SUCH LAW THAT DOES NOT OTHERWISE WARRANT CRIMINAL PROSE-
16 CUTION, HAS UNLAWFULLY ACCEPTED A CONTRIBUTION IN EXCESS OF A CONTRIB-
17 UTION LIMITATION ESTABLISHED IN ARTICLE FOURTEEN OF THIS CHAPTER OR HAS
18 UNLAWFULLY VIOLATED ANY PROVISION OF THIS CHAPTER, THE CHIEF ENFORCEMENT
19 COUNSEL SHALL SELECT A HEARING OFFICER, FROM A LIST OF PROSPECTIVE HEAR-
20 ING OFFICERS EACH APPROVED BY A TWO-THIRDS MAJORITY VOTE OF THE BOARD,
21 TO WHOM HE OR SHE SHALL PROVIDE A WRITTEN REPORT AS TO: (1) WHETHER
22 SUBSTANTIAL REASON EXISTS TO BELIEVE A VIOLATION OF THIS CHAPTER HAS
23 OCCURRED AND, IF SO, THE NATURE OF THE VIOLATION AND ANY APPLICABLE
24 PENALTY, BASED ON THE NATURE OF THE VIOLATION; (2) WHETHER THE MATTER
25 SHOULD BE RESOLVED EXTRA-JUDICIALLY; AND (3) WHETHER A SPECIAL PROCEED-
26 ING SHOULD BE COMMENCED IN THE SUPREME COURT TO RECOVER A CIVIL PENALTY.
27 THE HEARING OFFICER SHALL MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW
28 BASED ON A PREPONDERANCE OF THE EVIDENCE AS TO WHETHER A VIOLATION HAS
29 BEEN ESTABLISHED AND WHO IS GUILTY OF SUCH VIOLATION ON NOTICE TO AND
30 WITH AN OPPORTUNITY FOR THE INDIVIDUAL OR ENTITY ACCUSED OF ANY
31 VIOLATIONS TO BE HEARD. THE CHIEF ENFORCEMENT COUNSEL SHALL ADOPT SUCH
32 REPORT AND COMMENCE A SPECIAL PROCEEDING IN THE SUPREME COURT PURSUANT
33 TO SECTIONS 16-100, 16-114 AND 16-116 OF THIS CHAPTER SHOULD THE FIND-
34 INGS OF FACT AND CONCLUSIONS OF LAW SUPPORT THE COMMENCEMENT OF SUCH
35 PROCEEDING. IF THE BOARD OF ELECTIONS FAILS TO PRODUCE A LIST OF ELIGI-
36 BLE HEARING OFFICERS, THE CHIEF ENFORCEMENT COUNSEL MAY COMMENCE A
37 SPECIAL PROCEEDING AS PROVIDED HEREIN IN ACCORDANCE WITH RECOMMENDATIONS
38 MADE IN HIS OR HER REPORT.

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

45 8. UPON NOTIFICATION THAT A SPECIAL PROCEEDING HAS BEEN COMMENCED BY A
46 PARTY OTHER THAN THE STATE BOARD OF ELECTIONS, PURSUANT TO SECTION
47 16-114 OF THIS CHAPTER, THE CHIEF ENFORCEMENT COUNSEL SHALL INVESTIGATE
48 THE ALLEGED VIOLATIONS UNLESS OTHERWISE DIRECTED BY THE COURT.

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

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

1 S 5. Subdivision 32 of section 1.20 of the criminal procedure law, as
2 amended by section 4 of part A of chapter 501 of the laws of 2012, is
3 amended to read as follows:
4 32. "District attorney" means a district attorney, an assistant
5 district attorney or a special district attorney, and, where appropri-
6 ate, the attorney general, an assistant attorney general, a deputy
7 attorney general, a special deputy attorney general, [or] the special
8 prosecutor and inspector general for the protection of people with
9 special needs or his or her assistants when acting pursuant to their
10 duties in matters arising under article twenty of the executive law, OR
11 THE CHIEF ENFORCEMENT COUNSEL OF THE STATE BOARD OF ELECTIONS WHEN
12 ACTING PURSUANT TO HIS OR HER DUTIES IN MATTERS ARISING UNDER THE
13 ELECTION LAW.
14 S 6. This act shall take effect on the ninetieth day after it shall
15 have become a law.