

STATE OF NEW YORK

10307

IN ASSEMBLY

May 13, 2022

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

AN ACT to amend the election law, in relation to creating the elected
position of the secretary of elections

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

1 Section 1. Section 3-100 of the election law, subdivisions 1 and 2 as
2 amended by chapter 220 of the laws of 2005, subdivision 3 as amended by
3 section 2 of subpart B of part H of chapter 55 of the laws of 2014,
4 subdivision 3-a as added by section 2-a of subpart B of part H of chap-
5 ter 55 of the laws of 2014, and subdivisions 4 and 5 as redesignated by
6 chapter 9 of the laws of 1978, is amended to read as follows:

7 § 3-100. New York state board of elections; membership; organization.
8 1. There is hereby created [~~within the executive department~~] a New York
9 state board of elections, hereafter referred to as the "state board of
10 elections", [~~composed of four commissioners appointed by the governor,
11 two commissioners, one each from among not fewer than two persons recom-
12 mended by the chairman of the state committee of each of the major poli-
13 tical parties, and two other commissioners, one upon the joint recommen-
14 dation of the legislative leaders, of one major political party, in each
15 house of the legislature and one upon the joint recommendation of the
16 legislative leaders, of the other major political party, in each house
17 of the legislature~~] which shall be directed by a secretary of elections.
18 The [~~commissioners~~] secretary of elections shall be [~~appointed~~] elected
19 for [~~terms~~] a term of [~~two~~] four years [~~each and in the same manner as
20 their respective predecessors. A commissioner appointed to the board to
21 fill a vacancy caused other than by expiration of a term, shall serve
22 for the balance of the unexpired term. In the event that there is a
23 vacancy in the office of the commissioner appointed on the recommenda-
24 tion of such legislative leaders caused by expiration of term or other-
25 wise, such legislative leaders responsible for making the joint recom-
26 mendation to fill such vacancy shall jointly recommend an individual to
27 fill such vacancy and the governor shall make the appointment from such
28 joint recommendation within thirty days of receiving such joint recom-~~]

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

LBD15351-01-2

~~mendation. In the event the governor does not act on such joint recommendation within thirty days or objects to such joint recommendation, then the legislative leaders making such joint recommendation shall have the option of: (a) appointing the individual so jointly recommended as a commissioner, or (b) jointly recommending another individual for appointment by the governor according to the procedure outlined in this subdivision]~~ with elections occurring at the general election occurring two years after the general election choosing a governor. A candidate for secretary of elections shall be registered to vote in the state of New York and shall not be registered with any political party as of the filing deadline for the election. There shall be no primary for the position of secretary of elections. Candidates shall petition to appear on the ballot pursuant to independent nomination rules in sections 6-138 and 6-140 of this chapter.

~~2. [The two commissioners of the board appointed upon the recommendation of the legislative leaders shall be co-chairs of the state board of elections.~~

~~3.]~~ The [commissioners of the state board] secretary of elections shall have no other public employment. The [commissioners] secretary shall receive an annual salary of one hundred twenty-five thousand dollars, within the amounts made available therefor by appropriation. The board shall not, 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] secretary of elections shall appoint one or two co-executive directors, and such other staff members as are necessary in the exercise of its functions, and may fix their compensation. [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.] The secretary may appoint one or two co-executive directors who are not affiliated with any party, or the secretary may appoint one or two co-executive directors affiliated with a party, so long as such appointments are consistent with the state constitution. Appointment to the position of deputy executive director shall be made solely on the basis of qualifications and experience in elections management, including a firm understanding of current and emerging election technologies and their risks and experience with risk mitigation practices and to election process, procedures, and chain-of-custody, including but not limited to auditing, and such appointment shall be subject to advice and consent of the state senate. Each co-executive director shall serve a term of four years. 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]~~ secretary of elections for the remaining period of the term of such vacating incumbent.

~~[3-a.]~~ 3. There is established within the state board of elections the office of chief enforcement counsel to head the division of election law enforcement. Such counsel shall serve in said office for a fixed term of five years commencing September first, two thousand fourteen, and may only be removed by the governor for substantial neglect of duty, gross misconduct in office, or the inability to discharge the powers or duties of office, upon notice with an opportunity to be heard. The chief enforcement counsel shall have sole authority over personnel decisions within the enforcement division. All hiring decisions made by the chief enforcement counsel shall be made without regard to political affil-

1 iation. The chief enforcement counsel shall not hold any other public
2 office, be a party officer during his or her term of office, or other-
3 wise engage in outside employment. He or she shall be chosen by the
4 governor which choice shall be confirmed by each house of the legisla-
5 ture separately by a majority vote of the members elected to each house
6 of the legislature.

7 4. ~~[For the purposes of meetings, three commissioners shall constitute~~
8 ~~a quorum. The affirmative vote of three commissioners shall be required~~
9 ~~for any official action of the state board of elections.~~

10 5. The principal office of the state board of elections shall be in
11 the county of Albany.

12 § 2. Subdivision 6 of section 3-102 of the election law, as redesign-
13 nated by chapter 9 of the laws of 1978, is amended and five new subdivi-
14 sions 16-c, 16-d, 16-e, 16-f and 16-g are added to read as follows:

15 6. confer immunity in accordance with the provisions of section 50.20
16 of the criminal procedure law, in any investigation relating to any
17 crime or offense with respect to which, by express provisions of stat-
18 ute, a competent authority is authorized to confer immunity; provided,
19 however, that such immunity shall be conferred only after the attorney
20 general and appropriate district attorney are afforded the opportunity
21 to be heard respecting any objections which either may have to the
22 conferring thereof; and provided, further, that if either the attorney
23 general or any such appropriate district attorney shall object to the
24 conferring of immunity, immunity may be conferred only ~~[by unanimous~~
25 ~~vote of all four commissioners of the state board]~~ with approval of the
26 secretary of elections;

27 16-c. issue regulations stating minimum qualifications for local
28 commissioners of elections, requiring that appointments of local commis-
29 sioners be made on the basis of merit, and enforcing such regulations in
30 court where necessary;

31 16-d. create mandatory training programs for local elections commis-
32 sioners, and for other state and local elections staff where the secre-
33 tary shall deem necessary;

34 16-e. facilitate shared staffing among the state board of elections,
35 local boards of elections, and local municipal and county governments,
36 including creating regional elections supervisors within the state
37 board;

38 16-f. provide guidance and assistance with recruitment and training of
39 poll workers;

40 16-g. provide grants to allow local boards of elections to improve
41 their elections administration;

42 § 3. Subdivision 6 of section 3-105 of the election law, as added by
43 chapter 23 of the laws of 2005, is amended to read as follows:

44 6. Hearings shall be conducted by ~~[a panel of two commissioners of the~~
45 ~~state board of elections of opposite parties]~~ the secretary of elections
46 or senior staff members of ~~[opposite parties as selected by the commis-~~
47 ~~sioners of that party]~~ the board of elections, as selected by the secre-
48 tary of elections, pursuant to any restrictions in the constitution. If
49 the secretary or panel does not agree to sustain the complaint, the
50 formal complaint shall be deemed dismissed and shall constitute the
51 determination of the secretary or panel.

52 § 4. Subdivision 7 of section 3-200 of the election law is amended to
53 read as follows:

54 7. An election commissioner may be removed from office by the governor
55 for cause in the same manner as a sheriff, or by the secretary of
56 elections for incompetence, misconduct, or other good cause, provided

1 that prior to removal, such election commissioner shall be given a
2 written copy of the charges against him or her and have an opportunity
3 to be heard in his or her defense, and provided that the decision by the
4 secretary of election to remove a commissioner may be overruled by order
5 of the governor. Any vacancy so resulting shall be filled in a manner
6 prescribed by this article for filling vacancies.

7 § 5. Subdivision 6 of section 14-130 of the election law, as added by
8 section 9 of part CC of chapter 56 of the laws of 2015, is amended to
9 read as follows:

10 6. The state board of elections shall issue advisory opinions upon
11 request regarding expenditures that may or may not be considered
12 personal use of contributions. Any formal or informal advisory opinions
13 issued by [~~a majority vote of the commissioners of the state board~~] the
14 secretary of elections shall be binding on the board, the chief enforce-
15 ment counsel established by subdivision [~~three-a~~] three of section 3-100
16 of this chapter, and in any subsequent civil or criminal action or
17 proceeding or administrative proceeding.

18 § 6. Subdivision 1 of section 14-207 of the election law, as added by
19 section 4 of part ZZZ of chapter 58 of the laws of 2020, is amended to
20 read as follows:

21 1. There shall be a public campaign finance board within the state
22 board of elections that shall be comprised of the following commission-
23 ers: the [~~four state board of elections commissioners~~] secretary of
24 elections and three additional commissioners, one jointly appointed by
25 the legislative leaders of one major political party in each house of
26 the legislature, one jointly appointed by the legislative leaders of the
27 other major political party in each house of the legislature, and one of
28 whom shall be appointed by the governor. Each commissioner must be a New
29 York state resident and registered voter, and may not currently be, or
30 within the previous five years have been, an officer of a political
31 party or political committee as defined in the election law, or a regis-
32 tered lobbyist. The chair of the PCFB shall be designated by the PCFB
33 from among the three [~~additional~~] commissioners directly appointed by
34 the legislature or the governor. Each of the three [~~additional~~] commis-
35 sioners directly appointed by the legislature or the governor shall
36 receive a per diem of three hundred fifty dollars for work actually
37 performed not to exceed twenty-five thousand dollars in any one calendar
38 year. They shall be considered public officers for purposes of sections
39 seventy-three-a and seventy-four of the public officers law. The three
40 commissioners so appointed pursuant to this recommendation will be
41 appointed for a term of five years to commence on July first, two thou-
42 sand twenty and may be removed by his or her appointing authority solely
43 for substantial neglect of duty, gross misconduct in office, inability
44 to discharge the power or duties of office, after written notice and
45 opportunity to be heard. During the period of his or her term as a
46 commissioner appointed hereunder, each such commissioner is barred from
47 making, or soliciting from other persons, any contributions to candi-
48 dates for election to the offices of governor, lieutenant governor,
49 attorney general, comptroller, member of the assembly, or state senator.
50 Any vacancy occurring on the PCFB shall be filled within thirty days of
51 its occurrence in the same manner as the member whose vacancy is being
52 filled was appointed. A person appointed to fill a vacancy occurring
53 other than by expiration of a term of office shall be appointed for the
54 unexpired term of the member he or she succeeds. Four members of the
55 PCFB shall constitute a quorum, and the PCFB shall have the power to act
56 by majority vote of the total number of members of the commission with-

1 out vacancy. All members of the PCFB shall be appointed no later than
2 the first day of July, two thousand twenty and the PCFB shall promulgate
3 such regulations as are needed no later than the first day of July, two
4 thousand twenty-one.

5 § 7. This act shall take effect on January 1, 2023; provided, however,
6 that if part ZZZ of chapter 58 of the laws of 2020 shall not have taken
7 effect on or before such date then section six of this act shall take
8 effect on the same date and in the same manner as such chapter of the
9 laws of 2014, takes effect.