

# STATE OF NEW YORK

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2021-2022 Regular Sessions

## IN ASSEMBLY

February 24, 2021

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Introduced by M. of A. ROZIC, BICHOTTE HERMELYN, SIMON, QUART, GALLAGHER, FERNANDEZ, NOLAN, ANDERSON, BURGOS, CARROLL, SEAWRIGHT -- read once and referred to the Committee on Election Law -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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 section the term of each commis-  
3 sioner 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 section,  
8 file a certificate of party recommendation with the clerk of the city  
9 council of the city of New York recommending two individuals for consid-  
10 eration to serve as a commissioner of elections. The city council shall  
11 immediately, or as soon as practicable but no more than thirty days  
12 thereafter, hold a public hearing on such recommendations, and provided  
13 further, no more than thirty days thereafter confirm four individuals  
14 for such positions, who shall succeed those individuals whose terms  
15 shall have expired pursuant to this section.  
16 § 2. The section heading and subdivision 3 of section 3-200 of the  
17 election law, the section heading as amended by chapter 373 of the laws

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

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1 of 1978, are amended and a new subdivision 8 is added to read as  
2 follows:

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

5 3. In the city of New York the board shall consist of [~~ten~~] two  
6 commissioners of election who [~~shall be registered voters in the county~~  
7 ~~for which they are appointed and they~~] shall be appointed by the city

8 council of the city of New York. Not more than two commissioners shall  
9 be registered voters of the same county. No later than December thir-  
10 ty-first, two thousand twenty-two, the state board of elections shall  
11 prescribe qualifications for the commissioners of election of the board  
12 of elections of the city of New York. Such qualifications shall apply  
13 to appointments made beginning thirty days after promulgation of such  
14 qualifications and shall thereafter be reviewed by such board at least  
15 every two years and updated as necessary. Such qualifications shall be  
16 prescribed only after consideration of the skills and knowledge neces-  
17 sary or useful for the exercise of the duties and responsibilities of  
18 such commissioners, as well as the ability to recruit a sufficient  
19 number of candidates to be commissioners.

20 8. In the city of New York the commissioners of election shall partic-  
21 ipate in training conducted by the state board of elections regarding  
22 their duties and responsibilities as commissioners of election, includ-  
23 ing training regarding election day operations, to be completed within  
24 sixty days after a commissioner commences performance of the duties of  
25 the office. Commissioners of election shall participate in such continu-  
26 ing training conducted by the state board of elections as may be  
27 required by such board to remain informed of best practices, regulatory  
28 and statutory changes relating to their duties and responsibilities, and  
29 any other continuing training as is necessary to fulfill the duties of  
30 the commissioners of election.

31 § 3. Subdivisions 2 and 4 of section 3-204 of the election law, subdi-  
32 vision 2 as amended by chapter 453 of the laws of 1997, and subdivision  
33 4 as amended by chapter 116 of the laws of 2010, are amended to read as  
34 follows:

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

44 (b) Party recommendations for election commissioner in the city of New  
45 York or to fill a vacancy in such office shall be made by the county  
46 committee or by such other committee as the rules of the party may  
47 provide, by a majority of the votes cast at a meeting of the members of  
48 such committee at which a quorum is present. Each party shall, within  
49 sixty days, file a certificate of party recommendation with the clerk of  
50 the city council of the city of New York recommending one individual for  
51 consideration to serve as a commissioner of elections. The city council  
52 shall immediately, or as soon as practicable but no more than thirty  
53 days thereafter, hold a public hearing on such recommendations and  
54 provided further, no more than thirty days thereafter confirm an indi-  
55 vidual 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 co-executive directors 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 co-executive directors 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. (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~~] co-executive directors who shall each be of separate major political parties and shall be appointed, and may be removed, in a manner set forth in paragraph (b) of this subdivision. The duty of the co-executive directors shall be to supervise the operations of the board of elections [~~under the supervision of such board~~] in accordance with this subdivision. The board of elections of the city of New York shall advise the co-executive directors 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 executive or administrative functions. Except as expressly provided in this subdivision, such board shall make no individualized decisions concerning the employment of any specific person or the registration, pre-registration, enrollment or qualifications of any specific voter or applicant. Nothing in this subdivision shall be construed to require or authorize the day-to-day supervision of the co-executive directors by the board. The board may delegate powers and duties conferred upon the board to the co-executive directors, to be exercised consistent with paragraph (d) of this subdivision. One co-executive director shall first be appointed for a term of two years and the other shall first be appointed to a term of four years, with both terms commencing on March first, two thousand twenty-three. Thereafter, each co-executive director shall be appointed for a term of four years in the manner described in paragraph (b) of this subdivision. In the case of a vacancy, a co-executive director shall be appointed to serve the remainder of the unexpired term according to the original manner of appointment of the previous co-executive director.

(b)(1) For purposes of this paragraph and paragraph (e) of this subdivision, the term "appointing authorities" shall mean the mayor of the city of New York, the speaker of the city council of such city, and the public advocate of such city, who shall act pursuant to this subdivision by concurring action of at least two of such officials, provided that the mayor shall be one of the concurring officials.

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

(3) Party recommendations for co-executive director shall be made by the commissioners of election for each political party. Such commissioners shall act jointly by majority vote to recommend no fewer than three candidates for each position of co-executive director. If at any time a vacancy occurs in the office of co-executive director other than by expiration of term of office, or if a request for additional candidates is made by the appointing authorities pursuant to subparagraph six of this paragraph, party recommendations to fill such vacancy shall be made within thirty days. If fewer than three candidates are recommended in a timely manner by the commissioners of election for the applicable political party acting jointly by majority vote, then the members of the city council who are members of the applicable political party may, by majority vote of such members, file certificates of party recommendation

1 with the appointing authorities within fifteen days after the expiration  
2 of the time for filing by the commissioners of election, so as to  
3 increase the total number of candidates to three.

4 (4) Candidates recommended under this paragraph must satisfy all qual-  
5 ifications required for local officers pursuant to the public officers  
6 law. Further, no later than December thirty-first, two thousand twen-  
7 ty-two, the state board of elections shall prescribe additional quali-  
8 fications for the co-executive directors, which shall apply to recommen-  
9 dations and appointments made thereafter. Such qualifications shall  
10 thereafter be reviewed by such board at least every two years and  
11 updated as necessary, and shall be prescribed only after consideration  
12 of the skills and knowledge necessary or useful for the exercise of the  
13 duties and responsibilities of the co-executive directors, as well as  
14 the ability to recruit a sufficient number of candidates to be co-execu-  
15 tive directors.

16 (5) The certificates filed shall be in such form and contain such  
17 information as shall be prescribed by the state board of elections.

18 (6) The co-executive directors shall be appointed jointly by the  
19 appointing authorities in accordance with this subdivision, from among  
20 the candidates recommended pursuant to subparagraph three of this para-  
21 graph; provided, however, that within thirty days after receipt of one  
22 or more certificates of recommendation that include in the aggregate at  
23 least three candidates, the appointing authorities may request the  
24 submission of not less than two additional candidates, in which event  
25 the process set forth in subparagraph two of this paragraph shall be  
26 repeated. If the appointing authorities fail to jointly appoint any  
27 person recommended for appointment as co-executive director pursuant to  
28 this paragraph, within forty-five days after receipt of one or more  
29 certificates of recommendation that include at least three candidates,  
30 or within thirty days after receipt of one or more certificates that  
31 include at least two additional candidates, then the commissioners of  
32 election who are members of the political party which filed such certif-  
33 icate may appoint one of the recommended candidates by a majority vote  
34 of such commissioners. If a sufficient number of candidates, or of  
35 additional candidates, are not recommended to the appointing authorities  
36 by either the applicable commissioners of election or the applicable  
37 members of the city council within the times prescribed by this para-  
38 graph, then any holdover status of the incumbent co-executive director  
39 shall terminate and the process required by this paragraph shall recom-  
40 mence, unless the appointing authorities jointly appoint one of the  
41 recommended candidates within fifteen days after the expiration of such  
42 prescribed times.

43 (7) Notwithstanding any inconsistent provision of this paragraph, no  
44 earlier than the first day of January and no later than the thirty-first  
45 day of January in the last year of the term of a co-executive director,  
46 the appointing authorities and commissioners of election for the appli-  
47 cable political party, acting by a majority vote of such commissioners,  
48 may agree to jointly issue a certificate of party recommendation and  
49 appointment to reappoint such co-executive director to another term of  
50 office. In such event, the process otherwise specified in subparagraphs  
51 two, three and six of this paragraph shall not apply.

52 (8) A co-executive director may be removed from office for cause by  
53 the appointing authorities. In addition, a co-executive director may be  
54 removed without cause by the appointing authorities acting jointly with  
55 the commissioners of election for the applicable political party, acting  
56 by a majority vote of such commissioners. Any vacancy so resulting



1 shall be filled in the manner prescribed by this paragraph for filling  
2 vacancies.

3 (9) The co-executive directors shall be subject to the training  
4 requirements set forth in subdivision eight of section 3-200 of this  
5 article, unless the state board of elections in its discretion  
6 prescribes alternative or additional training for the co-executive  
7 directors specific to their duties and responsibilities.

8 (c) The board shall have the power and duty to take the following  
9 actions to the extent otherwise consistent with the jurisdiction of the  
10 board pursuant to this chapter:

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

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

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

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

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

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

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

31 (8) approve any contract where:

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

35 (ii) such contract provides for technical, consultant or personal  
36 services;

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

41 (9) promulgate regulations, issue orders and make decisions regarding  
42 general policies affecting the administration of elections of the city  
43 of New York.

44 (d) The co-executive directors shall collectively serve as the chief  
45 executive for the board of elections of the city of New York and shall  
46 collectively exercise all their powers and duties in a manner not incon-  
47 sistent with the policies of the board. The co-executive directors may  
48 collectively delegate powers and duties to the other, and may collec-  
49 tively delegate powers and duties to employees in furtherance of the  
50 purposes of this chapter, including but not limited to the ability to  
51 exercise the powers and duties of a co-executive director in the event  
52 of a vacancy. Such powers and duties shall include but not be limited  
53 to:

54 (1) appointing, and at their pleasure removing, clerks, voting machine  
55 technicians, custodians and other employees, fixing their number,  
56 prescribing their duties, fixing their titles and rank and establishing

1 their salaries within the amounts appropriated therefor in the expense  
2 budget of the city of New York, provided that this subparagraph shall  
3 not affect the fixing of a daily rate of compensation pursuant to subdi-  
4 vision one of section 3-420 of this article. They shall secure in the  
5 appointment of employees equal representation of the major political  
6 parties. In exercising the powers conferred by this paragraph with  
7 respect to the appointment of employees, the co-executive directors  
8 shall, in consultation with the New York city department of citywide  
9 administrative services establish written policies and procedures on  
10 personnel, including executive staff, other than those paid at a daily  
11 rate pursuant to subdivision one of section 3-420 of this article, with-  
12 in ninety days of the effective date of this paragraph. Such policies  
13 and procedures shall include:

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

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

30 (iii) policies providing for appropriate ongoing training of employ-  
31 ees, including those individuals employed prior to the establishment of  
32 such policies, with the purpose of ensuring that all employees have the  
33 knowledge and experience to fulfill the duties of the position that they  
34 hold;

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

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

42 (2) exercising all the powers and duties delegated to boards of  
43 elections, or specifically to the board of elections of the city of New  
44 York, except where such powers and duties are expressly reserved for  
45 such board pursuant to this subdivision, in all matters relating to  
46 qualification of voters, voter registration and enrollment, cancellation  
47 of voter registration, change of voter status and registration records  
48 pursuant to article five of this chapter; in all matters relating to  
49 creation and alterations of election districts pursuant to article four  
50 of this chapter, and in all matters relating to designation of places  
51 for registration and polling places pursuant to articles five and eight  
52 of this chapter; and

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

1 (e) Notwithstanding any inconsistent provision of law, in lieu of any  
2 otherwise applicable law concerning public conduct of business or  
3 rendering of determinations by the co-executive directors, they shall  
4 provide information to the board of elections of the city of New York  
5 and the public in accordance with this paragraph.

6 (1) At regular meetings of such board conducted in accordance with  
7 article seven of the public officers law, the co-executive directors  
8 shall report to the commissioners of such board on the discharge of any  
9 powers and duties exercised by the co-executive directors under para-  
10 graph (d) of this subdivision as well as any additional relevant infor-  
11 mation as may be requested by majority vote of such board. At such meet-  
12 ings, a reasonable opportunity shall be provided to the public to  
13 provide oral comment on the actions and operations of the board and its  
14 staff.

15 (2) Not later than January thirty-first of each year, the co-executive  
16 directors shall provide to the appointing authorities a report regarding  
17 the actual performance of the board of elections of the city of New York  
18 as an agency for the previous calendar year, relative to programmatic  
19 goals and measures. Such report shall include such additional informa-  
20 tion, and be presented in such form, as may be specified in writing by  
21 the appointing authority and speaker and communicated to the co-execu-  
22 tive directors no later than December first of the previous calendar  
23 year, provided that any specification requiring the collection or main-  
24 tenance of additional data not already collected or maintained shall be  
25 specified at least three months prior to the anticipated commencement of  
26 such collection or maintenance.

27 (3) For each election, the board shall track and report key voting and  
28 election administration data, including: turnout by election district;  
29 average wait times by poll site and election district; call volume by  
30 poll site and types of complaints received; the type and frequency of  
31 use of different voting methods, including absentee, early, and election  
32 day voting, affidavit ballot usage rates; rates of and reasons for  
33 ballot rejections; and, language interpreter staffing by language per  
34 poll site.

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

37 3. In the city of New York all leased or purchased equipment,  
38 supplies, ballots, printing and publications, except newspaper notices  
39 and advertisements, to be used or furnished by such board, may be  
40 procured for it by the purchasing department or agency of such city as  
41 if such board were an agency of such city. Such board shall comply with  
42 the rules and regulations of the New York city procurement policy board  
43 and applicable state law for all purchase contracts, including but not  
44 limited to purchase of goods, services or technology.

45 § 7. Notwithstanding any inconsistent provision of law, the current  
46 board of elections commissioners for the city of New York shall perform  
47 the functions assigned to the commissioners until the expiration of  
48 their term.

49 § 8. Notwithstanding any inconsistent provision of this act, until the  
50 first co-executive director of the applicable political party takes  
51 office in accordance with section 3-300 of the election law, as amended  
52 by section three of this act, the executive director or deputy executive  
53 director of the board of elections of the city of New York appointed by  
54 such board and representative of such party shall perform the functions  
55 assigned to the applicable co-executive director by such section of the  
56 election law, as amended by this act, or any other law. Further, while



1 remaining in office, such executive director and deputy executive direc-  
2 tor shall be subject to removal and replacement by action of such board,  
3 consistent with the provisions of section 3-300 of the election law as  
4 such section was in existence prior to its amendment by this act. If a  
5 co-executive director has not been appointed by May 1, 2022, the status  
6 of the executive director or deputy executive director appointed by such  
7 board and representative of the applicable political party shall termi-  
8 nate, and the new position of co-executive director shall be deemed in  
9 existence and vacant for all purposes after such date.

10 § 9. This act shall take effect immediately; provided, however, that  
11 section one of this act shall take effect on the one hundred fiftieth  
12 day after it shall have become a law; and provided further, however,  
13 that sections two, four, five, six, seven and eight of this act shall  
14 take effect on the sixtieth day after it shall have become a law.