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 Assembly, do enact as follows:

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

§ 3-100. New York state board of elections; membership; organization. 1. There is hereby created [~~within the executive department~~] a New York state board of elections, hereafter referred to as the "state board of elections", [~~composed of four commissioners appointed by the governor: two commissioners, one each from among not fewer than two persons recommended by the chairman of the state committee of each of the major political parties; and two other commissioners, one upon the joint recommendation of the legislative leaders, of one major political party, in each house of the legislature and one upon the joint recommendation of the legislative leaders, of the other major political party, in each house of the legislature~~] **which shall be directed by a secretary of elections**. The [~~commissioners~~] **secretary of elections** shall be [~~appointed~~] **elected** for [~~terms~~] **a term** of [~~two~~] **four** years [~~each and in the same manner as their respective predecessors. A commissioner appointed to the board to fill a vacancy caused other than by expiration of a term, shall serve for the balance of the unexpired term. In the event that there is a vacancy in the office of the commissioner appointed on the recommendation of such legislative leaders caused by expiration of term or otherwise, such legislative leaders responsible for making the joint recommendation to fill such vacancy shall jointly recommend an individual to fill such vacancy and the governor shall make the appointment from such 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.

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~~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-

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

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

~~5.~~] The principal office of the state board of elections shall be in the county of Albany.

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

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

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

16-d. create mandatory training programs for local elections commissioners, and for other state and local elections staff where the secretary shall deem necessary;

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

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

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

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

6. Hearings shall be conducted by [~~a panel of two commissioners of the state board of elections of opposite parties~~] **the secretary of elections** or senior staff members of [~~opposite parties as selected by the commissioners of that party~~] **the board of elections, as selected by the secretary of elections, pursuant to any restrictions in the constitution**. If the **secretary or** panel does not agree to sustain the complaint, the formal complaint shall be deemed dismissed and shall constitute the determination of the **secretary or** panel.

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

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

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

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

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

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

1. There shall be a public campaign finance board within the state board of elections that shall be comprised of the following commissioners: the [~~four state board of elections commissioners~~] **secretary of elections** and three additional commissioners, one jointly appointed by the legislative leaders of one major political party in each house of the legislature, one jointly appointed by the legislative leaders of the other major political party in each house of the legislature, and one of whom shall be appointed by the governor. Each commissioner must be a New York state resident and registered voter, and may not currently be, or within the previous five years have been, an officer of a political party or political committee as defined in the election law, or a registered lobbyist. The chair of the PCFB shall be designated by the PCFB from among the three [~~additional~~] commissioners **directly appointed by the legislature or the governor**. Each of the three [~~additional~~] commissioners **directly appointed by the legislature or the governor** shall receive a per diem of three hundred fifty dollars for work actually performed not to exceed twenty-five thousand dollars in any one calendar year. They shall be considered public officers for purposes of sections seventy-three-a and seventy-four of the public officers law. The three commissioners so appointed pursuant to this recommendation will be appointed for a term of five years to commence on July first, two thousand twenty and may be removed by his or her appointing authority solely for substantial neglect of duty, gross misconduct in office, inability to discharge the power or duties of office, after written notice and opportunity to be heard. During the period of his or her term as a commissioner appointed hereunder, each such commissioner is barred from making, or soliciting from other persons, any contributions to candidates for election to the offices of governor, lieutenant governor, attorney general, comptroller, member of the assembly, or state senator. Any vacancy occurring on the PCFB shall be filled within thirty days of its occurrence in the same manner as the member whose vacancy is being filled was appointed. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he or she succeeds. Four members of the PCFB shall constitute a quorum, and the PCFB shall have the power to act by majority vote of the total number of members of the commission with-

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

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