

# STATE OF NEW YORK

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5691--A

2021-2022 Regular Sessions

## IN ASSEMBLY

February 24, 2021

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Introduced by M. of A. ROZIC -- read once and referred to the Committee on Election Law -- committee discharged, bill amended, 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. The section heading and subdivision 3 of section 3-200 of  
2 the election law, the section heading as amended by chapter 373 of the  
3 laws of 1978, are amended and a new subdivision 8 is added to read as  
4 follows:

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

7 3. In the city of New York the board shall consist of ten commission-  
8 ers of election who shall be registered voters in the county for which  
9 they are appointed and they shall be appointed by the city council of  
10 the city of New York. Not more than two commissioners shall be regis-  
11 tered voters of the same county. In addition, no later than December  
12 thirty-first, two thousand twenty-one, the state board of elections  
13 shall prescribe qualifications for the commissioners of election of the  
14 board of elections of the city of New York. Such qualifications shall  
15 apply to appointments made beginning thirty days after promulgation of  
16 such qualifications and shall thereafter be reviewed by such board at  
17 least every two years and updated as necessary. Such qualifications  
18 shall be prescribed only after consideration of the skills and knowledge  
19 necessary or useful for the exercise of the duties and responsibilities  
20 of such commissioners, as well as the ability to recruit a sufficient  
21 number of candidates to be commissioners.

22 8. In the city of New York the commissioners of election shall partic-  
23 ipate in training conducted by the state board of elections regarding

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

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their duties and responsibilities as commissioners of election, including training regarding election day operations, to be completed within sixty days after a commissioner commences performance of the duties of the office. Commissioners of election shall participate in such continuing training conducted by the state board of elections as may be required by such board to remain informed of best practices, regulatory and statutory changes relating to their duties and responsibilities, and any other continuing training as is necessary to fulfill the duties of the commissioners of election.

§ 2. 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.

§ 3. 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 title and prescribe his 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

1 directors on matters of policy affecting the administration of elections  
2 in the city of New York. Except as expressly provided in this subdivi-  
3 sion, such board shall exercise no executive power and perform no execu-  
4 tive or administrative functions. Except as expressly provided in this  
5 subdivision, such board shall make no individualized decisions concern-  
6 ing the employment of any specific person or the registration, pre-re-  
7 gistration, enrollment or qualifications of any specific voter or appli-  
8 cant. Nothing in this subdivision shall be construed to require or  
9 authorize the day-to-day supervision of the co-executive directors by  
10 the board. The board may delegate powers and duties conferred upon the  
11 board to the co-executive directors, to be exercised consistent with  
12 paragraph (d) of this subdivision. One co-executive director shall  
13 first be appointed for a term of two years and the other shall first be  
14 appointed to a term of four years, with both terms commencing on March  
15 first, two thousand twenty-two. Thereafter, each co-executive director  
16 shall be appointed for a term of four years in the manner described in  
17 paragraph (b) of this subdivision. In the case of a vacancy, a co-exe-  
18 cutive director shall be appointed to serve the remainder of the unex-  
19 pired term according to the original manner of appointment of the previ-  
20 ous co-executive director.

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

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

33 (3) Party recommendations for co-executive director shall be made by  
34 the commissioners of election for each political party. Such commission-  
35 ers shall act jointly by majority vote to recommend no fewer than three  
36 candidates for each position of co-executive director. If at any time a  
37 vacancy occurs in the office of co-executive director other than by  
38 expiration of term of office, or if a request for additional candidates  
39 is made by the appointing authorities pursuant to subparagraph six of  
40 this paragraph, party recommendations to fill such vacancy shall be made  
41 within thirty days. If fewer than three candidates are recommended in a  
42 timely manner by the commissioners of election for the applicable poli-  
43 tical party acting jointly by majority vote, then the members of the  
44 city council who are members of the applicable political party may, by  
45 majority vote of such members, file certificates of party recommendation  
46 with the appointing authorities within fifteen days after the expiration  
47 of the time for filing by the commissioners of election, so as to  
48 increase the total number of candidates to three.

49 (4) In addition to satisfying any other qualifications required for  
50 local officers pursuant to the public officers law, candidates recom-  
51 ended under this paragraph must be registered voters in the city of New  
52 York. Further, no later than December thirty-first, two thousand twen-  
53 ty-one, the state board of elections shall prescribe additional quali-  
54 fications for the co-executive directors, which shall apply to recommen-  
55 dations and appointments made thereafter. Such qualifications shall  
56 thereafter be reviewed by such board at least every two years and

1 updated as necessary, and shall be prescribed only after consideration  
2 of the skills and knowledge necessary or useful for the exercise of the  
3 duties and responsibilities of the co-executive directors, as well as  
4 the ability to recruit a sufficient number of candidates to be co-execu-  
5 tive directors.

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

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

33 (7) Notwithstanding any inconsistent provision of this paragraph, no  
34 earlier than the first day of January and no later than the thirty-first  
35 day of January in the last year of the term of a co-executive director,  
36 the appointing authorities and commissioners of election for the appli-  
37 cable political party, acting by a majority vote of such commissioners,  
38 may agree to jointly issue a certificate of party recommendation and  
39 appointment to reappoint such co-executive director to another term of  
40 office. In such event, the process otherwise specified in subparagraphs  
41 two, three and six of this paragraph shall not apply.

42 (8) A co-executive director may be removed from office for cause by  
43 the appointing authorities. In addition, a co-executive director may be  
44 removed without cause by the appointing authorities acting jointly with  
45 the commissioners of election for the applicable political party, acting  
46 by a majority vote of such commissioners. Any vacancy so resulting  
47 shall be filled in the manner prescribed by this paragraph for filling  
48 vacancies.

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

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

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

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

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

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

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

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

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

21 (8) approve any contract where:

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

25 (ii) such contract provides for technical, consultant or personal  
26 services;

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

31 (9) promulgate regulations, issue orders and make decisions regarding  
32 general policies affecting the administration of elections of the city  
33 of New York.

34 (d) The co-executive directors shall collectively serve as the chief  
35 executive for the board of elections of the city of New York and shall  
36 collectively exercise all their powers and duties in a manner not incon-  
37 sistent with the policies of the board. The co-executive directors may  
38 collectively delegate powers and duties to the other, and may collec-  
39 tively delegate powers and duties to employees in furtherance of the  
40 purposes of this chapter, including but not limited to the ability to  
41 exercise the powers and duties of a co-executive director in the event  
42 of a vacancy. Such powers and duties shall include but not be limited  
43 to:

44 (1) appointing, and at their pleasure removing, clerks, voting machine  
45 technicians, custodians and other employees, fixing their number,  
46 prescribing their duties, fixing their titles and rank and establishing  
47 their salaries within the amounts appropriated therefor in the expense  
48 budget of the city of New York, provided that this subparagraph shall  
49 not affect the fixing of a daily rate of compensation pursuant to subdi-  
50 vision one of section 3-420 of this article. They shall secure in the  
51 appointment of employees equal representation of the major political  
52 parties. In exercising the powers conferred by this paragraph with  
53 respect to the appointment of employees, the co-executive directors  
54 shall, in consultation with the New York city department of citywide  
55 administrative services establish written policies and procedures on  
56 personnel, including executive staff, other than those paid at a daily



1 rate pursuant to subdivision one of section 3-420 of this article, with-  
2 in ninety days of the effective date of this paragraph. Such policies  
3 and procedures shall include:

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

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

20 (iii) policies providing for appropriate ongoing training of employ-  
21 ees, including those individuals employed prior to the establishment of  
22 such policies, with the purpose of ensuring that all employees have the  
23 knowledge and experience to fulfill the duties of the position that they  
24 hold; and

25 (iv) policies establishing an employee performance evaluation program  
26 based upon evidence of work actually performed by employees as compared  
27 with pre-established performance standards;

28 (2) exercising all the powers and duties delegated to boards of  
29 elections, or specifically to the board of elections of the city of New  
30 York, except where such powers and duties are expressly reserved for  
31 such board pursuant to this subdivision, in all matters relating to  
32 qualification of voters, voter registration and enrollment, cancellation  
33 of voter registration, change of voter status and registration records  
34 pursuant to article five of this chapter; in all matters relating to  
35 creation and alterations of election districts pursuant to article four  
36 of this chapter, and in all matters relating to designation of places  
37 for registration and polling places pursuant to articles five and eight  
38 of this chapter; and

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

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

48 (1) At regular meetings of such board conducted in accordance with  
49 article seven of the public officers law, the co-executive directors  
50 shall report to the commissioners of such board on the discharge of any  
51 powers and duties exercised by the co-executive directors under para-  
52 graph (d) of this subdivision as well as any additional relevant infor-  
53 mation as may be requested by majority vote of such board. At such meet-  
54 ings, a reasonable opportunity shall be provided to the public to  
55 provide oral comment on the actions and operations of the board and its  
56 staff.

1     (2) Not later than January thirty-first of each year, the co-executive  
2     directors shall provide to the appointing authorities a report regarding  
3     the actual performance of the board of elections of the city of New York  
4     as an agency for the previous calendar year, relative to programmatic  
5     goals and measures. Such report shall include such additional informa-  
6     tion, and be presented in such form, as may be specified in writing by  
7     the appointing authority and speaker and communicated to the co-execu-  
8     tive directors no later than December first of the previous calendar  
9     year, provided that any specification requiring the collection or main-  
10    tenance of additional data not already collected or maintained shall be  
11    specified at least three months prior to the anticipated commencement of  
12    such collection or maintenance.

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

15     3. In the city of New York all leased or purchased equipment,  
16     supplies, ballots, printing and publications, except newspaper notices  
17     and advertisements, to be used or furnished by such board, may be  
18     procured for it by the purchasing department or agency of such city as  
19     if such board were an agency of such city. Such board shall comply with  
20     the rules and regulations of the New York city procurement policy board  
21     and applicable state law for all purchase contracts, including but not  
22     limited to purchase of goods, services or technology.

23     § 5. Notwithstanding any inconsistent provision of this act, until the  
24     first co-executive director of the applicable political party takes  
25     office in accordance with section 3-300 of the election law, as amended  
26     by section three of this act, the executive director or deputy executive  
27     director of the board of elections of the city of New York appointed by  
28     such board and representative of such party shall perform the functions  
29     assigned to the applicable co-executive director by such section of the  
30     election law, as amended by this act, or any other law. Further, while  
31     remaining in office, such executive director and deputy executive direc-  
32     tor shall be subject to removal and replacement by action of such board,  
33     consistent with the provisions of section 3-300 of the election law as  
34     such section was in existence prior to its amendment by this act. If a  
35     co-executive director has not been appointed by May 1, 2022, the status  
36     of the executive director or deputy executive director appointed by such  
37     board and representative of the applicable political party shall termi-  
38     nate, and the new position of co-executive director shall be deemed in  
39     existence and vacant for all purposes after such date.

40     § 6. This act shall take effect on the sixtieth day after it shall  
41     have become a law.