STATE OF NEW YORK

5691--D

2021-2022 Regular Sessions

IN ASSEMBLY

February 24, 2021

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 -- recommitted to the Committee on Election Law in accordance with Assembly Rule 3, sec. 2 -- 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:

Section 1. Notwithstanding any inconsistent provision of law to the contrary, on the effective date of this section the term of each commissioner of the New York City Board of Elections, or any vacant position, shall be deemed expired, and each such commissioner or vacant position shall be replaced with new appointments made pursuant to this section.

In the city of New York, the county committee of each major political party shall, within sixty days after the effective date of this section, file a certificate of party recommendation with the clerk of the city council of the city of New York recommending one qualified individual for consideration to serve as a commissioner of elections. The city council shall immediately, or as soon as practicable but no more than thirty days thereafter, hold a public hearing on such recommendations, and provided further, no more than thirty days thereafter confirm two qualified individuals for such positions, who shall succeed those individuals whose terms shall have expired pursuant to this section.

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

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§ 2. The section heading and subdivision 3 of section 3-200 of the election law, the section heading as amended by chapter 373 of the laws of 1978, are amended and a new subdivision 8 is added to read as follows:

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

3. In the city of New York the board shall consist of [~~ten~~] **two** commissioners of election who [~~shall be registered voters in the county for which they are appointed and they~~] shall be appointed by the city council of the city of New York. Not more than two commissioners shall be registered voters of the same county. **No later than December thirty-first, two thousand twenty-two, the state board of elections shall prescribe qualifications for the commissioners of election of the board of elections of the city of New York. Such qualifications shall apply to appointments made beginning thirty days after promulgation of such qualifications and shall thereafter be reviewed by such board at least every two years and updated as necessary. Such qualifications shall be prescribed only after consideration of the skills and knowledge necessary or useful for the exercise of the duties and responsibilities of such commissioners, as well as the ability to recruit a sufficient number of candidates to be commissioners. Further, no later than December thirty-first, two thousand twenty-two, the state board of elections shall prescribe additional qualifications for the co-executive directors, which shall apply to recommendations and appointments made thereafter. Such qualifications shall thereafter be reviewed by such board at least every two years and updated as necessary, and shall be prescribed only after consideration of the skills and knowledge necessary or useful for the exercise of the duties and responsibilities of the co-executive directors, as well as the ability to recruit a sufficient number of candidates to be co-executive directors.**

8. In the city of New York the commissioners of election shall participate in training conducted by the state board of elections regarding 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.

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

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

(b) Party recommendations for election commissioner in the city of New York or to fill a vacancy in such office shall be made by the county

committee or by such other committee as the rules of the party may provide, by a majority of the votes cast at a meeting of the members of such committee at which a quorum is present. Each party shall, within sixty days of a vacancy, file a certificate of party recommendation with the clerk of the city council of the city of New York recommending one individual for consideration to serve as a commissioner of elections. The city council shall immediately, or as soon as practicable but no more than thirty days thereafter, hold a public hearing on such recommendations and provided further, no more than thirty days thereafter confirm an individual 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 the later of March first, two thousand twenty-three or thirty days after both commissioners have been confirmed. 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 commissioner of election for each political party. Such commissioner shall recommend no fewer than three candidates for the 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 commissioner of election for the applicable political party 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 with the appointing authorities within fifteen days after the expiration of the time for filing by the commissioners of election, so as to increase the total number of candidates to three.

(4) Candidates recommended under this paragraph must satisfy all qualifications required for local officers pursuant to the public officers law.

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

(6) The co-executive directors shall be appointed jointly by the appointing authorities in accordance with this subdivision, from among the candidates recommended pursuant to subparagraph three of this paragraph.

(7) Notwithstanding any inconsistent provision of this paragraph, no earlier than the first day of January and no later than the thirty-first day of January in the last year of the term of a co-executive director, the appointing authorities and commissioner of election for the applicable political party, may agree to issue a certificate of party recommendation and appointment to reappoint such co-executive director to another term of office. In such event, the process otherwise specified in subparagraphs two, three and six of this paragraph shall not apply.

(8) A co-executive director may be removed from office for cause by the appointing authorities. In addition, a co-executive director may be removed without cause by the appointing authorities acting jointly with the commissioner of election for the applicable political party. Any vacancy so resulting shall be filled in the manner prescribed by this paragraph for filling vacancies.

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

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

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

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

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

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

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

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

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

(8) approve any contract where:

(i) such contract was let by a procurement method other than competitive sealed bidding where the contract was awarded to the lowest responsible bidder;

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

(iii) the value of the contract exceeds or projects an annual expenditure exceeding one million dollars for the fiscal year or where the value of any contracts awarded to a single entity exceeds or is projected to exceed one million dollars for the fiscal year; and

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

(d) The co-executive directors shall collectively serve as the chief executive for the board of elections of the city of New York and shall collectively exercise all their powers and duties in a manner not inconsistent with the policies of the board. The co-executive directors may collectively delegate powers and duties to the other, and may collectively delegate powers and duties to employees in furtherance of the purposes of this chapter, including but not limited to the ability to exercise the powers and duties of a co-executive director in the event of a vacancy. Such powers and duties shall include but not be limited to:

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

(i) specifications setting forth the qualifications for and the nature and scope of the duties and responsibilities of each title, including executive staff, with appointments to be made consistent with such specifications, provided that appointments shall secure equal representation of the major political parties. Such specifications shall in addition to securing such representation, give due weight to seniority, previous trainings and experience, education and professional credentials, and performance ratings where available. This paragraph shall not be construed to require the preparation of administration of competitive examination of eligible list for any title, nor shall it be construed to

require the termination of any individual employed by the board of elections of the city of New York prior to the establishment of such specifications;

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

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

(iv) policies to require the posting of all vacant positions fourteen days before interviews commence. All postings shall be on a publicly accessible website, in the city record, or on an open data portal. Nothing shall prevent the posting of vacancies on all three; and

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

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

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

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

(1) At regular meetings of such board conducted in accordance with article seven of the public officers law, the co-executive directors shall report to the commissioners of such board on the discharge of any powers and duties exercised by the co-executive directors under paragraph (d) of this subdivision as well as any additional relevant information as may be requested by majority vote of such board. At such meetings, a reasonable opportunity shall be provided to the public to provide oral comment on the actions and operations of the board and its staff.

(2) Not later than January thirty-first of each year, the co-executive directors shall provide to the appointing authorities a report regarding the actual performance of the board of elections of the city of New York as an agency for the previous calendar year, relative to programmatic goals and measures. Such report shall include such additional information, and be presented in such form, as may be specified in writing by the appointing authority and speaker and communicated to the co-executive directors no later than December first of the previous calendar year, provided that any specification requiring the collection or main-

tenance of additional data not already collected or maintained shall be specified at least three months prior to the anticipated commencement of such collection or maintenance.

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

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

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

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

§ 8. Notwithstanding any inconsistent provision of this act, until the first co-executive director of the applicable political party takes office in accordance with section 3-300 of the election law, as amended by section five of this act, the executive director or deputy executive director of the board of elections of the city of New York appointed by such board and representative of such party shall perform the functions assigned to the applicable co-executive director by such section of the election law, as amended by this act, or any other law. Further, while remaining in office, such executive director and deputy executive director shall be subject to removal and replacement by action of such board, consistent with the provisions of section 3-300 of the election law as such section was in existence prior to its amendment by this act. If a co-executive director has not been appointed by May 1, 2023, the status of the executive director or deputy executive director appointed by such board and representative of the applicable political party shall terminate, and the new position of co-executive director shall be deemed in existence and vacant for all purposes after such date.

§ 9. This act shall take effect immediately; provided, however, that sections one, three, four, and five of this act shall take effect on January 1, 2023; and provided further, however, that sections six, seven and eight of this act shall take effect on the sixtieth day after it shall have become a law.