

# STATE OF NEW YORK

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2021-2022 Regular Sessions

## IN SENATE

April 15, 2021

Introduced by Sens. KRUEGER, HOYLMAN, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Elections in accordance with Senate Rule 6, sec. 8 -- 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. 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 one qualified individual  
10 for consideration to serve as a commissioner of elections. The city  
11 council shall immediately, or as soon as practicable but no more than  
12 thirty days thereafter, hold a public hearing on such recommendations,  
13 and provided further, no more than thirty days thereafter confirm two  
14 qualified individuals for such positions, who shall succeed those indi-  
15 viduals whose terms 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. Further, no later than Decem-  
20 ber thirty-first, two thousand twenty-two, the state board of  
21 elections shall prescribe additional qualifications for the co-executive  
22 directors, which shall apply to recommendations and appointments made  
23 thereafter. Such qualifications shall thereafter be reviewed by such  
24 board at least every two years and updated as necessary, and  
25 shall be prescribed only after consideration of the skills and knowledge  
26 necessary or useful for the exercise of the duties and responsibil-  
27 ities of the co-executive directors, as well as the ability to recruit  
28 a sufficient number of candidates to be co-executive directors.

29 8. In the city of New York the commissioners of election shall partic-  
30 ipate in training conducted by the state board of elections regarding  
31 their duties and responsibilities as commissioners of election, includ-  
32 ing training regarding election day operations, to be completed within  
33 sixty days after a commissioner commences performance of the duties of  
34 the office. Commissioners of election shall participate in such continu-  
35 ing training conducted by the state board of elections as may be  
36 required by such board to remain informed of best practices, regulatory  
37 and statutory changes relating to their duties and responsibilities, and  
38 any other continuing training as is necessary to fulfill the duties of  
39 the commissioners of election.

40 § 3. Subdivisions 2 and 4 of section 3-204 of the election law, subdi-  
41 vision 2 as amended by chapter 453 of the laws of 1997, and subdivision  
42 4 as amended by chapter 116 of the laws of 2010, are amended to read as  
43 follows:

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

53 (b) Party recommendations for election commissioner in the city of New  
54 York or to fill a vacancy in such office shall be made by the county  
55 committee or by such other committee as the rules of the party may  
56 provide, by a majority of the votes cast at a meeting of the members of

1 such committee at which a quorum is present. Each party shall, within  
2 sixty days of a vacancy, file a certificate of party recommendation with  
3 the clerk of the city council of the city of New York recommending one  
4 individual for consideration to serve as a commissioner of elections.  
5 The city council shall immediately, or as soon as practicable but no  
6 more than thirty days thereafter, hold a public hearing on such recom-  
7 mendations and provided further, no more than thirty days thereafter  
8 confirm an individual for such position.

9 4. Commissioners of election shall be appointed by the county legisla-  
10 tive body, or in the city of New York, by the city council following a  
11 public hearing. Provided, however, that if a legislative body shall  
12 fail to appoint any person recommended by a party for appointment as a  
13 commissioner pursuant to this section, within thirty days after the  
14 filing of a certificate of recommendation with such legislative body,  
15 then the members of such legislative body who are members of the poli-  
16 tical party which filed such certificate may appoint such person. And  
17 further provided, if there are no members of the legislative body who  
18 are members of the political party which filed such certificate, the  
19 appointment shall take effect upon the expiration of thirty days from  
20 the date that the certificate was filed. If none of the persons named in  
21 any of the certificates filed by a party are so appointed within sixty  
22 days after the filing of any such certificate, then such party may file  
23 another certificate within thirty days after the expiration of any such  
24 sixty day period recommending a different person for such appointment.  
25 If a party fails to file a certificate within the time prescribed by  
26 this section, the members of the legislative body who are members of  
27 such party may appoint any eligible person to such office.

28 § 4. The section heading of section 3-212 of the election law is  
29 amended and a new subdivision 6 is added to read as follows:

30 Boards of elections; organization, proceedings, reports and records;  
31 budget reporting in the city of New York.

32 6. If, at any time during the city fiscal year of the city of New  
33 York, the director of management and budget of such city determines that  
34 the expenditures of the board of elections of the city of New York are  
35 reasonably likely to exceed appropriations to such board for personnel  
36 services or other than personnel services for a quarter of the fiscal  
37 year, based upon a reasonable allotment by such director of such appro-  
38 priations to such quarter, or for the entire fiscal year, such director  
39 shall provide written notice of such determination to the co-executive  
40 directors of such board, the mayor of such city, the speaker of the city  
41 council of such city, and the public advocate of such city, together  
42 with any relevant requests for additional data or information that the  
43 director determines to be material to such board's level of expendi-  
44 tures. Within twenty days of receiving such notice, such co-executive  
45 directors shall submit to such director, mayor, public advocate and  
46 speaker a projection of whether and by what amount it will exceed its  
47 appropriations for personnel services and other than personnel services  
48 for each quarter and the entire fiscal year, together with a detailed  
49 explanation of the needs justifying any such projected excess expendi-  
50 tures. Nothing in this subdivision shall be construed to prevent the  
51 director from requiring the furnishing of data and information, and  
52 answers to pertinent inquiries, at any time in accordance with section  
53 two hundred twenty-five of the New York city charter.

54 § 5. Section 3-300 of the election law is amended to read as follows:

55 § 3-300. Board employees; appointment. [~~Every~~ 1. Except as provided  
56 in subdivision two of this section, every board of elections shall

1 appoint, and at its pleasure remove, clerks, voting machine technicians,  
2 custodians and other employees, fix their number, prescribe their  
3 duties, fix their titles and rank and establish their salaries within  
4 the amounts appropriated therefor by the local legislative body and  
5 shall secure in the appointment of employees of the board of elections  
6 equal representation of the major political parties. Every commissioner  
7 in each board of elections except for commissioners of the board of  
8 elections of the city of New York, may approve and at pleasure remove a  
9 deputy, establish his or her title and prescribe his or her duties. [~~In~~]

10 2. (a) Notwithstanding any provision of general, special or local law,  
11 in the city of New York, [~~the board of elections shall appoint an execu-~~  
12 ~~tive director and a deputy executive director whose duties it~~ co-execu-  
13 tive directors who shall each be of separate major political parties and  
14 shall be appointed, and may be removed, in a manner set forth in para-  
15 graph (b) of this subdivision. The duty of the co-executive directors  
16 shall be to supervise the operations of the board of elections [~~under~~  
17 ~~the supervision of such board~~ in accordance with this subdivision. The  
18 board of elections of the city of New York shall advise the co-executive  
19 directors on matters of policy affecting the administration of elections  
20 in the city of New York. Except as expressly provided in this subdivi-  
21 sion, such board shall exercise no executive power and perform no execu-  
22 tive or administrative functions. Except as expressly provided in this  
23 subdivision, such board shall make no individualized decisions concern-  
24 ing the employment of any specific person or the registration, pre-re-  
25 gistration, enrollment or qualifications of any specific voter or appli-  
26 cant. Nothing in this subdivision shall be construed to require or  
27 authorize the day-to-day supervision of the co-executive directors by  
28 the board. The board may delegate powers and duties conferred upon the  
29 board to the co-executive directors, to be exercised consistent with  
30 paragraph (d) of this subdivision. One co-executive director shall  
31 first be appointed for a term of two years and the other shall first be  
32 appointed to a term of four years, with both terms commencing on the  
33 later of March first, two thousand twenty-three or thirty days after  
34 both commissioners have been confirmed. Thereafter, each co-executive  
35 director shall be appointed for a term of four years in the manner  
36 described in paragraph (b) of this subdivision. In the case of a vacan-  
37 cy, a co-executive director shall be appointed to serve the remainder of  
38 the unexpired term according to the original manner of appointment of  
39 the previous co-executive director.

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

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

52 (3) Party recommendations for co-executive director shall be made by  
53 the commissioner of election for each political party. Such commissioner  
54 shall recommend no fewer than three candidates for the position of  
55 co-executive director. If at any time a vacancy occurs in the office of  
56 co-executive director other than by expiration of term of office, or if

1 a request for additional candidates is made by the appointing authori-  
2 ties pursuant to subparagraph six of this paragraph, party recommenda-  
3 tions to fill such vacancy shall be made within thirty days. If fewer  
4 than three candidates are recommended in a timely manner by the commis-  
5 sioner of election for the applicable political party then the members  
6 of the city council who are members of the applicable political party  
7 may, by majority vote of such members, file certificates of party recom-  
8 mendation with the appointing authorities within fifteen days after the  
9 expiration of the time for filing by the commissioners of election, so  
10 as to increase the total number of candidates to three.

11 (4) Candidates recommended under this paragraph must satisfy all qual-  
12 ifications required for local officers pursuant to the public officers  
13 law.

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

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

20 (7) Notwithstanding any inconsistent provision of this paragraph, no  
21 earlier than the first day of January and no later than the thirty-first  
22 day of January in the last year of the term of a co-executive director,  
23 the appointing authorities and commissioner of election for the applica-  
24 ble political party, may agree to issue a certificate of party recommen-  
25 dation and appointment to reappoint such co-executive director to anoth-  
26 er term of office. In such event, the process otherwise specified in  
27 subparagraphs two, three and six of this paragraph shall not apply.

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

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

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

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

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

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

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

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

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

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

6 (8) approve any contract where:

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

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

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

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

19 (d) The co-executive directors shall collectively serve as the chief  
20 executive for the board of elections of the city of New York and shall  
21 collectively exercise all their powers and duties in a manner not incon-  
22 sistent with the policies of the board. The co-executive directors may  
23 collectively delegate powers and duties to the other, and may collec-  
24 tively delegate powers and duties to employees in furtherance of the  
25 purposes of this chapter, including but not limited to the ability to  
26 exercise the powers and duties of a co-executive director in the event  
27 of a vacancy. Such powers and duties shall include but not be limited  
28 to:

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

45 (i) specifications setting forth the qualifications for and the nature  
46 and scope of the duties and responsibilities of each title, including  
47 executive staff, with appointments to be made consistent with such spec-  
48 ifications, provided that appointments shall secure equal representation  
49 of the major political parties. Such specifications shall in addition to  
50 securing such representation, give due weight to seniority, previous  
51 trainings and experience, education and professional credentials, and  
52 performance ratings where available. This paragraph shall not be  
53 construed to require the preparation of administration of competitive  
54 examination of eligible list for any title, nor shall it be construed to  
55 require the termination of any individual employed by the board of

1 elections of the city of New York prior to the establishment of such  
2 specifications;

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

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

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

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

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

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

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

38 (1) At regular meetings of such board conducted in accordance with  
39 article seven of the public officers law, the co-executive directors  
40 shall report to the commissioners of such board on the discharge of any  
41 powers and duties exercised by the co-executive directors under para-  
42 graph (d) of this subdivision as well as any additional relevant infor-  
43 mation as may be requested by majority vote of such board. At such meet-  
44 ings, a reasonable opportunity shall be provided to the public to  
45 provide oral comment on the actions and operations of the board and its  
46 staff.

47 (2) Not later than January thirty-first of each year, the co-executive  
48 directors shall provide to the appointing authorities a report regarding  
49 the actual performance of the board of elections of the city of New York  
50 as an agency for the previous calendar year, relative to programmatic  
51 goals and measures. Such report shall include such additional informa-  
52 tion, and be presented in such form, as may be specified in writing by  
53 the appointing authority and speaker and communicated to the co-execu-  
54 tive directors no later than December first of the previous calendar  
55 year, provided that any specification requiring the collection or main-  
56 tenance of additional data not already collected or maintained shall be

1 specified at least three months prior to the anticipated commencement of  
2 such collection or maintenance.

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

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

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

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

25 § 8. Notwithstanding any inconsistent provision of this act, until the  
26 first co-executive director of the applicable political party takes  
27 office in accordance with section 3-300 of the election law, as amended  
28 by section five of this act, the executive director or deputy executive  
29 director of the board of elections of the city of New York appointed by  
30 such board and representative of such party shall perform the functions  
31 assigned to the applicable co-executive director by such section of the  
32 election law, as amended by this act, or any other law. Further, while  
33 remaining in office, such executive director and deputy executive direc-  
34 tor shall be subject to removal and replacement by action of such board,  
35 consistent with the provisions of section 3-300 of the election law as  
36 such section was in existence prior to its amendment by this act. If a  
37 co-executive director has not been appointed by May 1, 2023, the status  
38 of the executive director or deputy executive director appointed by such  
39 board and representative of the applicable political party shall termi-  
40 nate, and the new position of co-executive director shall be deemed in  
41 existence and vacant for all purposes after such date.

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