

STATE OF NEW YORK

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IN SENATE

April 15, 2021

Introduced by Sens. KRUEGER, BIAGGI, HOYLMAN, MAY, 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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

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 act the term of each commission-
3 er 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 act,
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

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

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1 qualified individuals for such positions, who shall succeed those indi-
2 viduals whose terms shall have expired pursuant to this section.

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

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

8 3. In the city of New York the board shall consist of [~~ten~~] two
9 commissioners of election who [~~shall be registered voters in the county~~
10 ~~for which they are appointed and they~~] shall be appointed by the city
11 council of the city of New York. [~~Not more than two commissioners shall~~
12 ~~be registered voters of the same county~~] No two commissioners may be
13 residents of the same county or registered voters of the same party.

14 § 3. Subdivisions 2 and 4 of section 3-204 of the election law, subdivi-
15 sion 2 as amended by chapter 453 of the laws of 1997, and subdivision
16 4 as amended by chapter 116 of the laws of 2010, are amended to read as
17 follows:

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

27 (b) Party recommendations for election commissioner in the city of New
28 York or to fill a vacancy in such office shall be made by the county
29 committee or by such other committee as the rules of the party may
30 provide, by a majority of the votes cast at a meeting of the members of
31 such committee at which a quorum is present. Each party shall, within
32 sixty days of a vacancy, file a certificate of party recommendation with
33 the clerk of the city council of the city of New York recommending one
34 individual for consideration to serve as a commissioner of elections.
35 The city council shall immediately, or as soon as practicable but no
36 more than thirty days thereafter, hold a public hearing on such recom-
37 mendations and provided further, no more than thirty days thereafter
38 confirm an individual for such position.

39 4. Commissioners of election shall be appointed by the county legisla-
40 tive body, or in the city of New York, by the city council following a
41 public hearing. Provided, however, that if a legislative body shall
42 fail to appoint any person recommended by a party for appointment as a
43 commissioner pursuant to this section, within thirty days after the
44 filing of a certificate of recommendation with such legislative body,
45 then the members of such legislative body who are members of the poli-
46 tical party which filed such certificate may appoint such person. And
47 further provided, if there are no members of the legislative body who
48 are members of the political party which filed such certificate, the
49 appointment shall take effect upon the expiration of thirty days from
50 the date that the certificate was filed. If none of the persons named in
51 any of the certificates filed by a party are so appointed within sixty
52 days after the filing of any such certificate, then such party may file
53 another certificate within thirty days after the expiration of any such
54 sixty day period recommending a different person for such appointment.
55 If a party fails to file a certificate within the time prescribed by

1 this section, the members of the legislative body who are members of
2 such party may appoint any eligible person to such office.

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

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

7 6. If, at any time during the city fiscal year of the city of New
8 York, the director of management and budget of such city determines that
9 the expenditures of the board of elections of the city of New York are
10 reasonably likely to exceed appropriations to such board for personnel
11 services or other than personnel services for a quarter of the fiscal
12 year, based upon a reasonable allotment by such director of such appro-
13 priations to such quarter, or for the entire fiscal year, such director
14 shall provide written notice of such determination to the executive
15 director of such board, the mayor of such city, the speaker of the city
16 council of such city, and the public advocate of such city, together
17 with any relevant requests for additional data or information that the
18 director determines to be material to such board's level of expendi-
19 tures. Within twenty days of receiving such notice, such executive
20 director shall submit to such director, mayor, public advocate and
21 speaker a projection of whether and by what amount it will exceed its
22 appropriations for personnel services and other than personnel services
23 for each quarter and the entire fiscal year, together with a detailed
24 explanation of the needs justifying any such projected excess expendi-
25 tures. Nothing in this subdivision shall be construed to prevent the
26 director from requiring the furnishing of data and information, and
27 answers to pertinent inquiries, at any time in accordance with section
28 two hundred twenty-five of the New York city charter.

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

30 § 3-300. Board employees; appointment. [~~Every~~] 1. Except as provided
31 in subdivision two of this section, every board of elections shall
32 appoint, and at its pleasure remove, clerks, voting machine technicians,
33 custodians and other employees, fix their number, prescribe their
34 duties, fix their titles and rank and establish their salaries within
35 the amounts appropriated therefor by the local legislative body [~~and~~
36 ~~shall secure in the appointment of employees of the board of elections~~
37 ~~equal representation of the major political parties~~]. Every commissioner
38 in each board of elections except for commissioners of the board of
39 elections of the city of New York, may approve and at pleasure remove a
40 deputy, establish his or her title and prescribe his or her duties. [~~In~~]

41 2. There shall be equal representation of the major political parties
42 among those employees of the board of elections charged with the duty of
43 qualifying voters, distributing ballots to voters, or receiving, record-
44 ing or counting votes at elections.

45 3. (a) Notwithstanding any provision of general, special or local law,
46 in the city of New York, [~~the board of elections shall appoint~~] an exec-
47 utive director [~~and a deputy executive director whose duties it shall be~~
48 to supervise the operations of the board of elections under the super-
49 vision of such board] shall be appointed and may be removed, in a manner
50 set forth in paragraph (b) of this subdivision. It shall be their duty
51 to supervise the operations of the board of elections in accordance with
52 this subdivision. The executive director shall be selected following a
53 nationwide search for qualified and experienced candidates. They shall
54 serve a term of four years.

55 (b) The board of elections of the city of New York shall advise the
56 executive director on matters of policy affecting the administration of

1 elections in the city of New York. Except as expressly provided in this
2 subdivision, such board shall exercise no executive power and perform no
3 executive or administrative functions. Except as expressly provided in
4 this subdivision, such board shall make no individualized decisions
5 concerning the employment of any specific person or the registration,
6 pre-registration, enrollment or qualifications of any specific voter or
7 applicant. Nothing in this subdivision shall be construed to require or
8 authorize the day-to-day supervision of the executive director by the
9 board. The board may delegate powers and duties conferred upon the board
10 to the executive director, to be exercised consistent with paragraph (e)
11 of this subdivision. In the case of a vacancy, an executive director
12 shall be appointed to serve the remainder of the unexpired term accord-
13 ing to the original manner of appointment of the previous executive
14 director.

15 (c)(1) For purposes of this paragraph and paragraph (f) of this
16 subdivision, the term "appointing authorities" shall mean the mayor of
17 the city of New York, the speaker of the city council of such city, and
18 the public advocate of such city, who shall act pursuant to this subdi-
19 vision by concurring action of at least two of such officials, provided
20 that the mayor shall be one of the concurring officials.

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

27 (3) Party recommendations for executive director shall be made by the
28 commissioner of election for each political party. Such commissioner
29 shall recommend no fewer than three candidates for the position of exec-
30 utive director. If at any time a vacancy occurs in the office of execu-
31 tive director other than by expiration of term of office, or if a
32 request for additional candidates is made by the appointing authorities
33 pursuant to subparagraph four of this paragraph, party recommendations
34 to fill such vacancy shall be made within thirty days. If fewer than
35 three candidates are recommended in a timely manner by the commissioner
36 of election for the applicable political party then the members of the
37 city council who are members of the applicable political party may, by
38 majority vote of such members, file certificates of party recommendation
39 with the appointing authorities within fifteen days after the expiration
40 of the time for filing by the commissioners of election, so as to
41 increase the total number of candidates to three. If the members of the
42 city council from one political party do not recommend any candidates,
43 the appointing authorities will choose from the list of candidates
44 submitted.

45 (4) Candidates considered for executive director must satisfy all
46 qualifications required for local officers pursuant to the public offi-
47 cers law. Further, no later than December thirty-first, two thousand
48 twenty-two, the state board of elections shall prescribe additional
49 qualifications for the position of executive director, which shall apply
50 to recommendations and appointments made thereafter. Such qualifications
51 shall thereafter be reviewed by such board at least every two years
52 and updated as necessary, and shall be prescribed only after consid-
53 eration of the skills and knowledge necessary or useful for the exercise
54 of the duties and responsibilities of the executive director, as well
55 as the ability to recruit a sufficient number of candidates to be execu-
56 tive director.

(5) The executive director 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.

(6) 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 the executive director, the appointing authorities and commissioners of election, may agree to issue a certificate of party recommendation and appointment to reappoint such executive director to another term of office. In such event, the process otherwise specified in subparagraphs two, three and four of this paragraph shall not apply.

(7) An executive director may be removed from office for cause by the appointing authorities. In addition, an executive director may be removed without cause by the appointing authorities acting jointly with the commissioners of election. Any vacancy so resulting shall be filled in the manner prescribed by this paragraph for filling vacancies.

(d) 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.

(e) The executive director shall serve as the chief executive for the board of elections of the city of New York and shall exercise all their powers and duties in a manner not inconsistent with the policies of a

1 board. The executive director may delegate powers and duties to a deputy
2 director and may delegate powers and duties to employees in furtherance
3 of the purposes of this chapter, including but not limited to the ability
4 to exercise the powers and duties of the executive director in the
5 event of a vacancy. Such powers and duties shall include but not be
6 limited to:

7 (1) appointing, and at their pleasure removing, a deputy director,
8 clerks, voting machine technicians, custodians and other employees,
9 fixing their number, prescribing their duties, fixing their titles and
10 rank and establishing their salaries within the amounts appropriated
11 therefor in the expense budget of the city of New York, provided that
12 this subparagraph shall not affect the fixing of a daily rate of compen-
13 sation pursuant to subdivision one of section 3-420 of this article. In
14 exercising the powers conferred by this paragraph with respect to the
15 appointment of employees, the executive director shall, in consultation
16 with the New York city department of citywide administrative services
17 establish written policies and procedures on personnel, including execu-
18 tive staff, other than those paid at a daily rate pursuant to subdivi-
19 sion one of section 3-420 of this article, within ninety days of the
20 effective date of this paragraph. Such policies and procedures shall
21 include:

22 (i) specifications setting forth the qualifications for and the nature
23 and scope of the duties and responsibilities of each title, including
24 executive staff, with appointments to be made consistent with such spec-
25 ifications. Such specifications shall in addition to securing such
26 representation, give due weight to seniority, previous trainings and
27 experience, previous work for the board of elections or in elections
28 administration or in voting rights, education and professional creden-
29 tials, and performance ratings where available. This paragraph shall not
30 be construed to require the preparation of administration of competitive
31 examination of eligible list for any title, nor shall it be construed to
32 require the termination of any individual employed by the board of
33 elections of the city of New York prior to the establishment of such
34 specifications;

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

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

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

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

50 (2) exercising all the powers and duties delegated to boards of
51 elections, or specifically to the board of elections of the city of New
52 York, except where such powers and duties are expressly reserved for
53 such board pursuant to this subdivision, in all matters relating to
54 qualification of voters, voter registration and enrollment, cancellation
55 of voter registration, change of voter status and registration records
56 pursuant to article five of this chapter; in all matters relating to

1 creation and alterations of election districts pursuant to article four
2 of this chapter, and in all matters relating to designation of places
3 for registration and polling places pursuant to articles five and eight
4 of this chapter; and

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

9 (f) Notwithstanding any inconsistent provision of law, in lieu of any
10 otherwise applicable law concerning public conduct of business or
11 rendering of determinations by the executive director, they shall
12 provide information to the board of elections of the city of New York
13 and the public in accordance with this paragraph.

14 (1) At regular meetings of such board conducted in accordance with
15 article seven of the public officers law, the executive director shall
16 report to the commissioners of such board on the discharge of any powers
17 and duties exercised by the executive director under paragraph (e) of
18 this subdivision as well as any additional relevant information as may
19 be requested by majority vote of such board. At such meetings, a reason-
20 able opportunity shall be provided to the public to provide oral comment
21 on the actions and operations of the board and its staff.

22 (2) Not later than January thirty-first of each year, the executive
23 director shall provide to the appointing authorities a report regarding
24 the actual performance of the board of elections of the city of New York
25 as an agency for the previous calendar year, relative to programmatic
26 goals and measures. Such report shall include such additional informa-
27 tion, and be presented in such form, as may be specified in writing by
28 the city council and speaker and communicated to the executive director
29 no later than December first of the previous calendar year, provided
30 that any specification requiring the collection or maintenance of addi-
31 tional data not already collected or maintained shall be specified at
32 least three months prior to the anticipated commencement of such
33 collection or maintenance. Further, at least once annually, the execu-
34 tive director and elections commissioners shall present on the findings
35 of the report at a public hearing in front of the city council and
36 answer any questions or provide any additional follow up information
37 asked for by the council.

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

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

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

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

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

22 § 9. Severability. If any provision of this act is held invalid or
23 ineffective in whole or in part or inapplicable to any person or situ-
24 ation, such invalidity or holding shall not affect, impair or invalidate
25 other provisions or applications of this act that can be given effect
26 without the invalid provision or application, and all other provisions
27 thereof shall nevertheless be separately and fully effective, and to
28 this end the provisions of this act are declared to be severable.

29 § 10. This act shall take effect immediately; provided, however, that
30 sections one, three, four, and five of this act shall take effect Janu-
31 ary 1, 2023; and provided further, however, that sections six, seven and
32 eight of this act shall take effect on the sixtieth day after it shall
33 have become a law.