

STATE OF NEW YORK

662

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

Introduced by M. of A. ROZIC, BICHOTTE HERMELYN, SIMON, GALLAGHER, ANDERSON, BURGOS, CARROLL, SEAWRIGHT, HEVESI, L. ROSENTHAL, MAMDANI, REYES -- read once and referred to the Committee on Election Law

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 act 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 act, 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.

§ 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 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

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

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1 council of the city of New York. [~~Not more than two commissioners shall~~
2 ~~be registered voters of the same county~~] No two commissioners may be
3 residents of the same county or registered voters of the same party.

4 § 3. Subdivisions 2 and 4 of section 3-204 of the election law, subdivi-
5 sion 2 as amended by chapter 453 of the laws of 1997, and subdivision
6 4 as amended by chapter 116 of the laws of 2010, are amended to read as
7 follows:

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

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

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

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

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

52 6. If, at any time during the city fiscal year of the city of New
53 York, the director of management and budget of such city determines that
54 the expenditures of the board of elections of the city of New York are
55 reasonably likely to exceed appropriations to such board for personnel
56 services or other than personnel services for a quarter of the fiscal

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

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

19 § 3-300. Board employees; appointment. [~~Every~~] 1. Except as provided
20 in subdivision two of this section, every board of elections shall
21 appoint, and at its pleasure remove, clerks, voting machine technicians,
22 custodians and other employees, fix their number, prescribe their
23 duties, fix their titles and rank and establish their salaries within
24 the amounts appropriated therefor by the local legislative body [~~and~~
25 ~~shall secure in the appointment of employees of the board of elections~~
26 ~~equal representation of the major political parties~~]. Every commissioner
27 in each board of elections except for commissioners of the board of
28 elections of the city of New York, may approve and at pleasure remove a
29 deputy, establish his or her title and prescribe his or her duties. [~~In~~]

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

34 3. (a) Notwithstanding any provision of general, special or local law,
35 in the city of New York, [~~the board of elections shall appoint~~] an exec-
36 utive director [~~and a deputy executive director whose duties it shall be~~
37 ~~to supervise the operations of the board of elections under the super-~~
38 ~~vision of such board~~] shall be appointed and may be removed, in a manner
39 set forth in paragraph (b) of this subdivision. It shall be their duty
40 to supervise the operations of the board of elections in accordance with
41 this subdivision. The executive director shall be selected following a
42 nationwide search for qualified and experienced candidates. They shall
43 serve a term of four years.

44 (b) The board of elections of the city of New York shall advise the
45 executive director on matters of policy affecting the administration of
46 elections in the city of New York. Except as expressly provided in this
47 subdivision, such board shall exercise no executive power and perform no
48 executive or administrative functions. Except as expressly provided in
49 this subdivision, such board shall make no individualized decisions
50 concerning the employment of any specific person or the registration,
51 pre-registration, enrollment or qualifications of any specific voter or
52 applicant. Nothing in this subdivision shall be construed to require or
53 authorize the day-to-day supervision of the executive director by the
54 board. The board may delegate powers and duties conferred upon the board
55 to the executive director, to be exercised consistent with paragraph (e)
56 of this subdivision. In the case of a vacancy, an executive director

1 shall be appointed to serve the remainder of the unexpired term accord-
2 ing to the original manner of appointment of the previous executive
3 director.

4 (c)(1) For purposes of this paragraph and paragraph (f) of this
5 subdivision, the term "appointing authorities" shall mean the mayor of
6 the city of New York, the speaker of the city council of such city, and
7 the public advocate of such city, who shall act pursuant to this subdivi-
8 sion by concurring action of at least two of such officials, provided
9 that the mayor shall be one of the concurring officials.

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

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

34 (4) Candidates considered for executive director must satisfy all
35 qualifications required for local officers pursuant to the public offi-
36 cers law. Further, no later than December thirty-first, two thousand
37 twenty-three, the state board of elections shall prescribe additional
38 qualifications for the position of executive director, which shall apply
39 to recommendations and appointments made thereafter. Such qualifications
40 shall thereafter be reviewed by such board at least every two years
41 and updated as necessary, and shall be prescribed only after consid-
42 eration of the skills and knowledge necessary or useful for the exercise
43 of the duties and responsibilities of the executive director, as well
44 as the ability to recruit a sufficient number of candidates to be execu-
45 tive director.

46 (5) The executive director shall be appointed jointly by the
47 appointing authorities in accordance with this subdivision, from among
48 the candidates recommended pursuant to subparagraph three of this para-
49 graph.

50 (6) Notwithstanding any inconsistent provision of this paragraph, no
51 earlier than the first day of January and no later than the thirty-first
52 day of January in the last year of the term of the executive director,
53 the appointing authorities and commissioners of election, may agree to
54 issue a certificate of party recommendation and appointment to reappoint
55 such executive director to another term of office. In such event, the

1 process otherwise specified in subparagraphs two, three and four of this
2 paragraph shall not apply.

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

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

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

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

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

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

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

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

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

31 (8) approve any contract where:

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

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

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

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

44 (e) The executive director shall serve as the chief executive for the
45 board of elections of the city of New York and shall exercise all their
46 powers and duties in a manner not inconsistent with the policies of a
47 board. The executive director may delegate powers and duties to a deputy
48 director and may delegate powers and duties to employees in furtherance
49 of the purposes of this chapter, including but not limited to the abili-
50 ty to exercise the powers and duties of the executive director in the
51 event of a vacancy. Such powers and duties shall include but not be
52 limited to:

53 (1) appointing, and at their pleasure removing, a deputy director,
54 clerks, voting machine technicians, custodians and other employees,
55 fixing their number, prescribing their duties, fixing their titles and
56 rank and establishing their salaries within the amounts appropriated

1 therefor in the expense budget of the city of New York, provided that
2 this subparagraph shall not affect the fixing of a daily rate of compen-
3 sation pursuant to subdivision one of section 3-420 of this article. In
4 exercising the powers conferred by this paragraph with respect to the
5 appointment of employees, the executive director shall, in consultation
6 with the New York city department of citywide administrative services
7 establish written policies and procedures on personnel, including execu-
8 tive staff, other than those paid at a daily rate pursuant to subdivi-
9 sion one of section 3-420 of this article, within ninety days of the
10 effective date of this paragraph. Such policies and procedures shall
11 include:

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

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

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

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

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

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

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

55 (f) Notwithstanding any inconsistent provision of law, in lieu of any
56 otherwise applicable law concerning public conduct of business or

1 rendering of determinations by the executive director, they shall
2 provide information to the board of elections of the city of New York
3 and the public in accordance with this paragraph.

4 (1) At regular meetings of such board conducted in accordance with
5 article seven of the public officers law, the executive director shall
6 report to the commissioners of such board on the discharge of any powers
7 and duties exercised by the executive director under paragraph (e) of
8 this subdivision as well as any additional relevant information as may
9 be requested by majority vote of such board. At such meetings, a reason-
10 able opportunity shall be provided to the public to provide oral comment
11 on the actions and operations of the board and its staff.

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

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

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

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

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

50 § 8. Notwithstanding any inconsistent provision of this act, until the
51 executive director takes office in accordance with section 3-300 of the
52 election law, as amended by section five of this act, the executive
53 director or deputy executive director of the board of elections of the
54 city of New York appointed by such board and representative of such
55 party shall perform the functions assigned to the applicable executive
56 director by such section of the election law, as amended by this act, or

1 any other law. Further, while remaining in office, such executive
2 director and deputy executive director shall be subject to removal and
3 replacement by action of such board, consistent with the provisions of
4 section 3-300 of the election law as such section was in existence prior
5 to its amendment by this act. If an executive director has not been
6 appointed by May 1, 2024, the status of the executive director or deputy
7 executive director appointed by such board and representative of the
8 applicable political party shall terminate, and the new position of
9 executive director shall be deemed in existence and vacant for all
10 purposes after such date.

11 § 9. Severability. If any provision of this act is held invalid or
12 ineffective in whole or in part or inapplicable to any person or situ-
13 ation, such invalidity or holding shall not affect, impair or invalidate
14 other provisions or applications of this act that can be given effect
15 without the invalid provision or application, and all other provisions
16 thereof shall nevertheless be separately and fully effective, and to
17 this end the provisions of this act are declared to be severable.

18 § 10. This act shall take effect immediately; provided, however, that
19 sections one, three, four, and five of this act shall take effect Janu-
20 ary 1, 2024; and provided further, however, that sections six, seven and
21 eight of this act shall take effect on the sixtieth day after it shall
22 have become a law.