

STATE OF NEW YORK

1067

2023-2024 Regular Sessions

IN SENATE

January 10, 2023

Introduced by Sens. BORRELLO, HELMING, OBERACKER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the public officers law and the legislative law, in relation to the appointment process for state board positions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 39 of the public officers law, as amended by chapter 122 of the laws of 1947, is amended to read as follows:

2 § 39. Filling vacancies in office of officer appointed by governor and
3 senate. A vacancy which shall occur during the session of the senate, in
4 the office of an officer appointed by the governor by and with the
5 advice and consent of the senate, shall be filled in the same manner as
6 an original appointment. Such a vacancy occurring or existing while the
7 senate is not in session, including offices in which officers are holding
8 over pursuant to the provisions of section five of this chapter or
9 any other law, and offices vacant during the session of the senate,
10 shall be filled by the governor for a term which shall expire upon the
11 appointment and qualification of a successor but in any event such term
12 shall expire at the end of twenty days from the commencement of the next
13 meeting of the senate. There shall be a sixty-day notice period before
14 any nominee is officially appointed and confirmed to a vacant position
15 pursuant to this section, during which time the legislature may contract
16 with an independent private investigator or private investigation firm
17 pursuant to sections six and seven of the legislative law to conduct an
18 investigation and create a report on such nominee containing the results
19 of such investigation, which shall be made available to the appropriate
20 committee and all members of the legislature.

21 § 2. Section 40 of the public officers law is amended to read as
22 follows:
23

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

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§ 40. Vacancy occurring in office of legislative appointee, during legislative recess. When a vacancy shall occur or exist, otherwise than by expiration of term, during the recess of the legislature, in the office of any officer appointed by the legislature, the governor shall appoint a person to fill the vacancy for a term which shall expire at the end of twenty days from the commencement of the next meeting of the legislature. There shall be a sixty-day notice period before any nominee is officially appointed and confirmed to a vacant position pursuant to this section, during which time the legislature may contract with an independent private investigator or private investigation firm pursuant to sections six and seven of the legislative law to conduct an investigation and create a report on such nominee containing the results of such investigation, which shall be made available to the appropriate committee and all members of the legislature.

§ 3. Section 41 of the public officers law, as amended by chapter 91 of the laws of 1928, is amended to read as follows:

§ 41. Vacancies filled by legislature. When a vacancy occurs or exists, other than by removal, in the office of comptroller or attorney-general, or a resignation of either such officer to take effect at any future day shall have been made while the legislature is in session, the two houses thereof, by joint ballot, shall appoint a person to fill such actual or prospective vacancy. There shall be a sixty-day notice period before any nominee is officially appointed and confirmed to a vacant position pursuant to this section, during which time the legislature may contract with an independent private investigator or private investigation firm pursuant to sections six and seven of the legislative law to conduct an investigation and create a report on such nominee containing the results of such investigation, which shall be made available to the appropriate committee and all members of the legislature.

§ 4. Section 43 of the public officers law, as renumbered by chapter 649 of the laws of 1922, is amended to read as follows:

§ 43. Filling other vacancies. If a vacancy shall occur, otherwise than by expiration of term, with no provision of law for filling the same, if the office be elective, the governor shall appoint a person to execute the duties thereof until the vacancy shall be filled by an election. But if the term of such officer shall expire with the calendar year in which the appointment shall be made, or if the office be appointive, the appointee shall hold for the residue of the term. There shall be a sixty-day notice period before any nominee is officially appointed and confirmed to a vacant position pursuant to this section, during which time the legislature may contract with an independent private investigator or private investigation firm pursuant to sections six and seven of the legislative law to conduct an investigation and create a report on such nominee containing the results of such investigation, which shall be made available to the appropriate committee and all members of the legislature.

§ 5. Section 6 of the legislative law is amended by adding a new subdivision 9 to read as follows:

9. (a) An appropriation shall be made for and the temporary president of the senate and the minority leader of the senate shall, in conjunction with each other, contract with an independent private investigator or private investigation firm to conduct a background check on a potential nominee before being appointed to a vacant position pursuant to sections thirty-nine, forty, forty-one and forty-three of the public officers law. Once a nominee has been named, such nomination shall be submitted to the journal clerk of the senate. Once the journal clerk has

1 received such nomination, he or she shall forward such nomination to the
2 appropriate committee related to the position such nominee is being
3 appointed to for review.

4 (b) Once the journal clerk has forwarded the nomination to the appro-
5 priate committee, the sixty-day period referenced pursuant to sections
6 thirty-nine, forty, forty-one and forty-three of the public officers law
7 shall begin. A private investigator or private investigation firm shall
8 then complete their investigation pursuant to paragraph (a) of this
9 subdivision within thirty days and shall submit such report to the
10 appropriate committee and shall make such report available to all
11 members of the senate. The committee, as well as the members of the
12 senate shall then have thirty days to review such report and make any
13 objections or hold any hearings, as necessary, before such nominee is
14 confirmed to such vacant position.

15 § 6. Section 7 of the legislative law, as amended by chapter 506 of
16 the laws of 1960, the closing paragraph as added by chapter 141 of the
17 laws of 1994, is amended to read as follows:

18 § 7. Officers and employees of the assembly. 1. The assembly may
19 choose a clerk, a sergeant-at-arms and a stenographer. When an appropri-
20 ation has been made for the services, temporary or otherwise, of offi-
21 cers and employees of the assembly and their appointment is not other-
22 wise authorized by law, the speaker of the assembly may appoint such
23 officers and employees and fix their compensation, respectively, within
24 the amount provided by appropriation. The majority leader of the assem-
25 bly may appoint a counsel to majority leader, an assistant counsel to
26 majority leader, a secretary to majority leader, and a clerk to majority
27 leader. The minority leader of the assembly may appoint a counsel to
28 minority leader, a clerk to minority, an assistant clerk to minority, a
29 secretary to minority leader, a clerk to minority leader, an assistant
30 clerk to minority leader, a ways and means minority clerk, two stenogra-
31 phers, a clerk-chauffeur and a messenger to minority. In case of the
32 death or resignation of the clerk of the assembly, or his inability to
33 exercise the powers and/or discharge the duties of said office, notwith-
34 standing any other provisions of law the speaker of the assembly shall
35 appoint an acting clerk or designate the assistant clerk as acting clerk
36 to serve until a clerk is chosen by the assembly to fill the vacancy or
37 until the disability shall cease. The acting clerk so appointed or
38 designated as such shall have and exercise all of the powers of the
39 clerk of the assembly until a clerk has been chosen and has qualified or
40 until the disability shall cease.

41 2. Whenever the speaker of the assembly is authorized or required,
42 singly or jointly, to certify or approve warrants or vouchers for the
43 compensation of any person, it shall be sufficient if he execute the
44 first such warrant or voucher, and thereafter the same may be certified
45 or approved by his designee or designees, so long as the rate of such
46 compensation is not increased, and upon proof by affidavit or otherwise
47 that the same is due. Such designation shall be in writing and filed in
48 the office of the speaker and in the office of the comptroller, and
49 shall remain in effect during the term of office of the speaker unless
50 sooner revoked by him.

51 3. Notwithstanding any law to the contrary, the speaker of the assem-
52 bly or his or her designee may authorize expenditures to be made from
53 appropriations or reappropriations made to the assembly ways and means
54 committee, or the allocable portion of an appropriation or reappropri-
55 ation so made to a legislative council, commission or task force the
56 expenditures from which are for assembly purposes in whole or in alloca-

1 ble part. The speaker of the assembly may effect such authorization by
2 filing his or her approval of such authorization with the state comp-
3 troller.

4 4. (a) An appropriation shall be made for and the speaker of the
5 assembly and the minority leader of the assembly shall, in conjunction
6 with each other, contract with an independent private investigator or
7 private investigation firm to conduct a background check on a potential
8 nominee before being appointed to a vacant position pursuant to sections
9 thirty-nine, forty, forty-one and forty-three of the public officers
10 law. Once a nominee has been named, such nomination shall be submitted
11 to the journal clerk of the assembly. Once the journal clerk has
12 received such nomination, he or she shall forward such nomination to the
13 appropriate committee related to the position such nominee is being
14 appointed to for review.

15 (b) Once the journal clerk has forwarded the nomination to the appro-
16 priate committee, the sixty-day period referenced pursuant to sections
17 thirty-nine, forty, forty-one and forty-three of the public officers law
18 shall begin. A private investigator or private investigation firm shall
19 then complete their investigation pursuant to paragraph (a) of this
20 subdivision within thirty days and shall submit such report to the
21 appropriate committee and shall make such report available to all
22 members of the assembly. The committee, as well as the members of the
23 assembly shall then have thirty days to review such report and make any
24 objections or hold any hearings, as necessary, before such nominee is
25 confirmed to such vacant position.

26 § 7. This act shall take effect immediately.