§ 3-104. State board of elections; enforcement powers.

1. (a) There shall be a unit known as the division of election law enforcement established within the state board of elections. The head of such unit shall be the chief enforcement counsel.

(b) The state board of elections shall have jurisdiction of, and be responsible for, the execution and enforcement of the provisions of article fourteen of this chapter and other statutes governing campaigns, elections and related procedures; provided however that the chief enforcement counsel shall have sole authority within the state board of elections to investigate on his or her own initiative or upon complaint alleged violations of such statutes and all complaints alleging violations shall be forwarded to the division of election law enforcement.

2. (a) Whenever a local board of elections shall determine, on its own initiative or upon complaint, or otherwise, that there is substantial reason to believe a violation of this chapter or any code or regulation promulgated thereunder has been committed by a candidate or political committee or other person or entity that files statements required by article fourteen of this chapter solely with such local board, it shall expeditiously make an investigation which shall also include investigation of reports and statements made or failed to be made by the complainant and any political committee supporting his candidacy if the complainant is a candidate or, if the complaint was made by an officer or member of a political committee, of reports and statements made or failed to be made by such political committee and any candidates supported by it. The local board shall report the results of its investigation to the division of election law enforcement chief enforcement counsel within ninety days of the start of such investigation. The chief enforcement counsel may direct the local board of elections at any time to suspend its investigation so that the division of election law enforcement can investigate the matter.

(b) The chief enforcement counsel may request, and shall receive, the assistance of the state police in any investigation it shall conduct.

3. Upon receipt of a complaint and supporting information alleging any

violation of this chapter, or upon his or her own initiative, the chief enforcement counsel shall determine if an investigation should be undertaken. The chief enforcement counsel shall, if necessary, obtain additional information from the complainant or from other sources to assist such counsel in making this determination. Such analysis shall include the following: first, whether the allegations, if true, would constitute a violation of this chapter and, second, whether the allegations are supported by credible evidence. The chief enforcement counsel may at any time ask that the board authorize him or her to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivisions five and six of section 3-102 of this title. The board shall vote on whether to grant or refuse to grant such authority no later than twenty days after the chief enforcement counsel makes such request. For purposes of considering and voting on such request, the chief enforcement counsel shall be entitled to participate in all matters related thereto and shall vote on the board's granting or refusal to grant such request only when there is a tie. Should the board not vote on such request within twenty days of its submission, or grant the chief enforcement counsel's request, the chief enforcement counsel shall be so empowered to act pursuant to subdivisions five and six of section 3-102 of this title.

4. If the chief enforcement counsel determines that the allegations, if true, would not constitute a violation of this chapter or that the allegations are not supported by credible evidence, he or she shall issue a letter forthwith to the complainant dismissing the complaint and notice to the board.

5. (a) If, an individual has failed to cure pursuant to section 3-104-a of this title, or the chief enforcement counsel determines that substantial reason exists to believe that a person, acting as or on behalf of a candidate or political committee under circumstances evincing an intent to violate such law that does not otherwise warrant criminal prosecution, or has unlawfully violated any provision of this chapter, the board shall assign a hearing officer, randomly from a list of prospective hearing officers each of whom shall have been approved by a majority vote of the board. The chief enforcement counsel shall

provide a written report to such hearing officer as to: (1) whether substantial reason exists to believe a violation of this chapter has occurred and, if so, the nature of the violation and any applicable penalty, based on the nature of the violation; (2) whether the matter should be resolved extra-judicially; and (3) whether a special proceeding should be commenced in the supreme court to recover a civil penalty. The hearing officer shall make findings of fact and conclusions of law based on a preponderance of the evidence as to whether a violation has been established and, if so, who is guilty of such violation on notice to and with an opportunity for the individual or entity accused of any violations to be heard. However, if the hearing officer finds that on balance, the equities favor a dismissal of the complaint, the hearing officer shall dismiss the charges. In determining whether the equities favor a dismissal, the hearing officer shall consider the following factors: (1) whether the complaint alleges a de minimis violation of article fourteen of this chapter; (2) whether the subject of the complaint has made a good faith effort to correct the violation; and (3) whether the subject of the complaint has a history of similar violations. For purposes of making any such findings under this subdivision, proceedings before the hearing officer shall be governed by article three of the state administrative procedure act. The chief enforcement counsel shall adopt the report of the hearing officer and may, in his or her discretion, commence a special proceeding in the supreme court pursuant to sections 16-100, 16-114 and 16-116 of this chapter should the findings of fact and conclusions of law support the commencement of such proceeding or enter into an agreement to settle such matter with the subject of the complaint. In the event the chief enforcement counsel commences a special proceeding, the court shall afford the subject of the compliant an opportunity to be heard and shall be empowered to accept, reject or modify the findings of fact and conclusions of law made by the hearing officer. If the board fails to produce a list of eligible hearing officers, the chief enforcement counsel may commence a special proceeding as provided herein in accordance with recommendations made in his or her report.

(b) If the chief enforcement counsel determines that reasonable cause exists to believe a violation warranting criminal prosecution has taken place, the chief enforcement counsel shall present such findings to the

board. Within thirty days of such submission, the board shall vote on whether to accept or reject such findings. For purposes of voting on acceptance or rejection of findings by the chief enforcement counsel, the chief enforcement counsel shall be entitled to participate in all matters related to the review of his or her report and shall vote on its acceptance or rejection only when there is a tie. Should the board fail to vote to either accept or reject the findings within thirty days of submission of such findings, or should the board accept the findings by the chief enforcement counsel that there is reasonable cause to believe that a violation warranting criminal prosecution has taken place, the chief enforcement counsel shall, forthwith, and in any event no later than seven calendar days of such failure to accept or reject the findings by the board, refer such matter to the attorney general or district attorney with jurisdiction over such matter to commence a criminal action as such term is defined in the criminal procedure law.

6. Upon notification that a special proceeding has been commenced by a party other than the state board of elections, pursuant to section 16-114 of this chapter, the chief enforcement counsel shall investigate the alleged violations unless otherwise directed by the court.

7. The chief enforcement counsel shall prepare a report to be included in the annual report of the board to the governor, the state board of elections and legislature, summarizing the activities of the unit during the previous year.

8. The state board of elections may promulgate rules and regulations consistent with law to effectuate the provisions of this section.