

**GOVERNOR'S PROGRAM BILL
2013**

MEMORANDUM

AN ACT to amend the election law, in relation to the state board of elections chief enforcement counsel; and to amend the criminal procedure law in relation to the chief enforcement counsel of the state of board of elections; to amend the election law, in relation to candidates for office who are not enrolled in a party and repealing section 6-120 of such relating thereto; and to amend the election law, in relation to change of party enrollment.

Purpose:

Currently, several provisions of New York State's Election Law contribute to a culture of public corruption and limit participation in the electoral process. The State Board of Elections (the Board), which consists of four commissioners who are evenly appointed by each major political party, has limited enforcement powers and is hamstrung by a structure that facilitates gridlock. This structure results in few investigations of Election Law violations, and creates an environment in which bad actors violate the law with relative impunity.

In addition, the Wilson-Pakula Act of 1947 bars candidates from collecting nominating petitions or running in primaries unless they are enrolled in that party or are granted permission by party leaders. This requirement has led to individuals seeking party nominations through campaign donations and other extra-legal means. In addition, rigid party enrollment rules prevent candidates and voters, from easily changing party affiliation, suppressing voter choice and voter participation.

This bill addresses these problems by creating an independent enforcement unit at the Board so that violations of the Election Law are sufficiently investigated and prosecuted, repealing the Wilson-Pakula Act of 1947 and changing the laws related to party enrollment to expand voter choice and participation in elections.

Summary of Provisions:

Part A: Creates a Chief Enforcement Counsel at the Board of Elections

This bill would create a new, independent investigative unit at the Board headed by a chief enforcement counsel that would enforce and prosecute violations of the election law.

The chief enforcement counsel would be appointed by the Governor, with the advice and consent of the New York State Senate. The counsel, who will serve a four year term, will be designated a district attorney for the purposes of enforcing the election law. He or she will be authorized to investigate criminal violations of the Election Law, issue subpoenas, apply for search warrants and initiate criminal proceedings as well as investigate and prosecute all civil violations of the Election Law.

The Board would be empowered to direct the chief enforcement counsel to initiate investigations but could not bar the chief enforcement counsel from proceeding with his or her own independent investigation. In addition, following such an investigation, the chief enforcement counsel would present his or her findings to the Board with a written recommendation. The board would be mandated to vote to accept, modify or reject the counsel's recommendation. If it does not so act within ninety days, the chief enforcement counsel would proceed as if the Board has approved his or her recommendation.

Part B: Repeals the Wilson-Pakula Act of 1947

The Wilson-Pakula Act of 1947, codified in Election Law § 6-120, bars a candidate from collecting nominating petitions or running in a primary unless that candidate had enrolled in the party whose nomination he or she is seeking or is granted permission by the leader of that party to petition for the nomination. This legislation would repeal §6-120 to allow a candidate who is not enrolled in a political party to run in that party's primary by simply collecting the requisite number of signatures and filing a designating petition.

Part C: Changes Party Enrollment Deadlines

This bill would change party enrollment deadlines for candidates and voters. Election Law §§ 5-302 and 5-304 would be amended so that the voter's change of enrollment will become effective 90 days from application.

Existing Law:

The election law grants the Board limited enforcement powers. It does not have the authority to prosecute criminal violations, but instead must refer such matters to a district attorney.

Election Law § 6-120 bars a candidate who is not enrolled in a particular party from being designated or nominated as a candidate for that party unless that candidate receives the permission of that party's committee.

The Election Law requires that a voter who changes his or her party enrollment or who has previously registered to vote and has not enrolled in a party and wishes to enroll do so 30 days before the general election preceding the primary in which that voter wishes to vote.

Justification:

This bill would eliminate requirements in the Election Law that create opportunities for candidates to purchase their way into political primaries in pursuit of a Wilson-Pakula certificate and create a new, independent law enforcement unit within the Board that will have the tools to effectively investigate and prosecute violations of the election law.

Furthermore, New York's current party enrollment laws, the most restrictive in the country, not only burden candidates, but also prevent voters from participating in the electoral process. Currently, New York law requires voters to change their party enrollment 30 days prior to the general election preceding the primary in which they want to vote; a change in enrollment does not go into effect until after the general election. In effect, this requires voters to change their party enrollment eleven months before a primary in some instances. This bill will make it easier for both candidates and voters to change party affiliation and encourage greater participation in the electoral process.

Legislative History:

This is a new bill.

Budget Implications:

There is a small fiscal impact associated with this bill, related to the personnel costs associated with the new enforcement unit at the state board of elections. Such costs will not arise until the 2014-15 fiscal year.

Effective Date:

This bill would take effect on the ninetieth day after it shall become law.