IN SENATE--Introduced by Sen

--read twice and ordered printed, and when printed to be committed to the Committee on

--------- A. Assembly ---------

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the Committee on

*ELECLA*  
(Relates to board of elections enforcement counsel and change of party enrollment provisions; repealer)

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Elec. BOE enforcement counsel

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 board of elections (Part A); 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 law relating thereto (Part B); and to amend the

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal:

s20 Adams
s17 Feller
s63 Kennedy
s25 Montgomery
s23 Saviike
s15 Addabbo
s02 Flanagan
s34 Klein
s34 Nozzolillo
s29 Serrano
s11 Avella
s08 Fuschillo
s28 Kueger
s55 O'Brien
s51 Seward
s40 Ball
s59 Gallivan
s24 Lanza
s58 O'Mara
s09 Skelos
s42 Bonacic
s12 Gianaris
s39 Larkin
s21 Parker
s14 Smith
s04 Boyle
s41 Gipson
s37 Latimer
s13 Perata
s26 Squadron
s44 Brydlin
s22 Golden
s01 LaValle
s39 Perinick
s16 Stavisky
s38 Carlucci
s47 Griffin
s52 Libous
s61 Ranzenboher
s35 Stewarty
s50 DeFrancisco
s60 Cricanti
s45 Little
s48 Ritchie
s15 Cousins
s32 Diaz
s06 Hanan
s65 Marcellino
s33 Rivera
s36 Tkacyzk
s18 DiPalermo
s36 Hasselbeck
s43 Marchione
s56 Robach
s53 Velez
s31 Espaillat
Thompson
s07 Martins
s19 Sampson
s57 Young
s49 Farley
s77 Hoylman
s62 Maziarz
s10 Sanders
s03 Zeldin

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

a049 Abbate
a081 Dinowitz
a135 Johns
a039 Moody
a016 Schimminger
a092 Abinanti
a147 DiPietro
a13 Jordan
a133 Nojay
a140 Schimminger
a084 Arroyo
a115 Duprey
a094 Katz
a037 Nolan
a087 Sepulveda
a035 Aubry
a004 Englebright
a074 Kavanagh
a120 Oakes
a065 Silver
a120 Barclay
a054 Espinal
a42 Kearns
a46 O'Donnell
a027 Simmonowitz
a106 Barrett
a109 Pahy
a076 Kellar
a051 Ortiz
a036 Simotas
a056 Barron
a071 Farrell
a040 Kim
a091 Otis
a104 Skartados
a082 Benedetto
a126 Finizio
a131 Kolb
a132 Palmyro
a099 Skoufis
a117 Blankenbush
a008 Fitzpatrick
a065 Lator
a088 Paulin
a022 Solages
a052 Berelli
a124 Friend
a013 Lavine
a141 Peoples
a114 Scicci
a055 Boydand
a143 Gabryszak
a050 Lentol
Stokes
a116 Steck
a026 Braunstein
a095 Grief
a25 Libon
a038 Perry
a079 Stevenson
a044 Brennan
a137 Giangi
a102 Lopez, P.
a089 Peflow
a127 Stipe
a119 Brindisi
a067 Garbarino
a053 Lopez, V.
a073 Quart
a011 Sweeney
a138 Brison
a077 Gibbons
a23 Lupardo
a019 Ra
a112 Tedisco
a046 Brock-Krause
a148 Giglio
a100 Lupinozzi
a088 Rabbitt
a101 Tenney
a093 Buchwald
a080 Gjonaj
a21 Magee
a012 Raia
a001 Thiele
a118 Butler
a066 Glick
a29 Magnerelli
a005 Ramos
a061 Tiso
a103 Calhoun
a023 Goldfinger
a059 Maien
a134 Reilich
a031 Thies
a043 Camara
a150 Goodell
a028 Messaitis
a078 Rivera
a146 Walker
a145 Corretto
a075 Ginsberg
a035 Markey
a125 Roberts
a041 Weinstein
a033 Clark
a005 Graf
a090 Mayer
a055 Robinson
a020 Weinzberg
a047 Coloson
a160 Gunther
a168 McDonald
a068 Rodriguez
a024 Weprin
a052 Cooke
a139 Hawley
a014 McDonough
a072 Rosa
a070 Wright
a144 Corwin
a003 Heastie
a107 McLevitt
a067 Rosenthal
a096 Zebrowski
a085 Crespo
a003 Hennessey
a107 McLaughlin
a025 Rozic
a052 D'Arco
a122 Croul
a028 Hessei
a038 Miller
a116 Russell
a086
a021 Curran
a048 Hikind
a052 Millman
a149 Ryan
a063 Cusick
a018 Hooper
a015 Montesano
a009 Salaino
a045 Cymbrowiz
a042 Jacobs
a136 Morelle
a111 Santabarbara
a034 DenDecker
a097 Jeffe
a057 Morely
a059 Scarborough

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

LBDC 04/09/13
election law, in relation to change of enrollment; and to repeal subdivision 3 of section 5-304 of such law relating thereto (Part C)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:
Section 1. This act enacts into law major components of legislation relating to election reforms. Each component is wholly contained within a Part identified as Parts A through C. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

PART A

BOARD OF ELECTIONS ENFORCEMENT COUNSEL

Section 1. Subdivision 1 of section 14-126 of the election law, as amended by section 3 of part E of chapter 399 of the laws of 2011, is amended to read as follows:

1. Any person who fails to file a statement required to be filed by this article shall be subject to a civil penalty, not in excess of one thousand dollars, to be recoverable in a special proceeding or civil action to be brought by the state board of elections [or other board of elections] chief enforcement counsel pursuant to section 16-114 of this chapter. Any person who, three or more times within a given election cycle for such term of office, fails to file a statement or statements required to be filed by this article, shall be subject to a civil penalty, not in excess of ten thousand dollars, to be recoverable as provided for in this subdivision.
§ 2. Subdivision 3 of section 3-100 of the election law, as amended by
chapter 220 of the laws of 2005, is amended to read as follows:

3. The commissioners of the state board of elections shall have no
other public employment. The commissioners shall receive an annual sala-
ry of twenty-five thousand dollars, within the amounts made available
therefor by appropriation. The board shall, for the purposes of sections
seventy-three and seventy-four of the public officers law, be a "state
agency", and such commissioners shall be "officers" of the state board
of elections for the purposes of such sections. Within the amounts made
available by appropriation therefor, the state board of elections shall
appoint two co-executive directors, and such other staff members as are
necessary in the exercise of its functions, and may fix their compen-
sation. [Anytime after the effective date of the chapter of the laws of
two thousand five which amended this subdivision, the] The commissioners
or, in the case of a vacancy on the board, the commissioner of each of
the major political parties shall appoint one co-executive director.
Each co-executive director shall serve a term of four years. The gover-
nor shall appoint a chief enforcement counsel with the advice and
consent of the senate, who shall have a fixed term of four years and
shall be removed only for good cause and solely by the governor. Such
consent shall be determined by vote of the senate within thirty days of
the nomination by the governor. The chief enforcement counsel shall
have sole authority over personnel decisions within the enforcement
unit. All hiring decisions made by the chief enforcement counsel shall
be made without regard to political party affiliation. Any vacancy in
the office of co-executive director shall be filled by the commissioners
or, in the case of a vacancy on the board, the commissioner of the same
1 major political party as the vacating incumbent for the remaining period
2 of the term of such vacating incumbent.
3 § 3. Subdivision 3, paragraph (c) of subdivision 9-A and subdivision
4 17 of section 3-102 of the election law, subdivisions 3 and 17 as
5 amended by chapter 9 of the laws of 1978, paragraph (c) of subdivision
6 9-A as added by chapter 430 of the laws of 1997 and subdivision 17 as
7 renumbered by chapter 23 of the laws of 2005, are amended to read as
8 follows:
9 3. conduct any investigation necessary to carry out the provisions of
10 this chapter, provided, however, that the state board of elections chief
11 enforcement counsel, established pursuant to section 3-100 of this arti-
12 cle, shall conduct any investigation necessary to enforce the provisions
13 of this chapter on behalf of the board of elections;
14 (c) establish [a] an educational and training program on all reporting
15 requirements including but not limited to the electronic reporting proc-
16 ess and make it easily and readily available to any such candidate or
17 committee;
18 17. hear and vote upon the recommendations of the state board of
19 elections chief enforcement counsel regarding the enforcement of
20 violations of this chapter;
21 18. perform such other acts as may be necessary to carry out the
22 purposes of this chapter.
23 § 4. Section 3-104 of the election law, subdivisions 1, 3, 4 and 5 as
24 redesignated and subdivision 2 as amended by chapter 9 of the laws of
25 1978, is amended to read as follows:
26 § 3-104. State board of elections; enforcement powers.
1 1. (a) There shall be a unit known as the state board of elections enforcement unit established within the state board of elections. The head of such unit shall be the chief enforcement counsel.

2 (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 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 enforcement unit.

2 2. (a) Whenever [the state board of elections or other] 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 occurred 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 state board of elections, in lieu of making such an investigation, may direct the appropriate board of elections to make an investigation.] The local board shall report the results of its investigation to the state board of elections chief enforcement counsel within ninety days of the start
of such investigation. The state board of elections chief enforcement
counsel may direct the local board of elections at any time to suspend
its investigation so that the state board of elections enforcement unit
can investigate the matter.

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

3. If, after an investigation, the state or other board of elections
finds reasonable cause to believe that a violation warranting criminal
prosecution has taken place, it shall forthwith refer the matter to the
district attorney of the appropriate county and shall make available to
such district attorney all relevant papers, documents, testimony and
findings relevant to its investigation.

4. The state or other board of elections may, where appropriate,
commence a judicial proceeding with respect to the filing or failure to
file any statement of receipts, expenditures, or contributions, under
the provisions of this chapter, and the state board of elections may
direct the appropriate other board of elections to commence such
proceeding.

5. Upon receipt of a complaint and supporting information alleging
any other violation of this chapter, the chief enforcement counsel shall
analyze the complaint to determine if an investigation should be under-
taken. The chief enforcement counsel shall, if necessary, obtain addi-
tional 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.
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 to the complainant dismissing the complaint.

5. If the chief enforcement counsel determines that the allegations, if true, would constitute a violation of this chapter and that the allegations appear to be supported by credible evidence, he or she shall notify the state board of elections of (a) his or her intent to resolve the matter extra-judicially due to the de minimis nature of the violation; or (b) his or her intent to commence a full investigation, no later than the board's next regularly scheduled meeting. Notification shall summarize the relevant facts and the applicable law and shall protect from public disclosure the identity of the complainant and the individual subject to the complaint. The state board shall not have the authority to require the chief enforcement counsel to refrain from such investigation.

6. The chief enforcement counsel shall have the power to fully investigate violations of this chapter, including the power to issue subpoenas and to apply for search warrants pursuant to article six hundred ninety of the criminal procedure law, and, except in exigent circumstances, shall give prior notice of the application to the district attorney of the county in which such a warrant is to be executed, and in such exigent circumstances shall give such notice as soon thereafter as is practicable; provided, however that the failure to give notice of a search warrant application to a district attorney shall not be a ground to suppress the evidence seized in executing the warrant. The chief enforcement counsel shall be further authorized to use the full investi-
gative powers of the state board of elections, as provided for in subdivi-
visions four, five and six of section 3.102 of this title.

7. The chief enforcement counsel may, after consultation with the
district attorney as to the time and place of such attendance or appear-
ance, attend in person any term of the county court or supreme court
having appropriate jurisdiction, including an extraordinary special or
trial term of the supreme court when one is appointed pursuant to
section one hundred forty-nine of the judiciary law, or appear before
the grand jury thereof, for the purpose of managing and conducting in
such court or before such jury a criminal action or proceeding concerned
with a criminal violation of this chapter. In such case, such chief
enforcement counsel or his or her assistant so attending may exercise
all the powers and perform all the duties in respect of such actions or
proceedings which the district attorney would otherwise be authorized or
required to exercise or perform.

8. At the conclusion of its investigation, the chief enforcement coun-
sel shall provide the state board of elections with a written recommen-
dation as to: (a) 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; (b) whether the matter should be resolved extra-judicially;
(c) whether a special proceeding should be commenced in the supreme
court to recover a civil penalty; and (d) whether a criminal indictment
or information should be sought in consultation with a district attorney
pursuant to subdivision ten of this section because reasonable cause
exists to believe a violation warranting criminal prosecution has taken
place.
9. The state board of elections shall accept, modify, or reject the chief enforcement counsel's recommendation no later than ninety days after receipt of such recommendation by majority vote. In making its determination, the board shall consider not only the evidence of a violation but also: (a) whether the complaint alleges a de minimis violation; (b) whether the subject of the complaint has made a good faith effort to correct the violation; and (c) whether the subject of the complaint has a history of similar violations. All such determinations shall be made on a fair and equitable basis, without regard to the status, identity, or position of the subject of the complaint.

10. (a) If the state board of elections determines, as provided in subdivision nine of this section, 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, has unlawfully accepted a contribution in excess of a contribution limitation established in article fourteen of this chapter or has unlawfully violated any provision of this chapter, the board shall direct the commencement of a special proceeding in the supreme court pursuant to section 16-120 of this chapter.

(b) If the state board of elections determines, as provided in subdivision nine of this section, that reasonable cause exists to believe a violation warranting criminal prosecution has taken place, the chief enforcement counsel shall commence a criminal action as such term is defined in the criminal procedure law.

11. If the state board of elections does not accept, modify, or reject the chief enforcement counsel's recommendations within ninety days, either because it took no action or because it could not reach a majori-
by vote, the chief enforcement counsel shall proceed as if the state
board of elections had approved such recommendations.

12. 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 state board of elections shall direct the
chief enforcement counsel to investigate the alleged violations unless
otherwise directed by the court.

13. The chief enforcement counsel shall prepare a report, to be
included in the annual report to the governor and legislature, summariz-
ing the activities of the unit during the previous year. Such report
shall include: (a) the number of complaints or referrals received; (b)
the number of complaints and referrals that were found to need investi-
gation and the nature of each complaint; and (c) the number of matters
that have been resolved. The report shall not contain any information
for which disclosure is not permitted.

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

§ 5. Subdivision 32 of section 1.20 of the criminal procedure law, as
amended by section 4 of part A of chapter 501 of the laws of 2012, is
amended to read as follows:

32. "District attorney" means a district attorney, an assistant
district attorney or a special district attorney, and, where appro-
appropriate, the attorney general, an assistant attorney general, a deputy
attorney general, a special deputy attorney general, [or] the special
prosecutor and inspector general for the protection of people with
special needs or his or her assistants when acting pursuant to their
duties in matters arising under article twenty of the executive law, or
the chief enforcement counsel of the state board of elections when
acting pursuant to his or her duties in matters arising under the election law.

§ 6. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that if the amendments made to subdivision 32 of section 1.20 of the criminal procedure law by section 4 of part A of chapter 501 of the laws of 2012 have not yet taken effect on such date, then section five of this act shall take effect on the same date as section 4 of part A of such chapter takes effect.

PART B

WILSON PAKULA

Section 1. Section 6-120 of the election law is REPEALED and a new section 6-120 is added to read as follows:

§ 6-120. Designation and nomination; nonparty members. A person who is a candidate for any office who is not enrolled as a member of such political party as provided in this section may be designated or nominated for such office by filing designating petitions pursuant to section 6-136 of this article.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.

PART C

CHANGE OF ENROLLMENT

Section 1. Subdivision 2 of section 5-302 of the election law, as amended by chapter 164 of the laws of 1985, is amended to read as follows:
2. If the application form is for a voter who has changed his enrollment or a voter who has previously registered and not enrolled, then the board of elections shall compare the information and the signature appearing on each application form received with that on the registration poll record of the applicant and if found to correspond in all particulars shall, [not earlier than the Tuesday following the next general election and not later than the thirtieth day preceding the last day for publishing enrollment lists,] proceed in the manner specified in subdivision one [hereof] of this section to enter such enrollment on such voter's registration poll card ninety days after receipt.

§ 2. Subdivision 3 of section 5-304 of the election law is REPEALED.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law.

§ 2. Severability. If any clause, sentence, subdivision, paragraph, section, subpart or part of this act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section, subpart or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately, provided, however, that the applicable effective dates of Parts A through C of this act shall be as specifically set forth in the last section of such Parts.