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SENATE BILL 117

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO ELECTIONS; ENACTING THE ELECTIONS COMMISSION ACT;  
CREATING THE OFFICE OF ELECTIONS; CREATING THE ELECTIONS  
COMMISSION; PROVIDING POWERS AND DUTIES; TRANSFERRING THE  
BUREAU OF ELECTIONS TO THE OFFICE OF ELECTIONS; TRANSFERRING  
APPROPRIATIONS, MONEY, FUNCTIONS, PROPERTY, CONTRACTUAL  
OBLIGATIONS AND STATUTORY REFERENCES; AMENDING, ENACTING AND  
REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Election Code is enacted  
to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this  
act may be cited as the "Elections Commission Act"."

SECTION 2. A new section of the Election Code is enacted  
to read:

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1            "[NEW MATERIAL] DEFINITIONS.--As used in the Elections  
2 Commission Act:

- 3            A. "commission" means the elections commission; and  
4            B. "director" means the director of elections."

5            SECTION 3. A new section of the Election Code is enacted  
6 to read:

7            "[NEW MATERIAL] OFFICE OF ELECTIONS--CREATED--DIRECTOR--  
8 APPOINTMENT.--

9            A. The "office of elections" is created as an  
10 adjunct agency. The office shall perform duties pertaining to  
11 the state administration of elections pursuant to the election  
12 laws of the state.

13            B. The office of elections shall be headed by a  
14 "director of elections", who shall be appointed by the  
15 commission without reference to party affiliation and solely on  
16 grounds of fitness to perform the duties of the director's  
17 office. The director shall:

18                    (1) be well-versed in state and relevant  
19 federal election laws;

20                    (2) hold office from the date of the  
21 director's appointment until such time as the director is  
22 removed by a majority vote of the commission; provided,  
23 however, that in the event of such removal, the director shall  
24 be given six months' notice of the termination of the  
25 director's appointment or shall be paid six months' salary as

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1 terminal pay;

2 (3) not directly or indirectly engage in any  
3 political campaign or in any partisan political activity,  
4 except to vote, and not publicly support or oppose any  
5 candidate for local, state or federal office;

6 (4) not make any contribution to, or solicit  
7 funds on behalf of, any candidate; and

8 (5) be paid a salary fixed by the commission."

9 SECTION 4. A new section of the Election Code is enacted  
10 to read:

11 "[NEW MATERIAL] ADDITIONAL STAFF.--

12 A. The director shall appoint such professional,  
13 technical and clerical assistants as are necessary to carry out  
14 the provisions of the Elections Commission Act and the Election  
15 Code.

16 B. Employees shall be appointed without regard to  
17 party affiliation and solely on grounds of fitness to perform  
18 the duties of the position for which they are hired."

19 SECTION 5. A new section of the Election Code is enacted  
20 to read:

21 "[NEW MATERIAL] OFFICE OF ELECTIONS POWERS AND DUTIES.--

22 A. The office of elections shall:

23 (1) under the general supervisory control of  
24 the commission, administer the provisions of the Election Code;

25 (2) conduct schools, instruction and training

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1 pertaining to election administration;

2 (3) prepare instruction materials and manuals  
3 to promote uniformity of the administration of election laws in  
4 the state; and

5 (4) perform other duties assigned by the  
6 commission.

7 B. The position of "state voting system supervisor"  
8 is created in the office of elections. The state voting system  
9 supervisor shall be knowledgeable in the mechanical operation,  
10 repair and maintenance of voting systems used in the state.  
11 The state voting system supervisor shall provide assistance to  
12 counties in the repair, maintenance, care and proper use of  
13 voting systems owned by the counties."

14 SECTION 6. A new section of the Election Code is enacted  
15 to read:

16 "[NEW MATERIAL] ELECTIONS COMMISSION CREATED--MEMBERSHIP--  
17 TERMS--REMOVAL.--

18 A. The "elections commission" is created as an  
19 independent elections oversight commission staffed by the  
20 office of elections. The commission consists of the following  
21 members:

22 (1) one election director from the county  
23 clerk offices of class A counties, appointed by the association  
24 of county clerks;

25 (2) one election director from the county

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1 clerk offices of class B counties, appointed by the association  
2 of county clerks;

3 (3) two public members from different  
4 political parties, who shall have expertise in the area of  
5 elections, appointed by the governor; and

6 (4) two public members, who shall have  
7 expertise in the area of elections, appointed by the New Mexico  
8 legislative council from a list submitted by the majority and  
9 minority floor leaders of the house of representatives and  
10 senate; provided that the appointees shall not be from the same  
11 political party.

12 B. No more than three members shall be members of  
13 the same political party.

14 C. Members of the commission shall be appointed for  
15 staggered terms of six years. Upon initial appointment of the  
16 commission, the members shall draw lots to determine which two  
17 members shall serve initial terms of two years, which two  
18 members shall serve initial terms of four years and which two  
19 members shall serve initial terms of six years; thereafter, all  
20 members shall serve six-year terms. A person shall not serve  
21 as a commission member for more than twelve consecutive years.

22 D. A vacancy on the commission shall be filled by  
23 appointment by the original appointing authority for that  
24 member's unexpired term. A member shall be removed only for  
25 incompetence, neglect of duty or malfeasance in office. The

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1 state supreme court has exclusive jurisdiction over proceedings  
2 to remove a commission member, and its decision shall be final.  
3 A member shall be given notice of hearing for removal, which  
4 notice shall state the grounds for removal, and be given an  
5 opportunity to be heard before the member is removed.

6 E. The commission shall elect a chair, vice chair  
7 and such other officers as it deems necessary. A majority of  
8 the members constitutes a quorum for the transaction of  
9 business.

10 F. Members are entitled to receive per diem and  
11 mileage as provided in the Per Diem and Mileage Act and shall  
12 receive no other compensation, perquisite or allowance."

13 SECTION 7. A new section of the Election Code is enacted  
14 to read:

15 "[NEW MATERIAL] COMMISSION--POWERS AND DUTIES.--

16 A. The commission may approve for adoption,  
17 promulgation and filing as provided in the State Rules Act  
18 those rules for the administration of the Election Code  
19 proposed by the office of elections.

20 B. The commission shall:

21 (1) formulate policies for the operation and  
22 conduct of the office of elections;

23 (2) generally supervise the activities of the  
24 office of elections;

25 (3) approve the annual budget of the office of

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1 elections to be submitted to the legislature;

2 (4) decide, by majority vote, any  
3 disagreements between the office of elections and any state or  
4 local officer pertaining to elections; and

5 (5) prepare an annual report for the governor  
6 and the legislature on the state of election law and the  
7 conduct of elections in New Mexico."

8 SECTION 8. A new section of Chapter 1, Article 1 NMSA  
9 1978 is enacted to read:

10 "[NEW MATERIAL] OFFICE OF ELECTIONS--DEFINITION.--As used  
11 in the Election Code, except for Chapter 1, Article 17 NMSA  
12 1978, "secretary of state" means the office of elections."

13 SECTION 9. Section 1-1-16 NMSA 1978 (being Laws 1969,  
14 Chapter 240, Section 16, as amended) is amended to read:

15 "1-1-16. REGISTRATION OFFICER.--As used in the Election  
16 Code, "registration officer" means the [~~secretary of state~~]  
17 director of elections, a county clerk or a clerk's authorized  
18 deputy, a member of the board of registration or a state  
19 employee performing registration duties in accordance with the  
20 federal National Voter Registration Act of 1993 or Section  
21 1-4-5.2 NMSA 1978."

22 SECTION 10. Section 1-2-1 NMSA 1978 (being Laws 1969,  
23 Chapter 240, Section 22, as amended) is amended to read:

24 "1-2-1. [~~SECRETARY OF STATE~~] DIRECTOR OF ELECTIONS--CHIEF  
25 ELECTION OFFICER--RULES--ENFORCEMENT POWERS.--

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1           A. The [~~secretary of state~~] director of elections  
2 is the chief election officer of the state and shall:

3           (1) obtain and maintain uniformity in the  
4 application, operation and interpretation of the Election Code;

5           (2) subject to the State Rules Act and  
6 approval of the elections commission, make rules pursuant to  
7 the provisions of, and necessary to carry out the purposes of,  
8 the Election Code and shall furnish to the county clerks copies  
9 of such rules; provided that no rule is adopted or amended  
10 within the fifty-six days before a primary or a general  
11 election; and

12           (3) through the attorney general or the  
13 district attorney having jurisdiction, bring such actions as  
14 deemed necessary and proper for the enforcement of the  
15 provisions of the Election Code.

16           B. No forms or procedures shall be used in any  
17 election held pursuant to the Election Code without prior  
18 approval of the [~~secretary of state~~] office of elections."

19           **SECTION 11.** Section 1-2-1.1 NMSA 1978 (being Laws 1979,  
20 Chapter 74, Section 3, as amended) is amended to read:

21           "1-2-1.1. ATTORNEY GENERAL AND DISTRICT ATTORNEYS  
22 REQUIRED TO ASSIST [~~SECRETARY OF STATE~~] OFFICE OF ELECTIONS.--

23           A. The attorney general and the several district  
24 attorneys of the state upon request of the [~~secretary of state~~]  
25 office of elections shall provide to the [~~secretary of state~~]

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1 office legal advice, assistance, services and representation as  
2 counsel in any action to enforce the provisions of the Election  
3 Code.

4 B. Upon the request of the [~~secretary of state~~]  
5 office of elections, the attorney general and the several  
6 district attorneys of the state shall assign investigators or  
7 lawyers to aid the [~~secretary of state~~] office on election day  
8 to ensure the proper conduct of the election."

9 SECTION 12. Section 1-2-2 NMSA 1978 (being Laws 1969,  
10 Chapter 240, Section 23, as amended) is amended to read:

11 "1-2-2. [~~SECRETARY OF STATE~~] OFFICE OF ELECTIONS--GENERAL  
12 DUTIES.--The [~~secretary of state~~] office of elections shall:

13 A. generally supervise all elections by  
14 administering the Election Code in its statewide application;

15 B. prepare instructions for the conduct of election  
16 and registration matters in accordance with the laws of the  
17 state;

18 C. advise county clerks, boards of county  
19 commissioners and boards of registration as to the proper  
20 methods of performing their duties prescribed by the Election  
21 Code;

22 D. report possible violations of the Election Code  
23 of which the [~~secretary of state~~] office of elections has  
24 knowledge to the district attorney or the attorney general for  
25 prosecution;

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1           E. cause to be published in book form and  
2 distributed to the county clerk of each county for use by  
3 precinct boards a sufficient number of copies of the Election  
4 Code as it is from time to time amended and supplemented;

5           F. be responsible for the education and training of  
6 county clerks regarding elections;

7           G. be responsible for the education and training of  
8 voting machine technicians; and

9           H. assist the county clerks in the education and  
10 training of registration officers."

11           SECTION 13. Section 3-8-6.1 NMSA 1978 (being Laws 1991,  
12 Chapter 123, Section 2) is amended to read:

13           "3-8-6.1. [~~SECRETARY OF STATE~~] OFFICE OF ELECTIONS--  
14 DUTIES.--The [~~secretary of state~~] office of elections shall  
15 investigate complaints concerning conduct of elections held  
16 pursuant to the Municipal Election Code and issue the findings  
17 to the appropriate enforcement authority."

18           SECTION 14. TEMPORARY PROVISION--TRANSFERS.--

19           A. On July 1, 2013, all functions, appropriations,  
20 money, records, files, furniture, equipment and other property  
21 of the secretary of state's office pertaining to the conduct of  
22 elections, including campaign reporting and voting systems,  
23 shall be transferred to the office of elections.

24           B. On July 1, 2013, all contractual obligations of  
25 the secretary of state's office pertaining to the conduct of

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1 elections, including campaign reporting and voting systems,  
2 shall be deemed to be contractual obligations of the office of  
3 elections.

4 C. On July 1, 2013, all references in the law to  
5 the secretary of state as those references pertain to the  
6 conduct of elections, including campaign reporting and voting  
7 systems, shall be deemed to be references to the office of  
8 elections.

9 SECTION 15. REPEAL.--Section 8-4-5 NMSA 1978 (being Laws  
10 1969, Chapter 191, Section 1) is repealed.

11 SECTION 16. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2013.