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SENATE BILL 672

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

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.

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

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

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

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

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1           Section 3. [NEW MATERIAL] OFFICE OF ELECTIONS--CREATED--  
2 DIRECTOR--APPOINTMENT.--

3           A. The "office of elections" is created as an  
4 adjunct agency. The office shall perform duties pertaining to  
5 the state administration of elections pursuant to the election  
6 laws of the state.

7           B. The office of elections shall be headed by a  
8 "director of elections", who shall be appointed by the  
9 commission without reference to party affiliation and solely on  
10 grounds of fitness to perform the duties of the director's  
11 office. The director shall:

12                   (1) be well-versed in state and relevant  
13 federal election laws;

14                   (2) hold office from the date of the  
15 director's appointment until such time as the director is  
16 removed by a majority vote of the commission; provided,  
17 however, that in the event of such removal, the director shall  
18 be given six months' notice of the termination of the  
19 director's appointment or shall be paid six months' salary as  
20 terminal pay;

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

25                   (4) not make any contribution to, or solicit

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1 funds on behalf of, any candidate; and

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

3 Section 4. [NEW MATERIAL] ADDITIONAL STAFF.--

4 A. The director shall appoint such professional,  
5 technical and clerical assistants as are necessary to carry out  
6 the provisions of the Elections Commission Act and the Election  
7 Code.

8 B. Employees shall be appointed without regard to  
9 party affiliation and solely on grounds of fitness to perform  
10 the duties of the position for which they are hired.

11 Section 5. [NEW MATERIAL] OFFICE OF ELECTIONS POWERS AND  
12 DUTIES.--

13 A. The office of elections shall:

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

16 (2) conduct schools, instruction and training  
17 pertaining to election administration;

18 (3) prepare instruction materials and manuals  
19 to promote uniformity of the administration of election laws in  
20 the state; and

21 (4) perform other duties assigned by the  
22 commission.

23 B. The position of "state voting system supervisor"  
24 is created in the office of elections. The state voting system  
25 supervisor shall be knowledgeable in the mechanical operation,

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1 repair and maintenance of voting systems used in the state.  
2 The state voting system supervisor shall provide assistance to  
3 counties in the repair, maintenance, care and proper use of  
4 voting systems owned by the counties.

5 Section 6. [NEW MATERIAL] ELECTIONS COMMISSION CREATED--  
6 MEMBERSHIP--TERMS--REMOVAL.--

7 A. The "elections commission" is created as an  
8 independent elections oversight commission staffed by the  
9 office of elections. The commission consists of the following  
10 members:

11 (1) one election director from the county  
12 clerk offices of class A counties, appointed by the association  
13 of county clerks;

14 (2) one election director from the county  
15 clerk offices of class B counties, appointed by the association  
16 of county clerks;

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

20 (4) two public members, who shall have  
21 expertise in the area of elections, appointed by the New Mexico  
22 legislative council from a list submitted by the majority and  
23 minority floor leaders of the house of representatives and  
24 senate; provided that the appointees shall not be from the same  
25 political party.

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1           B. No more than three members shall be members of  
2 the same political party.

3           C. Members of the commission shall be appointed for  
4 staggered terms of six years. Upon initial appointment of the  
5 commission, the members shall draw lots to determine which two  
6 members shall serve initial terms of two years, which two  
7 members shall serve initial terms of four years and which two  
8 members shall serve initial terms of six years; thereafter, all  
9 members shall serve six-year terms. A person shall not serve  
10 as a commission member for more than twelve consecutive years.

11           D. A vacancy on the commission shall be filled by  
12 appointment by the original appointing authority for that  
13 member's unexpired term. A member shall be removed only for  
14 incompetence, neglect of duty or malfeasance in office. The  
15 state supreme court has exclusive jurisdiction over proceedings  
16 to remove a commission member, and its decision shall be final.  
17 A member shall be given notice of hearing for removal, which  
18 notice shall state the grounds for removal, and be given an  
19 opportunity to be heard before the member is removed.

20           E. The commission shall elect a chair, vice chair  
21 and such other officers as it deems necessary. A majority of  
22 the members constitutes a quorum for the transaction of  
23 business.

24           F. Members are entitled to receive per diem and  
25 mileage as provided in the Per Diem and Mileage Act and shall

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1 receive no other compensation, perquisite or allowance.

2 Section 7. [NEW MATERIAL] COMMISSION--POWERS AND  
3 DUTIES.--

4 A. The commission may approve for adoption,  
5 promulgation and filing as provided in the State Rules Act  
6 those rules for the administration of the Election Code  
7 proposed by the office of elections.

8 B. The commission shall:

9 (1) formulate policies for the operation and  
10 conduct of the office of elections;

11 (2) generally supervise the activities of the  
12 office of elections;

13 (3) approve the annual budget of the office of  
14 elections to be submitted to the legislature;

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

18 (5) prepare an annual report for the governor  
19 and the legislature on the state of election law and the  
20 conduct of elections in New Mexico.

21 Section 8. A new section of Chapter 1, Article 1 NMSA  
22 1978 is enacted to read:

23 "[NEW MATERIAL] OFFICE OF ELECTIONS--DEFINITION.--As used  
24 in the Election Code, except for Chapter 1, Article 17 NMSA  
25 1978, "secretary of state" means the office of elections."

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

3 "1-1-16. REGISTRATION OFFICER.--As used in the Election  
4 Code, "registration officer" means the [~~secretary of state~~]  
5 director of elections, a county clerk or a clerk's authorized  
6 deputy, a member of the board of registration or a state  
7 employee performing registration duties in accordance with the  
8 federal National Voter Registration Act of 1993 or Section  
9 1-4-5.2 NMSA 1978."

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

12 "1-2-1. [~~SECRETARY OF STATE~~] DIRECTOR OF ELECTIONS--CHIEF  
13 ELECTION OFFICER--RULES [~~AND REGULATIONS~~]--ENFORCEMENT  
14 POWERS.--

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

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

19 (2) subject to the State Rules Act and  
20 approval of the elections commission, make rules [~~and~~  
21 ~~regulations~~] pursuant to the provisions of, and necessary to  
22 carry out the purposes of, the Election Code and shall furnish  
23 to the county clerks copies of such rules [~~and regulations~~];  
24 and

25 (3) through the attorney general or the

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1 district attorney having jurisdiction, bring such actions as  
2 deemed necessary and proper for the enforcement of the  
3 provisions of the Election Code.

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

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

9 "1-2-1.1. ATTORNEY GENERAL AND DISTRICT ATTORNEYS  
10 REQUIRED TO ASSIST [~~SECRETARY OF STATE~~] OFFICE OF ELECTIONS.--

11 A. The attorney general and the several district  
12 attorneys of the state upon request of the [~~secretary of state~~]  
13 office of elections shall provide to the [~~secretary of state~~]  
14 office legal advice, assistance, services and representation as  
15 counsel in any action to enforce the provisions of the Election  
16 Code.

17 B. Upon the request of the [~~secretary of state~~]  
18 office of elections, the attorney general and the several  
19 district attorneys of the state shall assign investigators or  
20 lawyers to aid the [~~secretary of state~~] office on election day  
21 to ensure the proper conduct of the election."

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

24 "1-2-2. [~~SECRETARY OF STATE~~] OFFICE OF ELECTIONS--GENERAL  
25 DUTIES.--The [~~secretary of state~~] office of elections shall:

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- 1           A. generally supervise all elections;
- 2           B. administer the Election Code in its statewide  
3 application especially as it relates to federal and state  
4 elective offices;
- 5           C. prepare instructions for the conduct of election  
6 and registration matters in accordance with the laws of the  
7 state;
- 8           D. advise county clerks, boards of county  
9 commissioners and boards of registration as to the proper  
10 methods of performing their duties prescribed by the Election  
11 Code;
- 12           E. report possible violations of the Election Code  
13 of which the [~~secretary of state~~] office of elections has  
14 knowledge to the district attorney or the attorney general for  
15 prosecution;
- 16           F. cause to be published in pamphlet form and  
17 distributed to the county clerk of each county for use by  
18 precinct boards a sufficient number of copies of the Election  
19 Code as it is from time to time amended and supplemented;
- 20           G. be responsible for the education and training of  
21 county clerks regarding elections;
- 22           H. be responsible for the education and training of  
23 voting [~~machine~~] system technicians; and
- 24           I. assist the county clerks in the education and  
25 training of registration officers, in the recruitment and

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1 training of poll workers and other election workers and in the  
2 certification of the presiding judges of the precinct boards."

3 Section 13. TEMPORARY PROVISION--TRANSFERS.--

4 A. On July 1, 2009, all functions, appropriations,  
5 money, records, files, furniture, equipment and other property  
6 of the secretary of state's office pertaining to the conduct of  
7 elections, including campaign reporting and voting systems,  
8 shall be transferred to the office of elections.

9 B. On July 1, 2009, all contractual obligations of  
10 the secretary of state's office pertaining to the conduct of  
11 elections, including campaign reporting and voting systems,  
12 shall be deemed to be contractual obligations of the office of  
13 elections.

14 C. On July 1, 2009, all references in the law to  
15 the secretary of state as those references pertain to the  
16 conduct of elections, including campaign reporting and voting  
17 systems, shall be deemed to be references to the office of  
18 elections.

19 Section 14. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2009.