

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/12

SPONSOR Feldman LAST UPDATED _____ HB _____

SHORT TITLE Elections Commission Act SB 117

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 117 (SB117) would remove the Bureau of Elections from the Secretary of State's office and create a new Office of Elections under the direction of an appointed elections commission.

The election commission would consist of one election director from the county clerks offices in class A counties appointed by the association of county clerks; one election director from the county clerks offices in class B counties, appointed by the association of county clerks; two public members from different political parties, appointed by the Governor; and two public members appointed by the legislative council service from a list submitted by the majority and minority floor leaders of the house and senate, who shall not be from the same political party.

No more than three members shall be members of the same political party. Members would be entitled to receive per diem and mileage, but no other compensation.

All references to the Secretary of State in the Election Code would be changed to the office of elections, except Article 17, dealing with referendum petitions.

The bill provides that the director of elections shall "appoint such professional, technical and clerical assistants as are necessary to carry out the provisions of the Election Commission Act and the Election Code"

The bill creates the position of "state voting system supervisor" to provide assistance to counties in the repair, maintenance, care and proper use of voting systems owned by the counties"

The bill provides that the director of elections shall serve at the pleasure of the commission, but upon termination, will either be given six months notice or receive six months' salary as terminal pay.

The bill provides that on July 1, 2013, "all functions, appropriations, money, records, files, furniture, equipment and other property of the secretary of state's office pertaining to elections, including campaign reporting and voting systems" as well as "all contractual obligations pertaining the conduct of elections, including campaign reporting and voting systems" are transferred to the office of elections.

FISCAL IMPLICATIONS

Senate Bill 117 makes no appropriation, but the transfers of assets and liabilities away from the Secretary of State would likely leave the office unable to carry on its operations.

According to the DFA, \$1.599.2 million of general fund and \$1.696 million of Public Election fund appropriations, at total of \$3.295.2 million would be transferred from the Secretary of State to the Election Commission.

SIGNIFICANT ISSUES

The Secretary of State presents the following discussion of the impact of this bill.

When the electorate is removed from the ability to choose the chief elections officer, it takes away from the right of the people to elect leaders in critically important positions such as overseeing the conduct and providing for the integrity of elections.

The New Mexico constitution contemplates the conduct of elections by the Secretary of State.

Article 5, Section 2 provides that "the returns of every election for state officers shall be sealed up and transmitted to the secretary of state, who with the governor and chief justice, shall constitute the state canvassing board which shall canvass and declare the result of the election."

Article 19, Section 1 provides that the Secretary of State shall cause proposed constitutional amendments to be published in at least one newspaper in every county of the state for four consecutive weeks prior to the general election. The Secretary is also required to make reasonable efforts to provide notice of the content and purpose of legislatively approved amendments in English, Spanish and indigenous languages.

Additionally, this bill does not remove Section 1-17-1 et seq. regarding referendum petitions from the operation of the secretary of state's office. Under that section, the Secretary of State is required, among other things, to determine if the signers of the petition are qualified electors and

to accept or reject the petitions. The Secretary of State is also required to publish and post any referendum questions in the same manner as constitutional amendments. This section ties to the Secretary's constitutional duty under Article 4, Section 1 of the New Mexico constitution, which provides "The question of the approval or rejection of such law shall be submitted by the Secretary of State to the electorate at the next general election"

If all "functions, appropriations, money, records, files, furniture, equipment and other property of the secretary of state's office pertaining to the conduct of elections" and "all contractual obligations... pertaining to elections" were removed from the Secretary of State's office, the SOS would be unable to fulfill the constitutional requirements of the office.

PERFORMANCE IMPLICATIONS

All performance measures for the SOS are related to voters and elections.

CH/amm