

HOUSE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 538

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
ESTABLISHING PROCEDURES TO FILL A VACANCY IN THE OFFICE OF
REPRESENTATIVE AND IN THE OFFICE OF SENATOR.

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

SECTION 1. Section 2-7F-4 NMSA 1978 (being Laws 2021 (2nd
S.S.), Chapter 6, Section 4) is amended to read:

"2-7F-4. ELECTIONS--VACANCIES.--

A. Members of the house of representatives shall be
elected for terms of two years.

B. If a vacancy occurs in the office of
representative for any reason, the vacancy shall be filled as
follows:

(1) for a representative district that is
situated wholly within the exterior boundaries of a single

1 county, the board of county commissioners of that county shall
2 appoint the representative to fill the vacancy following the
3 procedures of Subsections C and D of this section; and

4 (2) for a representative district situated
5 within two or more counties:

6 (a) the board of county commissioners of
7 each county in the representative district shall submit one
8 name to the governor; and

9 (b) the governor shall appoint the
10 representative to fill the vacancy from the list of names so
11 submitted.

12 C. Except as provided in Subsection D of this
13 section, when a board of county commissioners is required to
14 fill a vacancy in the house of representatives by appointment,
15 the board shall:

16 (1) solicit and accept applications
17 immediately following the vacancy;

18 (2) hold a special meeting within three weeks
19 of the vacancy, at which the board shall make the appointment;
20 and

21 (3) announce the date of the special meeting
22 within two business days of the vacancy.

23 D. If a vacancy occurs during a legislative
24 session, the board shall solicit and accept applications
25 immediately following the vacancy and appoint a successor

1 within five business days of the vacancy.

2 [G.] E. An appointment to fill a vacancy in the
3 house of representatives shall be for a term ending on December
4 31 after the next general election.

5 ~~[D. An appointment to fill a vacancy made before
6 the general election of 2022 shall be made from the district as
7 it was described in Section 2-7E-1 NMSA 1978, as established by
8 the court in *Egolf v. Duran*, D-101-CV-2011-02942 (1st Dist.
9 Ct., Judgment and Final Order on Remand (State House of
10 Representatives Trial) filed February 28, 2012).]~~ F. On or
11 after the general election of 2022, a vacancy shall be filled
12 by appointment from the district as set out in the 2021 House
13 Redistricting Act."

14 SECTION 2. Section 2-8F-4 NMSA 1978 (being Laws 2021 (2nd
15 S.S.), Chapter 7, Section 4) is amended to read:

16 "2-8F-4. ELECTIONS--VACANCIES.--

17 A. Members of the senate shall be elected for terms
18 of four years.

19 B. If a vacancy occurs in the office of senator for
20 any reason, the vacancy shall be filled as follows:

21 (1) for a senate district that is situated
22 wholly within the exterior boundaries of a single county, the
23 board of county commissioners of that county shall appoint the
24 senator to fill the vacancy following the procedures of
25 Subsections C and D of this section; and

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1 (2) for a senate district situated within two
2 or more counties:

3 (a) the board of county commissioners of
4 each county in the senate district shall submit one name to the
5 governor; and

6 (b) the governor shall appoint the
7 senator to fill the vacancy from the list of names so
8 submitted.

9 C. Except as provided in Subsection D of this
10 section, when a board of county commissioners is required to
11 fill a legislative office vacancy by appointment, the board
12 shall:

13 (1) solicit and accept applications
14 immediately following the vacancy;

15 (2) hold a special meeting within three weeks
16 of the vacancy, at which the board shall make the appointment;
17 and

18 (3) announce the date of the special meeting
19 within two business days of the vacancy.

20 D. If a vacancy occurs during a legislative
21 session, the board shall solicit and accept applications
22 immediately following the vacancy and appoint a successor
23 within five business days of the vacancy.

24 [~~E.~~] E. All appointments to fill vacancies in the
25 senate shall be for a term ending on December 31 [~~subsequent~~

1 ~~to~~] after the next succeeding general election, at which
2 general election a person shall be elected to fill the
3 remainder of any unexpired term.

4 [D.] F. An appointment to fill a vacancy made
5 before the general election of 2024 shall be made from the
6 district as it was described in Section 2-8E-1 NMSA 1978, as
7 established by the court in *Egolf v. Duran*, D-101-CV-2011-02942
8 (1st Dist. Ct., Judgement and Final Order (State Senate Trial)
9 filed January 25, 2012). On or after the general election of
10 2024, a vacancy shall be filled by appointment from the
11 district as set out in the 2021 Senate Redistricting Act."

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