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FISCAL IMPACT REPORT

ORIGINAL DATE 2-26-09

SPONSOR Feldman LAST UPDATED _____ HB _____

SHORT TITLE Elections Commission Act SB 672

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Secretary of State (SOS)

County Clerks Affiliate (CCA)

SUMMARY

Synopsis of Bill

Senate Bill 672 creates a professional, independent, bi-partisan, 6-member state Elections Commission pursuant to the recommendations of the Governor's task force on ethics. The bill transfers the current functions of the Bureau of Elections in the Secretary of State's office to this new Commission.

The Commission members, who can only be removed for cause, consist of:

1. 2 election directors, 1 from a Class A County and the other from a Class B County;
2. 2 bi-partisan appointees by the Governor
3. 2 bi-partisan appointees by the legislative council

The main power of the Commission is to (1) establish policies, (2) hire a Director of Elections, and (3) generally oversee the office of elections.

SIGNIFICANT ISSUES

The County Clerks Affiliate suggested that the proposed legislation could restore confidence, accountability and competence to the electoral process in New Mexico. In the last several years,

particularly since the 2000 election, there have been increasing concerns with the issue of partisan elected officials controlling and administering the elections in states. These officials rarely have any real interest in the integrity of the election process, but rather use the office as a stepping stone to higher office. The knowledge of these individuals is often no deeper than the sound bite it takes to persuade voters. Many states have taken steps to remove the election function from these partisan office holders. States and territories that have done so are 16 in number and they are states that rarely ever have allegations of partiality in the conduct of their elections. Most of these states also combine the governmental ethics functions with this impartial commission, as does this proposed legislation. While some states still run elections from the Secretary of State's office, there are others, due to past scandals or infractions, which administer elections from the Attorney General's office, Lt. Governor, or more unadvisedly, from the Governor's office. In short, there is no strict standard nationally in the Secretary of State administering elections.

The Secretary of State contends that SB672 usurps the powers of the Secretary of State and will need to be proposed as a constitutional amendment as it conflicts with the constitutionally mandated duties of the Secretary of State (See, Article 5 section 1, N.M. Const. et. seq.). Further, the bill is in conflict with numerous statutes, beginning with Chapter 1 which provides that the Secretary of State is the chief election officer of the state (See, Section 1-2-1 et. Seq., NMSA 1978), including chapter 3 and 8 duties with regard to elections.

PERFORMANCE IMPLICATIONS

If this bill is enacted, the Secretary of State will be freed up to, among other duties, issue notary commissions, file agricultural liens and maintain records vital to the interests of commerce and industry.

ADMINISTRATIVE IMPLICATIONS

According to the SOS, the effective date attached to this legislation will not allow enough time before the 2010 election cycle to put in place the Elections Commission along with the director and staff. (Note: the agency's Bureau of Elections director position is vacant.)

The SOS highlights services not taken into consideration by the bill but are provided to the public through interagency relationships including:

- Felony convictions provided to the IT Division and disseminated to the counties statewide
- Death certificates provided to the IT Division and disseminated to the counties statewide
- The completion of felony probations provided to the counties statewide generated by a report submitted by the Department of Justice.

OTHER SUBSTANTIVE ISSUES

In light of recent scandals involving the operation of elections, both in New Mexico and across the nation, the Attorney General's Office explains that this bill seeks to remedy the problem by creating a bi-partisan, independent, and professional commission form of government to oversee elections.

The AGO further points out that in New Mexico the media has reported stories involving misspent money, late election results, and a dysfunctional electronic campaign reporting system. Across the nation there have been scandals including highly partisan interference with voting, including the disastrous 2000 presidential race.

ALTERNATIVES

The Attorney General's Office suggests considering the following alternatives:

1. To further ensure independence, provide that the Director of Elections can only be removed for cause.
2. To further ensure bi-partisan action, require bi-partisan quorums, similar to some of the Ethics Commission bills that have been introduced (i.e. HB 151 HJC committee substitute).
3. To ensure improved electronic reporting, transfer authority over all of the Secretary of State's database and software contracts to Department of Information & Technology.
4. To ensure improved Director of Elections work, require the Secretary of State to hire a permanent director and if not, within three months, authorize the Association of Counties to submit a name for hire.

EO/mc