



CENTER for DEMOCRACY &
ELECTION MANAGEMENT

SCHOOL *of* PUBLIC AFFAIRS

Nonpartisan Election Administration: Model Legislation For the States



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Background

Elections are contests for power and, as such, it is natural that politics will influence every part of the contest, including the administration of elections. In recent years, some partisan election officials have raised money or endorsed candidates, and that has weakened public confidence in the electoral process. Most officials have executed their responsibilities in a neutral and professional manner, but the fact that they are partisan sometimes raises suspicions that they might favor their own party. To build confidence in the electoral process, the most important reform is to construct an independent, nonpartisan, and professional election administration. Without such a system, every close vote will raise questions and doubts among the public.

In the last three decades, new democracies all over the world have formed independent Election Commissions to take charge of elections and all its components. It is time for all the states to modernize their electoral system by establishing independent, nonpartisan, and professional Election Commissions. In this monograph, we offer a draft statute for such a Commission. We have developed the model bill after extensive discussions with Common Cause, the Lawyers Committee for Civil Rights and Law, and representatives of other governmental and non-governmental organizations.

1. **Why do we need a nonpartisan body?** There are two alternatives, and both are flawed. In the United States, the person responsible in each state for elections is usually an elected official – a Secretary of State - who often aspires to a higher office. He or she needs to be sensitive to their party's concerns, and whether or not that person leans in a particular direction, people from the other party might very well believe that. A second approach is a bipartisan panel, but the problem with this model is that the members represent their parties rather than the public interest, and it often stalemates. A nonpartisan approach avoids both flaws.
2. **Is it possible to find someone who is nonpartisan? How?** Most countries have few problems establishing a nonpartisan body. The secret is in the nominating process. Instead of nominating people from each party, the parties should nominate people who need to be acceptable to all parties. In other words, the parties can veto but not promote candidates, and the candidates should not be beholden to any party.
3. **Why should it be independent?** In most new democracies, Election Commissions are the fourth branch of the government, independent of the other three branches to ensure that they are not unduly influenced by those who run for office.
4. **Why should it be professional?** The process for registering voters and conducting elections has grown increasingly complicated and requires people with substantial experience rather than those who are selected every two or four years. They need also to conduct research for best practices, and they need to periodically audit the machines and the entire process.



Dr. Robert A. Pastor, Professor & Co-Director, Center for Democracy and Election Management

Executive Summary of the Bill

1. This bill establishes a State Independent Election Commission to conduct all primary, general and special statewide and legislative elections. The election-related responsibilities of all offices, including that of the Secretary of State, would be transferred to the Commission (1).
2. The Chief Elections Officer supervises the conduct of elections; develops and implements uniform training programs for election officials; maintains an accurate, integrated, and universal registration list; establishes standards for voting equipment; aggregates, certifies, and announces election results; reports to the legislature and the public on the state of the electoral process and ways to improve it; certifies voting technology; prepares voter education materials; among other duties (2).
3. The Chief Elections Officer should be nonpartisan and of demonstrated integrity, independence, and public credibility. The procedure for selecting and confirming the individual is designed to assure that the person is viewed by the major political parties as nonpartisan. The person is nominated by the Governor from a list of candidates developed by the leadership of the major parties of the legislature, which must then confirm the nominee by a super-majority (three-fourths) vote. Provisions are made for filling the position temporarily in the case of gridlock. (3).
4. The Chief Election Officer appoints a staff director and general counsel for the commission, both of whom should be nonpartisan (4 and 5).
5. The bill establishes an Advisory Committee to meet quarterly with the Chief Elections Officer in public to provide technical advice and assure the transparency of the electoral process. The Committee is composed of representatives of the political parties, election administrators, law enforcement agencies, community and civil rights groups, and experts in different elements of election administration and technology (6).
6. Any person may file a complaint with the State Election Commission. In order to assess the complaint, conduct investigations, and enforce the law, the Chief Election Officer (CEO) has the power to subpoena witnesses (7) and the authority to impose a civil monetary penalty and/or issue a cease-and-desist order if a person has violated or is about to violate a state election law (8). The CEO may prescribe rules and regulations to implement the election law and assure uniform voting in the state, and has litigation authority to bring or defend an action under this act. (9 and 10).
7. Partisan activities of election officials are restricted (11).
8. Election observers are guaranteed access to the electoral process (12).
9. A funding formula is established to provide for uniform elections across the state and substantial independence for the Commission (13).

DRAFT LEGISLATION FOR STATE INDEPENDENT ELECTION COMMISSIONS

BILL NUMBER

To create a State Independent Election Commission; to create the position of Chief Elections Officer; to ensure the nonpartisan, professional and independent administration of elections in the State; to guarantee access to the electoral process to bona fide observers; and for other purposes

SECTION 1. SHORT TITLE, TABLE OF CONTENTS

(a) **SHORT TITLE**—This Act may be cited as the “Nonpartisan Election Administration Act.”

(b) **TABLE OF CONTENTS**—The table of contents of this Act is as follows:

[TO BE ADDED ONCE DRAFT IS FINALIZED]

SEC. 2. ESTABLISHMENT OF THE INDEPENDENT ELECTION COMMISSION;

(a) **IN GENERAL.** —

(1) **ESTABLISHMENT** - There is hereby established in the executive branch of the [state] an Independent Election Commission of [state] (hereby referred to as the ‘Commission’), which shall be headed by the Chief Elections Officer of [state] (hereafter referred to as the ‘Chief Elections Officer’).

(2) **TRANSFER OF RESPONSIBILITY AND FUNCTIONS-**

(A) **IN GENERAL-** Upon the appointment of a Chief Elections Officer under subsection (b), the responsibility for the administration of laws relating to elections and election campaigns shall be transferred from the [Secretary of State] to the Chief Elections Officer. [All employees of the [state elections office] become employees of the Independent Election Commission.]

(b) **Appointment of Chief Elections Officer** –

(1) **IN GENERAL-** The Governor of the state shall appoint a Chief Elections Officer, with the advice and consent of the Legislature of the state in accordance with section 3. If the Governor has nominated a person for Chief Elections Officer but the Legislature of the state has not confirmed the nominee within 60

days after receiving the nomination, the Governor shall appoint his nominee on an acting basis until the Legislature consents to a Chief Elections Officer.

(2) ACTING CHIEF ELECTIONS OFFICER - If a Chief Elections Officer has not been appointed under paragraph (1) within 180 days after the date of the enactment of this Act, the Governor shall appoint an Acting Chief Elections Officer to serve in that capacity until a Chief Elections Officer is appointed under the first sentence of paragraph (1).

(c) Duties of Chief Elections Officer – The Chief Elections Officer shall have the following duties and shall take such steps as are necessary to perform these duties: —

- (1) Supervise the conduct of all primary, general and special statewide and legislative elections, and all other elections as provided by law.
- (2) Develop and implement uniform training programs for all election officials in the state;
- (3) Prepare information for voters on voting problems;
- (4) Publish and distribute an election calendar, a manual on election procedures, and a map of all legislative districts;
- (5) Convene a state election conference of county and municipal election administrators and other government officials responsible for the conduct of elections within the state at the beginning of each year in which there is a federal or statewide election and whenever else deemed necessary by the Chief Elections Officer to discuss uniform implementation of state and federal election policies;
- (6) Prescribe the form of all ballots and the form and wording of ballots on state referendum questions, issues, and constitutional amendments;
- (7) Investigate or cause to be investigated the nonperformance of duties or violations of election laws by election officers;
- (8) Require such reports from county election administrators as deemed necessary;
- (9) Administer oaths, issue subpoenas, summon witnesses, compel the production of books, papers, records, and other evidence, and fix the time and place for hearing any matters relating to the administration and enforcement of the election laws.
- (10) Aggregate, certify and announce results of state and federal elections;
- (11) Prepare and publish reports whenever deemed necessary on the conduct and costs of voting in the state, including a tabulation of election returns and such

other information and statistics deemed appropriate by the Chief Elections Officer;

(12) Establish standards for voting precincts and polling locations, number precincts, prepare precinct maps, maintain and update pollbooks and registration lists, provide logbooks for each precinct to record any and all problems or complaints made during the course of the day of the election, and provide forms and supplies, including but not limited to ballots, pollbooks, and reports;

(13) Establish uniform, nondiscriminatory statewide standards for distribution of voting equipment, including, but not limited to, voting machines;

(14) Prescribe the order in which each political subdivision will appear on an election ballot;

(15) Hold quarterly public hearings to seek input from the public on matters of election administration;

(16) Direct where state election personnel and resources will be located;

(17) Develop a budget for the Commission to be submitted to the legislature for approval;

(18) Submit an annual report to the legislature and the general public, describing the state of election administration and suggesting recommendations for future improvements;

(19) Maintain accurate and integrated statewide voter registration lists;

(20) Promote reform of local election administration through greater professionalism and better training and certification of local election officials;

(21) Certify voting technology;

(22) Ensure compliance with the Help America Vote Act of 2002, Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301 et seq. (hereafter referred to as 'HAVA') and the National Voter Registration Act of 1993, Pub. L. 103-31, 107 Stat. 77, as amended 42 U.S.C. 1973 et seq. (hereinafter referred to as 'NVRA')

(d) **DEMEANOR AND OUTSIDE ACTIVITY** – The Chief Elections Officer shall endeavor to be nonpartisan in all decisions and statements and shall not –

(1) either directly or indirectly engage in any political campaign or in any partisan political activity except to vote;

(2) serve as an officer of any political party or any partisan organization;

(3) publicly support or oppose any candidate, including a candidate for any local, state, or federal office, or partisan organization; or allow his or her name to be used in connection with any activity of a political organization;

(4) make speeches on behalf of a political organization or any candidate;

(5) attend political gatherings;

(6) take a public position for or against or participate in a campaign to support or oppose any ballot initiative or ballot measure; and

(7) make any contribution to, or solicit funds on behalf of, any candidate, including a candidate for any local, state, or federal office, political party or partisan organization.

SEC. 3. ADVICE AND CONSENT OF THE LEGISLATURE

(a) In general —

(1) **NOMINATION** - Not later than 60 days after the enactment of this Act, the Senate majority leader, Senate minority leader, Speaker of the House, and House minority leader shall forward to the governor a jointly-developed list of qualified candidates for the Chief Elections Officer. Not later than 30 days after receipt of this list of candidates, the governor shall select a nominee from this list and forward that nominee to the legislature for confirmation.

(2) **CONFIRMATION.** — The nominee shall be subject to confirmation by a three-fourths vote of both houses of the legislature, acting separately. [In the case of a unicameral legislature, the nomination shall be subject to a three-fourths vote of the entire legislature.]

(b) Qualified Candidates

(1) An individual who is submitted to the governor under paragraph (1) should be viewed as nonpartisan and should —

(A) possess demonstrated integrity, independence, public credibility;

(B) possess demonstrated managerial experience;

(C) possess other qualities that demonstrate competence to undertake the responsibilities of the office.

- (2) An individual may not be submitted to the governor under paragraph (1) if--
 - (A) at any time during the 4-year period ending on the date of the nomination of such individual, the individual was--
 - (i) a candidate, an employee of a candidate, or an attorney for a candidate;
 - (ii) an elected officeholder, an employee of an elected officeholder, or an attorney for an elected officeholder; or
 - (iii) an officer or employee of a political party or an attorney for a political party.

SEC. 4. STAFF DIRECTOR

- (a) In General. — There shall be in the Commission a staff director.
- (b) Responsibilities. — The staff director –
 - (1) shall assist the Commission in its administration and operations;
 - (2) shall perform such responsibilities as the Chief Elections Officer shall prescribe; and
 - (3) may, with the approval of the Chief Elections Officer—
 - (A) appoint and fix pay of such additional personnel as the staff director consider appropriate; and
 - (B) procure temporary and intermittent services where needed.
- (c) Appointment – The Chief Elections Officer shall appoint the staff director.
- (d) Demeanor and Outside Activity – The staff director shall endeavor to be nonpartisan in all actions and statement and shall not –
 - (1) engage in any political campaign;
 - (2) serve as an officer of any political party or any partisan organization;
 - (3) publicly support or oppose any candidate, including a candidate for any local, state, or federal office, or partisan organization; and
 - (4) make any contribution to any candidate, including a candidate for any local, state, or federal office, political party or partisan organization.

SEC. 5. GENERAL COUNSEL

- (a) IN GENERAL- There shall be in the Commission a general counsel.
- (b) RESPONSIBILITIES- The general counsel shall—
 - (1) serve as the chief legal officer of the Commission;

(2) provide legal assistance to the Commission concerning its programs and policies;

(3) advise and assist the Commission in carrying out its responsibilities under this Act; and

(4) represent the Commission in any proceeding in court or before an administrative law judge.

(c) APPOINTMENT- The Chief Elections Officer shall appoint the general counsel.

(d) Demeanor and Outside Activity – The general counsel shall endeavor to be nonpartisan in all actions and statements and shall not –

(1) engage in any political campaign;

(2) serve as an officer of any political party or any partisan organization;

(3) publicly support or oppose any candidate, including a candidate for any local, state, or federal office, or partisan organization; and

(4) make any contribution to any candidate, including a candidate for any local, state, or federal office, political party or partisan organization.

SEC. 6. ADVISORY COMMITTEE

(a) IN GENERAL. — To assist in carrying out this Act, the Chief Elections Officer shall convene an Advisory Group [not later than 6 months after the enactment of this Act.]

(b) PURPOSE. — The Advisory Group shall meet quarterly with the Chief Elections Officer to provide technical expertise to the Chief Elections Officer, and assure transparency and accountability in the conduct of elections.

(c) COMPOSITION. — The Advisory Group shall be composed as follows:

(1) one member, an attorney knowledgeable in matters of election law, selected by the Chairman of the Commission;

(2) one member with expertise in matters of voting technology and systems, selected by the Chairman of the Commission;

(3) and one member from each of the political parties represented in the legislature, selected by members of their own political party;

(4) one member representing the election administrator of the state's most populous county;

(5) one member representing the election administrator of the state's least populous county;

(6) one member with expertise in matters of law enforcement selected by the state's Attorney General;

(7) one member who is currently serving as District Attorney in a county of the state selected by the Attorney General:

(8) at least two members, selected by the Chairman representing community organizations, including representatives from voting rights organizations, organizations whose mission is to defend citizens' civil rights, organizations whose mission is to defend the rights of people with disabilities, and organizations whose mission is to promote civic participation and expand voting to all eligible voters.

(d) **AUTHORITY.** — Final decision-making authority will remain with the Chief Elections Officer.

(e) **PUBLIC PARTICIPATION—**

(1) **MEETINGS.** — The advisory group shall – .

(A) ensure that each meeting of the Advisory Group is open to the public; and

(B) provide, at each meeting, an opportunity for interested persons to present oral or written statements concerning items on the agenda.

(2) **NOTICE.** — The Chief Elections Officer shall provide to the public timely notice of each meeting of the Advisory Group.

(3) **MINUTES.** — The Chief Elections Officer shall keep the minutes of each meeting of the Advisory Group and shall make the minutes of each meeting available to the public for inspection and distribution.

SEC. 7. ISSUANCE AND ENFORCEMENT OF SUBPOENAS.

(a) **ISSUANCE** - If the Commission is conducting an investigation, the Chief Elections Officer shall, on behalf of the Commission, have the power to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of the Commission's duties.

(b) **ISSUANCE AND ENFORCEMENT OF SUBPOENAS-**

(1) **ISSUANCE-** Subpoenas issued under subsection (a) shall bear the signature of the Chief Elections Officer and shall be served by any person or class of persons designated by the Chief Elections Officer for that purpose.

(2) ENFORCEMENT- In the case of contumacy or failure to obey a subpoena issued under subsection (a), the court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(c) WITNESS ALLOWANCES AND FEES- State provisions on witnesses allowances and fees shall apply to witnesses requested or subpoenaed to appear at any hearing of the Commission. The per diem and mileage allowances for witnesses shall be paid from funds available to pay the expenses of the Commission.

SEC. 8. ENFORCEMENT

(a) Initiation of Enforcement Actions by Chief Elections Officer.

(1) IN GENERAL- The Chief Elections Officer may initiate a civil enforcement action if, after conducting an investigation, the Chief Elections Officer finds reasonable grounds to believe that a violation of the State election law has occurred or is about to occur.

(2) BASIS FOR FINDINGS- The Chief Elections Officer may make a finding under subsection (1) based on any information available to the Chief Elections Officer.

(3) NOTICE AND OPPORTUNITY TO DEMONSTRATE NO VIOLATION- Prior to initiating an enforcement action under subsection (1), the Chief Elections Officer shall give any person under investigation notice and the opportunity to demonstrate that there are no reasonable grounds to believe a violation has occurred or is about to occur, but the Chief Elections Officer's decision on such matter shall not be subject to judicial review.

(b) COMPLAINT TO INITIATE ENFORCEMENT ACTION

(1) FILING OF COMPLAINT

(A) IN GENERAL- Any person may file a complaint with the Independent Election Commission alleging a violation of the State election law.

(B) TECHNICAL REQUIREMENTS- A complaint filed under paragraph

(A) may be—

(1) in writing, signed, and sworn to by the person filing such complaint, and

(2) made under penalty of perjury.

(C) ACTION BY THE CHIEF ELECTIONS OFFICER - Subject to paragraph (D), based on the allegations in a complaint filed under paragraph (A), and such investigations the Chief Elections Officer deems necessary and appropriate, the Chief Elections Officer may—

- (1) initiate a civil enforcement action if the Chief Elections Officer finds reasonable grounds to believe a violation has occurred or is about to occur; or
- (2) dismiss the complaint.

(c) CIVIL ENFORCEMENT ACTIONS.

(1) IN GENERAL- The Chief Elections Officer shall have the authority to impose a civil monetary penalty, issue a cease-and-desist order, or do both, if the Chief Elections Officer finds, by an order made on the record after notice and an opportunity for hearing before and administrative law judge that a person has violated (or, in the case of a cease and desist order, has violated or is about to violate) the State election laws.

(a) NOTICE AND REQUEST FOR HEARING-

(1) NOTICE- If the Chief Elections Officer finds that there are reasonable grounds to believe a violation has occurred or is about to occur, the Chief Elections Officer shall serve written notice of the charges on each respondent, and shall conduct such further investigation as the Chief Elections Officer deems necessary and appropriate.

(2) REQUEST FOR HEARING- Each respondent shall have an opportunity to request, prior to the date that is a number of days (decided on by the Chief Elections Officer) after the date on which the notice is received a hearing on the charges before an administrative law judge.

(3) EFFECT OF FAILURE TO REQUEST A HEARING- If no hearing is requested, the Chief Elections Officer shall make a finding on the charges, and shall issue whatever relief the Chief Elections Officer deems appropriate.

(b) CONCILIATION-

(1) PROCEDURES FOR ENTERING INTO CONCILIATION AGREEMENTS-

(A) IN GENERAL- If the respondent requests a hearing, the Chief Elections Officer shall attempt, for a period that does not exceed a number of days predetermined by the Chief Elections Officer, to correct or prevent such a violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with the respondent. In the case of a hearing that is requested at a time other than within a pre-set number of days of an election, the agreement is reached before then.

(B) INCLUSION OF CIVIL MONETARY PENALTIES- A conciliation agreement may include a requirement that the Respondent and or any other person involved in such conciliation shall pay a civil monetary penalty that does not exceed an amount predetermined by the Chief Elections Officer. The conciliation agreement may also include the requirement that the Respondent and or person involved consent to the terms of a cease-and-desist order.

(C) REPRESENTATION BY GENERAL COUNSEL- The General Counsel shall represent the Commission in any negotiations for a conciliation agreement and any such conciliation agreement shall be subject to the approval of the Chief Elections Officer.

(D) BAR TO FURTHER ACTION- A conciliation agreement, unless violated, is a complete bar to any further action by the Chief Elections Officer.

(2) CONFIDENTIALITY- No action by the Chief Elections Officer or any other person, and no information derived in connection with any conciliation attempt by the Chief Elections Officer may be made public by the Chief Elections Officer, without the written consent of the respondent, except that if a conciliation agreement is agreed upon and signed by the Chief Elections Officer and the respondent, the Chief Elections Officer shall make such agreement public.

(3) VIOLATION OF CONCILIATION AGREEMENT- In any case in which a person has entered into a conciliation agreement with the Chief Elections Officer, the Chief Elections Officer may

institute a civil action for relief if the Chief Elections Officer believes the person has violated any provision of such conciliation agreement. Such civil action shall be brought in the appropriate State Court in which the respondent resides or has its principal place of business. Such court shall have jurisdiction to issue any relief appropriate. For the Commission to obtain relief in any such action, the Chief Elections Officer need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

(c) HEARING- At the request of any respondent, a hearing on the charges served shall be conducted before an administrative law judge, who shall make such findings of fact and conclusions of law as the administrative law judge deems appropriate. The administrative law judge shall also have the authority to impose a civil monetary penalty on the respondent, issue a cease-and-desist order, or both. The decision of the administrative law judge shall constitute final agency action unless an appeal is taken.

(d) APPEAL TO CHIEF ELECTIONS OFFICER-

(1) RIGHT TO APPEAL- The General Counsel and each respondent shall each have a right to appeal to the Chief Elections Officer from any final determination made by an administrative law judge.

(2) REVIEW OF ALJ DETERMINATIONS- In the event of an appeal, the Chief Elections Officer shall review the determination of the administrative law judge to determine whether-

- (A) a finding of material fact is not supported by substantial evidence;
- (B) a conclusion of law is erroneous;
- (C) the determination of the administrative law judge is contrary to law or to the duly promulgated rules or decisions of the Chief Elections Officer
- (D) a prejudicial error of procedure was committed; or
- (E) the decision or the relief ordered is otherwise arbitrary, capricious, or an abuse of discretion.

(3) FINAL AGENCY ACTION- The decision of the Independent Election Commission shall constitute final agency action.

(e) JUDICIAL REVIEW-

(1) IN GENERAL- Any party aggrieved by a final agency action and who has exhausted all administrative remedies, including requesting a hearing before an administrative law judge to the Independent Election Commission, may obtain judicial review of such action in accordance with the State Administrative Procedures Act.

(2) SCOPE OF REVIEW- For purposes of conducting judicial review, the review shall be in accordance with the State's Administrative Procedures Act.

(3) PETITION FOR JUDICIAL REVIEW- To obtain judicial review, an aggrieved party described in such paragraph shall file a petition with the court during a predetermined period of days. A copy of such petitions shall be transmitted forthwith by the clerk of the court to the Commission, and thereupon the Chief Elections Officer shall file in the court the record upon which the order complained of was entered.

(4) DETERMINATION OF CIVIL MONETARY PENALTY- In determining the amount of civil monetary penalty under this section with respect to a violation of state election laws, the Chief Elections Officer or an administrative law judge shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, any prior violation, the degree of culpability, and such other matters as justice may require.

(f) CEASE-AND-DESIST ORDERS.

(1) IN GENERAL- If the Chief Elections Officer finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of the state election laws, the Chief Elections Officer may publish any findings and enter an order requiring such person, or any other person that is, was or would be a cause of the violation due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such a violation and any future violation of the same provision, rule or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply with such provision, rule or regulation, upon such terms and conditions and within such time as the Chief Elections Officer may specify in such order.

(2)TEMPORARY ORDER- Whenever the Chief Elections Officer determines that an alleged violation or threatened violation specified in the notice initiating a civil enforcement action, or the continuation thereof, is likely to result in violation of this Act, and substantial harm to the public interest, the Chief Elections Officer may apply to the State Court for the district in which the respondent resides or has its principal place of business, in which the alleged or threatened violation occurred or is about to occur.

(g) COLLECTION -- If any person fails to pay an assessment of a civil penalty:

(1) after the order making the assessment has become a final order and such person has not timely filed a petition for judicial review of the order; or

(2) after a court in an action has entered a final judgment no longer subject to appeal in favor of the Independent Election Commission, the State Attorney General shall recover the amount assessed in an action brought in any appropriate court. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to a review.

(h) CONFIDENTIALITY

(1) PRIOR TO A FINDING OF REASONABLE GROUNDS- Any proceedings conducted by the Chief Elections Officer prior to a finding that there are reasonable grounds to believe a violation of the law has occurred or is about to occur, shall be confidential and none of the Commission's records concerning the complaint shall be made public, except that the person filing a complaint may make such complaints public.

(2) AFTER FINDING OF REASONABLE GROUNDS- If the Chief Elections Officer makes a finding that a violation of law has occurred or is about to occur—

(A) the finding of the Chief Elections Officer, any notice of charges, and any answer or similar documents filed with the Commission shall be made public; and

(B) all proceedings conducted before an administrative law judge, and all documents used during such proceedings, shall be made public.

(3) AFTER DISMISSAL OF A COMPLAINT OR CONCLUSION OF PROCEEDINGS FOLLOWING A FINDING OF REASONABLE GROUNDS- The Commission shall make public no later than a predetermined date—

- (A) the complaint, any notice of charges, and any answer or similar documents filed with the Commission;
- (B) any order setting forth the Chief Elections Officer's final action on the complaint;
- (C) all documentary materials and testimony constituting the record on which the Chief Elections Officer relied in taking its actions.

The affirmative disclosure requirement of this subsection is without prejudice to the right of any person to request and obtain records relating to an investigation.

(4) CONFIDENTIALITY OF RECORDS AND PROCEEDINGS OTHERWISE SUBJECT TO DISCLOSURE-

- (A) IN GENERAL- The Chief Elections Officer shall issue regulations providing for the protection of information to disclosure of which would impair any person's constitutionally protected right of privacy, freedom of speech, or freedom of association.

SEC. 9. RULEMAKING AUTHORITY.

(a) IN GENERAL- The Chief Elections Officer may in accordance with law prescribe such rules and regulations as it deems necessary to carry out the provisions of this Act, including – but not limited to – the following purposes: to carry out prescribed duties, to assure uniform voting opportunities throughout the state, and to implement the requirements imposed upon the state by HAVA and the NVRA, and including the authority to promulgate rules of practice and procedure for agency adjudications.

(b) AUTHORITY TO PROMULGATE INDEPENDENT REGULATIONS- Whenever the Commission promulgates any regulation, it shall not be required to submit such regulation for review or approval to the Governor or any executive agency.

(c) CONDUCT OF ACTIVITIES- The Commission shall prepare written rules for the conduct of its activities, including procedures for the conduct of enforcement actions.

(d) FORMS-

(1) IN GENERAL- The Commission shall prescribe forms necessary to implement this Act.

(e) RELIANCE UPON RULES AND REGULATIONS- Notwithstanding any other provision of law, any person who relies upon any rule or regulation prescribed by the Commission in accordance with the provisions of this Act and who acts in good faith in accordance with such rule or regulation shall not, as a result of such act, be subject to any sanction provided by this Act or other state laws.

(g) JUDICIAL REVIEW-

(1) IN GENERAL- Any person adversely affected by a rule, regulation, or form promulgated by the Chief Elections Officer may obtain judicial review of such rule, regulation, or form by filing a petition in the highest court of the state.

(2) SCOPE OF REVIEW- For purposes of conducting the judicial review described in paragraph (1), the provisions of section 706 of title 5, United States Code, or equivalent state law shall apply.

(h) RULE AND REGULATION DEFINED- In this Act, the terms `rule' and `regulation' mean a provision or series of interrelated provisions stating a single, separable rule of law.

SEC. 10. LITIGATION AUTHORITY.

(a) IN GENERAL- Notwithstanding any other law, the Chief Elections Officer is authorized to bring, appear in, defend against, and appeal any action instituted under this Act or the election laws of the state, in any court either—

(1) by attorneys employed by the Commission; or

(2) by counsel whom it may appoint, on a temporary basis as may be necessary for such purpose, without regard to any state law, governing appointments of state employees, and whose compensation it may fix without regard to any state law.

(b) COMPENSATION OF APPOINTED COUNSEL- The compensation of counsel appointed on a temporary basis under subsection (a)(2) shall be paid out of any funds otherwise available to pay the compensation of employees of the Commission.

(c) INDEPENDENCE FROM ATTORNEY GENERAL- In pursuing an action under this section, the Chief Elections Officer may act independently of the state Attorney General.

Sec. 11. PARTISAN ACTIVITIES OF ELECTIONS OFFICIALS

(a) Election officials shall endeavor to act in a nonpartisan manner in all actions and statements and shall not engage in any of the following activities in connection with any candidate, including a candidate for any local, state, or federal office, or measure

appearing on the ballot of a local election district over which the elections official has jurisdiction:

(1) Directly or indirectly support or oppose the passage of, or solicit, receive, or make a monetary contribution in support of or in opposition to, ballot measures.

(2) Publicly support or oppose the election of, or solicit, receive, or make monetary contributions in support of or in opposition to, a candidate other than himself for election to any public office.

(3) If a member of a political organization, not actively participate as an officer, speaker, delegate, or alternate, or in any capacity involving the performance of services in distributing campaign literature or organizing, collecting funds for, or conducting or assisting in conducting a campaign to support or oppose a ballot measure or for the election of a candidate other than himself.

(b) Definitions – In this section the terms shall have the following meanings –

(1) The term “elections official” means a county clerk, city clerk, registrar of voters, or any other local agency officer or official who is charged with the duty of conducting an election.

(2) The term “political organization” means any organization that has as one of its principal purposes or activities the support of or opposition to ballot measures or the support of or opposition to candidates for public office.

Sec. 12. ELECTION OBSERVERS

(Preamble) IN GENERAL The state recognizes the vital role of transparency in the electoral process in the maintaining of public confidence, and thereby directs the Independent Election Commission to ensure access to all parts of the process, including the vote count, to legitimate outside observers and instructs all election officials to welcome such observers as a key element of their responsibilities and to respond to inquiries fully and accurately and in a cooperative and hospitable way.

(a) STANDARDS- The Chief Elections Official shall issue nondiscriminatory standards for granting access to the electoral process to nonpartisan election observers. Such standards shall take into account the need to avoid disruption and crowding in polling places as well as the need to ensure that all questions posed by election observers should be answered fully, accurately, and cooperatively.

(b) IN GENERAL- Nonpartisan domestic and international observers (including, but not limited to voting rights organizations, civil rights organizations and civic organizations) shall be allowed uniform and nondiscriminatory access to any polling place for purposes of observing an election in accordance with the standards published under paragraph (1).

(c) ACCESS TO OTHER FACILITIES Nonpartisan observers shall be allowed uniform and nondiscriminatory access to all stages of the election process, including the certification of election technologies, early and absentee voting and voting counting and aggregation.

(d) NOTICE OF DENIAL OF OBSERVATION REQUEST- the Chief Elections Official shall issue a public notice with respect to any denial of a request by any observer described in paragraph (2) for access to any polling place for purposes of observing an election. Such notice shall be issued not later than 24 hours after such denial.

Sec. 13. ESTABLISHMENT OF FUNDING FORMULA

(a) In developing a mechanism to fund the uniform implementation of state elections and in making adjustments to the funding formula, the legislature shall, at a minimum consider the following relevant factors:

- (1) the number of voters in an election district;
- (2) the needs of isolated polling places with low population density;
- (3) the needs of polling places with high population density; and
- (4) the special needs of any identifiable class of voters in an election district irregardless whether the class constitutes a majority or minority of the voters in the election district.

(b) By [Date Certain], the legislature shall:

- (1) determine the costs of providing uniform elections;
- (2) establish a funding formula that:

- (A) reflects the costs associated with providing uniform elections as determined in subsection (11)(a);
- (B) allows the legislature to adjust the funding formula based on the relevant factors identified in this section; and

(c) distributes to election districts in an equitable manner the state's share of the costs of the implementation of uniform elections.