



Model Election Ethics Legislation

A bill to create impartiality, conduct, and disclosure requirements for senior election officials

Drafted by

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with support from

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Section 1. Findings and Purpose

(a) The Legislature finds that

- (1) senior election officials often run in partisan elections or are appointed by the winners of partisan elections, creating close ties to a political party that will compete in the elections that they oversee;
- (2) most states have no law to prevent senior election officials from publicly endorsing candidates or taking other actions that can reduce voter trust in the neutrality of election administration;
- (3) of the elected chief election officials serving in the United States since 2000, approximately one in three have endorsed a candidate running in a race under their supervision and approximately one in ten have served as a co-chair (or equivalent) of a presidential election campaign;
- (4) a majority of voters are concerned that election officials may take steps in a future election to help their political party win;

(5) public trust in elections has eroded in recent years, with as few as 20% of voters expressing confidence in U.S. election systems in surveys conducted in 2022;

(6) more than 80% of voters believe it is very important that election officials act impartially according to surveys conducted in 2022;

(7) voters have particularly low confidence that disputed elections will be handled fairly when those voters do not belong to the same party as the state's chief election official; and

(8) maintaining voter confidence in elections is paramount.

(b) It is the purpose of this act:

(1) to protect senior election officials from growing partisan pressures so they may continue to faithfully execute their duties and serve the best interest of the voters;

(2) to prevent any senior election official from using their position to influence an election to the benefit or detriment of any candidacy or party, including their own; and

(3) to safeguard voter confidence in the integrity and impartiality of the state's election administration by ensuring that the conduct of senior election officials is beyond reproach.

Section 2. Definitions

In this act:

(1) "active part in political management or in a political campaign"¹ means:

(A) advising, controlling, directing, managing, representing, operating, assisting, or holding any position (including any unpaid or honorary position) with an authorized committee of a candidate or ballot measure campaign or political action committee, or participating in any decision-making of an authorized committee of a candidate or ballot measure campaign or political action committee;

(B) campaigning for or against candidates, including by making campaign speeches for candidates in elections, distributing campaign literature, or volunteering to work on a political campaign; or

¹ Nothing in this act prohibits individuals from registering to vote as they choose or from contributing money to political campaigns, political parties, or partisan political groups.

(C) knowing solicitation, acceptance, or receipt of a political contribution from any person, including by hosting a political fundraising, inviting others to a political fundraiser, or collecting contributions for or selling tickets to political fundraising functions.

(2) “ballot measure” means any law, issue, constitutional amendment, or question that appears on a ballot for voters to decide.

(3) “ballot measure campaign” means efforts made or funds spent to promote or oppose the placement of, or approval of, a ballot measure before the voters of the state or any local jurisdiction.

(4) “chief election official” means the highest State official with responsibility for the administration of state or federal elections under state or federal law.

(5) “election related conflict of interest” means an official action on the part of a senior election official in the discharge of the official’s duties including in the administration of any election, if:

(A) the senior election official knows or reasonably should know that their participation would likely have a disproportionately favorable impact on the senior election official’s own or their immediate family member’s election to office; or

(B) the circumstances would cause a reasonable person with knowledge of relevant facts to question the senior election official’s impartiality in the matter.

(6) “gift” means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received.

(7) “immediate family member” means, with respect to a candidate, a parent, child, sibling, domestic partner, spouse, spouse or domestic partner of a child or sibling, or parent of spouse or domestic partner.

(8) “partisan political activity” means any activity directed at the success or failure of a candidate or partisan group or ballot measure.

(9) “person” means an individual, proprietorship, firm, partnership, limited partnership, joint venture, joint stock company, syndicate, business or statutory trust, donative trust, estate, company, corporation, limited liability company, association, club, committee, organization, or group of persons acting in concert.

(10) “political office” means any office to which any candidate is to be nominated or elected, but shall exclude any office or position within a political party or affiliated organization.

(11) “political contribution”:²

(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political campaign, ballot measure campaign, or individual or entity that makes independent expenditures for political campaigns;

(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political campaign or ballot measure campaign; and

(C) includes any in-kind contribution of goods or services made for any political campaign, ballot measure campaign, or individual or entity that makes independent expenditures for political campaigns.

(12) “political campaign” means any organized effort to influence the outcome of any local, state, or federal election, including activities to promote or defeat any candidate or political party.

(13) “senior election official” means [enumerate all high-level state and local election administrators that should fall within the scope and coverage of this act], including the chief election official as defined in subsection (4).

Section 3. Prohibited Partisan Activity

(a) It shall be unlawful for senior election officials to:

(1) take any official action that shows partiality or discrimination toward or against any political party, any candidate for any political office, or any ballot measure;

(2) publicly endorse, support, or oppose any candidate for any political office or any ballot measure;

(3) knowingly solicit, accept, or receive indirectly or directly a political contribution from a subordinate;

(4) knowingly solicit or discourage the participation in any political campaign or ballot measure campaign of any person who:

(A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the office of the senior election official;

² This definition should be inclusive of the jurisdiction’s definition of political contribution.

(B) is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the office of the senior election official; or

(C) is a subordinate.

(5) take an active part in political management or in political campaigns with respect to any election over which the senior election official has supervisory authority; or

(6) use official authority to influence or interfere, or attempt to interfere, with the outcome of any election.

(b) Paragraphs (a)(1), (a)(2), and (a)(5) of this section do not apply to a senior election official with respect to an election for a specific office for which the official or an immediate family member of the senior election official is a candidate if:

(1) the senior election official publicly recuses himself or herself from participating in any official actions where it is reasonably foreseeable that such actions could affect the outcome of such election; or

(2) the senior election official has sole responsibility for overseeing the administration of elections in his or her jurisdiction such that no deputy or designee is readily available to assume responsibility for the official actions necessary under paragraph (1).

(c) A senior election official may not engage in any partisan political activity, including for their own campaign:

(1) while on duty;

(2) in any room or building used for official duties by an individual employed or holding office in the government or any agency or instrumentality;

(3) by using any government resources, equipment, or facilities, including office space, official titles, government vehicles, government employees on duty, government email addresses or stationery, and government office supplies; or

(4) while wearing a uniform or official insignia identifying the office or position of the election official.

(d) A senior election official who serves in a position where the duties and responsibilities of the position continue outside normal duty hours and while away from the normal duty post, may engage in political activity otherwise prohibited by subsection (c) if the costs associated with that political activity are not paid for by money derived from the government treasury.

Section 4. Election Related Conflict of Interest

(a) If a senior election official has an election related conflict of interest, the official shall recuse from the matter unless the senior election official has sole responsibility for overseeing the administration of elections in his or her jurisdiction such that no deputy or designee is readily available to assume responsibility for the official actions giving rise to the election related conflict of interest.

(b) A senior election official required to recuse under this section must submit a notice of such recusal to the [office of the chief election official or state ethics commission] within five (5) calendar days of identifying the election related conflict of interest.

(c) A senior election official required to recuse under this section who does not recuse shall be subject to the penalties set forth in this act.

(d) A senior election official may ask the [state ethics commission or chief election official] for guidance in advance of an action that may involve a conflict of interest including for guidance regarding to whom to recuse. The [state ethics commission or chief election official] must respond and make its response and explanation publicly available within five (5) days of receiving the request from the senior election official.

Section 5. Disclosure

No later than 90 calendar days before election or 30 days after appointment, a senior election official must disclose the following information:

(a) As it pertains to the senior election official, any paid or unpaid position within the previous five years held in a political organization including any campaign committee, independent expenditure committee, political party, or other political organization;

(b) As it pertains to the senior election official's spouse, any paid position within the previous two years held in a political organization, including any campaign committee, independent expenditure committee, political party, or other political organization.

Section 6. Public Availability of Disclosures

The [chief election official or state ethics commission] shall establish and maintain a publicly available, searchable, sortable, and downloadable online database of recusal notices submitted pursuant to section 4 and disclosures of political positions

submitted pursuant to section 5. Recusal notices and political disclosures shall be posted to the database as promptly as possible, but no later than 30 days after submission.

Section 7. Enforcement

(a) The [state ethics commission or state attorney general] shall have jurisdiction to investigate violations of this act according to the procedures of that agency.

(b) Any person who believes that a provision of this act has been violated may file a written complaint with the [state ethics commission or state attorney general].

Section 8. Penalties

Any senior election official who knowingly violates this act shall be subject to—

(a) disciplinary action consisting of removal, reduction in grade, debarment from state employment for a period not to exceed 5 years, suspension, or reprimand;

(b) an assessment of a civil penalty not to exceed \$25,000; or

(c) any combination of the penalties described in subsections (a) or (b).

Section 9. Oath of Senior Election Official³

To ensure that every citizen can have complete confidence in the integrity of the state government and the impartiality of the state's election administration, every senior election official shall take the following oath:

“I, ____ (name) ____, do solemnly swear (or affirm) that I will faithfully and impartially discharge the duties of ____ (name of office) ____ to the best of my ability; that I will place loyalty to the U.S. Constitution and the Constitution and the laws of the ____ (state/commonwealth) ____ above private gain or party affiliation; that I will not give preferential treatment to any private organization, political party, or individual; and that I will ensure that every party, candidate, voter, and other participant in the election process is treated in a way that is fair and just, so help me God (or so I do affirm).”

³ Only in states where such an oath is permitted under the state constitution.

Section 10. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.