

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AN ACT

RELATING TO ELECTIONS; REQUIRING A POST-ELECTION EVALUATION  
OF THE ACCURACY OF VOTING SYSTEMS; PROVIDING PROCEDURES;  
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Election Code is  
enacted to read:

"POST-ELECTION DUTIES--VOTING SYSTEM CHECK.--

A. At least ninety days prior to each general  
election, the secretary of state shall contract with an  
auditor qualified by the state auditor to audit state  
agencies to oversee a check on the accuracy of precinct  
electronic vote tabulators, alternate voting location  
electronic vote tabulators and absent voter precinct  
electronic vote tabulators. The voting system check shall be  
conducted for all federal offices, for governor and for the  
statewide elective office, other than the office of the  
governor, for which the winning candidate won by the smallest  
percentage margin of all candidates for statewide office in  
New Mexico.

B. For each selected office, the auditor shall  
publicly select a random sample of precincts from a pool of  
all precincts in the state no later than twelve days after  
the election. The random sample shall be chosen in a process

1 that will ensure, with at least ninety percent probability  
 2 for the selected offices, that faulty tabulators would be  
 3 detected if they would change the outcome of the election for  
 4 a selected office. The auditor shall select precincts  
 5 starting with the statewide office with the largest winning  
 6 margin and ending with the precincts for the statewide office  
 7 with the smallest winning margin and then, in the same  
 8 manner, select precincts from each congressional district.  
 9 The size of the random sample for each office shall be  
 10 determined as provided in Table 1 of this subsection. When a  
 11 precinct is selected for one office, it shall be used in lieu  
 12 of selecting a different precinct when selecting precincts  
 13 for another office in the same congressional district, or for  
 14 any statewide office. If the winning margin in none of the  
 15 offices for which a voting system check is required is less  
 16 than fifteen percent, a voting system check for that general  
 17 election shall not be required.

18 Table 1

19	Winning margin between top	Number of precincts in the
20	two candidates for the	state to be tested for that
21	office according to the	office
22	county canvasses	
23	Percent	
24	greater than 15	no precincts for that office
25	greater than 14	

1	but less than or equal to 15	4
2	greater than 13	
3	but less than or equal to 14	4
4	greater than 12	
5	but less than or equal to 13	5
6	greater than 11	
7	but less than or equal to 12	5
8	greater than 10	
9	but less than or equal to 11	6
10	greater than 9.0	
11	but less than or equal to 10	6
12	greater than 8.0	
13	but less than or equal to 9.0	7
14	greater than 7.0	
15	but less than or equal to 8.0	9
16	greater than 6.0	
17	but less than or equal to 7.0	10
18	greater than 5.5	
19	but less than or equal to 6.0	11
20	greater than 5.0	
21	but less than or equal to 5.5	13
22	greater than 4.5	
23	but less than or equal to 5.0	14
24	greater than 4.0	
25	but less than or equal to 4.5	16

1	greater than 3.5	
2	but less than or equal to 4.0	18
3	greater than 3.0	
4	but less than or equal to 3.5	22
5	greater than 2.5	
6	but less than or equal to 3.0	26
7	greater than 2.0	
8	but less than or equal to 2.5	32
9	greater than 1.8	
10	but less than or equal to 2.0	37
11	greater than 1.6	
12	but less than or equal to 1.8	42
13	greater than 1.4	
14	but less than or equal to 1.6	47
15	greater than 1.2	
16	but less than or equal to 1.4	54
17	greater than 1.1	
18	but less than or equal to 1.2	59
19	greater than 1.0	
20	but less than or equal to 1.1	65
21	greater than 0.9	
22	but less than or equal to 1.0	73
23	greater than 0.8	
24	but less than or equal to 0.9	82
25	greater than 0.7	

1 but less than or equal to 0.8 93  
2 greater than 0.6  
3 but less than or equal to 0.7 109  
4 greater than 0.5  
5 but less than or equal to 0.6 130  
6 0.5 or less automatic recount  
7 for that office.

8 C. The auditor shall notify the appropriate county  
9 clerks of the precincts that are to be included in the voting  
10 system check upon their selection. The auditor shall direct  
11 the appropriate county clerks to compare the original machine  
12 count precinct vote totals, including early absentee and  
13 absentee by mail machine count vote totals, for candidates  
14 for offices subject to the voting system check from the  
15 selected precincts for each office with the respective vote  
16 totals of a hand recount of the paper ballots from those  
17 precincts. The county clerks shall report their results to  
18 the auditor within ten days of the notice to conduct the  
19 voting system check.

20 D. Based on the results of the voting system check  
21 and any other auditing results, the auditor shall determine  
22 the error rate in the sample for each office. If the winning  
23 margin decreases and the error rate based on the difference  
24 between the vote totals of hand recounts of the paper ballots  
25 and the original precinct vote totals exceeds ninety percent

1 of the winning margin for an office, another sample equal in  
2 size to the original sample shall be selected and the  
3 original precinct vote totals compared to the vote totals of  
4 hand recounts. The error rate based on the first and second  
5 sample shall be reported, and if it exceeds ninety percent of  
6 the winning margin for the office, the state canvassing board  
7 shall order that a full hand recount of the ballots for that  
8 office be conducted.

9 E. The auditor shall report the results of the  
10 voting system check to the secretary of state upon completion  
11 of the voting system check and release the results to the  
12 public.

13 F. Persons designated as county canvass observers  
14 may observe the hand recount described in Subsection C of  
15 this section. Observers shall comply with the procedures  
16 governing county canvass observers as provided in Section  
17 1-2-31 NMSA 1978.

18 G. If a recount for an office selected for a  
19 voting system check is conducted pursuant to the provisions  
20 of Chapter 1, Article 14 NMSA 1978, the vote totals from the  
21 hand count of ballots for that office in precincts selected  
22 for the voting system check may be used in lieu of recounting  
23 the same ballots for the recount.

24 H. All costs of a voting system check or required  
25 hand recount shall be paid in the same manner as automatic

1 recounts."

2 Section 2. A new section of the Election Code is  
3 enacted to read:

4 "GENERAL ELECTION AUDIT.--The secretary of state shall  
5 issue rules for the conduct and procedures of the  
6 post-election voting system check, set minimum qualifications  
7 for auditors eligible for selection to conduct post-election  
8 evaluations of the accuracy of voting systems and approve the  
9 contract terms for auditors. The state auditor shall review  
10 the rules, qualification standards and contract terms to  
11 ensure they meet audit standards."

12 Section 3. REPEAL.--Section 1-14-13.1 NMSA 1978 (being  
13 Laws 2005, Chapter 270, Section 75) is repealed. \_\_\_\_\_

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25