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SENATE BILL 753

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO MUNICIPAL ELECTIONS; REVISING THE CONDUCT OF  
MUNICIPAL ELECTIONS; AMENDING AND ENACTING SECTIONS OF THE  
MUNICIPAL ELECTION CODE.

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

Section 1. Section 3-8-14 NMSA 1978 (being Laws 1985,  
Chapter 208, Section 22, as amended) is amended to read:

"3-8-14. VOTING MACHINES-- ORDERING-- PREPARATION--  
CERTIFICATION-- DELIVERY. --

A. If voting machines are to be used, the  
municipal clerk shall order the machines from the county clerk  
within fifteen days of the adoption of the election  
resolution, and the county clerk shall supply such voting  
machines pursuant to Section 1-9-6 NMSA 1978. The county  
shall provide voting machine technicians, voting machine

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1 programming and voting machine transportation [~~and~~]. The  
2 municipality shall pay the reasonable fee charged by the  
3 county for such services and the use of the voting machines,  
4 but in no case in an amount which exceeds the actual cost to  
5 the county pursuant to Section 1-9-12 NMSA 1978.

6 B. If voting machines are to be used, the  
7 municipal clerk shall order at least one voting machine for  
8 every polling place; provided that the clerk shall order a  
9 sufficient number of voting machines to assure that the  
10 eligible voters in that polling place shall be able to vote in  
11 a timely manner.

12 C. Programming of electronic machines shall be  
13 performed under the supervision of the municipal clerk and the  
14 county clerk. The machines shall be programmed so that votes  
15 will be counted in accordance with specification for  
16 electronic voting machine adopted by the secretary of state.

17 D. Immediately upon receipt of the notice of date,  
18 time and place of inspection and certification, the municipal  
19 clerk shall post such notice in the office of the municipal  
20 clerk and attempt to telephone the candidates at the phone  
21 number listed on the declaration of candidacy to give each  
22 candidate notice of the date, time and place of inspection and  
23 certification.

24 E. Inspection and certification shall occur not  
25 later than seven days prior to the election and shall be open

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1 to the public.

2 F. At the date, time and place for inspection and  
3 certification, in the presence of the county clerk and those  
4 municipal candidates present, if any, the municipal clerk  
5 shall:

6 (1) ensure that the correct ballot face has  
7 been installed on each voting machine, if ballot faces are to  
8 be installed;

9 ~~[(1)]~~ (2) test each counter for accuracy by  
10 casting votes upon it until it correctly registers each vote  
11 cast;

12 ~~[(2)]~~ (3) test each voting machine to assure  
13 that it has been correctly programmed; and

14 ~~[(3)]~~ (4) inform the county clerk when each  
15 machine is satisfactory and ready to be certified.

16 G. If the municipal clerk informs the county clerk  
17 that a machine is satisfactory and ready to be certified  
18 ~~[then]:~~

19 (1) the county clerk shall reset each counter  
20 at zero;

21 ~~[(2) the county clerk shall insert the~~  
22 ~~printer pack into the machine;~~

23 ~~(3)]~~ (2) the voting machine shall be  
24 immediately sealed with a numbered metal seal so as to prevent  
25 operation of the machine or its registering counters without

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1 breaking the seal;

2 [~~(4)~~] (3) the municipal clerk shall prepare a  
3 certificate in triplicate for each machine that shall:

4 (a) show the serial number of the  
5 voting machine;

6 (b) state that the voting machine has  
7 all of its resettable registering counters set at zero;

8 (c) state that the voting machine has  
9 been tested by voting on each registered counter to prove the  
10 counter is in perfect condition;

11 (d) state that the correct ballot face  
12 has been installed on the voting machine, if ballot faces are  
13 to be installed;

14 [~~(d)~~] (e) show the number of the metal  
15 seal that has sealed the machine; and

16 [~~(e)~~] (f) show the number registered on  
17 the protective counter;

18 [~~(5)~~] (4) a copy of the certificate shall be  
19 delivered to the county clerk, the original certificate shall  
20 be filed in the office of the municipal clerk and one copy  
21 shall be posted on the voting machine; and

22 [~~(6)~~] (5) if the voting machine requires  
23 keys, the keys to the voting machine shall be enclosed in a  
24 sealed envelope on which shall be written:

25 (a) the number of the precinct and

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1 polling place to which the machine is assigned;

2 (b) the serial number of ~~that~~ the  
3 voting machine;

4 (c) the number of the metal seal that  
5 has sealed the voting machine;

6 (d) the number registered on the  
7 protective counter; and

8 (e) across the seal of the envelope,  
9 the signatures of the county clerk, the municipal clerk and  
10 all candidates present, if any, at the inspection and  
11 certification.

12 H. After certification of the voting machines, if  
13 the voting machines require keys, the county clerk shall keep  
14 the keys to the voting machines in his custody and shall  
15 deliver the keys to the municipal clerk when the voting  
16 machines are delivered for election. The municipal clerk  
17 shall secure in the office of the municipal clerk all the  
18 envelopes containing the keys to the voting machines until  
19 delivered to the presiding judge of the election.

20 I. An objection to the use of a particular voting  
21 machine shall be filed in the district court within two days  
22 after the machine has been certified. Any objection so filed  
23 shall specify the number of the voting machine objected to and  
24 the reason for the objection. Each voting machine shall be  
25 conclusively presumed to be properly prepared for the election

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1 if it has been certified unless a timely objection has been  
2 filed.

3 J. Voting machines certified in accordance with  
4 this section shall be delivered to the assigned precinct  
5 polling place no earlier than five days prior to the election  
6 and no later than noon on the day prior to the election.

7 K. The municipal clerk shall refuse to certify any  
8 voting machine that the municipal clerk determines is not  
9 programmed properly, is not working properly or will not  
10 fairly or accurately record votes. Only voting machines that  
11 have been certified by the municipal clerk shall be used in  
12 the election. "

13 Section 2. Section 3-8-22 NMSA 1978 (being Laws 1985,  
14 Chapter 208, Section 30) is amended to read:

15 "3-8-22. CONDUCT OF ELECTION--ELIGIBILITY FOR  
16 ASSISTANCE--ORAL ASSISTANCE FOR LANGUAGE MINORITY VOTERS--AID  
17 OR ASSISTANCE TO VOTER MARKING BALLOT--WHO MAY ASSIST VOTER--  
18 TYPE OF ASSISTANCE.--

19 A. A voter may request assistance in voting only  
20 if he is:

21 (1) blind;

22 (2) physically disabled;

23 (3) unable to read or write; or

24 (4) a member of a language minority who is  
25 unable to read well enough to exercise the elective franchise.

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1                   B. When a voter who is eligible for assistance  
2 requires assistance in marking his paper ballot or recording  
3 his vote on a voting machine, the voter shall announce this  
4 fact in an audible tone before receiving his paper ballot or  
5 before entering the voting machine.

6                   C. The voter's request for assistance shall be  
7 noted next to his name in the signature roster and shall be  
8 initialed by the presiding judge.

9                   D. After noting the voter's request for assistance  
10 in the signature roster, the voter shall be allowed to receive  
11 assistance in marking his paper ballot or recording his vote  
12 on a voting machine.

13                   E. A person who swears falsely in order to secure  
14 assistance with voting is guilty of perjury.

15                   F. If a voter who has requested assistance in  
16 marking his ballot is blind, has a physical disability, is  
17 unable to read or write or is a member of a language minority  
18 who has requested assistance, he may be accompanied into the  
19 voting machine by a person of his own choice; provided that  
20 the person shall not be the voter's employer, an agent of that  
21 employer, an officer or agent of the voter's union or a  
22 candidate whose name appears on the ballot in the election. A  
23 member of the precinct board may assist a voter, if requested  
24 to do so by that voter.

25                   G. A person who accompanies the voter into the

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1 voting booth or voting machine may assist the voter in marking  
2 and folding his paper ballot or recording his vote on the  
3 voting machine. A member of the precinct board who assists a  
4 voter shall not disclose the name of any candidate or  
5 questions for whom any voter voted.

6 [A-] H. Oral assistance shall be made available to  
7 assist language minority voters who cannot read sufficiently  
8 well to exercise the elective franchise. "Language minority"  
9 means a person who is an American Indian or of Spanish  
10 heritage, and "inability to read well enough to exercise the  
11 elective franchise" means inability to read the languages in  
12 which the ballot is printed or the inability to understand  
13 instructions for operating the voting machine.

14 [B-] I. The position of election translator is  
15 created. The election translator shall be an additional  
16 member of the regular precinct board, unless oral assistance  
17 to language minorities can otherwise be rendered by a member  
18 of the regular precinct board. The election translator shall  
19 be appointed by the municipal clerk in the same manner as  
20 other precinct board members are appointed, except that the  
21 municipal clerk in appointing American Indian election  
22 translators shall seek the advice of the pueblo or tribal  
23 officials residing in that municipality. The election  
24 translator shall take the oath required of precinct board  
25 members and shall meet the same qualifications as other

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1 precinct board members.

2 [C-] J. Each municipal clerk shall compile and  
3 maintain a list of standby election translators to serve in  
4 those precincts on election day when the appointed election  
5 translator is unavailable for such service. "

6 Section 3. Section 3-8-26 NMSA 1978 (being Laws 1965,  
7 Chapter 300, Section 14-8-4, as amended) is amended to read:

8 "3-8-26. REGULAR MUNICIPAL ELECTION--PUBLICATION OF  
9 RESOLUTION--CHOICE OF BALLOTS OR VOTING MACHINES.--

10 A. Not earlier than one hundred [~~and~~] twelve days  
11 or later than eighty-four days prior to the date of a regular  
12 municipal election, the governing body shall adopt an election  
13 resolution calling for the regular municipal election. The  
14 election resolution shall be published in both English and  
15 Spanish and once within fifteen days of adoption and again not  
16 less than sixty days prior to the election or more than  
17 seventy-five days prior to the election, as provided in  
18 Subsection J of Section 3-1-2 NMSA 1978. In addition, the  
19 election resolution shall be posted in the office of the  
20 municipal clerk within twenty-four hours from the date of  
21 adoption until the date of the election. For information  
22 purposes and coordination, one copy of the election resolution  
23 shall be mailed within fifteen days of adoption to the  
24 secretary of state and the county clerk of the county in which  
25 the municipality is located.

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1           B. The election resolution shall state the date  
2 when the election will be held, the offices to be filled, the  
3 questions to be submitted to the voters, the date and time of  
4 the closing of the registration books by the county clerk as  
5 required by law, the date and time for filing the declaration  
6 of candidacy, the location of polling places, the date and  
7 time for absentee voting, the date and time for early voting  
8 and the consolidation of precincts, if any, notwithstanding  
9 any conflicting provisions of Section 1-3-5 NMSA 1978. Any  
10 question to be submitted to the voters in addition to the  
11 election of municipal officers may be included in the election  
12 resolution, but such inclusion shall not substitute for any  
13 additional or separate resolution or publication thereof as  
14 required by law.

15           C. In those municipalities allowed by law to use  
16 paper ballots, the election resolution shall also state  
17 whether paper ballots or voting machines will be used in the  
18 election. "

19           Section 4. Section 3-8-27 NMSA 1978 (being Laws 1965,  
20 Chapter 300, Section 14-8-8, as amended) is amended to read:

21           "3-8-27. REGULAR MUNICIPAL ELECTION--DECLARATION OF  
22 CANDIDACY--WITHDRAWING NAME FROM BALLOT--PENALTY FOR FALSE  
23 STATEMENT.--

24           A. Candidate filing day shall be between the hours  
25 of 8:00 a.m. and 5:00 p.m. on the fifty-sixth day preceding the

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1 day of election. On candidate filing day, a candidate for  
2 municipal office shall personally appear at the office of the  
3 municipal clerk to file all documents required by law in order  
4 to cause a person to be certified as a candidate.

5 Alternatively, on candidate filing day, a person acting solely  
6 on the candidate's behalf, by virtue of a written affidavit of  
7 authorization signed by the candidate, notarized and presented  
8 to the municipal clerk by such person, shall file in the office  
9 of the municipal clerk all documents required by law in order to  
10 cause a person to be certified as a candidate.

11 B. On candidate filing day, each candidate shall  
12 cause to be filed in the office of the municipal clerk a  
13 declaration of candidacy, ~~and~~ a certified copy of the  
14 candidate's current affidavit of voter registration on file  
15 with the county clerk, which has been certified by the office  
16 of the county clerk on a date not earlier than the adoption of  
17 the election resolution, and, in a home rule or charter  
18 municipality that requires a nominating petition to be  
19 submitted by a candidate for municipal office, a nominating  
20 petition that has the required number of signatures.

21 C. All candidates shall cause their affidavits of  
22 voter registration to show their address as a street address  
23 or rural route number and not as a post office box.

24 D. The municipal clerk shall provide a form for  
25 the declaration of candidacy and shall accept only those

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1 declarations of candidacy which contain:

2 (1) the identical name and the identical  
3 resident street address as shown on the affidavit of  
4 registration of the candidate submitted with the declaration  
5 of candidacy;

6 (2) the office and term to which the  
7 candidate seeks election and district designation, if  
8 appropriate;

9 (3) a statement that the candidate is  
10 eligible and legally qualified to hold the office for which  
11 the candidate is filing;

12 (4) a statement that the candidate has not  
13 been convicted of a felony or, if the candidate has been  
14 convicted of a felony, a statement that the candidate's  
15 elective franchise has been restored;

16 (5) a statement that the candidate or the  
17 candidate's authorized representative shall personally appear  
18 at the office of the municipal clerk during normal business  
19 hours on the fifty-fourth day before the election to ascertain  
20 whether the municipal clerk has certified the declaration of  
21 candidacy as valid;

22 (6) a telephone number at which the candidate  
23 or the candidate's authorized representative can be reached  
24 for purposes of giving telephone notice;

25 (7) a statement to the effect that the

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1 declaration of candidacy is an affidavit under oath and that  
2 any false statement knowingly made [~~therein~~] in the  
3 declaration of candidacy constitutes a fourth degree felony  
4 under the laws of New Mexico; and

5 (8) the notarized signature of the candidate  
6 on the declaration of candidacy.

7 E. The municipal clerk shall not accept a  
8 declaration of candidacy for more than one municipal elected  
9 office per candidate, so that each candidate declares for only  
10 one municipal elected office.

11 F. Once filed, the declaration of candidacy is a  
12 public record.

13 G. Not later than the fifty-fifth day preceding  
14 the day of the election, the municipal clerk shall determine  
15 whether the declaration of candidacy shall be certified. In  
16 order to be certified as a candidate, the documents submitted  
17 to the municipal clerk shall prove that the individual is a  
18 qualified elector as defined in Subsection K of Section 3-1-2  
19 NMSA 1978 and, if appropriate, that the individual resides in  
20 and is registered to vote in the municipal election district  
21 from which the individual seeks election. In the event that  
22 an individual fails to submit to the municipal clerk on  
23 candidate filing day the documents listed in Subsection B of  
24 this section in the form and with the contents as required by  
25 this section, [~~then~~] the municipal clerk shall not certify

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1 that individual as a candidate for municipal office.

2 H. The municipal clerk shall post in the clerk's  
3 office a list of the names of those individuals who have been  
4 certified as candidates. The municipal clerk shall also post  
5 in the clerk's office the names of those individuals who have  
6 not been certified as candidates, along with ~~at~~ the reasons  
7 therefor. ~~Such~~ The posting shall occur no later than 9:00  
8 a.m. on the fifty-fourth day preceding the election.

9 I. Not later than 5:00 p.m. on the forty-ninth day  
10 before the day of the election, a candidate for municipal  
11 office may file an affidavit on the form provided by the  
12 municipal clerk in the office of the municipal clerk stating  
13 that he is no longer a candidate for municipal office. A  
14 municipal clerk shall not place on the ballot the name of any  
15 person who has filed an affidavit as provided in this  
16 subsection.

17 J. Not later than 10:00 a.m. on the forty-eighth  
18 day preceding the election, the municipal clerk shall confirm  
19 with the printer on contract with the municipality and the  
20 county clerk the names of the candidates and their position on  
21 the ballot.

22 K. Any person knowingly making a false statement  
23 in the declaration of candidacy is guilty of a fourth degree  
24 felony.

25 L. No person shall be elected to municipal office

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1 as a write-in candidate unless that person has been certified  
2 as a declared write-in candidate by the municipal clerk, as  
3 follows:

4 (1) write-in candidates filing day shall be  
5 on the forty-second day preceding the election between the  
6 hours of 8:00 a.m. and 5:00 p.m.;

7 (2) write-in candidates shall file a  
8 declaration of write-in candidacy with the same documents and  
9 satisfy the same requirements as established in this section  
10 for candidates;

11 (3) the municipal clerk shall, on the forty-  
12 first day preceding the election, certify those individuals  
13 who have satisfied the requirements of this section as  
14 declared write-in candidates;

15 (4) not later than 9:00 a.m. on the fortieth  
16 day preceding the election, the municipal clerk shall, in the  
17 office of the municipal clerk:

18 (a) post the names of those individuals  
19 who have been certified as declared write-in candidates; and

20 (b) post the names of those individuals  
21 who have not been certified as declared write-in candidates  
22 along with the reasons therefor; and

23 (5) not later than 5:00 p.m. on the twenty-  
24 eighth day preceding the election, a declared write-in  
25 candidate may file an affidavit that he is no longer a write-

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1 in candidate for municipal office. In the event that a  
2 declared write-in candidate files [~~such~~] an affidavit of  
3 withdrawal, [~~any~~] votes for [~~such a~~] that candidate shall not  
4 be counted and canvassed. "

5 Section 5. Section 3-8-46 NMSA 1978 (being Laws 1985,  
6 Chapter 208, Section 54, as amended) is amended to read:

7 "3-8-46. CONDUCT OF ELECTIONS--CLOSING POLLS--LOCKING  
8 VOTING MACHINES--OPENING VOTING MACHINES--VERIFICATION OF  
9 VOTES--ADMITTANCE OF WATCHERS AND CANDIDATES--PROCLAMATION OF  
10 RESULTS--COMPLETION OF LOCKING--DURATION OF LOCKING AND  
11 SEALING. --

12 A. When the last person has voted, the precinct  
13 board, in the presence of all persons lawfully permitted to be  
14 present, shall immediately lock and seal the voting machine  
15 against further voting. The precinct board shall release the  
16 machine-printed returns from the machine. The precinct board  
17 shall then sign a certificate stating that the machine was  
18 locked and sealed; giving the exact time; stating the number  
19 of voters shown on the public counters, which shall be the  
20 total number of votes cast on the machine in that precinct;  
21 stating the number on the seal; and stating the number  
22 registered on the protective counter.

23 B. The precinct board shall verify that the  
24 counter settings registered on the machine-printed returns are  
25 legible. The machine-printed returns shall show the number of

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1 votes cast for each candidate and the number of votes cast for  
2 and against any other question submitted, and the return shall  
3 be signed by each member of the precinct board and the  
4 challengers and watchers, if there be such.

5 C. If the machine-printed returns are not legible,  
6 or if the precinct officials are unable to obtain the returns  
7 from the voting machine, the precinct officials shall call the  
8 municipal clerk who shall immediately contact the county  
9 clerk, [~~to have the counter compartment opened and shall~~  
10 ~~proceed to count and tally the results from the counters of~~  
11 ~~the machine~~] who shall dispatch a voting machine technician to  
12 that polling place to help the precinct officials obtain the  
13 returns from the voting machine.

14 D. A write-in vote shall be cast by writing in the  
15 name of a declared write-in candidate on the ballot or, on  
16 voting machines, write-ins shall be written in the slot  
17 provided for each designated office. A write-in vote shall be  
18 counted and canvassed only if:

19 (1) the name written in is the name of a  
20 declared write-in candidate and shows two initials and last  
21 name; first name, middle initial or name and last name; first  
22 and last name; or the full name as it appears on the  
23 declaration of write-in candidacy of the declared write-in  
24 candidate and misspellings of the above combinations that can  
25 be reasonably determined by a majority of the members of the

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1 precinct board to identify the declared write-in candidate;

2 (2) the name is written in the proper slot on  
3 the voting machine or on the proper line for write-in votes  
4 provided on an absentee ballot, emergency paper ballot or  
5 paper ballot used in lieu of voting machines;

6 (3) the name written in is not a vote for a  
7 person who is on the ballot for that office; and

8 (4) the name written in is not imprinted by  
9 rubber stamp or similar device or by the use of preprinted  
10 stickers or labels.

11 E. Only the members of the precinct board,  
12 candidates or their representatives, representatives of the  
13 news media, certified challengers, watchers and observers and  
14 the municipal clerk may be present while the votes are being  
15 counted and tallied. Only members of the precinct board shall  
16 handle ballots, machine-printed returns and signature rosters  
17 or take part in the counting and tallying.

18 F. The proclamation of the results of the votes  
19 cast shall be distinctly announced by an election judge who  
20 shall read the name of each candidate and the total number of  
21 votes cast for each candidate shown on the printed returns.  
22 An election judge shall also read the total number of votes  
23 cast for and against each question submitted. During the  
24 proclamation, ample opportunity shall be given to any person  
25 lawfully present to compare the result so proclaimed with the

1 printed returns. The precinct board may make corrections then  
2 and there.

3 G. When the precinct board is satisfied that the  
4 election results have been correctly tallied, an election  
5 judge shall complete a separate election return certificate in  
6 quadruplicate on which is recorded the total number of votes  
7 cast in that polling place for each candidate and for and  
8 against each question. The certificate shall be signed by all  
9 the members of the precinct board. One copy shall be posted  
10 at the door of the polling place, one copy mailed to the  
11 district court in the envelope provided, one copy returned to  
12 the municipal clerk to be used as unofficial returns and the  
13 original returned to the municipal clerk in the envelope  
14 provided.

15 H. Before adjourning, the precinct board shall  
16 complete the locking procedures on the voting machine.

17 I. On the voting machine, the machine return sheet  
18 is the official vote tally for that machine and the separate  
19 election return certificate is the official vote tally for  
20 that precinct or consolidated precinct.

21 J. If in the district court's opinion a contest is  
22 likely to develop, the court may order a voting machine to  
23 remain locked and sealed for such time as it deems necessary.

24 K. The county clerk shall break the seal for  
25 purposes of lawful investigation when ordered to do so by a

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1 court of competent jurisdiction. When the investigation is  
2 completed, the voting machine shall again be sealed and across  
3 the envelope containing the keys shall be written the  
4 signature of the county clerk, unless other provisions for the  
5 use of the voting machine are ordered by the court. "

6 Section 6. Section 3-8-53 NMSA 1978 (being Laws 1965,  
7 Chapter 300, Section 14-8-14, as amended) is amended to read:

8 "3-8-53. POST-ELECTION DUTIES--CANVASS OF RETURNS--  
9 MAJORITY VOTE FOR QUESTIONS. --

10 A. After the polls are closed and after the return  
11 of the ballot box, election returns and other materials by a  
12 precinct board and not later than noon on the third day after  
13 the election, the municipal clerk shall call to his assistance  
14 to open the returns [either]:

15 (1) a magistrate within the county, so long  
16 as the magistrate is not a candidate for an office of the  
17 municipality; [or]

18 (2) the members of the governing body of the  
19 municipality [at a special meeting] who are not candidates for  
20 municipal office; provided that if the members of the  
21 governing body who are not candidates for municipal office  
22 constitute a quorum, a special meeting shall be called; or

23 (3) a district court judge from the judicial  
24 district in which the municipality is located.

25 B. The municipal clerk and the persons called to

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1 open the returns are the municipal canvassing board, and the  
2 municipal clerk shall be the presiding officer of the  
3 municipal canvassing board.

4 ~~[B.]~~ C. In the presence of the other members of  
5 the municipal canvassing board, the municipal clerk shall  
6 publicly:

7 (1) canvass the returns in the manner set  
8 forth in the Municipal Election Code;

9 (2) prepare and execute a certificate of  
10 canvass certifying the results of the election. Such  
11 certificate shall contain the total number of voters who voted  
12 at the election, the total number of votes cast for each  
13 candidate, each declared write-in candidate and for and  
14 against each question, which candidates were elected to office  
15 and whether each question passed or failed;

16 (3) sign the certificate of canvass with the  
17 municipal canvassing board signing the certificate of canvass  
18 as witnesses; and

19 (4) immediately file the certificate of  
20 canvass in the official minute book of the municipality.

21 ~~[C.]~~ D. The matters to be performed pursuant to  
22 Subsection ~~[B]~~ C of this section shall be completed not later  
23 than 5:00 p.m. on the third day following the election, and  
24 such matters shall be performed solely at the office of the  
25 municipal clerk.

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1                    ~~[D-]~~ E. All questions submitted to the voters  
2 shall be decided by a majority of the voters voting on the  
3 question except as otherwise provided by law. "

4                    Section 7. Section 3-8-58 NMSA 1978 (being Laws 1985,  
5 Chapter 208, Section 66) is amended to read:

6                    "3-8-58. POST-ELECTION DUTIES--CANVASS--VOTING MACHINE  
7 RECHECK. --

8                    A. Prior to completion of the official canvass of  
9 an election, the municipal clerk, upon written request of any  
10 candidate in the election, if any, or upon receipt of a  
11 written petition of five percent of the people who voted in  
12 the election, shall, in the presence of the district judge,  
13 conduct a recheck and comparison of the results shown on the  
14 official returns being canvassed with the results [~~appearing~~  
15 ~~on the counter~~] of each voting machine used in the election.

16                    B. For the purpose of making the recheck and  
17 comparison, the municipal clerk may request the county clerk  
18 to [~~unlock and raise the cover of the counter compartment and~~  
19 ~~check the figures shown by the counter dials on the voting~~  
20 ~~machine~~]:

- 21                                    (1) break the seal and unlock the voting
- 22                                    machine;
- 23                                    (2) check the figures shown by the counter on
- 24                                    the voting machine;
- 25                                    (3) insert the cartridge into the voting

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1 machine; and

2 (4) re-run the printed returns from the  
3 voting machine.

4 C. At the conclusion of the recheck and  
5 comparison, the voting machine shall again be locked.

6 ~~[C-]~~ D. The necessary corrections, if any, shall  
7 be made on the returns and the results of the election, as  
8 shown by the recheck and comparison, shall be declared. "

9 Section 8. Section 3-8-68 NMSA 1978 (being Laws 1985,  
10 Chapter 208, Section 76, as amended) is amended to read:

11 "3-8-68. RECOUNT--RECHECK--APPLICATION--COSTS.--

12 A. Whenever any candidate for any office for which  
13 the municipal clerk issues a certificate of election believes  
14 that any error or fraud has been committed by any precinct  
15 board in counting or tallying the paper ballots used in lieu  
16 of voting machines, emergency paper ballots or absentee  
17 ballots, in the verification of the votes cast on the voting  
18 machines or in the certifying of the results of any election  
19 whereby the results of the election in the precinct have not  
20 been correctly determined, declared or certified, the  
21 candidate, within six days after completion of the canvass by  
22 the municipal canvassing board, may have a recount of the  
23 paper ballots used in lieu of voting machines, emergency paper  
24 ballots or absentee ballots, or a recheck of the ~~[votes shown~~  
25 ~~on the voting machines]~~ voting machine and the voting machine

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1 cartridge that contains the number of total votes that were  
2 cast in the precinct.

3 B. In the case of any office for which the  
4 municipal clerk issues a certificate of election, application  
5 for recount or recheck shall be filed with the municipal  
6 clerk.

7 C. Any applicant for a recount shall deposit with  
8 the municipal clerk fifty dollars (\$50.00) in cash or a  
9 sufficient surety bond in an amount equal to fifty dollars  
10 (\$50.00) for each precinct or consolidated precinct for which  
11 a recount is demanded. Any applicant for a recheck shall  
12 deposit with the municipal clerk ten dollars (\$10.00) in cash  
13 or a sufficient surety bond in an amount equal to ten dollars  
14 (\$10.00) for each voting machine to be rechecked.

15 D. The deposit or surety bond shall be security  
16 for the payment of the costs and expenses of the recount or  
17 recheck in case the results of the recount or recheck are not  
18 sufficient to change the results of the election.

19 E. If it appears that error or fraud sufficient to  
20 change the winner of the election has been committed, the  
21 costs and expenses of the recount or recheck shall be paid by  
22 the municipality upon warrant of the municipal clerk from the  
23 general fund of the municipality.

24 F. If no error or fraud appears to be sufficient  
25 to change the winner, the costs and expenses for the recount

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1 or recheck shall be paid by the applicant. Costs shall  
2 consist of any docket fees, mileage of a sheriff or state  
3 police officer in serving summons and fees and mileage of  
4 precinct board members, at the same rates allowed witnesses in  
5 civil actions. If fraud has been committed by a precinct  
6 board, they shall not be entitled to such mileage or fees."

7 Section 9. Section 3-8-81 NMSA 1978 (being Laws 1999,  
8 Chapter 278, Section 37) is amended to read:

9 "3-8-81. EARLY VOTING. --

10 A. The governing body of a municipality shall  
11 provide for early voting for any regular or special municipal  
12 election at the time of the adoption of the election  
13 resolution for a regular or special municipal election, and  
14 shall designate the office of the municipal clerk as the early  
15 voting precinct.

16 B. Early voting shall be done during the  
17 municipality's regular hours and days of business, between  
18 Monday and Friday, commencing on the twentieth day preceding  
19 the election and closing at 5:00 p.m. on the Friday  
20 immediately prior to the date of the election.

21 C. The municipal clerk shall publish notice of  
22 early voting at least twice, between [~~thirty and forty-five~~]  
23 twenty-four and sixty days prior to the election, and shall  
24 make reasonable efforts to publicize and inform voters of the  
25 time and location for early voting. A notice regarding early

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1 voting may be combined with other election publications that  
2 are required by law."

3 Section 10. Section 3-9-4 NMSA 1978 (being Laws 1973,  
4 Chapter 375, Section 3, as amended) is amended to read:

5 "3-9-4. ABSENTEE BALLOT APPLICATION--REJECTION--  
6 ACCEPTANCE--ISSUANCE OF ABSENTEE BALLOT.--

7 A. Application by a federal qualified elector or  
8 federal voter shall be made on the federal postcard  
9 application form to the municipal clerk.

10 B. The municipal clerk shall prescribe the form of  
11 the absentee ballot application.

12 C. An absentee ballot application shall be  
13 furnished by the municipal clerk by mail or in person in the  
14 office of the municipal clerk to the voter upon request by the  
15 voter.

16 D. A list containing the names and [address]  
17 addresses of voters requesting absentee ballot applications  
18 shall be kept and shall be made a part of the [absent]  
19 absentee ballot register.

20 E. Upon receipt of a properly completed and  
21 delivered application for an absentee ballot, the municipal  
22 clerk shall contact the county clerk to determine if the  
23 applicant is a qualified elector of the municipality.

24 F. The municipal clerk shall reject an absentee  
25 ballot application for any of the following reasons:

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1 (1) the application is not made on the form  
2 provided by the municipal clerk;

3 (2) the application does not set forth the  
4 applicant's full name and address;

5 (3) the application does not set forth the  
6 applicant's social security number or date of birth;

7 [~~(3)~~] (4) the applicant has voted early;

8 [~~(4)~~] (5) the application is not signed by  
9 the applicant; or

10 [~~(5)~~] (6) the applicant:

11 (a) has no valid affidavit of  
12 registration on file with the county clerk and is not a  
13 federal qualified elector or federal voter;

14 (b) has a valid affidavit of  
15 registration on file with the county clerk, but is not a  
16 resident of the municipality; or

17 (c) is a federal qualified elector or  
18 federal voter, but is not entitled to vote in the municipal  
19 election; and

20 (d) cannot comply with Subparagraph  
21 (a), (b) or (c) of this paragraph pursuant to Subsection B of  
22 Section 3-8-40 NMSA 1978.

23 G. If the municipal clerk rejects the absentee  
24 ballot application pursuant to Subsection F of this section,  
25 then the municipal clerk shall refuse to issue an absentee

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1 ballot and shall mark the application "rejected" and enter  
2 "rejected" in the absentee ballot register and file the  
3 application in a separate file. The municipal clerk shall,  
4 within twenty-four hours of rejection of the application,  
5 notify the applicant of the reasons for rejection of the  
6 application. Upon rejection of the application, the municipal  
7 clerk shall determine the method of notification to the voter.  
8 Notification shall only be made by courier with return receipt  
9 or certified mail, return receipt requested. The person whose  
10 application has been rejected shall have ten days from receipt  
11 of notice to appeal or show cause why the application should  
12 be accepted. In addition, if the application is incomplete,  
13 the clerk shall mail immediately a new application for  
14 absentee ballot.

15 H. If the application for absentee ballot is  
16 accepted, the municipal clerk shall:

- 17 (1) mark the application "accepted";  
18 (2) enter the required information in the  
19 absentee ballot register; and  
20 (3) issue to the applicant an absentee  
21 ballot.

22 I. The municipal clerk shall deliver the absentee  
23 ballot to the applicant in the office of the municipal clerk  
24 if the application for absentee ballot has been accepted and  
25 if the application is submitted in person by the applicant or

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1 mail an absentee ballot to any qualified elector, federal  
2 qualified elector or federal voter whose application for an  
3 absentee ballot was received by mail and has been accepted.  
4 The municipal clerk shall notify the county clerk who shall  
5 write "absentee ballot" on the signature line of the signature  
6 roster next to the name of the person who has been sent an  
7 absentee ballot. Names of individuals [~~which~~] that have been  
8 labeled "absentee ballot" shall appear on a separate list  
9 called the "absentee voter list". This list shall be  
10 submitted to the municipal clerk by the county clerk in the  
11 same manner as provided in Subsection B of Section 3-8-7 NMSA  
12 1978.

13 J. It is the duty of the municipal clerk to verify  
14 the signature roster and absentee voter list to ensure that  
15 all names of individuals who have been issued absentee ballots  
16 have been labeled "absentee ballot" on the signature roster  
17 and their names listed on the absentee voter list. If not,  
18 the municipal clerk shall write "absentee ballot" on the  
19 signature line of the signature roster next to the name of the  
20 person who has been sent an absentee ballot. The municipal  
21 clerk shall then enter the name and all required information  
22 on the absentee voter list.

23 K. If the application for an absentee ballot is  
24 delivered in person to the municipal clerk during regular  
25 hours and days of business and is accepted, the municipal

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1 clerk shall issue the voter the absentee ballot and it shall  
2 be marked by the applicant in a voting booth in the municipal  
3 clerk's office, sealed in the proper envelopes and otherwise  
4 properly executed and returned to the municipal clerk or the  
5 clerk's authorized representative before the applicant leaves  
6 the office of the municipal clerk. Absentee ballots may be  
7 cast in person beginning on the twenty-seventh day before the  
8 election at the municipal clerk's office until 5:00 p.m. on  
9 the Thursday immediately prior to the date of election.

10 L. The act of marking the absentee ballot in the  
11 office of the municipal clerk shall be a convenience to the  
12 voter in the delivery of the absentee ballot and does not make  
13 the office of the municipal clerk a polling place subject to  
14 the requirements of a polling place in the Municipal Election  
15 Code other than is provided in this subsection. During the  
16 period of time between the date a person may first apply in  
17 person for an absentee ballot and the final date for such  
18 application and marking of the ballot in the office of the  
19 municipal clerk, it is unlawful to solicit votes or display or  
20 otherwise make accessible any posters, signs or other forms of  
21 campaign literature whatsoever in the clerk's office.

22 M Absentee ballots shall be air mailed to federal  
23 qualified electors and federal voters whose applications have  
24 been accepted not earlier than thirty-five days prior to the  
25 election and not later than 5:00 p.m. on the Thursday

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1 immediately prior to the date of the election.

2 N. Absentee ballots shall be mailed to voters  
3 whose applications have been approved not earlier than thirty-  
4 five days prior to the election and not later than 5:00 p.m.  
5 on Thursday immediately prior to the date of the election.

6 O. No absentee ballot shall be delivered or mailed  
7 to any person other than the applicant for such ballot."

8 Section 11. A new section of the Municipal Election Code  
9 is enacted to read:

10 "[NEW MATERIAL] FORM OF EARLY VOTING BALLOT. --

11 A. When a municipality elects to use paper ballots  
12 for early voting, the form of the early voting ballot shall be  
13 in a form prescribed by the municipal clerk. The early voting  
14 ballot shall:

15 (1) be numbered consecutively beginning with  
16 number one. The number shall be printed in the upper right-  
17 hand corner of the ballot with a diagonal perforated line  
18 approximately placed so that the portion of the ballot bearing  
19 the number in the upper right-hand corner may be readily and  
20 easily detached from the ballot;

21 (2) be uniform in size;

22 (3) be printed on good quality paper;

23 (4) be printed in plain black type;

24 (5) have all words and phrases printed  
25 correctly and in their proper places; and

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1 (6) have district and precinct numbers, if  
2 applicable.

3 B. The following heading shall be printed on each  
4 paper ballot used for early voting in municipal elections:

5 "OFFICIAL EARLY VOTING BALLOT  
6 Election held.....(insert date)".

7 C. If the election is a regular municipal  
8 election, then the early voting ballot shall be prepared  
9 consistent with the requirements set forth in Section 3-8-29  
10 NMSA 1978. In addition, next to each candidate's name shall  
11 appear an empty box to be used when voting for that candidate.  
12 When space is allowed on a paper ballot for entering the name  
13 of a declared write-in candidate, that space shall be clearly  
14 designated by the use of the heading "Write-in Candidate".  
15 Below the heading shall appear one line, with a box to the  
16 right of the line, for each individual office-holder to be  
17 elected. Below the last candidate's name shall appear any  
18 question presented, in the order designated by the governing  
19 body.

20 D. If the election is a special municipal  
21 election, then questions presented shall be placed on the  
22 early voting ballot in the order designated by the governing  
23 body.

24 E. Next to each question presented on an early  
25 voting ballot shall appear two empty boxes, one labeled "FOR"

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1 and the other labeled "AGAINST".

2 F. At the bottom of all early voting ballots shall  
3 be printed:

4 "OFFICIAL EARLY VOTING BALLOT",  
5 followed by a facsimile signature of the municipal clerk."

6 Section 12. EFFECTIVE DATE. --The effective date of the  
7 provisions of this act is July 1, 2001.

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