

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE VOTERS AND ELECTIONS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1156

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO ELECTIONS; DEFINING TERMS; PROHIBITING RELEASE OF
CERTAIN REGISTRATION INFORMATION; ESTABLISHING RECOUNT
PROCEDURES; ESTABLISHING COUNTING STANDARDS; ALLOWING
MESSENGERS TO PICK UP ABSENTEE BALLOTS FROM POLLING PLACES;
CHANGING PROCEDURES BY WHICH VOTING RIGHTS MAY BE RESTORED TO
FELONS; CHANGING THE PENALTY FOR FAILURE TO DELIVER AN ABSENTEE
BALLOT APPLICATION; ELIMINATING PROVISIONS ALLOWING CANDIDATES
WHO FAIL TO RECEIVE PREPRIMARY CONVENTION DESIGNATION TO BECOME
A CANDIDATE; ALLOWING THE SECRETARY OF STATE TO ASSIST IN
PREPARING BALLOTS; CHANGING PROVISIONS RELATED TO ASSISTANCE OF
VOTERS AT THE POLLS; PROVIDING PROCEDURES FOR PRESERVING AND
CLEARING VOTING SYSTEM MEMORY CARDS; GIVING THE SECRETARY OF
STATE AUTHORITY TO DETERMINE THE FORM OF THE BALLOT FOR
CONSTITUTIONAL AMENDMENTS; REMOVING CERTAIN REFERENCES TO
ABSENTEE, EMERGENCY AND PROVISIONAL BALLOTS; CHANGING THE

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underscoring material = new
[bracketed material] = delete

1 DEADLINE FOR SCHOOL BOARD ELECTION PROCLAMATIONS; PROVIDING FOR
2 PENALTIES.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

7 "[NEW MATERIAL] PROHIBITION ON RELEASE OF REGISTRATION
8 INFORMATION.--The secretary of state, county clerk or any other
9 registration agent shall not release to the public a voter's
10 social security number or date of birth."

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

13 "[NEW MATERIAL] RECOUNT PROCEDURES.--

14 A. To ensure the accuracy of electronic vote
15 tabulating systems, the secretary of state shall issue rules to
16 implement the recount procedures provided for in Subsections B
17 and C of this section.

18 B. The votes from a random selection of ballots
19 shall be tallied by hand, and the votes from the same ballots
20 shall be tabulated by an electronic vote tabulating system.
21 For statewide and federal office, the number of ballots to be
22 tallied and tabulated shall be equal to at least two percent of
23 the ballots cast in each county. For all other offices, the
24 number of ballots to be tallied and tabulated shall be equal to
25 the greater of one hundred, or five percent, of the ballots

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1 cast for the office, distributed by county where applicable.

2 C. For a statewide or federal office, if the
3 results of the hand-tally and the electronic vote tabulating
4 system tabulation differ by one-fourth of one percent or less,
5 the remaining ballots shall be recounted using electronic vote
6 tabulating systems. Otherwise, the remaining ballots shall be
7 recounted by hand.

8 D. For offices other than statewide or federal
9 offices, if the results of the hand-tally and the electronic
10 vote tabulating system tabulation differ by the greater of one
11 percent or less, or two votes, the remaining ballots shall be
12 recounted using electronic vote tabulating systems. Otherwise,
13 the remaining ballots shall be recounted by hand.

14 E. Nothing in this section prohibits a candidate
15 from requesting a hand recount in accordance with the
16 provisions of Section 1-14-15 NMSA 1978."

17 Section 3. Section 1-1-6 NMSA 1978 (being Laws 1977,
18 Chapter 222, Section 1, as amended) is amended to read:

19 "1-1-6. RECHECK AND RECOUNT.--As used in the Election
20 Code:

21 A. "recheck" pertains to electronic [~~voting~~] vote
22 tabulating systems and means a verification procedure [~~where~~]
23 whereby a printout of the electronic record of votes cast in an
24 election is made from each electronic memory device in the
25 electronic [~~voting~~] vote tabulating system and the results are

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1 compared with the results shown on the official returns; and

2 B. "recount" pertains to emergency paper ballots,
3 absentee ballots, provisional paper ballots, optical scan paper
4 ballots [~~voter verifiable and auditable paper ballots printed~~
5 ~~by electronic voting systems~~] and any other paper ballot and
6 means a verification procedure whereby the voters' selections
7 [~~on the paper ballots may be~~] for an office are retabulated by
8 feeding the ballots into an electronic vote tabulating system,
9 and the voters' selections on ballots that cannot be read by
10 the system are counted by hand and the results compared with
11 the results shown on the official returns."

12 Section 4. Section 1-1-23 NMSA 1978 (being Laws 2005,
13 Chapter 270, Section 5) is amended to read:

14 "1-1-23. UNIQUE IDENTIFIER.--As used in the Election
15 Code, "unique identifier" means [~~the last four digits of~~] a
16 randomly generated series of numbers, letters or symbols
17 assigned to a voter, which shall not be the voter's social
18 security number or date of birth."

19 Section 5. Section 1-1-25 NMSA 1978 (being Laws 2005,
20 Chapter 270, Section 7) is amended to read:

21 "1-1-25. VOTER [~~IDENTIFICATION CARD~~] INFORMATION.--As
22 used in the Election Code, "voter [~~identification card~~]
23 information" means a document containing the person's name,
24 address and precinct number that is issued by the county clerk
25 or the [~~voter's copy of the voter's certificate of~~

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1 ~~registration]~~ secretary of state."

2 Section 6. Section 1-2-20 NMSA 1978 (being Laws 1969,
3 Chapter 240, Section 39, as amended) is amended to read:

4 "1-2-20. MESSENGERS--COMPENSATION.--

5 A. The county clerk may appoint messengers to
6 deliver ballot boxes, poll books, keys, election supplies and
7 other materials pertaining to the election. Messengers may
8 also be authorized to collect absentee ballots from polling
9 places and deliver those absentee ballots to locations
10 designated by the county clerk.

11 B. Messengers shall be paid mileage as provided in
12 the Per Diem and Mileage Act each way over the usually traveled
13 route. The mileage shall be paid within thirty days following
14 the date of election if funds are available for payment."

15 Section 7. Section 1-4-27.1 NMSA 1978 (being Laws 2001,
16 Chapter 46, Section 1, as amended) is amended to read:

17 "1-4-27.1. CANCELLATION OF REGISTRATION FOLLOWING
18 CONVICTION--ELIGIBILITY FOR ~~[REGISTRATION]~~ VOTING UPON
19 SATISFACTION OF CONDITIONS.--

20 A. When a voter has been convicted of a felony, the
21 ~~[clerk of the district court where the conviction occurred~~
22 ~~shall file a certificate of felony conviction with the~~
23 ~~secretary of state. The secretary of state shall notify the~~
24 ~~county clerk of the county where the convicted felon is~~
25 ~~registered to vote.~~

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1 ~~B. For purposes of cancellation of registration,~~
2 ~~verification of a felony conviction may be obtained by~~
3 ~~comparing the voter's registration record with the certificate~~
4 ~~of felony conviction filed by the clerk of the district court.~~

5 ~~C. The certificate of felony conviction shall~~
6 ~~include the voter's:~~

7 ~~(1) name;~~

8 ~~(2) age;~~

9 ~~(3) sex;~~

10 ~~(4) state tracking number;~~

11 ~~(5) case number;~~

12 ~~(6) birth date;~~

13 ~~(7) social security number, if any;~~

14 ~~(8) date of conviction; and~~

15 ~~(9) address]~~ voter's registration shall be
16 cancelled.

17 ~~[D.] B. When a voter convicted of a felony [for~~
18 ~~which a sentence of imprisonment is authorized but deferred or~~
19 ~~suspended by order of the court] is placed on supervised~~
20 ~~probation and has completed the conditions of [the court order,~~
21 ~~the clerk of the court shall notify the secretary of state that~~
22 ~~the person is eligible for registration. The secretary of~~
23 ~~state shall notify all county clerks that] supervision as~~
24 ~~ordered by the court, the person is eligible for registration.~~

25 ~~[E.] C. When a voter convicted of a felony is~~

1 unconditionally discharged from a correctional facility under
2 the jurisdiction of the corrections department, or is
3 conditionally discharged from a facility under the jurisdiction
4 of the corrections department and has completed all conditions
5 of probation or parole, [~~the corrections department shall~~
6 ~~notify the secretary of state that the person is eligible for~~
7 ~~registration. The secretary of state shall notify all county~~
8 ~~clerks that]~~ the person is eligible for registration.

9 [F.] D. When a voter convicted of a federal offense
10 constituting a felony is unconditionally discharged from a
11 correctional facility under the jurisdiction of a federal
12 corrections agency [~~or is conditionally discharged from a~~
13 ~~correctional facility under the jurisdiction of a federal~~
14 ~~corrections agency]~~ and has completed all conditions of
15 probation or parole, [~~the federal agency having jurisdiction of~~
16 ~~that person shall notify the secretary of state that the person~~
17 ~~is eligible for registration. The secretary of state shall~~
18 ~~notify all county clerks that]~~ the person is eligible for
19 registration.

20 E. The corrections department and the
21 administrative office of the courts shall deliver to the
22 secretary of state information and data as needed to carry out
23 the provisions of this section.

24 F. The secretary of state shall promulgate rules to
25 implement and enforce the provisions of this section."

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1 Section 8. Section 1-5-8 NMSA 1978 (being Laws 1969,
2 Chapter 240, Section 110, as amended) is amended to read:

3 "1-5-8. PRECINCT VOTER LISTS--SIGNATURE ROSTERS--NUMBER--
4 DISTRIBUTION.--

5 A. One copy of the signature roster shall be
6 prepared for each precinct. On the cover of the signature
7 roster shall be printed the words, "Copy for the County Clerk".
8 Upon its preparation and certification as to its accuracy and
9 completeness, the county clerk shall deliver the copy of the
10 signature roster to the precinct board.

11 B. The county clerk shall prepare three copies of
12 the precinct voter list for each precinct. Of the three copies
13 prepared, one copy shall not include ~~[voter social security~~
14 ~~numbers]~~ the voters' unique identifiers. The other two shall
15 contain ~~[only the last four digits of]~~ the ~~[voter's social~~
16 ~~security number]~~ voters' unique identifiers. The county clerk
17 shall deliver two of the copies to each precinct board. One
18 copy of the precinct voter list shall be retained by the county
19 clerk for verification purposes on election day and one copy
20 for the secretary of state shall be marked to verify those
21 voters on the list who voted.

22 C. Two copies of the county voter list, arranged in
23 alphabetical order, shall be prepared for election day for
24 verification purposes only."

25 Section 9. Section 1-6-4.3 NMSA 1978 (being Laws 2005,

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1 Chapter 270, Section 41) is amended to read:

2 "1-6-4.3. THIRD PARTY AGENTS COLLECTING ABSENTEE BALLOT
3 APPLICATIONS.--

4 A. A person or organization that is not part of a
5 government agency and that collects absentee ballot
6 applications shall submit the applications to the appropriate
7 office for filing within forty-eight hours of their completion
8 or the next business day if the appropriate office is closed
9 for that forty-eight-hour period.

10 ~~[B. The secretary of state shall establish~~
11 ~~procedures to ensure that absentee ballot applications~~
12 ~~collected in accordance with Subsection A of this section can~~
13 ~~be traced to the person and organization collecting the~~
14 ~~applications.]~~

15 ~~G.]~~ B. A person who ~~[intentionally alters or]~~
16 collects absentee ballot applications and fails to submit a
17 voter's completed absentee ballot application is guilty of a
18 ~~[fourth degree felony]~~ petty misdemeanor.

19 C. A person who intentionally alters another
20 voter's completed absentee ballot application is guilty of a
21 fourth degree felony."

22 Section 10. Section 1-8-33 NMSA 1978 (being Laws 1973,
23 Chapter 228, Section 7, as amended) is amended to read:

24 "1-8-33. PRIMARY ELECTION LAW--NOMINATING PETITION--
25 NUMBER OF SIGNATURES REQUIRED.--

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1 A. As used in this section, "total vote" means the
2 sum of all votes cast for all of the party's candidates for
3 governor at the last preceding primary election at which the
4 party's candidate for governor was nominated.

5 B. Candidates who seek preprimary convention
6 designation shall file nominating petitions at the time of
7 filing declarations of candidacy. Nominating petitions for
8 those candidates shall be signed by a number of voters equal to
9 at least two percent of the total vote of the candidate's party
10 in the state or congressional district, or the following number
11 of voters, whichever is greater: for statewide offices, two
12 hundred thirty voters; and for congressional candidates,
13 seventy-seven voters.

14 C. Nominating petitions for candidates for any
15 other office to be voted on at the primary election for which
16 nominating petitions are required shall be signed by a number
17 of voters equal to at least three percent of the total vote of
18 the candidate's party in the district or division, or the
19 following number of voters, whichever is greater: for
20 metropolitan court and magistrate courts, ten voters; for the
21 public regulation commission, fifty voters; for the [~~state~~
22 ~~board of~~] public education commission, twenty-five voters; for
23 state representative, ten voters; for state senator, seventeen
24 voters; and for district attorney and district judge, fifteen
25 voters.

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1 ~~[D. A candidate who fails to receive the preprimary~~
 2 ~~convention designation that he sought may collect additional~~
 3 ~~signatures to total at least four percent of the total vote of~~
 4 ~~the candidate's party in the state or congressional district,~~
 5 ~~whichever applies to the office he seeks, and file a new~~
 6 ~~declaration of candidacy and nominating petitions for the~~
 7 ~~office for which he failed to receive a preprimary designation.~~
 8 ~~The declaration of candidacy and nominating petitions shall be~~
 9 ~~filed with the secretary of state either ten days following the~~
 10 ~~date of the preprimary convention at which he failed to receive~~
 11 ~~the designation or on the date all declarations of candidacy~~
 12 ~~and nominating petitions are due pursuant to the provisions of~~
 13 ~~the Primary Election Law, whichever is later.]"~~

14 Section 11. Section 1-9-4.2 NMSA 1978 (being Laws 2003,
 15 Chapter 356, Section 9, as amended) is amended to read:

16 "1-9-4.2. DEFINITION OF A VOTE--COUNTING OF HAND-TALLIED
 17 BALLOTS.--

18 ~~[A. A vote on a touch-screen direct recording~~
 19 ~~electronic voting system or electronic voting system consists~~
 20 ~~of a voter's selection of a candidate or answer to a ballot~~
 21 ~~question selected by the electro-optical ballot display of the~~
 22 ~~device, followed by the voter activating the cast vote~~
 23 ~~indicator.~~

24 ~~B.]~~ A. A vote on a paper ballot [~~card~~] used on an
 25 electronic vote tabulating [~~marksense voting~~] system, optical

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1 scan vote tabulating system or high-speed central count
2 [~~marksense~~] vote tabulator consists of a voter's selection of a
3 candidate or answer to a ballot question indicated in the
4 voting response area of the paper ballot [~~card~~] marked in
5 accordance with the instructions for that ballot type. [~~If the~~
6 ~~paper ballot card is marked indistinctly or not marked~~
7 ~~according to the instructions for that ballot type, only a~~
8 ~~cross (X) or a check (√) within the voting response area shall~~
9 ~~be counted. A vote on a paper ballot card shall also be~~
10 ~~counted if, on a ballot type requiring the completion of an~~
11 ~~arrow to indicate a voter's selection, the voter has marked an~~
12 ~~arrowhead on the tail portion of the arrow in the voting~~
13 ~~response area or has circled the name of the preferred~~
14 ~~candidate or both.]~~

15 B. For paper ballots that are hand-tallied, a vote
16 shall be counted if:

17 (1) the ballot is marked in accordance with
18 the instructions for that ballot type;

19 (2) the preferred candidate's name or answer
20 to a ballot question is circled;

21 (3) there is a cross or check within the
22 voting response area for the preferred candidate or answer to
23 the ballot question; or

24 (4) the voter's intent is clearly discernable
25 to the precinct judge, subject to review by the canvassing

1 board."

2 Section 12. Section 1-10-2 NMSA 1978 (being Laws 1977,
3 Chapter 222, Section 25) is amended to read:

4 "1-10-2. BALLOTS--DUTY TO PROVIDE.--The county clerk
5 shall prepare and supply the ballots used in elections
6 conducted under the Election Code. The secretary of state may
7 assist in preparing and supplying ballots. Ballots other than
8 those prepared by the county clerk or secretary of state shall
9 not be used [~~in such elections~~]."

10 Section 13. Section 1-12-13 NMSA 1978 (being Laws 1969,
11 Chapter 240, Section 266, as amended) is amended to read:

12 "1-12-13. CONDUCT OF ELECTION--AID OR ASSISTANCE TO VOTER
13 IN MARKING BALLOT.--

14 A. When a voter who is eligible for assistance
15 pursuant to Section 1-12-12 NMSA 1978 requires assistance in
16 marking [~~his paper~~] a ballot or [~~recording his vote by~~] using
17 the voting [~~machine~~] system, the voter shall announce this fact
18 [~~in an audible tone~~] before receiving [~~his paper~~] the ballot or
19 [~~before entering~~] using the voting [~~machine~~] system.

20 B. The voter's request for assistance shall be
21 noted by [~~his~~] the voter's name in the signature roster and
22 initialed by the presiding judge.

23 C. After noting the request for assistance in the
24 signature roster, the voter shall be permitted assistance in
25 marking [~~his paper~~] the ballot or [~~recording his vote~~] using

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1 the voting system as provided in Section 1-12-15 NMSA 1978.

2 D. Any person who swears falsely in order to secure
3 assistance is guilty of perjury."

4 Section 14. Section 1-12-16 NMSA 1978 (being Laws 1969,
5 Chapter 240, Section 268) is amended to read:

6 "1-12-16. CONDUCT OF ELECTION--TYPE OF ASSISTANCE.--
7 Persons [~~accompanying the voter into the voting booth or voting~~
8 ~~machine~~] providing assistance to a voter may assist the voter
9 in reading and marking [~~and folding his paper~~] the ballot or
10 [~~recording his vote on~~] using the voting [~~machine~~] system."

11 Section 15. Section 1-13-21 NMSA 1978 (being Laws 1971,
12 Chapter 317, Section 21, as amended) is amended to read:

13 "1-13-21. CLEARING VOTING [~~MACHINES~~] SYSTEMS.--

14 A. Thirty days after adjournment of the state
15 canvassing board, each county clerk in the presence of the
16 district judge or [~~his~~] the district judge's designated
17 representative shall [~~open~~] clear the votes recorded on the
18 memory cards of all voting [~~machines~~] systems of the precincts
19 for which [~~he~~] the county clerk has not received [~~no~~] notice by
20 registered mail of contest or [~~no~~] judicial inquiry [~~and he~~
21 ~~shall clear such machines of all votes cast thereon~~].

22 B. The county clerk shall keep locked those memory
23 cards from voting [~~machines whereof~~] systems used in precincts
24 where a recount, judicial inquiry or inspection is sought,
25 subject to order of the district court or other authority

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1 having jurisdiction of the contest or inspection.

2 C. At least three days prior to the ~~[opening and]~~
 3 clearing of the voting ~~[machines]~~ system memory cards, the
 4 county clerk shall notify the county ~~[chairman]~~ chair of each
 5 political party participating in the election of the time,
 6 place and date thereof. The ~~[chairman]~~ chair of the political
 7 party may be present or may have ~~[his]~~ the chair's accredited
 8 representative present at ~~[such opening and]~~ the clearing.

9 ~~[D. Nothing in this section shall prohibit the use~~
 10 ~~of voting machines in a subsequent election. If the voting~~
 11 ~~machine must be cleared before the thirty-day period prescribed~~
 12 ~~in Subsection A of this section for use in any election, the~~
 13 ~~county clerk shall first obtain an order from the district~~
 14 ~~court for such clearance.]"~~

15 Section 16. Section 1-16-5 NMSA 1978 (being Laws 1969,
 16 Chapter 240, Section 378, as amended) is amended to read:

17 "1-16-5. STATE CONSTITUTIONAL AMENDMENTS--~~[BALLOT--FORMS~~
 18 ~~FOR EMERGENCY AND PROVISIONAL PAPER BALLOTS AND ABSENTEE]~~ FORM
 19 OF BALLOTS.--~~[A.]~~ All ~~[emergency and provisional paper ballots~~
 20 ~~and absentee]~~ ballots proposing constitutional amendments shall
 21 ~~[have printed thereon in both English and Spanish the full~~
 22 ~~title of the joint resolution proposing the constitutional~~
 23 ~~amendment and the constitutional amendment number assigned to~~
 24 ~~the joint resolution by the secretary of state. Below the~~
 25 ~~printed title, there shall be printed on the ballot two one-~~

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1 ~~quarter inch blank boxes. Opposite one of the blank boxes,~~
2 ~~there shall be printed in both English and Spanish the word~~
3 ~~"FOR", and opposite the other blank box shall be printed in~~
4 ~~both languages the word "AGAINST".~~

5 ~~B. There shall be printed across the top of the~~
6 ~~ballot the following: "Instructions to voters: If you desire~~
7 ~~to vote for the amendment, mark a cross (X) or a check (✓) or~~
8 ~~any other mark clearly indicating intention in the opposite~~
9 ~~the word "FOR". If you desire to vote against the amendment,~~
10 ~~mark a cross (X) or a check (✓) or any other mark clearly~~
11 ~~indicating intention in the opposite the word "AGAINST"] be~~
12 ~~in the form prescribed by the secretary of state."~~

13 Section 17. Section 1-16-6 NMSA 1978 (being Laws 1969,
14 Chapter 240, Section 379, as amended) is amended to read:

15 "1-16-6. STATE CONSTITUTIONAL AMENDMENTS--MARKING
16 [~~EMERGENCY AND PROVISIONAL PAPER~~] BALLOTS [~~AND ABSENTEE~~
17 ~~BALLOTS~~].--A voter desiring to mark [~~his emergency or~~
18 ~~provisional paper ballot or absentee~~] the ballot for or against
19 a proposed constitutional amendment shall do so in the manner
20 specified in the instructions printed on the ballot."

21 Section 18. Section 1-16-9 NMSA 1978 (being Laws 1969,
22 Chapter 240, Section 381, as amended) is amended to read:

23 "1-16-9. STATE CONSTITUTIONAL AMENDMENTS--SINGLE
24 [~~EMERGENCY AND PROVISIONAL PAPER BALLOT AND ABSENTEE~~] BALLOT.--
25 Proposed constitutional amendments or other questions submitted

1 to the voters [~~on emergency or provisional paper ballots or~~
 2 ~~absentee ballots~~] at any election shall be printed [~~upon~~] on
 3 one ballot only."

4 Section 19. Section 1-22-4 NMSA 1978 (being Laws 1985,
 5 Chapter 168, Section 6, as amended) is amended to read:

6 "1-22-4. REGULAR ELECTION--PROCLAMATION--PUBLICATION.--

7 A. The board shall by resolution issue a public
 8 proclamation in Spanish and English calling a regular school
 9 district election within the school district on the date
 10 prescribed by the School Election Law. The proclamation shall
 11 be filed by the superintendent with the county clerk of record
 12 on the last [~~Friday~~] Tuesday in November of the even-numbered
 13 year immediately preceding the date of the election.

14 B. The proclamation shall specify:

- 15 (1) the date when the election will be held;
 16 (2) the positions on the board to be filled;
 17 (3) the date on which declarations of
 18 candidacy are to be filed;
 19 (4) the date on which declarations of intent
 20 to be a write-in candidate are to be filed;
 21 (5) the questions to be submitted to the
 22 voters;
 23 (6) the precincts in each county in which the
 24 election is to be held and the location of each polling place;
 25 (7) the hours each polling place will be open;

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1 and

2 (8) the date and time of the closing of the
3 registration books by the county clerk of record as required by
4 law.

5 C. After filing the proclamation with the county
6 clerk of record and not less than fifty days before the date of
7 the election, the county clerk of record shall publish the
8 proclamation at least once in a newspaper of general
9 circulation within the school district. The publication of the
10 proclamation shall conform to the requirements of the federal
11 Voting Rights Act of 1965, as amended."

12 Section 20. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2007.

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