

1 SENATE BILL 980

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO ELECTIONS; DEFINING TERMS; CHANGING DELIVERY
12 DEADLINES FOR REGISTRATION AGENTS; ESTABLISHING RECOUNT
13 PROCEDURES; ALLOWING MESSENGERS TO PICK UP ABSENTEE BALLOTS
14 FROM POLLING PLACES; CHANGING PROCEDURES BY WHICH VOTING RIGHTS
15 MAY BE RESTORED TO FELONS; CHANGING REQUIREMENTS ON THIRD-PARTY
16 COLLECTION OF ABSENTEE BALLOT APPLICATIONS; REDUCING THE
17 PENALTY FOR FAILURE TO DELIVER AN ABSENTEE BALLOT APPLICATION;
18 ELIMINATING PROVISIONS ALLOWING CANDIDATES WHO FAIL TO RECEIVE
19 PREPRIMARY CONVENTION DESIGNATION TO BECOME A CANDIDATE;
20 ALLOWING THE SECRETARY OF STATE TO ASSIST IN PREPARING BALLOTS;
21 CHANGING PROVISIONS AND ELIMINATING A PENALTY RELATED TO
22 ASSISTANCE OF VOTERS AT THE POLLS; PROVIDING PROCEDURES FOR
23 PRESERVING AND CLEARING VOTING SYSTEM MEMORY CARDS; GIVING THE
24 SECRETARY OF STATE AUTHORITY TO DETERMINE THE FORM OF THE
25 BALLOT FOR CONSTITUTIONAL AMENDMENTS; REMOVING CERTAIN

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1 REFERENCES TO ABSENTEE, EMERGENCY AND PROVISIONAL BALLOTS;
2 CHANGING THE DEADLINE FOR SCHOOL BOARD ELECTION PROCLAMATIONS;
3 PROVIDING FOR PENALTIES.

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

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

8 "[NEW MATERIAL] RECOUNT PROCEDURES.--

9 A. To ensure the accuracy of electronic vote
10 tabulating systems, the secretary of state shall issue rules to
11 implement the recount procedures provided for in Subsections B
12 and C of this section.

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

22 C. For a statewide or federal office, if the
23 results of the hand-tally and the electronic vote tabulating
24 system tabulation differ by one-fourth of one percent or less,
25 the remaining ballots shall be recounted using electronic vote

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1 tabulating systems. Otherwise, the remaining ballots shall be
2 recounted by hand.

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

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

12 Section 2. Section 1-1-6 NMSA 1978 (being Laws 1977,
13 Chapter 222, Section 1, as amended) is amended to read:

14 "1-1-6. RECHECK AND RECOUNT.--As used in the Election
15 Code:

16 A. "recheck" pertains to electronic [~~voting~~] vote
17 tabulating systems and means a verification procedure [~~where~~]
18 whereby a printout of the electronic record of votes cast in an
19 election is made from each electronic memory device in the
20 electronic [~~voting~~] vote tabulating system and the results are
21 compared with the results shown on the official returns; and

22 B. "recount" pertains to emergency paper ballots,
23 absentee ballots, provisional paper ballots, optical scan paper
24 ballots [~~voter verifiable and auditable paper ballots printed~~
25 ~~by electronic voting systems~~] and any other paper ballot and

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1 means a verification procedure whereby the voters' selections
2 [~~on the paper ballots may be~~] for an office are retabulated by
3 feeding the ballots into an electronic vote tabulating system,
4 and the voters' selections on ballots that cannot be read by
5 the system are counted by hand and the results compared with
6 the results shown on the official returns."

7 Section 3. Section 1-1-25 NMSA 1978 (being Laws 2005,
8 Chapter 270, Section 7) is amended to read:

9 "1-1-25. VOTER IDENTIFICATION CARD.--As used in the
10 Election Code, "voter identification card" means a document
11 containing the person's name, address and precinct number that
12 is issued by the county clerk or the [~~voter's copy of the~~
13 ~~voter's certificate of registration~~] secretary of state."

14 Section 4. Section 1-2-20 NMSA 1978 (being Laws 1969,
15 Chapter 240, Section 39, as amended) is amended to read:

16 "1-2-20. MESSENGERS--COMPENSATION.--

17 A. The county clerk may appoint messengers to
18 deliver ballot boxes, poll books, keys, election supplies and
19 other materials pertaining to the election. Messengers may
20 also be authorized to collect absentee ballots from polling
21 places and deliver those absentee ballots to locations
22 designated by the county clerk.

23 B. Messengers shall be paid mileage as provided in
24 the Per Diem and Mileage Act each way over the usually traveled
25 route. The mileage shall be paid within thirty days following

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1 the date of election if funds are available for payment."

2 Section 5. Section 1-4-27.1 NMSA 1978 (being Laws 2001,
3 Chapter 46, Section 1, as amended) is amended to read:

4 "1-4-27.1. CANCELLATION OF REGISTRATION FOLLOWING
5 CONVICTION--ELIGIBILITY FOR [REGISTRATION] VOTING UPON
6 SATISFACTION OF CONDITIONS.--

7 A. When a voter has been convicted of a felony, the
8 ~~[clerk of the district court where the conviction occurred~~
9 ~~shall file a certificate of felony conviction with the~~
10 ~~secretary of state. The secretary of state shall notify the~~
11 ~~county clerk of the county where the convicted felon is~~
12 ~~registered to vote.~~

13 B. ~~For purposes of cancellation of registration,~~
14 ~~verification of a felony conviction may be obtained by~~
15 ~~comparing the voter's registration record with the certificate~~
16 ~~of felony conviction filed by the clerk of the district court.~~

17 C. ~~The certificate of felony conviction shall~~
18 ~~include the voter's:~~

- 19 (1) ~~name;~~
- 20 (2) ~~age;~~
- 21 (3) ~~sex;~~
- 22 (4) ~~state tracking number;~~
- 23 (5) ~~case number;~~
- 24 (6) ~~birth date;~~
- 25 (7) ~~social security number, if any;~~

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1 ~~(8) date of conviction; and~~
2 ~~(9) address]~~ voter's registration shall be
3 cancelled.

4 ~~[D.] B.~~ When a voter convicted of a felony ~~[for~~
5 ~~which a sentence of imprisonment is authorized but deferred or~~
6 ~~suspended by order of the court]~~ is placed on supervised
7 probation and has completed the conditions of ~~[the court order,~~
8 ~~the clerk of the court shall notify the secretary of state that~~
9 ~~the person is eligible for registration. The secretary of~~
10 ~~state shall notify all county clerks that]~~ supervision as
11 ordered by the court, the person is eligible for registration.

12 ~~[E.] C.~~ When a voter convicted of a felony is
13 unconditionally discharged from a correctional facility under
14 the jurisdiction of the corrections department, or is
15 conditionally discharged from a facility under the jurisdiction
16 of the corrections department and has completed all conditions
17 of probation or parole, ~~[the corrections department shall~~
18 ~~notify the secretary of state that the person is eligible for~~
19 ~~registration. The secretary of state shall notify all county~~
20 ~~clerks that]~~ the person is eligible for registration.

21 ~~[F.] D.~~ When a voter convicted of a federal offense
22 constituting a felony is unconditionally discharged from a
23 correctional facility under the jurisdiction of a federal
24 corrections agency ~~[or is conditionally discharged from a~~
25 ~~correctional facility under the jurisdiction of a federal~~

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1 ~~corrections agency~~] and has completed all conditions of
2 probation or parole, [~~the federal agency having jurisdiction of~~
3 ~~that person shall notify the secretary of state that the person~~
4 ~~is eligible for registration. The secretary of state shall~~
5 ~~notify all county clerks that~~] the person is eligible for
6 registration.

7 E. The secretary of state shall promulgate rules to
8 implement and enforce the provisions of this section."

9 Section 6. Section 1-4-49 NMSA 1978 (being Laws 2005,
10 Chapter 270, Section 17) is amended to read:

11 "1-4-49. THIRD-PARTY REGISTRATION AGENTS--REGISTRATION
12 REQUIRED--PROCEDURES--REPORTS--PENALTY.--

13 A. Registration agents who either register or
14 assist persons to register to vote on behalf of an organization
15 that is not a state or federal agency shall register with the
16 secretary of state and the organization shall provide the
17 secretary of state with:

18 (1) the name and permanent address of the
19 organization;

20 (2) the names, permanent addresses, temporary
21 addresses, if any, dates of birth and social security numbers
22 of each person registering persons to vote in the state on
23 behalf of the organization; and

24 (3) a sworn statement from each registration
25 agent employed by or volunteering for the organization stating

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1 that the agent will obey all state laws and rules regarding the
2 registration of voters on a form that gives notice of the
3 criminal penalties for false registration.

4 B. Organizations employing registration agents or
5 using volunteer registration agents shall deliver a certificate
6 of registration to the secretary of state or county clerk
7 within ~~[forty-eight hours]~~ fifteen days of its completion by
8 the person registering to vote or the next business day if the
9 appropriate office is closed ~~[for that forty-eight-hour period]~~
10 on the fifteenth day; provided that certificates collected in
11 the fifteen days before the close of registration for an
12 election are due within five days of the day the person
13 registering to vote completes the certificate, or before the
14 close of registration, whichever is sooner.

15 C. The secretary of state may issue rules to ensure
16 the integrity of the registration process, including rules
17 requiring that organizations account for all registration forms
18 used by their registration agents.

19 D. A person who willfully violates the provisions
20 of this section is guilty of a petty misdemeanor and shall have
21 ~~[his]~~ the person's third-party registration agent status
22 revoked."

23 Section 7. Section 1-6-4.3 NMSA 1978 (being Laws 2005,
24 Chapter 270, Section 41) is amended to read:

25 "1-6-4.3. THIRD PARTY AGENTS COLLECTING ABSENTEE BALLOT

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1 APPLICATIONS.--

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

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

13 ~~G.]~~ B. A person who ~~[intentionally alters or]~~ fails
14 to submit a completed absentee ballot application is guilty of
15 a ~~[fourth degree felony]~~ petty misdemeanor."

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

18 "1-8-33. PRIMARY ELECTION LAW--NOMINATING PETITION--
19 NUMBER OF SIGNATURES REQUIRED.--

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

24 B. Candidates who seek preprimary convention
25 designation shall file nominating petitions at the time of

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1 filing declarations of candidacy. Nominating petitions for
2 those candidates shall be signed by a number of voters equal to
3 at least two percent of the total vote of the candidate's party
4 in the state or congressional district, or the following number
5 of voters, whichever is greater: for statewide offices, two
6 hundred thirty voters; and for congressional candidates,
7 seventy-seven voters.

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

20 ~~[D. A candidate who fails to receive the preprimary~~
21 ~~convention designation that he sought may collect additional~~
22 ~~signatures to total at least four percent of the total vote of~~
23 ~~the candidate's party in the state or congressional district,~~
24 ~~whichever applies to the office he seeks, and file a new~~
25 ~~declaration of candidacy and nominating petitions for the~~

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1 ~~office for which he failed to receive a preprimary designation.~~
2 ~~The declaration of candidacy and nominating petitions shall be~~
3 ~~filed with the secretary of state either ten days following the~~
4 ~~date of the preprimary convention at which he failed to receive~~
5 ~~the designation or on the date all declarations of candidacy~~
6 ~~and nominating petitions are due pursuant to the provisions of~~
7 ~~the Primary Election Law, whichever is later.]"~~

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

10 "1-9-4.2. DEFINITION OF A VOTE.--

11 ~~[A. A vote on a touch-screen direct recording~~
12 ~~electronic voting system or electronic voting system consists~~
13 ~~of a voter's selection of a candidate or answer to a ballot~~
14 ~~question selected by the electro-optical ballot display of the~~
15 ~~device, followed by the voter activating the cast vote~~
16 ~~indicator.~~

17 B.] A. A vote on a paper ballot [card] used on an
18 electronic vote tabulating [marksense voting] system, optical
19 scan vote tabulating system or high-speed central count
20 [marksense] vote tabulator consists of a voter's selection of a
21 candidate or answer to a ballot question indicated in the
22 voting response area of the paper ballot [card] marked in
23 accordance with the instructions for that ballot type. [If the
24 paper ballot card is marked indistinctly or not marked
25 according to the instructions for that ballot type, only a

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1 ~~cross (X) or a check (✓) within the voting response area shall~~
2 ~~be counted. A vote on a paper ballot card shall also be~~
3 ~~counted if, on a ballot type requiring the completion of an~~
4 ~~arrow to indicate a voter's selection, the voter has marked an~~
5 ~~arrowhead on the tail portion of the arrow in the voting~~
6 ~~response area or has circled the name of the preferred~~
7 ~~candidate or both.]~~

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

10 (1) the ballot is marked in accordance with
11 the instructions for that ballot type;

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

14 (3) there is a cross or check within the
15 voting response area for the preferred candidate or answer to
16 the ballot question; or

17 (4) the voter's intent is clearly discernable
18 to the precinct judge, subject to review by the canvassing
19 board."

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

22 "1-10-2. BALLOTS--DUTY TO PROVIDE.--The county clerk
23 shall prepare and supply the ballots used in elections
24 conducted under the Election Code. The secretary of state may
25 assist in preparing and supplying ballots. Ballots other than

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1 those prepared by the county clerk or secretary of state shall
2 not be used [~~in such elections~~]."

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

5 "1-12-13. CONDUCT OF ELECTION--AID OR ASSISTANCE TO
6 VOTER IN MARKING BALLOT.--

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

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

16 C. After noting the request for assistance in the
17 signature roster, the voter shall be permitted assistance in
18 marking [~~his paper~~] the ballot or [~~recording his vote~~] using
19 the voting system as provided in Section 1-12-15 NMSA 1978.

20 [~~D. Any person who swears falsely in order to~~
21 ~~secure assistance is guilty of perjury.]"~~

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

24 "1-12-16. CONDUCT OF ELECTION--TYPE OF ASSISTANCE.--
25 Persons [~~accompanying the voter into the voting booth or voting~~

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1 ~~machine]~~ providing assistance to a voter may assist the voter
2 in reading and marking ~~[and folding his paper]~~ the ballot or
3 ~~[recording his vote on]~~ using the voting [machine] system."

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

6 "1-13-21. CLEARING VOTING ~~[MACHINES]~~ SYSTEMS.--

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

15 B. The county clerk shall keep locked those memory
16 cards from voting [machines whereof] systems used in precincts
17 where a recount, judicial inquiry or inspection is sought,
18 subject to order of the district court or other authority
19 having jurisdiction of the contest or inspection.

20 C. At least three days prior to the ~~[opening and]~~
21 clearing of the voting ~~[machines]~~ system memory cards, the
22 county clerk shall notify the county ~~[chairman]~~ chair of each
23 political party participating in the election of the time,
24 place and date thereof. The ~~[chairman]~~ chair of the political
25 party may be present or may have ~~[his]~~ the chair's accredited

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1 representative present at [~~such opening and~~] the clearing.

2 [D. ~~Nothing in this section shall prohibit the use~~
3 ~~of voting machines in a subsequent election. If the voting~~
4 ~~machine must be cleared before the thirty-day period prescribed~~
5 ~~in Subsection A of this section for use in any election, the~~
6 ~~county clerk shall first obtain an order from the district~~
7 ~~court for such clearance.~~"]

8 Section 14. Section 1-16-5 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 378, as amended) is amended to read:

10 "1-16-5. STATE CONSTITUTIONAL AMENDMENTS--~~[BALLOT--FORMS~~
11 ~~FOR EMERGENCY AND PROVISIONAL PAPER BALLOTS AND ABSENTEE]~~ FORM
12 OF BALLOTS.--[A.] All [~~emergency and provisional paper ballots~~
13 ~~and absentee]~~ ballots proposing constitutional amendments shall
14 [~~have printed thereon in both English and Spanish the full~~
15 ~~title of the joint resolution proposing the constitutional~~
16 ~~amendment and the constitutional amendment number assigned to~~
17 ~~the joint resolution by the secretary of state. Below the~~
18 ~~printed title, there shall be printed on the ballot two one-~~
19 ~~quarter inch blank boxes. Opposite one of the blank boxes,~~
20 ~~there shall be printed in both English and Spanish the word~~
21 ~~"FOR", and opposite the other blank box shall be printed in~~
22 ~~both languages the word "AGAINST".~~

23 B. ~~There shall be printed across the top of the~~
24 ~~ballot the following: "Instructions to voters: If you desire~~
25 ~~to vote for the amendment, mark a cross (X) or a check (✓) or~~

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1 ~~any other mark clearly indicating intention in the opposite~~
2 ~~the word "FOR". If you desire to vote against the amendment,~~
3 ~~mark a cross (X) or a check (✓) or any other mark clearly~~
4 ~~indicating intention in the opposite the word "AGAINST"] be~~
5 in the form prescribed by the secretary of state."

6 Section 15. Section 1-16-6 NMSA 1978 (being Laws 1969,
7 Chapter 240, Section 379, as amended) is amended to read:

8 "1-16-6. STATE CONSTITUTIONAL AMENDMENTS--MARKING
9 [~~EMERGENCY AND PROVISIONAL PAPER~~] BALLOTS [~~AND ABSENTEE~~
10 ~~BALLOTS~~].--A voter desiring to mark [~~his emergency or~~
11 ~~provisional paper ballot or absentee~~] the ballot for or against
12 a proposed constitutional amendment shall do so in the manner
13 specified in the instructions printed on the ballot."

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

16 "1-16-9. STATE CONSTITUTIONAL AMENDMENTS--SINGLE
17 [~~EMERGENCY AND PROVISIONAL PAPER BALLOT AND ABSENTEE~~] BALLOT.--
18 Proposed constitutional amendments or other questions submitted
19 to the voters [~~on emergency or provisional paper ballots or~~
20 ~~absentee ballots~~] at any election shall be printed [~~upon~~] on
21 one ballot only."

22 Section 17. Section 1-22-4 NMSA 1978 (being Laws 1985,
23 Chapter 168, Section 6, as amended) is amended to read:

24 "1-22-4. REGULAR ELECTION--PROCLAMATION--PUBLICATION.--
25 A. The board shall by resolution issue a public

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1 proclamation in Spanish and English calling a regular school
2 district election within the school district on the date
3 prescribed by the School Election Law. The proclamation shall
4 be filed by the superintendent with the county clerk of record
5 [en] by the last Friday in November of the even-numbered year
6 immediately preceding the date of the election.

7 B. The proclamation shall specify:

- 8 (1) the date when the election will be held;
9 (2) the positions on the board to be filled;
10 (3) the date on which declarations of
11 candidacy are to be filed;
12 (4) the date on which declarations of intent
13 to be a write-in candidate are to be filed;
14 (5) the questions to be submitted to the
15 voters;
16 (6) the precincts in each county in which the
17 election is to be held and the location of each polling place;
18 (7) the hours each polling place will be open;
19 and
20 (8) the date and time of the closing of the
21 registration books by the county clerk of record as required by
22 law.

23 C. After filing the proclamation with the county
24 clerk of record and not less than fifty days before the date of
25 the election, the county clerk of record shall publish the

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1 proclamation at least once in a newspaper of general
2 circulation within the school district. The publication of the
3 proclamation shall conform to the requirements of the federal
4 Voting Rights Act of 1965, as amended."

5 Section 18. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2007.