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HOUSE BILL 113

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Jose A. Campos

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR AUTOMATIC RECOUNTS OF  
CERTAIN ELECTIONS; PROVIDING FOR RECOUNT AND RECHECK  
PROCEDURES; CREATING A FUND; AMENDING, REPEALING AND ENACTING  
SECTIONS OF THE ELECTION CODE; MAKING AN APPROPRIATION.

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

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

"[NEW MATERIAL] AUTOMATIC RECOUNTS--ELECTIONS FOR STATE  
AND FEDERAL OFFICES--PROCEDURES.--

A. An automatic recount of the vote is required  
when the canvass of returns for a federal or state office in a  
general election indicates that the margin between the two  
candidates receiving the greatest number of votes for the  
office is less than one-half of one percent of the total votes

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1 cast for that office in that election.

2 B. The secretary of state shall file notice with  
3 the state canvassing board within five days of the completion  
4 of the state canvass that an automatic recount is required, and  
5 the state canvassing board shall order a recount of the ballots  
6 for the specified office.

7 C. Automatic recounts shall be conducted pursuant  
8 to the recount procedures established in Sections 1-14-16 and  
9 1-14-18 through 1-14-22 NMSA 1978.

10 D. For the purposes of this section, "state office"  
11 means the office of governor, lieutenant governor, state  
12 auditor, state treasurer, attorney general, secretary of state,  
13 supreme court justice, court of appeals judge, district judge,  
14 magistrate judge, public regulation commissioner, commissioner  
15 of public lands, state senator or state representative."

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

18 "[NEW MATERIAL] AUTOMATIC RECOUNTS--EXPENSES.--The  
19 secretary of state shall reimburse the counties for the costs  
20 of conducting an automatic recount with money appropriated to  
21 the secretary from the automatic recount fund."

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

24 "[NEW MATERIAL] AUTOMATIC RECOUNT FUND CREATED--USE.--The  
25 "automatic recount fund" is created in the state treasury. The

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1 fund shall consist of money distributed or transferred or  
2 otherwise accruing to the fund. Money in the fund is  
3 appropriated to the secretary of state to reimburse counties  
4 for expenses incurred in conducting automatic recounts.  
5 Disbursements from the fund shall be by warrant of the  
6 secretary of finance and administration upon vouchers signed by  
7 the secretary of state. Balances in the fund over one million  
8 five hundred thousand dollars (\$1,500,000) at the end of any  
9 fiscal year shall revert to the general fund."

10 Section 4. Section 1-14-16 NMSA 1978 (being Laws 1969,  
11 Chapter 240, Section 345, as amended) is repealed and a new  
12 Section 1-14-16 NMSA 1978 is enacted to read:

13 "1-14-16. [NEW MATERIAL] RECOUNT OR RECHECK  
14 PROCEEDINGS.--

15 A. Immediately after filing of the application for  
16 recount or recheck, or notice of an automatic recount, the  
17 appropriate canvassing board shall issue an order to the county  
18 clerk of each county where a precinct specified in the  
19 application or notice is located commanding the county clerk to  
20 convene the absent voter precinct board at the county seat on a  
21 day specified in the order, which date shall not be more than  
22 ten days after the filing of the application for a recount or  
23 recheck or notice of an automatic recount.

24 B. Upon receipt of the order, the county clerk  
25 shall send notices by registered mail of the date fixed for the

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1 recount or recheck to the district judge for the county, the  
2 absent voter precinct board members and the county chair of  
3 each of the political parties that participated in the election  
4 for the office in question.

5 C. The absent voter precinct board, district judge  
6 and county clerk shall meet on the date fixed for the recount  
7 or recheck, and the ballot boxes and ballot containers or  
8 voting machines of the precincts involved in the recount or  
9 recheck shall be opened. The absent voter precinct board shall  
10 recount and retally the ballots, or recheck the votes cast on  
11 the voting machines, as the case may be, for the office in  
12 question in the presence of the county clerk, district judge,  
13 or person designated to act for the district judge, and any  
14 other person who may desire to be present.

15 D. After completion of the recount or recheck, the  
16 absent voter precinct board shall replace the ballots in the  
17 ballot boxes and ballot containers and lock them, or the voting  
18 machines shall be locked and resealed, and the precinct board  
19 shall certify to the secretary of state the results of the  
20 recount or recheck. The district judge, or the person  
21 designated to act for the district judge, and the county clerk  
22 shall also certify that the recount or recheck was made in  
23 their presence."

24 Section 5. Section 1-14-18 NMSA 1978 (being Laws 1969,  
25 Chapter 240, Section 347, as amended) is amended to read:

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1 "1-14-18. RECOUNT--RECHECK--RECANVASS BY CANVASSING  
2 BOARDS.--

3 A. Immediately upon receipt of the certificate of  
4 recount or recheck from all the absent voter precinct boards  
5 making a recount or recheck, the proper canvassing board shall  
6 meet and recanvass the returns for the office in question.

7 B. In making the recanvass, the proper canvassing  
8 board shall be bound by the certificates of recount or recheck  
9 from the absent voter precinct boards instead of the original  
10 returns from [~~these~~] the precinct boards.

11 C. After the recanvass, if it appears that fraud or  
12 error has been committed sufficient to change the winner of the  
13 election, then the proper canvassing board shall revoke the  
14 certificate of nomination or election already issued to any  
15 person for that office and shall issue a certificate of  
16 nomination or election in favor of the person receiving a  
17 plurality of the votes cast at the election as shown by the  
18 recount or recheck, and such certificate shall supersede all  
19 others and entitle the holder to the same rights and  
20 [~~privileges~~] privileges as if such certificate had been  
21 originally issued by the canvassing board."

22 Section 6. APPROPRIATION.--Five hundred thousand dollars  
23 (\$500,000) is appropriated from the general fund to the  
24 automatic recount fund for expenditure in fiscal year 2009 and  
25 subsequent fiscal years to reimburse counties for expenses

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1 incurred in conducting automatic recounts. Any unexpended or  
2 unencumbered balance remaining at the end of a fiscal year  
3 shall not revert to the general fund.

4 Section 7. REPEAL.--Section 1-14-17 NMSA 1978 (being Laws  
5 1969, Chapter 240, Section 346, as amended) is repealed.

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