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SENATE BILL 136

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Dianna J. Duran

AN ACT

RELATING TO ELECTIONS; PROVIDING CERTIFICATION PROCEDURES FOR
VOTING SYSTEMS; CREATING A VOTING SYSTEM CERTIFICATION
COMMITTEE; PROVIDING FOR THE PURCHASE, STORAGE, CUSTODY,
DISPOSAL AND MAINTENANCE OF VOTING SYSTEMS; PROVIDING FOR
VOTING SYSTEM STANDARDS; AMENDING, REPEALING, RECOMPILING AND
ENACTING SECTIONS OF THE ELECTION CODE; MAKING AN
APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. A new section of Chapter 1, Article 9 NMSA
1978 is enacted to read:

"[NEW MATERIAL] VOTING SYSTEMS--AUTHORITY OF THE SECRETARY
OF STATE TO RECERTIFY AND DECERTIFY.--

A. Each voting system certified for use in the
state shall be reviewed for recertification by the secretary of

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1 state during the year following a presidential election. Tests
2 and inspections conducted pursuant to this section shall begin
3 no later than June 1 and shall follow the procedures in Section
4 1-9-14 NMSA 1978.

5 B. If at any time the secretary of state becomes
6 aware that a voting system certified for use in this state does
7 not comply with all requirements in the Election Code or meet
8 federal election standards, the secretary of state shall
9 undertake an investigation to determine if the voting system
10 should continue to be certified for use in the state. Tests
11 and inspections conducted pursuant to this section shall
12 commence upon the order of the secretary of state and shall
13 follow the procedures in Section 1-9-14 NMSA 1978. A voting
14 system that does not comply with all requirements in the
15 Election Code and the most recent voluntary voting system
16 guidelines adopted by the United States election assistance
17 commission shall be decertified for use in this state."

18 Section 2. A new section of Chapter 1, Article 9 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] VOTING SYSTEMS--VOTING SYSTEM
21 CERTIFICATION COMMITTEE--MEMBERS.--

22 A. The "voting system certification committee" is
23 created. The committee shall review written test reports and
24 the findings of the secretary of state on the certification,
25 recertification and decertification of voting systems for use

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1 in elections in the state.

2 B. The voting system certification committee shall
3 be composed of:

4 (1) the secretary of information technology or
5 the secretary's designee from within the department of
6 information technology; and

7 (2) four additional members as follows:

8 (a) one member appointed by the
9 president pro tempore of the senate;

10 (b) one member appointed by the minority
11 leader of the senate;

12 (c) one member appointed by the speaker
13 of the house of representatives; and

14 (d) one member appointed by the minority
15 leader of the house of representatives.

16 C. The four additional members appointed pursuant
17 to Paragraph (2) of Subsection B of this section shall be
18 county clerks or their deputies or other persons knowledgeable
19 of elections in this state. Members shall be appointed no
20 later than May 1 of each even-numbered year for terms of two
21 years. Vacancies shall be filled by the original appointing
22 authority.

23 D. The members of the committee shall select a
24 committee member to serve as chair of the committee. No person
25 who is currently or has been within the previous twelve months

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1 an employee or contractor of a voting machine vendor or the
2 office of the secretary of state may serve as a member of the
3 committee. Members of the committee are entitled to receive
4 per diem and mileage as provided in the Per Diem and Mileage
5 Act.

6 E. All meetings of the voting system certification
7 committee shall be open meetings held in accordance with the
8 Open Meetings Act. All reports and other records that are
9 used, created, received, maintained or held by or on behalf of
10 the voting system certification committee shall be open to
11 public inspection pursuant to the Inspection of Public Records
12 Act."

13 Section 3. A new section of Chapter 1, Article 9 NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] VOTING SYSTEMS--STORAGE--CUSTODY AND
16 MAINTENANCE--AUTHORITY TO ENFORCE.--

17 A. The secretary of state shall prescribe by rule
18 promulgated pursuant to the provisions of the State Rules Act
19 specifications for the proper storage of voting systems.

20 B. Voting systems shall be held in the custody of
21 the county that uses the voting systems. All voting systems
22 shall be properly stored pursuant to specifications promulgated
23 by the secretary of state. The board of county commissioners
24 shall be responsible for the costs of properly storing voting
25 systems in custody of the county.

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1 C. The secretary of state shall be responsible for
2 all hardware, software, firmware, maintenance and support for
3 voting systems, whether state- or county-owned, certified for
4 use in state elections.

5 D. If the secretary of state becomes aware that
6 state- or county-owned voting systems in the custody of a
7 county are not being stored pursuant to specifications
8 promulgated by the secretary of state, the secretary of state
9 may take action as is deemed appropriate to protect the voting
10 equipment. Such action may include requesting a court to order
11 the county to implement the specifications promulgated by the
12 secretary of state or the secretary of state taking immediate
13 physical control of the voting systems until the county has
14 complied with the storage specifications."

15 Section 4. A new section of Chapter 1, Article 9 NMSA is
16 enacted to read:

17 "[NEW MATERIAL] VOTING SYSTEMS--TECHNICAL REQUIREMENTS.--
18 Voting systems certified for use in state elections shall:

19 A. have a unique embedded internal serial number
20 for audit purposes;

21 B. be supplied with a dust- and moisture-proof
22 cover for transportation and storage purposes;

23 C. if the net weight of the system, or aggregate of
24 voting device parts, is over twenty pounds, have self-contained
25 wheels so that the system can be easily rolled by one person on

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1 rough pavement and can roll through a standard thirty-inch door
2 frame;

3 D. be a stand-alone, non-networked election system
4 such that all pre-election, election day and post-election
5 events and activities can be recorded and retained in each
6 device;

7 E. employ scalable technology allowing easy
8 enhancements that meet United States election assistance
9 commission standards and state law;

10 F. have ancillary equipment, such as printers,
11 power sources, microprocessors and switch and indicator
12 matrices, that is installed internally or is modular and
13 transportable;

14 G. display publicly the number of ballots
15 processed;

16 H. be able to print:

17 (1) an alphanumeric printout of the contests,
18 candidates and vote totals when the polls are opened so that
19 the poll workers can verify that the counters for each
20 candidate are on zero;

21 (2) an alphanumeric printout of the contests,
22 candidates and vote totals at the close of the polls, which
23 printouts shall contain the system serial number and public
24 counter total; and

25 (3) as many copies of the alphanumeric

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1 printouts as necessary to satisfy state law; and

2 I. include a feature to allow reports to be sent to
3 an electronic data file."

4 Section 5. A new section of Chapter 1, Article 9 NMSA
5 1978 is enacted to read:

6 "[NEW MATERIAL] VOTING SYSTEMS--OPERATIONAL
7 REQUIREMENTS.--Voting systems certified for use in state
8 elections shall:

9 A. have internal application software that is
10 specifically designed and engineered for the election
11 application;

12 B. include comprehensive diagnostics designed to
13 ensure that failures do not go undetected;

14 C. have a real-time clock capable of recording and
15 documenting the total time polls are opened; and

16 D. have a self-contained, internal backup battery
17 that powers all components of the system that are powered by
18 alternating current power; and, in the event of a power outage
19 in the polling place:

20 (1) the self-contained, internal backup
21 battery power shall engage with no disruption of operation for
22 at least two hours and with no loss of data; and

23 (2) the system shall maintain all vote totals,
24 public counter totals and the internal clock time in the event
25 that the main power and battery backup power fail."

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1 Section 6. A new section of Chapter 1, Article 9 NMSA
2 1978 is enacted to read:

3 "[NEW MATERIAL] VOTING SYSTEMS--MEMORY--REMOVABLE STORAGE
4 MEDIA DEVICE--REQUIREMENTS.--Voting systems certified for use
5 in state elections shall:

6 A. be programmable with removable storage media
7 devices;

8 B. contain ballot control information, summary vote
9 totals, maintenance logs and operator logs on the removable
10 storage media device;

11 C. ensure that the votes stored on the removable
12 storage media device accurately represent the actual votes
13 cast;

14 D. be designed so that no executable code can be
15 launched from random access memory;

16 E. have any operating system software stored in
17 nonvolatile memory, which shall include internal quality checks
18 such as parity or error detection and correction codes, and
19 which software shall include comprehensive diagnostics to
20 ensure that failures do not go undetected;

21 F. allow for pre-election testing of the ballot
22 control logic and accuracy, with results stored in the memory
23 that is used on election day, and shall be capable of printing
24 a zero-results printout prior to these tests and a results
25 printout after the test;

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1 G. have internal audit trail capability such that
2 all pre-election, election day and post-election events shall
3 be stored, recorded and recovered in an easy-to-read printed
4 form and be retained within memory that does not require
5 external power for memory retention;

6 H. possess the capability of remote transmission of
7 election results to a central location only by reading the
8 removable storage media devices once they have been removed
9 from the tabulation device after the poll closing sequence has
10 been completed; and

11 I. prevent data from being altered or destroyed by
12 report generation or by the transmission of results."

13 Section 7. A new section of Chapter 1, Article 9 NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] VOTING SYSTEMS--BALLOT HANDLING AND
16 PROCESSING REQUIREMENTS.--Voting systems certified for use in
17 state elections shall:

18 A. accept a ballot that is a minimum of six inches
19 wide and a maximum of twenty-four inches long, in dual columns
20 and printed on both sides;

21 B. accept a ballot in any orientation when inserted
22 by a voter;

23 C. have the capability to reject a ballot on which
24 a voter has made more than the allowable number of selections
25 in any contest;

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1 D. be designed to accommodate the maximum number of
2 ballot styles or ballot variations encountered in the largest
3 New Mexico election jurisdiction; and

4 E. be able to read a single ballot with at least
5 four hundred twenty voting positions."

6 Section 8. A new section of Chapter 1, Article 9 NMSA
7 1978 is enacted to read:

8 "[NEW MATERIAL] VOTING SYSTEMS--SOURCE CODE--ESCROW.--

9 As a condition of initial certification and continued
10 certification, the source code that operates a voting system
11 shall be placed in escrow and be accessible to the state of New
12 Mexico in the event the manufacturer ceases to do business or
13 ceases to support the voting system."

14 Section 9. Section 1-9-1 NMSA 1978 (being Laws 1969,
15 Chapter 240, Section 184, as amended) is amended to read:

16 "1-9-1. SECRETARY OF STATE--DUTIES--VOTING SYSTEM
17 DEFINED.--

18 A. The secretary of state shall study, examine and
19 [~~approve~~] certify all voting systems used in elections for
20 public office in New Mexico. [~~Any type of~~] The secretary of
21 state shall maintain a current list of certified voting systems
22 and copies of filed testing and evaluation reports accessible
23 by the public on the secretary of state's web site. Only
24 voting systems [not approved] certified by the secretary of
25 state and acquired pursuant to a competitive bid process in

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1 accordance with the provisions of the Procurement Code shall
2 [~~not~~] be used in any election for public office in New Mexico.

3 B. As used in Chapter 1, Article 9 NMSA 1978,
4 "voting system" means a combination of mechanical,
5 electromechanical or electronic equipment, including the
6 software and firmware required to program and control the
7 equipment, that is used to cast and count votes; equipment that
8 is not an integral part of a voting system, but that can be
9 used as an adjunct to it, is considered to be a component of
10 the system, including any type of system that is designed to
11 print or mark ballots at a polling location."

12 Section 10. Section 1-9-5 NMSA 1978 (being Laws 1969,
13 Chapter 240, Section 188, as amended) is amended to read:

14 "1-9-5. REQUIREMENT TO [~~PURCHASE AND~~] USE VOTING
15 SYSTEMS.--

16 A. Certified voting systems shall be used in all
17 [~~precincts~~] polling locations in all statewide elections.

18 B. The secretary of state shall provide to the
19 county clerk of each county [~~shall provide~~] at least one voting
20 system [~~in each precinct~~] for use in each polling location in
21 the general and primary elections [~~when the total number of~~
22 ~~registered voters in that precinct amounted to fewer than six~~
23 ~~hundred at the close of registration~~].

24 C. [~~At least one additional voting system shall be~~
25 ~~provided in such precinct for every six hundred registered~~

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1 ~~voters in that precinct; provided that if the voting system~~
2 ~~used in the precinct is a paper ballot system]~~ The county clerk
3 shall ensure that an adequate number of voting booths are
4 provided ~~[in lieu of providing more electronic vote tabulators~~

5 ~~D. When authorized by the state board of finance,~~
6 ~~the board of county commissioners may acquire new or previously~~
7 ~~owned voting or electronic vote tabulating systems, as tested~~
8 ~~and approved by the secretary of state pursuant to the~~
9 ~~provisions of Section 1-9-14 NMSA 1978, which systems may be~~
10 ~~used in any election for public office. The acquisition of~~
11 ~~these systems may be in excess of the number provided in this~~
12 ~~section.~~

13 ~~E. Except for intercounty acquisitions of equipment~~
14 ~~approved by the secretary of state, a previously owned voting~~
15 ~~or electronic vote tabulating system shall have a warranty~~
16 ~~equal to the warranty required of a new voting or electronic~~
17 ~~vote tabulating system] to ensure that voters in each polling~~
18 ~~location may cast their ballots in secret."~~

19 Section 11. Section 1-9-7 NMSA 1978 (being Laws 1969,
20 Chapter 240, Section 190, as amended) is amended to read:

21 "1-9-7. VOTING SYSTEMS--ACQUISITION.--

22 A. The secretary of state shall provide to the
23 county clerk of each county a sufficient number of voting
24 systems as required by the Election Code for the conduct of
25 primary and general elections.

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1 B. When authorized by the state board of finance,
2 the board of county commissioners may acquire new or previously
3 owned voting systems. No less than ninety days prior to each
4 primary and general election, the board of county commissioners
5 of each county [~~shall~~] may make application to the state board
6 of finance for [~~those~~] any additional voting systems [~~required~~
7 ~~by the Election Code. B.~~] to be acquired by a county in excess
8 of the number of voting systems required by the Election Code
9 for the conduct of primary and general elections.

10 C. The additional voting systems shall be of a type
11 [~~approved~~] certified by the secretary of state. They shall be
12 purchased by the state board of finance. The cost of the
13 voting systems, including all transportation costs, shall be
14 paid out of the electronic voting system revolving fund. The
15 state board of finance shall cause to be delivered to each
16 county clerk the additional voting systems.

17 D. Except for intercounty acquisitions of equipment
18 approved by the secretary of state, a previously owned voting
19 system shall have a warranty equal to the warranty required of
20 a new voting system."

21 Section 12. Section 1-9-7.1 NMSA 1978 (being Laws 2005,
22 Chapter 270, Section 56, as amended) is amended to read:

23 "1-9-7.1. VOTING SYSTEM--USE OF PAPER BALLOT.--

24 A. All voting systems used in elections covered by
25 the Election Code shall use a paper ballot on which the voter

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1 physically or electronically marks the voter's choices on the
2 ballot itself. ~~[provided, however, that voting systems owned or~~
3 ~~used by a county on May 1, 2006 that do not use a paper ballot~~
4 ~~may be used until an adequate supply of voting systems is~~
5 ~~available and sufficient federal, state or local funds are~~
6 ~~available:~~

7 (1) ~~to replace the voting systems;~~

8 (2) ~~to acquire the necessary software;~~

9 (3) ~~for]~~

10 B. The secretary of state ~~[to]~~ shall purchase the
11 paper ballots for all counties to use ~~[on the new voting~~
12 ~~system]~~ for primary and general elections. ~~[and~~

13 (4) ~~to hold the counties harmless for payments~~
14 ~~due for voting systems under lease-purchase agreements entered~~
15 ~~into pursuant to Sections 1-9-17 through 1-9-19 NMSA 1978.~~

16 B. ~~In any event, a voting system shall not be used~~
17 ~~if it has not been certified by the secretary of state and if a~~
18 ~~competitive bid process has not been conducted by the secretary~~
19 ~~of state pursuant to the provisions of Chapter 13, Article 1~~
20 ~~NMSA 1978]~~ If a system designed to print ballots at a polling
21 location is certified and the voting system certification
22 committee finds that its use in a polling place would result in
23 cost savings, the secretary of state shall acquire such systems
24 and paper ballot stock in lieu of fully preprinted paper
25 ballots for those polling places where cost savings would be

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1 realized.

2 C. The paper ballot shall be used [~~by the state or~~
3 ~~its contractor to check either the veracity of a machine count~~
4 ~~or the count itself, and shall be used]~~ in a recount proceeding
5 [~~as are absentee ballots~~], and in case of a discrepancy, the
6 paper ballot shall be considered the true and correct record of
7 the voter's choices."

8 Section 13. Section 1-9-7.2 NMSA 1978 (being Laws 2005,
9 Chapter 270, Section 57) is amended to read:

10 "1-9-7.2. VOTING SYSTEMS--TESTING OF PREVIOUSLY CERTIFIED
11 SYSTEMS.--The secretary of state may voluntarily test and
12 certify voting systems without an application by the
13 manufacturer if the system has been previously certified by
14 [~~other states or by the national association of state election~~
15 ~~directors]~~ the United States election assistance commission.
16 Tests and inspections conducted pursuant to this section shall
17 follow the [~~testing~~] procedures in Section 1-9-14 NMSA 1978 and
18 shall be completed within six months of the date on which
19 [~~testing begins~~] the secretary of state orders testing to
20 begin; provided, however, [~~that~~] if the manufacturer has not
21 applied for certification of that voting system, the
22 manufacturer shall not be required to pay for the costs of
23 testing and certification."

24 Section 14. Section 1-9-12 NMSA 1978 (being Laws 1975,
25 Chapter 255, Section 120, as amended) is amended to read:

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1 "1-9-12. [~~CARE AND CUSTODY OF SYSTEMS~~] CARE AND CUSTODY
2 OF [~~KEYS AND SEALS~~] REMOVABLE STORAGE MEDIA DEVICES--
3 RESPONSIBILITY FOR TRANSPORTATION OF VOTING SYSTEMS--[REPAIR]
4 RESPONSIBILITY FOR SECURITY AND PROGRAMMING--CHARGE FOR SUCH
5 [~~USE~~] TRANSPORTATION OR PROGRAMMING.--

6 A. The county clerk shall [~~have custody of all~~
7 ~~voting systems, shall keep them in good repair and shall~~] be
8 responsible for [~~their transportation~~] transporting all voting
9 systems to and from polling places.

10 B. The county clerk shall have care and custody of
11 and be responsible for the [~~keys and seals~~] removable storage
12 media devices for [~~the~~] all voting systems in the custody of
13 the county and shall be responsible for the programming of the
14 systems. [~~All keys for the voting systems shall be kept in a~~
15 ~~secure place in the county clerk's office until such time as~~
16 ~~supplies are available to program or maintain the voting~~
17 ~~systems.~~]

18 C. When voting systems are [~~being programmed for~~
19 used in any election [~~or maintained after an election~~], the
20 county clerk [~~or the county clerk's assigned deputy who is~~
21 ~~knowledgeable in the procedure of programming voting systems~~
22 ~~shall have custody of the keys and~~] shall assure the security
23 of the [~~keys~~] removable storage media devices at all times
24 during the period the voting systems are being programmed [~~or~~
25 ~~maintained~~. In any event, all keys shall be returned to the

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1 ~~office of the county clerk at the end of each day for~~
2 ~~safekeeping; providing that if the deputy is programming the~~
3 ~~voting systems outside of the county seat and it is impractical~~
4 ~~for the deputy to return the keys at the end of the day] and~~
5 until the votes recorded on the removable storage media devices
6 are cleared pursuant to Section 1-13-21 NMSA 1978. The county
7 clerk may give written authorization in advance [~~to the deputy~~
8 ~~to retain the keys for as long as is needed]~~ to program the
9 [~~voting systems]~~ removable storage media devices outside of the
10 county seat, and a copy of the authorization with the [~~deputy]~~
11 programmer named therein shall be kept on file in the county
12 clerk's office subject to public inspection. [~~The county clerk~~
13 ~~shall submit an affidavit to the secretary of state describing~~
14 ~~the method to be used in keeping the voting system keys secure.~~
15 ~~This affidavit shall be submitted to the secretary of state in~~
16 ~~January of each even-numbered year for the secretary of state's~~
17 ~~approval or disapproval. The security method approved by the~~
18 ~~secretary of state shall be the only method of safekeeping the~~
19 ~~voting system keys until a new affidavit is submitted and~~
20 ~~approved.]~~

21 D. Failure of the county clerk to assure the
22 security of voting system [~~keys]~~ removable storage media
23 devices in [~~his]~~ the county clerk's custody shall constitute a
24 neglect to discharge the duties of [~~his]~~ the clerk's office.

25 [~~G.~~] E. A reasonable fee may be charged by the

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1 county for the ~~[use]~~ transportation and programming of the
2 voting systems when used pursuant to Section 1-9-6 NMSA 1978,
3 but in no case shall such fee exceed the actual cost to the
4 county."

5 Section 15. Section 1-9-13 NMSA 1978 (being Laws 1975,
6 Chapter 255, Section 121, as amended) is amended to read:

7 "1-9-13. VOTING SYSTEM TECHNICIANS ~~[APPROVAL OF~~
8 ~~CONTRACTS]~~.--

9 ~~[A. The secretary of state shall approve all~~
10 ~~contracts, employment or otherwise, between a county and a~~
11 ~~voting system technician. Approval shall be based on the~~
12 ~~following:~~

13 ~~(1) adequacy of the training and expertise of~~
14 ~~the voting system technician; and~~

15 ~~(2) reasonableness of the compensation for the~~
16 ~~contracted services, based upon the type of election and the~~
17 ~~number of systems to be used.~~

18 ~~B.]~~ A. Voting system technicians shall be trained
19 and certified by the secretary of state as to their adequacy of
20 training and expertise on ~~[electronic]~~ voting systems certified
21 for use in the state.

22 B. The secretary of state may require voting system
23 technicians to undergo periodic training to maintain their
24 certification.

25 C. For purposes of this section, "voting system

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1 technician" means any person who [~~programs, clears, inspects~~
2 ~~and repairs electronic~~] is trained and certified to program,
3 inspect, properly store and provide preventative maintenance on
4 voting systems. [for compensation.

5 ~~D. The secretary of state shall adopt rules~~
6 ~~governing the use, maintenance and repair of electronic voting~~
7 ~~systems.]"~~

8 Section 16. Section 1-9-14 NMSA 1978 (being Laws 1983,
9 Chapter 226, Section 1, as amended) is amended to read:

10 "1-9-14. [~~COMPUTER VOTING DEVICES~~] VOTING SYSTEMS--
11 AUTHORITY OF THE SECRETARY OF STATE TO TEST--CERTIFICATION.--

12 A. [~~Notwithstanding any other provision of the~~
13 ~~Election Code~~] The secretary of state shall provide for the
14 testing and evaluation of [~~internal computers~~] voting systems
15 designed for the purpose of recording and tabulating votes
16 within polling places in New Mexico. All voting systems
17 certified for use in the state shall be tested by an
18 independent authority and shall comply with all requirements in
19 the Election Code and the most recent voluntary voting system
20 guidelines adopted by the United States election assistance
21 commission.

22 B. Any person who has [~~an internal computer which~~]
23 a voting system that is designed for the purpose of recording
24 and tabulating votes within a polling place may apply on or
25 before June 1 of any odd-numbered year to the secretary of

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1 state to have [~~his~~] the equipment examined and tested for
2 certification. At the time application is made for initial
3 certification, the applicant shall pay for testing each system
4 in an amount that reflects the actual cost of such test. Upon
5 receipt of the application, the secretary of state shall
6 examine and study the [~~computer~~] voting system to ensure that
7 it complies with all requirements in the Election Code and the
8 most recent voluntary voting system guidelines adopted by the
9 United States election assistance commission. As part of the
10 examination, the secretary of state shall require the system to
11 be independently inspected by persons or testing laboratories
12 technically qualified to evaluate and test the operation and
13 component parts of [~~an internal computer for recording and~~
14 ~~tabulating votes~~] voting systems and shall require a written
15 report on the results of such testing. The secretary of state
16 may authorize field testing of the equipment in one or more
17 [~~precincts~~] polling places in any state or local government
18 election, provided that such field tests shall be conducted at
19 no cost to the state or any local government. These tests and
20 inspections shall be completed within six months of the date of
21 application.

22 [~~B.~~] C. Upon completion of all tests and
23 examination of all written test reports, the secretary of state
24 shall make a written report of the result of the findings and
25 shall [~~submit that report for consideration by a committee~~

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1 ~~consisting of the secretary of state, the state chief~~
2 ~~information officer and a county clerk who is appointed by and~~
3 ~~serves at the pleasure of the governor and who is appointed~~
4 ~~with regard to political party affiliation so that no more than~~
5 ~~two members of the committee are from one political party] file~~
6 that report, together with the written test reports, in the
7 office of the secretary of state and post them on the secretary
8 of state's web site. The secretary of state shall accept
9 public comment during the twenty-one days following the filing
10 of the written report.

11 D. Following the period of public comment, the
12 secretary of state shall submit the filed reports and any
13 public comments for consideration by the voting system
14 certification committee. The voting system certification
15 committee shall make recommendations regarding the suitability
16 and reliability of the use of such equipment in the conduct of
17 elections under the Election Code. [~~Such report shall be a~~
18 public record.

19 ~~G.]~~ E. The voting system certification committee
20 shall recommend that a voting system be certified for use in
21 the state only if it complies with all requirements in the
22 Election Code and the most recent voluntary voting system
23 guidelines adopted by the United States election assistance
24 commission.

25 F. If the voting system certification committee

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1 report finds that the voting system does not comply with all
2 requirements in the Election Code or does not meet federal
3 election standards, the secretary of state shall allow thirty
4 days for an appeal of the findings to be filed or for the
5 deficiencies to be corrected, following which the secretary of
6 state shall report back to the voting system certification
7 committee with a written final report.

8 G. The voting system certification committee shall
9 reconvene to consider the final report of the secretary of
10 state and shall make final recommendations regarding the
11 suitability and reliability of the use of such equipment in the
12 conduct of elections under the Election Code.

13 H. If the voting system certification committee
14 recommends that the [internal computer for recording and
15 tabulating votes] voting system is suitable for use in [polling
16 places for the conduct of] elections in New Mexico, [such]
17 within thirty days of receiving the recommendation, the
18 secretary of state shall certify or recertify the equipment
19 [shall be deemed approved] for use in elections in this state.
20 [no later than January 1 of the succeeding year.

21 D. In the event the committee approves the use of
22 internal computers for use in polling places for the conduct of
23 elections in New Mexico, then the secretary of state shall
24 prescribe by rule promulgated under the provisions of the State
25 Rules Act specifications for internal computers designed for

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1 ~~the purpose of providing for a system of recording and~~
2 ~~tabulating votes within polling places. The prescribed~~
3 ~~specifications shall have as their purpose securing the secrecy~~
4 ~~of the ballot, protecting against fraud in the voting process,~~
5 ~~preserving in all respects the purity of elections,~~
6 ~~facilitating voting by the voters of this state and carrying~~
7 ~~out the provisions of the Election Code with respect to the~~
8 ~~administration of the conduct of elections in New Mexico.]~~

9 I. If the voting system certification committee
10 does not recommend that the voting system for recording and
11 tabulating votes is suitable for use in elections in New
12 Mexico, within thirty days of receiving the recommendation, the
13 secretary of state shall deny the application or decertify the
14 equipment for use in elections in this state."

15 Section 17. Section 1-9-17 NMSA 1978 (being Laws 1985,
16 Chapter 207, Section 16, as amended) is amended to read:

17 "1-9-17. [ELECTRONIC] ADDITIONAL VOTING SYSTEMS--STATE
18 BOARD OF FINANCE--LEASE-PURCHASE CONTRACT--TERMS.--

19 A. The state board of finance shall execute a
20 lease-purchase contract with the county for purchase of
21 [electronic] additional voting systems and the necessary
22 support equipment upon receipt of the application of the board
23 of county commissioners pursuant to Section 1-9-7 NMSA 1978.

24 B. The lease-purchase contract shall include, but
25 not be limited to, the following terms:

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1 (1) the county agrees to purchase from the
2 state board of finance the specified number of [~~electronic~~]
3 voting systems and the necessary support equipment;

4 (2) the county will pay for the cost of [~~such~~]
5 the systems and support equipment, including reimbursement for
6 costs of transportation;

7 (3) the term of the lease-purchase contract
8 shall not exceed [~~twenty~~] ten years;

9 (4) the care, custody and [~~maintenance~~] proper
10 storage of the systems and support equipment pursuant to
11 specifications issued by the secretary of state is the
12 responsibility of the county clerk; and

13 (5) upon good cause shown, the terms of the
14 lease-purchase contract may, at any time, be renegotiated."

15 Section 18. Section 1-9-17.1 NMSA 1978 (being Laws 2009,
16 Chapter 173, Section 1) is amended to read:

17 "1-9-17.1. [~~ELECTRONIC~~] VOTING SYSTEMS--RENEGOTIATION OF
18 LEASE-PURCHASE CONTRACT--DISPOSITION OF VOTING SYSTEMS.--

19 A. A lease-purchase contract for [~~an electronic~~] a
20 voting system entered into between the state board of finance
21 and a county pursuant to Section [~~1-19-17~~] 1-9-17 NMSA 1978,
22 after a renegotiation pursuant to Paragraph (5) of Subsection B
23 of that section, may include provisions providing that, upon
24 the [~~transfer of the ownership in~~] return of physical control
25 of the [~~electronic~~] voting systems to the state board of

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1 finance, the contract shall be terminated and no additional
2 payments from the county shall be due. The state board of
3 finance may dispose of [~~electronic~~] voting systems [~~acquired~~]
4 returned pursuant to this subsection in any manner that is
5 consistent with the interests of the state.

6 B. Upon application by the board of county
7 commissioners, the secretary of state shall dispose of voting
8 systems and support equipment purchased by the board of county
9 commissioners. The application shall include a provision for
10 the transfer of ownership in the voting systems to the state
11 without fee or compensation to the county."

12 Section 19. TEMPORARY PROVISION--RECOMPILATION.--Section
13 1-9-4.2 NMSA 1978 (being Laws 2003, Chapter 356, Section 34, as
14 amended) shall be recompiled as part of Chapter 1, Article 1
15 NMSA 1978.

16 Section 20. APPROPRIATION.--Three hundred fifty thousand
17 dollars (\$350,000) is appropriated from the electronic voting
18 system revolving fund to the office of the secretary of state
19 for expenditure in fiscal years 2011 and 2012 to maintain,
20 update and support the voting systems approved for use at
21 elections in the state. Any unexpended or unencumbered balance
22 remaining at the end of fiscal year 2012 shall revert to the
23 electronic voting system revolving fund.

24 Section 21. REPEAL.--Sections 1-9-2, 1-9-4.1, 1-9-8,
25 1-9-15 and 1-9-16 NMSA 1978 (being Laws 1969, Chapter 240,
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1 Section 185, Laws 2001, Chapter 233, Section 15, Laws 1969,
2 Chapter 240, Section 191 and Laws 1985, Chapter 207, Sections
3 14 and 15, as amended) are repealed.

4 Section 22. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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