

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 461

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY
JERRY LEE ALWIN

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR MANDATORY RECOUNTS UNDER
CERTAIN CIRCUMSTANCES; AMENDING THE ELECTION CODE.

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

Section 1. Section 1-14-14 NMSA 1978 (being Laws 1969,
Chapter 240, Section 343, as amended) is amended to read:

"1-14-14. RECOUNTS--RECHECKS--APPLICATION. --

A. Whenever any candidate for any office for which
the state canvassing board or county canvassing board issues a
certificate of nomination or election believes that any error or
fraud has been committed by any precinct board in counting or
tallying the emergency paper ballots or absentee ballots, in the
verification of the votes cast on the voting machines or in the
certifying of the results of any election whereby the results of
the election in the precinct have not been correctly determined,

Underscored material = new
[bracketed material] = delete

Underscored material = new
[bracketed material] = delete

1 declared or certified, the candidate, within six days after
2 completion of the canvass by the proper canvassing board, may
3 have a recount of the emergency paper ballots or absentee
4 ballots, or a recheck of the votes shown on the voting machines,
5 that were cast in the precinct.

6 B. In any primary or general election where the
7 difference in the canvass of the votes between the successful
8 candidate of a district and the candidate having the next
9 highest number of votes in that district is one percent or less
10 as certified by the county or state canvassing board:

11 (1) in the case of the county canvassing board,
12 the county clerk shall certify that result to the district judge
13 and the district judge shall order a mandatory recount by
14 precinct in the manner provided in Section 1-14-17 NMSA 1978 for
15 the applicable district within ten days after completion of the
16 canvass without any cost of proceedings to the candidates as
17 required by the provisions of Section 1-14-15 NMSA 1978; and

18 (2) in the case of the state canvassing board,
19 the state board shall order a recount in the applicable district
20 within ten days after completion of the canvass in the manner
21 provided by Section 1-14-16 NMSA 1978. The recount shall be
22 without cost of proceedings to the candidates as required by the
23 provisions of Section 1-14-15 NMSA 1978.

24 ~~[B.]~~ C. In the case of any office for which the
25 state canvassing board issues a certificate of nomination or

Underscored material = new
[bracketed material] = delete

1 election, application for recount or recheck shall be filed with
2 the secretary of state.

3 [~~C.~~] D. In the case of any office for which the
4 county canvassing board issues a certificate of nomination or
5 election, application for recount or recheck shall be filed with
6 the district judge for the county in which the applicant
7 resides. "

8 Section 2. Section 1-14-15 NMSA 1978 (being Laws 1978,
9 Chapter 48, Section 1) is amended to read:

10 "1-14-15. RECOUNTS--RECHECKS--COST OF PROCEEDINGS.--

11 A. Any applicant for a recount shall deposit with
12 the proper canvassing board fifty dollars (\$50.00) in cash, or a
13 sufficient surety bond in an amount equal to fifty dollars
14 (\$50.00), for each precinct for which a recount is demanded.
15 Any applicant for a recheck shall deposit with the proper
16 canvassing board ten dollars (\$10.00) in cash, or a sufficient
17 surety bond in an amount equal to ten dollars (\$10.00), for each
18 voting machine to be rechecked.

19 B. The deposit or surety bond shall be security for
20 the payment of the costs and expenses of the recount or recheck
21 in case the results of the recount or recheck are not sufficient
22 to change the results of the election.

23 C. If it appears that error or fraud sufficient to
24 change the winner of the election has been committed, the costs
25 and expenses of the recount or recheck shall be paid by the

Underscored material = new
[bracketed material] = delete

1 state upon warrant issued by the secretary of finance and
2 administration supported by a voucher of the state canvassing
3 board, or shall be paid by the county upon warrant of the county
4 clerk from the general fund of the county, as the case may be.

5 D. If no error or fraud appears to be sufficient to
6 change the winner, the costs and expenses for the recount or
7 recheck shall be paid by the applicant. Costs shall consist of
8 any docket fees, mileage of the sheriff in serving summons and
9 fees and mileage of precinct board members, at the same rates
10 allowed witnesses in civil actions. If error or fraud has been
11 committed by a precinct board, they shall not be entitled to
12 such mileage or fees.

13 E. In the case of an election where the difference
14 in the canvass of the votes between the successful candidate and
15 the candidate having the next highest number of votes is one
16 percent or less, the recount shall take place without cost to
17 the candidates. "

18 Section 3. Section 1-14-16 NMSA 1978 (being Laws 1969,
19 Chapter 240, Section 345, as amended) is amended to read:

20 "1-14-16. RECOUNT OR RECHECK PROCEEDINGS--STATE. --

21 A. Immediately after filing of the application for
22 recount or recheck, or a certification of the election resulting
23 in the margin of votes as provided in Section 1-14-14 NMSA 1978,
24 the state canvassing board shall issue a summons directed to the
25 precinct board of each precinct specified in the application

. 113555.2

1 commanding it to appear at the county seat of the county wherein
2 the precinct is situated on a day fixed in the summons, which
3 date shall not be more than ten days after the filing of the
4 application for a recount or recheck. The summons shall be
5 forwarded to the county clerk of the concerned county.

6 B. Upon receipt of the summons, the county clerk
7 shall deliver it to the sheriff who shall forthwith personally
8 serve it upon each of the precinct board members. The county
9 clerk shall thereupon send notices by registered mail of the
10 date fixed for recount or recheck to the district judge for the
11 county and to the county chairman of each of the political
12 parties that participated in the election in that precinct.

13 C. The precinct boards, district judge and the
14 county clerk shall meet at the county courthouse at 10:00 a. m.
15 on the date fixed for the recount or recheck, and the ballot
16 boxes or voting machines of the precincts involved in the
17 recount or recheck shall be opened. The precinct boards shall
18 recount and retally the emergency paper ballots or the absentee
19 ballots, or recheck the votes cast on the voting machine, as the
20 case may be, for the office in question in the presence of the
21 county clerk, district judge or person designated to act for
22 him, and any other person who may desire to be present.

23 D. During the recount or recheck, the precinct board
24 of a precinct where emergency paper ballots or absentee ballots
25 were used shall recount and retally only the ballots [which]

Underscored material = new
[bracketed material] = delete

1 that the presiding judge accepted and placed in the ballot box
2 as legal ballots at the time they were cast or received, as the
3 case may be.

4 E. After completion of the recount or recheck, the
5 precinct board shall replace the emergency paper ballots or
6 absentee ballots in the ballot box and lock it, or the voting
7 machines shall be locked and resealed, and the precinct board
8 shall certify to the secretary of state the results of the
9 recount or recheck. The district judge, or the person
10 designated to act for him, and the county clerk shall also
11 certify that the recount or recheck was made in their presence."

12 Section 4. Section 1-14-17 NMSA 1978 (being Laws 1969,
13 Chapter 240, Section 346, as amended) is amended to read:

14 "1-14-17. RECOUNT AND RECHECK PROCEEDINGS-- COUNTY. --

15 A. Immediately upon filing of the application for
16 recount or recheck, or a certification by the county clerk as
17 required by Section 1-14-14 NMSA 1978, the district judge shall
18 by order fix the place and date of the recount or recheck, which
19 date shall not be more than ten days after the filing of the
20 application. Such order of the district judge shall direct the
21 county clerk to issue a summons to the precinct board of the
22 precinct complained of. It shall command them to attend at the
23 time and place specified therein and to make such recount or
24 recheck.

25 B. The summons shall be forthwith personally served

Underscored material = new
[bracketed material] = delete

1 by the sheriff upon each precinct board member.

2 C. The county clerk shall notify the county chairman
3 of each political party that participated in the election in
4 that precinct of the date and place fixed for the recount or
5 recheck. The notice shall be by registered mail.

6 D. The precinct board, district judge and county
7 clerk shall meet at the county courthouse at 10:00 a.m. on the
8 date set.

9 E. The ballot boxes or voting machines of the
10 precincts involved in the recount or recheck shall be unlocked,
11 and the precinct board shall recount and retally the emergency
12 paper and absentee ballots or recheck the votes cast on the
13 voting machine for the office in question in the presence of the
14 district judge or person designated to act for him, the county
15 clerk and any other person who desires to be present.

16 F. At the recount, the precinct board of a precinct
17 using emergency paper ballots or absentee ballots shall recount
18 and retally only the ballots ~~[which]~~ that the presiding judge
19 accepted and placed in the ballot box as legal ballots at the
20 time they were cast.

21 G. After completion of the recount or recheck, the
22 emergency paper ballots or absentee ballots shall be placed in
23 the ballot box and locked, or the voting machines shall be
24 locked and resealed, and the precinct board shall certify to the
25 county canvassing board the results of the recount or recheck.

. 113555.2

Underscored material = new
~~[bracketed material] = delete~~

1 The district judge and county clerk shall certify that such
2 recount or recheck was made in their presence. "

3 - 8 -
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State of New Mexico
House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 12, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 461, as amended

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.**

Respectfully submitted,

Thomas P. Foy, Chairman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: King, Mallory, Rios, Sanchez, Stewart

Absent: None

M \H0461

Underscored material = new
~~[bracketed material] = delete~~

State of New Mexico
State of New Mexico
House of Representatives

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

Mr. Speaker:

Your

House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 14, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred

HOUSE BILL 461, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Respectfully submitted,

Max Coll, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 12 For 0 Against

Yes: 12

Excused: Bird, Garcia, M. H., Marquardt, Salazar, Watchman

Absent: None

M \H0461

Underscored material = new
~~[bracketed material] = delete~~