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SENATE BILL 1164

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

INTRODUCED BY

DIANNA J. DURAN

FOR THE ELECTION CODE RECODIFICATION COMMITTEE

AN ACT

RELATING TO ELECTIONS; REVISING CERTAIN SECTIONS OF THE ELECTION
CODE RELATING TO PRECINCT BOARDS AND ABSENTEE BALLOTS; AMENDING
AND REPEALING OBSOLETE SECTIONS OF THE NMSA 1978.

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

Section 1. Section 1-2-10 NMSA 1978 (being Laws 1975,
Chapter 255, Section 16) is amended to read:

"1-2-10. PRECINCT BOARD--APPOINTMENT BY COUNTY CLERK--
METHOD OF DETERMINING MEMBERSHIP. --The county clerk shall
appoint ~~[the]~~ precinct board members for each precinct ~~[in the]~~
~~following order:~~

A.] from the list submitted by the major party
county chairmen to the county clerk in the order ~~[stated thereon]~~

B.] specified on the list. If a list is not
submitted, then the county clerk shall appoint members from the

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1 precinct board standby list, and

2 [E-] from any other list of voters who have the same
3 qualifications and comply with the same requirements as provided
4 for precinct board members. "

5 Section 2. Section 1-2-12 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 32, as amended) is amended to read:

7 "1-2-12. PRECINCT BOARD--NUMBER FOR EACH PRECINCT--
8 MULTIPARTISAN.--

9 A. When absentee ballots are counted, the precinct
10 board shall consist of:

11 (1) a presiding judge;

12 (2) one election judge from each of the major
13 political parties;

14 (3) one election clerk [~~from each of the major~~
15 ~~political parties~~]; and

16 (4) if a major party has no registered,
17 qualified elector who is able to fill the position as election
18 judge or election clerk, a registered, qualified elector from
19 another major party, chosen by the county clerk to fill the
20 vacant position.

21 B. When one voting machine is to be used in a
22 precinct, the precinct board shall consist of:

23 (1) a presiding judge;

24 (2) two election judges who shall be of
25 different political parties; and

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1 (3) one election clerk who shall be of a
2 different political party than the presiding judge.

3 C. When two voting machines are to be used in a
4 precinct, the precinct board shall consist of:

5 (1) a presiding judge;

6 (2) two election judges who shall be of
7 different political parties; and

8 (3) two election clerks who shall be of
9 different political parties.

10 D. When three voting machines are used in a
11 precinct, the precinct board shall consist of:

12 (1) a presiding judge;

13 (2) two election judges who shall be of
14 different political parties; and

15 (3) three election clerks, not more than two of
16 whom shall belong to the same political party.

17 E. If the county clerk determines that additional
18 election clerks are needed in a precinct, the clerk may appoint
19 such additional election clerks as he deems necessary [~~provided,~~
20 ~~however, that such appointments shall be made in the manner that~~
21 ~~provides for representation from all major political parties].~~

22 F. In addition to the members of the precinct board
23 provided for in this section, the county clerk may appoint an
24 additional election clerk for the purpose of making changes in
25 the certificate of registration of any voter who has voted in

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1 that election at the polling place. "

2 Section 3. Section 1-6-5 NMSA 1978 (being Laws 1969,
3 Chapter 240, Section 131, as amended by Laws 1993, Chapter 314,
4 Section 43 and also by Laws 1993, Chapter 316, Section 43) is
5 amended to read:

6 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--
7 [~~MAKING~~] MARKING AND DELIVERY OF BALLOT IN PERSON. --

8 A. The county clerk shall mark each completed
9 absentee ballot application with the date and time of receipt in
10 the clerk's office and enter the required information in the
11 absentee ballot register. The county clerk shall then determine
12 if the applicant is a voter, an absent uniformed services voter
13 or an overseas voter.

14 B. If the applicant has no valid certificate of
15 registration on file in the county and he is not a federal
16 qualified elector or if the applicant states he is a federal
17 qualified elector but his application indicates he is not a
18 federal qualified elector, no absentee ballot shall be issued
19 and the county clerk shall mark the application "rejected" and
20 file the application in a separate file from those accepted.

21 C. The county clerk shall notify in writing each
22 applicant of the fact of acceptance or rejection of his
23 application and, if rejected, shall explain why the application
24 was rejected.

25 D. If the applicant is determined to be a voter or a

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1 federal qualified elector, the county clerk shall mark the
2 application "accepted" and deliver or mail to the applicant an
3 absentee ballot and the required envelopes for use in returning
4 the ballot. Acceptance of an application of a federal qualified
5 elector constitutes registration for the election in which the
6 ballot is to be cast. Acceptance of an application from an
7 overseas voter who is not an absent uniformed services voter
8 constitutes a request for changing information on the
9 certificate of registration of any such voter. No absent voter
10 shall be permitted to change his party affiliation during those
11 periods when change of party affiliation is prohibited by the
12 Election Code. Upon delivery or mailing of an absentee ballot
13 to any applicant who is a voter, an appropriate designation
14 shall be made on the signature line of the ~~[signature roster~~
15 ~~next to the name of the person who has been sent an absentee~~
16 ~~ballot]~~ absent voter's list and checklist of registered voters.

17 E. If an application for an absentee ballot is
18 delivered in person to the county clerk and is accepted, the
19 county clerk shall deliver the absentee ballot and it shall be
20 marked by the applicant in a voting booth of a type prescribed
21 by the secretary of state in the courthouse, sealed in the
22 proper envelopes and otherwise properly executed and returned to
23 the county clerk or his authorized representative before the
24 applicant leaves the office of the county clerk. The act of
25 marking the absentee ballot in the office of the county clerk

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1 shall be a convenience to the voter in the delivery of the
2 absentee ballot and does not make the office of the county clerk
3 a polling place subject to the requirements of a polling place
4 in the Election Code other than is provided in this subsection.
5 It shall be unlawful to solicit votes, display or otherwise make
6 accessible any posters, signs or other forms of campaign
7 literature whatsoever in the clerk's office. Absentee ballots
8 may be marked in person during the regular hours and days of
9 business at the county clerk's office from 8:00 a.m. on the
10 fortieth day preceding the election up until 5:00 p.m. on the
11 Saturday immediately prior to the date of the election. In
12 marking the absentee ballot, the voter may be assisted by one
13 person of the voter's own choice [~~upon the execution with the~~
14 ~~county clerk of an affidavit for assistance stating therein that~~
15 ~~the voter meets at least one of the conditions for receiving~~
16 ~~such assistance as is set forth by the provisions of Section~~
17 ~~1-12-12 NMSA 1978.~~

18 ~~F. Absentee ballots shall be air mailed to~~
19 ~~applicants temporarily domiciled inside or outside the~~
20 ~~continental limits of the United States not later than on the~~
21 ~~Thursday immediately prior to the date of the election] as~~
22 provided in Section 1-12-15 NMSA 1978.

23 F. Absentee ballots shall be mailed no later than
24 the Thursday prior to the date of the election to applicants
25 temporarily domiciled inside or outside the boundaries of the

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1 state and no later than fifteen days prior to the date of the
2 election to applicants temporarily domiciled outside the
3 continental boundaries of the United States.

4 G. No absentee ballot shall be delivered or mailed
5 to any person other than the applicant for such ballot.

6 H. The county clerk shall accept and process with
7 respect to a primary or general election for any federal office,
8 any otherwise valid voter registration application from an
9 absent uniformed services voter or overseas voter if the
10 application is received not less than thirty days before the
11 election. The county clerk shall also accept and process
12 federal write-in absentee ballots from overseas voters in
13 general elections for federal offices in accordance with the
14 provisions of Section 103 of the federal Uniformed and Overseas
15 Citizens Absentee Voting Act. "

16 Section 4. Section 1-6-15 NMSA 1978 (being Laws 1977,
17 Chapter 222, Section 13, as amended) is amended to read:

18 "1-6-15. CANVASS--RECOUNT OR RECHECK--DISPOSITION. --Where
19 no voting machines are used to register absentee ballots, [~~such~~]
20 the ballots shall be canvassed, recounted and disposed of in the
21 manner provided by the Election Code for the canvassing,
22 recounting and disposition of emergency paper ballots. Where
23 voting machines are used to register absentee ballots, [~~such~~]
24 the ballots shall be canvassed and rechecked in the manner
25 provided by the Election Code for the canvassing and recheck of

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1 ballots cast on a voting machine; provided, in the event of a
2 contest, voting machines used to register absentee ballots shall
3 not be rechecked but the absentee ballots shall be recounted in
4 the manner provided by the Election Code for the recounting of
5 emergency paper ballots. As used in this section, "voting
6 machines" means [~~lever voting machines or~~] electronic voting
7 machines as provided in the Election Code."

8 Section 5. Section 1-6-17 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 142) is amended to read:

10 "1-6-17. [~~CANCELLATION OF~~] ABSENTEE BALLOT--~~[AT] DEATH~~
11 BEFORE ELECTION DAY. --If [any] a person voting [~~under~~] pursuant
12 to the provisions of the Absent Voter Act dies after mailing or
13 delivering his absentee ballot to the county clerk but before
14 [~~the absentee ballot is delivered to the deceased person's~~
15 ~~precinct board, his official outer envelope shall be marked~~
16 ~~"cancelled by board of registration" and preserved]~~ election
17 day, his absentee ballot shall be processed by the county clerk
18 in the same manner as [~~provided for other uncast ballots in~~
19 ~~Section 3-6-10B NMSA 1953]~~ all other absentee ballots."

20 Section 6. Section 1-6-23 NMSA 1978 (being Laws 1975,
21 Chapter 255, Section 95, as amended) is amended to read:

22 "1-6-23. ABSENT VOTER PRECINCT POLLING PLACE--~~HOURS~~ [~~ON~~
23 ~~ELECTION DAY]~~ DETERMINED BY COUNTY CLERK. --The hours in which
24 the absent voter precinct polling place shall be open for
25 delivery and counting of ballots shall be set by the county

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1 clerk or statutorily appointed supervisor of the election. "

2 Section 7. Section 1-9-2 NMSA 1978 (being Laws 1969,
3 Chapter 240, Section 185, as amended) is amended to read:

4 "1-9-2. SECRETARY OF STATE--MANNER OF APPROVAL. --

5 A. Any person desiring to have a type of voting
6 machine approved for use in New Mexico may apply to the
7 secretary of state to have [~~such~~] the machine examined and
8 approved. At the time application is made, the applicant shall
9 pay to the secretary of state [~~an examination fee of three~~
10 ~~hundred dollars (\$300)~~] the estimated amount of the cost of the
11 examination, which shall not exceed five thousand dollars
12 (\$5,000).

13 B. Upon receipt of the application and examination
14 fee, the secretary of state shall examine and study the machine.
15 As part of the examination, the secretary of state shall require
16 the machine to be independently inspected by two mechanical
17 experts and shall require from each of them a written report on
18 the results of their inspection.

19 C. Upon completion of [~~her~~] his examination, the
20 secretary of state shall make a written report on the result of
21 [~~her~~] his examination and findings and shall file such report,
22 together with the inspection reports of the two mechanical
23 experts, in the office of the secretary of state. [~~Such reports~~
24 ~~and findings are public records~~] The written report is a public
25 record.

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1 D. The secretary of state shall inform the applicant
2 in writing of the findings. If the findings show that the
3 voting machine type is adequate for the election needs of New
4 Mexico, it shall be deemed approved for use at elections in this
5 state."

6 Section 8. Section 1-9-13 NMSA 1978 (being Laws 1975,
7 Chapter 255, Section 121, as amended) is amended to read:

8 "1-9-13. VOTING MACHINE TECHNICIANS--APPROVAL OF
9 CONTRACTS. --

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

14 (1) adequacy of the training and expertise of
15 the voting machine technician; and

16 (2) reasonableness of the compensation for the
17 contracted services, based upon the type of election and the
18 number of machines to be used, but in no instance shall [such]
19 compensation exceed thirty-five dollars (\$35.00) per machine for
20 programming [plus ten dollars (\$10.00) for clearing each lever
21 type voting machine]. The technician shall receive seventeen
22 dollars [and] fifty cents (\$17.50) for each hour of election
23 school and for standby troubleshooting services. The technician
24 may also be paid mileage.

25 B. Voting machine technicians shall be certified by

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1 the secretary of state as to their adequacy of training and
2 expertise on [~~lever voting machines and~~] electronic voting
3 machines.

4 C. For purposes of this section, "voting machine
5 technician" means any person who programs, clears, inspects and
6 repairs [~~lever voting machines and~~] electronic voting machines
7 for compensation.

8 D. The secretary of state shall adopt rules and
9 regulations governing the use, maintenance and repair of [~~lever
10 voting machines and~~] electronic voting machines. "

11 Section 9. Section 1-11-5 NMSA 1978 (being Laws 1969,
12 Chapter 240, Section 215, as amended) is amended to read:

13 "1-11-5. VOTING [~~DEVICE~~] MACHINE-PREPARATION. --Thirty
14 days before the election, the county clerk may begin to prepare,
15 inspect and seal [~~lever voting machines and~~] electronic voting
16 machines [~~which are to~~] that will be used in the election. [~~and~~
17 ~~such~~] Preparation, inspection and sealing shall continue until
18 all machines are prepared, inspected and sealed. "

19 Section 10. REPEAL. --Sections 1-9-4 and 1-12-7 NMSA 1978
20 (being Laws 1969, Chapter 240, Sections 187 and 246, as amended)
21 are repealed.

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

3 SB 1164/a

4
5
6 March 8, 1997

7
8 Mr. President:

9
10 Your RULES COMMITTEE, to whom has been referred

11
12 SENATE BILL 1164

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16
17
18 1. On page 2, line 2, after "voters" insert "prepared by the
19 county clerk".

20
21 2. On page 5, line 14, restore "signature roster".

22
23 3. On page 5, line 16, strike "absent voter's list".

24
25 4. On page 6, line 13, strike "own".

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

Page 13

5. On page 7, between lines 5 and 6, insert the following new subsection:

"H. An absentee ballot shall not be hand delivered to a voter except by the county clerk or his staff within the physical area of the county clerk's office; at an alternative voting location; or as provided in Section 1-6-16.2 NMSA 1978."

6. Renumber the succeeding subsection.

Respectfully submitted,

Gloria Howes, Chairman

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Altamirano, Aragon, Campos

Absent: None

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