

AN ACT

RELATING TO ELECTIONS; EXPANDING THE ABSENT VOTER ACT;
REPEALING THE ABSENTEE-EARLY VOTING ACT; CLARIFYING FILING
REQUIREMENTS AND NOMINATING PETITION REQUIREMENTS; REPEALING
AND ENACTING SECTIONS OF THE ELECTION CODE.

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

Section 1. A new section of the Absent Voter Act is
enacted to read:

"PREPARATION OF ELECTRONIC VOTING MACHINES.--

A. Five days before an electronic voting machine
is issued for absentee voting as provided in Section 1-6-9.1
NMSA 1978, the county clerk may begin to prepare, inspect and
seal the voting machine in accordance with the specifications
for electronic voting machines adopted by the secretary of
state.

B. One day before any electronic voting machine
is used for absentee voting, the county clerk shall certify
to the secretary of state and all county party chairmen the
type and serial number of each voting machine to be used."

Section 2. A new section of the Absent Voter Act is
enacted to read:

"SECRETARY OF STATE--EMERGENCY AUTHORITY.--The
secretary of state shall have emergency authority to
prescribe by regulation procedures to accommodate the special

absentee ballot requirements brought on by activation of the New Mexico national guard and reserve units or for individuals who are overseas voters, and procedures for a special write-in absentee ballot available at least ninety days prior to an election to cover candidates for federal offices."

Section 3. A new section of the Absent Voter Act is enacted to read:

"SECURITY--COUNTING AND CANVASSING.--The secretary of state shall adopt rules for protecting the integrity, security and secrecy of the absentee ballots, including procedures specifying that machines and ballot containers remain locked and that ballots not be removed prior to election day; procedures for voting by absentee ballot; separation of absentee ballots voted on electronic voting machines twenty days before the election from those received through the mail; disposition of absentee ballots rejected by a voting machine; handling of, counting and canvassing of absentee ballots; and sorting of absentee ballots by representative district for canvassing purposes."

Section 4. Section 1-6-2 NMSA 1978 (being Laws 1987, Chapter 327, Section 6, as amended) is amended to read:

"1-6-2. DEFINITIONS.--As used in the Absent Voter Act:

A. "absent uniformed services voter" means:

(1) a member of a uniformed service on

active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(2) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(3) a spouse or dependent of a member referred to in Paragraphs (1) and (2) of this subsection who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

B. "election" means a statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections;

C. "electronic ballot" means a paper ballot or ballot face designed to be used on an electronic voting machine to cast votes;

D. "electronic voting machine" means a computer-controlled machine designed to electronically record and tabulate votes cast;

E. "federal office" means the office of president, vice president or senator or representative in congress;

F. "federal qualified elector" means:

- (1) an absent uniformed services voter; or
- (2) an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved;

G. "member of the merchant marine" means an individual other than a member of a uniformed service or an individual employed, enrolled or maintained on the Great Lakes or the inland waterways who:

- (1) is employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States or a vessel of a foreign-flag registry under charter to or control of the United States; or

- (2) is enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as an officer or crew member of any such vessel;

H. "overseas voter" means:

- (1) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

- (2) a person who resides outside the United States and, but for such residence, would be qualified to vote in the last place in which the person was domiciled

before leaving the United States; and

I. "uniformed services" means the army, navy, air force, marine corps and coast guard and the commissioned corps of the national oceanic and atmospheric administration."

Section 5. Section 1-6-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 129, as amended by Laws 1993, Chapter 19, Section 1 and also by Laws 1993, Chapter 21, Section 1) is amended to read:

"1-6-3. RIGHT TO VOTE BY ABSENTEE BALLOT.--

A. Any voter may vote by absentee ballot for all candidates and on all questions appearing on the ballot as if he were able to cast his ballot in person at his regular polling place on election day.

B. Any federal qualified elector may register absentee and vote by an absentee ballot for any federal office."

Section 6. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION.--

A. Application by a federal qualified elector for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of his residence.

B. Application by a voter for an absentee ballot

shall be made only on a form prescribed, printed and furnished by the secretary of state to the county clerk of the county in which the voter resides. The form shall identify the applicant and contain information to establish his qualification for issuance of an absentee ballot under the Absent Voter Act; provided that on the application form for a general election ballot there shall be no box, space or place provided for designation of the voter's political party affiliation.

C. Each application for an absentee ballot shall be subscribed by the applicant."

Section 7. Section 1-6-4.1 NMSA 1978 (being Laws 1987, Chapter 327, Section 9) is amended to read:

"1-6-4.1. FEDERAL WRITE-IN ABSENTEE BALLOT FOR OVERSEAS VOTERS IN GENERAL ELECTIONS FOR FEDERAL OFFICES.--

A. Except as provided in Subsection C of this section, a federal write-in absentee ballot for federal offices in a general election shall be processed in the same manner as provided by law for other absentee ballots.

B. In completing the ballot, the overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for all candidates of that political party for federal office. Any abbreviation, misspelling or other minor variation in the form of the name

of a candidate or a political party shall be disregarded in determining the validity of the ballot if the intention of the overseas voter can be ascertained.

C. A federal write-in absentee ballot of an overseas voter shall not be counted if:

(1) the ballot is submitted from any location in the United States;

(2) the application of the overseas voter for an absentee ballot is received by the county clerk less than thirty days before the election; or

(3) the absentee ballot of the overseas voter is received by the county clerk later than 7:00 p.m. on election day."

Section 8. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended by Laws 1993, Chapter 314, Section 43 and also by Laws 1993, Chapter 316, Section 43) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT-- MARKING AND DELIVERY OF BALLOT IN PERSON.--

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

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

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

D. If the county clerk finds that the applicant is a voter or a federal qualified elector, the county clerk shall mark the application "accepted" and deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. No absent voter shall be permitted to change his party affiliation during those

periods when change of party affiliation is prohibited by the Election Code. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter who has been provided or mailed an absentee ballot.

E. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall provide the voter an absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the voter leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code other than is provided in this subsection. It shall be unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office. Absentee ballots may be marked in person during the regular hours and days of business at the county clerk's

office from 8:00 a.m. on the fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter may be assisted by one person of the voter's choice.

F. Commencing with the twentieth day prior to an election, an absent voter may vote in person at the county clerk's office or on an electronic voting machine at an alternate location established by the county clerk. In class A counties, the county clerk shall establish not less than four alternate locations as a convenience to the voters. Absentee voting may be done at the county clerk's office or an alternate location during the regular hours of business from 8:00 a.m. on the twentieth day prior to the election until 5:00 p.m. on Thursday immediately prior to the election. The county clerk shall ensure that procedures established for processing an absent voter application and for voting by absentee ballot are complied with at each alternative location.

G. Absentee ballots shall be air mailed to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Thursday immediately prior to the date of the election.

H. No absentee ballot shall be delivered or mailed by the county clerk to any person other than the

applicant for such ballot.

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

J. The secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting."

Section 9. Section 1-6-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 132, as amended) is amended to read:

"1-6-6. ABSENTEE BALLOT REGISTER.--

A. For each election, the county clerk shall keep an "absentee ballot register", in which he shall enter:

(1) the name and address of each absentee ballot applicant;

(2) the date and time of receipt of the application;

(3) whether the application was accepted or rejected;

(4) the date of issue of an absentee ballot in the county clerk's office or at an alternate location or the mailing of an absentee ballot to the applicant;

(5) the applicant's precinct;

(6) whether the applicant is a voter, a federal voter, a federal qualified elector or an overseas citizen voter; and

(7) the date and time the completed absentee ballot was received from the applicant by the county clerk or the absent voter voted in the county clerk's office or at an alternate location.

B. Within twenty-four hours after receipt of a voter's application for an absentee ballot, the county clerk shall mail either the ballot or a notice of rejection to the applicant.

C. The absentee ballot register is a public record open to public inspection in the county clerk's office during regular office hours.

D. The county clerk shall deliver to the absent voter precinct on election day a complete list of all absentee ballot applicants with applicable information shown in the absentee ballot register for each applicant up to 5:00 p.m. on the Thursday preceding the election. The county clerk shall deliver a signature roster containing the same information as the lists to the absent voter precinct board.

E. The county clerk shall transmit to the secretary of state and to the county chairman of each of the major political parties in the county a complete copy of entries made in the absentee ballot register. Such transmissions shall be made once each week beginning four weeks immediately prior to the election. A final copy shall be transmitted on the Friday immediately following the election."

Section 10. Section 1-6-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 133, as amended) is amended to read:

"1-6-7. FORM OF ABSENTEE BALLOT.--As soon as candidates and questions to be voted upon have been determined for each election, the county clerk shall procure a supply of suitable absentee ballots. The absentee ballots shall be numbered and shall be, as nearly as possible, in the same form as prescribed by the secretary of state for emergency ballots. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as possible. Absentee ballots shall be printed at least forty days prior to the date of a primary election and forty-nine days prior to the date of a general election. Absentee ballots for any other election shall be printed at least thirty-five days prior to the date of the election."

Section 11. Section 1-6-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 134, as amended) is amended to read:

"1-6-8. ABSENTEE BALLOT ENVELOPES.--

A. The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of:

(1) official inner envelopes for use in sealing the completed absentee ballot;

(2) official mailing envelopes for use in returning the official inner envelope to the county clerk; provided the official mailing envelope for absentee ballots in a general election shall contain no designation of party affiliation;

(3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and

(4) official transmittal envelopes for use by the county clerk in mailing absentee ballot materials.

B. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and federal qualified electors shall be printed in red in the form prescribed by the federal Uniformed and Overseas Citizens Absentee Voting Act. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to

and from the county clerk and voters shall be printed in black in substantially similar form. All official inner envelopes shall be printed in black.

C. The reverse of each official mailing envelope shall contain a form to be executed by the voter completing the absentee ballot. The form shall identify the voter and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."."

Section 12. Section 1-6-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 135, as amended) is amended to read:

"1-6-9. MANNER OF VOTING.--

A. Any person voting pursuant to the Absent Voter Act shall secretly mark his absentee ballot in the manner provided in the Election Code for marking emergency paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope, which shall include an affirmation by the voter under penalty of perjury that the facts stated in the form are true.

B. Federal qualified electors shall either deliver or mail the official mailing envelope to the county

clerk of their county of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the county clerk of the county of residence or former residence as the case may be. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence."

Section 13. Section 1-6-9.1 NMSA 1978 (being Laws 1991, Chapter 105, Section 13, as amended) is amended to read:

"1-6-9.1. VOTING BY ELECTRONIC BALLOT.-- An absent voter voting on an electronic ballot shall secretly mark the ballot in accordance with the instructions on that ballot, and the vote cast shall be recorded on an electronic voting machine."

Section 14. Section 1-6-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 136, as amended) is amended to read:

"1-6-10. RECEIPT OF ABSENTEE BALLOTS BY CLERK.--

A. The county clerk shall mark on each completed official mailing envelope the date and time of receipt in the clerk's office, record this information in the absentee ballot register and safely keep the official mailing envelope unopened in a locked and number-sealed ballot box, except as provided in Subsection H of Section 1-6-14 NMSA 1978, until it is delivered on election day to the proper absent voter precinct board or until it is canceled and destroyed in

accordance with law.

B. The county clerk shall accept completed official mailing envelopes until 7:00 p.m. on election day. Any completed official mailing envelope received after that time shall not be delivered to a precinct board but shall be preserved by the county clerk until the time for election contests has expired. In the absence of a restraining order after expiration of the time for election contests, the county clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the county clerk shall count the numbers of late ballots from voters, federal voters, overseas citizen voters and federal qualified electors and report the number from each category to the secretary of state.

C. At 5:00 p.m. on the Monday immediately preceding the date of election, the county clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the county clerk's office all such unused ballots. The county clerk shall execute a certificate of destruction, which shall include the numbers on the absentee ballots destroyed. A copy of the certificate of destruction shall be sent to the secretary of state."

Section 15. Section 1-6-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 137, as amended) is amended to read:

"1-6-11. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER
PRECINCTS.--

A. On election day, the county clerk shall deliver the absentee ballots received prior to 7:00 p.m. on election day to the special deputy county clerks for delivery to the absent voter precinct boards. The absentee ballots for each absent voter precinct shall be separately wrapped, and the special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk. Upon delivery of the absentee ballots to the absent voter precinct board, the special deputy county clerk shall remain in the polling place of the absent voter precinct until he has observed the opening of the official mailing envelope, the deposit of the ballot in the locked ballot box and the listing of the names on the official mailing envelope in the signature rosters. Upon such delivery of absentee ballots, the special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge and he shall return such receipt to the county clerk for filing. The receipts shall specify the number of envelopes received by the special deputy county clerk from the county clerk for each absent voter precinct and the number of envelopes received by the absent voter precinct board from the special deputy county clerk.

B. At 7:00 a.m. on election day, the county clerk

shall deliver the electronic voting machines used for absentee voting to the absent voter precinct board. The machines shall not be used to vote on or count additional ballots for that election. A special deputy county clerk shall issue a receipt for each voting machine. Upon delivery of a voting machine, the special deputy shall obtain a receipt executed by the presiding judge and each election judge specifying the serial number and the seal number of the machine and shall verify the public counter number on the machine, and he shall return the receipt to the county clerk for filing."

Section 16. Section 1-6-14 NMSA 1978 (being Laws 1971, Chapter 317, Section 11, as amended) is amended to read:

"1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER PRECINCT BOARDS.--

A. Before opening any official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

B. If the voter's signature is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The election clerks shall enter the voter's name in the signature rosters and shall write the notation "Rejected--Missing Signature" in the "Notations" column of the signature rosters. The presiding judge shall

place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. The accredited challengers may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the absent voter precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector, overseas citizen voter or voter as provided in the Election Code.

Upon the challenge of an absentee ballot, the election judges and the presiding election judge shall follow the same procedure as when ballots are challenged when a person attempts to vote in person. If a challenge is upheld, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

D. If the official mailing envelopes have been properly subscribed and the voters have not been challenged:

(1) the election judges shall open the

official mailing envelopes and deposit the ballots in their still-sealed official inner envelopes in the locked ballot box; and

(2) the election clerks shall enter the absent voter's name and residence address as shown on the official mailing envelope in the signature rosters and shall mark the notation "AB" opposite the voter's name in the "Notations" column of the signature rosters.

E. Prior to the closing of the polls, the election judges and the presiding election judge may either remove the absentee ballots from the official inner envelopes and count and tally the results of absentee balloting or, under the personal supervision of the presiding election judge and one election judge from each party, count and tally the absentee ballots on an electronic voting machine the same as if the absent voter had been present and voted in person. It is unlawful for any person to disclose the results of a count and tally or the registration on a voting machine of absentee ballots prior to the closing of the polls.

F. Absentee ballots shall be counted and tallied on an electronic voting machine as provided in the Election Code.

G. Absent voter precinct polls shall close at the time prescribed by the Election Code for other polling places, and the results of the election shall be certified as

prescribed by the secretary of state.

H. The county clerk may convene the absent voter precinct board no more than three days before the day of the election to alphabetize, enter on the roster and sort the absentee ballots by legislative district; provided that no member of the absent voter precinct board shall open an official mailing envelope or count and canvass any absentee ballot prior to the day of the election."

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

"1-6-15. CANVASS--RECOUNT OR RECHECK--DISPOSITION.--
If voting machines are not used to register absentee ballots, the absentee ballots shall be canvassed, recounted and disposed of in the manner provided by the Election Code for the canvassing, recounting and disposition of emergency paper ballots. If voting machines are used to register absentee ballots, the ballots shall be canvassed and rechecked in the manner provided by the Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register absentee ballots shall not be rechecked but the absentee ballots shall be recounted in the manner provided by the Election Code for the recounting of emergency paper ballots. As used in this section, "voting machines" means electronic voting machines as provided in the Election Code."

Section 18. Section 1-6-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 141, as amended by Laws 1989, Chapter 368, Section 2 and also by Laws 1989, Chapter 392, Section 15) is amended to read:

"1-6-16. VOTING IN PERSON PROHIBITED.--

A. Except as provided in Section 1-6-16.1 NMSA 1978, no person who has been issued an absentee ballot shall vote in person at his precinct poll.

B. At any time prior to 5:00 p.m. on the Monday immediately preceding the date of the election, a person whose absentee ballot application has been accepted and who was mailed an absentee ballot but who has not received the absentee ballot may execute, in the office of the county clerk of the county where he is registered to vote, a sworn affidavit stating that he did not receive or vote his absentee ballot. Upon receipt of the sworn affidavit, the county clerk shall issue the voter a replacement absentee ballot.

C. The secretary of state shall prescribe the form of the affidavit and the manner in which the county clerk shall void the first ballot mailed to the applicant."

Section 19. Section 1-6-16.1 NMSA 1978 (being Laws 1989, Chapter 368, Section 1, as amended) is amended to read:

"1-6-16.1. ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN NOT TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND

COUNTING.--

A. A voter who applies for an absentee ballot but has not received the absentee ballot by mail as of the date of the election may present himself at his assigned polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be permitted to vote on an emergency paper ballot.

B. The completed ballot shall be placed in an official inner envelope substantially as prescribed by Section 1-6-8 NMSA 1978 and sealed. The official inner envelope shall then be placed in an official envelope substantially as prescribed for a transmittal envelope or mailing envelope in Section 1-6-8 NMSA 1978. This envelope shall contain a form on its back that identifies the voter by name and signature roster number and a printed statement to the effect that the voter made application for an absentee ballot but had not received it as of the date of the election and is permitted to vote by emergency paper ballot.

C. The presiding election judge shall put all absentee ballots in a special envelope provided for that purpose by the county clerk, seal it and return it to the county clerk along with the machine tally sheets. The sealed envelope shall not be put in the locked ballot box.

D. Upon receipt of the envelope containing absentee ballots, the county clerk, no later than forty-eight

hours after the close of the election, shall remove the transmittal envelopes and, without removing or opening the inner envelopes, determine that:

(1) if a voter did in fact make application for an absentee ballot; and

(2) if an absentee ballot was received by the county clerk from the voter by 7:00 p.m. on election day.

E. Upon making that determination, the county clerk shall remove the inner envelope without opening it, retain the transmittal envelope with the other election returns and place the inner unopened envelope in a secure container to be transmitted to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.

F. The secretary of state shall prescribe and furnish the necessary envelopes for purposes of this section and shall adopt rules and regulations deemed necessary to preserve the secrecy of the emergency paper ballots."

Section 20. Section 1-6-16.2 NMSA 1978 (being Laws 1993, Chapter 353, Section 1) is amended to read:

"1-6-16.2. ADDITIONAL EMERGENCY PROCEDURE FOR VOTING.-

-

A. After the close of the period for requesting absentee ballots by mail, any voter who is unable to go to the polls due to unforeseen illness or disability resulting

in his confinement in a hospital, sanatorium, nursing home or residence and who is unable to vote at his regular polling place or alternate location may request in writing that an alternative ballot be made available to him. The written request shall be signed by the voter and a health care provider under penalty of perjury.

B. The alternative ballot shall be made available by the clerk of the county in which the voter resides to any authorized representative of the voter who through his representative has presented the written request to the office of the clerk.

C. Before releasing the alternative ballot, the county clerk shall compare the signature on the written request with the signature on the voter's affidavit of registration. If the county clerk determines that the signature on the written request is not the signature of the voter, he shall reject the request for an alternative ballot.

D. The voter shall mark the alternative ballot, place it in an identification envelope similar to that used for absentee ballots, fill out and sign the envelope and return the ballot to the office of the clerk of the county in which the voter resides no later than the time of closing of the polls on election day. The voter's name shall be compared to the roster of voters and the ballot shall only be counted if there is no signature for that voter on the roster

of the precinct where that voter's name appears.

E. Alternative ballots shall be processed and counted in the same manner as absentee ballots.

F. The secretary of state shall prescribe the form of alternative ballots and shall distribute an appropriate number of alternative ballots to each county clerk."

Section 21. Section 1-6-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 142) is amended to read:

"1-6-17. CANCELLATION OF ABSENTEE BALLOT AT DEATH.--If any person voting under the provisions of the Absent Voter Act dies after mailing or delivering his absentee ballot to the county clerk but before the absentee ballot is counted, the official outer envelope shall be marked "canceled by the precinct board" and preserved by the county clerk in the same manner as provided for other uncast ballots in Subsection B of Section 1-6-10 NMSA 1978."

Section 22. Section 1-6-21 NMSA 1978 (being Laws 1975, Chapter 255, Section 93, as amended) is amended to read:

"1-6-21. CONSOLIDATION OF ABSENT VOTER PRECINCTS.--Absent voter precincts may be consolidated by the governing authority if it deems it desirable and so directs by resolution."

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

"1-6-23. ABSENT VOTER PRECINCT POLLING PLACE--HOURS ON ELECTION DAY AND SUBSEQUENT DAYS.--The county clerk or statutorily appointed supervisor of the election shall determine the hours during which the absent voter precinct polling place shall be open for delivery and counting of ballots on election day and subsequent days until all ballots are counted."

Section 24. Section 1-6-24 NMSA 1978 (being Laws 1969, Chapter 54, Section 5, as amended) is amended to read:

"1-6-24. ABSENT VOTER PRECINCT BOARD APPOINTMENT.--

A. The county clerk of each county shall appoint absent voter precinct board members and their respective alternates for each absent voter precinct and shall compensate them at an hourly rate set by the county clerk.

B. A minimum of three precinct board members shall be appointed to the absent voter precinct board with no more than two members belonging to the same political party."

Section 25. Section 1-8-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 162, as amended) is amended to read:

"1-8-13. PRIMARY ELECTION LAW--CONTENTS OF PROCLAMATION.--The proclamation calling a primary election shall contain:

A. the names of the major political parties participating in the primary election;

B. the offices for which each political party

shall nominate candidates; provided that if any law is enacted by the legislature in the year in which the primary election is held and the law does not take effect until after the date of the proclamation but prior to the date of the primary election, the proclamation shall conform to the intent of the law with respect to the offices for which each political party shall nominate candidates;

C. the date on which declarations of candidacy and nominating petitions for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, state board of education, public regulation commission or magistrate shall be filed and the places where they shall be filed in order to have the candidates' names printed on the official ballot of their party at the primary election;

D. the date on and place at which declarations of candidacy shall be filed for any other office and filing fees paid or, in lieu thereof, a pauper's statement of inability to pay;

E. the final date on and place at which candidates for the office of United States representative and for any statewide office seeking preprimary convention designation by the major parties shall file petitions and declarations of candidacy;

F. the final date on which the major political parties shall hold state preprimary conventions for the designation of candidates; and

G. the final date on and place at which certificates of designation of primary election candidates shall be filed by political parties with the secretary of state.

As used in the Primary Election Law, "statewide office" means any office voted on by all the voters of the state."

Section 26. Section 1-8-30 NMSA 1978 (being Laws 1973, Chapter 228, Section 4, as amended) is amended to read:

"1-8-30. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--NOMINATING PETITION--FILING AND FORM.--

A. As used in the Primary Election Law, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters, which is signed on behalf of the person wishing to become a candidate for a political office in the primary election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate at the same time shall file a nominating petition, which shall be on the form prescribed by law.

C. The nominating petition shall be on paper approximately eight and one-half inches wide and fourteen inches long with numbered lines for signatures spaced

approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION

I, the undersigned, a registered voter of the county of _____, New Mexico, and a member of the _____ party, hereby nominate _____, who resides at _____ in the county of _____, New Mexico, for the party nomination for the office of _____, to be voted for at the primary election to be held on the first Tuesday of June, 19 _____, and I declare that I am a resident of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1. _____

(usual (name printed (address as (city or
signature) as registered) registered) rt. no.)

2. _____

(usual (name printed (address as (city or
signature) as registered) registered) rt. no.)."

D. In October of odd-numbered years, the secretary of state shall furnish to each county clerk a

sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section and all sheets shall be firmly secured by a staple or other suitable fastening."

Section 27. Section 1-8-31 NMSA 1978 (being Laws 1973, Chapter 228, Section 5, as amended by Laws 1993, Chapter 314, Section 47 and also by Laws 1993, Chapter 316, Section 47) is amended to read:

"1-8-31. PRIMARY ELECTION LAW--NOMINATING PETITION--
SIGNATURES TO BE COUNTED.--

A. A person who signs a nominating petition shall sign only one petition for the same office unless more than one candidate is to be elected to that office, and in that case a person may sign not more than the number of nominating petitions equal to the number of candidates to be elected to the office.

B. A person who signs a nominating petition shall indicate his residence as his address. If the person does not have a residential address, he may provide his mailing address.

C. A signature shall be counted on a nominating petition unless there is evidence presented that the person

signing:

(1) was not a registered member of the candidate's political party ten days prior to the filing of the nominating petition;

(2) failed to provide information required by the nominating petition sufficient to determine that the person is a qualified voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate;

(3) has signed more than one petition for the same office, except as provided in Subsection A of this section, or has signed one petition more than once;

(4) is not of the same political party as the candidate named in the nominating petition as shown by the signer's certificate of registration; or

(5) is not the person whose name appears on the nominating petition.

D. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code, except that Paragraphs (1) and (4) of Subsection C of this section shall not apply to petitions filed by unaffiliated candidates or petitions filed by candidates of minor political parties."

Section 28. Section 1-8-44 NMSA 1978 (being Laws 1969, Chapter 240, Section 182, as amended) is amended to read:

"1-8-44. PRIMARY ELECTION LAW--WITHDRAWAL OF CANDIDATES.--A candidate seeking to withdraw from a primary election shall withdraw no later than the first Tuesday in April before that primary election."

Section 29. Section 1-8-49 NMSA 1978 (being Laws 1977, Chapter 322, Section 5) is amended to read:

"1-8-49. INDEPENDENT CANDIDATES FOR GENERAL ELECTIONS--CANDIDATES FOR PRESIDENT AND VICE PRESIDENT.--

A. Nomination as an independent candidate for president or vice president shall be made by filing a declaration of independent candidacy with the proper filing officer. The candidate for president shall also at the same time file a nominating petition with the required number of signatures.

B. In making a declaration of independent candidacy for president, the candidate shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY FOR PRESIDENT
I, _____ (candidate's name), being duly sworn, say that I am a citizen of the United States, have been a resident of the United States for at least fourteen years and have attained the age of thirty-five.

I desire to become a candidate for the office of president of the United States at the general election to be held on the date set by law for this year. I will be

eligible and legally qualified to hold this office at the beginning of its term.

The name of my vice presidential running mate, whom I selected, is _____. The names and addresses of the required number of presidential electors who intend to vote for me and for my vice presidential running mate in the electoral college are:

_____	_____
(name)	(name)
_____	_____
(residence address)	(residence address)
_____	_____
(mailing address)	(mailing address)
_____	_____
(city)	(city)
_____	_____
(state and zip code)	(state and zip code)
_____	_____
(name)	(name)
_____	_____
(residence address)	(residence address)
_____	_____
(mailing address)	(mailing address)
_____	_____

(city)

(state and zip code)

(name)

(residence address)

(mailing address)

(city)

(state and zip code)

I submit with this statement a nominating petition in the form and manner prescribed by the Election Code. I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable in accordance with the criminal laws of New Mexico.

(city)

(state and zip code)

(name)

(residence address)

(mailing address)

(city)

(state and zip code)

(name)

(residence address)

(mailing address)

(city)

(state and zip code)

(name)

(city)

(state and zip code)

Subscribed and sworn to me this _____ day
of

_____ , _____

(year)

notary public

My commission expires:

_____ " .

C. In making a declaration of independent
candidacy for vice president, the candidate shall submit a
sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY FOR VICE
PRESIDENT

I, _____ (candidate's name), being duly sworn,
say that I am a citizen of the United States, have been a
resident of the United States for at least fourteen years and
have attained the age of thirty-five.

I have been selected by independent presidential
candidate _____ as his vice presidential running
mate

and desire to be that candidate for vice president. I will
be eligible and legally qualified to hold this office at the

beginning of its term.

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable in accordance with the criminal laws of New Mexico.

(declarant)

(residence address)

(mailing address)

(city)

(state and zip code)

Subscribed and sworn to me this _____ day of _____, _____

(year)

(notary public)

My commission expires:

_____".

D. The independent presidential electors whom the independent candidate for president is required to name shall be registered voters of New Mexico; they may or may not be affiliated with a political party in New Mexico. United

States senators, United States representatives and persons holding federal offices of trust or profit are not eligible to be electors.

E. When independent candidates for president and vice president appear on the general election ballot, a vote for that pair of nominees is a vote for that presidential candidate's electors.

F. If the independent candidates for president and vice president receive the highest number of votes at the general election, the independent presidential candidate's electors shall be the presidential electors of the state of New Mexico. As such, each elector shall be granted a certificate of election by the state canvassing board, and each elector shall be subject to the provisions of Sections 1-15-5 through 1-15-10 NMSA 1978."

Section 30. Section 1-8-50 NMSA 1978 (being Laws 1977, Chapter 322, Section 6) is amended to read:

"1-8-50. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--NOMINATING PETITION FORM.--

A. As used in Sections 1-8-45 through 1-8-52 NMSA 1978, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters that is signed on behalf of the person wishing to become an independent candidate for a political office in a general or

United States representative special election requiring a nominating petition.

B. In making a determination of candidacy, the candidate shall file a nominating petition at the same time, which shall be on forms prescribed by law.

C. The nominating petition for an independent candidate for any office except president of the United States shall be on paper approximately eight and one-half inches wide and fourteen inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY
FOR ANY OFFICE EXCEPT PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of the county
of _____, New Mexico, hereby nominate
_____, who resides at
_____ in the county of
_____, New Mexico, as an independent candidate
for the office of _____, to be voted
for at the general election, or United States
representative special election to be held on
_____ , _____

(month) (day) (year)

and I declare that I am a resident of the state,
district, county or area to be represented by the office

for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill the office at the next ensuing general election or at a United States representative special election.

1. _____

(usual (name printed (address as (city)
signature) as registered) registered)

2. _____

(usual (name printed (address as
(city)."
signature) as registered) registered)

D. The nominating petition for an independent candidate for the office of president of the United States shall be on paper approximately eight and one-half inches wide and fourteen inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY
FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of the
county of _____, New Mexico, by endorsement hereon,

petition that the name of _____ be printed on the general election ballot as an independent candidate for the office of president of the United States, to be voted on at the general election to be held on November _____, _____. I also declare that I am that person whose name appears hereon and that I have not signed, nor will I sign, any nominating petition for any other candidate seeking the office of president of the United States at the next ensuing general election."

E. The secretary of state shall furnish to each county clerk a sample of the nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate as provided by the Election Code.

F. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section, and all sheets shall be firmly secured by a staple or other suitable fastening."

Section 31. Section 1-12-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 246, as amended by Laws 1993, Chapter 314, Section 54 and also by Laws 1993, Chapter 316, Section 54) is amended to read:

"1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO VOTE.--

A. No person shall vote in any primary, general or

statewide special election unless he is a voter of the precinct in which he offers to vote. A valid original certificate of registration in the county register is prima facie evidence of being a voter in the precinct.

B. No person shall vote in any primary election whose party affiliation is not designated on his original certificate of registration.

C. No person at any primary election shall be permitted to vote for the candidate of any party other than the party designated on his current certificate of registration."

Section 32. Section 1-15-23 NMSA 1978 (being Laws 1969, Chapter 240, Section 373) is amended to read:

"1-15-23. EXPIRING TERM AND SUCCEEDING TERM.--If the same individual is a candidate at a general election for both the expiring term and the succeeding term, his name shall appear but once on the ballot, and the name of the office, followed by the words, "full and expiring terms"."

Section 33. Section 1-22-2 NMSA 1978 (being Laws 1985, Chapter 168, Section 4, as amended) is amended to read:

"1-22-2. DEFINITIONS.--As used in the School Election Law:

A. "board" means the governing authority of the local school district;

B. "county clerk" means the clerk of each county

in which the school district is situate;

C. "proper filing officer" means the county clerk or, in the case of a multicounty school district, the clerk of the county in which the administrative office of the school district is situate;

D. "magistrate" means the magistrate whose office is situated in the municipality where the administrative office of the school district is located or in close proximity to the municipality;

E. "school district election" means a regular or special school district election but does not include a recall election; and

F. "superintendent" means the superintendent of schools of the local school district."

Section 34. Section 1-22-7 NMSA 1978 (being Laws 1985, Chapter 168, Section 9) is amended to read:

"1-22-7. DECLARATION OF CANDIDACY--FILING DATE--
PENALTY.--

A. A candidate for a school board position that will be filled at a regular school district election shall file a declaration of candidacy with the proper filing officer during the period commencing at 9:00 a.m. on the third Tuesday in December of the even-numbered year immediately preceding the date of the regular school district election and ending at 5:00 p.m. on the same day.

B. A candidate for a school board position that will be filled at a special school district election shall file a declaration of candidacy with the proper filing officer during the period commencing at 9:00 a.m. on the forty-eighth day before the election and ending at 5:00 p.m. on the same day.

C. A candidate shall file for only one school board position during a filing period.

D. Whoever knowingly makes a false statement in his declaration of candidacy is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Section 35. Section 1-22-19 NMSA 1978 (being Laws 1985, Chapter 168, Section 21, as amended) is amended to read:

"1-22-19. ABSENTEE VOTING.--

A. A voter may vote in a school district election by absentee ballot for all candidates and on all questions appearing on the ballot in his precinct as if he were casting his ballot in person at the polling place on election day.

B. The provisions of the Absent Voter Act of the Election Code apply to absentee voting in school district elections, provided that absentee ballots may be marked in person during the regular hours and days of business at the county clerk's office from 8:00 a.m. on the twenty-fifth day

preceding the election until 5:00 p.m. on the Friday immediately prior to the date of the election. Absentee ballots shall be printed at least thirty days prior to the date of the election. Provisions may be made by the board in the proclamation for absentee voting by electronic voting machine from 8:00 a.m. on the twentieth day preceding an election until 5:00 p.m. on the Friday immediately prior to the date of the election.

C. A regular precinct board may be designated to serve as the absent voter precinct board. A member of the absent voter precinct board shall receive the same compensation as a regular precinct board member. A regular precinct board member who also serves as a member of the absent voter precinct board shall not be entitled to extra compensation for serving on the absent voter precinct board."

Section 36. REPEAL.--Sections 1-6-5.2 and 1-6A-1 through 1-6A-12 NMSA 1978 (being Laws 1991, Chapter 105, Section 11, Laws 1993, Chapter 37, Sections 1 through 9, Chapter 165, Sections 4 through 6, as amended) are repealed.

= HB 650
Page 46

=====