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HOUSE BILL 860

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO ELECTIONS; EXPANDING THE ABSENT VOTER ACT TO
INCLUDE EARLY VOTING; REPEALING THE ABSENTEE- EARLY VOTING ACT;
AMENDING AND REPEALING SECTIONS OF THE ELECTION CODE.

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

Section 1. 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

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1 place of residence where the member is otherwise qualified to
2 vote; or

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

8 B. "election" means [~~any~~] a statewide election,
9 general election, primary election or special election to fill
10 vacancies in the office of United States representative and
11 regular or special school district elections [~~except as~~
12 ~~modified by the school election law~~];

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

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

19 [~~C.~~] E. "federal office" means the office of
20 president, vice president or of [a] senator or representative
21 in congress;

22 [~~D.~~] F. "federal qualified elector" means:

23 (1) an absent uniformed services voter; or

24 (2) an absent uniformed [~~service~~] services
25 voter who, by reason of active duty or service, is absent from

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1 the United States on the date of the election involved;

2 ~~[E. "marksense ballot" means a paper ballot card~~
3 ~~used on an optical scan vote tabulating machine;~~

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

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

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

17 H. "memory cartridge" or "results memory
18 cartridge" means a transportable cassette-type case or memory
19 card used in an electronic voting machine that records and
20 retains the total vote counted and tallied for each candidate
21 on the electronic voting machine;

22 ~~[G.]~~ I. "overseas voter" means:

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

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

5 [~~H-~~] J. "uniformed services" means the army, navy,
6 air force, marine corps and coast guard and the commissioned
7 corps of the national oceanic and atmospheric administration."

8 Section 2. Section 1-6-3 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 129, as amended by Laws 1993, Chapter 19,
10 Section 1 and also by Laws 1993, Chapter 21, Section 1) is
11 amended to read:

12 "1-6-3. RIGHT TO VOTE BY ABSENTEE BALLOT [~~RIGHT TO~~
13 ~~VOTE~~]. --

14 A. Any voter may vote by absentee ballot for all
15 candidates and on all questions appearing on the ballot [~~at~~
16 ~~his precinct poll~~] as if he were able to cast his ballot in
17 person at [~~the precinct poll~~] his regular polling place on
18 election day.

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

22 Section 3. Section 1-6-4 NMSA 1978 (being Laws 1969,
23 Chapter 240, Section 130, as amended) is amended to read:

24 "1-6-4. ABSENTEE BALLOT APPLICATION. --

25 A. Application by a federal qualified elector for

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1 an absentee ballot shall be made on the official postcard form
2 prescribed or authorized by the federal government to the
3 county clerk of the county of his residence.

4 B. Application [~~by a voter~~] for an absentee ballot
5 shall be made only by a voter on a form prescribed, printed
6 and furnished by the secretary of state to the county clerk of
7 the county in which he resides. The form shall identify the
8 applicant and contain information to establish his
9 qualification for issuance of an absentee ballot under the
10 Absent Voter Act; provided that on the application form for a
11 general election ballot there shall be no box, space or place
12 provided for designation of the voter's political party
13 affiliation.

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

16 D. The official application form for an absentee
17 ballot shall be mailed only by the county clerk upon the
18 request of the voter."

19 Section 4. Section 1-6-5 NMSA 1978 (being Laws 1969,
20 Chapter 240, Section 131, as amended by Laws 1993, Chapter
21 314, Section 43 and also by Laws 1993, Chapter 316, Section
22 43) is amended to read:

23 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--
24 [~~MAKING~~] MARKING AND DELIVERY OF BALLOT IN PERSON.--

25 A. The county clerk shall mark each completed

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

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

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

17 D. If the county clerk finds that the applicant is
18 [~~determined to be~~] a voter or a federal qualified elector, the
19 county clerk shall mark the application "accepted" and deliver
20 an absentee ballot to the voter in the county clerk's office
21 or mail to the applicant an absentee ballot and the required
22 envelopes for use in returning the ballot. Acceptance of an
23 application of a federal qualified elector constitutes
24 registration for the election in which the ballot is to be
25 cast. Acceptance of an application from an overseas voter who

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1 is not an absent uniformed services voter constitutes a
2 request for changing information on the certificate of
3 registration of any such voter. No absent voter shall be
4 permitted to change his party affiliation during those periods
5 when change of party affiliation is prohibited by the Election
6 Code. Upon delivery of an absentee ballot to the voter in the
7 county clerk's office or mailing of an absentee ballot to
8 [~~any~~] an applicant who is a voter, an appropriate designation
9 shall be made on the signature line of the signature roster
10 next to the name of the [~~person~~] voter who has been [~~sent~~]
11 provided or mailed an absentee ballot.

12 E. If an application for an absentee ballot is
13 delivered in person to the county clerk and is accepted, the
14 county clerk shall [~~deliver the~~] provide the voter an absentee
15 ballot and it shall be marked by the applicant in a voting
16 booth of a type prescribed by the secretary of state [~~in the~~
17 ~~courthouse~~], sealed in the proper envelopes and otherwise
18 properly executed and returned to the county clerk or his
19 authorized representative before the [~~applicant~~] voter leaves
20 the office of the county clerk. The act of marking the
21 absentee ballot in the office of the county clerk shall be a
22 convenience to the voter in the delivery of the absentee
23 ballot and does not make the office of the county clerk a
24 polling place subject to the requirements of a polling place
25 in the Election Code other than is provided in this

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1 subsection. It shall be unlawful to solicit votes, display or
2 otherwise make accessible any posters, signs or other forms of
3 campaign literature whatsoever in the clerk's office.

4 Absentee ballots may be marked in person during the regular
5 hours and days of business at the county clerk's office from
6 8:00 a.m. on the fortieth day preceding the election up until
7 5:00 p.m. on the Saturday immediately prior to the date of the
8 election.

9 F. In marking the absentee ballot, the voter may
10 be assisted by one person of the voter's [own] choice [upon
11 the execution with the county clerk of an affidavit for
12 assistance stating therein that the voter meets at least one
13 of the conditions for receiving such assistance as is set
14 forth by the provisions of Section 1-12-12 NMSA 1978].

15 G. Commencing with the twentieth day prior to an
16 election, an absent voter may vote in person at the county
17 clerk's office or on an electronic voting machine at an
18 alternate location established by the county clerk. In class
19 A counties, the county clerk shall establish not less than
20 four alternate locations as a convenience to the voters.
21 Absentee voting may be done at the county clerk's office or an
22 alternate location from the twentieth day prior to the
23 election through the Saturday immediately prior to the
24 election. The county clerk shall ensure that procedures
25 established for processing an absent voter application and for

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1 voting by absentee ballot are complied with at each alternate
2 location.

3 [F-] H. Absentee ballots shall be air mailed to
4 applicants temporarily domiciled inside or outside the
5 continental limits of the United States not later than on the
6 Thursday immediately prior to the date of the election.

7 [G-] I. No absentee ballot shall be delivered or
8 mailed by the county clerk to any person other than the
9 applicant for such ballot.

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

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

23 Section 5. A new section of the Absent Voter Act is
24 enacted to read:

25 "[NEW MATERIAL] PREPARATION OF ELECTRONIC VOTING

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1 MACHINES. --

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

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

12 Section 6. A new section of the Absent Voter Act is
13 enacted to read:

14 "[NEW MATERIAL] SECRETARY OF STATE--EMERGENCY AUTHORITY. --
15 The secretary of state shall have emergency authority to
16 prescribe by rule procedures to accommodate the special
17 absentee ballot requirements brought on by activation of the
18 New Mexico national guard and reserve units or for individuals
19 who are overseas voters, and procedures for a special write-in
20 absentee ballot available at least ninety days prior to an
21 election to cover candidates for federal offices. "

22 Section 7. Section 1-6-6 NMSA 1978 (being Laws 1969,
23 Chapter 240, Section 132, as amended) is amended to read:

24 "1-6-6. ABSENTEE BALLOT REGISTER. --

25 A. For each election, the county clerk shall keep

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- 1 an "absentee ballot register" in which he shall enter:
- 2 (1) the name and [county] address of each
- 3 absentee ballot applicant;
- 4 (2) the date and time of receipt of the
- 5 application;
- 6 (3) whether the application was accepted or
- 7 rejected;
- 8 (4) the date of [~~delivery or~~] issue of an
- 9 absentee ballot in the county clerk's office or at an alternate
- 10 location or the mailing of an absentee ballot to the applicant;
- 11 (5) the applicant's precinct;
- 12 (6) whether the applicant is a voter, a
- 13 federal voter, a federal qualified elector or an overseas
- 14 citizen voter; and
- 15 (7) the date and time the completed absentee
- 16 ballot was received from the applicant by the county clerk or
- 17 the absent voter in the county clerk's office or at an
- 18 alternate location.

19 B. Within twenty-four hours after receipt of a

20 voter's application for an absentee ballot, the county clerk

21 shall mail either the ballot or a notice of rejection to the

22 applicant.

23 C. The absentee ballot register is a public record

24 open to public inspection in the county clerk's office during

25 regular office hours.

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1 D. The county clerk shall deliver to the [absentee]
2 absent voter precinct board on election day a complete list of
3 all absentee ballot applicants with applicable information
4 shown in the absentee ballot register for each applicant up to
5 [~~noon of the day~~] 5:00 p.m. on the Saturday preceding the
6 election. The county clerk shall deliver a signature roster
7 containing the same information as the lists to the [absentee]
8 absent voter precinct board.

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

16 Section 8. Section 1-6-9.1 NMSA 1978 (being Laws 1991,
17 Chapter 105, Section 13, as amended) is amended to read:

18 "1-6-9.1. [~~USING THE MARKSENSE BALLOT. --Any person~~]
19 VOTING BY ELECTRONIC BALLOT. --An absent voter voting on [the
20 ~~marksense~~] an electronic ballot shall secretly mark the ballot
21 [~~by completing the arrow () () in pencil directly to the~~
22 ~~right of the candidate's name or the proposed question. The~~
23 ~~voter shall then place the marked ballot in the official inner~~
24 ~~envelope and securely seal the envelope and then place the~~
25 ~~official inner envelope inside the official mailing envelope~~

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1 ~~and securely seal the envelope. The voter shall then complete~~
2 ~~the form on the reverse of the official mailing envelope]~~ in
3 accordance with the instructions on that ballot, and the vote
4 cast shall be recorded on an electronic voting machine."

5 Section 9. Section 1-6-10 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 136, as amended) is amended to read:

7 "1-6-10. RECEIPT OF ABSENTEE BALLOTS BY CLERK. --

8 A. The county clerk shall mark on each completed
9 official mailing envelope the date and time of receipt in the
10 clerk's office, record this information in the absentee ballot
11 register and safely keep the official mailing envelope unopened
12 in a locked ballot box until it is delivered [~~on election day~~]
13 to the proper absent voter precinct board or until it is
14 canceled and destroyed in accordance with law.

15 B. The county clerk shall accept completed official
16 mailing envelopes until 7:00 p.m. on election day. Any
17 completed official mailing envelope received after that time
18 shall not be delivered to a precinct board but shall be
19 preserved by the county clerk until the time for election
20 contests has expired. In the absence of a restraining order
21 after expiration of the time for election contests, the county
22 clerk shall destroy all late official mailing envelopes without
23 opening or permitting the contents to be examined, cast,
24 counted or canvassed. Before their destruction, the county
25 clerk shall count the numbers of late absentee ballots from

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1 voters, federal voters, overseas citizen voters and federal
2 qualified electors and report the number from each category to
3 the secretary of state.

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

12 Section 10. Section 1-6-11 NMSA 1978 (being Laws 1969,
13 Chapter 240, Section 137, as amended) is amended to read:

14 "1-6-11. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER
15 PRECINCTS-- EARLY PROCESSING OPTION. --

16 A. Unless the county clerk has chosen the early
17 processing option pursuant to Subsection B of this section, on
18 election day the county clerk shall deliver the absentee
19 ballots received [~~by him~~] prior to 7:00 p.m. on election day to
20 the special deputy county clerks for delivery to the absent
21 voter precinct boards. The absentee ballots for each absent
22 voter precinct shall be separately wrapped, and the special
23 deputy county clerk shall issue a receipt for all ballots
24 [~~taken by him~~] delivered for the county clerk. Upon delivery
25 of the absentee ballots to the absent voter precinct board, the

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1 special deputy county clerk shall remain in the polling place
2 of the absent voter precinct until he has observed the opening
3 of the official mailing envelope, the deposit of the ballot in
4 the locked ballot box and the listing of the names on the
5 official mailing envelope in the signature rosters. Upon such
6 delivery of absentee ballots, the special deputy county clerk
7 shall obtain a receipt executed by the presiding judge and each
8 election judge and he shall return such receipt to the county
9 clerk for filing. The receipts shall specify the number of
10 envelopes received by the special deputy county clerk from the
11 county clerk for each absent voter precinct and the number of
12 envelopes received by the absent voter precinct board from the
13 special deputy county clerk.

14 B. The county clerk may choose to deliver absentee
15 ballots to the absent voter precinct boards anytime after 7:00
16 a.m. the Friday immediately preceding election day if the
17 procedures for delivery set out in Subsection A of this section
18 are followed each time the special deputy county clerks deliver
19 absentee ballots to the absent voter precinct boards and the
20 county clerk gives the secretary of state written notice no
21 later than the Monday before the Friday immediately preceding
22 the election. The absent voter precinct boards may then begin
23 processing the absentee ballots on an electronic vote
24 tabulation machine pursuant to Section 1-6-14 NMSA 1978. For
25 the purposes of this section, "processing" means following the

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1 procedures in Section 1-6-14 NMSA 1978 that do not require
2 manual counting, tallying or registering of the results of
3 absentee balloting. Absentee ballots that cannot be processed
4 on, or are rejected by, an electronic voting machine shall be
5 placed in a locked ballot box that shall not be opened until
6 election day, at which time the absentee balloting results
7 shall be manually counted or registered.

8 C. At 7:00 a.m. on election day, the county clerk
9 shall deliver the electronic voting machines used for absentee
10 voting to the absent voter precinct board. The machines shall
11 not be used to vote on or count additional ballots for that
12 election, except that the absent voter precinct board may count
13 and tally any paper absentee ballots on the voting machine
14 after any ballots already counted and tallied have been secured
15 in a locked ballot box and provided a blank memory cartridge is
16 used. A special deputy county clerk shall issue a receipt for
17 each voting machine. Upon delivery of a voting machine, the
18 special deputy shall obtain a receipt executed by the presiding
19 judge and each election judge specifying the serial number and
20 the seal number of the machine and shall verify the public
21 counter number on the machine, and he shall return the receipt
22 to the county clerk for filing. Thereafter, the absent voter
23 precinct board shall proceed as specified in Sections 1-6-14
24 through 1-6-25 NMSA 1978. "

25 Section 11. Section 1-6-14 NMSA 1978 (being Laws 1971,
. 127363. 1

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1 Chapter 317, Section 11, as amended) is amended to read:

2 "1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER
3 PRECINCT BOARDS. --

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

8 B. If the voter's signature is missing, the
9 presiding judge shall write "Rejected" on the front of the
10 official mailing envelope. The election clerks shall enter the
11 voter's name in the signature rosters and shall write the
12 notation "Rejected--Missing Signature" in the "Notations"
13 column of the signature rosters. The presiding election judge
14 shall place the official mailing envelope unopened in an
15 envelope provided for rejected ballots, seal the envelope and
16 write the voter's name on the front of the envelope and deposit
17 it in the locked ballot box.

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

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

24 (2) the person offering to vote is not a
25 federal voter, federal qualified elector, overseas citizen

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1 voter or voter as provided in the Election Code.

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

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

12 (1) the election judges shall open the
13 official mailing envelopes and deposit the ballots in their
14 still-sealed official inner envelopes in the locked ballot box;
15 and

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

21 E. Prior to the closing of the polls, the election
22 judges and the presiding election judge may either remove the
23 absentee ballots from the official inner envelopes and count
24 and tally the results of absentee balloting or, under the
25 personal supervision of the presiding election judge and one

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1 election judge from each party, [~~register the results of each~~
2 ~~absentee ballot on a~~] count and tally the absentee ballot on an
3 electronic voting machine the same as if the absent voter had
4 been present and voted in person. It [~~shall be~~] is unlawful
5 for any person to disclose the results of [~~such~~] a count and
6 tally [~~or such registration on a voting machine~~] of absentee
7 ballots prior to the closing of the polls.

8 F. Absentee ballots shall be counted and tallied
9 [~~or registered on a lever voting machine or~~] by hand or on an
10 electronic voting machine as provided in the Election Code
11 [~~provided that any county with a population in excess of one~~
12 ~~hundred thousand shall count and tally or register absentee~~
13 ~~ballots on an electronic voting machine~~].

14 G. Absent voter precinct polls shall close at the
15 time prescribed by the Election Code for other polling places,
16 and the results of the election shall be certified as
17 prescribed by the secretary of state. "

18 Section 12. Section 1-6-15 NMSA 1978 (being Laws 1977,
19 Chapter 222, Section 13, as amended) is amended to read:

20 "1-6-15. CANVASS--RECOUNT OR RECHECK--DISPOSITION.--
21 [~~Where no~~] If voting machines are not used to register absentee
22 ballots, [~~such~~] the absentee ballots shall be canvassed,
23 recounted and disposed of in the manner provided by the
24 Election Code for the canvassing, recounting and disposition of
25 emergency paper ballots. [~~Where~~] If voting machines are used

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

11 Section 13. Section 1-6-16 NMSA 1978 (being Laws 1969,
12 Chapter 240, Section 141, as amended by Laws 1989, Chapter 368,
13 Section 2 and also by Laws 1989, Chapter 392, Section 15) is
14 amended to read:

15 "1-6-16. VOTING IN PERSON PROHIBITED. --

16 A. Except as provided in Section 1-6-16.1 NMSA
17 1978, no person who has been issued an [~~absent voter~~] absentee
18 ballot shall vote in person at his precinct poll.

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

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1 Upon receipt of the sworn affidavit, the county clerk shall
2 issue the voter a replacement absentee ballot.

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

6 Section 14. Section 1-6-16.1 NMSA 1978 (being Laws 1989,
7 Chapter 368, Section 1, as amended) is amended to read:

8 "1-6-16.1. ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN NOT
9 TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND COUNTING.--

10 A. [~~Any applicant~~] A voter who applies for an
11 absentee ballot [~~who~~] but has not received the absentee ballot
12 by mail as of the date of the election ~~may~~ present himself at
13 his assigned [~~precinct~~] polling place and, after executing an
14 affidavit of nonreceipt of absentee ballot, shall be permitted
15 to vote on an emergency paper ballot [~~or a marksense ballot~~].

16 B. The completed ballot shall be placed in an
17 official inner envelope substantially as prescribed by Section
18 1-6-8 NMSA 1978 and sealed. The official inner envelope shall
19 then be placed in an official envelope substantially as
20 prescribed for a transmittal envelope or mailing envelope in
21 Section 1-6-8 NMSA 1978. This envelope shall contain a form on
22 its back that identifies the voter by name and signature roster
23 number and [~~the~~] a printed statement to the effect that the
24 voter made application for an absentee ballot but had not
25 received it as of the date of the election and is permitted to

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1 vote by emergency paper ballot [~~or a marksense ballot~~].

2 C. The presiding election judge shall put all
3 [~~such~~] emergency absentee ballots in a special envelope
4 provided for that purpose by the county clerk, seal it and
5 return it to the county clerk along with the machine tally
6 sheets. The sealed envelope shall not be put in the locked
7 ballot box.

8 D. Upon receipt of the envelope containing [~~such~~]
9 emergency absentee ballots, the county clerk, no later than
10 forty-eight hours after the close of the election, shall remove
11 the transmittal envelopes and, without removing or opening the
12 inner envelopes, determine [~~that~~]:

13 (1) [~~such~~] if a voter did in fact make
14 application for an absentee ballot; and

15 (2) [~~no such~~] if an absentee ballot was
16 received by the county clerk from the voter by 7:00 p.m. on
17 election day.

18 E. Upon making [~~such~~] that determination, the
19 county clerk shall remove the inner envelope without opening
20 it, [~~destroy the transmittal envelope~~] retain the transmittal
21 envelope with the other election returns and place the unopened
22 inner envelope in a secure [~~place~~] container to be transmitted
23 to the county canvassing board to be tallied and included in
24 the canvass of that county for the appropriate precinct.

25 F. The secretary of state shall prescribe and

1 furnish the necessary envelopes for purposes of this section
2 and shall adopt rules and regulations deemed necessary to
3 preserve the secrecy of [~~the ballot~~] emergency paper ballots."

4 Section 15. REPEAL. -- Sections 1-6-5.2, 1-6-17 and 1-6A-1
5 through 1-6A-12 NMSA 1978 (being Laws 1991, Chapter 105,
6 Section 11, Laws 1969, Chapter 240, Section 142, Laws 1993,
7 Chapter 37, Sections 1 through 9 and Laws 1995, Chapter 165,
8 Sections 4 through 6, as amended) are repealed.

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

1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3
4
5

6 March 2, 1999
7

8 Mr. Speaker:
9

10 Your VOTERS AND ELECTIONS COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 860
14

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

17 1. On page 5, strike lines 16 through 18 in their
18 entirety. ,
19

20 and thence referred to the JUDICIARY COMMITTEE.
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underscored material = new
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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3 HVEC/HB 860

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4 Respectfully submitted,
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8 _____
9 Edward C. Sandoval, Chairman
10

11 Adopted _____

Not Adopted _____

12 (Chief Clerk)

(Chief Clerk)

13
14 Date _____
15

16 The roll call vote was 9 For 2 Against

17 Yes: 9

18 No: Buffett, Sandoval

19 Excused: Garcia

20 Absent: None
21
22

23 J: \99BillsWP\H0860
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underscored material = new
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