

MINUTES
of the
FOURTH MEETING
of the
ELECTION REFORM TASK FORCE

October 13-14, 2005
Room 307, State Capitol
Santa Fe

The fourth meeting of the Election Reform Task Force for the 2005 interim was called to order by Representative Edward C. Sandoval, co-chair, on Thursday, October 13, 2005, at 10:15 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Sen. Linda M. Lopez, Co-Chair
Rep. Edward C. Sandoval, Co-Chair
Rep. Janice E. Arnold-Jones (10/13)
Sen. Dianna J. Duran
Rep. Mary Helen Garcia
Mary Herrera
Melinda Hughes
Leland Lehrman
Jim Noel
Sen. Gerald Ortiz y Pino (10/13)
Charlotte Roybal
Karen P. Smyer
Mario Trujillo
Claire Weiner

Absent

Joe Goldberg
Audrey Jaramillo
Mary Ann Sedillo
Rebecca Vigil-Giron, Sec. of State

Advisory Members

Sen. Rod Adair
Sen. Dede Feldman (10/14)
Denise Lamb
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. W. Ken Martinez
Sen. Mary Kay Papen (10/13)
Rep. Debbie A. Rodella
J. Fred Vigil (10/13)

Sen. Ben D. Altamirano
Rhoda Coakley
Rep. Kandy Cordova
Rep. Justine Fox-Young
Rep. Ted Hobbs
Rep. Kathy A. McCoy
Sen. Michael S. Sanchez

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Jon Boller
Evan Blackstone
Tim Crawford

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Thursday, October 13

Voting Machine Demonstrations

Representatives from Election Systems & Software, Inc. (ES&S), and Sequoia Voting Systems, Inc. (Sequoia), introduced themselves and explained what products they would be demonstrating to the committee. Tom Ashberger from ES&S brought two machines that have been certified by the state, the iVotronic, a direct recording electronic system (DRE), to which a voter verifiable paper trail (VVPT) mechanism could be attached, and the Model 100 precinct ballot counter, which tabulates optical scan ballots. He also introduced Douglas Town, who is the company's executive liaison on disabilities, and who demonstrated ES&S's AutoMARK voting system, which has not yet been submitted to the state for certification. Sharee Noell from Sequoia brought her company's AVC Edge machine, a DRE system, which can also be outfitted with a VVPT mechanism, and its Optical Scan Insight system for tabulating optical scan ballots. It was noted that both the iVotronic and the AVC Edge systems fulfill the disability and language minority requirements of the federal Help America Vote Act of 2002 (HAVA). After the demonstrations of the different voting systems in the Capitol rotunda, the committee reconvened in Room 307.

Numerous questions were posed by committee members on HAVA requirements and related matters. It was stated that there needs to be at least one HAVA-compliant voting system in each of the approximately 1,400 polling places in the state, and that HAVA requires that those systems be in place beginning in 2006. The HAVA-compliant machines from the two companies both cost in the \$3,500 range, with an added \$1,000 or so per machine for the added VVPT mechanism (though this amount would be much more if there is a long ballot; for example, only 100 or so voters would fill the paper roll, requiring replacement of the VVPT cartridge since it is recommended that the whole cartridge be replaced when the paper roll is full). ES&S representatives said that their AutoMARK voting system would cost about \$4,500, plus another \$4,000 for an optical reader to go with it. The AutoMARK, they said, would allow blind and disabled voters to vote on a paper ballot without assistance, thus fulfilling the VVPT requirements in state law that go into effect in 2007. The ES&S representative recommended that the state go entirely with an optical scan system, in part to avoid potential problems associated with using a paper roll system on the direct recording electronic systems. The Sequoia representative said she would not recommend the optic scan system as the best way to go, partly because of greater predicted expense in the long run. Others mentioned that only one

optic scan machine is required in each precinct since this machine simply tabulates the votes, so not as many machines are needed statewide. Committee members discussed the pros and cons of the various systems as they apply to different-sized precincts with different needs.

The discussion then turned to the question of who should set up the machines for each election, with some task force members expressing concern about having to rely on private companies to set the function and test each machine for each election. Melinda Hughes said that most county clerks do not have the expertise or money to do this themselves and, therefore, have to rely on the vendors. Denise Lamb suggested that though it would be nice for each county to have its own Ph.D. for setting up and testing voting systems, it is not practical; but perhaps the state could partner with one of the national labs or with a university, like Georgia did with Kennesaw State University, to do this job in New Mexico. Several members of the task force said they thought this was a good idea. Other comments and questions included:

- the need for a requirement that voting system vendors use an open source code for input and output formats;
- how much it would cost to switch entirely to paper ballots that could be optically scanned, since in many places only 40 percent of the vote was on electronic machines anyway;
- the problems presented by having a straight-party ticket vote choice on voting machines and how that can contribute to undervotes; and
- the report on the preferences of disabled voters for the two HAVA-compliant machines certified in the state that has not been released by the secretary of state.

Voting Machine Considerations

Stephen Fettig and Charlie Stauss presented their concerns about the types of voting systems that will be used in the election process. They made the following points:

- the state needs well-tested systems to avoid problems on election day;
- paper ballots can be recounted even if there is a software error or some other problem with an electronic voting system;
- counting votes with optical scanning machines is very fast and recounts can be done at anytime;
- HAVA does not require the use of DREs;
- there should be no remote communication to voting machines;
- the state should strive for open source software and have data standards so that any vendor could input/output data to any machine—a copyright to one's software is adequate protection;
- DREs almost always increase costs of elections due to complexity, training requirements, maintenance costs, replacement frequency, etc.;
- new technology is forthcoming, but many machines that are HAVA-compliant, such as the AutoMARK, which is a much-improved type of voting system, are just not there yet; and
- the state should wait a year or so to purchase new voting systems, instead of being the test case on these new machines and technologies.

Leland Lehrman commented that sometimes more technology does not guarantee good results, and that the human element is always present. He suggested that the state may need to allocate resources to human beings to improve the process, and asked if the state could comply with HAVA without a technology/voting machine solution. Task force members then discussed how long the state has until it needs to comply with HAVA provisions, and if it has to take delivery of the new machines by January 1, 2006, or just have them ordered by that time. It was also suggested that the state bundle as much maintenance into the contracts as possible, since not all the available federal dollars would be spent on the machines themselves.

The co-chair asked that the final presentation scheduled for Thursday be combined with the first presentation on Friday.

Friday, October 14

Review of Laws 2005, Chapter 270

Ernie Marquez, director of the Bureau of Elections, and Denise Lamb, chief deputy clerk of Santa Fe County, delivered the following comments to the task force.

To the Election Reform Task Force

Submitted by Denise Lamb

Honorable Members:

The comments on Chapter 270, Laws 2005 in this document are solely mine, based on my experience in administration of the New Mexico Election Code; as president of the National Association of State Election Directors (NASSED); as vice chair of NASSED's Voting Systems Standards Board when that committee developed the 2002 Federal Voting Systems Standards; and based on my involvement with congressional staff in the development of HAVA.

My comments do not necessarily reflect the position of the Santa Fe County clerk.

Chapter 270 – Conflicts, Concerns and Possible Solutions

Section 5 – Unique Identifier

Concern: Several thousand New Mexico voters registered to vote many years ago without social security numbers. Most of these registrations were done before the Internal Revenue Service required a social security number for tax purposes. There are approximately 5,800 of these voters statewide. The voters appear on the roster at their polling place under the last four digits of their certificate of voter registration — a number they did not pay attention to when they registered and never memorized.

When the voter appears at the polls, the name and year of birth will match the information on the roster, but the last four digits of the social security number will not match the numbers on the

roster and the voter will then have to produce additional documentation. This requirement will also affect the same voters who vote by absentee ballot, because the last four digits of the social security number will not match the last four digits of the certificate number.

Santa Fe County has 851 of these voters with 72 percent of the total being over age 60 and 65 percent with a Hispanic surname. One of these voters is Governor Bruce King and another is former Secretary of State Ernestine Evans. This issue should be resolved so that elderly and minority voters do not feel extra scrutiny at the polls.

Recommended Solution: Send every one of these voters a letter requesting the social security number, which can be addressed by administrative rulemaking power of the secretary of state.

Related Issue:

From time to time, voters raise the issue of the use of the social security number and issues of possible identity theft. The legislature wisely has made these elements of voter registration privacy protected and has imposed felony penalties for their unauthorized use.

New Mexico has been using the social security number for voter identification purposes since 1934, when the Election Code first authorized its use. Since then, there has not been one reported case of identity theft from a certificate of voter registration. The state is exempt from the provisions of Section 7 of the Privacy Act by reason of being "grandfathered", as are five other states.

The legislature should be very cautious in relinquishing use of the social security number for voter registration purposes. There would be financial consequences under HAVA in having to re-configure the statewide voter file. Under Section 303 of HAVA, New Mexico is exempt from having to engage in data connections and contractual agreements between the Social Security Administration, Motor Vehicles Administration and other state or federal agencies. In addition, restricting use to only the last four digits of the social security number would result in an unreliable match for the purposes of felony convictions and death records.

Section 9 – Mailing of Voter Identification Cards

Concern: This is going to be expensive. By the time of the next primary election and if first class postage does not rise, it will cost the state over \$400,000 to accomplish this mailing. If the legislature agrees that this money is well spent, then it should be a regular appropriation to the secretary of state every two years and not just for the next election.

Recommended Solution: The counties should receive the money to do this in advance and then send the proof of expenditure to the secretary of state. The postal service does not extend credit for election mailings, and counties having to budget for this mailing in advance will result in some other equally important election function having less money.

Section 11 – A Single Training Manual

Concern: Because precinct training manuals also contain instructions on operation of the voting system and counties are permitted to choose any certified system, a single manual will include all the voting systems in use within the state. Including instructions on different voting systems not in use within a county will cause confusion for precinct boards. Also, the language requiring training of precinct boards in the county and the state canvassing process should be deleted. Precinct boards have no duties in the canvass. The emphasis for precinct board training should be on the duties at the polling place, which if improperly carried out can have a negative impact on the canvass.

Recommended Solution: Design a single precinct training manual on the administrative procedures to be used at the polling place. This manual should be designed in a three-ring binder format. Pages relating to the operation of the various voting systems can be inserted. This format will also allow for changes in procedures to be inserted into the binder as state laws or administrative rule changes. A considerable savings could be realized if manuals do not have to be reprinted in their entirety for each election cycle.

Amend section to delete language relating to instruction in the county and state canvass process.

Section 15 – County Canvass Observers

Concern: Santa Fe County, in a general election, could have as many as 52 major party candidate observers. This figure does not include minor party candidate observers or "election-related" organization observers. There is simply no space for this many people to sit or stand around existing work stations (32" x 58" of available space per station in Santa Fe County) while provisional and in-lieu-of absentee ballots are being qualified. The statute restricts access to the "room". Is Bernalillo County's warehouse a "room"? Are Santa Fe County's cubicles a "room"? This section needs to be amended; otherwise, the canvassing process will become chaotic and unmanageable. The county staff cannot secure the election returns, conduct the canvass and engage in crowd control at the same time without undesirable results.

Permitting the chief election officer of the county to determine how many observers is "functional" is a step in the right direction; however, this is bound to lead to disagreements that might end up before the courts and delay the canvassing process.

The most serious concern with this section is the conflict between it and federal law. Section 302 of HAVA states: "Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot."

Section 15 permits observers to "observe and document" the process of "verifying paper ballots". In the verification of provisional ballots, the voter's eligibility is determined by viewing the voter's registration on the computerized voter file or, if necessary, the original certificate of registration. Observers will be able to view and "document" this information. The voter data includes privacy-protected information, such as date of birth and social security number. The

observers will also have access to the name of the voter, party affiliation and whether or not the ballot is to be counted. This appears to directly conflict with the federal law.

Recommended Solution: Amend this section. There needs to be some consideration of what constitutes a "room". The Office of the Attorney General should be asked to look at the apparent conflict between federal and state law.

Section 20 – First-Time Registrants by Mail

Concern: Paragraph (4) of Subsection I of Section 1-4-5.1 NMSA 1978 was amended to expand the documents that a first-time registrant by mail can submit as proof of identification. One of the permitted documents is "a voter identification card".

A first-time registrant in New Mexico cannot possibly possess a voter identification card, because this person has never been registered before and the county clerk has never sent this person a card.

Recommended Solution: Amend this language out of the statute and allow the other documents to serve as identification for first-time voters by mail.

Section 41 – Third-Party Agents Collecting Absentee Ballot Applications

Concern: Third-party agents (unlike third-party registration agents, this term is not defined in the Election Code) are required to submit absentee ballot applications within 48 hours of their completion.

In order for the secretary of state to establish procedures making the application traceable to the person and organization, there needs to be some process to register both people and organizations. The language added for third-party registration agents cannot just be transferred to this process without more specific language in the statute to apply to these individuals and organizations.

A "traceable" form means that each absentee ballot application, like a certificate of registration, needs a unique number. Presently, the application is posted on the secretary of state's web page so any voter can obtain a copy. In order to provide traceable numbers, the application will have to be removed from public access and made available only through the secretary of state and county clerks.

Question: How can the state or county clerks track exactly when the voter filled out the application to ensure that it is turned in within 48 hours?

Recommended Solution: Amend the statute to set up a procedure similar to registration of third-party registration agents, although how effective that statute will be remains to be seen. Early experiences indicate it is easily circumvented.

Another solution is to remove these third-party agents from the process completely. The previous statute on absentee voting required the voter to directly contact the county clerk and request an application for absentee voting. In recent years, the absentee process has become more driven by parties, candidates and special interest groups. This has caused considerable damage to the integrity of the absentee voting process.

There have been many reports in recent elections from voters who have received an absentee ballot, but deny that they ever applied for one. There are also reports from voters who believe that the ballot they receive is a mistake, discard it and then find out on election day (when they tell the truth) that they cannot be issued another ballot.

The legislature might want to consider if the involvement of so many "third-party" organizations in voter registration, absentee voting and the canvass of elections is actually adding to the integrity of the process or damaging the integrity of the process.

Section 42 – Absentee Application for Federal Qualified Elector or Overseas Voter

Concern: HAVA exempts first-time registrants by mail that are military voters or disabled from the identification requirements of HAVA, because Congress recognized that it might be a hardship for these voters to access copying machines.

Recommended Solution: Extend the same exemption in state statute.

Section 43 – Issuance of Absentee Ballot

Concern: In 2003, the legislature amended Section 1-6-4.1 NMSA 1978 to permit the "electronic transmission" (email or facsimile) of ballots to and from military and overseas absentee voters. The voter is required to waive secrecy of the ballot on an affidavit.

Section 43 now amends Subsection G of Section 1-6-4 NMSA 1978 to permit any voter (inside or outside the United States) to request that a ballot be electronically transmitted to this voter as late as the Friday before the election. There is no provision made for return transmittal or a waiver of secrecy of the ballot.

A voter outside the country and most within the United States can have little real expectation of the ballot being returned by conventional mail. If a voter can pay for special shipping, there is some possibility of the voter's ballot being returned timely, but for the average voter, this is a bad joke.

Also, the legislature should consider the wisdom of any return transmittal by email. This type of ballot transmittal is risky because along with the ballot, malicious computer viruses could infect a county clerk's computer systems at a very critical time in the election process and negatively impact election security.

If the legislature believes that the stand-alone, non-networked voting systems in use in New Mexico pose a danger to election security, the idea of electronic transmission of ballots to election offices by unsecured home computers should be terrifying.

Recommended Solution: Because the Pentagon's Federal Overseas Voting Program invested over \$60,000,000 in an Internet voting program that was abandoned and because New Mexico has made no investment in network security for this purpose, this section should be deleted from the law.

Section 48 – Permitting Absentee Ballots to be Returned to Polling Place

Concern: In a positive effort to receive timely reporting of the absentee ballot count, Section 50 permits the early tabulation of absentee results. With this provision, it would be possible to have absentee results very early on election night.

However, permitting absentee ballots to be returned to polling places is counter-productive. In many rural counties, the distance from the polling place to the county courthouse is considerable and absentee precinct boards may have to wait for several hours after the polls close before having the results.

A further complication is that Subsection G of Section 1-6-14 NMSA 1978 of the Election Code provides that "Absent voter precinct polls shall close at the time prescribed by the Election Code for other polling places....". That closing time is 7:00 p.m. This conflict should be resolved.

Recommended Solution: If the legislature wishes more timely reporting of the absentee vote count, allowing delivery of absentee ballots to the polling places will not accomplish the intended outcome, because the absentee precinct board will have to wait until all the precinct returns have been delivered to report results. The voter should bear some responsibility for delivery of absentee ballots by 7:00 p.m. on election day. The conflict between the two sections of the code should be resolved.

Section 51 – Handling Absentee Ballots by Absent Voter Precinct Boards

Concern: Paragraph (2) of Subsection D of Section 1-6-14 NMSA 1978 specifies that the absentee precinct board may insert ballots for tabulation between 8:00 a.m. and 5:00 p.m. on the five days preceding election day.

However, Section 1-6-23 NMSA 1978 states that the county clerk shall determine the hours during which the absent voter precinct shall be open for delivery and registering of absentee ballots on the five days preceding election day.

Recommended Solution: This conflict between statutes should be resolved before the next election.

Section 56 – Voting System – Voter Verified Paper Trail

Concern: Section 56 specifies that the "voter verified and auditable paper trail" is to be used as the record of the election for the purposes of recount and a "true and correct record of the voter's choices". In other words, it is the "ballot". However, it is not defined as a ballot in the Election Code, nor is it given the same security protections as a ballot, thereby making it more vulnerable to tampering. Questions that must be asked are: Is the printer producing the "paper trail" to have a seal, as do voting machines and ballot boxes? If so, how do precinct workers deal with paper jams? Who is authorized to open the printer and under what circumstances? Can "paper trails" be impounded? Do the "paper trails" from a single machine need to remain intact—in other words, how are they handled for a recount? How long is the tape from one machine? If the tape remains intact, that limits the number of people who can recount—if it does not, there is no integrity.

Recommended Solution: Amend the Election Code to address these issues.

Concern: Section 56 mandates that counties replace their existing voting systems with either a paper ballot system or a voting system with the so-called "voter verified paper trail". One huge issue is the cost, which the secretary of state will address; however, the legislature needs to be aware that counties still owe the State Board of Finance for outstanding loans on their existing equipment.

There are pro and con arguments that need to be considered on both sides of the "voter verified paper trail" issue. These arguments need to be weighed carefully, or the new systems used may result in less voter confidence, usability and reliability. Some of these arguments, for the purpose of discussion, are:

Discussion Item 1:

Proponents claim that the use of the "voter verified paper trail" will prevent hackers or insider election officials, intent on manipulation of the outcome, from tampering with the voting system and the voter will have assurance the ballot is counted as cast and that ballots are auditable.

However, to be discussed is whether this is truly the case. What would prevent a sophisticated tamper-minded individual from manipulating the software that controls the printer that produces the paper trail? If physical or remote access is possible that enables tampering to the system itself, there is nothing to prevent tampering to the printer software, which is an integral part of the system. The printout is created by the computer and only in the event of a total recount would the tampering be discovered. Also, if the hypothetical hacker is clever enough to insert a malicious code into a voting system, is it not logical to assume that the number of votes altered would be large enough to avoid any automatic recount? Is it not also safe to assume that the software could be manipulated so any detection of changed votes by the voter could be corrected in a subsequent printout?

Another issue is how many voters will actually check the paper. In Clark County, Nevada, 36 percent of voters did not want to spend the time necessary to review the printout. Will voters notice any errors? In a recent study done at the Massachusetts Institute of Technology, a significant number of voters simply did not notice errors on the paper trail system (and the participants were students in the Electrical Engineering and Computer Sciences Departments!).

Also, the paper trail will not add integrity to the system unless every voter is required to review it. If even one voter neglects to review the paper printout, its integrity as an audit trail is worthless, because after the fact, a voter or candidate can challenge the paper trail as not having been reviewed by every voter.

Fourth, does paper actually add integrity to the voting system? While there have been numerous instances of tampering with paper ballots historically and in recent elections (2004, Hamilton Co., Tennessee; 2002, Broward Co., Florida; 2002, Illinois; 2001, San Francisco, California; and 2000, Benton Co., Arkansas), there has not been one documented instance of fraud with electronic systems. Even without intentional tampering, a human programming error in Bernalillo County in 2000 resulted in 60,000 straight-party absentee paper ballots not being counted for nearly a week after the election. A complicating factor was that the county clerk had ballots printed on paper rather than cardstock that could not be read by the machine, resulting in a protracted hand tally and much media attention and scrutiny. This human error did not instill voter confidence.

Electronic voting systems have been used for 20 years in hundreds of jurisdictions and thousands of elections and there is not a single incident supporting the conclusion that any program manipulation has occurred or that there has been an election result altered by a hacker or a conspiracy by local election officials manipulating election results through modification of either programming or reporting.

Discussion Item 2:

Individuals in favor of the "paper trail" point to New Mexico's "high" undervote rate as evidence that voting systems were misprogrammed or tampered with in the 2004 election.

However, the data needs to be placed in historical perspective. What are historic undervote rates in New Mexico and what are they on different types of voting equipment used historically? What are causes of undervoting that are not related to voting equipment?

Looking at the historic undervote in New Mexico one easily observes that the 2.5 percent undervote in New Mexico in 2004 is not atypical. There have been 19 presidential, gubernatorial or U.S. Senate (top of the ballot at the time) elections in New Mexico that were equal to or exceeded the 2.5 percent undervote reported in 2004. These were: 1926 (2.5 percent), 1932 (3.7 percent), 1938 (3.5 percent), 1948 (4 percent), 1952 (2.5 percent), 1958 (3.8 percent) and 1966 (5.7 percent). These elections were all held with hand-counted paper ballots. On mechanical lever voting machines, the undervote rates were: 1970 (3.8 percent), 1972 (2.6 percent), 1974 (3.1 percent), 1978 (3.7 percent), 1982 (3.2 percent) and 1986 (3.4 percent).

Finally, when the state began its transition to optical scan and DRE voting systems, undervote rates were: 1988 (2.7 percent), 1990 (4.3 percent), 1992 (3.7 percent), 1994 (4.7 percent), 1996 (4.1 percent), and 1998 (3.9 percent).

Perhaps one of the causes of undervoting in New Mexico on electronic voting machines, in particular the first generation DREs, is straight-party voting. If a voter does not read the directions, presses the straight party option and then decides (to be extra sure) to press the button for president, the presidential vote is deselected and no vote has been cast.

Until recently, few studies have been done regarding undervoting, although election administrators have been aware of the phenomenon for years. A recent study done by Stephen Knack and Martha Kropf at the University of Maryland indicates that undervoting is related to race, class and poverty. This would tend to indicate that undervoting may be a voter education issue, rather than a technology issue, and as such, the legislature may want to undertake a systematic program of voter education.

One of the great ironies of the paper versus electronic voting system debate is that the new generation of electronic voting systems can help eliminate undervoting. Unlike the first generation systems, new systems prompt the voter when undervoting is detected and multiple opportunities are given to correct the ballot. Valencia County saw a decline in undervoting when it transitioned to a new system.

Discussion Item 3:

How will the "paper trail" provide verification for Native Americans with an unwritten language?

New Mexico has nine Native American languages and eight of these are oral languages and not written. Will Native American voters have the same opportunity to "verify" their choices as all other voters? What about visually impaired or blind voters?

Discussion Item 4:

Currently, the certified voting systems with a "paper trail" are on a printer with a continuous take up spool. That is, a voter with permit #6 will be the sixth voter on a "paper trail" system. It is easily possible (election records are all public) to use the "paper trail" to determine exactly for whom a voter voted. Does this violate the Constitution of New Mexico and the Election Code in terms of secrecy of the ballot?

Recommended Solution: The legislature may have been hasty in enacting this section of the Election Code. Issues of usability by pollworkers and voters have not been studied and because only two jurisdictions in the United States have conducted elections with "paper trail" machines, there is little research to draw on for an objective opinion.

Much research is currently being done on voting methods that provide additional security. These include the feasibility of open source codes, source codes escrowed at the National Software Library at the National Institute of Standards and Technology and cryptographic systems. Also promising is random parallel monitoring of systems, where a system is pulled out of service on election day to check its functions.

In making a decision on this complicated issue prior to reviewing available research and looking at other points of view, New Mexico may find itself with a complicated and unworkable voting system that decreases, rather than increases, voter confidence.

It may be appropriate, if the legislature believes so, to use optical scan paper ballots rather than the untested "paper trail" systems. However, the legislature should be aware that technological advances are rapidly changing the voting systems available and in a relatively short period of time, the state may wish to take advantage of new technology. Also, the legislature needs to be aware of the long history of problems and fraud associated with paper ballots.

Section 60 – Election Day Delivery of Absentee Ballot by Voter

Concern: See Section 48.

Section 70 – Provisional Voting Information to Voter

Concern: Title III of HAVA requires that each state enact an administrative appeals process for alleged violations of Title III, which includes provisional voting.

The New Mexico secretary of state has enacted an administrative appeal process (1.10.18 NMAC) and created a toll-free number (which is detached from the provisional ballot envelope at the polls and given to each provisional voter) for voters to inquire as to the disposition of their ballot and procedures for filing an administrative appeal.

Creating an additional appeal process at the local level is duplicative. The cost and administrative problem created in sending certified mailings during the canvass of the election is overly burdensome.

Recommended Solution: Repeal this section.

Section 75 – Random Voting System Check – Recount

Concern: The word "random" is not defined, nor is the secretary of state given authority by rule to define it. Who chooses the precincts? How are they chosen?

It is instructive to note that the recent gubernatorial recount in Washington State (almost entirely paper ballots) resulted in three different totals, two as a result of hand counts, which were different each time. Subsequent litigation was not settled until months after the election.

Recommended Solution: If the legislature believes that random recounts for the office of president or governor adds to the integrity of the process, either the statute or administrative rule should define the terms used in this section.

Discussion

Mario Trujillo urged everyone to take these suggestions very seriously. In response to a comment that Ms. Lamb's concerns about the county canvass observer provisions are anticipating something that is not likely to happen, and that the process needs to be transparent, Ms. Lamb said she agrees that the process needs to be transparent, but that verification of ballots is different from counting ballots and that it would still be best to attempt to define terms before an election contest occurs. Representative Madalena asked what the responsibility of the secretary of state is for educating voters, especially Native American voters, in order to encourage more participation in the process. Mr. Marquez and Ms. Lamb said that the Bureau of Elections has not had a new position added to the bureau since 1984, and that currently the bureau consists of five people and has never even had a deputy director. Representative Garcia offered to carry a bill creating more positions in the Bureau of Elections. Representative Lujan expressed concern about the voters delivering absentee ballots to the polls and the delay that would cause in reporting election returns. He also said that he hopes the committee would talk about minor party filing deadlines at its next meeting. Other suggestions and topics discussed included:

- changing Section 60 of Chapter 270 to indicate who should deliver absentee ballots to the absent voter precinct polls;
- having the secretary of state, instead of county clerks, mail out voter identification cards before the general election instead of the primary election;
- allocating more resources to the election process;
- elimination of the straight-party voting option to alleviate voter confusion and decrease undervotes that are due to voter confusion;
- spoiling absentee ballots at the polling place and allowing voters to vote at precincts on election day;
- putting suggestions on election fixes on a web site;
- delaying the purchase of VVPT machines since the ones demonstrated today are actually confusing to use;
- having individuals get authorization and training to be registration agents from county clerks, and having them swear to uphold the law and be residents of New Mexico;
- repealing provisions allowing absentee ballots to be delivered to polling places on election day;
- better education of precinct workers to help cut down on mistakes;
- allowing representatives from political parties to attend pollworker training sessions; and
- banning early election returns from being broadcast before polls close, and not requiring reporting of returns by county clerks for 24 to 48 hours after the polls close so they would have time to do their work.

The minutes from the previous meeting were approved without objection. The co-chairs asked staff to summarize the task force's work for the next meeting so that it could consider what recommendations to make to the legislature for the upcoming session. The meeting adjourned at 1:00 p.m.