HOUSE BILL 383

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO ELECTIONS; CONFORMING THE ELECTION CODE TO THE
REQUIREMENTS OF THE FEDERAL HELP AMERICA VOTE ACT OF 2002;
PROVIDING FOR SECURITY OF VOTERS' PERSONAL INFORMATION DURING
REGISTRATION; PRESCRIBING PENALTIES; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978.

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

    Section 1. A new section of Chapter 1, Article 1 NMSA
1978 is enacted to read:

    "[NEW MATERIAL] ELECTION CYCLE.--As used in the Election
Code, "election cycle" means the period between the end of a
general election and the end of the following general
election."

    Section 2. A new section of the Election Code is enacted
to read:

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1   "[NEW MATERIAL] CONDUCT OF ELECTIONS--VOTER INFORMATION.--

2   The secretary of state shall issue rules describing the voter

3   information the county clerks shall display, in accordance with

4   the federal Help America Vote Act of 2002, in each polling

5   place on election day and in each county clerk's office and

6   alternate location where absentee or early voting is taking

7   place."

8   Section 3.   A new section of the Election Code is enacted

9   to read:

10   "[NEW MATERIAL] CONDUCT OF ELECTION--PROVISIONAL VOTING--

11   INFORMATION TO VOTER--STATUS OF VOTER'S BALLOT.--

12   A.   If a voter is required to vote on a provisional

13   paper ballot, the election judge shall give the voter written

14   instructions on how the voter may determine whether the vote

15   was counted and, if the vote was not counted, the reason it was

16   not counted.

17   B.   The county clerk shall establish a free access

18   system, such as a toll-free telephone number or internet web

19   site, that a voter who casts a provisional paper ballot may

20   access to ascertain whether the voter's ballot was counted and,

21   if the vote was not counted, the reason it was not counted.

22   Access to information about an individual voter's provisional

23   ballot is restricted to the voter who cast the ballot."

24   Section 4.   A new section of the Election Code is enacted

25   to read:

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1   "[NEW MATERIAL] CONDUCT OF ELECTION--PROVISIONAL PAPER

2   BALLOTS--USE WHEN POLLING HOURS EXTENDED--DISPOSITION.--

3   A.   If polling hours are extended by court order or

4   any other order pursuant to a state law in effect at least ten

5   days before the date of that election, during the extended

6   hours, a voter shall vote only on a provisional paper ballot.

7   B.   A provisional paper ballot cast pursuant to this

8   section shall be separated and held apart from provisional

9   paper ballots cast by those not affected by the order. The

10   ballot shall be counted if:

11   (1)   there is no legal challenge to the order

12   extending polling hours within ten days of the election; or

13   (2)   a legal challenge to the order extending

14   polling hours is not sustained."

15   Section 5.   A new section of the Election Code is enacted

16   to read:

17   "[NEW MATERIAL] ADMINISTRATIVE COMPLAINTS--PROCEDURES.--

18   A.   The secretary of state shall adopt rules for an

19   administrative procedure for hearing complaints on violations

20   of the provisions of Title III of the federal Help America Vote

21   Act of 2002, including provisions related to voting system

22   standards, provisional voting procedures, voter registration

23   procedures and operational standards of the statewide voter

24   registration system.

25   B.   A person who determines that there is a

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1   violation or that a violation is about to occur pursuant to

2   this section may file a complaint with the secretary of state.

3   Complaints may be consolidated by the secretary.

4   C.   Complaints shall be in writing, signed and sworn

5   by the person filing the complaint and notarized.

6   D.   The hearing shall be on the record if the

7   complainant requests.

8   E.   If the hearing officer determines that there is

9   a violation, an appropriate remedy shall be provided. If there

10   is no violation, the complaint shall be dismissed and the

11   results of the hearing made available to the public.

12   F.   A final decision shall be made within ninety

13   days of the filing of the complaint unless the complainant

14   consents to extending the deadline. If the deadline is not

15   met, the complaint shall be resolved within sixty days through

16   alternative dispute resolution procedures established pursuant

17   to the Governmental Dispute Resolution Act. Records and

18   materials from the hearing shall be available for use in an

19   alternative dispute resolution procedure."

20   Section 6. A new section of the Election Code is enacted

21   to read:

22   "[NEW MATERIAL] PROVISIONAL PAPER BALLOTS--REQUIRED

23   INFORMATION.--

24   A.   At a minimum, the following information shall be

25   printed on the outer envelope for a provisional paper ballot:

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1   (1)   the name and signature of the voter;

2   (2)   the voter's registered address, both

3   present and former if applicable;

4   (3)   the voter's date of birth;

5   (4)   the reason for using the ballot;

6   (5)   the precinct and the polling place at

7   which the voter has voted;

8   (6)   the voter's social security number; and

9   (7)   sufficient space to list the disposition

10   of the ballot after review by the county clerk.

11   B.   A provisional paper ballot shall not be rejected

12   for lack of the information required by this section as long as

13   the voter provides a valid signature and sufficient information

14   to determine eligibility."

15   Section 7.   A new section of the Election Code is enacted

16   to read:

17   "[NEW MATERIAL] PROVISIONAL PAPER BALLOTS--DISPOSITION.--

18   A.   Upon closing of the polls, provisional paper

19   ballots shall be delivered to the county clerk, who shall

20   determine if the ballots will be counted prior to certification

21   of the election.

22   B.   A provisional paper ballot shall not be counted

23   if the registered voter did not sign either the signature

24   roster or the ballot's envelope.

25   C.   If there is no record of the voter ever having

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1   been registered in the county, the voter shall be offered the

2   opportunity to register and the provisional paper ballot shall

3   not be counted.

4   D.   If the voter was registered in the county, the

5   registration was later canceled and the county clerk determines

6   that the cancellation was in error, the voter's registration

7   shall be immediately restored and the provisional paper ballot

8   counted.

9   E.   If the county clerk determines that the

10 cancellation was not in error, the voter shall be offered the

11 opportunity to register at the voter's correct address, and the

12 provisional paper ballot shall not be counted.

13   F.   If the voter is a registered voter in the

14 county, but has voted on a provisional paper ballot at a

15 polling place other than the voter's designated polling place,

16 the county canvassing board shall ensure that only those votes

17 for the positions or measures for which the voter was eligible

18 to vote are counted.

19   G.   If the county clerk finds that the voter who

20 voted on a provisional paper ballot at the polls has also voted

21 an absentee ballot in that election, the provisional paper

22 ballot shall not be counted.

23   H.   The county canvassing board shall prepare a

24 tally displaying the number of provisional paper ballots

25 received, the number found valid and counted, the number

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1   rejected and not counted and the reason for not counting the

2   ballots as part of the canvassing process and forward it to the

3   secretary of state immediately upon certification of the

4   election.

5   I.   The secretary of state shall issue rules to

6   ensure securing the secrecy of the provisional paper ballots

7   and protecting against fraud in the voting process."

8   Section 8.   A new section of the Election Code is enacted

9   to read:

10   "[NEW MATERIAL] ABSENTEE BALLOTS--OVERSEAS VOTERS--

11   REPORTS.--

12   A.   Within thirty days following a general election,

13   the county clerk shall report to the secretary of state the

14   number of absentee ballots transmitted to overseas voters and

15   federal qualified electors for the election and the number of

16   those ballots returned, rejected or counted.

17   B.   Within ninety days following a general election,

18   the secretary of state shall report to the federal election

19   assistance commission the combined absentee ballot numbers

20   submitted by the counties pursuant to this section."

21   Section 9.   A new section of Chapter 1, Article 9 NMSA

22   1978 is enacted to read:

23   "[NEW MATERIAL] DEFINITION OF A VOTE.--

24   A.   A vote on a touch-screen direct recording

25   electronic voting system or electronic voting system consists

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1   of a voter's selection of a candidate or answer to a ballot

2   question selected by the electro-optical ballot display of the

3   device, followed by the voter activating the cast vote

4   indicator.

5   B.   A vote on a paper ballot card used on an

6   electronic vote tabulating marksense voting system, optical

7   scan vote tabulating system or high-speed central count

8   marksense vote tabulator consists of a voter's selection of a

9   candidate or answer to a ballot question indicated in the

10   voting response area of the paper ballot card marked in

11   accordance with the instructions for that ballot type. If the

12   paper ballot card is marked indistinctly or not marked

13   according to the instructions for that ballot type, only a

14   cross (X) or a check (%) within the voting response area shall

15   be counted. A vote on a paper ballot card shall also be

16   counted if, on a ballot type requiring the completion of an

17   arrow to indicate a voter's selection, the voter has marked an

18   arrowhead on the tail portion of the arrow in the voting

19   response area."

20   Section 10.   Section 1-4-5 NMSA 1978 (being Laws 1969,

21   Chapter 240, Section 63, as amended by Laws 1993, Chapter 314,

22   Section 6 and also by Laws 1993, Chapter 316, Section 6) is

23   amended to read:

24   "1-4-5.   METHOD OF REGISTRATION--<u>UNLAWFUL USE OF</u>

25   <u>INFORMATION--PENALTY</u>.--

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1   A.   A qualified elector may apply to a registration

2   officer for registration.

3   B.   The registration officer shall fill out each of

4   the blanks on the original and the voter's copy of the

5   certificate of registration by typing or printing in ink.

6   Carbon paper may be used between the original and the voter's

7   copy.

8   C.   The qualified elector shall subscribe a

9   certificate of registration as follows:

10   (1)   a person shall sign his original

11   certificate of registration using his given name, middle name

12   or initial and last name; or

13   (2)   if any qualified elector seeking to

14   register is unable to read and write either the English or

15   Spanish language or is unable to read or write because of some

16   physical disability, the certificate of such person shall be

17   filled out by a registration officer and the name of the

18   qualified elector so registering shall be subscribed by the

19   making of his mark.

20   D.   When properly executed by the registration

21   officer, the original and the voter's copy of the certificate

22   of registration shall be presented, either in person or by mail

23   by the qualified elector or by the registration officer, to the

24   county clerk of the county in which the qualified elector

25   resides.

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1   E.   Only when the certificate of registration is

2   properly filled out, subscribed by the qualified elector and

3   accepted for filing by the county clerk as evidenced by his

4   signature or stamp and the date of acceptance thereon shall it

5   constitute an official public record of the registration of the

6   qualified elector. Before a certificate of registration is

7   filed with the county clerk, it is unlawful for any information

8   required on the certificate to be copied, conveyed or used by

9   anyone other than the person registering to vote.

10   F.   A person who unlawfully copies, conveys or uses

11   information from a certificate of registration is guilty of a

12   fourth degree felony."

13   Section 11.   Section 1-4-5.1 NMSA 1978 (being Laws 1993,

14   Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,

15   as amended) is amended to read:

16   "1-4-5.1.   METHOD OF REGISTRATION--FORM.--

17   A.   A qualified elector may apply for registration

18   by mail or in the office of the county clerk.

19   B.   Certificate of registration forms may be

20   requested from the secretary of state or any county clerk in

21   person, by telephone or by mail for oneself or for others.

22   C.   Except as provided in Subsection D of this

23   section, a qualified elector who wishes to register to vote

24   shall fill out completely and sign the certificate of

25   registration.   The qualified elector may seek the assistance of

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1   any person in completing the certificate of registration.

2   D.   A qualified elector who has filed for an order

3   of protection pursuant to the provisions of the Family Violence

4   Protection Act and who presents a copy of that order from a

5   state or tribal court to the registration officer shall not be

6   required to provide address information on the certificate of

7   registration.

8   E.   Completed certificates of registration may be

9   mailed or presented in person by the registrant or any other

10   person to the secretary of state or presented in person by the

11   registrant or any other person to the county clerk of the

12   county in which the registrant resides.

13   F.   If the registrant wishes to vote in the next

14   election, the completed and signed certificate of registration

15   shall be delivered or mailed and postmarked at least twenty-

16   eight days before the election.

17   G.   Upon receipt of a certificate of registration,

18   the secretary of state shall send the certificate to the county

19   clerk in the county where the qualified elector resides.

20   H.   Only when the certificate of registration is

21   properly filled out, signed by the qualified elector and

22   accepted for filing by the county clerk as evidenced by his

23   signature or stamp and the date of acceptance thereon and when

24   notice has been received by the registrant shall it constitute

25   an official public record of the registration of the qualified

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1   elector.

2   I.   The secretary of state shall prescribe the

3   form of the certificate of registration, which form shall be

4   a postpaid mail-in format and shall be printed in Spanish and

5   English.   The certificate of registration form shall be clear

6   and understandable to the average person and shall include

7   brief but sufficient instructions to enable the qualified

8   elector to complete the form without assistance.   The form

9   shall also include:

10   (1)   the question "Are you a citizen of the

11   United States of America?" and boxes for the applicant to

12   check to indicate whether the applicant is or is not a

13   citizen;

14   (2)   the question "Will you be at least

15   eighteen years of age on or before election day?" and boxes

16   for the applicant to check to indicate whether the applicant

17   will be eighteen years of age or older on election day;

18   (3)   the statement "If you checked 'no' in

19   response to either of these questions, do not complete this

20   form."; and

21   (4)   a statement informing the applicant

22   that:

23   (a)   if the form is not submitted in

24   person by the applicant and the applicant is registering for

25   the first time in New Mexico, the applicant must submit with

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1   the form a copy of a current and valid photo identification,

2   utility bill, bank statement, government check, paycheck or

3   other government document that shows the name and address of

4   the applicant; and

5   (b)   if the applicant does not submit

6   the required identification, he will be required to do so

7   when he votes in person or absentee."

8   Section 12.   Section 1-4-11 NMSA 1978 (being Laws 1969,

9   Chapter 240, Section 67, as amended) is amended to read:

10   "1-4-11.   DUTIES OF COUNTY CLERK--UPON RECEIPT OF

11   CERTIFICATES.--

12   A.   Upon receipt of a complete certificate of

13   registration, if in proper form, the county clerk shall

14   determine if the qualified elector applying for registration

15   is already registered in the registration records of the

16   county.   If the qualified elector is not already registered

17   in the county and if the certificate of registration is

18   received within the time allowed by law for filing

19   certificates of registration in the county clerk's office,

20   the county clerk shall sign or stamp, in the space provided

21   therefor on each copy of the certificate, his name and the

22   date the certificate was accepted for filing in the county

23   registration records.   A voter identification card shall be

24   handed or mailed to the voter and to no other person.

25   B.   If the qualified elector is already registered

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1   in the county as shown by his original certificate of

2   registration currently on file in the county registration

3   records, the county clerk shall not accept the new

4   certificate of registration unless it is filed pursuant to

5   Section 1-4-13, 1-4-15, 1-4-17 or 1-4-18 NMSA 1978. He shall

6   stamp or write the word "rejected" on the new certificate of

7   registration and hand or mail it to the voter with an

8   explanation why the new certificate of registration was

9   rejected and what remedial action, if any, the voter must

10   take to bring his registration up to date.

11   C.   If the qualified elector does not register in

12   person, indicates that he has not previously voted in a

13   general election in New Mexico and does not provide the

14   registration officer with the required identification, the

15   registration officer shall indicate this on the voter's

16   certificate of registration and the county clerk shall note

17   this on the appropriate precinct signature roster."

18   Section 13.   Section 1-4-12 NMSA 1978 (being Laws 1969,

19   Chapter 240, Section 68, as amended) is amended to read:

20   "1-4-12.   DUTIES OF COUNTY CLERK--FILING OF

21   CERTIFICATES.--

22   A.   Certificates of registration, if in proper

23   form, shall be processed and filed by the county clerk as

24   follows:

25   (1)   a voter identification card shall be

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1   delivered or mailed to the voter; and

2   (2)   the original certificate shall be filed

3   alphabetically by surname and inserted into the county

4   register pursuant to Section 1-5-5 NMSA 1978.

5   B.   The county clerk shall, on Monday of each

6   week, process all certificates of registration that are in

7   proper form and that were received in his office up to 5:00

8   p.m. on the preceding Friday.

9   C.   The contents of certificates of registration,

10   except for the voter's social security number and date of

11   birth, are public records."

12   Section 14.   Section 1-4-48 NMSA 1978 (being Laws 1995,

13   Chapter 198, Section 13) is amended to read:

14   "1-4-48.   AGENCY REGISTRATION.--

15   A.   The secretary of state shall adopt and publish

16   in accordance with the State Rules Act [regulations] rules

17   for the administration of a state-agency-based voter

18   registration program. The [regulations] rules shall provide

19   for distribution of voter registration forms, provisions for

20   the acceptance of voter registration forms and procedures for

21   reporting voter registration activity in accordance with the

22   federal National Voter Registration Act of 1993.

23   B.   Voter registration shall be made available at

24   all state agencies providing public assistance or services to

25   people with disabilities. The secretary of state may, with

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1   the agreement of those offices, designate other state and

2   local public offices to provide voter registration services.

3   C.   Each state agency participating in the voter

4   registration program shall maintain sufficient records for

5   the secretary of state to comply with federal voter

6   registration reporting requirements and the federal Help

7   America Vote Act of 2002.   Any records maintained by [the] a

8   state agency regarding voter registration activities in that

9   agency are confidential and shall not be released as public

10   records.

11   D.   Any voter registration made or accepted at a

12   state agency pursuant to this section shall be transmitted to

13   the appropriate registration officer within ten calendar

14   days.

15   E.   [No] A state agency employee or agency

16   contractor who participates in the voter registration process

17   may not intentionally influence the prospective registrant in

18   the selection of political party, or independent status, by

19   word or act.   [No] A state agency employee or agency

20   contractor who participates in the voter registration process

21   may not reveal the existence of or the nature of the voter

22   registration to anyone other than a registration officer."

23   Section 15.   Section 1-5-10 NMSA 1978 (being Laws 1969,

24   Chapter 240, Section 112, as amended) is amended to read:

25   "1-5-10.   VOTER LISTS--SIGNATURE ROSTERS--USE DURING

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1   ELECTION.--

2   A.   Each precinct board using voter lists shall

3   post securely at or near the entrance of the polling place

4   one copy of the voter list for use of the voters prior to

5   voting.   The posted copy shall not contain a listing of voter

6   social security numbers.

7   B.   The presiding judge of the precinct board

8   shall assign one judge of the board to be in charge of one

9   copy of the voter list, which shall be used to confirm the

10   registration and voting of each person offering to vote.

11   C.   The presiding judge of the precinct board

12   shall assign one election clerk to be in charge of the

13   signature roster.

14   D.   The judge assigned to the voter list used for

15   confirmation of registration and voting shall determine that

16   each person offering to vote is registered and, in the case

17   of a primary election, that [such] the voter is registered in

18   a party designated on the primary election ballot.   If the

19   person's registration is confirmed by the presence of his

20   name on the voter list or if the person presents a

21   certificate under the seal and signature of the county clerk

22   showing that he is entitled to vote in the election and to

23   vote in that precinct, [then] the judge shall announce to the

24   election clerks the list number and the name of the voter as

25   shown on the voter list.

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1   E.   The election clerk shall locate that list

2   number and name on the signature roster and shall require the

3   voter to sign his usual signature or, if unable to write, to

4   make his mark opposite his printed name.   If the voter makes

5   his mark, it shall be witnessed by one of the judges of the

6   precinct board.   If the signature roster indicates that the

7   voter is required to present a form of identification before

8   voting, the election judge shall ask the voter for a current

9   and valid photo identification or a copy of a current utility

10   bill, bank statement, government check, paycheck or other

11   government document that shows and matches the name and

12   address of the voter as indicated on the signature roster.

13   If the voter does not provide the required identification, he

14   shall be allowed to vote on a provisional paper ballot.

15   F.   The election judge shall follow the procedures

16   provided for in Sections 1-5-12 and 1-12-8 NMSA 1978 if a

17   person whose name does not appear on the signature list

18   requests to vote or a person is required to vote on a

19   provisional paper ballot.

20   [F.   No] G.   A voter shall not be permitted to

21   vote until he has properly signed his usual signature or made

22   his mark in the signature roster.

23   [G.] H.   After the poll is closed, the election

24   clerk in charge of a signature roster shall draw a single

25   horizontal line in ink through each signature space in the

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1   signature roster where no signature or mark appears."

2   Section 16.   Section 1-5-12 NMSA 1978 (being Laws 1969,

3   Chapter 240, Section 114, as amended) is amended to read:

4   "1-5-12.   VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

5   A.   A voter whose name does not appear on the

6   voter list and signature roster for the precinct in which he

7   offers to vote shall be permitted to vote in the precinct

8   pursuant to the federal National Voter Registration Act of

9   1993 and Section 1-12-8 NMSA 1978.

10   B.   The election clerks in charge of the signature

11   rosters shall add the voter's name and address in ink to the

12   signature roster on the line immediately following the last

13   entered voter's name and the voter shall be allowed to sign

14   an affidavit of eligibility and cast [an emergency] a

15   provisional paper ballot, provided he has first signed or

16   marked both the signature roster and checklist of registered

17   voters.

18   C.   The [emergency] provisional paper ballot

19   number for the voter shall be entered on the affidavit of

20   eligibility, the signature roster and the checklist of

21   registered voters.

22   D.   In a primary election, [no] a voter shall not

23   be permitted to vote for a candidate of a party different

24   from the party designation shown on his certificate of

25   registration.   Upon making that determination, the county

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1   clerk shall transmit the ballot to the county canvassing

2   board to be tallied and included in the canvass of that

3   county for the appropriate precinct.

4   E.   [No] Verbal authorization from the county

5   clerk to allow a person to vote [shall be] is not permitted."

6   Section 17.   Section 1-6-2 NMSA 1978 (being Laws 1987,

7   Chapter 327, Section 6, as amended) is amended to read:

8   "1-6-2.   DEFINITIONS.--As used in the Absent Voter Act:

9   A.   "absent uniformed services voter" means:

10   (1)   a member of a uniformed service on

11   active duty who, by reason of such active duty, is absent

12   from the place of residence where the member is otherwise

13   qualified to vote;

14   (2)   a member of the merchant marine who, by

15   reason of service in the merchant marine, is absent from the

16   place of residence where the member is otherwise qualified to

17   vote; or

18   (3)   a spouse or dependent of a member

19   referred to in Paragraphs (1) and (2) of this subsection who,

20   by reason of the active duty or service of the member, is

21   absent from the place of residence where the spouse or

22   dependent is otherwise qualified to vote;

23   B.   "election" means a statewide election, general

24   election, primary election or special election to fill

25   vacancies in the office of United States representative and

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1   regular or special school district elections;

2   C.   "electronic ballot" means a paper ballot or

3   ballot face designed to be used on an electronic voting

4   machine to cast votes;

5   D.   "electronic voting machine" means a computer-

6   controlled machine designed to electronically record and

7   tabulate votes cast;

8   E.   "federal office" means the office of

9   president, vice president or senator or representative in

10   congress;

11   F.   "federal qualified elector" means:

12   (1)   an absent uniformed services voter; or

13   (2)   an absent uniformed services voter who,

14   by reason of active duty or service, is absent from the

15   United States on the date of the election involved;

16   G.   "member of the merchant marine" means an

17   individual other than a member of a uniformed service or an

18   individual employed, enrolled or maintained on the Great

19   Lakes or the inland waterways who:

20   (1)   is employed as an officer or crew member

21   of a vessel documented under the laws of the United States, a

22   vessel owned by the United States or a vessel of a foreign-

23   flag registry under charter to or control of the United

24   States; or

25   (2)   is enrolled with the United States for

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1   employment or training for employment or maintained by the

2   United States for emergency relief service as an officer or

3   crew member of any such vessel;

4   H.   "overseas voter" means:

5   (1)   an absent uniformed services voter who,

6   by reason of active duty or service, is absent from the

7   United States on the date of the election involved;

8   [(1)] (2)   a person who resides outside the

9   United States and is qualified to vote in the last place in

10   which the person was domiciled before leaving the United

11   States; or

12   [(2)] (3)   a person who resides outside the

13   United States and, but for such residence, would be qualified

14   to vote in the last place in which the person was domiciled

15   before leaving the United States; and

16   I.   "uniformed services" means the army, navy, air

17   force, marine corps and coast guard and the commissioned

18   corps of the national oceanic and atmospheric

19   administration."

20   Section 18.   Section 1-6-4 NMSA 1978 (being Laws 1969,

21   Chapter 240, Section 130, as amended) is amended to read:

22   "1-6-4.   ABSENTEE BALLOT APPLICATION--FEDERAL QUALIFIED

23   ELECTOR--OVERSEAS VOTER.--

24   A.   Application by a federal qualified elector or

25   an overseas voter for an absentee ballot shall be made on the

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1   official postcard form prescribed or authorized by the

2   federal government to the county clerk of the county of his

3   residence.

4   B.   Application by a voter for an absentee ballot

5   shall be made only on a form prescribed, printed and

6   furnished by the secretary of state to the county clerk of

7   the county in which the voter resides.   The form shall

8   identify the applicant and contain information to establish

9   his qualification for issuance of an absentee ballot under

10   the Absent Voter Act; provided that on the application form

11   for a general election ballot there shall be no box, space or

12   place provided for designation of the voter's political party

13   affiliation.   The form shall allow the applicant to receive

14   an absentee ballot for all elections within an election

15   cycle.

16   C.   Each application for an absentee ballot shall

17   be subscribed by the applicant.

18   D.   An application for an absentee ballot by a

19   federal qualified elector or an overseas voter shall be

20   accepted at any time preceding the general election. "

21   Section 19.   Section 1-6-5 NMSA 1978 (being Laws 1969,

22   Chapter 240, Section 131, as amended by Laws 2001, Chapter

23   49, Section 1 and by Laws 2001, Chapter 58, Section 1) is

24   amended to read:

25   "1-6-5.   PROCESSING APPLICATION--ISSUANCE OF BALLOT--

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1   MARKING AND DELIVERY OF BALLOT IN PERSON.--

2   A.   The county clerk shall mark each completed

3   absentee ballot application with the date and time of receipt

4   in the clerk's office and enter the required information in

5   the absentee ballot register.   The county clerk shall then

6   determine if the applicant is a voter, an absent uniformed

7   services voter or an overseas voter.

8   B.   If the applicant has no valid certificate of

9   registration on file in the county and he is not a federal

10   qualified elector or if the applicant states he is a federal

11   qualified elector but his application indicates he is not a

12   federal qualified elector, [no] an absentee ballot shall not

13   be issued and the county clerk shall mark the application

14   "Rejected" and file the application in a separate file from

15   those accepted.

16   C.   The county clerk shall notify [in writing]

17   each applicant in writing of the fact of acceptance or

18   rejection of his application and, if rejected, shall explain

19   why the application was rejected.

20   D.   If the applicant has on file with the county a

21   valid certificate of registration that indicates that the

22   applicant is a voter who registered by mail without

23   submitting the required identification, the county clerk

24   shall notify the voter that he must submit with his absentee

25   ballot a copy of a current and valid photo identification,

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1   utility bill, bank statement, government check, paycheck or

2   other government document that shows the name and address of

3   the applicant. The county clerk shall note on the absentee

4   ballot register and signature roster that the applicant's

5   absentee ballot must be returned with the required

6   identification.

7   [D.] E. If the county clerk finds that the

8   applicant is a voter or a federal qualified elector, the

9   county clerk shall mark the application "Accepted" and

10   deliver an absentee ballot to the voter in the county clerk's

11   office or mail to the applicant an absentee ballot and the

12   required envelopes for use in returning the ballot.

13   Acceptance of an application of a federal qualified elector

14   constitutes registration for the election in which the ballot

15   is to be cast. Acceptance of an application from an overseas

16   voter who is not an absent uniformed services voter

17   constitutes a request for changing information on the

18   certificate of registration of any such voter. [No] An

19   absent voter shall not be permitted to change his party

20   affiliation during those periods when change of party

21   affiliation is prohibited by the Election Code. Upon

22   delivery of an absentee ballot to a voter in the county

23   clerk's office or mailing of an absentee ballot to an

24   applicant who is a voter, an appropriate designation shall be

25   made on the signature line of the signature roster next to

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1   the name of the voter who has been provided or mailed an

2   absentee ballot.

3   [E.] F. If an application for an absentee ballot

4   is delivered in person to the county clerk and is accepted,

5   the county clerk shall provide the voter an absentee ballot

6   and it shall be marked by the applicant in a voting booth of

7   a type prescribed by the secretary of state, sealed in the

8   proper envelopes and otherwise properly executed and returned

9   to the county clerk or his authorized representative before

10   the voter leaves the office of the county clerk. The act of

11   marking the absentee ballot in the office of the county clerk

12   shall be a convenience to the voter in the delivery of the

13   absentee ballot and does not make the office of the county

14   clerk a polling place subject to the requirements of a

15   polling place in the Election Code other than is provided in

16   this subsection. It shall be unlawful to solicit votes,

17   display or otherwise make accessible any posters, signs or

18   other forms of campaign literature whatsoever in the clerk's

19   office. Absentee ballots may be marked in person during the

20   regular hours and days of business at the county clerk's

21   office from 8:00 a.m. on the fortieth day preceding the

22   election up until 5:00 p.m. on the Saturday immediately prior

23   to the date of the election. In marking the absentee ballot,

24   the voter may be assisted by one person of the voter's

25   choice.

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1   [F.] G. Commencing with the twentieth day prior

2   to an election, an absent voter may vote in person, on an

3   electronic voting machine at the county clerk's office or at

4   an alternate location established by the county clerk;

5   provided, a county clerk may allow an absent voter to vote on

6   an electronic voting machine beginning on the fortieth day

7   before an election. In class A counties, the county clerk

8   shall establish not less than four alternate locations as a

9   convenience to the voters. Absentee voting may be done at

10   the county clerk's office or an alternate location during the

11   regular hours of business from 8:00 a.m. on the twentieth day

12   prior to the election until 5:00 p.m. on the Saturday

13   immediately prior to the election. The county clerk shall

14   ensure that procedures established for processing an absent

15   voter application and for voting by absentee ballot are

16   complied with at each [alternative] alternate location.

17   [G.] H. Absentee ballots shall be [air mailed]

18   airmailed to applicants temporarily domiciled inside or

19   outside the continental limits of the United States not later

20   than on the Thursday immediately prior to the date of the

21   election.

22   [H.   No] I. An absentee ballot shall not be

23   delivered or mailed by the county clerk to any person other

24   than the applicant for such ballot.

25   [I.] J. The county clerk shall accept and

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1   process, with respect to a primary or general election for

2   any federal office, any otherwise valid voter registration

3   application from an absent uniformed services voter or

4   overseas voter if the application is received not less than

5   thirty days before the election. The county clerk shall also

6   accept and process federal write-in absentee ballots from

7   overseas voters in general elections for federal offices in

8   accordance with the provisions of Section 103 of the federal

9   Uniformed and Overseas Citizens Absentee Voting Act.

10   [J.] K. The secretary of state and each county

11   clerk shall make reasonable efforts to publicize and inform

12   voters of the times and locations for absentee voting."

13   Section 20.   Section 1-6-5.1 NMSA 1978 (being Laws 1991,

14   Chapter 105, Section 10) is amended to read:

15   "1-6-5.1.   FEDERAL ABSENTEE BALLOT DISTRIBUTION.--In the

16   distribution of federal absentee ballots:

17   A.   [absent uniformed services voters] federal

18   qualified electors [members of the merchant marine] and

19   members of the uniformed [service] services shall receive the

20   entire ballot; and

21   B.   all other overseas voters shall receive only

22   ballots for federal candidates."

23   Section 21.   Section 1-6-6 NMSA 1978 (being Laws 1969,

24   Chapter 240, Section 132, as amended) is amended to read:

25   "1-6-6.   ABSENTEE BALLOT REGISTER.--

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

2   an "absentee ballot register", in which he shall enter:

3   (1)   the name and address of each absentee

4   ballot applicant;

5   (2)   the date and time of receipt of the

6   application;

7   (3)   whether the application was accepted or

8   rejected;

9   (4)   the date of issue of an absentee ballot

10   in the county clerk's office or at an alternate location or

11   the mailing of an absentee ballot to the applicant;

12   (5)   the applicant's precinct;

13   (6)   whether the applicant is a voter, a

14   federal voter, a federal qualified elector or an overseas

15   [citizen] voter; [and]

16   (7)   whether the voter is required to submit

17   identification pursuant to Section 1-6-5 NMSA 1978; and

18   [(7)] (8)   the date and time the completed

19   absentee ballot was received from the applicant by the county

20   clerk or the absent voter voted in the county clerk's office

21   or at an alternate location.

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

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

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

25   applicant.

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1   C.   The absentee ballot register is a public

2   record open to public inspection in the county clerk's office

3   during regular office hours.   The county clerk shall have an

4   updated absentee ballot register available for public

5   inspection Monday through Friday during regular office hours.

6   D.   The county clerk shall deliver to the absent

7   voter precinct on election day a complete list of all

8   absentee ballot applicants with applicable information shown

9   in the absentee ballot register for each applicant up to 5:00

10   p.m. on the Thursday preceding the election.   The county

11   clerk shall deliver a signature roster containing the same

12   information as the lists to the absent voter precinct board.

13   E.   The county clerk shall transmit to the

14   secretary of state and to the county chairman of each of the

15   major political parties in the county a complete copy of

16   entries made in the absentee ballot register.   [Such] The

17   transmissions shall be made once each week beginning four

18   weeks immediately prior to the election.   A final copy shall

19   be transmitted on the Friday immediately following the

20   election."

21   Section 22.   Section 1-6-14 NMSA 1978 (being Laws 1971,

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

23   "1-6-14.   HANDLING ABSENTEE BALLOTS BY ABSENT VOTER

24   PRECINCT BOARDS.--

25   A.   Before opening [any] an official mailing

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1   envelope, the presiding judge and the election judges shall

2   determine that the required information has been completed on

3   the reverse side of the official mailing envelope.

4   B. If the voter's signature is missing, the

5   presiding judge shall write "Rejected" on the front of the

6   official mailing envelope. The election clerks shall enter

7   the voter's name in the signature rosters and shall write the

8   notation "Rejected--Missing Signature" in the "Notations"

9   column of the signature rosters. The presiding judge shall

10   place the official mailing envelope unopened in an envelope

11   provided for rejected ballots, seal the envelope and write

12   the voter's name on the front of the envelope and deposit it

13   in the locked ballot box.

14   C. [The accredited challengers] A lawfully

15   appointed challenger may examine the official mailing

16   envelope and may challenge the ballot of any absent voter for

17   the following reasons:

18   (1) the official mailing envelope has been

19   opened prior to being received by the absent voter precinct

20   board; or

21   (2) the person offering to vote is not a

22   federal voter, federal qualified elector, overseas [citizen]

23   voter or voter as provided in the Election Code.

24   Upon the challenge of an absentee ballot, the election

25   judges and the presiding election judge shall follow the same

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1   procedure as when ballots are challenged when a person

2   attempts to vote in person.   If a challenge is upheld, the

3   official mailing envelope shall not be opened but shall be

4   placed in an envelope provided for challenged ballots.   The

5   same procedure shall be followed in canvassing and

6   determining the validity of challenged absentee ballots as

7   with other challenged ballots.

8   D.   If the official mailing [envelopes have]

9   envelope has been properly subscribed and the [voters have]

10 voter has not been challenged:

11   (1)   the election judges shall open the

12 official mailing [envelopes] envelope and deposit the

13 [ballots] ballot in [their] its still-sealed official inner

14 [envelopes] envelope in the locked ballot box; and

15   (2)   the election clerks shall enter the

16 absent voter's name and residence address as shown on the

17 official mailing envelope in the signature rosters and shall

18 mark the notation "AB" opposite the voter's name in the

19 "Notations" column of the signature rosters.

20   E.   Prior to the closing of the polls, the

21 election judges and the presiding election judge may either

22 remove the absentee ballots from the official inner envelopes

23 and count and tally the results of absentee balloting or,

24 under the personal supervision of the presiding election

25 judge and one election judge from each major political party,

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1   count and tally the absentee ballots on an electronic voting

2   machine the same as if the absent [voter] voters had been

3   present and voted in person. It is unlawful for [any] a

4   person to disclose the results of a count and tally or the

5   registration on a voting machine of absentee ballots prior to

6   the closing of the polls.

7   F.   Absentee ballots shall be counted and tallied

8   on an electronic voting machine as provided in the Election

9   Code.

10   G.   Absent voter precinct polls shall close at the

11 time prescribed by the Election Code for other polling

12 places, and the results of the election shall be certified as

13 prescribed by the secretary of state.

14   H.   The county clerk may convene the absent voter

15 precinct board no more than three days before the day of the

16 election to alphabetize, enter on the roster and sort the

17 absentee ballots by legislative district; provided that [no]

18 a member of the absent voter precinct board shall not open an

19 official mailing envelope or count and canvass any absentee

20 ballot prior to the day of the election.

21   I.   If an absentee ballot does not contain the

22 identification required pursuant to Subsection D of Section

23 1-6-5 NMSA 1978, it shall be handled as a provisional paper

24 ballot in accordance with the Election Code."

25   Section 23.   Section 1-9-2 NMSA 1978 (being Laws 1969,

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1   Chapter 240, Section 185, as amended) is amended to read:

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

3   A.   All voting systems approved for use in New

4   Mexico shall meet federal election [commission] standards,

5   [and] conform to state information technology rules,

6   standards and practices and be tested by an independent

7   authority.

8   B.   [Any] A person desiring to have a type of

9   voting system approved for use in New Mexico may apply to the

10 secretary of state to have the system examined and approved.

11 At the time application is made, the applicant shall direct

12 the independent testing authority to submit its report on the

13 system to the secretary of state.

14   C.   Upon receipt of the report from the

15 independent testing authority, the secretary of state shall

16 examine and study the system.   As part of the examination,

17 the secretary of state shall require the system to be

18 independently inspected by two voting system experts and

19 shall require from each of them a written report on the

20 results of their inspection.

21   D.   Upon completion of his examination, the

22 secretary of state shall make a written report on the result

23 of his examination and findings and shall file such report,

24 together with the inspection reports of the two voting system

25 experts, in the office of the secretary of state.   Such

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1   reports and findings are public records.

2   E.   The secretary of state shall inform the

3   applicant in writing of the findings.   If the findings show

4   that the voting system type is adequate for the election

5   needs of New Mexico, it shall be deemed approved for use at

6   elections in [this] the state."

7   Section 24.   Section 1-9-4.1 NMSA 1978 (being Laws 2001,

8   Chapter 233, Section 15) is amended to read:

9   "1-9-4.1.   TOUCH-SCREEN DIRECT RECORDING ELECTRONIC

10   VOTING SYSTEMS--STANDARDS.--

11   A.   A touch-screen direct recording electronic

12   voting system, as approved by the secretary of state, may be

13   used in any election for public office in New Mexico.   As

14   used in this section, "system" means a touch-screen direct

15   recording electronic voting system.

16   B.   The system shall:

17   (1)   meet federal election performance and

18   test standards [of the federal election commission];

19   (2)   [be an electronic computer-controlled

20   voting system that provides] provide for direct recording and

21   tabulating of votes cast;

22   (3)   have internal [operating system]

23   application software [firmware] that:

24   (a)   is specifically designed and

25   engineered for the election application;

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1   (b)   is contained within each touch-

2 screen voting device;

3   (c)   is stored in a nonvolatile memory

4 within each terminal;

5   (d)   includes internal quality checks

6 such as purity or error detection and correction codes; and

7   (e)   [shall include] includes

8 comprehensive diagnostics to ensure that failures do not go

9 undetected;

10   (4)   have a battery backup [system] that

11 will, at a minimum, allow voting to continue uninterrupted

12 for two hours without external power;

13   (5)   have [an] internal audit trail [system]

14 capability such that all pre-election, election day and post-

15 election events, including all random ballot [images system]

16 image anomalies, shall be stored, recorded and recovered in

17 an easy-to-read printed form and be retained within at least

18 three independent memories that do not require any type of

19 external alternating current or direct current battery power

20 for memory retention;

21   (6)   along with any and all activating and

22 vote recording devices and components, have a unique embedded

23 internal serial number for audit purposes;

24   (7)   be a stand-alone, non-networked election

25 system such that all pre-election, election day and post-

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1   election events and activities, including any and all entered

2   votes, are directly entered, recorded and retained in each

3   device in multiple memory locations within the device;

4   (8)   for security purposes, along with each

5   associated activating and recording device and component,

6   employ a unique, electronically implanted election specific

7   internal security code such that the absence of such code

8   prevents substitution of any unauthorized system or related

9   component;

10   (9)   be designed to accept challenged or

11   fail-safe ballots and allow voters to choose their ballot

12   language directly on the system;

13   (10)   be designed to accommodate the maximum

14   number of ballot styles or ballot variations encountered in

15   the largest New Mexico election jurisdiction;

16   (11)   employ scalable technology allowing

17   easy enhancements that meet federal election [commission]

18   standards and can take advantage of new election technology

19   such as larger touch-screens, optional touch-screen types,

20   expandable memory, modem transmission of election results,

21   ballot activation from automated voter registration [systems]

22   and internet communication capabilities;

23   (12)   have electronic components mounted on

24   printed circuit boards and subsistence, such as printer,

25   power sources, microprocessor, switch and indicator matrices

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1   modular and luggable;

2   (13)   have a realtime clock capable of

3   recording and documenting the total time polls are open in a

4   precinct and capable of documenting the opening and closing

5   of polls;

6   (14)   prevent any voter from selecting more

7   than the allowable number of candidates for any office to

8   prevent overvoting, be able to alert the voter on a message

9   screen if the voter attempts to overvote and inform the voter

10 of any necessary corrective action;

11   (15)   present the entire ballot to the voter

12 in a series of sequential pages that include methods to

13 ensure the voter sees all ballot options on all pages before

14 completing his vote and allow the voter to review all ballot

15 choices before casting his ballot;

16   (16)   have as an integral part of the system

17 a privacy curtain within which the voter casts his vote;

18   (17)   have a color touch-screen that is at

19 least fifteen inches in diagonal measure; and

20   (18)   be able to accommodate a wheelchair

21 voter without intervention of the poll worker other than a

22 minor adjustment such as the angle of the display, and the

23 voter must be able to vote in a face-first position so that

24 privacy is maintained with the ballot surface adjusted to a

25 vertical position.

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1   C.   If the net weight of the system, or aggregate

2   of voting device parts, is over twenty pounds, the system

3   shall have self-contained wheels so that the system can be

4   easily rolled by one person on rough pavement and can roll

5   through a standard thirty-inch door frame.

6   D.   The device that is used by [the] a poll worker

7   to activate the system for each individual voter shall be a

8   credit-card size "smart card" type of device.   The poll

9   worker shall be able to activate the card at the poll table

10   with an activation device and hand the card to the voter to

11   use on any open voting system.   The card shall be rendered

12   unusable by the voting system after the voter has cast a

13   ballot.   The system must be compatible with the voter

14   registration system, so that the precinct and party

15   information for a specific voter can be transferred to the

16   system automatically and transferred to the smart card

17   without poll-worker data entry.   There shall be a manual

18   solution available in the event the smart card activation

19   device, or the smart card reading unit on the machine, fails.

20   E.   Each system shall be able to print an

21   alphanumeric printout of the contest, candidates, position

22   numbers and vote totals when the polls are open so that the

23   poll workers can verify that the counters for each candidate

24   are on zero.   At the close of the polls, the system shall be

25   able to print out in the same format the results of the

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1   election.   These printouts shall contain the system serial

2   number, [the] public counter total and [the] protective

3   counter number.   The poll worker must be able to request as

4   many copies as necessary by state law.   The system shall

5   include [an optional] a feature to allow reports to be sent

6   to a printer, [to] the screen [or to] and a file.

7   F.   The system central processing unit [must]

8   shall be designed so that no executable code can be launched

9   from random access memory.   If the operating system is open

10   or widely used, it [must] shall be an embedded system.

11   G.   The system shall have a mandatory pre-election

12   testing of the ballot control logic and accuracy.   The logic

13   and accuracy test results must be stored into the memory of

14   the main processor (central processing unit) and into the

15   same programmable memory device that is used on election day

16   for future reference.   This should be stored by vote total

17   summaries and by each individual ballot image randomly.   The

18   system must be capable of printing a zero-results printout

19   prior to these tests and a results printout after the test.

20   H.   The system shall provide an electronic,

21   redundant storage of both the vote totals and the randomized

22   individual ballot images.

23   I.   The system shall allow a comparison of the

24   multiple locations of totals and ballot images to detect any

25   errors or discrepancies.   In the event of a data discrepancy,

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1   an appropriate error message shall be displayed in a text

2   format, in order to either correct the data error or prohibit

3   voting from continuing.

4   J.   The system shall have a programmable memory

5   device that plugs into the system.   [This] The programmable

6   memory device shall contain [the] ballot control information,

7   [the] summary vote totals, maintenance log, operator log and

8   [the] randomized ballot images.

9   K.   The system shall maintain all vote totals,

10   public counter totals, audit trail ballot images, protective

11   counter totals and the internal clock time in both the main

12   memory and the removable programmable memory devices in the

13   event the main power and battery backup power fail.

14   L.   The system shall have a self-contained,

15   internal backup battery that powers all components of the

16   system that are powered by alternating current power.   In the

17   event of a power outage in the precinct the self-contained,

18   internal backup battery power shall engage with no disruption

19   of operation or loss of data.   The system shall maintain all

20   vote totals, public counter totals, audit trail ballot

21   images, protective counter totals and the internal clock time

22   in both the main memory and the removable programmable memory

23   devices in the event the main power and battery backup power

24   fail.

25   M.   The system software shall be able to:

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1   (1) run in a networked or stand-alone

2   environment;

3   (2) support absentee in-person voting;

4   (3) collect and keep separate the absentee

5   in-person vote totals by day collected, by machine, by

6   legislative district and by site; and

7   (4) collect statistical data such as turnout

8   so that it is available by date and site."

9   Section 25. Section 1-9-15 NMSA 1978 (being Laws 1985,

10   Chapter 207, Section 14, as amended) is amended to read:

11   "1-9-15. ELECTRONIC VOTING SYSTEMS--RECORDING AND

12   TABULATING VOTING SYSTEMS--STANDARDS.--

13   A.   Electronic recording and tabulating voting

14   systems as tested and approved by the secretary of state

15   pursuant to the provisions of Section 1-9-14 NMSA 1978, may

16   be used in any election for public office in New Mexico.

17   B.   The electronic recording and tabulating voting

18   [systems] system shall meet the following standards:

19   (1) the system shall be an electronic

20   computer-controlled voting system [which] that provides for

21   direct electronic recording and tabulating of votes cast;

22   (2) the operating system software [firmware]

23   of the system shall be stored in nonvolatile memory and shall

24   include internal quality checks such as [purity] parity or

25   error detection and correction codes. The [firmware]

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1   <u>software</u> shall include comprehensive diagnostics to ensure that

2   failures do not go undetected;

3   (3)   the system shall have a battery backup

4   system that will, as a minimum, retain voter information and be

5   capable of retaining and restoring processor operating

6   parameters in the event of power failures;

7   (4)   the system shall have, as a standard or as

8   an option, software and hardware provisions for remote

9   transmission of election results to a central location;

10   (5)   subsistence, such as printer, power

11   sources, microprocessor, switch and indicator matrices, shall

12   be modular and luggable. Electronic components shall be

13   mounted on printed circuit boards;

14   (6)   the system shall be supplied with a dust-

15   and moisture-proof cover for transportation and storage

16   purposes;

17   (7)   the system shall be able to operate in a

18   temperature range of fifty degrees Fahrenheit to ninety degrees

19   Fahrenheit;

20   (8)   the system shall have a temperature range

21   for storage of zero degrees Fahrenheit to one hundred twenty

22   degrees Fahrenheit;

23   (9)   the system shall have an operating and

24   storage humidity range of thirty percent to eighty percent

25   noncondensing;

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1   (10)   the system shall be able to accept line

2   voltage of 115 VAC +- [15] fifteen percent, 60 HZ;

3   (11)   the system shall be able to record and

4   document the total time polls are open at a precinct location;

5   (12)   the system shall prevent any voter from

6   selecting more than the allowable number of candidates for any

7   office and shall preclude overvoting;

8   (13)   the system shall be capable of operating

9   continuously for a minimum time period of sixteen hours without

10   external power (115 VAC);

11   (14)   the tabulation of votes on the system

12   shall be stored, ballot by ballot, in three or more memory

13   locations on separate integrated circuit chips and shall be

14   electronically compared throughout the election.   Any

15   differences between votes tabulated and votes stored in

16   multiple storage locations shall be detected immediately and

17   generate an error message defining required maintenance on the

18   [electronic voting] system before it can continue to be used in

19   the election;

20   (15)   the system shall contain the entire

21   ballot, which shall be placed on the face of the machine, and

22   shall be visible to the voter on a single page;

23   (16)   the system shall have a privacy booth in

24   which the voter casts his vote, and the privacy booth shall be

25   an integral part of the system; and

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1   (17)   the system shall be designed to meet the

2   needs of physically disabled voters with or without adjustment

3   of the unit by poll workers.

4   C.   In determining compliance with the standards set

5   forth in Subsection B of this section, the qualification test

6   report made pursuant to the performance and test standards of

7   [the] federal election [commission] law shall be considered

8   insofar as it is applicable."

9   Section 26.   Section 1-9-16 NMSA 1978 (being Laws 1985,

10   Chapter 207, Section 15, as amended) is amended to read:

11   "1-9-16.   ELECTRONIC VOTING SYSTEMS--VOTE TABULATING

12   SYSTEMS--STANDARDS.--

13   A.   Electronic vote tabulating systems, as tested

14   and approved by the secretary of state pursuant to the

15   provisions of Section 1-9-14 NMSA 1978, may be used in any

16   election for public office in New Mexico for the purpose of

17   tabulating ballots.

18   B.   The electronic vote tabulating [systems] system

19   shall meet the following standards:

20   (1)   the machine shall be an electronic

21   computer-controlled voting system [which] that provides for the

22   direct electronic tabulation of votes cast;

23   (2)   the operating software of the vote

24   tabulating system shall be stored in [a] nonvolatile memory

25   [(firmware)] and shall include internal quality checks such as

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1   [purity] parity or error detection and correction codes.   The

2   [firmware] software shall include comprehensive diagnostics to

3   ensure that failures do not go undetected;

4   (3)   the system shall have a battery backup

5   that will, as a minimum, retain voter information and be

6   capable of retaining and restoring processor operating

7   parameters in the event of power failures;

8   (4)   the system shall provide alphanumeric

9   printouts of the vote totals by legislative district at the

10 closing of the polls;

11   (5)   the system shall have, as a standard or as

12 an option, software and hardware provisions for remote

13 transmission of election results to a central location;

14   (6)   subsistence, such as printer, power

15 sources, microprocessor, switch and indicator matrices, shall

16 be modular and luggable.   Electronic components shall be

17 mounted on printed circuit boards;

18   (7)   the system shall be supplied with a dust-

19 and moisture-proof cover for transportation and storage

20 purposes;

21   (8)   the system shall be able to operate in a

22 temperature range of fifty degrees Fahrenheit to ninety degrees

23 Fahrenheit;

24   (9)   the system shall have a temperature range

25 for storage of zero degrees Fahrenheit to one hundred twenty

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1   degrees Fahrenheit;

2   (10)   the system shall have an operating and

3   storage humidity of thirty percent to eighty percent

4   noncondensing;

5   (11)   the system shall accept a line voltage of

6   115 VAC +- [15] fifteen percent, 60 HZ;

7   (12)   the system memory pack shall be able to

8   accept over one thousand five hundred voting positions and

9   tabulate over sixty-five thousand votes for each position;

10   (13)   the system shall accept a ballot inserted

11   in any orientation and one [which] that is a minimum six inches

12   wide and a maximum twenty-four inches long, in dual columns and

13   printed on both sides.   The ballot [should] shall be able to

14   hold a maximum of five hundred twenty candidate positions;

15   (14)   the system shall recognize all errors and

16   be able to reject or return [the errant] a ballot that contains

17   an error.   The tabulator shall automatically be able to detect

18   an overvoted ballot;

19   (15)   the system shall contain an RS-232 data

20   communications capability to transmit totals;

21   (16)   the system shall contain a public display

22   counter to record the number of ballots processed; and

23   (17)   the system should be programmable with

24   control cards.

25   C.   In determining compliance with the standards set

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1 forth in Subsection B of this section, the qualification test

2 report made pursuant to the performance and test standards of

3 [the] federal election [commission] law shall be considered

4 insofar as it is applicable."

5   Section 27.   Section 1-9-19 NMSA 1978 (being Laws 1985,

6 Chapter 207, Section 18, as amended) is amended to read:

7   "1-9-19.   ELECTRONIC VOTING SYSTEM REVOLVING FUND.--The

8 "electronic voting system revolving fund" is created.   The

9 electronic voting system revolving fund may be used to finance,

10 by contract, the purchase of electronic voting systems and

11 necessary support equipment under the conditions stated in

12 Section 1-9-17 NMSA 1978.   The electronic voting system

13 revolving fund may be expended upon vouchers signed by the

14 secretary of finance and administration.   If at the end of

15 [the] a fiscal year the electronic voting system revolving fund

16 exceeds [four million dollars ($4,000,000)] six million five

17 hundred thousand dollars ($6,500,000), the amount in excess of

18 [four million dollars ($4,000,000)] six million five hundred

19 thousand dollars ($6,500,000) shall revert to the general

20 fund."

21   Section 28.   Section 1-10-1 NMSA 1978 (being Laws 1977,

22 Chapter 222, Section 24, as amended) is amended to read:

23   "1-10-1.   BALLOT.--As used in the Election Code:

24   A.   "ballot" means a system for arranging and

25 designating for the voter the names of candidates,

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1   constitutional amendments and other questions to be voted on

2   and for the marking, casting or otherwise recording of such

3   votes, and the term includes absentee ballots, ballot labels,

4   ballot cards, ballot sheets, provisional paper ballots and

5   emergency paper ballots;

6   B.   "ballot label" means that portion of cardboard,

7   paper or other material placed on the front of the voting

8   machine containing the names of the candidates, the offices the

9   candidates are seeking, a statement of the proposed

10 constitutional amendment or other question or proposition to be

11 voted upon;

12   C.   "emergency paper ballot" means the paper ballot

13 used in the circumstances covered under Section 1-12-43 NMSA

14 1978;

15   D.   "ballot card" means a card upon which votes may

16 be recorded by use of a pen or pencil for tabulation in an

17 electronic vote tabulating machine; [and]

18   E.   "ballot sheet" means the sheet used on an

19 electronic vote recording and tabulating machine containing the

20 offices, candidates and questions to be voted on; and

21   F.   "provisional paper ballot" means the paper

22 ballot used pursuant to Section 1-5-10 or 1-12-8 NMSA 1978 or

23 Section 3 of this 2003 act."

24   Section 29.   Section 1-12-7 NMSA 1978 (being Laws 1969,

25 Chapter 240, Section 246, as amended) is amended to read:

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

2   VOTE.--

3   A.   [No] A person shall not vote in [any] a primary,

4   general or statewide special election unless he is a voter of

5   the [precinct] county in which he offers to vote.   A valid

6   original certificate of registration in the county register is

7   prima facie evidence of being a voter in the precinct.

8   B.   [No] A person [shall vote in any primary

9   election] whose major party affiliation is not designated on

10   his original certificate of registration shall not vote in a

11   primary election.

12   C.   [No] A person at [any] a primary election shall

13   not be permitted to vote for the candidate of any party other

14   than the party designated on his current certificate of

15   registration."

16   Section 30.   Section 1-12-8 NMSA 1978 (being Laws 1969,

17   Chapter 240, Section 247, as amended) is amended to read:

18   "1-12-8.   CONDUCT OF ELECTION--[VOTER'S COPY OR

19   CERTIFICATE] PROVISIONAL VOTING.--

20   A.   [Notwithstanding the provisions of Section

21   1-12-7 NMSA 1978] A person shall be permitted to vote on a

22   provisional paper ballot even though his original certificate

23   of registration cannot be found in the county register or even

24   if his name does not appear on the signature roster, provided:

25   (1)   his residence is within the boundaries of

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1   the [precinct] county in which he offers to vote;

2   (2)   his name is not on the list of persons

3   submitting absentee ballots; and

4   [(3)   he presents his voter identification card

5   that appears on its face to be valid or he presents a

6   certificate of eligibility bearing the seal and signature of

7   the county clerk stating that the voter's duplicate certificate

8   of registration is on file at the county clerk's office and

9   that such voter has not received an absentee ballot nor has he

10   been purged and that he shall be permitted to vote in the

11   precinct and election specified therein, provided that such

12   authorization shall not be given orally by the county clerk;

13   and

14   (4)] (3)   he executes a statement swearing or

15   affirming to the best of his knowledge that he is a qualified

16   elector, is currently registered and eligible to vote in that

17   [precinct] county and has not cast a ballot or voted in that

18   election.

19   B.   A voter shall vote on a provisional paper ballot

20   if the voter:

21   (1)   has not previously voted in a general

22   election in New Mexico;

23   (2)   did not register to vote in person;

24   (3)   did not submit the required identification

25   with the certificate of registration form; and

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1   (4)   does not present to the election judge one

2   of the following forms of identification that matches the name

3   and address on the voter's certificate of registration:

4   (a)   a current and valid photo

5   identification; or

6   (b)   a copy of a current utility bill,

7   bank statement, government check, paycheck or other government

8   document that shows the name and address of the voter.

9   [B.] C.   An election judge shall [insert the voter's

10   ballot number or voter number on the public counter on the

11   voter's copy of the certificate of registration or certificate

12   of eligibility and on the executed statement. The voter's copy

13   of the certificate of registration or certificate of

14   eligibility shall be retained by the precinct board and the

15   voter's copy of his certificate of registration or certificate

16   of eligibility, along with the executed statement, shall be

17   returned with the election returns to the county clerk] have

18   the voter sign the signature roster and issue the voter a

19   provisional paper ballot, an outer envelope and an official

20   inner envelope.   The voter shall vote on the provisional paper

21   ballot in secrecy and when done, place the ballot in the

22   official inner envelope and place the official inner envelope

23   in the outer envelope and return it to the precinct officer.

24   The election judge shall ensure that the required information

25   is completed on the outer envelope, have the voter sign it in

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1   the appropriate place and place it in an envelope designated

2   for provisional paper ballots.

3   [C.] D. Knowingly executing a false statement

4   constitutes perjury as provided in the Criminal Code of this

5   state, and voting on the basis of such falsely executed

6   statement constitutes fraudulent voting.

7   [D. To be valid, a voter's copy of the certificate

8   of registration dated after June 30, 1955 shall bear the

9   signature stamp of the county clerk.

10   E. Within thirty days after the election, the

11   county clerk shall examine each executed statement and

12   investigate the truth of the statements made therein. The

13   county clerk shall also determine the reason why the original

14   certificate of registration of the voter was not in the county

15   register or the signature roster sent to the precinct board and

16   shall take actions to avoid similar circumstances requiring the

17   use of the voter's copy of the certificate of registration or

18   certificate of eligibility by voters in future elections.]"

19   Section 31.   Section 1-16-5 NMSA 1978 (being Laws 1969,

20   Chapter 240, Section 378, as amended) is amended to read:

21   "1-16-5.   STATE CONSTITUTIONAL AMENDMENTS--BALLOT--FORMS

22   FOR EMERGENCY AND PROVISIONAL PAPER BALLOTS AND ABSENTEE

23   BALLOTS.--

24   A.   All emergency and provisional paper ballots and

25   absentee ballots proposing constitutional amendments shall have

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1   printed thereon in both English and Spanish the full title of

2   the joint resolution proposing the constitutional amendment and

3   the constitutional amendment number assigned to the joint

4   resolution by the secretary of state.   Below the printed title,

5   there shall be printed on the ballot two one-quarter inch blank

6   boxes.   Opposite one of the blank boxes, there shall be printed

7   in both English and Spanish the [words] word "FOR", and

8   opposite the other blank box shall be printed in both [such]

9   languages the [words] word "AGAINST".

10   B.   There shall be printed across the top of [such]

11 the ballot the following: "Instructions to voters: If you

12 desire to vote for the amendment, mark a cross (X) or a check

13 (T) or any other mark clearly indicating intention in the 9

14 opposite the [words] word "FOR".   If you desire to vote against

15 the amendment, mark a cross (X) or a check (T) or any other

16 mark clearly indicating intention in the 9 opposite the [words]

17 word "AGAINST"."

18   Section 32.   Section 1-16-6 NMSA 1978 (being Laws 1969,

19 Chapter 240, Section 379, as amended) is amended to read:

20   "1-16-6.   STATE CONSTITUTIONAL AMENDMENTS--MARKING

21 EMERGENCY AND PROVISIONAL PAPER BALLOTS AND ABSENTEE BALLOTS.--

22 A voter desiring to mark his emergency or provisional paper

23 ballot or absentee ballot for or against a proposed

24 constitutional amendment shall do so in the manner specified in

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1   the instructions printed on the [emergency paper ballot or

2   absentee] ballot."

3   Section 33.   Section 1-16-9 NMSA 1978 (being Laws 1969,

4   Chapter 240, Section 381, as amended) is amended to read:

5   "1-16-9.   STATE CONSTITUTIONAL AMENDMENTS--SINGLE

6   EMERGENCY AND PROVISIONAL PAPER BALLOT AND ABSENTEE BALLOT.--

7   Proposed constitutional amendments or other questions submitted

8   to the voters on emergency or provisional paper ballots or

9   absentee ballots at any election shall be printed upon one

10   ballot only."

11   Section 34.   EFFECTIVE DATE.--The effective date of the

12   provisions of this act is July 1, 2003.

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