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**SENATE BILL 540**

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

**INTRODUCED BY**

Dianna J. Duran

**AN ACT**

**RELATING TO ELECTIONS; AMENDING, REPEALING AND ENACTING  
SECTIONS OF THE MUNICIPAL ELECTION CODE TO PROVIDE FOR ABSENTEE  
VOTING RATHER THAN EARLY VOTING FOR ANY REGULAR OR SPECIAL  
MUNICIPAL ELECTION.**

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

**Section 1. Section 3-8-2 NMSA 1978 (being Laws 1985,  
Chapter 208, Section 10, as amended) is amended to read:**

**"3-8-2. DEFINITIONS. - -**

**A. The definitions in Section 3-1-2 NMSA 1978 shall  
apply to the Municipal Election Code in addition to those  
definitions set forth in the Municipal Election Code.**

**B. As used in the Municipal Election Code:**

**(1) "absentee voter list" means the list  
prepared by the municipal and county clerks of those persons**

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1 who have been issued an absentee ballot;

2 (2) "ballot" means a system for arranging and  
3 designating for the voter the names of candidates and questions  
4 to be voted on and for the marking, casting or otherwise  
5 recording of such votes. "Ballot" includes [~~early voting~~  
6 ~~ballots~~] marksense ballots, absentee ballots, ballot faces,  
7 emergency paper ballots and paper ballots used in lieu of  
8 voting machines;

9 (3) "ballot face" means the material placed on  
10 the front of the voting machine containing the names of the  
11 candidates, the offices the candidates are seeking and a  
12 statement of the proposed questions to be voted upon;

13 (4) "clerk" or "municipal clerk" means the  
14 municipal clerk or any deputy or assistant municipal clerk;

15 (5) "county clerk" means the clerk of the  
16 county or his designee within which the municipality is  
17 located;

18 (6) "election returns" means all certificates  
19 of the precinct board, including the certificate showing the  
20 total number of votes cast for each candidate, if any, and for  
21 or against each question, if any, and shall include statements  
22 of canvass, signature rosters, registered voter lists, machine  
23 printed returns, emergency paper ballots, paper ballots used in  
24 lieu of voting machines, absentee ballots, absentee ballot  
25 registers and absentee voter lists or absent voter machine

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1 printed returns;

2 (7) "emergency paper ballot" means the paper  
3 ballot used when a voting machine becomes disabled so that a  
4 voter is unable to cast a vote for all of the candidates and  
5 questions of the voter's choice and have such vote correctly  
6 recorded by the voting machine and when no substitute voting  
7 machine is available;

8 (8) "marksense ballot" means a paper ballot  
9 card used on an optical-scan vote-tabulating machine;

10 (9) "municipal clerk's office" means the  
11 office of the municipal clerk or any other room used in the  
12 process of [~~early voting~~] absentee voting, counting and  
13 tallying of [~~early voting ballots or~~] absentee ballots or  
14 canvassing the election results within the confines of the  
15 building where the municipal clerk's office is located;

16 (10) "paper ballot" means a ballot manually  
17 marked by the voter and counted by hand without the assistance  
18 of a machine or optical-scan vote tabulating device;

19 (11) "precinct" means a portion of a county  
20 situated entirely in or partly in a municipality that has been  
21 designated by the county as a precinct for election purposes  
22 and that is entitled to a polling place and a precinct board.  
23 If a precinct includes territory both inside and outside the  
24 boundaries of a municipality, "precinct", for municipal  
25 elections, shall mean only that portion of the precinct lying

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1 within the boundaries of the municipality;

2 (12) "consolidated precinct" means the  
3 combination of two or more precincts pursuant to the Municipal  
4 Election Code;

5 (13) "precinct board" means the appointed  
6 election officials serving a single or consolidated precinct;

7 (14) "recheck" pertains to voting machines and  
8 means a verification procedure where the counter compartment of  
9 the voting machine is opened and the results of the balloting  
10 as shown on the counters of the machine are compared with the  
11 results shown on the official returns; and

12 (15) "recount" pertains to emergency paper  
13 ballots, paper ballots used in lieu of voting machines [~~early~~  
14 ~~voting ballots~~] and absentee ballots and means a retabulation  
15 and retallying of individual ballots. "

16 Section 2. Section 3-8-14 NMSA 1978 (being Laws 1985,  
17 Chapter 208, Section 22, as amended) is amended to read:

18 "3-8-14. VOTING MACHINES-- ORDERING-- PREPARATION--  
19 CERTIFICATION-- DELIVERY. --

20 A. If voting machines are to be used, the municipal  
21 clerk shall order the machines from the county clerk within  
22 fifteen days of the adoption of the election resolution, and  
23 the county clerk shall supply such voting machines pursuant to  
24 Section 1-9-6 NMSA 1978. The county shall provide voting  
25 machine technicians, voting machine programming and voting

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1 machine transportation. The municipality shall pay the  
2 reasonable fee charged by the county for such services and the  
3 use of the voting machines, but in no case in an amount which  
4 exceeds the actual cost to the county pursuant to Section  
5 1-9-12 NMSA 1978.

6 B. If voting machines are to be used, the municipal  
7 clerk shall order at least one voting machine for every polling  
8 place; provided that the clerk shall order a sufficient number  
9 of voting machines to assure that the eligible voters in that  
10 polling place shall be able to vote in a timely manner.

11 C. Programming of electronic machines shall be  
12 performed under the supervision of the municipal clerk and the  
13 county clerk. The machines shall be programmed so that votes  
14 will be counted in accordance with specification for electronic  
15 voting machine adopted by the secretary of state.

16 D. Immediately upon receipt of the notice of date,  
17 time and place of inspection and certification, the municipal  
18 clerk shall post such notice in the office of the municipal  
19 clerk and attempt to telephone the candidates at the phone  
20 number listed on the declaration of candidacy to give each  
21 candidate notice of the date, time and place of inspection and  
22 certification.

23 E. Inspection and certification shall occur not  
24 later than seven days prior to the election and shall be open  
25 to the public. If electronic voting machines are to be used

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1 for absentee voting, inspection and certification shall occur  
2 not later than seven days prior to the beginning of absentee  
3 voting and shall be open to the public.

4 F. At the date, time and place for inspection and  
5 certification, in the presence of the county clerk and those  
6 municipal candidates present, if any, the municipal clerk  
7 shall:

8 (1) ensure that the correct ballot face has  
9 been installed on each voting machine, if ballot faces are to  
10 be installed;

11 (2) test each counter for accuracy by casting  
12 votes upon it until it correctly registers each vote cast;

13 (3) test each voting machine to assure that it  
14 has been correctly programmed; and

15 (4) inform the county clerk when each machine  
16 is satisfactory and ready to be certified.

17 G. If the municipal clerk informs the county clerk  
18 that a machine is satisfactory and ready to be certified:

19 (1) the county clerk shall reset each counter  
20 at zero;

21 (2) the voting machine shall be immediately  
22 sealed with a numbered metal seal so as to prevent operation of  
23 the machine or its registering counters without breaking the  
24 seal;

25 (3) the municipal clerk shall prepare a

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1 certificate in triplicate for each machine that shall:

2 (a) show the serial number of the voting  
3 machine;

4 (b) state that the voting machine has  
5 all of its resettable registering counters set at zero;

6 (c) state that the voting machine has  
7 been tested by voting on each registered counter to prove the  
8 counter is in perfect condition;

9 (d) state that the correct ballot face  
10 has been installed on the voting machine, if ballot faces are  
11 to be installed;

12 (e) show the number of the metal seal  
13 that has sealed the machine; and

14 (f) show the number registered on the  
15 protective counter;

16 (4) a copy of the certificate shall be  
17 delivered to the county clerk, the original certificate shall  
18 be filed in the office of the municipal clerk and one copy  
19 shall be posted on the voting machine; and

20 (5) if the voting machine requires keys, the  
21 keys to the voting machine shall be enclosed in a sealed  
22 envelope on which shall be written:

23 (a) the number of the precinct and  
24 polling place to which the machine is assigned;

25 (b) the serial number of the voting

1 machine;

2 (c) the number of the metal seal that  
3 has sealed the voting machine;

4 (d) the number registered on the  
5 protective counter; and

6 (e) across the seal of the envelope, the  
7 signatures of the county clerk, the municipal clerk and all  
8 candidates present, if any, at the inspection and  
9 certification.

10 H. After certification of the voting machines, if  
11 the voting machines require keys, the county clerk shall keep  
12 the keys to the voting machines in his custody and shall  
13 deliver the keys to the municipal clerk when the voting  
14 machines are delivered for election. The municipal clerk shall  
15 secure in the office of the municipal clerk all the envelopes  
16 containing the keys to the voting machines until delivered to  
17 the presiding judge of the election.

18 I. An objection to the use of a particular voting  
19 machine shall be filed in the district court within two days  
20 after the machine has been certified. Any objection so filed  
21 shall specify the number of the voting machine objected to and  
22 the reason for the objection. Each voting machine shall be  
23 conclusively presumed to be properly prepared for the election  
24 if it has been certified unless a timely objection has been  
25 filed.

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1           J. Voting machines certified in accordance with  
2 this section shall be delivered to the assigned precinct  
3 polling place no earlier than five days prior to the election  
4 and no later than noon on the day prior to the election,  
5 provided that any voting machines to be used for absentee  
6 voting shall be delivered to the municipal clerk no earlier  
7 than five days prior to the beginning of absentee voting and no  
8 later than noon on the day prior to the beginning of absentee  
9 voting in person in the office of the municipal clerk.

10           K. The municipal clerk shall refuse to certify any  
11 voting machine that the municipal clerk determines is not  
12 programmed properly, is not working properly or will not fairly  
13 or accurately record votes. Only voting machines that have  
14 been certified by the municipal clerk shall be used in the  
15 election. "

16           Section 3. Section 3-8-17 NMSA 1978 (being Laws 1985,  
17 Chapter 208, Section 25, as amended) is amended to read:

18           "3-8-17. SAMPLE BALLOTS. --

19           A. At the same time official ballots are printed  
20 for voting with machines or paper ballots, the municipal clerk  
21 shall cause sample ballots to be printed, which shall:

22                   (1) be printed in both English and Spanish;

23                   (2) be printed in a total number equal to at

24 least [~~ten~~] five percent of the number of qualified electors in  
25 each precinct or consolidated precinct;

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1 (3) be the same in all respects as the  
2 official ballots, except that they shall be printed on colored  
3 paper and shall not contain the facsimile signature of the  
4 municipal clerk or any endorsement on the sample ballot or the  
5 back thereof;

6 (4) be marked in large black capital letters,  
7 "SAMPLE BALLOT"; and

8 (5) be made available in reasonable quantities  
9 to all interested persons for distribution to the voters.

10 B. Nothing in this section shall prevent any person  
11 from having printed at his expense sample ballots, of a  
12 different color than the official sample ballot, which comply  
13 with the provisions of this subsection, so long as no marks,  
14 notations, words or other material are added to, taken from or  
15 deface, change or hide the information on or the appearance of  
16 the sample ballot as authorized by the municipal clerk. "

17 Section 4. Section 3-8-18 NMSA 1978 (being Laws 1985,  
18 Chapter 208, Section 26, as amended) is amended to read:

19 "3-8-18. ELECTION SUPPLIES. --

20 A. If paper ballots are to be used in lieu of  
21 voting machines, then the municipal clerk shall order to be  
22 printed paper ballots and sample paper ballots no later than  
23 5:00 p.m. on the fifty-third day preceding the day of the  
24 election. The ballots shall be delivered to the clerk not  
25 later than the eighth day preceding the day of the election.

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1           B. No later than 5:00 p.m. on the fifty-third day  
2 preceding the day of the election, the municipal clerk shall:

3                   (1) order absentee ballots [~~and early voting~~  
4 ~~material~~];

5                   (2) order ballot faces, sample voting machine  
6 ballots and emergency paper ballots, if voting machines are to  
7 be used; and

8                   (3) order all other election supplies  
9 necessary for the conduct of the election.

10           C. Absentee ballots, emergency paper ballots,  
11 [~~early voting materials~~] ballot faces for the machines and  
12 sample voting machine ballots shall be delivered to the  
13 municipal clerk not less than thirty-five days prior to the day  
14 of the election."

15           Section 5. Section 3-8-26 NMSA 1978 (being Laws 1965,  
16 Chapter 300, Section 14-8-4, as amended) is amended to read:

17                   "3-8-26. REGULAR MUNICIPAL ELECTION--PUBLICATION OF  
18 RESOLUTION--CHOICE OF BALLOTS OR VOTING MACHINES.--

19                   A. Not earlier than one hundred twelve days or  
20 later than eighty-four days prior to the date of a regular  
21 municipal election, the governing body shall adopt an election  
22 resolution calling for the regular municipal election. The  
23 election resolution shall be published in both English and  
24 Spanish and once within fifteen days of adoption and again not  
25 less than sixty days prior to the election or more than

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1 seventy-five days prior to the election, as provided in  
2 Subsection J of Section 3-1-2 NMSA 1978. In addition, the  
3 election resolution shall be posted in the office of the  
4 municipal clerk within twenty-four hours from the date of  
5 adoption until the date of the election. For information  
6 purposes and coordination, one copy of the election resolution  
7 shall be mailed within fifteen days of adoption to the  
8 secretary of state and the county clerk of the county in which  
9 the municipality is located.

10 B. The election resolution shall state the date  
11 when the election will be held, the offices to be filled, the  
12 questions to be submitted to the voters, the date and time of  
13 the closing of the registration books by the county clerk as  
14 required by law, the date and time for filing the declaration  
15 of candidacy, the location of polling places, the date and time  
16 for absentee voting [~~the date and time for early voting~~] and  
17 the consolidation of precincts, if any, notwithstanding any  
18 conflicting provisions of Section 1-3-5 NMSA 1978. Any  
19 question to be submitted to the voters in addition to the  
20 election of municipal officers may be included in the election  
21 resolution, but such inclusion shall not substitute for any  
22 additional or separate resolution or publication thereof as  
23 required by law.

24 C. In those municipalities allowed by law to use  
25 paper ballots, the election resolution shall also state whether

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1 paper ballots or voting machines will be used in the election. "

2 Section 6. Section 3-8-40 NMSA 1978 (being Laws 1985,  
3 Chapter 208, Section 48, as amended) is amended to read:

4 "3-8-40. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO  
5 VOTE--CERTIFICATE VOTING--FRAUDULENT AND DOUBLE VOTING. --

6 A. No person shall vote in a municipal special or  
7 regular election unless that person is a qualified elector and  
8 he has appeared to vote at the polling place in the precinct or  
9 consolidated precinct [~~which~~] that encompasses his place of  
10 residence as shown on the signature roster.

11 B. Notwithstanding the provisions of Subsection A  
12 of this section, a person shall be permitted to vote even  
13 though that person's name cannot be found in the signature  
14 roster, provided:

15 (1) his residence is within the boundaries of  
16 the municipality and within the boundaries of the precinct and  
17 the district, if applicable, in which he offers to vote;

18 (2) his name is not listed as having been  
19 issued an absentee ballot;

20 [~~(3) his name is not listed as having voted~~  
21 ~~during early voting;~~

22 (4)] (3) he presents a certificate bearing the  
23 seal and signature of the county clerk stating that his  
24 affidavit of registration is on file at the county clerk's  
25 office, that he has not been purged from the voter rolls and

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1 that he shall be permitted to vote in the precinct and election  
2 specified therein; provided that such authorization shall not  
3 be given orally by the county clerk; and

4 [~~(5)~~] (4) he executes a statement swearing or  
5 affirming to the best of his knowledge that he is a qualified  
6 elector resident of the municipality, currently registered and  
7 eligible to vote in that precinct and has not cast a ballot or  
8 voted in the election.

9 C. Upon compliance with the requirements of  
10 Subsection B of this section, the election judge shall cause  
11 the election clerks to:

12 (1) write the person's name and address, as  
13 shown on the certificate, in the signature roster under the  
14 heading for name and address in the first blank space  
15 immediately below the last name and address appearing in the  
16 signature roster;

17 (2) insert the person's ballot number or voter  
18 number as shown on the public counter of the voting machine on  
19 the certificate and on his executed sworn statement;

20 (3) retain the completed certificate and the  
21 executed sworn statement, which shall be returned to the  
22 municipal clerk with the election returns; and

23 (4) comply with all relevant requirements of  
24 Section 3-8-41 NMSA 1978.

25 D. After canvass, the municipal clerk shall in

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1 writing notify the county clerk of the names of all individuals  
2 voting on certificates.

3 E. A person who knowingly executes a false  
4 statement required by Paragraph [~~(5)~~] (4) of Subsection B of  
5 this section is guilty of perjury as provided in the Criminal  
6 Code, and voting on the basis of such falsely executed  
7 statement constitutes fraudulent voting.

8 F. A person not entitled to vote who fraudulently  
9 votes or a person who votes or offers to vote more than once at  
10 any election is guilty of a fourth degree felony. "

11 Section 7. Section 3-8-43 NMSA 1978 (being Laws 1985,  
12 Chapter 208, Section 51, as amended) is amended to read:

13 "3-8-43. CONDUCT OF ELECTION--CHALLENGES--REQUIRED  
14 CHALLENGES--ENTRIES--DISPOSITION.--

15 A. A challenge may be interposed by a member of the  
16 precinct board or by a challenger for the following reasons,  
17 which shall be stated in an audible tone by the person making  
18 the challenge:

19 (1) the person offering to vote is not  
20 registered;

21 (2) the person offering to vote is listed  
22 among those persons in the precinct to whom an absentee ballot  
23 was issued [~~or is listed as an early voter~~];

24 (3) the person offering to vote is not a  
25 qualified elector;

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1 (4) the person offering to vote is not listed  
2 on the signature roster or voter registration list;

3 (5) in the case of an absentee ballot, if the  
4 official mailing envelope containing an absentee ballot has  
5 been opened prior to delivery of absentee ballots to the absent  
6 voter precinct board; or

7 (6) the person offering to vote is a qualified  
8 elector of the municipality but does not reside in the district  
9 where he is offering to vote.

10 B. When a person has offered to vote and a  
11 challenge is interposed and the person's name appears in the  
12 signature roster or his name has been entered in the signature  
13 roster pursuant to Subsection C of Section 3-8-40 NMSA 1978,  
14 the election clerk shall write the word "challenged" above the  
15 person's signature in the signature roster.

16 (1) If the challenge is unanimously affirmed  
17 by the election judges:

18 (a) the election clerk shall write the  
19 word "affirmed" above the person's signature next to the  
20 challenge notation in the signature roster;

21 (b) the person shall nevertheless be  
22 furnished a paper ballot, whether or not voting machines are  
23 being used at the polling place, and the election clerk shall  
24 write the number of the ballot so furnished next to the  
25 person's signature in the signature roster;

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1 (c) the person shall be allowed to mark  
2 and prepare the ballot. He shall return the paper ballot to an  
3 election judge who shall announce the person's name in an  
4 audible tone and in his presence place the challenged ballot in  
5 an envelope marked "rejected", which shall be sealed and the  
6 person's name shall be written on the envelope; and

7 (d) the envelope containing the rejected  
8 ballot shall then be deposited in the ballot box and shall not  
9 be counted.

10 (2) If the challenge is not unanimously  
11 affirmed by the election judges:

12 (a) the election clerks shall write the  
13 words "not affirmed" above the person's signature next to the  
14 challenge notation in the signature roster; and

15 (b) the person shall be allowed to vote  
16 in the manner allowed by law as if the challenge had not been  
17 interposed.

18 C. A required challenge shall be interposed by the  
19 precinct board when a person attempts to offer himself to vote  
20 and demands to vote and his name does not appear on the  
21 signature roster and cannot be entered pursuant to Subsection C  
22 of Section 3-8-40 NMSA 1978. A required challenge shall be  
23 interposed by the precinct board as follows:

24 (1) the election judge shall cause the  
25 election clerks to enter the person's name and address under

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1 the heading "name and address" in the signature roster in the  
2 first blank space immediately below the last name and address  
3 that appears in the signature roster;

4 (2) the election clerk shall immediately write  
5 the words "required challenge" above the space provided for the  
6 person's signature in the signature roster;

7 (3) the person shall sign his name in the  
8 signature roster;

9 (4) the person shall nevertheless be furnished  
10 a paper ballot, whether or not voting machines are being used  
11 at the polling place, and the election clerk shall write the  
12 number of the ballot so furnished next to the person's  
13 signature in the signature roster; and

14 (5) the person shall be allowed to mark and  
15 prepare the ballot. He shall return the paper ballot to an  
16 election judge who shall announce his name in an audible tone  
17 and in his presence place the required challenge ballot in an  
18 envelope marked "rejected--required challenge" [~~which~~] that  
19 shall be sealed. The person's name shall be written on the  
20 envelope and the envelope containing the rejected ballot shall  
21 then be deposited in the ballot box and shall not be counted."

22 Section 8. Section 3-8-65 NMSA 1978 (being Laws 1985,  
23 Chapter 208, Section 73, as amended) is amended to read:

24 "3-8-65. CONTEST OF ELECTIONS--PRESERVATION OF  
25 BALLOTS--BALLOTS DEFINED--APPLICATION FOR ORDER--DEPOSIT.--

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1           A. Either the contestant or contestee, within the  
2 time provided by the Municipal Election Code for the  
3 preservation of ballots, shall give notice by certified mail to  
4 the municipal clerk that a contest is pending in a designated  
5 court, and it is the duty of the municipal clerk to preserve  
6 the ballots of all precincts named in the notice of contest and  
7 to notify the county clerk to impound the ballot faces and  
8 voting machines used in all of the precincts named in the  
9 notice of contest until the contest has been finally  
10 determined.

11           B. "Ballots", as used in Subsection A of this  
12 section, includes signature rosters, registered voter lists,  
13 machine-printed returns, voting machine permits, paper ballots,  
14 [~~early voting ballots, early voting applications, early voting~~  
15 ~~lists~~] marksense ballots, absentee ballots, absentee ballot  
16 outer envelopes, statements of canvass, absentee ballot  
17 applications, absentee ballot registers and absentee voter  
18 lists.

19           C. Any contestant or contestee may petition the  
20 district court for an order impounding ballots in one or more  
21 precincts or consolidated precincts. The petition shall state  
22 what specific items of ballots are requested to be impounded.  
23 Upon receipt of the petition, along with a cash deposit of  
24 twenty-five dollars (\$25.00) per precinct or consolidated  
25 precinct, the court may issue an order of impoundment."

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1           Section 9. Section 3-8-69 NMSA 1978 (being Laws 1985,  
2 Chapter 208, Section 77, as amended) is amended to read:

3           "3-8-69. RECOUNT--RECHECK--PROCEEDINGS.--

4           A. Immediately after filing of the application for  
5 recount or recheck, the municipal clerk shall issue a summons  
6 directed to the precinct board of each precinct or consolidated  
7 precinct specified in the application commanding it to appear  
8 at the office of the municipal clerk on a day fixed in the  
9 summons, which date shall not be more than ten days after the  
10 filing of the application for recount or recheck. A copy of  
11 the summons shall be forwarded to the county clerk of the  
12 concerned county.

13           B. The municipal clerk shall deliver the summons to  
14 a sheriff or state police officer who shall forthwith  
15 personally serve it upon each of the precinct board members.  
16 The municipal clerk shall send notices by registered mail of  
17 the date, time and place fixed for recount or recheck to the  
18 district judge and county clerk.

19           C. The precinct board, district judge or the  
20 district court judge's designee, county clerk and the municipal  
21 clerk shall meet on the date, time and places fixed for the  
22 recount or recheck, and the ballot boxes or voting machines of  
23 the precinct or consolidated precinct involved in the recount  
24 or recheck shall be opened. The precinct boards shall recount  
25 and retally the paper ballots used in lieu of voting machines

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1 or emergency paper ballots or recheck the votes cast on the  
2 voting machine, as the case may be, and recount and retally  
3 [~~early voting ballots~~] the absentee ballots for the office in  
4 question in the presence of the municipal clerk, the county  
5 clerk, district judge or person designated to act for the judge  
6 and any other person who may desire to be present.

7 D. During the recount or recheck, the precinct  
8 board of a precinct or consolidated precinct where emergency  
9 paper ballots, paper ballots used in lieu of voting machines  
10 [~~early voting ballots~~] or absentee ballots were used shall  
11 recount and retally only the ballots [~~which~~] that the election  
12 judge accepted and placed in the ballot box at the time they  
13 were cast or received, as the case may be.

14 E. After completion of the recount or recheck, the  
15 precinct board shall replace the emergency paper ballots, paper  
16 ballots used in lieu of voting machines [~~early voting ballots~~]  
17 or absentee ballots in the ballot box and lock it, or the  
18 voting machines shall be locked and resealed, and the precinct  
19 board shall certify to the municipal clerk the results of the  
20 recount or recheck. The district judge or the person  
21 designated to act for the judge, the county clerk and the  
22 municipal clerk shall also certify that the recount or recheck  
23 was made in their presence."

24 Section 10. Section 3-8-71 NMSA 1978 (being Laws 1985,  
25 Chapter 208, Section 79, as amended) is amended to read:

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1 "3-8-71. PRESERVATION OF ELECTION INFORMATION. --

2 A. The municipal clerk shall retain for two years  
3 after each municipal election:

4 (1) the absentee ballot register, application  
5 for absentee ballots, absentee voter lists and affidavits of  
6 destruction;

7 [~~(2)~~] ~~the early voting register, early voting~~  
8 ~~applications, early voter list and affidavits of destruction;~~

9 [~~(3)~~] ~~if applicable the combined register for~~  
10 ~~early voting and absentee voting;~~

11 [~~(4)~~] (2) signature roster and registered voter  
12 list;

13 [~~(5)~~] (3) the machine-printed returns;

14 [~~(6)~~] (4) oaths of office of the precinct  
15 board;

16 [~~(7)~~] (5) declarations of candidacy and  
17 withdrawals;

18 [~~(8)~~] (6) copies of all election material  
19 required to be published or posted;

20 [~~(9)~~] (7) a copy of all sample ballots and  
21 ballot faces;

22 [~~(10)~~] (8) voting machine permits;

23 [~~(11)~~] (9) certificates submitted by voters;

24 [~~(12)~~] (10) copies of all affidavits and  
25 certificates prepared in connection with the election;

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1                    [~~(13)~~] (11) all results of recounts, rechecks,  
2 contests and recanvass; and

3                    [~~(14)~~] (12) all other significant election  
4 materials.

5                    B. The district court shall retain for forty-five  
6 days after each municipal election all election materials sent  
7 by the precinct board. Thereafter, the material may be  
8 destroyed unless needed by the court in connection with a  
9 contest or other case or controversy.

10                    C. The municipal clerk shall destroy election  
11 records two years after the election by shredding, burning or  
12 otherwise destroying. "

13                    Section 11. Section 3-8-74 NMSA 1978 (being Laws 1985,  
14 Chapter 208, Section 82, as amended) is amended to read:

15                    "3-8-74. UNLAWFUL POSSESSION OF KEYS--EARLY VOTING BALLOT  
16 OR ABSENTEE BALLOT--PENALTY. --

17                    A. Unlawful possession of keys consists of the  
18 possession at any time by any person of any key to a voting  
19 machine or ballot box or possession of an imitation or  
20 duplicate thereof or making or causing to be made any imitation  
21 or duplicate thereof unless authorized by the Municipal  
22 Election Code.

23                    B. A person who commits unlawful possession of keys  
24 is guilty of a fourth degree felony.

25                    C. Unlawful possession of an absentee ballot

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1 consists of the possession by any person at any time of  
2 absentee ballot materials when not authorized by the Municipal  
3 Election Code to be in the possession of such materials or when  
4 such materials were obtained in an unlawful manner. As used in  
5 this section, "absentee ballot materials" means an absentee  
6 ballot, absentee ballot envelopes, the absentee ballot register  
7 or absentee ballot return.

8 D. A person who commits unlawful possession of an  
9 absentee ballot is guilty of a fourth degree felony.

10 ~~[E. Unlawful possession of an early voting ballot~~  
11 ~~consists of the possession by any person at any time of early~~  
12 ~~voting ballot materials when not authorized by the Municipal~~  
13 ~~Election Code to be in the possession of such materials, or~~  
14 ~~when such materials were obtained in an unlawful manner. As~~  
15 ~~used in this section, "early voting ballot materials" means an~~  
16 ~~early voting ballot, the early voting ballot register or early~~  
17 ~~voting election returns.~~

18 ~~F. A person who commits unlawful possession of an~~  
19 ~~early voting ballot is guilty of a fourth degree felony.]"~~

20 Section 12. Section 3-8-75 NMSA 1978 (being Laws 1985,  
21 Chapter 208, Section 83, as amended) is amended to read:

22 "3-8-75. FALSE VOTING--FALSIFYING ELECTION DOCUMENTS--  
23 FALSE SWEARING--PENALTY.--

24 A. False voting consists of:

25 (1) voting or offering to vote with the

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1 knowledge of not being a qualified elector;

2 (2) voting or offering to vote in the name of  
3 any other person;

4 (3) knowingly voting or offering to vote in  
5 any precinct except that in which one is registered;

6 (4) voting or offering to vote more than once  
7 in the same election;

8 (5) inducing, abetting or procuring or  
9 attempting to induce, abet or procure a person known not to be  
10 a qualified elector to vote; or

11 (6) inducing, abetting or procuring or  
12 attempting to induce, abet or procure a person who has voted  
13 once in any election to vote or attempt to vote again at the  
14 same election.

15 B. A person who commits false voting is guilty of a  
16 fourth degree felony.

17 C. Falsifying election documents consists of  
18 performing any of the following acts willfully and with  
19 knowledge and intent to deceive or mislead any voter, precinct  
20 board, municipal clerk or other election official:

21 (1) printing, causing to be printed,  
22 distributing or displaying false or misleading instructions  
23 pertaining to voting or the conduct of the election;

24 (2) printing, causing to be printed,  
25 distributing or displaying any official ballot, absentee

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1 ballot, [~~early voting ballot~~] marksense ballot, sample ballot,  
2 facsimile diagram, ballot face or pretended ballot that  
3 includes the name of any person not entitled by law to be on  
4 the ballot or omits or defaces the name of any person entitled  
5 by law to be on the ballot or otherwise contains false or  
6 misleading information or headings;

7 (3) defacing, altering, forging, making false  
8 entries in or changing any election document, including [~~but~~  
9 ~~not limited to~~] election returns, a certificate of election  
10 registration record or signature rosters, affidavits,  
11 certificates or any other election document except as  
12 authorized in the Municipal Election Code;

13 (4) withholding any certificate of election,  
14 registered voter list, signature roster, election return or any  
15 other election document required by or prepared and issued  
16 pursuant to the Municipal Election Code; or

17 (5) preparing or submitting any false  
18 certificate of election, signature roster, registered voter  
19 list, election return or any other election document.

20 D. A person who falsifies election documents is  
21 guilty of a fourth degree felony.

22 E. False swearing consists of knowingly taking or  
23 giving any oath required by the Municipal Election Code with  
24 the knowledge that the thing or matter sworn to is not a true  
25 and correct statement.

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1 F. A person who falsely swears is guilty of a  
2 fourth degree felony. "

3 Section 13. Section 3-9-1 NMSA 1978 (being Laws 1973,  
4 Chapter 375, Section 2, as amended) is amended to read:

5 "3-9-1. DEFINITIONS. -- As used in [~~this article~~] Chapter  
6 3, Article 9 NMSA 1978:

7 A. "absentee voting" means the casting of a vote by  
8 a qualified elector for any candidate or question prior to  
9 election day, by mail on an absentee ballot, in person on an  
10 absentee ballot or in person on a voting machine;

11 [~~A.-~~] B. "federal qualified elector" means a  
12 qualified elector covered under the provisions of the Federal  
13 Voting Assistance Act of 1955;

14 [~~B.-~~] C. "federal voter" means a voter covered under  
15 the provisions of the Federal Voting Assistance Act of 1955;

16 [~~C.-~~] D. "covered under the provisions of the  
17 Federal Voting Assistance Act of 1955" means:

18 (1) members of the armed forces while in the  
19 active service and their spouses and dependents;

20 (2) members of the merchant marine of the  
21 United States and their spouses and dependents; and

22 (3) citizens of the United States temporarily  
23 residing outside the territorial limits of the United States  
24 and the District of Columbia and their spouses and dependents  
25 when residing with or accompanying them;

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1           ~~[D.]~~ E. "armed forces" means the army, navy, air  
2 force, marine corps, coast guard, environmental science  
3 services administration and public health service;

4           ~~[E.]~~ F. "members of the merchant marine" means  
5 persons other than members of the armed forces:

6                   (1) employed as officers or members of crews  
7 of vessels documented under the laws of the United States or of  
8 vessels owned by the United States or of vessels of foreign  
9 registry under charter to or control of the United States; or

10                   (2) enrolled with the United States for  
11 employment or training for employment or maintained by the  
12 United States for emergency relief service as officers or  
13 members of crews of any such vessels, but does not include  
14 great lakes or inland waterways service;

15           ~~[F.]~~ G. "voter" means a qualified elector of the  
16 municipality; and

17           ~~[G.]~~ H. "election" means a regular or special  
18 municipal election."

19           Section 14. Section 3-9-4 NMSA 1978 (being Laws 1973,  
20 Chapter 375, Section 3, as amended) is amended to read:

21           "3-9-4. ABSENTEE BALLOT APPLICATION-- REJECTION--  
22 ACCEPTANCE-- ISSUANCE OF ABSENTEE BALLOT.--

23           A. Application by a federal qualified elector or  
24 federal voter shall be made on the federal postcard application  
25 form to the municipal clerk.

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1           B. The municipal clerk shall prescribe the form of  
2 the absentee ballot application.

3           ~~[C. An absentee ballot application shall be  
4 furnished by the municipal clerk by mail or in person in the  
5 office of the municipal clerk to the voter upon request by the  
6 voter.]~~

7           C. An application for an absentee ballot may be  
8 obtained by the voter from the municipal clerk. An application  
9 for an absentee ballot may be requested by the voter in person,  
10 by telephone or by mail, and any voter may request an  
11 application for an absentee ballot for an immediate family  
12 member. For purposes of this section, "immediate family" means  
13 spouse, children, parents, brothers and sisters.

14           D. A list containing the names and addresses of  
15 voters requesting absentee ballot applications shall be kept  
16 and shall be made a part of the absentee ballot register.

17           E. Upon receipt of a properly completed and  
18 delivered application for an absentee ballot, the municipal  
19 clerk shall contact the county clerk to determine if the  
20 applicant is a qualified elector of the municipality.

21           F. The municipal clerk shall reject an absentee  
22 ballot application for any of the following reasons:

23                   (1) the application is not made on the form  
24 provided by the municipal clerk;

25                   (2) the application does not set forth the

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1 applicant's full name and address;

2 (3) the application does not set forth the  
3 applicant's social security number or date of birth;

4 [~~(4) the applicant has voted early;~~  
5 ~~(5)~~] (4) the application is not signed by the  
6 applicant; or

7 [~~(6)~~] (5) the applicant:

8 (a) has no valid affidavit of  
9 registration on file with the county clerk and is not a federal  
10 qualified elector or federal voter;

11 (b) has a valid affidavit of  
12 registration on file with the county clerk, but is not a  
13 resident of the municipality; or

14 (c) is a federal qualified elector or  
15 federal voter, but is not entitled to vote in the municipal  
16 election; and

17 (d) cannot comply with Subparagraph (a),  
18 (b) or (c) of this paragraph pursuant to Subsection B of  
19 Section 3-8-40 NMSA 1978.

20 G. If the municipal clerk rejects the absentee  
21 ballot application pursuant to Subsection F of this section,  
22 then the municipal clerk shall refuse to issue an absentee  
23 ballot and shall mark the application "rejected" and enter  
24 "rejected" in the absentee ballot register and file the  
25 application in a separate file. The municipal clerk shall,

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1 within twenty-four hours of rejection of the application,  
2 notify the applicant of the reasons for rejection of the  
3 application. Upon rejection of the application, the municipal  
4 clerk shall determine the method of notification to the voter.  
5 Notification shall only be made by courier with return receipt  
6 or certified mail, return receipt requested. The person whose  
7 application has been rejected shall have ten days from receipt  
8 of notice to appeal or show cause why the application should be  
9 accepted. In addition, if the application is incomplete, the  
10 clerk shall mail immediately a new application for absentee  
11 ballot.

12 H. If the application for absentee ballot is  
13 accepted, the municipal clerk shall:

- 14 (1) mark the application "accepted";
- 15 (2) enter the required information in the  
16 absentee ballot register; and
- 17 (3) issue to the applicant an absentee ballot.

18 I. The municipal clerk shall deliver the absentee  
19 ballot to the applicant in the office of the municipal clerk if  
20 the application for absentee ballot has been accepted and if  
21 the application is submitted in person by the applicant or mail  
22 an absentee ballot to any qualified elector, federal qualified  
23 elector or federal voter whose application for an absentee  
24 ballot was received by mail and has been accepted. The  
25 municipal clerk shall notify the county clerk who shall write

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1 "absentee ballot" on the signature line of the signature roster  
2 next to the name of the person who has been sent an absentee  
3 ballot. Names of individuals that have been labeled "absentee  
4 ballot" shall appear on a separate list called the "absentee  
5 voter list". This list shall be submitted to the municipal  
6 clerk by the county clerk in the same manner as provided in  
7 Subsection B of Section 3-8-7 NMSA 1978.

8 J. It is the duty of the municipal clerk to verify  
9 the signature roster and absentee voter list to ensure that all  
10 names of individuals who have been issued absentee ballots have  
11 been labeled "absentee ballot" on the signature roster and  
12 their names listed on the absentee voter list. If not, the  
13 municipal clerk shall write "absentee ballot" on the signature  
14 line of the signature roster next to the name of the person who  
15 has been sent an absentee ballot. The municipal clerk shall  
16 then enter the name and all required information on the  
17 absentee voter list.

18 K. If the application for an absentee ballot is  
19 delivered in person to the municipal clerk during regular hours  
20 and days of business and is accepted, the municipal clerk shall  
21 issue the voter the absentee ballot and it shall be marked by  
22 the applicant in a voting booth in the municipal clerk's  
23 office, sealed in the proper envelopes and otherwise properly  
24 executed and returned to the municipal clerk or the clerk's  
25 authorized representative before the applicant leaves the

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1 office of the municipal clerk, or allow the voter to cast a  
2 vote on the voting machine. Absentee ballots may be [~~cast~~]  
3 marked in person beginning at 8:00 a.m. on the twenty-seventh  
4 day before the election at the municipal clerk's office during  
5 the regular hours and days of business until 5:00 p.m. on the  
6 [~~Thursday~~] Friday immediately prior to the date of election.  
7 An absent voter may vote in person on a paper ballot, or on an  
8 electronic voting machine, at the municipal clerk's office  
9 beginning at 8:00 a.m. on the twentieth day prior to the  
10 election until 5:00 p.m. on the Friday immediately before the  
11 election.

12 L. The act of marking the absentee ballot in the  
13 office of the municipal clerk shall be a convenience to the  
14 voter in the delivery of the absentee ballot and does not make  
15 the office of the municipal clerk a polling place subject to  
16 the requirements of a polling place in the Municipal Election  
17 Code other than is provided in this subsection. During the  
18 period of time between the date a person may first apply in  
19 person for an absentee ballot and the final date for such  
20 application and marking of the ballot in the office of the  
21 municipal clerk, it is unlawful to solicit votes or display or  
22 otherwise make accessible any posters, signs or other forms of  
23 campaign literature whatsoever in the clerk's office.

24 M Absentee ballots shall be air mailed to federal  
25 qualified electors and federal voters whose applications have

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1 been accepted not earlier than thirty-five days prior to the  
2 election and not later than 5:00 p.m. on the [~~Thursday~~] Friday  
3 immediately prior to the date of the election.

4 N. Absentee ballots shall be mailed to voters whose  
5 applications have been approved not earlier than thirty-five  
6 days prior to the election and not later than 5:00 p.m. on  
7 [~~Thursday~~] the Friday immediately prior to the date of the  
8 election.

9 O. No absentee ballot shall be delivered or mailed  
10 to any person other than the applicant for such ballot."

11 Section 15. Section 3-9-7 NMSA 1978 (being Laws 1973,  
12 Chapter 375, Section 8, as amended) is amended to read:

13 "3-9-7. MANNER OF VOTING--USE OF AN ELECTRONIC VOTING  
14 DEVICE. --

15 A. Any person voting an absentee ballot under the  
16 provisions of the Municipal Election Code shall secretly mark  
17 the ballot in the manner provided in the Municipal Election  
18 Code for marking emergency paper ballots, remove any visible  
19 number on the ballot, place the ballot in the official inner  
20 envelope and securely seal the envelope. The person voting  
21 shall then place the official inner envelope inside the  
22 official mailing envelope and securely seal the envelope. The  
23 person voting shall then fill in the form on the reverse of the  
24 official mailing envelope.

25 B. Federal voters and federal qualified electors

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1 shall either deliver their ballots in person or mail the  
2 official mailing envelope to the municipal clerk of their  
3 municipality of residence or deliver it to a person designated  
4 by federal authority to receive executed ballots for  
5 transmission to the municipal clerk of the municipality of  
6 residence. Voters shall either deliver or mail the official  
7 mailing envelope to the municipal clerk of their municipality  
8 of residence. The municipal clerk shall not accept an official  
9 outer envelope that is delivered in person to the municipal  
10 clerk's office from any person other than the voter signing the  
11 official outer envelope.

12 C. Any person voting on the marksense ballot shall  
13 secretly mark the ballot by completing the arrow in pencil  
14 directly to the right of the candidate's name or the proposed  
15 question. The voter shall then place the marked ballot in the  
16 official inner envelope and securely seal the envelope and then  
17 place the official inner envelope inside the official mailing  
18 envelope and securely seal the envelope. The voter shall then  
19 complete the form on the reverse of the official mailing  
20 envelope.

21 D. When an electronic voting device is used by the  
22 voter to cast an absentee vote, the municipal clerk shall  
23 ensure that each absentee voting machine is located within the  
24 office of the municipal clerk. The area shall be secured by  
25 lock and key. Each day during the time the absentee voting

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1 machine is used for absentee voting, the municipal clerk shall,  
2 in the presence of one other employee of the municipality,  
3 unlock the office where the voting machine is located. Each  
4 day, at the close of regular office hours, the municipal clerk  
5 shall, in the presence of one other municipal employee, secure  
6 the office where the voting machine is located. Each day  
7 immediately after unlocking or locking the office where the  
8 voting machine is located, the municipal clerk and the employee  
9 present shall sign or initial the absentee voting daily report.  
10 The municipal clerk shall prescribe the form of the absentee  
11 voting daily report, which shall include the following  
12 information:

13 (1) the voting machine serial number;

14 (2) beginning and ending public counter number  
15 for the day;

16 (3) beginning and ending protective counter  
17 number for the day;

18 (4) closing seal number, if any;

19 (5) the total number of voters for the day;

20 and

21 (6) a place for the date and signature of the  
22 municipal clerk and the municipal employee.

23 E. Voting shall be conducted substantially in the  
24 manner provided in the Municipal Election Code. The absentee  
25 voting daily report shall be submitted to the absent voter

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1 precinct on election day, along with any voting machines used. "

2 Section 16. Section 3-9-8 NMSA 1978 (being Laws 1973,  
3 Chapter 375, Section 9, as amended) is amended to read:

4 "3-9-8. CARE OF ABSENTEE BALLOTS--DESTRUCTION OF UNUSED  
5 BALLOTS BY MUNICIPAL CLERK. --

6 A. The municipal clerk shall mark on each completed  
7 official outer envelope the date and time of receipt in his  
8 office, record this information in the absentee ballot register  
9 and safely and securely keep the official outer envelope  
10 unopened until it is delivered on election day to the proper  
11 precinct board or until it is canceled and destroyed in  
12 accordance with law. Once a ballot is officially accepted by  
13 the municipal clerk and recorded in the absentee ballot  
14 register, it cannot be returned to the voter for any reason.

15 B. The municipal clerk shall accept completed  
16 official outer envelopes received by mail or delivered in  
17 person to the municipal clerk's office by the voter signing the  
18 official outer envelope or by members of the voter's immediate  
19 family until 7:00 p.m. on election day. For purposes of this  
20 section, "immediate family" means spouse, children, parents,  
21 brothers and sisters. Any completed outer envelope received  
22 after that time and date shall be marked as to the time and  
23 date received, shall not be delivered to the precinct board and  
24 shall be preserved until the time for election contests has  
25 expired. In the absence of a court order, after the expiration

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1 of the time for election contests, the municipal clerk shall  
2 destroy all late official mailing envelopes without opening or  
3 permitting the contents to be examined, cast, counted or  
4 canvassed. Before their destruction, the municipal clerk shall  
5 count the numbers of late ballots from voters, federal voters  
6 and federal qualified electors and record the number from each  
7 category in the absentee ballot register.

8 C. After 5:00 p.m. and not later than 8:00 p.m. on  
9 the Thursday immediately preceding the date of the election,  
10 the municipal clerk shall record the numbers of the unused  
11 absentee ballots and shall publicly destroy in the municipal  
12 clerk's office all such unused ballots. The municipal clerk  
13 shall execute a certificate of such destruction, which shall  
14 include the numbers on the ballots destroyed, and such  
15 certificate shall be placed within the absentee ballot  
16 register.

17 D. At 7:00 p.m. on the day of the election, the  
18 municipal clerk shall determine the number of ballots that were  
19 mailed and have not been received and execute a "certificate of  
20 unreceived absentee ballots". Such certificate shall be placed  
21 in the absentee ballot register and shall become an official  
22 part of the register. The municipal clerk shall determine the  
23 form of the certificate of unreceived absentee ballots."

24 Section 17. Section 3-9-10 NMSA 1978 (being Laws 1985,  
25 Chapter 208, Section 98, as amended) is amended to read:

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1           "3-9-10. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER  
2       PRECINCT. --After 7:00 a.m. on election day, the municipal clerk  
3       shall deliver to the absent voter precinct board the absentee  
4       ballot register and the absent voter ballots received by the  
5       clerk, any electronic voting machines used and all absentee  
6       voting daily reports. Prior to 7:00 p.m. on election day, the  
7       municipal clerk shall deliver any ballots received on election  
8       day to the absent voter precinct board and the precinct board  
9       shall note the receipt of ballots in the absentee ballot  
10      register and on the absentee voter list. On delivery of the  
11      ballots, the municipal clerk or his designee shall remain in  
12      the presence of the absent voter precinct board until the clerk  
13      has observed the opening of all official mailing envelopes, the  
14      deposit of all ballots in the locked ballot box and the listing  
15      of the names on all of the official mailing envelopes in the  
16      absentee voter list. All functions of the absent voter  
17      precinct board shall be conducted in the place designated as  
18      the absent voter precinct."

19           Section 18. Section 3-9-13 NMSA 1978 (being Laws 1973,  
20      Chapter 375, Section 11, as amended) is amended to read:

21           "3-9-13. VOTING IN PERSON PROHIBITED. --

22           A. No person who has been issued an absentee ballot  
23      shall vote [~~by early ballot or~~] in person at that person's  
24      regular precinct polling place on election day except as  
25      otherwise provided in the Municipal Election Code.

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1           B. At any time prior to 5:00 p.m. on the [~~Thursday~~]  
2 Friday immediately preceding the date of the election, any  
3 person whose absentee ballot application has been accepted and  
4 who was mailed an absentee ballot but who has not received the  
5 absentee ballot may execute, in the office of the municipal  
6 clerk of the municipality where that person is registered to  
7 vote, a sworn affidavit stating that the person did not receive  
8 or vote his absentee ballot. Upon receipt of the sworn  
9 affidavit, the municipal clerk shall issue the voter a  
10 replacement absentee ballot.

11           C. The municipal clerk shall prescribe the form of  
12 the affidavit and the manner in which the municipal clerk shall  
13 void the first ballot mailed to the applicant."

14           Section 19. A new section of the Municipal Election Code  
15 is enacted to read:

16           "[NEW MATERIAL] ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN  
17 NOT TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND  
18 COUNTING.--

19           A. A voter who has submitted an application for an  
20 absentee ballot that was accepted by the municipal clerk but  
21 who has not received the absentee ballot by mail as of the date  
22 of the election may present himself at his assigned polling  
23 place and, after executing an affidavit of non-receipt of  
24 absentee ballot, shall be issued an emergency paper ballot in  
25 lieu of an absentee ballot by the presiding judge, and shall be

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1 allowed to mark the ballot.

2 B. The voter shall place the completed emergency  
3 paper ballot issued in lieu of an absentee ballot in an  
4 official inner envelope, substantially in the form prescribed  
5 pursuant to Section 3-9-6 NMSA 1978, which shall be sealed by  
6 the voter. The official inner envelope shall then be placed by  
7 the voter, in the presence of the presiding judge, in an  
8 official outer envelope substantially as prescribed for a  
9 transmittal envelope or mailing envelope pursuant to Section  
10 3-9-6 NMSA 1978. The presiding judge shall fill in the  
11 information on the back of the envelope that identifies the  
12 voter by name and signature roster number and contains the  
13 printed affidavit that the voter made application for an  
14 absentee ballot, which the voter believes to have been accepted  
15 by the municipal clerk, that the voter swears an absentee  
16 ballot had not been received as of the date of the election and  
17 that the voter was issued an emergency paper ballot in lieu of  
18 an absentee ballot, and that the ballot was marked by the voter  
19 and submitted to the presiding judge.

20 C. The presiding judge shall place all emergency  
21 paper ballots issued in lieu of absentee ballots in a special  
22 envelope provided for that purpose by the municipal clerk, seal  
23 the envelope and return it to the municipal clerk along with  
24 the machine tally sheets after the closing of the polls. The  
25 sealed envelope shall not be placed in the locked ballot box.

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1           D. The municipal clerk shall, upon receipt of the  
2 envelope containing emergency paper ballots in lieu of absentee  
3 ballots, and no later than forty-eight hours after the close of  
4 the polls for the election, remove the transmittal envelopes  
5 and without removing or opening the inner envelopes, determine:

6                   (1) if the voter did in fact make application  
7 for an absentee ballot that was accepted by the municipal  
8 clerk;

9                   (2) if an absentee ballot was mailed by the  
10 municipal clerk to the voter; and

11                   (3) whether an absentee ballot was received by  
12 the municipal clerk from the voter by 7:00 p.m. on election  
13 day.

14           E. If the municipal clerk determines that the  
15 emergency paper ballot in lieu of absentee ballot is valid,  
16 that an absentee ballot was mailed to the voter and that no  
17 absentee ballot was received from the voter by the municipal  
18 clerk, the municipal clerk shall remove the inner envelope  
19 without opening it, retain the transmittal envelope with the  
20 other election returns and place the inner envelope, unopened,  
21 in a secure and locked container to be transmitted to the  
22 canvassing board to be tallied and included in the canvass of  
23 the election returns for the municipality.

24           F. If the municipal clerk determines that the  
25 emergency paper ballot in lieu of absentee ballot is not valid

underscored material = new  
[bracketed material] = delete

1 because the application for absentee ballot was rejected and no  
2 ballot was mailed to the voter, or that a ballot was received  
3 from the voter by the municipal clerk not later than 7:00 p. m.  
4 on election day, the municipal clerk shall write "rejected  
5 invalid ballot" on the front of the transmittal envelope and  
6 the transmittal envelope shall not be sent to the canvassing  
7 board for counting and tallying. The municipal clerk shall  
8 retain the unopened transmittal envelope in a safe and secure  
9 manner and shall notify the district attorney in writing of the  
10 alleged violation of the Municipal Election Code. A copy of  
11 the notification to the district attorney shall be sent by  
12 first class mail to the voter and to the secretary of state.

13 G. The municipal clerk shall furnish and shall  
14 prescribe the form of the necessary envelopes to be used in  
15 accordance with the purposes of this section, and shall take  
16 steps to preserve the secrecy of any ballots cast pursuant to  
17 this section. "

18 Section 20. REPEAL. -- Sections 3-8-81 through 3-8-83,  
19 3-8-83.1 and 3-8-84 through 3-8-95 NMSA 1978 (being Laws 1999,  
20 Chapter 278, Sections 37 through 39, Laws 2001, Chapter 197,  
21 Section 11 and Laws 1999, Chapter 278, Sections 40 through 44  
22 and 46 through 52, as amended) are repealed.