SENATE BILL 318

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

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AN ACT

RELATING TO ELECTIONS; REQUIRING A POST-ELECTION EVALUATION OF THE ACCURACY OF RANDOMLY SELECTED VOTING SYSTEMS; PRESCRIBING PROCEDURES; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] POST-ELECTION DUTIES--RANDOM VOTING SYSTEM CHECK.--

A. For each general election, the state auditor shall contract with an election auditor to oversee a random voting system check of precinct electronic vote tabulators, alternate voting location electronic vote tabulators and absent voter precinct electronic vote tabulators. The election

1　auditor shall select in a public drawing a random sample of

2　precinct electronic vote tabulators, alternate voting location

3　electronic vote tabulators and batches of absentee ballots from

4　absent voter precincts as soon as practicable after the

5　completion of the county canvasses. The size of the random

6　sample shall be determined so that it will ensure, with at

7　least a ninety percent probability, that faulty tabulators

8　would be detected if they would change the outcome of the

9　election for a selected office. The election auditor may

10　choose to conduct a voting system check of additional

11　electronic vote tabulators if initial results indicate more

12　auditing is necessary.

13　　　　　B.　The election auditor shall notify the

14　appropriate county clerks which precinct electronic vote

15　tabulators and alternate voting location electronic voter

16　tabulators are to be checked and which batches of ballots from

17　absent voter precincts are to be included in the random voting

18　system check.

19　　　　　C.　The election auditor shall direct the

20　appropriate county clerks to compare the vote totals for

21　candidates for selected offices from the randomly selected

22　precinct level electronic vote tabulators and alternate voting

23　location electronic vote tabulators with the respective vote

24　totals of a hand recount of the paper ballots counted by those

25　electronic vote tabulators in accordance with state auditor

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1   rules.

2   D.   For electronic vote tabulators used in absentee

3   ballot precincts, county clerks shall divide absentee ballots

4   into batches.   Each batch shall contain approximately the same

5   number of ballots as an estimate of the county average for the

6   number of ballots voted in the county's precincts.   The ballots

7   in the batches need not be associated with voters from any

8   particular precinct.   As the ballots in a batch are tabulated

9   and recorded, each batch shall be assigned a unique

10   identification number in the format provided by the secretary

11   of state.   Immediately after tabulating the ballots comprising

12   each batch, a cumulative summary vote tally report bearing the

13   unique identification number of the batch and containing the

14   sum of the vote totals of the batch and all previously counted

15   batches in the election shall be recorded.   The election

16   auditor shall use the reports to determine the electronic vote

17   tally for each batch.   The election auditor shall first compare

18   the vote tallies in the final cumulative report to the official

19   results announced by the county and resolve any discrepancies,

20   and then include all the batches from each county in the random

21   selection process and, if selected, cause them to be audited in

22   the same manner provided herein for precincts, except that the

23   hand count shall be compared to the vote tally derived from the

24   cumulative reports.   The batches shall be included with the

25   precincts in the random selection process for precincts and

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1   batches to be audited. The vote tallies of the batches

2   selected for auditing shall be compared to hand counts of the

3   batches.

4   E.   For the purposes of this section, "selected

5   offices" means the offices of governor or president, the

6   statewide elective office for which the winning candidate won

7   by the narrowest margin of all candidates for statewide

8   elective office and all federal elective offices on the ballot.

9   F.   Based on the results of the electronic vote

10   tabulator audit and any other auditing results, the election

11   auditor shall determine whether or not there is a significant

12   possibility that a full hand recount of the votes for any of

13   the selected offices would change the outcome of the election

14   and report the determination to the state auditor, secretary of

15   state and state canvassing board, which shall make the report

16   available to the public.

17   G.   Persons designated as county canvass observers

18   shall be notified by the election auditor of, and may observe,

19   the hand recounts required in this section. Observers shall

20   comply with the procedures governing county canvass observers

21   as provided in Section 1-2-31 NMSA 1978.

22   H.   All costs of a random voting system check shall

23   be paid by the state. The secretary of state shall reimburse a

24   county for expenses incurred in conducting a random voting

25   system check."

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1 Section 2. A new section of the Audit Act is enacted to

2 read:

3 "[NEW MATERIAL] GENERAL ELECTION AUDIT.--For each general

4 election, the state auditor shall contract with an election

5 auditor to conduct a post-election evaluation of the accuracy

6 of randomly selected voting systems in accordance with the

7 Election Code."

8 Section 3. APPROPRIATION.--One hundred thousand dollars

9 ($100,000) is appropriated from the general fund to the office

10 of the secretary of state for expenditure in fiscal year 2009

11 for reimbursing counties for the costs incurred in conducting

12 automatic recounts. Any unexpended or unencumbered balance

13 remaining at the end of fiscal year 2009 shall revert to the

14 general fund.

15 Section 4. REPEAL.--Section 1-14-13.1 NMSA 1978 (being

16 Laws 2005, Chapter 270, Section 75) is repealed.

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