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HOUSE BILL 647

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Jose A. Campos

AN ACT

RELATING TO MUNICIPAL ELECTIONS; MODIFYING AND UPDATING CERTAIN PROCEDURES IN THE MUNICIPAL ELECTION CODE; REMOVING REFERENCES TO EMERGENCY PAPER BALLOTS; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW BY REPEALING LAWS 1995, CHAPTER 98, SECTION 3; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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:

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1 (1) "absentee voter list" means the list  
2 prepared by the municipal and county clerks of those persons  
3 who have been issued an absentee ballot;

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

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

15 (4) ~~["clerk" or "municipal clerk" means the~~  
16 ~~municipal clerk or any deputy or assistant municipal clerk]~~  
17 "consolidated precinct" means the combination of two or more  
18 precincts pursuant to the Municipal Election Code;

19 (5) "county clerk" means the clerk of the  
20 county or ~~[his]~~ the county clerk's designee within which the  
21 municipality is located;

22 (6) "election returns" means all certificates  
23 of the precinct board, including the certificate showing the  
24 total number of votes cast for each candidate, if any, and for  
25 or against each question, if any, and shall include statements

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1 of canvass, signature rosters, registered voter lists, machine-  
2 printed returns, [~~emergency paper ballots~~] paper ballots used  
3 in lieu of voting machines, absentee ballots, absentee ballot  
4 registers and absentee voter lists or absent voter machine-  
5 printed returns;

6 [~~(7)~~] "~~emergency paper ballot~~" means the paper  
7 ballot used when a voting machine becomes disabled so that a  
8 voter is unable to cast a vote for all of the candidates and  
9 questions of the voter's choice and have such vote correctly  
10 recorded by the voting machine and when no substitute voting  
11 machine is available;

12 [~~(8)~~] "~~marksense ballot~~" means a paper ballot  
13 card used on an optical-scan vote-tabulating machine]

14 (7) "municipal clerk" means the municipal  
15 clerk or any deputy or assistant municipal clerk;

16 [~~(9)~~] (8) "municipal clerk's office" means the  
17 office of the municipal clerk or any other room used in the  
18 process of absentee voting, counting and tallying of absentee  
19 ballots or canvassing the election results within the confines  
20 of the building where the municipal clerk's office is located;

21 [~~(10)~~] (9) "paper ballot" means a ballot  
22 manually marked by the voter and counted by hand without the  
23 assistance of a machine or optical-scan vote tabulating device;

24 [~~(11)~~] (10) "precinct" means a portion of a  
25 county situated entirely in or partly in a municipality that

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1 has been designated by the county as a precinct for election  
2 purposes and that is entitled to a polling place and a precinct  
3 board. If a precinct includes territory both inside and  
4 outside the boundaries of a municipality, "precinct", for  
5 municipal elections, shall mean only that portion of the  
6 precinct lying within the boundaries of the municipality;

7 ~~[(12) "consolidated precinct" means the~~  
8 ~~combination of two or more precincts pursuant to the Municipal~~  
9 ~~Election Code;~~

10 ~~(13)]~~ (11) "precinct board" means the  
11 appointed election officials serving a single or consolidated  
12 precinct;

13 (12) "qualified elector" means any person  
14 whose affidavit of voter registration has been filed by the  
15 county clerk, who is registered to vote in a general election  
16 precinct established by the board of county commissioners that  
17 is wholly or partly within the municipal boundaries and who is  
18 a resident of the municipality. Persons who would otherwise be  
19 qualified electors if land on which they reside is annexed to a  
20 municipality shall be deemed to be qualified electors:

21 (a) upon the effective date of the  
22 municipal ordinance effectuating the terms of the annexation as  
23 certified by the board of arbitration pursuant to Section  
24 3-7-10 NMSA 1978;

25 (b) upon thirty days after the filing of

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1 an order of annexation by the municipal boundary commission  
2 pursuant to Sections 3-7-15 and 3-7-16 NMSA 1978, if no appeal  
3 is filed or, if an appeal is filed, upon the filing of a  
4 nonappealable court order effectuating the annexation; or

5 (c) upon thirty days after the filing of  
6 an ordinance pursuant to Section 3-7-17 NMSA 1978, if no appeal  
7 is filed or, if an appeal is filed, upon the filing of a  
8 nonappealable court order effectuating the annexation;

9 ~~{(14)}~~ (13) "recheck" pertains to voting  
10 machines and means a verification procedure where the counter  
11 compartment of the voting machine is opened and the results of  
12 the balloting as shown on the counters of the machine are  
13 compared with the results shown on the official returns; ~~[and~~

14 ~~{(15)}~~ (14) "recount" pertains to ~~[emergency~~  
15 ~~paper ballots, paper ballots used in lieu of voting machines]~~  
16 ballots and absentee ballots and means a retabulation and  
17 retallying of individual ballots;

18 (15) "voter" means a qualified elector of the  
19 municipality; and

20 (16) "voting machine" means any electronic  
21 recording and tabulating voting system as tested and approved  
22 by the secretary of state."

23 Section 2. Section 3-8-11 NMSA 1978 (being Laws 1985,  
24 Chapter 208, Section 19) is amended to read:

25 "3-8-11. POLLING PLACES.--

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1           A. The governing body shall designate within the  
2 municipal boundaries a polling place, in each precinct or  
3 consolidated precinct, ~~[which]~~ that is the most convenient and  
4 suitable public building or public school building in the  
5 precinct that can be obtained and ~~[which]~~ that provides  
6 suitable access for handicapped persons as required by law.

7           B. If no public building or public school building  
8 is available, the governing body shall provide some other  
9 suitable place, which shall be the most convenient and  
10 appropriate place obtainable within the municipal boundaries  
11 and in the precinct, considering the purpose for which it is to  
12 be used.

13           C. If no public building or public school building  
14 is available in the precinct and if there is no other suitable  
15 place obtainable in the precinct, the governing body may  
16 designate as a polling place for the precinct the most  
17 convenient and suitable building or public school building  
18 nearest to that precinct that can be obtained; provided, no  
19 polling place shall be designated outside the boundaries of the  
20 municipality and of the precinct as provided in this subsection  
21 until such designated polling place is approved by written  
22 order of the district court of the county in which the precinct  
23 is located.

24           D. Upon application of the governing body or  
25 municipal clerk, the governing board of any school district

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1 shall permit the use of any school buildings or a part thereof  
2 for the conduct of any municipal election.

3 E. If only one candidate files a declaration of  
4 candidacy for each position to be filled at an election and no  
5 declared write-in candidate files for a position and there are  
6 no questions or bond issues on the ballot, the municipal clerk  
7 may designate a single polling place for the election."

8 Section 3. Section 3-8-13 NMSA 1978 (being Laws 1985,  
9 Chapter 208, Section 21) is amended to read:

10 "3-8-13. VOTING MACHINES--PAPER BALLOTS.--Voting machines  
11 shall be used in all municipal elections, except paper ballots  
12 may be used in lieu of voting machines for the recording of  
13 votes cast in a municipal special or regular election in  
14 municipalities of less than one thousand five hundred  
15 population. A decision to use paper ballots shall be made by  
16 the governing body at the time the election resolution is  
17 adopted. Nothing in this section shall prevent the use of  
18 [~~emergency paper ballots or~~] absentee ballots as allowed by  
19 law."

20 Section 4. Section 3-8-14 NMSA 1978 (being Laws 1985,  
21 Chapter 208, Section 22, as amended) is amended to read:

22 "3-8-14. VOTING MACHINES--ORDERING--PREPARATION--  
23 CERTIFICATION--DELIVERY.--

24 A. If voting machines are to be used, the municipal  
25 clerk shall order the machines from the county clerk within

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1 fifteen days of the adoption of the election resolution, and  
2 the county clerk shall supply such voting machines pursuant to  
3 Section 1-9-6 NMSA 1978. The county shall provide voting  
4 machine technicians, voting machine programming and voting  
5 machine transportation. The municipality shall pay the  
6 reasonable fee charged by the county for such services and the  
7 use of the voting machines, but in no case in an amount [~~which~~]  
8 that exceeds the actual cost to the county pursuant to Section  
9 1-9-12 NMSA 1978.

10 B. If voting machines are to be used, the municipal  
11 clerk shall order at least one voting machine for every polling  
12 place; provided that the municipal clerk shall order a  
13 sufficient number of voting machines to [~~assure~~] ensure that  
14 the eligible voters in that polling place shall be able to vote  
15 in a timely manner.

16 C. Programming of electronic machines shall be  
17 performed under the supervision of the municipal clerk and the  
18 county clerk. The machines shall be programmed so that votes  
19 will be counted in accordance with [~~specification~~]  
20 specifications for electronic voting [~~machine~~] machines adopted  
21 by the secretary of state.

22 D. Immediately upon receipt of the notice of date,  
23 time and place of inspection and certification, the municipal  
24 clerk shall post such notice in the office of the municipal  
25 clerk and attempt to [~~telephone~~] contact the candidates [~~at the~~

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1 ~~phone number~~] using the information listed on the declaration  
2 of candidacy to give each candidate notice of the date, time  
3 and place of inspection and certification.

4 E. Inspection and certification shall occur not  
5 later than seven days prior to the election and shall be open  
6 to the public. If [~~electronic~~] voting machines are to be used  
7 for absentee voting, inspection and certification shall occur  
8 not later than seven days prior to the beginning of absentee  
9 voting and shall be open to the public.

10 F. At the date, time and place for inspection and  
11 certification, in the presence of the county clerk and those  
12 municipal candidates present, if any, the municipal clerk  
13 shall:

14 (1) ensure that the correct ballot [~~face~~]  
15 sheet has been installed on each voting machine, if ballot  
16 [~~faces~~] sheets are to be installed;

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

19 (3) test each voting machine to [~~assure~~]  
20 ensure that it has been correctly programmed; and

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

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

25 (1) the county clerk shall reset each counter

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1 at zero;

2 (2) the voting machine shall be immediately  
3 sealed with a numbered [~~metal~~] seal so as to prevent operation  
4 of the machine or its registering counters without breaking the  
5 seal;

6 (3) the municipal clerk shall prepare a  
7 certificate in triplicate for each machine that shall:

8 (a) show the serial number of the voting  
9 machine;

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

12 (c) state that the voting machine has  
13 been tested by voting on each registered counter to prove the  
14 counter is in perfect condition;

15 (d) state that the correct ballot [~~face~~]  
16 sheet has been installed on the voting machine, if ballot  
17 [~~faces~~] sheets are to be installed;

18 (e) show the number of the [~~metal~~] seal  
19 that has sealed the machine; and

20 (f) show the number registered on the  
21 protective counter;

22 (4) a copy of the certificate shall be  
23 delivered to the county clerk, the original certificate shall  
24 be filed in the office of the municipal clerk and one copy  
25 shall be posted on the voting machine; and

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1 (5) if the voting machine requires keys, the  
2 keys to the voting machine shall be enclosed in a sealed  
3 envelope on which shall be written:

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

6 (b) the serial number of the voting  
7 machine;

8 (c) the number of the ~~[metal]~~ seal that  
9 has sealed the voting machine;

10 (d) the number registered on the  
11 protective counter; and

12 (e) ~~[across the seal of the envelope]~~  
13 the signatures of the county clerk, the municipal clerk and all  
14 candidates present, if any, at the inspection and  
15 certification.

16 H. After certification of the voting machines, if  
17 the voting machines require keys, the county clerk shall keep  
18 the keys to the voting machines in ~~[his]~~ the county clerk's  
19 custody and shall deliver the keys to the municipal clerk when  
20 the voting machines are delivered for election. The municipal  
21 clerk shall secure in the office of the municipal clerk all the  
22 envelopes containing the keys to the voting machines until  
23 delivered to the presiding judge of the election.

24 I. An objection to the use of a particular voting  
25 machine shall be filed in the district court within two days

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1 after the machine has been certified. Any objection so filed  
2 shall specify the number of the voting machine objected to and  
3 the reason for the objection. Each voting machine shall be  
4 conclusively presumed to be properly prepared for the election  
5 if it has been certified unless a timely objection has been  
6 filed.

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

16 K. The municipal clerk shall refuse to certify any  
17 voting machine that the municipal clerk determines is not  
18 programmed properly, is not working properly or will not fairly  
19 or accurately record votes. Only voting machines that have  
20 been certified by the municipal clerk shall be used in the  
21 election."

22 Section 5. Section 3-8-16 NMSA 1978 (being Laws 1985,  
23 Chapter 208, Section 24, as amended) is amended to read:

24 "3-8-16. PAPER BALLOTS IN LIEU OF VOTING MACHINES  
25 [~~EMERGENCY PAPER BALLOTS~~]--FORM--GENERAL REQUIREMENTS.--As used

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1 in this section, "paper ballots" means paper ballots used in  
2 lieu of voting machines [~~and emergency paper ballots~~]. Paper  
3 ballots shall be in the form prescribed by the municipal clerk,  
4 which shall conform to the following rules:

5 A. paper ballots shall:

6 (1) be numbered consecutively beginning with  
7 number one. The number shall be printed [~~in the upper right-~~  
8 ~~hand corner of the ballot~~] with a [~~diagonal~~] perforated line  
9 appropriately placed so that the portion of the ballot bearing  
10 the number [~~in the upper right-hand corner~~] may be readily and  
11 easily detached from the ballot;

12 (2) be uniform in size;

13 (3) be printed on good quality paper;

14 (4) be printed in plain black type;

15 (5) have all words and phrases printed  
16 correctly and in their proper places; and

17 (6) have district and precinct, if applicable;

18 B. the following heading shall be printed on each  
19 paper ballot used in all municipal elections:

20 "OFFICIAL ELECTION BALLOT

21 Election held . . . . . (insert date)";

22 C. if the election is a regular municipal election,  
23 [~~then~~] the paper ballot shall be prepared consistent with the  
24 requirements of Section 3-8-29 NMSA 1978. In addition, next to  
25 each candidate's name shall appear an empty box to be used when

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1 voting for that candidate. Where space is allowed on a paper  
2 ballot for entering the name of a declared write-in candidate,  
3 that space shall be clearly designated by the use of the  
4 heading "Write-in Candidate". Below the heading shall appear  
5 one line, with a box to the right of the line, for each  
6 individual office holder to be elected. Below the last  
7 candidate's name shall appear any question presented, in the  
8 order designated by the governing body;

9 D. if the election is a special municipal election,  
10 [~~then~~] questions presented shall be placed on the paper ballot  
11 in the order designated by the governing body;

12 E. next to each question presented on a paper  
13 ballot shall appear two empty boxes, one labeled "FOR" and the  
14 other labeled "AGAINST"; and

15 F. at the bottom of all paper ballots shall be  
16 printed: "OFFICIAL ELECTION BALLOT", followed by a facsimile  
17 signature of the municipal clerk."

18 Section 6. Section 3-8-18 NMSA 1978 (being Laws 1985,  
19 Chapter 208, Section 26, as amended) is amended to read:

20 "3-8-18. ELECTION SUPPLIES.--

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

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1 ~~later than the eighth day preceding the day of the election.~~

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

5                   (1) order absentee ballots;

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

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

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

15           Section 7. Section 3-8-20 NMSA 1978 (being Laws 1971,  
16 Chapter 306, Section 9, as amended) is amended to read:

17           "3-8-20. PRECINCT [~~BOARDS~~] BOARD--DUTIES.--

18                   A. The precinct board shall:

19                           (1) conduct the municipal election in the  
20 manner provided for the conduct of elections in the Municipal  
21 Election Code; and

22                           (2) at the close of the polls, count the votes  
23 cast on each question, if any, and for each candidate, if any,  
24 and perform all duties as required by the Municipal Election  
25 Code.

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1           B. A member of the precinct board shall not  
2 disclose the name of any candidate for whom any voter has  
3 voted.

4           C. No person shall serve on a precinct board unless  
5 that person has attended [~~an~~] election [~~school~~] training  
6 conducted by the municipal clerk in the previous four years."

7           Section 8. Section 3-8-21 NMSA 1978 (being Laws 1985,  
8 Chapter 208, Section 29, as amended) is amended to read:

9           "3-8-21. MUNICIPAL CLERK--PRECINCT BOARD--ELECTION  
10 [~~SCHOOL~~] TRAINING.--

11           A. The municipal clerk shall conduct or cause to be  
12 conducted [~~an~~] election [~~school~~] training not less than five  
13 days prior to the election. All major details of the conduct  
14 of elections shall be covered at the [~~school~~] training, with  
15 special emphasis given to recent changes in the Municipal  
16 Election Code. The [~~school of instruction~~] training session  
17 shall be open to the public, with notice published not less  
18 than four days prior to the [~~school~~] training.

19           B. Notice of the [~~school~~] training shall be mailed  
20 to each precinct board member and alternate not less than seven  
21 days prior to the [~~school~~] training.

22           C. Two or more municipalities may jointly conduct  
23 [~~a combined~~] election [~~school~~] training.

24           D. The governing body may authorize payment of  
25 mileage to precinct board members who attend [~~the~~] election

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1 [school] training."

2 Section 9. Section 3-8-22 NMSA 1978 (being Laws 1985,  
3 Chapter 208, Section 30, as amended) is amended to read:

4 "3-8-22. CONDUCT OF ELECTION--ELIGIBILITY FOR  
5 ASSISTANCE--ORAL ASSISTANCE FOR LANGUAGE MINORITY VOTERS--AID  
6 OR ASSISTANCE TO VOTER MARKING BALLOT--WHO MAY ASSIST  
7 VOTER--TYPE OF ASSISTANCE.--

8 A. A voter may request assistance in voting only if  
9 the voter is:

10 (1) visually impaired;  
11 (2) a person with a physical disability;  
12 (3) unable to read or write; [or]  
13 (4) a member of a language minority who is  
14 unable to read well enough to exercise the elective franchise;  
15 or

16 (5) not able to operate a voting machine or  
17 mark a ballot without assistance.

18 B. When a voter who is eligible for assistance  
19 requires assistance in marking a [paper] ballot or recording a  
20 vote on a voting machine, the voter shall announce this fact  
21 [in an audible tone] before receiving the [paper] ballot or  
22 before entering the voting machine.

23 C. The voter's request for assistance shall be  
24 noted next to the voter's name in the signature roster and  
25 shall be initialed by the presiding judge.

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1           D. After noting the voter's request for assistance  
2 in the signature roster, the voter shall be allowed to receive  
3 assistance in marking a ~~[paper]~~ ballot or recording a vote on a  
4 voting machine. The name of the person providing assistance to  
5 a voter pursuant to this section shall be recorded on the  
6 signature roster.

7           E. A person who swears falsely in order to secure  
8 assistance with voting is guilty of perjury.

9           F. If a voter who has requested assistance in  
10 marking a ballot has a visual impairment or physical  
11 disability, is unable to read or write or is a member of a  
12 language minority who has requested assistance, the voter may  
13 be accompanied into the voting machine by a person of the  
14 voter's own choice; provided that the person shall not be the  
15 voter's employer, an agent of that employer, an officer or  
16 agent of the voter's union or a candidate whose name appears on  
17 the ballot in the election. A member of the precinct board may  
18 assist a voter, if requested to do so by that voter.

19           G. A person who accompanies the voter into the  
20 voting booth or voting machine may assist the voter in marking  
21 ~~[and folding]~~ a ~~[paper]~~ ballot or recording a vote on the  
22 voting machine. A member of the precinct board who assists a  
23 voter shall not disclose the name of any candidate or questions  
24 for whom any voter voted.

25           H. Oral assistance shall be made available to

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1 assist language minority voters who cannot read sufficiently  
2 well to exercise the elective franchise. As used in this  
3 subsection, "language minority" means a person who is Native  
4 American or of Spanish heritage, and "inability to read well  
5 enough to exercise the elective franchise" means inability to  
6 read the languages in which the ballot is printed or the  
7 inability to understand instructions for operating the voting  
8 machine.

9 I. The position of election translator is created.  
10 The election translator shall be an additional member of the  
11 regular precinct board, unless oral assistance to language  
12 minorities can otherwise be rendered by a member of the regular  
13 precinct board. The election translator shall be appointed by  
14 the municipal clerk in the same manner as other precinct board  
15 members are appointed, except that the municipal clerk in  
16 appointing Native American election translators shall seek the  
17 advice of the pueblo or tribal officials residing in that  
18 municipality. The election translator shall take the oath  
19 required of precinct board members and shall meet the same  
20 qualifications as other precinct board members.

21 J. Each municipal clerk shall compile and maintain  
22 a list of standby election translators to serve in those  
23 precincts on election day when the appointed election  
24 translator is unavailable for such service."

25 Section 10. Section 3-8-27 NMSA 1978 (being Laws 1965,

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1 Chapter 300, Section 14-8-8, as amended) is amended to read:

2 "3-8-27. REGULAR MUNICIPAL ELECTION--DECLARATION OF  
3 CANDIDACY--WITHDRAWING NAME FROM BALLOT--PENALTY FOR FALSE  
4 STATEMENT.--

5 A. Candidate filing day shall be between the hours  
6 of 8:00 a.m. and 5:00 p.m. on the fifty-sixth day preceding the  
7 day of election. On candidate filing day, a candidate for  
8 municipal office shall personally appear at the office of the  
9 municipal clerk to file all documents required by law in order  
10 to cause a person to be certified as a candidate.

11 Alternatively, on candidate filing day, a person acting solely  
12 on the candidate's behalf, by virtue of a written affidavit of  
13 authorization signed by the candidate, notarized and presented  
14 to the municipal clerk by such person, shall file in the office  
15 of the municipal clerk all documents required by law in order  
16 to cause a person to be certified as a candidate.

17 B. On candidate filing day, each candidate shall  
18 cause to be filed in the office of the municipal clerk a  
19 declaration of candidacy; a certified copy of the candidate's  
20 current affidavit of voter registration that is on file with  
21 the county clerk ~~[which]~~ and that has been certified by the  
22 office of the county clerk on a date not earlier than the  
23 adoption of the election resolution; and, in a home rule or  
24 charter municipality that requires a nominating petition to be  
25 submitted by a candidate for municipal office, a nominating

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1 petition that has the required number of signatures.

2 C. All candidates shall cause their affidavits of  
3 voter registration to show their address as a street address or  
4 rural route number and not as a post office box.

5 D. The municipal clerk shall provide a form for the  
6 declaration of candidacy and shall accept only those  
7 declarations of candidacy ~~[which]~~ that contain:

8 (1) the identical name and the identical  
9 resident street address as shown on the affidavit of  
10 registration of the candidate submitted with the declaration of  
11 candidacy;

12 (2) the office and term to which the candidate  
13 seeks election and district designation, if appropriate;

14 (3) a statement that the candidate is eligible  
15 and legally qualified to hold the office for which the  
16 candidate is filing;

17 (4) a statement that the candidate has not  
18 been convicted of a felony or, if the candidate has been  
19 convicted of a felony, a statement that the candidate's  
20 elective franchise has been restored and that the candidate has  
21 been granted a pardon or a certificate by the governor  
22 restoring the candidate's full rights of citizenship;

23 (5) a statement that the candidate or the  
24 candidate's authorized representative shall ~~[personally appear~~  
25 ~~at]~~ contact the office of the municipal clerk during normal

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1 business hours on the fifty-fourth day before the election to  
2 ascertain whether the municipal clerk has certified the  
3 declaration of candidacy as valid;

4 (6) [~~a telephone number at which~~] the contact  
5 information for how the candidate or the candidate's authorized  
6 representative can be reached for purposes of giving  
7 [~~telephone~~] notice;

8 (7) a statement to the effect that the  
9 declaration of candidacy is an affidavit under oath and that  
10 any false statement knowingly made in the declaration of  
11 candidacy constitutes a fourth degree felony under the laws of  
12 New Mexico; and

13 (8) the notarized signature of the candidate  
14 on the declaration of candidacy.

15 E. The municipal clerk shall not accept a  
16 declaration of candidacy for more than one municipal elected  
17 office per candidate, so that each candidate declares for only  
18 one municipal elected office.

19 F. Once filed, the declaration of candidacy is a  
20 public record.

21 G. Not later than the fifty-fifth day preceding the  
22 day of the election, the municipal clerk shall determine  
23 whether the declaration of candidacy shall be certified. In  
24 order to be certified as a candidate, the documents submitted  
25 to the municipal clerk shall prove that the individual is a

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1 qualified elector as defined in Subsection K of Section 3-1-2  
2 NMSA 1978 and, if appropriate, that the individual resides in  
3 and is registered to vote in the municipal election district  
4 from which the individual seeks election. In the event that an  
5 individual fails to submit to the municipal clerk on candidate  
6 filing day the documents listed in Subsection B of this section  
7 in the form and with the contents as required by this section,  
8 the municipal clerk shall not certify that individual as a  
9 candidate for municipal office.

10 H. The municipal clerk shall post in the clerk's  
11 office a list of the names of those individuals who have been  
12 certified as candidates. The municipal clerk shall also post  
13 in the clerk's office the names of those individuals who have  
14 not been certified as candidates, along with the reasons  
15 therefor. The posting shall occur no later than 9:00 a.m. on  
16 the fifty-fourth day preceding the election.

17 I. Not later than 5:00 p.m. on the forty-ninth day  
18 before the day of the election, a candidate for municipal  
19 office may file an affidavit on the form provided by the  
20 municipal clerk in the office of the municipal clerk stating  
21 that ~~[he]~~ the candidate is no longer a candidate for municipal  
22 office. A municipal clerk shall not place on the ballot the  
23 name of any person who has filed an affidavit as provided in  
24 this subsection.

25 J. Not later than 10:00 a.m. on the forty-eighth

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1 day preceding the election, the municipal clerk shall confirm  
2 with the printer on contract with the municipality and the  
3 county clerk the names of the candidates and their position on  
4 the ballot.

5 K. Any person knowingly making a false statement in  
6 the declaration of candidacy is guilty of a fourth degree  
7 felony.

8 L. No person shall be elected to municipal office  
9 as a write-in candidate unless that person has been certified  
10 as a declared write-in candidate by the municipal clerk, as  
11 follows:

12 (1) write-in candidates filing day shall be on  
13 the [~~forty-second~~] forty-ninth day preceding the election  
14 between the hours of 8:00 a.m. and 5:00 p.m.;

15 (2) write-in candidates shall file a  
16 declaration of write-in candidacy with the same documents and  
17 satisfy the same requirements as established in this section  
18 for candidates;

19 (3) the municipal clerk shall, on the [~~forty-~~  
20 ~~first~~] forty-eighth day preceding the election, certify those  
21 individuals who have satisfied the requirements of this section  
22 as declared write-in candidates;

23 (4) not later than 9:00 a.m. on the [~~fortieth~~]  
24 forty-seventh day preceding the election, the municipal clerk  
25 shall, in the office of the municipal clerk:

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1 (a) post the names of those individuals  
2 who have been certified as declared write-in candidates; and

3 (b) post the names of those individuals  
4 who have not been certified as declared write-in candidates  
5 along with the reasons [~~therefor~~]; and

6 (5) not later than 5:00 p.m. on the [~~twenty-~~  
7 ~~eight~~] thirty-fifth day preceding the election, a declared  
8 write-in candidate may file an affidavit that [~~he~~] the  
9 candidate is no longer a write-in candidate for municipal  
10 office. In the event that a declared write-in candidate files  
11 an affidavit of withdrawal, votes for that candidate shall not  
12 be counted and canvassed."

13 Section 11. Section 3-8-41 NMSA 1978 (being Laws 1985,  
14 Chapter 208, Section 49) is amended to read:

15 "3-8-41. CONDUCT OF ELECTION--VOTER'S NAME, ADDRESS,  
16 SIGNATURE--ENTRIES BY PRECINCT BOARD.--

17 A. When a person [~~presents himself at~~] goes to the  
18 polls to vote, [~~he~~] the person shall announce [~~his~~] the  
19 person's name and address in an audible tone of voice and  
20 locate [~~his~~] the person's name and number in the registered  
21 voter list posted for such purpose. An election clerk shall  
22 locate the person's name and number in the signature roster.  
23 The person shall then sign [~~his~~] the person's name in the  
24 signature roster or, if [~~he~~] the person is unable to write, the  
25 election clerk shall sign [~~his~~] the person's name in the

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1 signature roster, which shall be initialed by an election judge  
2 in the signature roster. Thereupon, a challenge may be  
3 interposed as provided in the Municipal Election Code.

4 B. If no challenge is interposed, an election clerk  
5 shall issue a voting machine permit to the person, upon which  
6 shall be written ~~[his]~~ the person's voter registration list  
7 number. The person shall present the voting machine permit to  
8 the precinct board member ~~[activating]~~ monitoring the machine  
9 or issuing ballots, and the person shall be allowed to vote.  
10 The precinct board member shall enter the public counter number  
11 onto the voting machine permit as shown on the voting machine  
12 after the person has voted. All voting machine permits shall  
13 be retained in consecutive order and made part of the election  
14 returns."

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

17 "3-8-43. CONDUCT OF ELECTION--CHALLENGES--REQUIRED  
18 CHALLENGES--ENTRIES--DISPOSITION.--

19 A. A challenge may be interposed by a member of the  
20 precinct board or by a challenger for the following reasons,  
21 which shall be stated in an audible tone by the person making  
22 the challenge:

23 (1) the person offering to vote is not  
24 registered;

25 (2) the person offering to vote is listed

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1 among those persons in the precinct to whom an absentee ballot  
2 was issued;

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

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

7 (5) in the case of an absentee ballot, [~~if~~]  
8 the official mailing envelope containing an absentee ballot has  
9 been opened prior to delivery of absentee ballots to the absent  
10 voter precinct board; or

11 (6) the person offering to vote is a qualified  
12 elector of the municipality but does not reside in the district  
13 where [~~he~~] the person is offering to vote.

14 B. When a person has offered to vote and a  
15 challenge is interposed and the person's name appears in the  
16 signature roster or [~~his~~] the person's name has been entered in  
17 the signature roster pursuant to Subsection C of Section 3-8-40  
18 NMSA 1978, the election clerk shall write the word "challenged"  
19 above the person's signature in the signature roster and:

20 (1) if the challenge is unanimously affirmed  
21 by the election judges:

22 (a) the election clerk shall write the  
23 word "affirmed" above the person's signature next to the  
24 challenge notation in the signature roster;

25 (b) the person shall nevertheless be

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1 furnished a paper ballot, whether or not voting machines are  
2 being used at the polling place, and the election clerk shall  
3 write the number of the ballot so furnished next to the  
4 person's signature in the signature roster;

5 (c) the person shall be allowed to mark  
6 and prepare the ballot. [~~He~~] The person shall return the paper  
7 ballot to an election judge who shall announce the person's  
8 name in an audible tone and in [~~his~~] the person's presence  
9 place the challenged ballot in an envelope marked "rejected",  
10 which shall be sealed and the person's name shall be written on  
11 the envelope; and

12 (d) the envelope containing the rejected  
13 ballot shall then be deposited in the ballot box and shall not  
14 be counted; or

15 (2) if the challenge is not unanimously  
16 affirmed by the election judges:

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

20 (b) the person shall be allowed to vote  
21 in the manner allowed by law as if the challenge had not been  
22 interposed.

23 C. A required challenge shall be interposed by the  
24 precinct board when a person attempts to offer [~~himself~~] to  
25 vote and demands to vote and [~~his~~] the person's name does not

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1 appear on the signature roster and cannot be entered pursuant  
2 to Subsection [G] B of Section 3-8-40 NMSA 1978. A required  
3 challenge shall be interposed by the precinct board as follows:

4 (1) the election judge shall cause the  
5 election clerks to enter the person's name and address under  
6 the heading "name and address" in the signature roster in the  
7 first blank space immediately below the last name and address  
8 that appears in the signature roster;

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

12 (3) the person shall sign [~~his~~] the person's  
13 name in the signature roster;

14 (4) the person shall nevertheless be furnished  
15 a paper ballot, whether or not voting machines are being used  
16 at the polling place, and the election clerk shall write the  
17 number of the ballot so furnished next to the person's  
18 signature in the signature roster; and

19 (5) the person shall be allowed to mark and  
20 prepare the ballot. [~~He~~] The person shall return the paper  
21 ballot to an election judge who shall announce [~~his~~] the  
22 person's name in an audible tone and in [~~his~~] the person's  
23 presence place the required challenge ballot in an envelope  
24 marked "rejected--required challenge" that shall be sealed.  
25 The person's name shall be written on the envelope and the

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1 envelope containing the rejected ballot shall then be deposited  
2 in the ballot box and shall not be counted."

3 Section 13. Section 3-8-44 NMSA 1978 (being Laws 1985,  
4 Chapter 208, Section 52, as amended) is amended to read:

5 "3-8-44. CONDUCT OF ELECTION--VOTING MACHINES--  
6 INSTRUCTIONS--INSPECTION OF VOTING MACHINE FACE AFTER  
7 VOTE--ENTRY INTO MACHINE.--

8 A. Before each person votes, a member of the  
9 precinct board shall, at the request of the voter and so far as  
10 possible, instruct the person on how to operate the voting  
11 machine, illustrate its operation on the model and call  
12 attention to the posted sample ballot. If any person, before  
13 voting, asks for further information regarding the machine's  
14 operation, an election judge shall give ~~[him]~~ the person the  
15 necessary information prior to the ~~[person]~~ person's casting  
16 ~~[his]~~ a vote.

17 B. The member of the precinct board attending the  
18 voting machine shall inspect the face of the machine after each  
19 person has voted to see that the ballot labels are in their  
20 proper places and have not been defaced.

21 C. After a person has announced ~~[his]~~ the person's  
22 name and address, had voter registration confirmed, signed the  
23 signature roster and has had no challenge affirmed against  
24 casting a ballot, the person may vote. No ~~[person shall be~~  
25 ~~permitted to occupy the voting booth longer than three and~~

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1 ~~one-half minutes]~~ more than one voter shall be permitted at the  
2 voting machine at one time unless the voter is being assisted."

3 Section 14. Section 3-8-46 NMSA 1978 (being Laws 1985,  
4 Chapter 208, Section 54, as amended) is amended to read:

5 "3-8-46. CONDUCT OF ELECTIONS--CLOSING POLLS--LOCKING  
6 VOTING MACHINES--OPENING VOTING MACHINES--VERIFICATION OF  
7 VOTES--ADMITTANCE OF WATCHERS AND CANDIDATES--PROCLAMATION OF  
8 RESULTS--COMPLETION OF LOCKING--DURATION OF LOCKING AND  
9 SEALING.--

10 A. When the last person has voted, the precinct  
11 board, in the presence of all persons lawfully permitted to be  
12 present, shall immediately lock and, if required by the county  
13 clerk, seal the voting machine against further voting. The  
14 precinct board shall release the machine-printed returns from  
15 the machine. The precinct board shall then sign a certificate  
16 stating that the machine was locked [~~and sealed~~]; giving the  
17 exact time; stating the number of voters shown on the public  
18 counters, which shall be the total number of votes cast on the  
19 machine in that precinct; stating the number on the seal; and  
20 stating the number registered on the protective counter.

21 B. The precinct board shall verify that the counter  
22 settings registered on the machine-printed returns are legible.  
23 The machine-printed returns shall show the number of votes cast  
24 for each candidate and the number of votes cast for and against  
25 any other question submitted, and the return shall be signed by

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1 each member of the precinct board and the challengers and  
2 watchers, if there be such.

3 C. If the machine-printed returns are not legible,  
4 or if the precinct officials are unable to obtain the returns  
5 from the voting machine, the precinct officials shall call the  
6 municipal clerk, who shall immediately contact the county  
7 clerk, who shall dispatch a voting machine technician to that  
8 polling place to help the precinct officials obtain the returns  
9 from the voting machine.

10 D. A write-in vote shall be cast by writing in the  
11 name of a declared write-in candidate on the ballot or, on  
12 voting machines, write-ins shall be written in the slot  
13 provided for each designated office. A write-in vote shall be  
14 counted and canvassed only if:

15 (1) the name written in is the name of a  
16 declared write-in candidate and shows two initials and last  
17 name; first name, middle initial or name and last name; first  
18 and last name; or the full name as it appears on the  
19 declaration of write-in candidacy of the declared write-in  
20 candidate and misspellings of the above combinations that can  
21 be reasonably determined by a majority of the members of the  
22 precinct board to identify the declared write-in candidate;

23 (2) the name is written in the proper slot on  
24 the voting machine or on the proper line for write-in votes  
25 provided on an absentee ballot [~~emergency paper ballot~~] or

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1 paper ballot used in lieu of voting machines;

2 (3) the name written in is not a vote for a  
3 person who is on the ballot for that office; and

4 (4) the name written in is not imprinted by  
5 rubber stamp or similar device or by the use of preprinted  
6 stickers or labels.

7 E. Only the members of the precinct board,  
8 candidates or their representatives, representatives of the  
9 news media, certified challengers, watchers and observers and  
10 the municipal clerk may be present while the votes are being  
11 counted and tallied. Only members of the precinct board shall  
12 handle ballots, machine-printed returns and signature rosters  
13 or take part in the counting and tallying.

14 F. The proclamation of the results of the votes  
15 cast shall be distinctly announced by an election judge who  
16 shall read the name of each candidate and the total number of  
17 votes cast for each candidate shown on the printed returns. An  
18 election judge shall also read the total number of votes cast  
19 for and against each question submitted. During the  
20 proclamation, ample opportunity shall be given to any person  
21 lawfully present to compare the result so proclaimed with the  
22 printed returns. The precinct board may make corrections then  
23 and there.

24 G. When the precinct board is satisfied that the  
25 election results have been correctly tallied, an election judge

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1 shall complete a separate election return certificate in  
2 [~~quadruplicate~~] triplicate on which is recorded the total  
3 number of votes cast in that polling place for each candidate  
4 and for and against each question. The certificate shall be  
5 signed by all the members of the precinct board. One copy  
6 shall be posted at the door of the polling place, one copy  
7 mailed to the district court in the envelope provided [~~one copy~~  
8 ~~returned to the municipal clerk to be used as unofficial~~  
9 ~~returns~~] and the original returned to the municipal clerk in  
10 the envelope provided.

11 H. Before adjourning, the precinct board shall  
12 complete the locking procedures on the voting machine.

13 I. On the voting machine, the machine return sheet  
14 is the official vote tally for that machine and the separate  
15 election return certificate is the official vote tally for that  
16 precinct or consolidated precinct.

17 J. If in the district court's opinion a contest is  
18 likely to develop, the court may order a voting machine to  
19 remain locked and sealed for such time as it deems necessary.

20 K. The county clerk shall break the seal for  
21 purposes of lawful investigation when ordered to do so by a  
22 court of competent jurisdiction. When the investigation is  
23 completed, the voting machine shall again be sealed and across  
24 the envelope containing the keys shall be written the signature  
25 of the county clerk, unless other provisions for the use of the

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1 voting machine are ordered by the court."

2 Section 15. Section 3-8-47 NMSA 1978 (being Laws 1985,  
3 Chapter 208, Section 55, as amended) is amended to read:

4 "3-8-47. CONDUCT OF ELECTIONS--DISPOSITION OF SIGNATURE  
5 ROSTER--MACHINE-PRINTED RETURNS--BALLOT BOXES--ELECTION RETURN  
6 CERTIFICATE--AFFIDAVITS--OTHER ELECTION MATERIALS.--

7 A. After all certificates have been executed, the  
8 precinct board shall place [~~one copy of the signature roster~~]  
9 the voter checklist and one copy of the machine-printed returns  
10 in the stamped, addressed envelope provided for that purpose by  
11 the municipal clerk and immediately mail it to the district  
12 court.

13 B. The following election returns and materials  
14 shall not be placed in the ballot box and shall be returned by  
15 the precinct board to the municipal clerk in the envelope or  
16 other container provided by the municipal clerk for such  
17 purpose:

- 18 (1) all ballot box keys;
- 19 (2) [~~one~~] the signature roster;
- 20 (3) one voter registration list;
- 21 (4) the election returns certificate, if  
22 separate from the signature roster;
- 23 (5) one copy of the machine-printed returns;
- 24 (6) a machine cartridge or memory card for any  
25 [~~electronic marksense~~] voting machine, if required by the

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1 county clerk; [and]

2 (7) voting machine permits; and

3 (8) all unused election supplies.

4 C. ~~[The locked ballot box containing any paper~~  
5 ~~ballot cast in the election, election returns, all unused~~  
6 ~~election supplies and all material listed in Subsection B of~~  
7 ~~this section shall be returned by the precinct board to the~~  
8 ~~municipal clerk within twenty-four hours after the polls~~  
9 ~~close.] All materials listed in Subsection B of this section,~~  
10 along with the locked ballot box containing any paper ballots  
11 cast in the election, including spoiled and challenged ballots,  
12 shall be returned by the precinct board to the municipal clerk  
13 within twenty-four hours after the polls close.

14 D. After receipt of ballot boxes and election  
15 returns and materials but not later than twenty-four hours  
16 after the polls close, the municipal clerk shall ascertain  
17 whether the locked ballot box and all the election returns and  
18 materials enumerated in Subsection B of this section have been  
19 returned to the municipal clerk as provided in Subsection C of  
20 this section. If the locked ballot box or all such election  
21 returns and materials are not timely returned by each precinct  
22 board, the municipal clerk shall immediately issue a summons  
23 requiring the delinquent precinct board to appear and produce  
24 the missing ballot box or election returns or materials within  
25 twenty-four hours. The summons shall be served by a sheriff or

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1 state police officer without cost to the municipality, and the  
2 members of the precinct board shall not be paid for their  
3 service on election day unless the delay was unavoidable. If  
4 delivery pursuant to the summons is not timely made, the vote  
5 in the precinct shall not be canvassed or made a part of the  
6 final election results except upon order of the district court  
7 after finding that the delay in the delivery of materials was  
8 due to forces beyond the control of the precinct board.

9 E. Once the ballot box is locked, it shall not be  
10 opened prior to canvassing by the municipal clerk."

11 Section 16. Section 3-8-48 NMSA 1978 (being Laws 1985,  
12 Chapter 208, Section 56, as amended) is amended to read:

13 "3-8-48. CONDUCT OF ELECTIONS--~~[EMERGENCY PAPER BALLOTS]~~  
14 PAPER BALLOTS--ONE TO A VOTER--RECEIPT OR DELIVERY--OCCUPATION  
15 OF VOTING MACHINES.--

16 A. Only one ~~[emergency paper ballot or]~~ paper  
17 ballot shall be given to each qualified elector entitled to  
18 vote. The ballots shall be delivered to qualified electors  
19 entitled to vote in consecutive order, beginning with the  
20 lowest numbered ballot.

21 B. No qualified elector entitled to vote shall  
22 receive a ballot from any person other than from an election  
23 judge at the polling place where the person is authorized to  
24 vote. No person other than an election judge shall deliver a  
25 ballot to any qualified elector entitled to vote.

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1 C. Unless otherwise provided by law, when voting  
2 machines are used as voting booths to mark ~~[emergency]~~ paper  
3 ballots, they shall not be occupied by more than one person at  
4 a time. A person shall not remain in or occupy such voting  
5 machine longer than is necessary to mark and prepare ~~[his~~  
6 ~~emergency]~~ the paper ballot ~~[which shall not exceed five~~  
7 ~~minutes]~~.

8 D. The ballot shall be ~~[used and]~~ completed ~~[in the~~  
9 ~~manner prescribed in Section 1-12-25.1 NMSA 1978]~~ and returned  
10 to the presiding judge who shall place it in a locked ballot  
11 box to be counted when the machine is repaired or replaced or  
12 at the time the polls close. ~~[Counting and handling marksense~~  
13 ~~ballots in emergency situations shall be done as prescribed for~~  
14 ~~emergency paper ballots.]"~~

15 Section 17. Section 3-8-49 NMSA 1978 (being Laws 1985,  
16 Chapter 208, Section 57) is amended to read:

17 "3-8-49. CONDUCT OF ELECTION--PAPER BALLOTS--~~[EMERGENCY~~  
18 ~~PAPER BALLOTS]~~ MARKING--USE OF PEN OR OTHER WRITING IMPLEMENT--  
19 IDENTIFICATION MARKS.--

20 A. In order to vote for a candidate, the person  
21 voting shall mark a cross (X) or a check (V) in the box next to  
22 the name of that candidate or write in the name of the person  
23 for whom ~~[he]~~ the voter desires to vote in the space for write-  
24 in candidates and mark a cross (X) or a check (V) in the box  
25 next to the line upon which the write-in vote is cast. Such

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1 write-in vote shall be cast in accordance with the provisions  
2 of Subsection D of Section 3-8-46 NMSA 1978. Notwithstanding  
3 the requirements of this subsection, if a different mark, other  
4 than a cross or check, is required for proper counting of the  
5 ballot, then the person voting shall make such mark on the  
6 ballot in the place so designated on the ballot utilizing the  
7 required writing implement pursuant to the instructions of the  
8 precinct board.

9 B. If a question is included on the paper ballot,  
10 [~~then~~] the person voting shall mark the paper ballot by marking  
11 a cross (X) or a check (V) in the box for or against the  
12 question submitted or otherwise marking the ballot in  
13 accordance with Subsection A of this section.

14 C. All crosses, checks or other proper marks on the  
15 ballot shall be made only with pen or other writing implement  
16 and in the manner required for the proper counting of the  
17 ballot. The cross used in marking ballots shall be two lines  
18 intersecting at any angle within the circle or box. The check  
19 shall be a "V"-shaped mark with it being permissible for either  
20 side of the "V" [~~being~~] to be longer than the other side. Any  
21 mark discernible either as a cross or a check, whether or not  
22 any of the lines [~~extend~~] extends outside the circle or box,  
23 shall be counted as a valid marking of the ballot when crosses  
24 or checks are required.

25 D. A person voting shall not place any mark on the

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1 ballot by which it may be afterwards identified as one voted by  
2 [~~him~~] that person."

3 Section 18. Section 3-8-50 NMSA 1978 (being Laws 1985,  
4 Chapter 208, Section 58) is amended to read:

5 "3-8-50. CONDUCT OF ELECTION--~~[EMERGENCY PAPER BALLOTS]~~  
6 PAPER BALLOTS--PROCEDURE AFTER MARKING--DELIVERY OF TWO OR MORE  
7 BALLOTS--PERSON AUTHORIZED TO RECEIVE BALLOTS--SPOILED OR  
8 DEFACED BALLOTS.--

9 A. After marking and preparing the paper ballot,  
10 the person voting:

11 (1) shall not show it to any person in such a  
12 way as to reveal its contents; and

13 (2) shall deliver it to an election judge who  
14 shall then remove any visible number on the ballot, hand the  
15 detached number to the person voting and deposit the paper  
16 ballot in the ballot box in the presence of the person voting.

17 B. Only an election judge shall receive a ballot  
18 from a person voting. No person shall examine or solicit a  
19 person to reveal or show the contents of [~~his~~] the person's  
20 paper ballot.

21 C. The election judge shall not deposit in the  
22 ballot box any paper ballot from which the slip containing the  
23 number of the paper ballot has not been removed by the election  
24 judge and handed to the person voting.

25 D. A person who accidentally spoils or erroneously

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1 prepares the ballot may return the spoiled or erroneously  
2 prepared ballot to the election judge and receive a new ballot.

3 E. The election judge in delivering the new ballot  
4 shall announce the name of the person voting in an audible tone  
5 and the number of the new ballot.

6 F. Upon the announcement of the election judge, the  
7 election clerks shall cross out the number of the spoiled or  
8 erroneously prepared ballot in the signature roster with a  
9 single line and shall insert in lieu thereof the number of the  
10 new ballot.

11 G. The election judge shall mark the spoiled or  
12 erroneously prepared ballot with the word "SPOILED" and shall  
13 place it in a separate envelope marked "SPOILED BALLOTS", which  
14 shall be returned to the municipal clerk.

15 H. Any person who knowingly hands to the election  
16 judge two or more ballots folded together is guilty of a fourth  
17 degree felony."

18 Section 19. Section 3-8-51 NMSA 1978 (being Laws 1985,  
19 Chapter 208, Section 59, as amended) is amended to read:

20 "3-8-51. CONDUCT OF ELECTION--~~[EMERGENCY PAPER BALLOTS]~~  
21 PAPER BALLOTS--UNUSED BALLOTS--DESTRUCTION OF UNUSED  
22 BALLOTS--COUNTING AND TALLYING.--

23 A. Immediately upon closing of the polls, the  
24 election judge shall prepare a certificate of destruction,  
25 which shall state the number of the last ballot ~~[which]~~ that

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1 was used for voting, the numbers of the ballots that were  
2 destroyed and the fact that all unused ballots were destroyed.

3 B. Immediately after preparation of the certificate  
4 of destruction and before any ballot box is unlocked, the  
5 precinct board shall destroy all unused ballots in the presence  
6 of the candidates, if present, the municipal clerk, if present,  
7 certified challengers and watchers, if any, and representatives  
8 of the news media, if any.

9 C. On the day of the election, immediately upon the  
10 arrival of the hour when the polls are required by law to be  
11 closed, the municipal clerk shall publicly, in the clerk's  
12 office, proceed to destroy every unused ballot that remains in  
13 the clerk's control and make and file an affidavit in writing  
14 as to the number of ballots so destroyed.

15 D. The precinct board shall count and tally the  
16 ballots and certify the results of the election on the form  
17 provided on the cover of the signature roster by writing  
18 opposite the name of each candidate in words and figures the  
19 total number of votes cast for the candidate and shall set  
20 forth in the spaces provided therefor in words and figures the  
21 total number of votes cast for or against each question  
22 submitted. Ballots not marked as required by the Municipal  
23 Election Code shall not be counted.

24 E. Only the members of the precinct board,  
25 candidates, municipal clerk, representatives of the news media

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1 and certified challengers and watchers may be present while the  
2 votes are being counted and tallied. Only members of the  
3 precinct board shall handle ballots and signature rosters or  
4 take part in the counting and tallying.

5 F. The proclamation of the results of the votes  
6 cast shall be distinctly announced by the election judge who  
7 shall read the name of each candidate and the total vote cast  
8 for each candidate. The election judge shall also read the  
9 total vote cast for and against each question submitted. The  
10 election judge shall thereupon complete an election return  
11 certificate on which is recorded the total number of votes cast  
12 for each candidate and for and against each question. The  
13 certificate shall be signed by all the members of the precinct  
14 board."

15 Section 20. Section 3-8-52 NMSA 1978 (being Laws 1985,  
16 Chapter 208, Section 60, as amended) is amended to read:

17 "3-8-52. CONDUCT OF ELECTION--~~[EMERGENCY PAPER BALLOTS]~~  
18 PAPER BALLOTS--SIGNATURE ROSTERS--DISPOSITION.--

19 A. After the counting and tallying of ballots is  
20 completed and after all certificates have been executed, the  
21 precinct board shall place ~~[one copy of the signature roster]~~  
22 the voter checklist and one copy of all certificates and tally  
23 sheets in the stamped, addressed envelope provided for that  
24 purpose by the municipal clerk and immediately mail it to the  
25 district court.

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1           B. The ~~[remaining copy of the]~~ signature roster,  
2 all certificates, tally sheets and all ballot box keys shall be  
3 returned to the municipal clerk. The signature roster,  
4 certificates, tally sheets and ballot box key shall not be  
5 placed in the ballot box.

6           C. After paper ballots used in lieu of voting  
7 machines ~~[or emergency paper ballots]~~ are counted and tallied,  
8 the precinct board shall place the following in the ballot box:

9                   (1) the bundles of counted paper ballots used  
10 in lieu of voting machines ~~[or emergency paper ballots]~~;

11                   (2) the envelopes containing spoiled ballots;  
12 and

13                   (3) the envelopes containing rejected ballots.

14           D. After the required items have been placed in the  
15 ballot box, the ballot box shall be closed and locked.

16           E. The locked ballot box containing those materials  
17 required by law, the election returns and all other election  
18 materials shall be delivered to the municipal clerk by the  
19 precinct board within twenty-four hours after the polls are  
20 closed. If such delivery is not timely made, then the vote in  
21 the precinct shall not be canvassed or made a part of the final  
22 election results except upon order of the district court after  
23 finding that the delay in the delivery of materials was due to  
24 forces beyond the control of the precinct board.

25           F. Once the ballot box is locked, it shall not be

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1 opened prior to canvassing."

2 Section 21. Section 3-8-58 NMSA 1978 (being Laws 1985,  
3 Chapter 208, Section 66, as amended) is amended to read:

4 "3-8-58. POST-ELECTION DUTIES--CANVASS--VOTING MACHINE  
5 RECHECK.--

6 A. Prior to completion of the official canvass of  
7 an election, the municipal clerk, upon written request of any  
8 candidate in the election, if any, or upon receipt of a written  
9 petition of five percent of the people who voted in the  
10 election, shall, in the presence of the district judge, conduct  
11 a recheck and comparison of the results shown on the official  
12 returns being canvassed with the results of each voting machine  
13 used in the election.

14 B. For the purpose of making the recheck and  
15 comparison, the municipal clerk may request the county clerk  
16 to:

17 (1) [~~break the seal and~~] unlock the voting  
18 machine;

19 (2) check the figures shown by the counter on  
20 the voting machine;

21 (3) insert the cartridge or memory card into  
22 the voting machine; and

23 (4) rerun the printed returns from the voting  
24 machine.

25 C. At the conclusion of the recheck and comparison,

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1 the voting machine shall again be [~~locked~~] secured.

2 D. The necessary corrections, if any, shall be made  
3 on the returns and the results of the election, as shown by the  
4 recheck and comparison, shall be declared."

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

7 "3-8-65. CONTEST OF ELECTIONS--PRESERVATION OF  
8 BALLOTS--BALLOTS DEFINED--APPLICATION FOR ORDER--DEPOSIT.--

9 A. Either the contestant or contestee, within the  
10 time provided by the Municipal Election Code for the  
11 preservation of ballots, shall give notice by certified mail to  
12 the municipal clerk that a contest is pending in a designated  
13 court, and it is the duty of the municipal clerk to preserve  
14 the ballots of all precincts named in the notice of contest and  
15 to notify the county clerk to impound the ballot [~~faces~~] sheets  
16 and voting machines used in all of the precincts named in the  
17 notice of contest until the contest has been finally  
18 determined.

19 B. "Ballots", as used in Subsection A of this  
20 section, includes signature rosters, registered voter lists,  
21 machine-printed returns, voting machine permits, paper ballots,  
22 [~~marksense ballots~~] absentee ballots, absentee ballot outer  
23 envelopes, statements of canvass, absentee ballot applications,  
24 absentee ballot registers and absentee voter lists.

25 C. Any contestant or contestee may petition the

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1 district court for an order impounding ballots in one or more  
2 precincts or consolidated precincts. The petition shall state  
3 what specific items of ballots are requested to be impounded.  
4 Upon receipt of the petition, along with a cash deposit of  
5 twenty-five dollars (\$25.00) per precinct or consolidated  
6 precinct, the court may issue an order of impoundment."

7 Section 23. Section 3-8-68 NMSA 1978 (being Laws 1985,  
8 Chapter 208, Section 76, as amended) is amended to read:

9 "3-8-68. RECOUNT--RECHECK--APPLICATION--COSTS.--

10 A. Whenever any candidate for any office for which  
11 the municipal clerk issues a certificate of election believes  
12 that any error or fraud has been committed by any precinct  
13 board in counting or tallying the [~~paper ballots used in lieu~~  
14 ~~of voting machines, emergency paper~~] ballots or absentee  
15 ballots, in the verification of the votes cast on the voting  
16 machines or in the certifying of the results of any election  
17 whereby the results of the election in the precinct have not  
18 been correctly determined, declared or certified, the  
19 candidate, within six days after completion of the canvass by  
20 the municipal canvassing board, may have a recount of the  
21 [~~paper ballots used in lieu of voting machines, emergency~~  
22 ~~paper~~] ballots or absentee ballots, or a recheck of the voting  
23 machine and the voting machine cartridge or memory card that  
24 contains the number of total votes that were cast in the  
25 precinct.

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1           B. In the case of any office for which the  
2 municipal clerk issues a certificate of election, application  
3 for recount or recheck shall be filed with the municipal clerk.

4           C. Any applicant for a recount shall deposit with  
5 the municipal clerk fifty dollars (\$50.00) in cash or a  
6 sufficient surety bond in an amount equal to fifty dollars  
7 (\$50.00) for each precinct or consolidated precinct for which a  
8 recount is demanded. Any applicant for a recheck shall deposit  
9 with the municipal clerk ten dollars (\$10.00) in cash or a  
10 sufficient surety bond in an amount equal to ten dollars  
11 (\$10.00) for each voting machine to be rechecked.

12           D. The deposit or surety bond shall be security for  
13 the payment of the costs and expenses of the recount or recheck  
14 in case the results of the recount or recheck are not  
15 sufficient to change the results of the election.

16           E. If it appears that error or fraud sufficient to  
17 change the winner of the election has been committed, the costs  
18 and expenses of the recount or recheck shall be paid by the  
19 municipality upon warrant of the municipal clerk from the  
20 general fund of the municipality.

21           F. If no error or fraud appears to be sufficient to  
22 change the winner, the costs and expenses for the recount or  
23 recheck shall be paid by the applicant. Costs shall consist of  
24 any docket fees, mileage of a sheriff or state police officer  
25 in serving summons and fees and mileage of precinct board

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1 members, at the same rates allowed witnesses in civil actions.  
2 If fraud has been committed by a precinct board, [~~they~~] it  
3 shall not be entitled to such mileage or fees."

4 Section 24. Section 3-8-69 NMSA 1978 (being Laws 1985,  
5 Chapter 208, Section 77, as amended) is amended to read:

6 "3-8-69. RECOUNT--RECHECK--PROCEEDINGS.--

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

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

22 C. The precinct board, district judge or the  
23 district court judge's designee, county clerk and the municipal  
24 clerk shall meet on the date, time and [~~places~~] place fixed for  
25 the recount or recheck, and the ballot boxes or voting machines

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1 of the precinct or consolidated precinct involved in the  
2 recount or recheck shall be opened. The precinct boards shall  
3 recount and retally the [~~paper ballots used in lieu of voting~~  
4 ~~machines or emergency paper~~] ballots or recheck the votes cast  
5 on the voting machine, as the case may be, and recount and  
6 retally the absentee ballots for the office in question in the  
7 presence of the municipal clerk, the county clerk, district  
8 judge or person designated to act for the judge and any other  
9 person who may desire to be present.

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

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

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1 presence."

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

4 "3-8-71. PRESERVATION OF ELECTION INFORMATION.--

5 A. The municipal clerk shall retain for two years  
6 after each municipal election:

7 (1) the absentee ballot register, application  
8 for absentee ballots, absentee voter lists and affidavits of  
9 destruction;

10 (2) signature roster and registered voter  
11 list;

12 (3) the machine-printed returns;

13 (4) oaths of office of the precinct board;

14 (5) declarations of candidacy and withdrawals;

15 (6) copies of all election material required  
16 to be published or posted;

17 (7) a copy of all sample ballots and ballot  
18 [~~faces~~] sheets;

19 (8) voting machine permits;

20 (9) certificates submitted by voters;

21 (10) copies of all affidavits and certificates  
22 prepared in connection with the election;

23 (11) all results of recounts, rechecks,  
24 contests and recanvass; and

25 (12) all other significant election materials.

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

6           C. The municipal clerk shall destroy election  
7 records two years after the election by shredding, burning or  
8 otherwise destroying."

9           Section 26. Section 3-8-75 NMSA 1978 (being Laws 1985,  
10 Chapter 208, Section 83, as amended) is amended to read:

11           "3-8-75. FALSE VOTING--FALSIFYING ELECTION DOCUMENTS--  
12 FALSE SWEARING--PENALTY.--

13           A. False voting consists of:

- 14                   (1) voting or offering to vote with the  
15 knowledge of not being a qualified elector;  
16                   (2) voting or offering to vote in the name of  
17 any other person;  
18                   (3) knowingly voting or offering to vote in  
19 any precinct except that in which one is registered;  
20                   (4) voting or offering to vote more than once  
21 in the same election;  
22                   (5) inducing, abetting or procuring or  
23 attempting to induce, abet or procure a person known not to be  
24 a qualified elector to vote; or  
25                   (6) inducing, abetting or procuring or

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1 attempting to induce, abet or procure a person who has voted  
2 once in any election to vote or attempt to vote again at the  
3 same election.

4 B. A person who commits false voting is guilty of a  
5 fourth degree felony.

6 C. Falsifying election documents consists of  
7 performing any of the following acts willfully and with  
8 knowledge and intent to deceive or mislead any voter, precinct  
9 board, municipal clerk or other election official:

10 (1) printing, causing to be printed,  
11 distributing or displaying false or misleading instructions  
12 pertaining to voting or the conduct of the election;

13 (2) printing, causing to be printed,  
14 distributing or displaying any official ballot, absentee  
15 ballot, [~~marksense~~ ballot] sample ballot, facsimile diagram,  
16 ballot [~~face~~] sheet or pretended ballot that includes the name  
17 of any person not entitled by law to be on the ballot or omits  
18 or defaces the name of any person entitled by law to be on the  
19 ballot or otherwise contains false or misleading information or  
20 headings;

21 (3) defacing, altering, forging, making false  
22 entries in or changing any election document, including  
23 election returns, a certificate of election registration record  
24 or signature rosters, affidavits, certificates or any other  
25 election document except as authorized in the Municipal

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1 Election Code;

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

6 (5) preparing or submitting any false  
7 certificate of election, signature roster, registered voter  
8 list, election return or any other election document.

9 D. A person who falsifies election documents is  
10 guilty of a fourth degree felony.

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

15 F. A person who falsely swears is guilty of a  
16 fourth degree felony."

17 Section 27. Section 3-9-1 NMSA 1978 (being Laws 1973,  
18 Chapter 375, Section 2, as amended) is amended to read:

19 "3-9-1. DEFINITIONS.--As used in Chapter 3, Article 9  
20 NMSA 1978:

21 A. "absent uniformed services voter" means:

22 (1) a member of a uniformed service on active  
23 duty who, by reason of such active duty, is absent from the  
24 place of residence where the member is otherwise qualified to  
25 vote;

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1                   (2) a member of the merchant marine who, by  
2 reason of service in the merchant marine, is absent from the  
3 place of residence where the member is otherwise qualified to  
4 vote; or

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

10                   ~~[A.]~~ B. "absentee voting" means the casting of a  
11 vote by a qualified elector for any candidate or question prior  
12 to election day; ~~[by mail on an absentee ballot, in person on~~  
13 ~~an absentee ballot or in person on a voting machine;~~

14                   ~~B.~~ "federal qualified elector" means a qualified  
15 elector covered under the provisions of the Federal Voting  
16 Assistance Act of 1955;

17                   ~~C.~~ "federal voter" means a voter covered under the  
18 provisions of the Federal Voting Assistance Act of 1955;

19                   ~~D.~~ "covered under the provisions of the Federal  
20 Voting Assistance Act of 1955" means:

21                   ~~(1) members of the armed forces while in the~~  
22 ~~active service and their spouses and dependents;~~

23                   ~~(2) members of the merchant marine of the~~  
24 ~~United States and their spouses and dependents; and~~

25                   ~~(3) citizens of the United States temporarily~~

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1 ~~residing outside the territorial limits of the United States~~  
2 ~~and the District of Columbia and their spouses and dependents~~  
3 ~~when residing with or accompanying them;~~

4 ~~E. "armed forces" means the army, navy, air force,~~  
5 ~~marine corps, coast guard, environmental science services~~  
6 ~~administration and public health service;~~

7 ~~F. "members of the merchant marine" means persons~~  
8 ~~other than members of the armed forces:~~

9 ~~(1) employed as officers or members of crews~~  
10 ~~of vessels documented under the laws of the United States or of~~  
11 ~~vessels owned by the United States or of vessels of foreign~~  
12 ~~registry under charter to or control of the United States; or~~

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

18 C. "early voter" means a voter who votes in person  
19 before election day, and not by mail;

20 D. "election" means a regular or special municipal  
21 election;

22 E. "federal qualified elector" means:

23 (1) an absent uniformed services voter; or

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

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1 States on the date of the election involved;

2 F. "immediate family" means a person's spouse,  
3 children, parents, brothers and sisters;

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

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

12 (2) is enrolled with the United States for  
13 employment or training for employment or is maintained by the  
14 United States for emergency relief service as an officer or  
15 crew member of a vessel described in Paragraph (1) of this  
16 subsection;

17 H. "overseas voter" means:

18 (1) an absent uniformed services voter who, by  
19 reason of active duty or service, is absent from the United  
20 States on the date of the election involved;

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

24 (3) a person who resides outside the United  
25 States and, but for such residence, would be qualified to vote

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1 in the last place in which the person was domiciled before  
2 leaving the United States;

3 I. "uniformed services" means the army, navy, air  
4 force, marine corps and coast guard and the commissioned corps  
5 of the national oceanic and atmospheric administration; and

6 ~~[G.]~~ J. "voter" means a qualified elector of the  
7 municipality ~~[and~~

8 ~~H. "election" means a regular or special municipal~~  
9 ~~election]."~~

10 Section 28. Section 3-9-2 NMSA 1978 (being Laws 1973,  
11 Chapter 375, Section 4) is amended to read:

12 "3-9-2. CERTAIN APPLICATIONS CONSTITUTE REGISTRATION.--An  
13 application from a federal qualified elector or ~~[federal]~~  
14 overseas voter shall, when received by the municipal clerk,  
15 constitute a registration for purposes of that election."

16 Section 29. Section 3-9-3 NMSA 1978 (being Laws 1973,  
17 Chapter 375, Section 1, as amended) is amended to read:

18 "3-9-3. ABSENTEE VOTING--REGULAR OR SPECIAL MUNICIPAL  
19 ELECTIONS--RIGHT TO VOTE.--

20 A. Any voter or any ~~[federal]~~ overseas voter or  
21 federal qualified elector entitled to vote in the municipal  
22 election may vote by absentee ballot for all candidates and on  
23 all questions appearing on the ballot at such regular or  
24 special election at ~~[his]~~ the voter's assigned polling place,  
25 as if ~~[he]~~ the voter were able to cast ~~[his]~~ a ballot in person

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1 at such polling place.

2 B. The provisions of this section shall also apply  
3 to a regular or special municipal election held in conjunction  
4 with any other political subdivision."

5 Section 30. Section 3-9-4 NMSA 1978 (being Laws 1973,  
6 Chapter 375, Section 3, as amended) is amended to read:

7 "3-9-4. ABSENTEE BALLOT APPLICATION--REJECTION--  
8 ACCEPTANCE--ISSUANCE OF ABSENTEE BALLOT.--

9 A. Application by a federal qualified elector or  
10 [~~federal~~] overseas voter shall be made on the federal postcard  
11 application form to the municipal clerk.

12 B. The municipal clerk shall prescribe the form of  
13 the absentee ballot application.

14 C. An application for an absentee ballot may be  
15 obtained [~~by the voter~~] from the municipal clerk. [~~An~~  
16 ~~application for an absentee ballot may be requested by the~~  
17 ~~voter in person, by telephone or by mail, and any voter may~~  
18 ~~request an application for an absentee ballot for an immediate~~  
19 ~~family member. For purposes of this section, "immediate~~  
20 ~~family" means spouse, children, parents, brothers and sisters.~~

21 ~~D. A list containing the names and addresses of~~  
22 ~~voters requesting absentee ballot applications shall be kept~~  
23 ~~and shall be made a part of the absentee ballot register.~~

24 ~~E.]~~ D. Upon receipt of a properly completed and  
25 delivered application for an absentee ballot, the municipal

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1 clerk shall contact the county clerk to determine if the  
2 applicant is a qualified elector of the municipality.

3 ~~[F-]~~ E. The municipal clerk shall reject an  
4 absentee ballot application for any of the following reasons:

5 (1) the application is not made on the form  
6 provided by the municipal clerk;

7 (2) the application does not set forth the  
8 applicant's full name and address;

9 (3) the application does not set forth the  
10 applicant's ~~[social security number or]~~ date of birth;

11 (4) the application is not signed by the  
12 applicant; or

13 (5) the applicant:  
14 (a) has no valid affidavit of  
15 registration on file with the county clerk and is not a federal  
16 qualified elector or ~~[federal]~~ overseas voter;

17 (b) has a valid affidavit of  
18 registration on file with the county clerk, but is not a  
19 resident of the municipality; or

20 (c) is a federal qualified elector or  
21 ~~[federal]~~ overseas voter, but is not entitled to vote in the  
22 municipal election; and

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

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1           ~~[G. If the municipal clerk rejects the absentee~~  
2 ~~ballot application pursuant to Subsection F of this section,~~  
3 ~~then the municipal clerk shall refuse to issue an absentee~~  
4 ~~ballot and shall mark the application "rejected" and enter~~  
5 ~~"rejected" in the absentee ballot register and file the~~  
6 ~~application in a separate file. The municipal clerk shall,~~  
7 ~~within twenty-four hours of rejection of the application,~~  
8 ~~notify the applicant of the reasons for rejection of the~~  
9 ~~application. Upon rejection of the application, the municipal~~  
10 ~~clerk shall determine the method of notification to the voter.~~  
11 ~~Notification shall only be made by courier with return receipt~~  
12 ~~or certified mail, return receipt requested. The person whose~~  
13 ~~application has been rejected shall have ten days from receipt~~  
14 ~~of notice to appeal or show cause why the application should be~~  
15 ~~accepted. In addition, if the application is incomplete, the~~  
16 ~~clerk shall mail immediately a new application for absentee~~  
17 ~~ballot.]~~

18           F. If the municipal clerk rejects an absentee  
19 ballot application pursuant to Subsection E of this section,  
20 the municipal clerk shall mark the application "rejected",  
21 enter "rejected" in the absentee ballot register and file the  
22 application in a separate file. The municipal clerk shall  
23 notify the applicant in writing of the reasons for rejection of  
24 the application. If the application is incomplete, the  
25 municipal clerk shall immediately mail a new application for an

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1 absentee ballot.

2           ~~[H.]~~ G. If the application for absentee ballot is  
3 accepted, the municipal clerk shall:

- 4                   (1) mark the application "accepted";  
5                   (2) enter the required information in the  
6 absentee ballot register; and  
7                   (3) issue to the applicant an absentee ballot.

8           ~~[F.]~~ H. The municipal clerk shall deliver the  
9 absentee ballot to the applicant in the office of the municipal  
10 clerk if the application for absentee ballot has been accepted  
11 and if the application is submitted in person by the applicant  
12 or mail an absentee ballot to any qualified elector, federal  
13 qualified elector or ~~[federal]~~ overseas voter whose application  
14 for an absentee ballot was received by mail and has been  
15 accepted. The municipal clerk shall notify the county clerk  
16 who shall write "absentee ballot" on the signature line of the  
17 signature roster next to the name of the person who has been  
18 sent an absentee ballot. Names of individuals that have been  
19 labeled "absentee ballot" shall appear on a separate list  
20 called the "absentee voter list". This list shall be submitted  
21 to the municipal clerk by the county clerk in the same manner  
22 as provided in Subsection B of Section 3-8-7 NMSA 1978.

23           ~~[J.]~~ I. It is the duty of the municipal clerk to  
24 verify the signature roster and absentee voter list to ensure  
25 that all names of individuals who have been issued absentee

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1 ballots have been labeled "absentee ballot" on the signature  
2 roster and their names listed on the absentee voter list. If  
3 not, the municipal clerk shall write "absentee ballot" on the  
4 signature line of the signature roster next to the name of the  
5 person who has been sent an absentee ballot. The municipal  
6 clerk shall then enter the name and all required information on  
7 the absentee voter list.

8 [K-] J. If the application for an absentee ballot  
9 is delivered in person to the municipal clerk during regular  
10 hours and days of business and is accepted, the municipal clerk  
11 shall issue the voter the absentee ballot and it shall be  
12 marked by the applicant in a voting booth in the municipal  
13 clerk's office, sealed in the proper envelopes and otherwise  
14 properly executed and returned to the municipal clerk or the  
15 clerk's authorized representative before the applicant leaves  
16 the office of the municipal clerk. ~~[or allow the voter to cast~~  
17 ~~a vote on the voting machine. Absentee ballots may be marked~~  
18 ~~in person beginning at 8:00 a.m. on the twenty-seventh day~~  
19 ~~before the election at the municipal clerk's office during the~~  
20 ~~regular hours and days of business until 5:00 p.m. on the~~  
21 ~~Friday immediately prior to the date of election. An absent~~  
22 ~~voter may vote in person on a paper ballot, or on an electronic~~  
23 ~~voting machine, at the municipal clerk's office beginning at~~  
24 ~~8:00 a.m. on the twentieth day prior to the election until 5:00~~  
25 ~~p.m. on the Friday immediately before the election.~~

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1           ~~H.~~ K. The act of marking the absentee ballot in  
2 the office of the municipal clerk shall be a convenience to the  
3 voter in the delivery of the absentee ballot and does not make  
4 the office of the municipal clerk a polling place subject to  
5 the requirements of a polling place in the Municipal Election  
6 Code other than ~~is~~ as provided in this subsection. During  
7 the period of time between the date a person may first apply in  
8 person for an absentee ballot and the final date for such  
9 application and marking of the ballot in the office of the  
10 municipal clerk, it is unlawful to solicit votes or display or  
11 otherwise make accessible any posters, signs or other forms of  
12 campaign literature whatsoever in the clerk's office.

13           ~~M.~~ L. Absentee ballots shall be ~~air~~ mailed to  
14 federal qualified electors and ~~federal~~ overseas voters whose  
15 applications have been accepted not earlier than thirty-five  
16 days prior to the election and not later than 5:00 p.m. on the  
17 Friday immediately prior to the date of the election.

18           ~~N.~~ M. Absentee ballots shall be ~~mailed~~ issued  
19 to voters whose applications have been approved not earlier  
20 than thirty-five days prior to the election and not later than  
21 5:00 p.m. on the Friday immediately prior to the date of the  
22 election.

23           ~~O.~~ N. No absentee ballot shall be delivered or  
24 mailed by the municipal clerk to any person other than the  
25 applicant for such ballot."

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1           Section 31. A new section of the Municipal Election Code  
2 is enacted to read:

3           "[NEW MATERIAL] EARLY VOTING--USE OF ABSENTEE VOTING  
4 PROCEDURES.--

5           A. An early voter may vote in person on a voting  
6 machine beginning at 8:00 a.m. on the twentieth day before the  
7 election at the municipal clerk's office during regular hours  
8 and days of business until 5:00 p.m. on the Friday immediately  
9 before the date of the election.

10           B. Upon receipt of a properly completed application  
11 for an absentee ballot, the municipal clerk shall contact the  
12 county clerk to determine if the applicant is a qualified  
13 elector of the municipality.

14           C. If the application is accepted, the municipal  
15 clerk shall:

16                     (1) mark the application accepted; and

17                     (2) enter the required information in the  
18 absentee ballot register.

19           D. Upon acceptance of the application, the voter  
20 shall be allowed to vote.

21           E. The municipal clerk shall notify the county  
22 clerk, who shall make an appropriate designation on the  
23 signature roster next to the voter's name indicating that the  
24 voter has voted early."

25           Section 32. Section 3-9-5 NMSA 1978 (being Laws 1973,

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1 Chapter 375, Section 6, as amended) is amended to read:

2 "3-9-5. ABSENTEE BALLOT REGISTER.--

3 A. For each election, the municipal clerk shall  
4 keep an "absentee ballot register" in which ~~he~~ the clerk  
5 shall enter:

6 (1) in numerical sequence, the name and  
7 municipal address of each absentee ballot applicant;

8 (2) the date and time of receipt of the  
9 application;

10 (3) whether the application was accepted or  
11 rejected;

12 (4) the date of delivery to the voter in  
13 person in the office of the municipal clerk, or mailing of an  
14 absentee ballot to the applicant, the method of delivery and,  
15 if mailed, the address to which the ballot was mailed;

16 (5) the applicant's precinct and district  
17 number, if applicable;

18 (6) whether the applicant is a voter, [~~a~~  
19 ~~federal~~] an overseas voter or a federal qualified elector;

20 (7) affidavits of voters who did not receive  
21 absentee ballots; and

22 (8) the date and time the completed ballot was  
23 received from the applicant by the municipal clerk.

24 B. The absentee ballot register is a public record  
25 open to public inspection in the municipal clerk's office

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1 during regular office hours and shall be preserved for two  
2 years after the date of the election. The municipal clerk  
3 shall have an updated absentee ballot register available for  
4 public inspection Monday through Friday during regular office  
5 hours.

6 ~~[C. For the purposes of recordkeeping, the absentee~~  
7 ~~register may be combined with the early voting register,~~  
8 ~~provided that the method of balloting shall be labeled either~~  
9 ~~"absentee ballot" or "early voter".]~~"

10 Section 33. Section 3-9-6 NMSA 1978 (being Laws 1973,  
11 Chapter 375, Section 7, as amended) is amended to read:

12 "3-9-6. FORM OF ABSENTEE BALLOT--FORM OF ABSENTEE BALLOT  
13 ENVELOPES.--

14 A. The form of the absentee ballot shall be, as  
15 nearly as practicable, in the same form as prescribed by the  
16 municipal clerk for ~~[emergency paper]~~ other ballots ~~[or paper~~  
17 ~~ballots used in lieu of voting machines]~~. However, to reduce  
18 weight and bulk for transport of absentee ballots, the size and  
19 weight of the paper for envelopes, ballots and instructions  
20 shall be reduced as much as is practicable. The ballots shall  
21 provide for sequential numbering.

22 B. Absentee ballots and envelopes shall be  
23 delivered by the printer to the municipal clerk not later than  
24 thirty-five days prior to the date of the election to be held.

25 C. The municipal clerk shall prescribe the form of:

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1 (1) official inner envelopes for use in  
2 sealing the completed absentee ballot;

3 (2) official mailing envelopes for use in  
4 returning the official inner envelope to the municipal clerk;

5 (3) absentee ballot instructions, describing  
6 proper methods for completion of the ballot and returning it;  
7 and

8 (4) official transmittal envelopes for use by  
9 the municipal clerk in mailing absentee ballot materials.

10 D. Official transmittal envelopes and official  
11 mailing envelopes for transmission of absentee ballot materials  
12 to and from the municipal clerk and [~~federal~~] overseas voters  
13 and federal qualified electors shall be printed in [~~blue~~] black  
14 in the form prescribed by postal regulations and the federal  
15 [~~Voting Assistance Act of 1955~~] Uniformed and Overseas Citizens  
16 Absentee Voting Act. Official transmittal envelopes and  
17 official mailing envelopes for transmission of absentee ballot  
18 materials to and from the municipal clerk shall be printed in  
19 green in substantially similar form. All official inner  
20 envelopes shall be printed in green.

21 E. The reverse of each official mailing envelope  
22 shall contain a form to be signed by the person completing the  
23 absentee ballot. The form shall identify the person and shall  
24 contain the following statement: "I will not vote in this  
25 election other than by the enclosed ballot. I will not receive

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1 or offer any compensation or reward for giving or withholding  
2 any vote."."

3 Section 34. Section 3-9-7 NMSA 1978 (being Laws 1973,  
4 Chapter 375, Section 8, as amended) is amended to read:

5 "3-9-7. MANNER OF VOTING--USE OF AN ELECTRONIC VOTING  
6 DEVICE.--

7 A. Any person voting an absentee ballot under the  
8 provisions of the Municipal Election Code shall secretly mark  
9 the ballot [~~in the manner provided in the Municipal Election~~  
10 ~~Code for marking emergency paper ballots, remove any visible~~  
11 ~~number on the ballot~~] as instructed on the ballot, place the  
12 marked ballot in the official inner envelope and securely seal  
13 the envelope. The [~~person voting~~] voter shall then place the  
14 official inner envelope inside the official mailing envelope  
15 and securely seal the envelope. The [~~person voting~~] voter  
16 shall then [~~fill in~~] complete the form on the reverse of the  
17 official mailing envelope.

18 B. [~~Federal~~] Overseas voters and federal qualified  
19 electors shall either deliver their ballots in person or mail  
20 the official mailing envelope to the municipal clerk of their  
21 municipality of residence or deliver it to a person designated  
22 by federal authority to receive executed ballots for  
23 transmission to the municipal clerk of the municipality of  
24 residence. [~~Voters shall either deliver or mail the official~~  
25 ~~mailing envelope to the municipal clerk of their municipality~~

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1 ~~of residence. The municipal clerk shall not accept an official~~  
2 ~~outer envelope that is delivered in person to the municipal~~  
3 ~~clerk's office from any person other than the voter signing the~~  
4 ~~official outer envelope.~~

5 ~~G. Any person voting on the marksense ballot shall~~  
6 ~~secretly mark the ballot by completing the arrow in pencil~~  
7 ~~directly to the right of the candidate's name or the proposed~~  
8 ~~question. The voter shall then place the marked ballot in the~~  
9 ~~official inner envelope and securely seal the envelope and then~~  
10 ~~place the official inner envelope inside the official mailing~~  
11 ~~envelope and securely seal the envelope. The voter shall then~~  
12 ~~complete the form on the reverse of the official mailing~~  
13 ~~envelope.] A voter, caregiver to that voter or member of that~~  
14 ~~voter's immediate family may deliver that voter's absentee~~  
15 ~~ballot to the municipal clerk in person or by mail, provided~~  
16 ~~that the voter has subscribed the outer envelope of the~~  
17 ~~absentee ballot.~~

18 ~~[D.]~~ C. When an electronic voting device is used by  
19 the voter to cast an absentee vote, the municipal clerk shall  
20 ensure that each absentee voting machine is located within the  
21 office of the municipal clerk. The area shall be secured by  
22 lock and key. Each day during the time the absentee voting  
23 machine is used for absentee voting, the municipal clerk shall,  
24 in the presence of one other employee of the municipality,  
25 unlock the office where the voting machine is located. Each

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

- 10 (1) the voting machine serial number;
- 11 (2) the beginning and ending public counter  
12 number for the day;
- 13 (3) the beginning and ending protective  
14 counter number for the day;
- 15 (4) the closing seal number, if any;
- 16 (5) the total number of voters for the day;
- 17 and
- 18 (6) a place for the date and signature of the  
19 municipal clerk and the municipal employee.

20 [~~E.~~] D. Voting shall be conducted substantially in  
21 the manner provided in the Municipal Election Code. The  
22 absentee voting daily report shall be submitted to the absent  
23 voter precinct on election day, along with any voting machines  
24 used."

25 Section 35. Section 3-9-8 NMSA 1978 (being Laws 1973,

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1 Chapter 375, Section 9, as amended) is amended to read:

2 "3-9-8. CARE OF ABSENTEE BALLOTS--DESTRUCTION OF UNUSED  
3 BALLOTS BY MUNICIPAL CLERK.--

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

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

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1 for election contests, the municipal clerk shall destroy all  
2 late official mailing envelopes without opening or permitting  
3 the contents to be examined, cast, counted or canvassed.  
4 Before their destruction, the municipal clerk shall count the  
5 numbers of late ballots from voters, [~~federal~~] overseas 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~~] Friday immediately preceding the date of the  
10 election, the municipal clerk shall record the numbers of the  
11 unused absentee ballots and shall publicly destroy in the  
12 municipal clerk's office all [~~such~~] unused ballots. The  
13 municipal clerk shall execute a certificate of such  
14 destruction, which shall include the numbers on the ballots  
15 destroyed, and [~~such~~] the certificate shall be placed within  
16 the absentee ballot 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~~] The certificate shall be  
21 placed in the absentee ballot register and shall become an  
22 official part of the register. The municipal clerk shall  
23 determine the form of the certificate of unreceived absentee  
24 ballots."

25 Section 36. Section 3-9-11 NMSA 1978 (being Laws 1985,

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1 Chapter 208, Section 99, as amended by Laws 1995, Chapter 98,  
2 Section 3 and also by Laws 1995, Chapter 200, Section 10) is  
3 amended to read:

4 "3-9-11. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER  
5 PRECINCT BOARDS.--

6 A. Before opening any official mailing envelope, an  
7 election judge shall determine that the required signature has  
8 been executed on the reverse side of the official mailing  
9 envelope.

10 B. If the signature is missing, an election judge  
11 shall write "rejected" on the front of the official mailing  
12 envelope. The election clerks shall write the notation  
13 "rejected - missing signature" in the "notations" column on the  
14 absentee voter list. An election judge shall place the  
15 official mailing envelope unopened in an envelope provided for  
16 rejected ballots, seal the envelope, write the voter's name on  
17 the front of the envelope and deposit it in the locked ballot  
18 box.

19 C. Declared challengers certified by the municipal  
20 clerk may examine the official mailing envelope and may  
21 challenge the ballot of any absent voter for the following  
22 reasons:

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

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1 (2) the person offering to vote is not [~~a~~  
2 ~~federal~~] an overseas voter, federal qualified elector or voter  
3 as provided in the Municipal Election Code.

4 Upon the challenge of an absentee ballot, an election  
5 judge shall generally follow the same procedure as when ballots  
6 are challenged when a person offers to vote in person. If a  
7 challenged ballot is not to be counted, it shall not be opened  
8 and shall be placed in an envelope provided for challenged  
9 ballots.

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

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

15 (2) the election clerks shall mark the  
16 notation "AB" opposite the voter's name in the "notations"  
17 column of the absentee voter list.

18 E. Prior to the closing of the polls, an election  
19 judge may remove the absentee ballots from the official inner  
20 envelopes and either count and tally the results of absentee  
21 balloting by hand or register the results of each absentee  
22 ballot on a voting machine the same as if the absent voter had  
23 been present and voted in person. It shall be unlawful for any  
24 person to disclose the results of such count and tally or such  
25 registration on a voting machine of absentee ballots prior to

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1 the closing of the polls.

2 F. The municipal clerk shall, prior to the opening  
3 of the polls on election day, notify the absent voter precinct  
4 board in writing whether absentee ballots are to be counted and  
5 tallied or registered on a voting machine. The procedures  
6 shall be such as to ensure the secrecy of the ballot.

7 G. Absent voter precinct polls shall be closed at  
8 7:00 p.m. on the day of the election by the absent voter  
9 precinct board."

10 Section 37. Section 3-9-12 NMSA 1978 (being Laws 1985,  
11 Chapter 208, Section 100) is amended to read:

12 "3-9-12. CANVASS--RECOUNT OR RECHECK--DISPOSITION.--Where  
13 no voting machines are used to register absentee ballots, such  
14 ballots shall be canvassed, recounted and disposed of in the  
15 manner provided by the Municipal Election Code for the  
16 canvassing, recounting and disposition of [emergency] paper  
17 ballots. Where voting machines are used to register absentee  
18 ballots, such ballots shall be canvassed and rechecked in the  
19 manner provided by the Municipal Election Code for the  
20 canvassing and recheck of ballots cast on a voting machine;  
21 provided, in the event of a contest, voting machines used to  
22 register absentee ballots shall not be rechecked, but the  
23 absentee ballots shall be recounted in the manner provided by  
24 the Municipal Election Code [for the recounting of emergency  
25 paper ballots]."

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1           Section 38. Section 3-9-13.1 NMSA 1978 (being Laws 2003,  
2 Chapter 244, Section 19) is amended to read:

3           "3-9-13.1. ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN NOT  
4 TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND COUNTING.--

5           A. A voter who has submitted an application for an  
6 absentee ballot that was accepted by the municipal clerk but  
7 who has not received the absentee ballot by mail as of the date  
8 of the election may [~~present himself at his~~] go to the assigned  
9 polling place and, after executing an affidavit of nonreceipt  
10 of absentee ballot, shall be issued [~~an emergency paper~~] a  
11 ballot in lieu of an absentee ballot by the presiding judge,  
12 and shall be allowed to mark the ballot.

13           B. The voter shall place the completed [~~emergency~~  
14 ~~paper~~] ballot issued in lieu of an absentee ballot in an  
15 official inner envelope, substantially in the form prescribed  
16 pursuant to Section 3-9-6 NMSA 1978, which shall be sealed by  
17 the voter. The official inner envelope shall then be placed by  
18 the voter, in the presence of the presiding judge, in an  
19 official outer envelope substantially as prescribed for a  
20 transmittal envelope or mailing envelope pursuant to Section  
21 3-9-6 NMSA 1978. The presiding judge shall fill in the  
22 information on the back of the envelope that identifies the  
23 voter by name and signature roster number and contains the  
24 printed affidavit that the voter made application for an  
25 absentee ballot, which the voter believes to have been accepted

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1 by the municipal clerk, that the voter swears an absentee  
2 ballot had not been received as of the date of the election and  
3 that the voter was issued [~~an emergency paper~~] a ballot in lieu  
4 of an absentee ballot, and that the ballot was marked by the  
5 voter and submitted to the presiding judge.

6 C. The presiding judge shall place all [~~emergency~~  
7 ~~paper~~] ballots issued in lieu of absentee ballots in a special  
8 envelope provided for that purpose by the municipal clerk, seal  
9 the envelope and return it to the municipal clerk along with  
10 the machine tally sheets after the closing of the polls. The  
11 sealed envelope shall not be placed in the locked ballot box.

12 D. The municipal clerk shall, upon receipt of the  
13 envelope containing [~~emergency paper~~] ballots in lieu of  
14 absentee ballots, and no later than forty-eight hours after the  
15 close of the polls for the election, remove the transmittal  
16 envelopes and without removing or opening the inner envelopes,  
17 determine:

18 (1) if the voter did in fact make application  
19 for an absentee ballot that was accepted by the municipal  
20 clerk;

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

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

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1           E. If the municipal clerk determines that the  
2 [~~emergency paper~~] ballot in lieu of absentee ballot is valid,  
3 that an absentee ballot was mailed to the voter and that no  
4 absentee ballot was received from the voter by the municipal  
5 clerk, the municipal clerk shall remove the inner envelope  
6 without opening it, retain the transmittal envelope with the  
7 other election returns and place the inner envelope, unopened,  
8 in a secure and locked container to be transmitted to the  
9 canvassing board to be tallied and included in the canvass of  
10 the election returns for the municipality.

11           F. If the municipal clerk determines that the  
12 [~~emergency paper~~] ballot in lieu of absentee ballot is not  
13 valid because the application for absentee ballot was rejected  
14 and no ballot was mailed to the voter, or that a ballot was  
15 received from the voter by the municipal clerk not later than  
16 7:00 p.m. on election day, the municipal clerk shall write  
17 "rejected invalid ballot" on the front of the transmittal  
18 envelope and the transmittal envelope shall not be sent to the  
19 canvassing board for counting and tallying. The municipal  
20 clerk shall retain the unopened transmittal envelope in a safe  
21 and secure manner and shall notify the district attorney in  
22 writing of the alleged violation of the Municipal Election  
23 Code. A copy of the notification to the district attorney  
24 shall be sent by first class mail to the voter and to the  
25 secretary of state.

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1           G. The municipal clerk shall furnish and shall  
2 prescribe the form of the necessary envelopes to be used in  
3 accordance with the purposes of this section, and shall take  
4 steps to preserve the secrecy of any ballots cast pursuant to  
5 this section."

6           Section 39. Section 3-9-16 NMSA 1978 (being Laws 1973,  
7 Chapter 375, Section 14, as amended) is amended to read:

8           "3-9-16. PENALTIES.--

9           A. [~~Any~~] A person who knowingly votes or offers to  
10 vote an absentee ballot to which [~~he~~] the person is not  
11 lawfully entitled to vote or offer to vote is guilty of a  
12 fourth degree felony.

13           B. [~~Any~~] A municipal official or employee or any  
14 other person who knowingly furnishes absentee ballots to  
15 persons who are not entitled to such ballots under the  
16 provisions of the Municipal Election Code is guilty of a fourth  
17 degree felony.

18           C. [~~Any~~] A municipal official or employee, precinct  
19 board member or any other person who knowingly destroys or  
20 otherwise disposes of an absentee ballot other than in the  
21 manner provided by the Municipal Election Code is guilty of a  
22 fourth degree felony.

23           D. [~~Any~~] A person who knowingly or willfully makes  
24 any false statement in any application for an absentee ballot  
25 or in the absentee ballot register or in any certificate

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underscored material = new  
[bracketed material] = delete

1 required by the Municipal Election Code is guilty of a fourth  
2 degree felony.

3 E. A person who knowingly possesses an executed or  
4 unexecuted absentee ballot outside the physical confines of the  
5 municipal clerk's office when the ballot is not the personal  
6 ballot of that person or who otherwise knowingly authorizes,  
7 aids or abets the unlawful removal of an executed or unexecuted  
8 absentee ballot from the physical confines of the municipal  
9 clerk's office is guilty of a fourth degree felony.

10 F. A municipal clerk who knowingly possesses an  
11 executed or unexecuted absentee ballot outside the physical  
12 confines of the municipal clerk's office when that ballot is  
13 not the personal ballot of the municipal clerk, or who  
14 otherwise knowingly authorizes, aids or abets the unlawful  
15 removal of an executed or unexecuted absentee ballot that is  
16 not the personal ballot of the municipal clerk from the  
17 physical confines of the municipal clerk's office, is guilty of  
18 a fourth degree felony."

19 Section 40. REPEAL.--

20 A. Laws 1995, Chapter 98, Section 3 is repealed.

21 B. Sections 3-8-15 and 3-8-40.1 NMSA 1978 (being  
22 Laws 1985, Chapter 208, Section 23 and Laws 1999, Chapter 278,  
23 Section 45, as amended) are repealed.

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