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HOUSE BILL 833

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

INTRODUCED BY

Jose A. Campos

AN ACT

RELATING TO ELECTIONS; UPDATING PROVISIONS IN THE ELECTION CODE TO COMPORT WITH THE USE OF PAPER BALLOTS; REMOVING REFERENCES TO EMERGENCY PAPER BALLOTS FROM THE ELECTION CODE; PROVIDING FOR THE HANDLING OF PAPER BALLOTS; AMENDING, REPEALING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 1-1-6 NMSA 1978 (being Laws 1977, Chapter 222, Section 1, as amended) is amended to read:

"1-1-6. RECHECK AND RECOUNT.--As used in the Election Code:

A. "recheck" pertains to electronic vote tabulating systems and means a verification procedure whereby a printout of the electronic record of votes cast in an election is made from each electronic memory device in the electronic vote

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1 tabulating system and the results are compared with the results
2 shown on the official returns; and

3 B. "recount" pertains to [~~emergency~~] all paper
4 ballots, including absentee ballots, provisional paper ballots,
5 optical scan paper ballots and any other paper ballot and means
6 a verification procedure whereby the voters' selections for an
7 office are [~~retabulated by feeding the ballots into an~~
8 ~~electronic vote tabulating system, and the voters' selections~~
9 ~~on ballots that cannot be read by the system are counted by~~
10 ~~hand~~] retallied and the results compared with the results shown
11 on the official returns."

12 Section 2. Section 1-2-12 NMSA 1978 (being Laws 1969,
13 Chapter 240, Section 32, as amended) is amended to read:

14 "1-2-12. PRECINCT BOARD--NUMBER FOR EACH PRECINCT--
15 MULTIPARTISAN.--

16 A. When absentee ballots are counted, the precinct
17 board shall consist of:

- 18 (1) a presiding judge;
- 19 (2) one election judge from each of the major
20 political parties;
- 21 (3) one clerk from each of the major political
22 parties; and
- 23 (4) if a major party has no registered,
24 qualified elector who is able to fill the position as election
25 judge or election clerk, a registered, qualified elector from

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1 another major party, chosen by the county clerk to fill the
2 vacant position.

3 B. ~~[When one voting machine is to be used in a~~
4 ~~precinct]~~ For primary, general and special federal elections,
5 the precinct board shall consist of:

6 (1) a presiding judge;

7 (2) two election judges who shall be of
8 different political parties; and

9 (3) one election clerk who shall be of a
10 different political party than the presiding judge.

11 C. ~~[When two voting machines are to be used in a~~
12 ~~precinct]~~ For all other elections, the precinct board shall
13 consist of:

14 (1) a presiding judge;

15 (2) [~~two~~] one election [~~judges~~] judge who
16 shall be of a different political [~~parties~~] party than the
17 presiding judge; and

18 (3) [~~two~~] one election [~~clerks who shall be of~~
19 ~~different political parties~~] clerk.

20 ~~[D. When three voting machines are used in a~~
21 ~~precinct, the precinct board shall consist of:~~

22 ~~(1) a presiding judge;~~

23 ~~(2) two election judges who shall be of~~
24 ~~different political parties; and~~

25 ~~(3) three election clerks, not more than two~~

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1 ~~of whom shall belong to the same political party.~~

2 ~~E.]~~ D. If the county clerk determines that
3 additional election clerks are needed in a precinct, the clerk
4 may appoint such additional election clerks as ~~[he]~~ the clerk
5 deems necessary; provided, however, that such appointments
6 shall be made in the manner that provides for representation
7 from all major political parties.

8 ~~[F.]~~ E. In addition to the members of the precinct
9 board provided for in this section, the county clerk may
10 appoint an additional election clerk for the purpose of making
11 changes in the certificate of registration of any voter who has
12 voted in that election at the polling place."

13 Section 3. Section 1-6-7 NMSA 1978 (being Laws 1969,
14 Chapter 240, Section 133, as amended) is amended to read:

15 "1-6-7. FORM OF ABSENTEE BALLOT.--As soon as candidates
16 and questions to be voted upon have been determined for each
17 election, the county clerk shall procure a supply of suitable
18 absentee ballots. The absentee ballots shall be numbered and
19 shall be, as nearly as possible, in the same form as prescribed
20 by the secretary of state for ~~[emergency]~~ paper ballots.
21 However, to reduce weight and bulk for transport of absentee
22 ballots, the size and weight of the paper for envelopes,
23 ballots and instructions shall be reduced as much as possible.
24 Absentee ballots shall be printed at least forty-five days
25 prior to the date of a primary election and forty-nine days

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1 prior to the date of a general election. Absentee ballots for
2 any other election shall be printed at least thirty-five days
3 prior to the date of the election."

4 Section 4. Section 1-6-15 NMSA 1978 (being Laws 1977,
5 Chapter 222, Section 13, as amended) is amended to read:

6 "1-6-15. CANVASS--RECOUNT OR RECHECK--DISPOSITION.--If
7 voting machines are not used to register absentee ballots, the
8 absentee ballots shall be canvassed, recounted and disposed of
9 in the manner provided by the Election Code for the canvassing,
10 recounting and disposition of [~~emergency~~] paper ballots. If
11 voting machines are used to register absentee ballots, the
12 ballots shall be canvassed and rechecked in the manner provided
13 by the Election Code for the canvassing and recheck of ballots
14 cast on a voting machine; provided, in the event of a contest,
15 voting machines used to register absentee ballots shall not be
16 rechecked but the absentee ballots shall be recounted in the
17 manner provided by the Election Code for the recounting of
18 [~~emergency~~] paper ballots. As used in this section, "voting
19 machines" means electronic voting machines as provided in the
20 Election Code."

21 Section 5. Section 1-6-16.1 NMSA 1978 (being Laws 1989,
22 Chapter 368, Section 1, as amended) is amended to read:

23 "1-6-16.1. ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN NOT
24 TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND COUNTING.--

25 A. A voter who applies for an absentee ballot but

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1 has not received the absentee ballot by mail as of the date of
2 the election may [~~present himself at his~~] go to the voter's
3 assigned polling place and, after executing an affidavit of
4 nonreceipt of absentee ballot, shall be permitted to vote on
5 [~~an emergency~~] a replacement absentee paper ballot.

6 B. The completed ballot shall be placed in an
7 official inner envelope substantially as prescribed by Section
8 1-6-8 NMSA 1978 and sealed. The official inner envelope shall
9 then be placed in an official envelope substantially as
10 prescribed for a transmittal envelope or mailing envelope in
11 Section 1-6-8 NMSA 1978. This envelope shall contain a form on
12 its back that identifies the voter by name and signature roster
13 number and a printed statement to the effect that the voter
14 made application for an absentee ballot but had not received it
15 as of the date of the election and is permitted to vote by
16 [~~emergency~~] replacement absentee paper ballot.

17 C. The presiding [~~election~~] judge shall put all
18 replacement absentee ballots in a special envelope provided for
19 that purpose by the county clerk, seal it and return it to the
20 county clerk along with the machine tally sheets. The sealed
21 envelope shall not be put in the locked ballot box.

22 D. Upon receipt of the envelope containing
23 replacement absentee ballots, the county clerk, no later than
24 forty-eight hours after the close of the election, shall remove
25 the transmittal envelopes and, without removing or opening the

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1 inner envelopes, determine that:

2 (1) [~~if a~~] the voter did in fact make
3 application for an absentee ballot; and

4 (2) [~~if an~~] no absentee ballot was received by
5 the county clerk from the voter by 7:00 p.m. on election day.

6 E. Upon making that determination, the county clerk
7 shall remove the inner envelope without opening it, retain the
8 transmittal envelope with the other election returns and place
9 the inner unopened envelope in a secure container to be
10 transmitted to the county canvassing board to be tallied and
11 included in the canvass of that county for the appropriate
12 precinct.

13 F. The secretary of state shall prescribe and
14 furnish the necessary envelopes for purposes of this section
15 and shall adopt rules [~~and regulations~~] deemed necessary to
16 preserve the secrecy of the [~~emergency~~] replacement absentee
17 paper ballots."

18 Section 6. Section 1-8-36.1 NMSA 1978 (being Laws 1981,
19 Chapter 156, Section 1, as amended) is amended to read:

20 "1-8-36.1. PRIMARY ELECTION LAW--WRITE-IN CANDIDATES.--

21 A. Write-in candidates are permitted in the primary
22 election only for the offices of United States representative,
23 members of the legislature, district judges, district
24 attorneys, public regulation commission, [~~state board of~~
25 ~~education~~] public education commission, magistrates and any

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1 office voted upon by all voters of the state.

2 B. A person may be a write-in candidate only for
3 nomination by the major political party with which [~~he~~] the
4 person is affiliated as shown by [~~his~~] the certificate of
5 registration, and such person shall have the qualifications to
6 be a candidate in the primary election for the political party
7 for which [~~he~~] the person is a write-in candidate.

8 C. A person desiring to be a write-in candidate for
9 one of the offices listed in Subsection A of this section in
10 the primary election shall file with the proper filing officer
11 a declaration of intent to be a write-in candidate. Such
12 declaration of intent shall be filed before 5:00 p.m. on the
13 second Tuesday in March.

14 D. A write-in vote shall be counted and canvassed
15 only if:

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

24 (2) the name is written in the proper slot on
25 the voting machine or on the proper line provided on an

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1 absentee ballot or [~~emergency~~] other paper ballot for write-in
2 votes for the office for which the candidate has filed a
3 declaration of intent.

4 E. At the time of filing the declaration of intent
5 to be a write-in candidate, the write-in candidate shall be
6 considered a candidate for all purposes and provisions relating
7 to candidates in the Election Code, including the obligations
8 to report pursuant to the Campaign Reporting Act, except that
9 [~~he shall not be entitled to have his~~] the write-in candidate's
10 name shall not be printed on the ballot.

11 F. No unopposed write-in candidate shall have [~~his~~]
12 the write-in candidate's nomination certified unless [~~he~~] the
13 write-in candidate receives at least the number of write-in
14 votes in the primary election as [~~he~~] the write-in candidate
15 would need signatures on a nominating petition pursuant to the
16 requirements set out in Section 1-8-33 NMSA 1978.

17 G. A write-in vote shall be cast by writing in the
18 name. As used in this section, "write-in" does not include the
19 imprinting of any name by rubber stamp or similar device or the
20 use of preprinted stickers or labels."

21 Section 7. Section 1-10-1 NMSA 1978 (being Laws 1977,
22 Chapter 222, Section 24, as amended) is amended to read:

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

24 A. "ballot" means a system for arranging and
25 designating for the voter the names of candidates,

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1 constitutional amendments and other questions to be voted on
2 and for the marking, casting or otherwise recording of such
3 votes, and the term includes absentee ballots, ballot labels,
4 ballot cards, ballot sheets, provisional paper ballots and
5 [~~emergency~~] all other paper ballots;

6 ~~[B. "ballot label" means that portion of cardboard,~~
7 ~~paper or other material placed on the front of the voting~~
8 ~~machine containing the names of the candidates, the offices the~~
9 ~~candidates are seeking, a statement of the proposed~~
10 ~~constitutional amendment or other question or proposition to be~~
11 ~~voted upon;~~

12 ~~G. "emergency paper ballot" means the paper ballot~~
13 ~~used in the circumstances covered under Section 1-12-43 NMSA~~
14 ~~1978;~~

15 ~~D. "ballot card" means a card upon which votes may~~
16 ~~be recorded by use of a pen or pencil for tabulation in an~~
17 ~~electronic vote tabulating machine;~~

18 ~~E. "ballot sheet" means the sheet used on an~~
19 ~~electronic vote recording and tabulating machine containing the~~
20 ~~offices, candidates and questions to be voted on] and~~

21 ~~[F.]~~ B. "provisional paper ballot" means the paper
22 ballot used pursuant to Section [~~1-5-10 or~~] 1-12-7.1, 1-12-8
23 [~~NMSA 1978~~] or [~~Section 3 of this 2003 act~~] 1-12-25.2 NMSA
24 1978."

25 Section 8. Section 1-10-5 NMSA 1978 (being Laws 1977,
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1 Chapter 222, Section 28) is amended to read:

2 "1-10-5. BALLOTS--PRINTING.--~~[Ballot labels]~~ Ballots
3 shall be printed and in the hands of the county clerk at least
4 [~~thirty~~] forty days before the election."

5 Section 9. Section 1-12-44 NMSA 1978 (being Laws 1977,
6 Chapter 222, Section 47, as amended) is recompiled in Chapter
7 1, Article 10 NMSA 1978 and is amended to read:

8 "~~[EMERGENCY SITUATIONS--EMERGENCY]~~ PAPER BALLOTS--GENERAL
9 REQUIREMENTS.--~~[Emergency]~~ Paper ballots [~~used in the primary~~
10 ~~and general elections]~~ shall:

11 A. be numbered consecutively [~~for each precinct,~~
12 ~~beginning with number one. The number shall be printed in the~~
13 ~~upper right-hand corner of the ballot with a diagonal~~
14 ~~perforated line so placed that the portion of the ballot~~
15 ~~bearing the number in the upper right-hand corner may be~~
16 ~~readily and easily detached from the emergency paper ballot];~~

17 B. be uniform in size;

18 C. be printed on good quality white paper;

19 D. be printed in plain black type;

20 [~~E. have all words, phrases and the names of the~~
21 ~~candidates printed in their proper places; and~~

22 ~~F.] E. have the [~~legislative district, commissioner~~
23 ~~district and]~~ precinct numbers printed on each [~~emergency]~~
24 paper ballot; and~~

25 F. be in the form prescribed by the secretary of

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1 state."

2 Section 10. Section 1-12-47 NMSA 1978 (being Laws 1977,
3 Chapter 222, Section 50) is recompiled in Chapter 1, Article 10
4 NMSA 1978 and is amended to read:

5 "~~[EMERGENCY SITUATIONS--EMERGENCY]~~ PAPER BALLOTS--WRITE-IN
6 CANDIDATES.--~~[Where space is allowed on an emergency paper~~
7 ~~ballot]~~ When a write-in candidate has been certified pursuant
8 to the Election Code, a space for entering the name of [a] the
9 write-in candidate [that space] shall be clearly designated by
10 the use of the heading "Write-in Candidate" after the listing
11 of other candidates for that office."

12 Section 11. Section 1-12-49 NMSA 1978 (being Laws 1977,
13 Chapter 222, Section 52) is recompiled in Chapter 1, Article 10
14 NMSA 1978 and is amended to read:

15 "~~[EMERGENCY SITUATIONS]~~ PAPER BALLOTS--ELECTION
16 SUPPLIES.--The secretary of state shall provide for the
17 procurement of [emergency] paper ballot election supplies."

18 Section 12. Section 1-10-8.1 NMSA 1978 (being Laws 1981,
19 Chapter 166, Section 1, as amended) is amended to read:

20 "1-10-8.1. GENERAL ELECTION--PARTY POSITION ON BALLOT.--

21 A. The order of preference for position on the
22 voting machines, [emergency] paper ballots and absentee ballots
23 of the candidates of political parties in the general election
24 shall be determined by lot at the time and in the manner
25 prescribed by the secretary of state.

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1 B. The order of preference of major political
2 parties for purposes of this section shall be: first, the top
3 row with the offices proceeding from left to right across the
4 lever voting machine or paper ballot; second, the second row
5 with the offices proceeding from left to right across the
6 machine or paper ballot; and thereafter, consecutively down
7 each row in the same manner until all major parties and their
8 candidates are positioned on the ballot.

9 C. The order of preference of minor political
10 parties for purposes of this section in the positions below the
11 major parties on the machine or ballot shall be: first, the
12 top row with the offices proceeding from left to right across
13 the machine or paper ballot; second, the second row with the
14 offices proceeding from left to right across the machine or
15 paper ballot; and thereafter, consecutively down each row in
16 the same manner until all minor parties and their candidates
17 are positioned on the ballot.

18 D. [~~Where~~] When lever voting machines are used, the
19 sample ballot posted in the polling place shall reflect the
20 actual positioning of parties on the voting machine in that
21 precinct. The secretary of state may require that sample
22 ballots distributed to each polling place reflect the actual
23 positioning of parties on the voting machines used in that
24 precinct.

25 E. When electronic vote recording and tabulating

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1 machines or electronic vote tabulating machines are used, the
2 offices and candidates shall be printed on the ballot sheet or
3 ballot card in a vertical position with the order of preference
4 being from top to bottom.

5 F. When [~~emergency~~] paper ballots [~~and absentee~~
6 ~~ballots~~] are used in a general election, such ballots shall be
7 printed and bound so that the ballots for each precinct shall
8 reflect the actual positioning of parties as they appear on the
9 voting machines in that precinct.

10 G. The secretary of state shall prescribe
11 procedures and publish instructions to carry out the provisions
12 of this section."

13 Section 13. Section 1-12-19.1 NMSA 1978 (being Laws 1981,
14 Chapter 156, Section 2, as amended) is amended to read:

15 "1-12-19.1. GENERAL ELECTIONS--SPECIAL ELECTIONS--WRITE-
16 IN CANDIDATES.--

17 A. A person desiring to be a write-in candidate in
18 a special election for United States representative or a
19 statewide special election shall file with the proper filing
20 officer a declaration of intent to be a write-in candidate.
21 The declaration of intent shall be filed between 9:00 a.m. and
22 5:00 p.m. on the sixty-third day immediately preceding the
23 election. A person desiring to be a write-in candidate in a
24 general election shall file the declaration of intent between
25 9:00 a.m. and 5:00 p.m. on the day after the primary election.

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1 B. The form of the declaration of intent shall be
2 prescribed by the secretary of state and shall contain a sworn
3 statement by the candidate that the candidate is qualified to
4 be a candidate for and to hold the office for which the
5 candidate is filing.

6 C. At the time of filing the declaration of intent
7 to be a write-in candidate, the write-in candidate shall be
8 considered a candidate for all purposes and provisions relating
9 to candidates in the Election Code, including the obligation to
10 report under the Campaign Reporting Act, except that the
11 candidate shall not be entitled to have the candidate's name
12 printed on the ballot.

13 D. The secretary of state shall, not less than ten
14 days before the general election, certify the names of the
15 declared write-in candidates to the county clerks of every
16 county affected by such candidacy.

17 E. No person shall be a write-in candidate in the
18 general election who was a candidate in the primary election
19 immediately prior to the general election.

20 F. A vote for a write-in candidate shall be counted
21 and canvassed only if:

22 (1) the name written in is the name of a
23 declared write-in candidate and shows two initials and last
24 name; first name, middle initial or name and last name; first
25 and last name; or the full name as it appears on the

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1 declaration of intent to be a write-in candidate and
2 misspellings of the above combinations that can be reasonably
3 determined by a majority of the members of the precinct board
4 to identify a declared write-in candidate; and

5 (2) the name is written in the proper office
6 or entered upon the keyboard on the voting machine or on the
7 proper line provided on a marksense ballot, absentee ballot or
8 [~~emergency~~] paper ballot for write-in votes for the office for
9 which the candidate has filed a declaration of intent.

10 G. No unopposed write-in candidate shall have an
11 election certified unless the candidate receives at least the
12 number of write-in votes as the candidate would need signatures
13 on a nominating petition pursuant to the requirements in
14 Section 1-8-33 NMSA 1978.

15 H. A write-in vote shall be cast by writing in the
16 name. As used in this section, "write-in" does not include the
17 imprinting of any name by rubber stamp or similar device or the
18 use of preprinted stickers or labels."

19 Section 14. Section 1-12-31 NMSA 1978 (being Laws 1969,
20 Chapter 240, Section 291, as amended) is amended to read:

21 "1-12-31. CONDUCT OF ELECTION--DISPOSITION OF BALLOT
22 BOXES AND OTHER ELECTION MATERIALS.--

23 A. The following election returns and materials
24 shall not be placed in the ballot box and shall be returned
25 immediately to the county clerk along with the locked box:

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- 1 (1) one ballot box key in an envelope
2 addressed to the county clerk;
3 (2) one signature roster;
4 (3) one tally sheet;
5 (4) the registration binder;
6 (5) all unused election supplies not destroyed
7 pursuant to the Election Code; and
8 (6) a machine cartridge for any electronic or
9 marksense machine.

10 B. [~~In the event emergency paper ballots have been~~
11 ~~voted~~] The election judge of the party different from that of
12 the presiding judge shall place the other ballot box key in the
13 envelope addressed to the district court and immediately mail
14 it to the district court."

15 Section 15. Section 1-12-25.1 NMSA 1978 (being Laws 1991,
16 Chapter 105, Section 30) is amended to read:

17 "1-12-25.1. PROCEDURES FOR VOTING ON [~~LEVER~~] ELECTRONIC
18 [~~AND MARKSENSE VOTING MACHINES~~] VOTE TABULATOR SYSTEMS.--~~[A.]~~ A
19 voter voting on [~~a lever type machine~~] an electronic vote
20 tabulator system shall:

21 [~~(1) enter the machine and push the red handle~~
22 ~~to the left to close the curtain;~~

23 [~~(2) set the pointer directly under the~~
24 ~~candidate's name or question on which he desires to vote; and~~

25 [~~(3) make all selections and pull the red~~

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1 ~~handle to the right to open the curtain and record his vote.~~

2 ~~B. A voter voting on a direct recording electronic~~
3 ~~machine shall:~~

4 ~~(1) enter the machine;~~

5 ~~(2) press the square to the right of the~~
6 ~~candidate's name or question on which he desires to vote; and~~

7 ~~(3) make all selections and press the vote~~
8 ~~button in the lower right hand corner of the voting machine to~~
9 ~~record his vote.~~

10 ~~C. A voter voting on a marksense machine shall~~

11 ~~(1)]~~ A. receive a ballot issued by the precinct
12 board;

13 ~~(2)]~~ B. take the ballot to a voting booth and,
14 with the [~~pencil~~] writing utensil provided, mark it by
15 [~~completing the arrow to the right of~~] filling in the circle
16 next to the candidate's name or next to the answer to the
17 question [~~on~~] for which [~~he~~] the voter desires to vote; and

18 ~~(3) make all selections and]~~ C. feed the ballot
19 into the [~~machine~~] electronic vote tabulator to record [~~his~~]
20 the vote."

21 Section 16. Section 1-12-43 NMSA 1978 (being Laws 1977,
22 Chapter 222, Section 46) is amended to read:

23 "1-12-43. EMERGENCY SITUATIONS [~~EMERGENCY PAPER BALLOTS--~~
24 ~~WHEN USED]~~ .--

25 A. If any voting [~~machine~~] system becomes disabled

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1 while being used to the extent that any voter is unable to cast
2 a vote for all the candidates or questions of ~~[his]~~ the voter's
3 choice and have such vote recorded by the ~~[machine]~~ voting
4 system, it shall be repaired, if possible, or another voting
5 ~~[machine]~~ system shall be promptly substituted.

6 B. The board of county commissioners shall
7 appropriate funds for servicing, repairing and substituting
8 voting ~~[machines]~~ systems that become disabled.

9 C. If a disabled voting ~~[machine]~~ system cannot be
10 repaired in a reasonable length of time and if there are no
11 other voting ~~[machines]~~ systems available for substitution, the
12 presiding judge shall order ~~[emergency paper]~~ marked ballots to
13 be ~~[substituted and used]~~ collected and securely preserved
14 until they may be tabulated pursuant to rules promulgated by
15 the secretary of state.

16 D. A voter shall not be denied the opportunity to
17 mark a ballot for later tabulation due to the lack of a
18 functioning voting system.

19 ~~[D.]~~ E. The county clerk shall provide additional
20 ~~[emergency paper]~~ ballots if needed and when requested by the
21 precinct board."

22 Section 17. Section 1-12-51 NMSA 1978 (being Laws 1977,
23 Chapter 222, Section 54) is amended to read:

24 "1-12-51. ~~[EMERGENCY SITUATIONS]~~ PAPER BALLOTS--
25 UNAUTHORIZED RECEIPT OR DELIVERY OF [EMERGENCY] PAPER BALLOT.--

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1 Except for absentee ballots and unless otherwise provided by
2 law, a voter shall not receive [~~an emergency~~] a paper ballot
3 from any person other than from a member of the precinct board
4 of the polling place where [~~he~~] the voter is authorized to vote
5 or at an alternate early voting location. No person other than
6 a member of the precinct board or officer authorized by law
7 shall deliver [~~an emergency~~] a paper ballot to any voter."

8 Section 18. Section 1-12-55 NMSA 1978 (being Laws 1977,
9 Chapter 222, Section 58, as amended) is amended to read:

10 "1-12-55. [~~EMERGENCY SITUATIONS--EMERGENCY~~] PAPER
11 BALLOTS--~~[USE OF PEN]~~ MARKING.--All [~~crosses or checks~~] marks
12 on the [~~emergency~~] paper ballot shall be made only with [~~pen~~].
13 ~~The cross used in marking emergency paper ballots shall be two~~
14 ~~lines intersecting at any angle within the circle or box. The~~
15 ~~check shall be a "V" shaped mark with it being permissible for~~
16 ~~either side of the "V" being longer than the other side. Any~~
17 ~~mark discernible either as a cross or a check, whether or not~~
18 ~~any of the lines extend outside the circle or box, shall be~~
19 ~~counted as a valid marking of the ballot]~~ the recommended or
20 provided marking device."

21 Section 19. Section 1-12-57 NMSA 1978 (being Laws 1977,
22 Chapter 222, Section 60) is amended to read:

23 "1-12-57. [~~EMERGENCY SITUATIONS--EMERGENCY~~] PAPER
24 BALLOTS--PROCEDURE AFTER MARKING.--After marking and preparing
25 [~~his emergency~~] a paper ballot in a polling place or alternate

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1 voting location, the voter:

2 ~~[A. shall, before leaving the voting machine, fold~~
3 ~~his ballot so that the number on the ballot appears on the~~
4 ~~outside, without displaying the marks on its face, and he shall~~
5 ~~keep it folded until he has voted;~~

6 B.] A. shall not show it to any person in such a
7 way as to reveal its contents; and

8 ~~[C.] B.~~ shall ~~[deliver it to the presiding judge~~
9 ~~who shall then detach the visible number on the ballot, hand it~~
10 ~~to the voter, then deposit the emergency]~~ feed the paper ballot
11 ~~[in the ballot box in the presence of the voter]~~ into the
12 optical scan tabulator."

13 Section 20. Section 1-12-58 NMSA 1978 (being Laws 1977,
14 Chapter 222, Section 61) is amended to read:

15 "1-12-58. ~~[EMERGENCY SITUATIONS--EMERGENCY]~~ PAPER
16 ~~BALLOTS--DELIVERY OF TWO OR MORE BALLOTS [FOLDED TOGETHER].--~~
17 Every voter who knowingly ~~[hands to the presiding judge]~~
18 attempts to vote on two or more [emergency] paper ballots
19 ~~[folded together]~~ is guilty of a fourth degree felony."

20 Section 21. Section 1-12-59 NMSA 1978 (being Laws 1977,
21 Chapter 222, Section 62) is amended to read:

22 "1-12-59. ~~[EMERGENCY SITUATIONS--PERSON AUTHORIZED TO~~
23 ~~RECEIVE EMERGENCY]~~ VIEWING MARKED PAPER BALLOT.--~~[Only the~~
24 ~~presiding judge shall receive from any voter an emergency paper~~
25 ~~ballot prepared by such voter.]~~ No person shall ~~[examine or]~~

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1 solicit the voter to show [~~his emergency~~] the voter's marked
2 paper ballot."

3 Section 22. Section 1-12-61 NMSA 1978 (being Laws 1977,
4 Chapter 222, Section 64) is amended to read:

5 "1-12-61. [~~EMERGENCY SITUATIONS~~] REMOVAL OF [~~EMERGENCY~~]
6 PAPER BALLOTS FROM POLLING PLACE.--No person shall remove any
7 [~~emergency~~] paper ballot from any polling place [~~before the~~
8 ~~completion of the ballot count~~] unless authorized by law."

9 Section 23. Section 1-12-62 NMSA 1978 (being Laws 1977,
10 Chapter 222, Section 65, as amended) is amended to read:

11 "1-12-62. [~~EMERGENCY SITUATIONS--EMERGENCY~~] PAPER
12 BALLOTS--SPOILED OR DEFACED.--

13 A. A voter who accidentally spoils or erroneously
14 prepares [~~his emergency~~] the voter's paper ballot may return
15 the spoiled or erroneously prepared [~~emergency~~] paper ballot to
16 the presiding judge and receive a new [~~emergency~~] paper ballot.

17 B. The presiding judge in delivering the new
18 [~~emergency~~] paper ballot shall announce the name of the voter
19 and the number of the new [~~emergency~~] paper ballot in an
20 audible tone.

21 C. Upon the announcement of the presiding judge,
22 the election clerks shall cross out the number of the spoiled
23 or erroneously prepared [~~emergency~~] paper ballot in the
24 signature roster and checklist of registered voters with a
25 single line and shall insert in lieu thereof the number of the

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1 new [emergency] paper ballot.

2 D. The presiding judge shall mark the spoiled or
3 erroneously prepared [emergency] paper ballot with the word
4 "SPOILED" and shall place it in a separate envelope marked
5 "SPOILED BALLOTS", which shall be returned to the county
6 clerk."

7 Section 24. Section 1-12-63 NMSA 1978 (being Laws 1977,
8 Chapter 222, Section 66) is amended to read:

9 "1-12-63. [EMERGENCY SITUATIONS] ELECTION JUDGES--UNUSED
10 [EMERGENCY] PAPER BALLOTS.--Immediately upon time of the
11 closing of the polls [~~and before any ballot box is unlocked~~],
12 the election judges and presiding judge, in the presence of
13 those lawfully permitted to be present, shall publicly destroy
14 all unused [emergency] paper ballots."

15 Section 25. Section 1-12-65 NMSA 1978 (being Laws 1977,
16 Chapter 222, Section 68, as amended) is amended to read:

17 "1-12-65. EMERGENCY SITUATIONS--[EMERGENCY] PAPER
18 BALLOTS--COUNTING AND TALLYING PROCEDURES.--

19 A. The presiding judge and the election judges,
20 assisted by the election clerks, shall count and tally the
21 [emergency] paper ballots that were not tabulated due to voting
22 machine failure and certify the results of the election on the
23 form on the tally sheet setting opposite the name of each
24 candidate in figures the total number of votes cast for the
25 candidate, and they shall set forth in the spaces provided

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1 therefor the total number of votes cast for and against each
2 constitutional amendment and other questions. [~~Emergency~~] Paper
3 ballots not marked as required by the Election Code shall not
4 be counted. The precinct board shall sign the tally sheet
5 certificate.

6 B. The counting and tallying of [~~emergency~~] paper
7 ballots in emergency situations shall be in accordance with
8 procedures prescribed by the secretary of state."

9 Section 26. Section 1-12-66 NMSA 1978 (being Laws 1977,
10 Chapter 222, Section 69, as amended) is amended to read:

11 "1-12-66. [~~EMERGENCY SITUATIONS--EMERGENCY~~] PAPER
12 BALLOTS--SIGNATURE ROSTERS, CHECKLIST OF VOTERS AND TALLY
13 SHEETS--DISPOSITION.--

14 A. After the counting and tallying of [~~emergency~~]
15 paper ballots are completed and after all certificates have
16 been executed, the presiding judge and the two election judges
17 shall place [~~one copy of the signature roster~~] the checklist of
18 voters and one copy of the tally sheet in the stamped,
19 addressed envelope provided for that purpose and an election
20 judge shall immediately mail it to the secretary of state.

21 B. The [~~remaining copy of the~~] signature roster and
22 the original tally sheet shall be returned to the county clerk.
23 The signature roster and the tally sheet shall not be placed in
24 the ballot box.

25 C. Signature rosters, checklists of registered

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1 voters and tally sheets in the custody of the county clerk and
2 the secretary of state may be destroyed three years after the
3 election to which they apply."

4 Section 27. Section 1-12-67 NMSA 1978 (being Laws 1977,
5 Chapter 222, Section 70, as amended) is amended to read:

6 "1-12-67. [~~EMERGENCY SITUATIONS--EMERGENCY~~] PAPER BALLOTS
7 [~~MATERIAL~~] TO BE PLACED IN BALLOT BOX.--[A.] After the
8 [~~emergency~~] paper ballots are tallied, the precinct board shall
9 place [~~the following in the ballot box:~~

10 ~~(1)~~ the bundles of counted [~~emergency~~] paper
11 ballots

12 ~~(2)~~ the envelopes containing spoiled ballots;
13 and

14 ~~(3)~~ the envelopes containing rejected ballots.

15 B. ~~After the required items have been placed~~ in
16 the ballot box and the ballot box shall be closed and locked."

17 Section 28. Section 1-12-68 NMSA 1978 (being Laws 1977,
18 Chapter 222, Section 71, as amended) is amended to read:

19 "1-12-68. [~~EMERGENCY SITUATIONS--EMERGENCY~~] PAPER
20 BALLOTS--COUNTY CANVASS--WHEN RECOUNT IS REQUIRED.--

21 A. If it appears that defective returns cannot be
22 corrected without a recount of the [~~emergency~~] paper ballots,
23 the county canvassing board shall immediately notify the
24 district court in writing.

25 B. The district court shall fix a time and place,

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[bracketed material] = delete

1 which shall be not more than one week after receipt of notice
2 from the county canvassing board, for a recount of the
3 [~~emergency~~] paper ballots from the precinct.

4 C. The county clerk shall immediately notify the
5 county [~~chairmen~~] chairs of the political parties [~~who~~] that
6 participated in the election of the time and place of the
7 recount.

8 D. At the time and place set by the district court,
9 the ballot box shall be opened in the presence of the district
10 judge or some person designated by [~~him~~] the district judge to
11 act for the district court, the precinct board, the county
12 canvassing board and other persons desiring to be present.

13 E. The precinct board shall then recount the
14 [~~emergency~~] paper ballots and make a new tally sheet
15 certificate in duplicate to conform to the facts.

16 F. After the recount is completed, the precinct
17 board shall replace in the ballot box the [~~emergency~~] paper
18 ballots and other items taken therefrom and shall lock and
19 return the ballot box and one key to the county clerk. The
20 other key shall be returned to the district court or its
21 representative.

22 G. After being properly corrected, the signature
23 roster and tally sheets shall be disposed of as in the first
24 instance: one each to the county clerk and one each to the
25 secretary of state."

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1 Section 29. Section 1-14-14 NMSA 1978 (being Laws 1969,
2 Chapter 240, Section 343, as amended) is amended to read:

3 "1-14-14. RECOUNTS--RECHECKS--APPLICATION.--

4 A. Whenever any candidate for any office for which
5 the state canvassing board or county canvassing board issues a
6 certificate of nomination or election believes that any error
7 or fraud has been committed by any precinct board in counting
8 or tallying the [~~emergency~~] paper ballots or absentee ballots,
9 in the verification of the votes cast on the voting machines or
10 in the certifying of the results of any election whereby the
11 results of the election in the precinct have not been correctly
12 determined, declared or certified, the candidate, within six
13 days after completion of the canvass by the proper canvassing
14 board, may have a recount of the [~~emergency~~] paper ballots or
15 absentee ballots, or a recheck of the votes shown on the voting
16 machines, that were cast in the precinct.

17 B. In the case of any office for which the state
18 canvassing board issues a certificate of nomination or
19 election, application for recount or recheck shall be filed
20 with the secretary of state.

21 C. In the case of any office for which the county
22 canvassing board issues a certificate of nomination or
23 election, application for recount or recheck shall be filed
24 with the district judge for the county in which the applicant
25 resides."

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