

SENATE RULES COMMITTEE SUBSTITUTE FOR  
SENATE BILL 72

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

AN ACT

RELATING TO ELECTIONS; REQUIRING A POST-ELECTION EVALUATION OF  
THE ACCURACY OF VOTING SYSTEMS; PROVIDING PROCEDURES; REPEALING  
AND ENACTING SECTIONS OF THE NMSA 1978.

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

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

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

A. At least ninety days prior to each general  
election, the secretary of state shall contract with an auditor  
qualified by the state auditor to audit state agencies to  
oversee a check on the accuracy of precinct electronic vote  
tabulators, alternate voting location electronic vote  
tabulators and absent voter precinct electronic vote

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1 tabulators. The voting system check shall be conducted for all  
2 federal offices, for governor and for the statewide elective  
3 office, other than the office of the governor, for which the  
4 winning candidate won by the smallest percentage margin of all  
5 candidates for statewide office in New Mexico.

6 B. For each selected office, the auditor shall  
7 publicly select a random sample of precincts from a pool of all  
8 precincts in the state no later than twelve days after the  
9 election. The auditor shall select precincts starting with the  
10 statewide office with the largest winning margin and ending  
11 with the precincts for the statewide office with the smallest  
12 winning margin and then, in the same manner, select precincts  
13 from each congressional district. The size of the random  
14 sample for each office shall be determined as provided in Table  
15 1 of this subsection. When a precinct is selected for one  
16 office, it shall be used in lieu of selecting a different  
17 precinct when selecting precincts for another office in the  
18 same congressional district, or for any statewide office. If  
19 the winning margin in none of the offices for which a voting  
20 system check is required is less than fifteen percent, a voting  
21 system check for that general election shall not be required.

22 Table 1

23	Winning margin between top	Number of precincts in the
24	two candidates for the	state to be tested for that
25	office according to the	office

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1	county canvasses	
2	Percent	
3	greater than 15	no precincts for that office
4	greater than 14	
5	but less than or equal to 15	4
6	greater than 13	
7	but less than or equal to 14	4
8	greater than 12	
9	but less than or equal to 13	5
10	greater than 11	
11	but less than or equal to 12	5
12	greater than 10	
13	but less than or equal to 11	6
14	greater than 9.0	
15	but less than or equal to 10	6
16	greater than 8.0	
17	but less than or equal to 9.0	7
18	greater than 7.0	
19	but less than or equal to 8.0	9
20	greater than 6.0	
21	but less than or equal to 7.0	10
22	greater than 5.5	
23	but less than or equal to 6.0	11
24	greater than 5.0	
25	but less than or equal to 5.5	13

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1	greater than 4.5	
2	but less than or equal to 5.0	14
3	greater than 4.0	
4	but less than or equal to 4.5	16
5	greater than 3.5	
6	but less than or equal to 4.0	18
7	greater than 3.0	
8	but less than or equal to 3.5	22
9	greater than 2.5	
10	but less than or equal to 3.0	26
11	greater than 2.0	
12	but less than or equal to 2.5	32
13	greater than 1.8	
14	but less than or equal to 2.0	37
15	greater than 1.6	
16	but less than or equal to 1.8	42
17	greater than 1.4	
18	but less than or equal to 1.6	47
19	greater than 1.2	
20	but less than or equal to 1.4	54
21	greater than 1.1	
22	but less than or equal to 1.2	59
23	greater than 1.0	
24	but less than or equal to 1.1	65
25	greater than 0.9	

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1	but less than or equal to 1.0	73
2	greater than 0.8	
3	but less than or equal to 0.9	82
4	greater than 0.7	
5	but less than or equal to 0.8	93
6	greater than 0.6	
7	but less than or equal to 0.7	109
8	greater than 0.5	
9	but less than or equal to 0.6	130
10	0.5 or less	automatic recount
11		for that office.

The auditor may choose to test additional precincts and electronic vote tabulators if initial election results indicate that more auditing will be necessary to explain any anomalies in a county canvass or if preliminary results of the audit indicate the need for more testing.

C. The auditor shall notify the appropriate county clerks of the precincts that are to be included in the voting system check upon their selection. The auditor shall direct the appropriate county clerks to compare the original machine count precinct vote totals, including early absentee and absentee by mail machine count vote totals, for candidates for offices subject to the voting system check from the selected precincts for each office with the respective vote totals of a hand recount of the paper ballots from those precincts. The

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1 county clerks shall report their results to the auditor within  
2 ten days of the notice to conduct the voting system check.

3 D. Based on the results of the voting system check  
4 and any other auditing results, the auditor shall determine the  
5 error rate in the sample for each office. If the winning  
6 margin decreases and the error rate based on the difference  
7 between the vote totals of hand recounts of the paper ballots  
8 and the original precinct vote totals exceeds ninety percent of  
9 the winning margin for an office, another sample equal in size  
10 to the original sample shall be selected and the original  
11 precinct vote totals compared to the vote totals of hand  
12 recounts. The error rate based on the first and second sample  
13 shall be reported, and if it exceeds ninety percent of the  
14 winning margin for the office, the state canvassing board shall  
15 order that a full hand recount of the ballots for that office  
16 be conducted.

17 E. The auditor shall report the results of the  
18 voting system check to the secretary of state upon completion  
19 of the voting system check and release the results to the  
20 public.

21 F. Persons designated as county canvass observers  
22 may observe the hand recount described in Subsection C of this  
23 section. Observers shall comply with the procedures governing  
24 county canvass observers as provided in Section 1-2-31 NMSA  
25 1978.

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