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HOUSE BILL 450

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Brian F. Egolf

AN ACT

RELATING TO ELECTIONS; PROVIDING THAT SCHOOL ELECTIONS BE  
CONDUCTED BY MAIL; RECONCILING MULTIPLE AMENDMENTS TO THE SAME  
SECTION OF LAW IN LAWS 1987; AMENDING, 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 School Election Law is  
enacted to read:

"[NEW MATERIAL] ELECTIONS CONDUCTED BY MAIL.--All school  
elections shall be conducted by mail pursuant to the provisions  
of Chapter 1, Article 22 NMSA 1978 except as provided in  
Section 1-22-6 NMSA 1978."

SECTION 2. A new section of the School Election Law is  
enacted to read:

"[NEW MATERIAL] BALLOTS--ENVELOPES.--

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1           A. The secretary of state shall prescribe the form  
2 of:

- 3                   (1) ballots;
- 4                   (2) official inner envelopes for use in  
5 sealing completed ballots;
- 6                   (3) official mailing envelopes for use in  
7 returning the official inner envelopes to the county clerk;
- 8                   (4) ballot instructions describing how to  
9 complete and return ballots; and
- 10                  (5) official transmittal envelopes for use by  
11 the county clerk in mailing ballot materials.

12           B. The reverse of each official mailing envelope  
13 shall contain a form, to be executed by the voter completing  
14 the ballot, that contains such affirmations as the secretary of  
15 state shall, by rule, prescribe."

16           **SECTION 3.** A new section of the School Election Law is  
17 enacted to read:

18           "[NEW MATERIAL] BALLOTS--REGISTER.--

19           A. The proper filing officer shall keep a register  
20 of all voters in the school district on which is entered:

- 21                   (1) the name and address of each voter;
- 22                   (2) the date of mailing of the ballot to the  
23 voter;
- 24                   (3) the voter's school district and precinct;
- 25 and

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1 (4) the date and time the completed ballot was  
2 received from the voter by the proper filing officer.

3 B. Not less than twenty-eight days before election  
4 day, the proper filing officer shall mail by non-forwardable  
5 mail a ballot to each voter in the school district.

6 C. The proper filing officer shall deliver to the  
7 absent voter precinct board on election day a complete list of  
8 all voters with applicable information shown in the ballot  
9 register for each voter."

10 SECTION 4. A new section of the School Election Law is  
11 enacted to read:

12 "[NEW MATERIAL] BALLOTS--MANNER OF VOTING.--

13 A. A voter shall secretly mark the ballot, place it  
14 in the official inner envelope and securely seal the envelope.  
15 The voter shall then place the official inner envelope inside  
16 the official mailing envelope and securely seal the envelope.  
17 The voter shall then complete the form on the reverse of the  
18 official mailing envelope, which shall include an affirmation  
19 by the voter under penalty of perjury that the facts stated in  
20 the form are true.

21 B. A voter may return the completed official  
22 mailing envelope by mail or personally deliver it to the office  
23 of the county clerk."

24 SECTION 5. A new section of the School Election Law is  
25 enacted to read:

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1           "[NEW MATERIAL] RECEIPT OF BALLOTS BY CLERK.--

2           A. The county clerk shall mark on each completed  
3 official mailing envelope the date and time of receipt in the  
4 county clerk's office, record this information in the ballot  
5 register and safely keep the official mailing envelope unopened  
6 in a locked and number-sealed ballot box until it is delivered  
7 to the proper absent voter precinct board or until it is  
8 canceled and destroyed in accordance with law.

9           B. The county clerk shall accept completed official  
10 mailing envelopes until 7:00 p.m. on election day. A completed  
11 official mailing envelope received after that time shall not be  
12 delivered to an absent voter precinct board, but the county  
13 clerk shall record, in the ballot register, the date and time  
14 of receipt. The county clerk shall preserve all late official  
15 mailing envelopes until the time for election contests has  
16 expired, at which time, in the absence of a restraining order,  
17 the county clerk shall destroy the envelopes without opening  
18 them or permitting the contents to be examined, cast, counted  
19 or canvassed."

20           SECTION 6. A new section of the School Election Law is  
21 enacted to read:

22           "[NEW MATERIAL] HANDLING BALLOTS BY ABSENT VOTER PRECINCT  
23 BOARD.--

24           A. Before opening any official mailing envelope,  
25 the election judges and the presiding election judge shall

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1 determine that the required information has been completed on  
2 the reverse side of the official mailing envelope.

3 B. If the voter's signature is missing, the  
4 presiding judge shall write "Rejected" on the front of the  
5 official mailing envelope. The election clerks shall enter the  
6 voter's name in the signature rosters and shall write the  
7 notation "Rejected - Missing Signature" in the "Notations"  
8 column of the signature rosters. The presiding judge shall  
9 place the official mailing envelope unopened in an envelope  
10 provided for rejected ballots, seal the envelope and write the  
11 voter's name on the front of the envelope and deposit it in the  
12 locked ballot box.

13 C. The accredited challengers may view the official  
14 mailing envelope and may challenge the ballot of any voter  
15 because the official mailing envelope has been opened prior to  
16 being received by the absent voter precinct board. Upon the  
17 challenge of a ballot, the election judges and the presiding  
18 election judge shall follow the same procedure as when ballots  
19 are challenged when a person attempts to vote in person. If a  
20 challenge is upheld, the official mailing envelope shall not be  
21 opened but shall be placed in an envelope provided for  
22 challenged ballots. The same procedure shall be followed in  
23 canvassing and determining the validity of challenged ballots  
24 pursuant to this section as with other challenged ballots.

25 D. If an official mailing envelope has been

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1 properly subscribed and the voter has not been challenged:

2 (1) the election clerks shall enter the name  
3 and residence address as shown on the official mailing envelope  
4 in the signature rosters and shall mark the notation "AB"  
5 opposite the voter's name in the "Notations" column of the  
6 signature rosters; and

7 (2) only between 8:00 a.m. and 10:00 p.m. on  
8 the five days preceding election day, including Saturday and  
9 Sunday, and beginning at 7:00 a.m. on election day, under the  
10 personal supervision of the presiding election judge, shall the  
11 election judges open the official mailing envelope and the  
12 official inner envelope and insert the enclosed ballot into an  
13 electronic voting machine to be registered and retained until  
14 votes are counted and canvassed following the closing of the  
15 polls on election night.

16 E. Ballots shall be counted and tallied on an  
17 electronic voting machine as provided in the Election Code,  
18 except as provided in Section 1-22-10 NMSA 1978.

19 F. It is unlawful for a person to disclose the  
20 results of a count and tally or the registration on a voting  
21 machine of ballots prior to the closing of the polls."

22 SECTION 7. A new section of the School Election Law is  
23 enacted to read:

24 "[NEW MATERIAL] VOTING WHEN NO BALLOT RECEIVED.--

25 A. Except as provided in this section, a person

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1 shall not vote in person in a school election.

2 B. At any time prior to 5:00 p.m. on the Monday  
3 immediately preceding the date of the election, a voter who has  
4 not received a ballot for a school election may execute, in the  
5 office of the county clerk of the county where the person is  
6 registered to vote, a sworn affidavit stating that the person  
7 did not receive the ballot. Upon receipt of the sworn  
8 affidavit, the county clerk shall issue the voter a replacement  
9 ballot.

10 C. A voter who has not received the ballot by mail  
11 as of the date of the election shall be permitted to vote on a  
12 replacement ballot in the office of the county clerk. The  
13 replacement ballot shall be placed by the voter in an official  
14 inner envelope. The voter shall then place the inner envelope  
15 inside an official outer envelope and securely seal the  
16 envelope. The voter shall then complete the form on the  
17 reverse of the outer envelope, which shall include an affidavit  
18 of nonreceipt of the mailed ballot and an affirmation by the  
19 voter under penalty of perjury that the facts stated in the  
20 form are true. The county clerk shall put all outer envelopes  
21 in a special envelope provided for that purpose and seal it and  
22 return it to the absent voter precinct board.

23 D. Upon receipt of replacement ballots, the county  
24 clerk, no later than forty-eight hours after the close of the  
25 election, shall remove the outer envelopes and, without

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1 removing or opening the inner envelopes, determine if a mailed  
2 ballot was received by the county clerk from the voter by 7:00  
3 p.m. on election day. Upon making that determination, the  
4 county clerk shall remove the inner envelope without opening  
5 it, retain the outer envelope with the other election returns,  
6 place the inner unopened envelope in a secure container and  
7 transmit the container to the canvassing board for inclusion in  
8 the canvass of that county for the appropriate precinct.

9 E. The secretary of state shall prescribe the  
10 affidavits, replacement ballots and necessary envelopes for  
11 purposes of this section and shall adopt rules deemed necessary  
12 to preserve the secrecy of the replacement ballot."

13 SECTION 8. Section 1-22-1 NMSA 1978 (being Laws 1985,  
14 Chapter 168, Section 3) is amended to read:

15 "1-22-1. SHORT TITLE.--~~[Sections 1-22-1 through 1-22-19]~~  
16 Chapter 1, Article 22 NMSA 1978 NMSA 1978 may be cited as the  
17 "School Election Law"."

18 SECTION 9. Section 1-22-4 NMSA 1978 (being Laws 1985,  
19 Chapter 168, Section 6, as amended) is amended to read:

20 "1-22-4. REGULAR ELECTION--PROCLAMATION--PUBLICATION.--

21 A. The board shall by resolution issue a public  
22 proclamation in Spanish and English calling a regular school  
23 district election within the school district on the date  
24 prescribed by the School Election Law. The proclamation shall  
25 be filed by the superintendent with the county clerk [of



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1 ~~record]~~ who is the proper filing officer on the last Tuesday in  
2 November of the even-numbered year immediately preceding the  
3 date of the election.

4 B. The proclamation shall specify:

5 (1) the date when the election will be held;

6 (2) the positions on the board to be filled;

7 (3) the date on which declarations of  
8 candidacy are to be filed;

9 (4) the date on which declarations of intent  
10 to be a write-in candidate are to be filed;

11 (5) the questions to be submitted to the  
12 voters;

13 (6) the school district precincts in each  
14 county in which the election is to be held [~~and the location of~~  
15 ~~each polling place;~~

16 ~~(7) the hours each polling place will be~~  
17 ~~open]; and~~

18 [~~(8)~~] (7) the date and time of the closing of  
19 the registration books by the county clerk [~~of record]~~ as  
20 required by law.

21 C. After filing the proclamation with the [~~county~~  
22 ~~clerk of record]~~ proper filing officer, and not less than fifty  
23 days before the date of the election, [~~the~~] that county clerk  
24 [~~of record]~~ shall publish the proclamation at least once in a  
25 newspaper of general circulation within the school district.

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1 The publication of the proclamation shall conform to the  
2 requirements of the federal Voting Rights Act of 1965, as  
3 amended."

4 SECTION 10. Section 1-22-5 NMSA 1978 (being Laws 1985,  
5 Chapter 168, Section 7, as amended) is amended to read:

6 "1-22-5. SPECIAL ELECTION--PROCLAMATION--PUBLICATION.--

7 A. Whenever a special school district election is  
8 to be called or is required by law, the board shall by  
9 resolution issue a public proclamation in Spanish and English  
10 calling the election. The proclamation shall forthwith be  
11 filed by the superintendent with the county clerk [~~of record~~]  
12 who is the proper filing officer.

13 B. The proclamation shall specify:

14 (1) the date on which the special election  
15 will be held;

16 (2) the positions on the board to be filled;

17 (3) the date on which declarations of  
18 candidacy are to be filed;

19 (4) the date on which declarations of intent  
20 to be a write-in candidate are to be filed;

21 (5) the questions to be submitted to the  
22 voters;

23 (6) the school district precincts in each  
24 county in which the election is to be held [~~and the location of~~  
25 ~~each polling place;~~

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1                   ~~(7) the hours each polling place will be~~  
2 ~~open~~]; and

3                   ~~[(8)]~~ (7) the date and time of the closing of  
4 the registration books by the county clerk ~~[of record]~~ as  
5 required by law.

6                   C. After filing the proclamation with the ~~[county~~  
7 ~~clerk of record]~~ proper filing officer, and not less than fifty  
8 days before the date of the election, ~~[the]~~ that county clerk  
9 ~~[of record]~~ shall publish the proclamation at least twice in a  
10 newspaper of general circulation in the school district. The  
11 publication of the proclamation shall conform to the  
12 requirements of the federal Voting Rights Act of 1965, as  
13 amended."

14                   SECTION 11. Section 1-22-6 NMSA 1978 (being Laws 1985,  
15 Chapter 168, Section 8, as amended) is amended to read:

16                   "1-22-6. PRECINCTS--CONSOLIDATION--POLLING PLACES.--

17                   A. The same precincts that are used in a general  
18 election shall be used in a school district election, provided  
19 that:

20                                 (1) if a precinct lies partly within and  
21 partly outside of a school district, the part of the precinct  
22 lying within the school district constitutes a precinct for a  
23 school district election; and

24                                 (2) all of the area within the exterior  
25 boundaries of a school district may constitute ~~[one]~~ an absent

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1 voter precinct for a school district election.

2 B. In the event that only one candidate has filed a  
3 declaration of candidacy for each position to be filled at an  
4 election and no declared write-in candidates have filed for any  
5 position and there are no questions or bond issues on the  
6 ballot, only one polling place for the election shall be  
7 designated and it shall be in the office of the county clerk or  
8 a designated polling place in the school district of the county  
9 in which the school district is located.

10 [~~G. Except as otherwise provided in the School  
11 Election Law, the county clerk shall consolidate precincts for  
12 a school district election as provided in the proclamation for  
13 that election and shall provide for a polling place within each  
14 precinct or consolidated precinct.]"~~

15 SECTION 12. Section 1-22-10 NMSA 1978 (being Laws 1985,  
16 Chapter 168, Section 12, as amended) is amended to read:

17 "1-22-10. BALLOTS.--

18 A. The proper filing officer shall determine  
19 whether a candidate filing a declaration of candidacy is a  
20 registered qualified elector of the state residing within the  
21 school district. If the candidate is so qualified and no  
22 withdrawal of candidacy has been filed as provided in the  
23 School Election Law, the proper filing officer shall place the  
24 candidate's name on the ballot for the position specified in  
25 the declaration of candidacy. A declaration of candidacy shall

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1 not be amended after it has been filed with the proper filing  
2 officer.

3 B. Ballots for the school district election shall  
4 be prepared by the proper filing officer and printed by the  
5 thirtieth day preceding the election. The cost of printing the  
6 ballots shall be paid by the school district. The proper  
7 filing officer shall [~~furnish printed~~] mail ballots to the  
8 [~~county clerk of~~] voters of the school district in each county  
9 in which the school district is situate. The printed ballot  
10 shall contain the name of each person who is a candidate and  
11 the position on the board for which the person is a candidate.  
12 The ballot shall also contain all questions to be submitted to  
13 the voters of the district as certified to the proper filing  
14 officer by the board.

15 C. Paper ballots shall be printed in a form in  
16 substantial compliance with the provisions of Section [~~1-12-44~~]  
17 1-10-12 NMSA 1978 and in compliance with the provisions of the  
18 federal Voting Rights Act of 1965, as amended.

19 D. A school district election shall be a  
20 nonpartisan election, and the names of all candidates shall be  
21 listed on the ballot without party or slate designation. The  
22 order in which the names of candidates are listed on the ballot  
23 shall be determined by lot.

24 E. Whenever two or more members of the board are to  
25 be elected for terms of the same length of time, the positions

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1 shall be numerically designated on the ballot as "position  
2 one", "position two" and such additional consecutively numbered  
3 positions as are necessary, but only one member shall be  
4 elected for each position.

5 F. Space shall be provided on each ballot for a  
6 voter to write in the name of one candidate for each position  
7 to be filled when a declaration of intent to be a write-in  
8 candidate has been filed.

9 G. Voting machines shall be used for the recording  
10 of votes cast in a school district election; provided that  
11 paper ballots may be hand counted in lieu of using a voting  
12 machine to tabulate ballots for:

13 (1) school districts of less than five hundred  
14 average daily membership; or

15 (2) school district elections in which only  
16 one candidate has filed a declaration of candidacy for each  
17 position to be filled at the election, no declared write-ins  
18 have filed for any position and there are no questions or bond  
19 issues on the ballot and notwithstanding any other provision in  
20 the Election Code."

21 SECTION 13. Section 1-22-12 NMSA 1978 (being Laws 1985,  
22 Chapter 168, Section 14, as amended) is amended to read:

23 "1-22-12. CONDUCT OF ELECTIONS.--

24 A. Except as otherwise provided in the School  
25 Election Law, the county clerk shall administer and conduct

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1 school district elections pursuant to the provisions of the  
2 Election Code for the conduct of general elections.

3 B. Precinct board members for [~~each polling place~~]  
4 the absent voter precinct shall be appointed by the county  
5 clerk from among those persons who meet the qualifications set  
6 forth in Section 1-2-7 NMSA 1978 and who reside within the  
7 school district. The number of members on [~~each~~] the precinct  
8 board shall be as provided in Section 1-2-12 NMSA 1978.  
9 Vacancies on election day shall be filled as provided in  
10 Section 1-2-15 NMSA 1978.

11 C. In the event that only one candidate has filed a  
12 declaration of candidacy for each position to be filled at the  
13 election, no declared write-ins have filed for any position and  
14 there are no questions or bond issues on the ballot, the county  
15 clerk shall perform the duties of the absent voter precinct  
16 board and no other precinct board shall be appointed.

17 D. All costs of school district elections shall be  
18 paid by the school district."

19 SECTION 14. Section 1-22-13 NMSA 1978 (being Laws 1985,  
20 Chapter 168, Section 15) is amended to read:

21 "1-22-13. CHALLENGERS--WATCHERS.--Upon petition filed  
22 with the county clerk, any candidate for membership on the  
23 board may:

24 A. appoint one person as challenger for [~~each~~  
25 ~~precinct in~~] the school district election, who shall have the

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1 powers and be subject to the restrictions provided for  
2 challengers in the Election Code; and

3 B. appoint one person as a watcher for [~~each~~  
4 ~~precinct in~~] the school district election, who shall have the  
5 powers and be subject to the restrictions provided for watchers  
6 in the Election Code."

7 SECTION 15. Section 1-22-15 NMSA 1978 (being Laws 1985,  
8 Chapter 168, Section 17, as amended by Laws 1987, Chapter 249,  
9 Section 49 and also by Laws 1987, Chapter 338, Section 3) is  
10 amended to read:

11 "1-22-15. CANVASSING BOARD--DUTIES.--

12 A. The canvassing board for the canvass of the  
13 results of a school district election shall be composed of the  
14 superintendent, the county clerk [~~of record~~] who is the proper  
15 filing officer and the magistrate or the presiding judge of the  
16 metropolitan court, as the case may be, of the county in which  
17 the administrative office of the school district is situate.

18 [~~B. Ballots cast in each county in which the school~~  
19 ~~district is situate shall be transported by the presiding judge~~  
20 ~~of the precinct board upon the closing of the polls to the~~  
21 ~~office of the proper filing officer. Each ballot box shall~~  
22 ~~have two locks. The key to one lock on each ballot box when~~  
23 ~~emergency ballots are used and one copy of the signature roster~~  
24 ~~shall at that time be placed in a stamped, addressed envelope~~  
25 ~~provided for that purpose and shall be mailed to the magistrate~~

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1 ~~or the presiding judge of the metropolitan court, as the case~~  
2 ~~may be, of the county in which the administrative office of the~~  
3 ~~school district is situate. If emergency ballots are not used,~~  
4 ~~both ballot box keys shall be returned to the proper filing~~  
5 ~~officer.~~

6 ~~G.]~~ B. Within three days after the date of the  
7 school district election, the canvassing board shall meet in  
8 the office of the proper filing officer or the administrative  
9 office of the school district as determined by the proper  
10 filing officer and shall:

11 (1) canvass the returns in the same manner as  
12 county election returns are canvassed;

13 (2) determine the total number of persons in  
14 the school district voting in the election; and

15 (3) issue a certificate of canvass of the  
16 results of the election and send one copy of the certified  
17 results:

18 (a) to the board;

19 (b) to the secretary of state; and

20 (c) to the proper filing officer to be  
21 filed in [~~his~~] the filing officer's office.

22 [~~D.]~~ C. The canvassing board shall issue a  
23 certificate of election to each candidate [~~which~~] that it  
24 determines to be elected.

25 [~~E.]~~ D. The county clerk [~~of record~~] who is the

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1 proper filing officer shall cause the results of the election  
2 to be published once in a newspaper of general circulation in  
3 the school district."

4 SECTION 16. Section 1-23-2 NMSA 1978 (being Laws 1987,  
5 Chapter 160, Section 2) is amended to read:

6 "1-23-2. DEFINITION.--As used in the Mail Ballot Election  
7 Act, "local government" means any county [~~school district~~] or  
8 incorporated municipality."

9 SECTION 17. REPEAL.--Sections 1-22-19 and 1-23-7 NMSA  
10 1978 (being Laws 1985, Chapter 168, Section 21 and Laws 1987,  
11 Chapter 160, Section 7, as amended) are repealed.