

1 HOUSE BILL 609
2 44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999
3 INTRODUCED BY
4 E. G. Smokey Blanton
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10 AN ACT
11 RELATING TO ELECTIONS; AMENDING AND ENACTING CERTAIN
12 PROVISIONS OF THE ELECTION CODE RELATING TO ELECTION
13 PROCEDURES.
14

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

16 Section 1. Section 1-2-1 NMSA 1978 (being Laws 1969,
17 Chapter 240, Section 22, as amended) is amended to read:

18 "1-2-1. SECRETARY OF STATE--CHIEF ELECTION OFFICER--
19 RULES AND REGULATIONS--ENFORCEMENT POWERS.--

20 A. The secretary of state is the chief election
21 officer of the state and shall:

22 (1) obtain and maintain uniformity in the
23 application, operation and interpretation of the Election
24 Code;

25 (2) subject to the State Rules Act, make

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1 rules [~~and regulations~~] pursuant to the provisions of, and
2 necessary to carry out the purposes of, the Election Code and
3 shall furnish to the county clerks copies of [~~such~~] the rules
4 [~~and regulations; and~~];

5 (3) through the attorney general or the
6 district attorney having jurisdiction, bring such actions as
7 deemed necessary and proper for the enforcement of the
8 provisions of the Election Code; and

9 (4) by rule, adopt checklists, written in
10 nontechnical language for distribution by each county clerk
11 and including the following topics:

- 12 (a) precinct opening procedures;
- 13 (b) precinct close-out procedures;
- 14 (c) routine precinct voting procedures;
- 15 (d) procedures to follow when a voter
16 is not on the precinct list of voters;
- 17 (e) procedures to follow when a voter
18 is not in receipt of an absentee ballot;
- 19 (f) machine malfunction procedures;
- 20 (g) legal powers and duties of the
21 precinct board;
- 22 (h) opening and close-out procedures
23 for absent voter precincts;
- 24 (i) procedures in absent voter
25 precincts for accepting or rejecting absentee ballots; and

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(j) procedures in absent voter precincts for counting absentee ballots.

B. No forms or procedures shall be used in any election held pursuant to the Election Code without prior approval of the secretary of state. "

Section 2. Section 1-2-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 23, as amended) is amended to read:

"1-2-2. SECRETARY OF STATE--GENERAL DUTIES. --The secretary of state shall:

- A. generally supervise all elections;
- B. administer the Election Code in its statewide application especially as it relates to federal and state elective offices;
- C. prepare instructions for the conduct of election and registration matters in accordance with the laws of the state;
- D. advise county clerks, boards of county commissioners and boards of registration as to the proper methods of performing their duties prescribed by the Election Code;
- E. report possible violations of the Election Code of which he has knowledge to the district attorney or the attorney general for prosecution;
- F. cause to be published in pamphlet form and distributed to the county clerk of each county for use by

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1 precinct boards a sufficient number of copies of the Election
2 Code as it is from time to time amended and supplemented;

3 G. be responsible for the education and training
4 of county clerks regarding elections, including conducting,
5 within one hundred eighty days of each general election, a
6 training program for newly elected county clerks with an
7 emphasis on practical applications;

8 H. be responsible for the education and training
9 of voting machine technicians; [~~and~~]

10 I. assist the county clerks in the education and
11 training of registration officers and precinct boards; and

12 J. provide county clerks, their staffs and
13 precinct boards with copies of the checklists developed
14 pursuant to Section 1-2-1 NMSA 1978. The checklists shall be
15 used as part of the training materials for all precinct boards
16 and staff of the county clerks. "

17 Section 3. Section 1-2-4 NMSA 1978 (being Laws 1969,
18 Chapter 240, Section 25, as amended) is amended to read:

19 "1-2-4. SECRETARY OF STATE--INSTRUCTIONS TO PRECINCT
20 BOARDS. --

21 A. The secretary of state shall provide
22 instructions for the precinct board, which shall include a
23 brief nontechnical explanation of their duties as required by
24 the Election Code. The instructions shall be in a checklist
25 format including the topics specified in Paragraph (4) of

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1 Subsection A of Section 1-2-1 NMSA 1978.

2 B. When any specific duty is imposed by the
3 instructions issued under the Election Code, the duty shall be
4 deemed to be a requirement of the law. "

5 Section 4. Section 1-2-12 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 32, as amended) is amended to read:

7 "1-2-12. PRECINCT BOARD--NUMBER FOR EACH PRECINCT--
8 MULTIPARTISAN. --

9 A. When absentee ballots are counted, the precinct
10 board shall consist of:

- 11 (1) a presiding judge;
- 12 (2) one election judge from each of the major
13 political parties;
- 14 (3) one clerk from each of the major
15 political parties; and
- 16 (4) if a major party has no registered,
17 qualified elector who is able to fill the position as election
18 judge or election clerk, a registered, qualified elector from
19 another major party, chosen by the county clerk to fill the
20 vacant position.

21 B. When one voting machine is to be used in a
22 precinct, the precinct board shall consist of:

- 23 (1) a presiding judge;
- 24 (2) two election judges who shall be of
25 different political parties; and

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- 1 (3) one election clerk who shall be of a
- 2 different political party than the presiding judge.
- 3 C. When two voting machines are to be used in a
- 4 precinct, the precinct board shall consist of:
- 5 (1) a presiding judge;
- 6 (2) two election judges who shall be of
- 7 different political parties; and
- 8 (3) two election clerks who shall be of
- 9 different political parties.
- 10 D. When three voting machines are used in a
- 11 precinct, the precinct board shall consist of:
- 12 (1) a presiding judge;
- 13 (2) two election judges who shall be of
- 14 different political parties; and
- 15 (3) three election clerks, not more than two
- 16 of whom shall belong to the same political party.
- 17 E. If the county clerk determines that additional
- 18 election clerks are needed in a precinct, the clerk may
- 19 appoint such additional election clerks as he deems necessary;
- 20 provided, however, that such appointments shall be made in the
- 21 manner that provides for representation from all major
- 22 political parties. The county clerk may, proportionally by
- 23 party, increase the size of the board of an absent voter
- 24 precinct if the county clerk determines that, based on the
- 25 number of absentee ballots requested, additional election

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1 clerks are necessary to ensure the timely tallying of the
2 absentee ballots.

3 F. In addition to the members of the precinct
4 board provided for in this section, the county clerk may
5 appoint an additional election clerk for the purpose of making
6 changes in the certificate of registration of any voter who
7 has voted in that election at the polling place. "

8 Section 5. Section 1-2-17 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 37, as amended) is amended to read:

10 "1-2-17. PRECINCT BOARD--SCHOOLS OF INSTRUCTION. --

11 A. The secretary of state shall supervise and the
12 county clerk shall cause to be held a public school of
13 instruction for all presiding judges, precinct boards and
14 others who will be officially concerned with the conduct of
15 elections in any county with a population of one hundred
16 thousand or more according to the most recent federal
17 decennial census.

18 B. The county clerk shall cause to be held a
19 public school of instruction for all presiding judges,
20 precinct boards and others who will be officially concerned
21 with the conduct of the elections in any county having a
22 population of less than one hundred thousand according to the
23 most recent federal decennial census.

24 C. The schools for instruction provided for in
25 this section shall be as follows:

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1 (1) one school not less than three days
2 before the primary election;

3 (2) one school not less than three days
4 before the general election; and

5 (3) one school not less than three days
6 before any other statewide election.

7 D. All major details of the conduct of elections
8 shall be covered by the county clerk or his authorized
9 representative at such school, with special emphasis being
10 given to recent changes in the Election Code. The topics to
11 be covered at the school shall include those topics contained
12 in the checklists required by Paragraph (4) of Subsection A of
13 Section 1-2-1 NMSA 1978.

14 E. The school of instruction shall be open to any
15 interested person, and notice of the school shall be given to
16 the public press at least four days before the school is to be
17 held. Each member of the precinct board shall be notified by
18 mail at least seven days prior to commencement of the school.

19 F. No person shall serve as a judge or member of a
20 precinct board in any election who has not attended at least
21 one such school of instruction in the calendar year of the
22 election at which he is appointed to serve or has been
23 certified by the county clerk with respect to the person's
24 completion of the school of instruction. This subsection
25 shall not apply to filling of vacancies on election day as

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1 provided in Subsection B of Section 1-2-15 NMSA 1978. "

2 Section 6. Section 1-2-22 NMSA 1978 (being Laws 1969,
3 Chapter 240, Section 41, as amended) is amended to read:

4 "1-2-22. CHALLENGERS--QUALIFICATIONS--RESTRICTIONS. --
5 [~~Challengers and alternate challengers shall be voters of a~~
6 ~~precinct located in that county to which they are appointed.~~]
7 Challengers shall be voters of the county in which they are
8 appointed. No sheriff, deputy sheriff, marshal, deputy
9 marshal, municipal or state police officer, candidate or any
10 person who is a spouse or child of a candidate being voted on
11 at the election shall serve as a challenger or alternate
12 challenger. "

13 Section 7. Section 1-3-7 NMSA 1978 (being Laws 1969,
14 Chapter 240, Section 57, as amended) is amended to read:

15 "1-3-7. POLLING PLACES. --

16 A. No less than one polling place shall be
17 provided for each precinct.

18 B. The board of county commissioners shall
19 designate as the polling place, or places as the case may be,
20 in each precinct the most convenient and suitable public
21 building or public school building in the precinct that can be
22 obtained.

23 C. If no public building or public school building
24 is available, the board of county commissioners shall provide
25 some other suitable place which shall be the most convenient

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1 and appropriate place obtainable in the precinct, considering
2 the purpose for which it is to be used pursuant to the
3 Election Code.

4 D. If no public building or public school building
5 is available in the precinct and if there is no other suitable
6 place obtainable in the precinct, the board of county
7 commissioners may designate as a polling place for the
8 precinct the most convenient and suitable building or public
9 school building nearest to that precinct that can be obtained.
10 Provided, no polling place shall be designated outside the
11 boundary of the precinct as provided in this subsection until
12 such designated polling place is approved by written order of
13 the district court of the county in which the precinct is
14 located.

15 E. Upon application of the board of county
16 commissioners, the governing board of any school district
17 shall permit the use of any school building or a part thereof
18 for registration purposes and the conduct of any election;
19 provided, however, that the building or the part used for the
20 election complies with the standards set out in the federal
21 Voting Accessibility for the Elderly and Handicapped Act
22 [~~(Public Law 98-435)~~].

23 F. Public schools may be closed for elections at
24 the discretion of local school boards.

25 G. Prior to each election, the county clerk, by

1 publication and by posting in government buildings and, if
2 possible, on state county and municipal websites, shall
3 announce the polling places for each precinct in the county. "

4 Section 8. Section 1-4-5 NMSA 1978 (being Laws 1969,
5 Chapter 240, Section 63, as amended by Laws 1993, Chapter 314,
6 Section 6 and also by Laws 1993, Chapter 316, Section 6) is
7 amended to read:

8 "1-4-5. METHOD OF REGISTRATION. --

9 A. A qualified elector may apply to a registration
10 officer for registration.

11 B. The registration officer shall fill out each of
12 the blanks on the original and the voter's copy of the
13 certificate of registration by typing or printing in ink.
14 Carbon paper may be used between the original and the voter's
15 copy.

16 C. The qualified elector shall subscribe a
17 certificate of registration.

18 (1) A person shall sign his original
19 certificate of registration using his given name, middle name
20 or initial and last name.

21 (2) If any qualified elector seeking to
22 register is unable to read and write either the English or
23 Spanish language or is unable to read or write because of some
24 physical disability, the certificate of such person shall be
25 filled out by a registration officer and the name of the

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1 qualified elector so registering shall be subscribed by the
2 making of his mark.

3 D. When properly executed by the registration
4 officer, the original and the voter's copy of the certificate
5 of registration shall be presented, either in person or by
6 mail by the qualified elector or by the registration officer,
7 to the county clerk of the county in which the qualified
8 elector resides.

9 E. Only when the certificate of registration is
10 properly filled out, subscribed by the qualified elector and
11 accepted for filing by the county clerk as evidenced by his
12 signature or stamp and the date of acceptance thereon shall it
13 constitute an official public record of the registration of
14 the qualified elector.

15 F. No later than one hundred twenty days before
16 each election, the county clerk shall submit for publication
17 and, if possible, through television and radio public service
18 announcements, a statement that it is the responsibility of
19 each voter to update his voter registration data. "

20 Section 9. Section 1-4-21 NMSA 1978 (being Laws 1969,
21 Chapter 240, Section 77, as amended) is amended to read:

22 "1-4-21. REFUSAL OF REGISTRATION--APPEAL.--A qualified
23 elector whose registration has been refused or the county
24 chairman of any major political party who alleges that certain
25 persons are qualified electors but have been refused

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1 registration may bring an appeal regarding the refused
2 registration pursuant to the provisions of Section [~~12-8A-1~~
3 39-3-1.1 NMSA 1978. The court shall award costs against the
4 county if the appeal is successful. "

5 Section 10. Section 1-6-6 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 132, as amended) is amended to read:

7 "1-6-6. ABSENTEE BALLOT REGISTER. --

8 A. For each election, the county clerk shall keep
9 an "absentee ballot register" in which he shall enter:

- 10 (1) the name and county address of each
11 absentee ballot applicant;
- 12 (2) the date and time of receipt of the
13 application;
- 14 (3) whether the application was accepted or
15 rejected;
- 16 (4) the date of delivery or mailing of an
17 absentee ballot to the applicant;
- 18 (5) the applicant's precinct;
- 19 (6) whether the applicant is a voter, a
20 federal voter, a federal qualified elector or an overseas
21 citizen voter; and
- 22 (7) the date and time the completed ballot
23 was received from the applicant by the county clerk.

24 B. The county clerk shall use the absentee
25 register to ensure that multiple absentee ballot requests are

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1 not processed for the same voter. If multiple absentee voter
2 requests are received for the same voter, only the first
3 request shall be honored.

4 [B-] C. Within twenty-four hours after receipt of
5 a voter's application for an absentee ballot, the county clerk
6 shall mail either the ballot or notice of rejection. If
7 necessary, the county clerk shall hire temporary staff to
8 ensure that the requirements of this subsection are satisfied.

9 [C-] D. The absentee ballot register is a public
10 record open to public inspection in the county clerk's office
11 during regular office hours.

12 [D-] E. The county clerk shall deliver to the
13 absentee board on election day a complete list of all absentee
14 ballot applicants with applicable information shown in the
15 absentee ballot register for each applicant up to noon of the
16 day preceding the election. The county clerk shall deliver a
17 signature roster containing the same information as the lists
18 to the absentee board.

19 [E-] F. The county clerk shall transmit to the
20 secretary of state and to the county chairman of each of the
21 major political parties in the county a complete copy of
22 entries made in the absentee ballot register. Such
23 transmissions shall be made once each week beginning four
24 weeks immediately prior to the election. A final copy shall
25 be transmitted on the Friday immediately following the

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1 election. "

2 Section 11. Section 1-6A-10 NMSA 1978 (being Laws 1995,
3 Chapter 165, Section 4) is amended to read:

4 "1-6A-10. ABSENTEE-EARLY VOTING PRECINCT BOARD. --

5 A. The county clerk shall appoint absentee-early
6 voting election officials who shall receive compensation at an
7 hourly rate set by the county clerk.

8 B. A minimum of three board members shall be
9 appointed to the absentee-early voting precinct board with not
10 more than two members belonging to the same political party.
11 The county clerk shall, proportionally by party, increase the
12 size of the board if the number of anticipated ballots is such
13 that more election clerks are necessary. "

14 Section 12. Section 1-10-9 NMSA 1978 (being Laws 1969,
15 Chapter 240, Section 208) is amended to read:

16 "1-10-9. BALLOTS--ERRORS AND OMISSIONS. --

17 A. If an error or omission has occurred in the
18 printed ballot, the district court, upon petition of any
19 voter, may order the county clerk to forthwith correct the
20 error or supply the omission or immediately show cause why the
21 error should not be corrected or the omission should not be
22 supplied.

23 B. If any error occurs in the printing on the
24 ballot of the name of any candidate or in the designation of
25 the office for which he is nominated, the ballot shall

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1 nevertheless be counted for such candidate for the office for
2 which he was nominated as shown by the certificate of
3 nomination.

4 C. If an error or omission occurs on the face of
5 the ballot and is not discovered until after voting has
6 commenced, a voter may notify the election judge or the county
7 clerk of the error omission. Within twenty-four hours after
8 notification, the county clerk or a candidate shall bring the
9 matter before the district court, which shall immediately hold
10 a hearing on the matter. Within ten days after the hearing,
11 the district court shall grant such appropriate relief as it
12 deems necessary, including rejection of all or a portion of
13 the votes in a precinct or rejection of all the votes in the
14 election. Appeals from the decision of the district court may
15 be taken to the supreme court and shall be heard
16 expeditiously. Pending a final decision, the canvassing board
17 shall not certify the affected election. If an error or
18 omission results in an action pursuant to this subsection, the
19 office of the election official that caused the error or
20 omission shall be assessed all court costs. "

21 Section 13. Section 1-12-3 NMSA 1978 (being Laws 1977,
22 Chapter 222, Section 36) is amended to read:

23 "1-12-3. CONDUCT OF ELECTION--PRECINCT BOARD DUTIES. --
24 The secretary of state shall prescribe the duties of the
25 precinct board in a checklist format, including those topics

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1 required by Paragraph (4) of Subsection A of Section 1-2-1
2 NMSA 1978. Copies of such duties shall be furnished each
3 county clerk and the clerk shall distribute them to each
4 precinct. "

5 Section 14. Section 1-12-32 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 292, as amended) is amended to read:

7 "1-12-32. CONDUCT OF ELECTION--RETURN OF BALLOT BOXES
8 AND ELECTION MATERIALS. --

9 A. Unless the ballot box, election returns and
10 materials are delivered to the county clerk within [~~twenty-~~
11 ~~four~~] twelve hours after the polls are closed, the vote in the
12 precinct shall not be canvassed or made a part of the final
13 election results except upon order of the district court after
14 finding that the delay in the delivery of materials was due to
15 forces beyond the control of the precinct board.

16 B. In precincts not more than thirty-five miles
17 distant from the county clerk's office, the delivery of the
18 ballot box and election returns and materials shall be made by
19 the presiding judge in person.

20 C. In precincts more than thirty-five miles
21 distant from the county clerk's office, the delivery of the
22 ballot box, election returns and materials may be made by
23 special messenger selected by the presiding judge and the
24 election judges. "

25 Section 15. A new Section 1-13-13.1 NMSA 1978 is enacted

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1 to read:

2 "1-13-13.1. [NEW MATERIAL] POST-ELECTION DUTIES--
3 INSPECTION OF REJECTED BALLOTS.--During the canvass of an
4 election, the county canvassing board, upon written request of
5 a candidate in the election, shall permit an inspection of
6 rejected ballots. The inspection shall be conducted in the
7 presence of the requesting candidate and any other interested
8 person. "

9 Section 16. Section 1-14-2 NMSA 1978 (being Laws 1969,
10 Chapter 240, Section 327) is amended to read:

11 "1-14-2. CONTEST OF ELECTIONS--STATUS OF PERSON HOLDING
12 CERTIFICATE.--

13 A. Except as provided in Subsection B of this
14 section, in case of a contest of an election, the person
15 holding the certificate of election shall take possession and
16 discharge the duties of the office until the contest is
17 decided.

18 B. In the case of an election context alleging an
19 error or omission of an election official, the certificate of
20 election shall be suspended and the incumbent shall retain the
21 office until a final judgment. "

22 Section 17. Section 1-14-3 NMSA 1978 (being Laws 1969,
23 Chapter 240, Section 328, as amended) is amended to read:

24 "1-14-3. CONTEST OF ELECTION--FILING OF COMPLAINT.--

25 A. Except as provided in Subsection B of this

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1 section, any action to contest an election shall be commenced
2 by filing a verified complaint of contest in the district
3 court of the county where either of the parties resides.

4 [~~Such~~] The complaint shall be filed no later than thirty days
5 from issuance of the certificate of nomination or issuance of
6 the certificate of election to the successful candidate. The
7 party instituting the action shall be known as the contestant,
8 and the party against whom the action is instituted shall be
9 known as the contestee.

10 B. An action to contest an election alleging an
11 error or omission by an election official shall be brought in
12 the district court of the county where the person bringing the
13 action resides. The complaint shall be filed no later than
14 thirty days from issuance of the certificate of nomination or
15 certificate of election. The party instituting the action
16 shall be known as the contestant and the election official
17 shall be the contestee.

18 C. The Rules of Civil Procedure apply to all
19 actions commenced under the provisions of this section."

20 Section 18. Section 1-14-4 NMSA 1978 (being Laws 1969,
21 Chapter 240, Section 337) is amended to read:

22 "1-14-4. CONTEST OF ELECTION-- JUDGMENT-- EFFECT-- COSTS. --

23 A. Except as provided in Subsection B of this
24 section, judgment shall be rendered in favor of the party for
25 whom a majority of the legal votes shall be proven to have

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1 been cast and shall be to the effect that he is entitled to
2 the office in controversy with all the privileges, powers and
3 emoluments belonging thereto and for his costs. If the
4 contestant prevails, he shall have judgment placing him in
5 possession of the contested office and for the emoluments
6 thereof from the beginning of the term for which he was
7 elected and for his costs.

8 B. If the court finds that an error or omission
9 has been committed by an election official, the court may:

10 (1) reject all or a portion of the votes from
11 affected precincts and render an order that the person for
12 whom a majority of the legal votes were cast is entitled to
13 hold the office in controversy; or

14 (2) reject all of the votes cast in the
15 election and order a special election to decide who is
16 entitled to hold the office in controversy. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 March 2, 1999

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8 Mr. Speaker:

9
10 Your VOTERS AND ELECTIONS COMMITTEE, to whom has
11 been referred

12
13 HOUSE BILL 609

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

17 1. On page 2, line 9, strike "checklists" and insert in
18 lieu thereof "a precinct manual".

19
20 2. On page 2, line 10, insert a period following "county
21 clerk".

22
23 3. On page 2, strike lines 11 through 25 and on page 3,
24 strike lines 1 and 2.

25 4. On page 4, line 4, after "elections" strike the

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remainder of the line, strike all of lines 5 and 6 and strike
line 7 through "applications".

5. On page 4, line 12, after "staffs" strike "and",
strike line 13 through "checklists" and insert in lieu thereof
", precinct boards and canvassing boards with copies of
the precinct manual".

6. On page 4, line 14, strike "checklists" and insert in
lieu thereof "manual".

7. On page 4, lines 17 through 25 and on page 5, lines 1
through 4, strike Section 3 in its entirety.

8. Renumber the succeeding sections accordingly.

9. On page 8, line 12, strike "checklists" and insert in
lieu thereof "precinct manual".

10. On page 9, strike lines 5 and 6 and on line 7, strike

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4 "Challengers" and insert in lieu thereof "Challengers and
5 alternate challengers shall be voters of the precinct to which
6 they are appointed; provided that if no challenger is available
7 in that precinct then challengers".

8
9 11. On page 16, strike "If an error or".

10
11 12. On page 16, strike lines 18 through 19 in their
12 entirety.

13
14 13. On page 16, line 20, strike "omission shall be
15 assessed all court costs."

16
17 14. On pages 16 and 17, strike Section 13 in its
18 entirety.

19 15. Renumber the succeeding sections accordingly.

20
21 16. On page 18, line 18, strike "context" and insert in
22 lieu thereof "contest".,

23 and thence referred to the JUDICIARY COMMITTEE.

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Respectfully submitted,

Edward C. Sandoval, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Foley, Lujan, Lutz, Sandoval

Absent: None

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Sanchez

Absent: None

J: \99BillsWP\H0609

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 609

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO ELECTIONS; AMENDING AND ENACTING CERTAIN
PROVISIONS OF THE ELECTION CODE RELATING TO ELECTION
PROCEDURES.

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

Section 1. Section 1-2-2 NMSA 1978 (being Laws 1969,
Chapter 240, Section 23, as amended) is amended to read:

"1-2-2. SECRETARY OF STATE--GENERAL DUTIES. --The
secretary of state shall:

- A. generally supervise all elections;
- B. administer the Election Code in its statewide
application especially as it relates to federal and state
elective offices;
- C. prepare instructions for the conduct of
election and registration matters in accordance with the laws
of the state;
- D. advise county clerks, boards of county
commissioners and boards of registration as to the proper

1 methods of performing their duties prescribed by the Election
2 Code;

3 E. report possible violations of the Election Code
4 of which he has knowledge to the district attorney or the
5 attorney general for prosecution;

6 F. cause to be published in pamphlet form and
7 distributed to the county clerk of each county for use by
8 precinct boards a sufficient number of copies of the Election
Code as it is from time to time amended and supplemented;

9 G. be responsible for the education and training
10 of county clerks regarding elections;

11 H. be responsible for the education and training
12 of voting machine technicians; [~~and~~]

13 I. assist the county clerks in the education and
14 training of registration officers and precinct boards; and

15 J. provide county clerks, their staffs, precinct
16 boards and canvassing boards with copies of the precinct
17 manual. The manuals shall be used as part of the training
18 materials for all precinct boards and staff of the county
19 clerks. "

20 Section 2. Section 1-2-4 NMSA 1978 (being Laws 1969,
21 Chapter 240, Section 25, as amended) is amended to read:

22 "1-2-4. SECRETARY OF STATE--INSTRUCTIONS TO PRECINCT
23 BOARDS. --

24 A. The secretary of state shall provide
25 [~~instructions~~] an instruction manual for the precinct board,
which shall include a brief nontechnical explanation of their
duties as required by the Election Code.

1 B. When any specific duty is imposed by the
2 instructions issued under the Election Code, the duty shall be
3 deemed to be a requirement of the law. "

4 Section 3. Section 1-2-12 NMSA 1978 (being Laws 1969,
5 Chapter 240, Section 32, as amended) is amended to read:

6 "1-2-12. PRECINCT BOARD--NUMBER FOR EACH PRECINCT--
7 MULTIPARTISAN. --

8 A. When absentee ballots are counted, the precinct
9 board shall consist of:

- 10 (1) a presiding judge;
- 11 (2) one election judge from each of the major
12 political parties;
- 13 (3) one clerk from each of the major
14 political parties; and
- 15 (4) if a major party has no registered,
16 qualified elector who is able to fill the position as election
17 judge or election clerk, a registered, qualified elector from
18 another major party, chosen by the county clerk to fill the
19 vacant position.

20 B. When one voting machine is to be 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) one election clerk who shall be of a
different political party than the presiding judge.

C. When two voting machines are to be used in a
precinct, the precinct board shall consist of:

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- 1 (1) a presiding judge;
2 (2) two election judges who shall be of
3 different political parties; and
4 (3) two election clerks who shall be of
5 different political parties.

6 D. When three voting machines are used in a
7 precinct, the precinct board shall consist of:

- 8 (1) a presiding judge;
9 (2) two election judges who shall be of
10 different political parties; and
11 (3) three election clerks, not more than two
12 of whom shall belong to the same political party.

13 E. If the county clerk determines that additional
14 election clerks are needed in a precinct, the clerk may
15 appoint such additional election clerks as he deems necessary;
16 provided, however, that such appointments shall be made in the
17 manner that provides for representation from all major
18 political parties. The county clerk may, proportionally by
19 party, increase the size of the board of an absent voter
20 precinct if the county clerk determines that, based on the
21 number of absentee ballots requested, additional election
22 clerks are necessary to ensure the timely tallying of the
23 absentee ballots.

24 F. In addition to the members of the precinct
25 board provided for in this section, the county clerk may
26 appoint an additional election clerk for the purpose of making
27 changes in the certificate of registration of any voter who
28 has voted in that election at the polling place. "

1 Section 4. Section 1-2-17 NMSA 1978 (being Laws 1969,
2 Chapter 240, Section 37, as amended) is amended to read:

3 "1-2-17. PRECINCT BOARD--SCHOOLS OF INSTRUCTION.--

4 A. The secretary of state shall supervise and the
5 county clerk shall cause to be held a public school of
6 instruction for all presiding judges, precinct boards and
7 others who will be officially concerned with the conduct of
8 elections in any county with a population of one hundred
9 thousand or more according to the most recent federal
decennial census.

10 B. The county clerk shall cause to be held a
11 public school of instruction for all presiding judges,
12 precinct boards and others who will be officially concerned
13 with the conduct of the elections in any county having a
14 population of less than one hundred thousand according to the
most recent federal decennial census.

15 C. The schools for instruction provided for in
16 this section shall be as follows:

17 (1) one school not less than three days
18 before the primary election;

19 (2) one school not less than three days
20 before the general election; and

21 (3) one school not less than three days
before any other statewide election.

22 D. All major details of the conduct of elections
23 shall be covered by the county clerk or his authorized
24 representative at such school, with special emphasis being
25 given to recent changes in the Election Code. The topics to

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1 be covered at the school shall include those topics contained
2 in the precinct manual.

3 E. The school of instruction shall be open to any
4 interested person, and notice of the school shall be given to
5 the public press at least four days before the school is to be
6 held. Each member of the precinct board shall be notified by
7 mail at least seven days prior to commencement of the school.

8 F. No person shall serve as a judge or member of a
9 precinct board in any election who has not attended at least
10 one such school of instruction in the calendar year of the
11 election at which he is appointed to serve or has been
12 certified by the county clerk with respect to the person's
13 completion of the school of instruction. This subsection
14 shall not apply to filling of vacancies on election day as
15 provided in Subsection B of Section 1-2-15 NMSA 1978. "

16 Section 5. Section 1-2-22 NMSA 1978 (being Laws 1969,
17 Chapter 240, Section 41, as amended) is amended to read:

18 "1-2-22. CHALLENGERS--QUALIFICATIONS--RESTRICTIONS.--
19 Challengers and alternate challengers shall be voters of [a
20 ~~precinct located in that county to which they are appointed.~~]
21 the precinct to which they are appointed; provided that if no
22 challenger is available, challengers shall be voters of the
23 county in which they are appointed. No sheriff, deputy
24 sheriff, marshal, deputy marshal, municipal or state police
25 officer, candidate or any person who is a spouse or child of a
candidate being voted on at the election shall serve as a
challenger or alternate challenger. "

Section 6. Section 1-4-5 NMSA 1978 (being Laws 1969,

1 Chapter 240, Section 63, as amended by Laws 1993, Chapter 314,
2 Section 6 and also by Laws 1993, Chapter 316, Section 6) is
3 amended to read:

4 "1-4-5. METHOD OF REGISTRATION. --

5 A. A qualified elector may apply to a registration
6 officer for registration.

7 B. The registration officer shall fill out each of
8 the blanks on the original and the voter's copy of the
9 certificate of registration by typing or printing in ink.
10 Carbon paper may be used between the original and the voter's
11 copy.

12 C. The qualified elector shall subscribe a
13 certificate of registration.

14 (1) A person shall sign his original
15 certificate of registration using his given name, middle name
16 or initial and last name.

17 (2) If any qualified elector seeking to
18 register is unable to read and write either the English or
19 Spanish language or is unable to read or write because of some
20 physical disability, the certificate of such person shall be
21 filled out by a registration officer and the name of the
22 qualified elector so registering shall be subscribed by the
23 making of his mark.

24 D. When properly executed by the registration
25 officer, the original and the voter's copy of the certificate
of registration shall be presented, either in person or by
mail by the qualified elector or by the registration officer,
to the county clerk of the county in which the qualified

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1 elector resides.

2 E. Only when the certificate of registration is
3 properly filled out, subscribed by the qualified elector and
4 accepted for filing by the county clerk as evidenced by his
5 signature or stamp and the date of acceptance thereon shall it
6 constitute an official public record of the registration of
7 the qualified elector.

8 F. No later than one hundred twenty days before
9 each election, the county clerk shall submit for publication
10 and, if possible, through television and radio public service
11 announcements, a statement that it is the responsibility of
12 each voter to update his voter registration data. "

13 Section 7. Section 1-6-6 NMSA 1978 (being Laws 1969,
14 Chapter 240, Section 132, as amended) is amended to read:

15 "1-6-6. ABSENTEE BALLOT REGISTER. --

16 A. For each election, the county clerk shall keep
17 an "absentee ballot register" in which he shall enter:

- 18 (1) the name and county address of each
19 absentee ballot applicant;
- 20 (2) the date and time of receipt of the
21 application;
- 22 (3) whether the application was accepted or
23 rejected;
- 24 (4) the date of delivery or mailing of an
25 absentee ballot to the applicant;
- (5) the applicant's precinct;
- (6) whether the applicant is a voter, a
federal voter, a federal qualified elector or an overseas

1 citizen voter; and

2 (7) the date and time the completed ballot
3 was received from the applicant by the county clerk.

4 B. The county clerk shall use the absentee
5 register to ensure that multiple absentee ballot requests are
6 not processed for the same voter. If multiple absentee voter
7 requests are received for the same voter, only the first
8 request shall be honored.

9 ~~[B.]~~ C. Within twenty-four hours after receipt of
10 a voter's application for an absentee ballot, the county clerk
11 shall mail either the ballot or notice of rejection. If
12 necessary, the county clerk shall hire temporary staff to
13 ensure that the requirements of this subsection are satisfied.

14 ~~[C.]~~ D. The absentee ballot register is a public
15 record open to public inspection in the county clerk's office
16 during regular office hours.

17 ~~[D.]~~ E. The county clerk shall deliver to the
18 absentee board on election day a complete list of all absentee
19 ballot applicants with applicable information shown in the
20 absentee ballot register for each applicant up to noon of the
21 day preceding the election. The county clerk shall deliver a
22 signature roster containing the same information as the lists
23 to the absentee board.

24 ~~[E.]~~ F. The county clerk shall transmit to the
25 secretary of state and to the county chairman of each of the
major political parties in the county a complete copy of
entries made in the absentee ballot register. Such
transmissions shall be made once each week beginning four

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1 weeks immediately prior to the election. A final copy shall
2 be transmitted on the Friday immediately following the
3 election. "

4 Section 8. Section 1-6A-10 NMSA 1978 (being Laws 1995,
5 Chapter 165, Section 4) is amended to read:

6 "1-6A-10. ABSENTEE-EARLY VOTING PRECINCT BOARD. --

7 A. The county clerk shall appoint absentee-early
8 voting election officials who shall receive compensation at an
9 hourly rate set by the county clerk.

10 B. A minimum of three board members shall be
11 appointed to the absentee-early voting precinct board with not
12 more than two members belonging to the same political party.
13 The county clerk shall, proportionally by party, increase the
size of the board if the number of anticipated ballots is such
that more election clerks are necessary. "

14 Section 9. Section 1-10-9 NMSA 1978 (being Laws 1969,
15 Chapter 240, Section 208) is amended to read:

16 "1-10-9. BALLOTS--ERRORS AND OMISSIONS. --

17 A. If an error or omission has occurred in the
18 printed ballot, the district court, upon petition of any
19 voter, may order the county clerk to forthwith correct the
20 error or supply the omission or immediately show cause why the
21 error should not be corrected or the omission should not be
22 supplied.

23 B. If any error occurs in the printing on the
24 ballot of the name of any candidate or in the designation of
25 the office for which he is nominated, the ballot shall
nevertheless be counted for such candidate for the office for

1 which he was nominated as shown by the certificate of
2 nomination.

3 C. If an error or omission occurs on the face of
4 the ballot that changes the outcome of the affected race and
5 is not discovered until after voting has commenced, a voter
6 may notify the election judge or the county clerk of the error
7 or omission. Within twenty-four hours after notification, or
8 on the next regularly scheduled district court day, the county
9 clerk or a candidate may bring the matter before the district
10 court, which shall immediately hold a hearing on the matter.
11 Within ten days after the hearing, the district court shall
12 grant such appropriate relief as it deems necessary, including
13 rejection of all or a portion of the votes in a precinct or
14 rejection of all the votes in the election. Appeals from the
15 decision of the district court may be taken to the supreme
16 court and shall be heard expeditiously. Pending a final
decision, the canvassing board shall not certify the affected
election.

17 Section 10. Section 1-11-3 NMSA 1978 (being Laws 1969,
18 Chapter 240, Section 213, as amended) is amended to read:

19 "1-11-3. PROCLAMATION-- PUBLICATION-- POSTING. --

20 A. The proclamation shall be published at least
21 once, not more than twelve nor less than seven days before
election day.

22 B. The proclamation shall be published in a legal
23 newspaper as defined by Section 14-11-2 NMSA 1978.

24 C. If no legal newspaper is published in the
25 county, the proclamation shall be published in a legal

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1 newspaper of general circulation in the county.

2 D. A copy of the proclamation shall be posted in a
3 public building.

4 E. The proclamation shall be printed in English
5 and Spanish.

6 F. The proclamation shall be broadcast on a radio
7 station in the appropriate Native American languages in those
8 counties affected by the federal Voting Rights Act of 1965, as
9 amended.

10 G. The proclamation shall be posted, if possible,
11 on state, county and municipal web sites."

12 Section 11. Section 1-14-3 NMSA 1978 (being Laws 1969,
13 Chapter 240, Section 328, as amended) is amended to read:

14 "1-14-3. CONTEST OF ELECTION--FILING OF COMPLAINT.--

15 A. Except as provided in Subsection B of this
16 section, any action to contest an election shall be commenced
17 by filing a verified complaint of contest in the district
18 court of the county where either of the parties resides.

19 [~~Such~~] The complaint shall be filed no later than thirty days
20 from issuance of the certificate of nomination or issuance of
21 the certificate of election to the successful candidate. The
22 party instituting the action shall be known as the contestant,
23 and the party against whom the action is instituted shall be
24 known as the contestee.

25 B. An action to contest an election alleging an
error or omission by an election official shall be brought in
the district court of the county where the person bringing the
action resides. The complaint shall be filed no later than

thirty days from issuance of the certificate of nomination or certificate of election. The party instituting the action shall be known as the contestant and the election official shall be the contestee.

C. The Rules of Civil Procedure apply to all actions commenced under the provisions of this section."

Section 12. Section 1-14-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 337) is amended to read:

"1-14-4. CONTEST OF ELECTION-- JUDGMENT-- EFFECT-- COSTS. --

A. Except as provided in Subsection B of this section, judgment shall be rendered in favor of the party for whom a majority of the legal votes shall be proven to have been cast and shall be to the effect that he is entitled to the office in controversy [with all the privileges, powers and emoluments belonging thereto] and for his costs. If the contestant prevails, he shall have judgment placing him in possession of the contested office [and for the emoluments thereof] from the beginning of the term for which he was elected and for his costs.

B. If the court finds that an error or omission has been committed by an election official, the court may:

(1) reject all or a portion of the votes from affected precincts and render an order that the person for whom a majority of the legal votes were cast is entitled to hold the office in controversy; or

(2) reject all of the votes cast in the election and order a special election to decide who is entitled to hold the office in controversy. "

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