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**ELECTION HANDBOOK  
of the  
STATE OF NEW MEXICO**

**1993 EDITION**



**STEPHANIE GONZALES**  
Secretary of State

State Capitol  
Santa Fe, New Mexico

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WASHINGTON, DC 20005

**ELECTION HANDBOOK**  
**of the**  
**STATE OF NEW MEXICO**

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**1993 EDITION**



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and 1993 Cumulative Supplement

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1993

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# CHAPTER 1

## Elections

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## ARTICLE 1

### Definitions and General Provisions

#### Sec.

- 1-1-1. Election Code.
- 1-1-1.1. Purpose of Election Code.
- 1-1-2. Headings.
- 1-1-3. "Shall" and "may".
- 1-1-4. Qualified elector.
- 1-1-5. Voter.
- 1-1-6. Recheck and recount.
- 1-1-7. Residence; rules for determining.
- 1-1-7.1. Residence for purpose of candidacy and signing of petitions; rule for determining.
- 1-1-8. Election returns.
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- 1-1-18. Oath includes affirmation.
- 1-1-19. Elections covered by code.
- 1-1-20. Major fractions.

#### 1-1-1. Election Code.

Chapter 1 NMSA 1978 may be cited as the "Election Code".



### **1-1-1.1. Purpose of [Election] Code.**

It is the purpose of the Election Code [this chapter] to secure the secrecy of the ballot, the purity of elections and guard against the abuse of the elective franchise. It is also the purpose of the Election Code to provide for efficient administration and conduct of elections.

### **1-1-2. Headings.**

Article and section headings do not in any manner affect the scope, meaning or intent of the provisions of the Election Code [this chapter].

### **1-1-3. "Shall" and "may".**

As used in the Election Code [this chapter], "shall" is mandatory and "may" is permissive.

### **1-1-4. Qualified elector.**

As used in the Election Code [this chapter], "qualified elector" means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States.

### **1-1-5. Voter.**

As used in the Election Code [this chapter], "voter" means any qualified elector who is registered under the provisions of the Election Code.

### **1-1-6. Recheck and recount.**

As used in the Election Code [this chapter]:

A. "recheck" pertains to voting machines and means a verification procedure where the center counter compartment door of the voting machine is opened and the results of the balloting as shown on the counters of the machine are compared with the results shown on the official returns; and

B. "recount" pertains to emergency paper ballots and absentee ballots and means a retabulation and retallying of individual ballots.

### **1-1-7. Residence; rules for determining.**

For the purpose of determining residence for voting, the place of residence is governed by the following rules:

A. the residence of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return;

B. the place where a person's family resides is presumed to be his place of residence, but a person who takes up or continues his abode with the intention of remaining at a place other than where his family resides is a resident where he abides;

C. a change of residence is made only by the act of removal joined with the intent to remain in another place. There can be only one residence;

D. a person does not gain or lose residence solely by reason of his presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while residing upon an Indian or military reservation;

E. no member of the armed forces of the United States, his spouse or his dependent is a resident of this state solely by reason of being stationed in this state;

F. a person does not lose his residence if he leaves his home and goes to another country, state or place within this state for temporary purposes only and with the intention of returning;

G. a person does not gain a residence in a place to which he comes for temporary purposes only;

H. a person loses his residence in this state if he votes in another state in an election requiring residence in that state, and has not upon his return regained his residence in this state under the provisions of the constitution of New Mexico;

I. "residence" is computed by not including the day on which the person's residence commences and by including the day of the election;

J. a person does not acquire or lose residence by marriage only.

#### **1-1-7.1. Residence for purpose of candidacy and signing of petitions; rule for determining.**

For the purpose of determining the residence of a person desiring to be a candidate for the nomination or election to an office under the provisions of the Election Code [this chapter] or for the purpose of determining the residence of any signer of a petition required by the Election Code, permanent residence shall be resolved in favor of that place shown on the person's certificate of registration as his permanent residence, provided the person resides on the premises.

#### **1-1-8. Election returns.**

As used in the Election Code [this chapter], "election returns" means the certificate of the precinct board showing the total number of votes cast for each candidate, or for or against each proposed constitutional amendment or other question, and may include statements of canvass, signature rosters, poll books, tally books, machine printed returns and, in any canvass of returns for county candidates, the original certificates of registration in the possession of the county clerk, together with the copies of certificates of registration in the office of the county clerk.

#### **1-1-9. Major political party; minor political party.**

As used in the Election Code [this chapter]:

A. "major political party" means any qualified political party, any of whose candidates received as many as five percent of the total number of votes cast at the last preceding general election for the office of governor, or president of the United States, as the case may be; and

B. "minor political party" means any qualified political party, none of whose candidates received five percent or more of the total number of votes cast at the last preceding general election for the office of governor, or president of the United States, as the case may be.

#### **1-1-10. Qualified political party.**

As used in the Election Code [this chapter], "qualified political party" means a political party that has complied with the provisions of Section 1-7-2 NMSA 1978.

#### **1-1-11. Precinct.**

As used in the Election Code [this chapter], "precinct" means a designated division of a county for election purposes which is entitled to a polling place and a precinct board. For purposes of municipal or school district elections, a precinct may also be coterminous with the boundaries of the municipality or school district as the case may be.

#### **1-1-12. Consolidated precinct.**

As used in the Election Code [this chapter], "consolidated precinct" means the combination of two or more precincts pursuant to the provisions of Sections 1-3-4 and 1-6-21 NMSA 1978.

**1-1-13. Precinct board.**

As used in the Election Code [this chapter], "precinct board" means the appointed election officials serving a single precinct or a consolidated precinct.

**1-1-14. Publication.**

As used in the Election Code [this chapter], "publication," unless otherwise provided in the constitution of New Mexico or the Election Code, means publication for the required number of times in a newspaper of general circulation in the county. "Publication in Spanish" means publication for the required number of times in an official Spanish language newspaper as set forth in Section 14-11-13 NMSA 1978 or any other Spanish language newspaper which meets the requirements of Section 14-11-2 NMSA 1978 if such newspaper exists in the county and is of general circulation in the county.

**1-1-15. Posting.**

As used in the Election Code [this chapter], "posting" means posting for not less than seven days prior to an election or to an action to be taken, in at least one conspicuous place in each precinct in the county.

**1-1-16. Registration officer.**

As used in the Election Code [this chapter], "registration officer" means a county clerk or his authorized deputy, a member of the board of registration or a deputy registration officer.

**1-1-17. Person authorized to administer oaths.**

As used in the Election Code [this chapter], "person authorized to administer oaths" means any person empowered by the laws of any state, the federal government or of any foreign country to administer oaths.

**1-1-18. Oath includes affirmation.**

As used in the Election Code [this chapter], "oath" includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word "swear" includes affirm.

**1-1-19. Elections covered by code.**

A. The Election Code [this chapter] applies to the following:

- (1) general elections;
- (2) primary elections;
- (3) statewide special elections;
- (4) elections to fill vacancies in the office of representative in congress; and
- (5) school district elections.

B. To the extent procedures are incorporated or adopted by reference by separate laws governing such elections or to the extent procedures are not specified by such laws, certain provisions of the Election Code shall also apply to:

- (1) municipal officer or municipal bond elections; or
- (2) special district officer or special district bond or other special district elections.

**1-1-20. Major fractions.**

In any place in the Election Code [this chapter] requiring counting or computation of numbers, any fraction or decimal greater than one-half of a whole number shall be counted as a whole number.

## ARTICLE 2

### Election Officers and Boards

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| <p>Sec.</p> <p>1-2-1. Secretary of state; chief election officer; rules and regulations; enforcement powers.</p> <p>1-2-1.1. Attorney general and district attorneys required to assist secretary of state.</p> <p>1-2-2. Secretary of state; general duties.</p> <p>1-2-3. Secretary of state; instructions; forms; certificates.</p> <p>1-2-3.1. Secretary of state; multipurpose registration form.</p> <p>1-2-4. Secretary of state; instructions to precinct boards.</p> <p>1-2-5. Secretary of state; election seminars.</p> <p>1-2-6. Precinct board; appointment; term.</p> <p>1-2-7. Precinct board; qualification of members.</p> <p>1-2-8. Precinct board; lists from major political parties.</p> <p>1-2-9. Precinct board; standby list.</p> <p>1-2-10. Precinct board; appointment by county clerk.</p> <p>1-2-11. Precinct board; assignment.</p> <p>1-2-12. Precinct board; number for each precinct; bipartisan.</p> <p>1-2-13. Primary election; appointment of temporary additional clerks.</p> | <p>Sec.</p> <p>1-2-14. Precinct boards; notice of appointment.</p> <p>1-2-15. Precinct board; vacancy on election day.</p> <p>1-2-16. Precinct board; compensation.</p> <p>1-2-17. Precinct board; schools of instruction.</p> <p>1-2-18. Precinct board members; identification badges.</p> <p>1-2-19. Oral assistance for language minority voters.</p> <p>1-2-20. Messengers; compensation.</p> <p>1-2-21. Challengers; appointment.</p> <p>1-2-22. Challengers; qualifications; restrictions.</p> <p>1-2-23. Challengers; permitted activities.</p> <p>1-2-24. Challengers; identification badges.</p> <p>1-2-25. Challengers; prohibited activities.</p> <p>1-2-26. Challengers; penalty.</p> <p>1-2-27. Watchers; appointment.</p> <p>1-2-28. Watchers; qualifications; restrictions.</p> <p>1-2-29. Watchers; permissible and unpermissible activities.</p> <p>1-2-30. Watchers; penalty.</p> |
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#### **1-2-1. Secretary of state; chief election officer; rules and regulations; enforcement powers.**

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

(1) obtain and maintain uniformity in the application, operation and interpretation of the Election Code [this chapter];

(2) subject to the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], make rules and regulations pursuant to the provisions of, and necessary to carry out the purposes of, the Election Code and shall furnish to the county clerks copies of such rules and regulations; and

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

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.

#### **1-2-1.1. Attorney general and district attorneys required to assist secretary of state.**

A. The attorney general and the several district attorneys of the state upon request of the secretary of state shall provide to the secretary of state legal advice, assistance, services and representation as counsel in any action to enforce the provisions of the Election Code [this chapter].

B. Upon the request of the secretary of state, the attorney general and the several district attorneys of the state shall assign investigators or lawyers to aid the secretary of state on election day to ensure the proper conduct of the election.

#### **1-2-2. Secretary of state; general duties.**

The secretary of state shall:

A. generally supervise all elections;

B. administer the Election Code [this chapter] 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 precinct boards a sufficient number of copies of the Election Code as it is from time to time amended and supplemented;

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

H. be responsible for the education and training of voting machine technicians; and

I. assist the county clerks in the education and training of deputy registration officers and precinct boards.

### **1-2-3. Secretary of state; instructions; forms; certificates.**

A. The secretary of state shall prepare and furnish to each county:

(1) sufficient forms, blanks, records, files or other equipment deemed necessary by him for the registration of voters, including suitable instructions concerning their use for each registration officer;

(2) printed forms of additional election certificates; and

(3) instructions to voters which shall set forth in nontechnical language the manner in which voters cast their ballots.

B. All registration or voting notices, forms, instructions, assistance or other information relating to the electoral process shall be printed in both English and Spanish.

C. Where a minority language is historically unwritten, all proclamations, registration or voting notices, instructions, assistance or other information relating to the electoral process shall be made available orally in the respective minority language, through the media when practicable, in public meetings and on election day at the polls.

#### **1-2-3.1. Secretary of state; multipurpose registration form.**

The secretary of state shall prescribe the form of a multipurpose certificate of registration, which shall be printed in English and Spanish. The certificate of registration form shall be clear and understandable to the average person and shall include brief but sufficient instructions to enable the qualified elector to complete the form. The certificate of registration form shall replace the affidavit of registration.

#### **1-2-4. Secretary of state; instructions to precinct boards.**

A. The secretary of state shall provide instructions for the precinct board, which shall include a brief nontechnical explanation of their duties as required by the Election Code [this chapter].

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

#### **1-2-5. Secretary of state; election seminars.**

In carrying out his duties under the Election Code [this chapter], the secretary of state shall, once before each and every statewide election, cause to be organized and conducted at convenient places and times in this state seminars on the administration of the Election Code. The secretary of state shall send written notice of the seminar to each county clerk setting forth the time and place of the seminar. Each county clerk, one of his designated deputies and one voting machine technician shall attend the seminar. Per diem and mileage shall be paid out of the funds appropriated to the secretary of state.

**1-2-6. Precinct board; appointment; term.**

A. The county clerk on or before fifty-five days next preceding the primary election shall appoint the precinct board for each precinct.

B. The members of the precinct board shall be appointed for a term of two years.

C. In the event of a vacancy in the office of precinct board member by reason of death, removal from the county, disqualification, refusal to serve or excusal by the county clerk for sufficient cause, the county clerk shall appoint a qualified person to fill the vacancy for the unexpired term.

**1-2-7. Precinct board; qualification of members.**

A. In order to qualify as a member of the precinct board, a person shall:

(1) be a resident of the representative district and county in which the precinct where he is a voter is located;

(2) be able to read and write;

(3) have the necessary capacity to carry out his functions with acceptable skill and dispatch; and

(4) execute the precinct board member's oath of office.

B. No person shall be qualified for appointment or service on a precinct board:

(1) who is a candidate for any federal, state, district or county office;

(2) who is a spouse, parent, child, brother or sister of any candidate to be voted for at the election; or

(3) who is a sheriff, deputy sheriff, marshal, deputy marshal, state or municipal policeman.

**1-2-8. Precinct board; lists from major political parties.**

The county chairman of each of the major political parties may file with the county clerk at least thirty days before the date of appointment the names of not more than four voters for each precinct to be considered for appointment as a member of the precinct board. Such names shall be those of persons residing in the precinct to which they are to be appointed and who meet the qualifications required for a precinct board member. The county chairman may indicate his order of preference for each of the persons recommended for each precinct.

**1-2-9. Precinct board; standby list.**

A. Not less than twenty-one days prior to the date for appointing members of precinct boards, the county clerk shall publish a notice once in a newspaper of general circulation to the effect that precinct boards are to be appointed for the specified number of precincts, stating the number of persons composing each board and that applications for the standby list will be accepted at the county clerk's office.

B. The county clerk shall then compile from the individual applicants a standby list of precinct board members. The persons on the standby list shall have the same qualifications and comply with the same requirements as provided for precinct board members.

**1-2-10. Precinct board; appointment by county clerk.**

The county clerk shall appoint the precinct board for each precinct in the following order:

A. from the list submitted by the major party county chairmen in the order stated thereon;

B. from the standby list; and

C. from any other list of voters who have the same qualifications and comply with the same requirements as provided for precinct board members.

**1-2-11. Precinct board; assignment.**

Wherever possible, the county clerk shall assign persons appointed as precinct board members to serve in precincts wherein they reside or in precincts located in the representative district wherein they reside. In the event of a shortage or absence of precinct board members in certain precincts, the county clerk may, in the best interest of the election process, assign appointed precinct board members to serve in any precinct in the county, provided that such appointed board members shall not change the proportionate representation of each party on the board.

**1-2-12. Precinct board; number for each precinct; bipartisan.**

- A. When absentee ballots are counted, the precinct board shall consist of:
- (1) a presiding judge;
  - (2) two election judges who shall be of different political parties; and
  - (3) two election clerks who shall be of different political parties.
- B. When one voting machine is to be used in a precinct, the precinct board shall consist of:
- (1) a presiding judge;
  - (2) two election judges who shall be of different political parties; and
  - (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:
- (1) a presiding judge;
  - (2) two election judges who shall be of different political parties; and
  - (3) two election clerks who shall be of different political parties.
- D. When three voting machines are used in a precinct, the precinct board shall consist of:
- (1) a presiding judge;
  - (2) two election judges who shall be of different political parties; and
  - (3) three election clerks, not more than two of whom shall belong to the same political party.
- E. If the county clerk determines that additional election clerks are needed in a precinct, the clerk may appoint such additional election clerks as he deems necessary; provided, however, that such appointments shall be made in the manner that provides for representation from all major political parties.
- F. In addition to the members of the precinct board provided for in this section, the county clerk may appoint an additional election clerk for the purpose of making changes in the certificate of registration of any voter who has voted in that election at the polling place.

**1-2-13. Primary election; appointment of temporary additional clerks.**

Not less than twenty-eight days prior to the primary election, the county clerk shall appoint a temporary additional election clerk for each precinct in the county for any political party participating in that election when such temporary additional election clerk has been selected and his appointment requested in writing, signed by any group or groups of six candidates for such party's nomination for county offices in the county. No single candidate in such election shall join in more than one request for a temporary additional election clerk. Temporary additional election clerks shall serve without compensation and shall serve only for the primary election for which appointed. Temporary additional election clerks shall attend the county clerk's school for that primary election, execute a precinct board member's oath and otherwise meet the qualifications for a precinct board member.

**1-2-14. Precinct boards; notice of appointment.**

- A. Immediately after the appointment of the precinct boards, the county clerk shall:

(1) make and certify a list of the names of the appointees for each precinct, post the list in a conspicuous and accessible place in his office and keep it posted for five days and send a copy of the list by mail to the county chairman of each major political party and to the secretary of state; and

(2) by mail, notify each person appointed, request his written acceptance and keep a record of all notifications and acceptances. The notice shall be accompanied by a copy of the instructions to the precinct board.

B. If any person appointed to a precinct board fails to accept the appointment within two weeks after the notice was sent, the county clerk shall appoint another qualified person for the precinct board.

### **1-2-15. Precinct board; vacancy on election day.**

A. If for any cause a member of the precinct board is not present on election day at the precinct for which he or she was appointed, the remaining board members shall notify the county clerk who shall fill the vacancy.

B. If the board members are unable to contact the county clerk in a timely manner, the vacant position shall be filled as follows:

(1) if there is a vacancy in the position of presiding judge, the remaining board members shall elect one of the election judges to fill the vacancy;

(2) if there is a vacancy in the position of election judge, the presiding judge shall appoint an election clerk of a different political party than that of the remaining election judge; however, if there is no election clerk of a different political party, the presiding judge shall appoint a voter of the precinct who is of a different political party than that of the remaining election judge; and

(3) if the vacancy is in the position of election clerk, the presiding judge shall appoint any voter of the precinct to fill the vacancy, provided the voter is of a different political party than the remaining election clerk on a five-member board or of a different political party than that of the presiding judge on a four-member board.

C. No vacancy on election day shall prevent the remaining board members from proceeding to open the polls and conducting the election in their assigned precinct.

### **1-2-16. Precinct board; compensation.**

A. Members of a precinct board shall be compensated for their services at the rate of not less than fifty dollars (\$50.00) nor more than ninety-five dollars (\$95.00).

B. Compensation shall be paid within thirty days following the date of election.

### **1-2-17. Precinct board; schools of instruction.**

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

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

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

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

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

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

D. All major details of the conduct of elections shall be covered by the county clerk or his authorized representative at such school, with special emphasis being given to recent changes in the Election Code [this chapter].

E. The school of instruction shall be open to any interested person, and notice of the school shall be given to the public press at least four days before the school is to be held.



Each member of the precinct board shall be notified by mail at least seven days prior to commencement of the school.

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

### **1-2-18. Precinct board members; identification badges.**

At all times on election day while performing their duties, members of the precinct board shall wear uniform identification badges. Such badges shall be furnished by the county clerk. The secretary of state shall prescribe the form and material of such identification badges, which shall include the identification of the board member's title and political party.

### **1-2-19. Oral assistance for language minority voters.**

A. In those polling places designated by the secretary of state as being subject to the provisions of the 1975 amendments to the federal Voting Rights Act of 1965, oral assistance shall be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise. As used in the Election Code [this chapter], "language minority" means a person who is an American Indian or of Spanish heritage and "inability to read well enough to exercise the elective franchise" means inability to read the languages in which the ballot is printed or the inability to understand instructions for operating the voting machine.

B. In those precincts where oral assistance is required, the position of election translator is created. The election translator shall be an additional member of the regular precinct board unless oral assistance to language minorities can otherwise be rendered by a member of the regular precinct board. The election translator shall be appointed by the county clerk in the same manner as other precinct board members are appointed, except that the county clerk in appointing American Indian election translators shall seek the advice of the pueblo or tribal officials residing in that county. The election translator shall take the oath required of precinct board members and shall meet the same qualifications as other precinct board members. In precincts where election translators are required, an election translator shall represent each political party as required by law for precinct boards.

C. Each county clerk shall compile and maintain a list of standby election translators to serve in those precincts on election day when the appointed election translator is unavailable for such service.

D. Each county clerk shall provide to the secretary of state no later than thirty days before any election a list of appointed election translators and a list of appointed standby election translators, together with the precinct numbers to which each election translator has been appointed.

### **1-2-20. Messengers; compensation.**

A. The county clerk may appoint messengers to deliver ballot boxes, poll books, keys, election supplies and other materials pertaining to the election.

B. Messengers shall be paid mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] each way over the usually traveled route. The mileage shall be paid within thirty days following the date of election if funds are available for payment.

### **1-2-21. Challengers; appointment.**

A. The county chairman of each political party represented on the ballot may appoint in writing one challenger and one alternate challenger for each precinct.

B. If any county chairman fails to make such appointments the precinct chairman of the political party may appoint in writing one challenger and one alternate challenger for the precinct.

C. If any precinct chairman fails to make such appointments, or if no person properly appointed is present at the polling place and offers to serve, the voters present belonging to that political party may appoint one challenger and one alternate challenger in writing.

### **1-2-22. Challengers; qualifications; restrictions.**

Challengers and alternate challengers shall be voters of a precinct located in that county to which they are appointed. No sheriff, deputy sheriff, marshal, deputy marshal, municipal or state police 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.

### **1-2-23. Challengers; permitted activities.**

A. A challenger or alternate challenger, upon presentation of his written appointment to the precinct board, shall be permitted to be present from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close.

B. A challenger or alternate challenger, for the purpose of interposing challenges, may:

(1) inspect the registration book or precinct voter list for the purpose of determining whether he desires to interpose a challenge;

(2) inspect the pollbooks, registration book or signature rosters to determine whether entries are being made in accordance with the Election Code [this chapter];

(3) examine each voting machine before the polls are opened to compare the number on the metal seal and the numbers on the counters with the numbers on the key envelope and to see that all ballot labels are in their proper places and that the voting machine is ready for voting at the opening of the polls; and

(4) make in any polling place and preserve for future reference written memoranda of any action or omission on the part of any member of the precinct board.

### **1-2-24. Challengers; identification badges.**

At all times while they are present in the polling place, challengers shall wear uniform identification badges designating them as authorized challengers of the political party which they represent. They shall not wear any other form of identification, party or candidate pins. The secretary of state shall prescribe the form and materials of such badges and such badges shall be furnished to the challengers by the presiding judge upon presentation of their written appointments.

### **1-2-25. Challengers; prohibited activities.**

A. Challengers and alternate challengers shall not be permitted to perform any duty of a precinct board member. Challengers and alternate challengers shall not handle the ballots, pollbooks, signature rosters or voting machines or take any part in the tallying or counting of the ballots.

B. Only one challenger or alternate challenger for each political party in each precinct shall be permitted at one time in the room in which the voting is being conducted.

C. Challengers shall not interfere with the orderly conduct of the election.

### **1-2-26. Challengers; penalty.**

The act of denying a challenger or alternate challenger, who has presented his written appointment to the precinct board, the right to be present at the polling place, or denying him the right to challenge voters and inspect the registration books, signature rosters or

pollbooks, or denying him the right to witness the counting and tallying of ballots is a petty misdemeanor.

### **1-2-27. Watchers; appointment.**

A. The county chairman of each political party represented on the ballot may appoint in writing two watchers for each precinct. If any county chairman fails to make the appointments, the precinct chairman of the political party may appoint in writing two watchers for the precinct. If any precinct chairman fails to make the appointments, or if no person properly appointed is present at the polling place and offers to serve, the voters present belonging to that political party may appoint in writing two watchers.

B. In a primary election any group of six candidates for county office for each political party participating in the election may appoint in writing an additional watcher for each precinct. No candidate, however, shall join in more than one request for an additional watcher.

C. In a primary election any group of three candidates seeking nomination for statewide or district office may appoint in writing one watcher for each of those precincts as they may desire. No candidate, however, shall join in more than one request for an additional watcher at any precinct.

### **1-2-28. Watchers; qualifications; restrictions.**

Watchers shall have the same qualifications and restrictions as required by the Election Code [this chapter] for challengers.

### **1-2-29. Watchers; permissible and unpermissible activities.**

A. Upon presentation of his written appointment to the precinct board, a watcher may:

(1) be present from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close;

(2) be permitted to observe that the election is being conducted in accordance with the Election Code [this chapter];

(3) examine any voting machine being used in the precinct in the same manner that challengers may examine the voting machines; and

(4) make in any polling place and preserve for future reference written memoranda of any action or omission on the part of any member of the precinct board charged with the performance of a duty by the Election Code.

B. A watcher is subject to the same prohibitions and restrictions as are placed upon challengers by the Election Code.

### **1-2-30. Watchers; penalty.**

The act of denying a watcher, who has presented his written appointment to the precinct board, the right to be present at the polling place, or denying him the right to witness the counting and tallying of the ballots, is a petty misdemeanor.

## **ARTICLE 3**

### **Precincts and Polling Places**

Sec.

- 1-3-1. Nature of a precinct; maps.
- 1-3-2. Precincts; duties of county commissioners.
- 1-3-3. Precincts; combined.
- 1-3-4. Consolidation of precincts; notice.
- 1-3-5. Precincts; powers of county commissioners.
- 1-3-6. Precincts; boundaries; protest.
- 1-3-7. Polling places.
- 1-3-7.1. Additional polling places.

Sec.

- 1-3-8. Precinct changes; notice and publication.
- 1-3-9. Precincts; exclusions.
- 1-3-10. Short title.
- 1-3-11. Purpose.
- 1-3-12. Adjusting precinct boundaries.
- 1-3-13. Secretary of state powers and duties.
- 1-3-14. Standard base map required.
- 1-3-15, 1-3-16. Repealed.

Sec.

1-3-17. Repealed.

1-3-18. Polling places; building requirements; inspection.

### **1-3-1. Nature of a precinct; maps.**

A. Each precinct as nearly as practicable shall be composed of contiguous and compact areas having clearly definable boundaries; provided that on and after January 1, 1990, such precinct boundaries shall comply with the provisions of the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978].

B. A precinct for general or primary election purposes shall not have had more than eight hundred votes cast in person in that precinct at the last preceding general election.

C. Each county clerk shall provide and maintain a suitable map showing the current geographical boundaries with designation of each precinct, representative district and senatorial district in the county. The size and form of such maps shall be prescribed by the secretary of state. A word description of the geographical boundaries shall be attached to each map. Such map, with attached description, is a public record.

D. Each county clerk shall send a copy of each map with attached description to the secretary of state. These copies are also public records.

### **1-3-2. Precincts; duties of county commissioners.**

A. Not later than the first Monday in November of each odd-numbered year, the board of county commissioners shall by resolution:

(1) designate the polling place of each precinct that shall provide individuals with physical mobility limitations an unobstructed access to at least one voting machine;

(2) create additional precincts to meet the requirements of Section 1-3-1 NMSA 1978 or upon petition pursuant to Section 4-38-21 NMSA 1978;

(3) create additional polling places in existing precincts as necessary pursuant to Section 1-3-7.1 NMSA 1978; and

(4) divide any precincts as necessary to meet legal and constitutional requirements for redistricting boards of county commissioners.

B. The county clerk shall notify the secretary of state in writing of any changes in precincts or the designation of polling places made by the board of county commissioners and shall furnish a copy of the map showing the current geographical boundaries, designation and word description of each new polling place and each new or changed precinct.

C. The secretary of state shall review all new or changed precinct maps submitted pursuant to this section for compliance under the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978]. Any necessary precinct boundary adjustments shall be made and submitted to the secretary of state no later than the first Monday in December of that year. Upon approval of the new or changed precincts by the secretary of state, the precincts and polling places as changed by the resolution of the boards of county commissioners and approved by the secretary of state shall be the official precincts and polling places for the next succeeding primary and general elections.

### **1-3-3. Precincts; combined.**

A. In the interest of economy, the board of county commissioners may combine any precinct where the total vote cast in person in that precinct in the last preceding general election was less than one hundred with an adjacent and contiguous precinct.

B. No such combination shall be made where the total vote cast in person in both precincts in the last preceding general election exceeds six hundred or where such combinations would cross legislative district boundary lines.

**1-3-4. Consolidation of precincts; notice.**

A. Precincts may be consolidated by the appropriate governing authority for the following elections:

- (1) statewide special elections;
- (2) countywide special elections;
- (3) elections to fill vacancies in the office of representative in congress;
- (4) municipal candidate and bond elections unless otherwise prohibited; and
- (5) school district candidate and bond elections unless otherwise prohibited.

B. When precincts are consolidated as provided in this section, the notice of election, in addition to the other matters required by law, shall state therein which precincts have been consolidated and the designation of the polling place.

**1-3-5. Precincts; powers of county commissioners.**

No precinct shall be created, divided, abolished or consolidated or the boundaries or polling place therein changed less than four months prior to each election, except by order of the district court.

**1-3-6. Precincts; boundaries; protest.**

A. Any ten or more voters of a precinct dissatisfied with the boundaries fixed for a precinct or location of the polling place designated by the board of county commissioners for that precinct may, at any time not less than fifty-five days prior to any general election, petition the district court of that county, setting forth the facts and reasons for their dissatisfaction and requesting that the board of county commissioners be required by mandamus to change the boundaries or polling place as set forth in the petition.

B. Upon filing of the petition, the court shall fix a time and place for hearing, which time shall not be more than twenty days from the date the petition was filed. Each member of the board of county commissioners and the person whose name appears first on the petition as a signer thereof shall immediately be given notice by the court of the filing of the petition and the date set for hearing.

C. On the date set for the hearing on the petition, the court shall hear the evidence, decide the issues involved and issue its order as the law and facts require.

**1-3-7. Polling places.**

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

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

C. If no public building or public school building is available, the board of county commissioners shall provide some other suitable place which shall be the most convenient and appropriate place obtainable in the precinct, considering the purpose for which it is to be used pursuant to the Election Code [Chapter 1 NMSA 1978].

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

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

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

### **1-3-7.1. Additional polling places.**

In the interest of the convenience of the voters and providing accessibility to the polling place, the board of county commissioners may create additional polling places within the precinct upon their own action or upon receipt of a petition signed by at least ten percent of the registered voters of the precinct so requesting.

### **1-3-8. Precinct changes; notice and publication.**

Upon the adoption of any resolution, or upon the final action of any district court upon a petition creating, abolishing, dividing or consolidating any precinct, or changing any precinct boundary or changing any designated polling place, the board of county commissioners shall:

A. send a certified copy of the resolution or court order to the secretary of state and to the county chairman of each of the major political parties; and

B. publish once the resolution in a newspaper as provided in the Election Code [this chapter].

### **1-3-9. Precincts; exclusions.**

As used in Chapter 1, Article 3 NMSA 1978, "precinct" shall not include absent voter precinct.

### **1-3-10. Short title.**

Sections 1-3-10 through 1-3-14 NMSA 1978 may be cited as the "Precinct Boundary Adjustment Act".

### **1-3-11. Purpose.**

The purpose of the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] is to comply with the criteria established pursuant to the provisions of Subsection (c) of Section 141 of Title 13 of the United States Code in order to obtain an enumeration of the populations of New Mexico election precincts by the bureau of the census in the 1990 federal decennial census and in order to provide such enumeration data to the New Mexico legislature for purposes of legislative reapportionment.

### **1-3-12. Adjusting precinct boundaries.**

A. Every precinct boundary shall coincide with a numbered or named street or road or with a visible terrain feature that is:

(1) shown on the standard base maps developed pursuant to Subsection B of this section;

(2) a block boundary on the PL 94-171 1990 census block maps; or

(3) approved by the secretary of state and the bureau of the census.

B. As soon as feasible, but no later than April 1, 1985:

(1) the secretary of state shall have prepared and furnish to each county clerk standard base maps of the county. The standard base map for nonurban areas of the county shall, as nearly as practicable, show:

(a) all state and federal highways;

(b) all numbered and named county roads that have been certified to the state highway and transportation department;

(c) all major railroad lines; and

(d) other major terrain features such as flowing rivers and streams and mountain ranges; and

(2) the board of county commissioners and the county clerks, upon receipt of the standard base maps from the secretary of state, shall:

(a) adjust all urban precinct boundaries to coincide with numbered or named street boundaries;

(b) adjust all nonurban precinct boundaries to coincide with suitable visible terrain features shown on the standard base map; provided that in order to make such adjustment, two or more existing precincts may be consolidated without consolidating existing polling places; and provided further that such precincts shall be composed of contiguous and compact areas, and state, county and municipal boundary lines may serve as precinct boundaries; and

(c) upon the completion of the precinct boundary adjustments as required in this section, indicate on the standard base maps the boundaries for both urban and nonurban precincts and, together with a written description of the precincts, shall send four copies of the precinct maps to the secretary of state for approval.

C. The precincts shown upon the standard base maps submitted pursuant to the provisions of Subsection B of this section and as revised and approved as of August 16, 1991 by the secretary of state pursuant to the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] shall become the official precincts of each county for the 1991 redistricting of legislative, congressional and state board of education districts. Thereafter, and for the 1992 and subsequent primary and general elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978.

### **1-3-13. Secretary of state powers and duties.**

A. The secretary of state shall review all county precinct maps submitted pursuant to Section 1-3-12 NMSA 1978 for compliance with the provisions of the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978]. Those county precinct maps determined not to be in compliance shall be rejected and returned to the appropriate county clerk with a written statement of noncompliance setting forth those instances where the map is in default. The county clerk and the board of county commissioners shall make the required adjustments and resubmit one copy of the corrected county precinct map within thirty days after receiving notice of noncompliance.

B. Prior to January 1, 1992, if any precinct boundary adjustments are necessary to meet the legal and constitutional requirements of legislative reapportionment, the secretary of state shall notify any county of those boundary adjustments that are necessary in that county. Upon review and certification of the adjusted precinct boundaries, the county shall submit the certified precinct changes to the secretary of state for final approval of the precincts for the 1992 primary and general elections.

### **1-3-14. Standard base map required.**

All precinct maps prepared by the county clerk as required in Sections 3 and 4 [1-3-12 and 1-3-13 NMSA 1978] of the Precinct Boundary Adjustment Act shall be on a standard base map as prescribed by the secretary of state in order to achieve as nearly as practicable uniformity of size and scale.

### **1-3-15, 1-3-16. Repealed.**

### **1-3-17. Repealed.**

### **1-3-18. Polling places; building requirements; inspection.**

A. No building used as a polling place for the conduct of an election in any class A county shall house:

- (1) more than four precinct polling places in the conduct of any single election; and
- (2) more than two precinct polling places in any single room.

B. The restrictions set forth in Subsection A of this section may be waived with the approval of the director of the state bureau of elections.

C. The location of each precinct polling place within the building shall be clearly designated by appropriate signs, prominently and clearly displayed at a height no less than six feet from the floor. Signs for each precinct polling place shall also be clearly displayed outside the building where polling takes place.

D. Not less than thirty days prior to any election at which the building is intended for use as a polling place, the county clerk or his designated representative shall physically inspect each such facility to determine its suitability for precinct polling places and its capability of handling heavy voter traffic in the most expeditious manner with a maximum efficiency and minimum discomfort of the voter. In the event the building is found to meet these standards, the county clerk shall certify for the record its acceptability.

E. Each polling place will be furnished and have available equipment necessary to assist voters in reading the ballot.

## ARTICLE 4

### Registration of Electors

Sec.	Sec.
1-4-1. Registration required.	1-4-26. Cancellation of registration; determination of insanity.
1-4-2. Qualification for registration.	1-4-27. Cancellation of registration; determination of felony conviction.
1-4-3. Registration declared permanent.	1-4-28. Cancellation of registration; certain failure to vote; suspension; notice.
1-4-4. Fees and charges prohibited.	1-4-29. Board of registration; county clerk; failure to cancel; duty of the secretary of state.
1-4-5. Method of registration.	1-4-30. Cancellation of registration; voter's request.
1-4-5.1. Method of registration; form.	1-4-31. Cancellation of registration; county clerk.
1-4-6. Repealed.	1-4-32. Cancellation of registration; duties of county clerk; retention of records.
1-4-7. Registration by temporary absentees.	1-4-33. Board of registration; county chairman's list.
1-4-8. Duties of county clerk; acceptance of registration; close of registration.	1-4-34. Board of registration; county commissioners; appointment.
1-4-9. Duties of county clerk; registration of language minorities.	1-4-35. Board of registration; secretary.
1-4-10. Restriction on local government elections.	1-4-36. Board of registration; compensation.
1-4-11. Duties of county clerk; upon receipt of certificates.	1-4-37. Board of registration; term; qualification.
1-4-12. Duties of county clerk; filing of certificates.	1-4-38. Board of registration; place of meetings.
1-4-13. Change of name; correcting error.	1-4-39. Deputy registration officers; classifications; definitions.
1-4-14. Certificate of registration; replacement of lost copy.	1-4-40. Deputy registration officers; purpose; submission of names to county clerk; appointment by county clerk; filling of vacancies.
1-4-15. Registration; change of party affiliation.	1-4-41. Deputy registration officers; duties and powers of appointed officer.
1-4-16. Registration; when party affiliation shall not be made.	1-4-42. Deputy registration officer; instructions; materials; training.
1-4-17. Registration; change of residence within same county.	1-4-43. Deputy registration officer; cancellation of appointment.
1-4-18. Change of registered residence to another county.	1-4-44. Deputy registration officer; qualifications.
1-4-19. Registration; transfer upon creation or change of precincts; notice to voters.	1-4-45. Deputy registration officers; publication of list; list made available.
1-4-20. Repealed.	1-4-46. Clerical assistance for county clerk.
1-4-21. Refusal of registration.	1-4-47. Driver's license voter registration.
1-4-22. Cancellation of registration; petition to district court.	
1-4-23. Cancellation of registration; board of registration; grounds; when.	
1-4-24. Cancellation of registration; county clerk; grounds.	
1-4-25. Cancellation of registration; determination of death.	

#### 1-4-1. Registration required.

No person shall vote at any election unless he is registered as required by the Election Code [this chapter]. No ballot of any unregistered or otherwise unqualified elector shall be cast, counted or canvassed.



### **1-4-2. Qualification for registration.**

Any person who will be a qualified elector at the date of the next ensuing election shall be permitted within the provisions of the Election Code [this chapter] to register and become a voter, provided, however, he shall not register in New Mexico without canceling his registration in the state of previous residence if such there be.

### **1-4-3. Registration declared permanent.**

The registration of a qualified elector is permanent for all purposes during the life of such person unless and until his certificate of registration is canceled for any cause specified in the Election Code [this chapter].

### **1-4-4. Fees and charges prohibited.**

No qualified elector shall be charged any fee or required to pay any sum whatsoever by any registration officer for performance of a duty required of him by the Election Code [this chapter] in connection with registration.

### **1-4-5. Method of registration.**

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

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

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

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

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

D. When properly executed by the registration 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 elector resides.

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

#### **1-4-5.1. Method of registration; form.**

A. A qualified elector may also apply for registration by mail or in the office of the county clerk.

B. Certificate of registration forms may be requested from the secretary of state or any county clerk in person, by telephone or by mail for oneself or for others.

C. A qualified elector who wishes to register to vote shall fill out completely and sign the certificate of registration. The qualified elector may seek the assistance of any person in completing the certificate of registration.

D. Completed certificates of registration may be mailed or presented in person by the registrant or any other person to the secretary of state or presented in person by the registrant or any other person to the county clerk of the county in which the registrant resides.

E. If the registrant wishes to vote in the next election, the completed and signed certificate of registration shall be delivered or mailed and postmarked at least twenty-eight days before the election.

F. Upon receipt of a certificate of registration, the secretary of state shall send the certificate to the county clerk in the county where the qualified elector resides.

G. Only when the certificate of registration is properly filled out, signed by the qualified elector and accepted for filing by the county clerk as evidenced by his signature or stamp and the date of acceptance thereon and when notice has been received by the registrant, shall it constitute an official public record of the registration of the qualified elector.

H. The secretary of state shall prescribe the form of the certificate of registration, which shall be a postpaid mail-in format and shall be printed in Spanish and English. The certificate of registration form shall be clear and understandable to the average person and shall include brief but sufficient instructions to enable the qualified elector to complete the form without assistance.

#### **1-4-6. Repealed.**

#### **1-4-7. Registration by temporary absentees.**

A qualified elector who is temporarily out of his county of residence or out of New Mexico, may, upon request to the county clerk of his county of residence, obtain the prescribed certificate of registration form. After the certificate of registration has been subscribed, the qualified elector shall return it to the county clerk of his county of residence by mail. Upon receipt of the completed certificate of registration, the county clerk shall ascertain if such certificate of registration is to be filed or rejected in accordance with the Election Code [this chapter].

#### **1-4-8. Duties of county clerk; acceptance of registration; close of registration.**

A. The county clerk shall receive certificates of registration at all times during normal working hours, except that he shall close registration at 5:00 p.m. on the twenty-eighth day immediately preceding any election at which the registration books are to be furnished to the precinct board.

B. Registration shall be reopened on the Monday following the election.

C. For purposes of a municipal or school election, the registration period for those precincts within the municipality or school district is closed at 5:00 p.m. on the twenty-eighth day immediately preceding the municipal or school election and is opened again on the Monday following the election.

D. During the period when registration is closed, the county clerk shall receive certificates of registration and other documents pertaining thereto but shall not file the certificate of registration in the registration book until the Monday following the election at which time a copy shall be mailed to the registrant at the address shown on the certificate of registration.

E. When the twenty-eighth day prior to any election referred to in this section is a Saturday, Sunday or legal holiday, registration shall be closed at 5:00 p.m. of the next succeeding regular business day for the office of the county clerk.

F. The county clerk shall accept for filing any certificate of registration that is hand delivered or received in the mail before 5:00 p.m. on the Friday immediately following the close of registration.

#### **1-4-9. Duties of county clerk; registration of language minorities.**

The county clerk shall initiate nonpartisan measures to urge and facilitate registration of language minority voters and other voters.

#### **1-4-10. Restriction on local government elections.**

No municipal, school or special district election shall be held within forty-two days prior to any statewide election.

**1-4-11. Duties of county clerk; upon receipt of certificates.**

A. Upon receipt of a complete certificate of registration, if in proper form, the county clerk shall determine if the qualified elector applying for registration is already registered in the registration records of the county. If the qualified elector is not already registered in the county and if the certificate of registration is received within the time allowed by law for filing certificates of registration in the county clerk's office, the county clerk shall sign or stamp, in the space provided therefor on each copy of the certificate, his name and the date the certificate was accepted for filing in the county registration records. A copy of the certificate of registration shall be handed or mailed to the voter and to no other person.

B. If the qualified elector is already registered in the county as shown by his original certificate of registration currently on file in the county registration records, the county clerk shall not accept the new certificate of registration unless it is filed pursuant to Sections 1-4-13, 1-4-15, 1-4-17 or 1-4-18 NMSA 1978. He shall stamp or write the word "rejected" on the new certificate of registration and hand or mail it to the voter with an explanation why the new certificate of registration was rejected and what remedial action, if any, the voter must take to bring his registration up to date.

**1-4-12. Duties of county clerk; filing of certificates.**

A. Certificates of registration, if in proper form, shall be processed and filed by the county clerk as follows:

- (1) the voter's copy of the certificate shall be delivered or mailed to the voter; and
- (2) the original certificate shall be filed alphabetically by surname and inserted into the county register pursuant to Section 1-5-5 NMSA 1978.

B. The county clerk shall, on Monday of each week, process all certificates of registration, which are in proper form, that were received in his office up to 5:00 p.m. on the preceding Friday.

C. Original certificates of registration and their contents are public records.

**1-4-13. Change of name; correcting error.**

A. Any voter who changes his name or discovers an error in his certificate of registration may have the name on his certificate changed or the error corrected by filing an application to change the certificate of registration.

B. The application to change the certificate of registration shall show the name by which the qualified elector previously registered, his change of name or correction of error and a request that the change be shown on his certificate of registration. The application shall be subscribed by the voter. When completed, the application shall be filed with the county clerk and retained for six years in a file established for that purpose.

C. The county clerk shall note the change of name or correction of error on the voter's certificate of registration.

**1-4-14. Certificate of registration; replacement of lost copy.**

If any certificate of registration is lost, the county clerk upon application of the voter shall make a replacement copy thereof from the certificates in his office. The application for replacement of a lost copy of the certificate shall be retained for six years by the county clerk in a file established for that purpose. The certificate issued pursuant to the application shall be stamped "Replacement Copy".

**1-4-15. Registration; change of party affiliation.**

A. A voter may change his designated party affiliation by executing an application for change of party affiliation.

B. A voter who has previously declined to designate a party affiliation but who desires to designate a party affiliation shall make an original designation of party affiliation by executing an application for designation of party affiliation.

C. The application for change of party affiliation shall show the name of the voter, his address, his present party affiliation, if previously designated, and the party with which he desires to affiliate. The application shall be subscribed by the voter before a registration officer.

D. When properly executed, the application shall be filed with the county clerk and retained for six years in a file established for that purpose. The county clerk shall note the change of, or original designation of, party affiliation on the voter's certificate of registration.

#### **1-4-16. Registration; when party affiliation shall not be made.**

A. No designation of party affiliation shall be made or changed on an existing certificate of registration at any time during which registration is closed.

B. Every person appearing as a candidate on the primary or general election ballot shall be a candidate only under the name and party affiliation designation appearing on his existing certificate of registration on file in the county clerk's office on the date of the governor's proclamation of a primary election.

#### **1-4-17. Registration; change of residence within same county.**

A. A voter who has changed his residence within the same county shall complete a certificate of registration to change his registered residence address.

B. No change of registered residence address shall be made in any period during which registration is closed; however, the county clerk may accept applications for such change but shall not process them until the registration period is open.

C. The application for change of registered residence shall be filed with the county clerk, and the previous registration shall be retained for six years in a file established for that purpose.

#### **1-4-18. Change of registered residence to another county.**

When a voter changes his registered residence address from one county in this state to another county in this state, he shall complete a certificate of registration and file it with the appropriate county clerk; provided, he shall not register in the county of new residence without first canceling his registration in the county of previous residence.

#### **1-4-19. Registration; transfer upon creation or change of precincts; notice to voters.**

A. When a new precinct is created or the boundaries of an existing precinct are changed, the board of county commissioners shall notify the county clerk of such action.

B. Upon receipt of the notice, the county clerk shall reflect such change on the voter file and mail to each affected voter a notice of the creation or change of precinct.

#### **1-4-20. Repealed.**

#### **1-4-21. Refusal of registration.**

Mandamus may be brought in the district court against the county clerk by any qualified elector whose registration has been refused, or by the county chairman of either of the two major political parties who alleges that certain persons are qualified electors but have been refused registration.

#### **1-4-22. Cancellation of registration; petition to district court.**

A. At any time not less than forty-two days prior to any election, held pursuant to the Election Code [this chapter], the secretary of state, the county chairman of either of the major political parties or any twenty petitioners who are voters of the county may file and

present to the district court a verified petition alleging either on personal knowledge or on information and belief that certain persons registered, named in the petition, are not qualified electors in the precincts named in the petition. The petition shall contain a brief statement of facts upon which such allegation is made.

B. Upon filing and presentation of such petition, the court shall by order fix a day for hearing thereon, which date shall be not less than five days nor more than ten days after such order. The court shall direct the county clerk to forthwith notify such persons named in the petition whose registration is sought to be canceled, of the date and purpose of the hearing, and that each such person should be present at the hearing if he desires to oppose such cancellation.

C. Any county chairman or any group of twenty petitioners who, without reasonable cause, shall file a petition seeking to purge a voter are liable for the costs of such proceeding.

D. If, after hearing, the court finds that the registration of any of the persons named in the petition should be canceled, it shall by order direct the county clerk to cancel such registrations.

### **1-4-23. Cancellation of registration; board of registration; grounds; when.**

Beginning on the third Monday of March of each odd-numbered year, the board of registration shall cancel, or if applicable, suspend and cancel, certificates of registration for certain failure of the voter to vote.

### **1-4-24. Cancellation of registration; county clerk; grounds.**

The county clerk shall cancel certificates of registration for the following reasons:

- A. death of the voter;
- B. legal insanity of the voter; or
- C. a felony conviction of the voter.

### **1-4-25. Cancellation of registration; determination of death.**

A. For purposes of cancellation of registration, the death of a voter shall be ascertained by obituary notices, probate records or by comparison of registration records with periodic certified lists of deceased residents filed with the county clerk.

B. The state registrar of vital statistics shall file with the county clerk of the proper county for use by the board of registration periodic certified lists of deceased residents over the age of eighteen years regardless of the place of death.

C. The periodic certified list of deceased residents shall show the:

- (1) name;
- (2) age;
- (3) sex;
- (4) marital status;
- (5) birth place;
- (6) birth date;
- (7) social security number, if any;
- (8) address; and
- (9) place and date of death of the deceased resident.

### **1-4-26. Cancellation of registration; determination of insanity.**

A. For purposes of cancellation of registration, the legal insanity of a voter shall be ascertained by comparison of registration records with the certification of legal insanity filed by the court with the county clerk.

B. When in proceedings held pursuant to law, the district court determines that a mentally ill individual is insane as that term is used in the constitution of New Mexico, it

shall file a certification of such fact with the county clerk of the county wherein the individual is registered.

C. The certification of legal insanity shall include the:

- (1) name;
- (2) age;
- (3) sex;
- (4) marital status;
- (5) birth place;
- (6) birth date;
- (7) social security number, if any; and
- (8) address.

#### **1-4-27. Cancellation of registration; determination of felony conviction.**

A. For purposes of cancellation of registration, the fact of a felony conviction of a voter may be ascertained by comparison of registration records with the certification of felony conviction filed with the county clerk.

B. When a voter has been convicted of a felony, the clerk of the district court wherein the conviction occurred shall file with the county clerk of the county wherein the convicted felon is registered a certification of the fact.

C. The certification of felony conviction shall include the:

- (1) name;
- (2) age;
- (3) sex;
- (4) marital status;
- (5) birth place;
- (6) birth date;
- (7) social security number, if any;
- (8) date of conviction; and
- (9) address.

#### **1-4-28. Cancellation of registration; certain failure to vote; suspension; notice.**

A. The failure of a voter to vote in at least one general election or one primary election in a four-year period shall be grounds for cancellation of registration by the board of registration.

B. The secretary of state shall prescribe procedures for ascertaining whether a voter has voted at least once in the last two general elections.

C. After a determination that a voter has apparently not voted, the board of registration shall suspend the certificate of registration for sixty days.

D. The county clerk, upon direction of the board of registration, shall mail a notice to the voter at his residence address shown on the certificate of registration.

E. The suspended certificate of registration shall be canceled unless within the sixty-day suspension period the board of registration receives written notice from the voter that:

- (1) he still maintains residence as stated in his certificate of registration;
- (2) he did in fact vote in at least one of the last two general or primary elections at a stated polling place; or
- (3) he has made or desires to make a change in his registered residence address on his certificate of registration to the address and precinct in which he now resides.

F. No certificate of registration suspended for apparent failure to vote shall be marked or stamped "Canceled" until the expiration of the sixty-day period specified in this section.

**1-4-29. Board of registration; county clerk; failure to cancel; duty of the secretary of state.**

A. If the board of registration or the county clerk of any county does not cancel registration certificates as required by law, the secretary of state shall investigate the registration records, election returns and other pertinent records of that county and file a petition with the district court for the cancellation of the certificates of those persons as the investigation determines should have been canceled by the board of registration or the county clerk.

B. In such a proceeding, the court shall determine the cost of the investigation, and if it finds that the board of registration or the county clerk did not cancel certificates of registration in the manner provided by law, shall enter judgment against the county for the cost of the investigation.

**1-4-30. Cancellation of registration; voter's request.**

A. The county clerk shall cancel a certificate of registration upon the request of a voter only for the following reasons:

(1) when the voter changes his registered residence address to another county within the state; and

(2) when the voter moves to another state.

B. An application by a voter to cancel his registration shall be in writing and subscribed before a registration officer or a person authorized to administer oaths or on a form prescribed by the secretary of state.

C. Upon receipt of the written request for cancellation of registration, the county clerk shall cancel the voter's registration and shall forthwith mail to such person a notice of such cancellation and the date of cancellation.

D. The voter's certificate of registration shall be deemed canceled upon receipt by the county clerk of the written request therefor and when such request is for the reasons specified in Subsection A of this section.

**1-4-31. Cancellation of registration; county clerk.**

The county clerk shall cancel registration:

A. only upon written application of the voter for reasons set out by law;

B. only in compliance with the instructions of the board of registration pursuant to the provisions of Section 1-4-28 NMSA 1978;

C. only in compliance with an order of the district court; or

D. only in compliance with the provisions of Section 1-4-24 NMSA 1978.

**1-4-32. Cancellation of registration; duties of county clerk; retention of records.**

A. When a registration is canceled, the county clerk shall remove, endorse and file the original certificate of registration according to procedures prescribed by the secretary of state.

B. Canceled original certificates of registration along with any written application of the voter for cancellation or other pertinent orders or certificates shall be retained for six years and then may be destroyed; provided that such records may be destroyed prior to the expiration of the six-year period with the approval of the state records administrator and upon their being properly microfilmed and stored.

**1-4-33. Board of registration; county chairman's list.**

A. On or before the first Monday of February of each odd-numbered year the county chairman of each of the qualified political parties may furnish the board of county commissioners the names of four voters in the county, each of whom is able to read and write

legibly and is otherwise competent to perform the duties required of a member of a board of registration.

B. Each county chairman who submits the list provided for in Subsection A of this section shall indicate his preference for appointment to the board of registration by placing the number 1, 2, 3 or 4 opposite the name of each person on his list respectively.

#### **1-4-34. Board of registration; county commissioners; appointment.**

A. The board of county commissioners shall at its first regular scheduled meeting in February of each odd-numbered year appoint three voters who shall constitute the board of registration for the county.

B. Two of the three persons appointed to the board of registration shall be members of each of the major political parties respectively at the time of their appointment.

C. In addition, the board of county commissioners shall appoint two alternates who shall not belong to the same political party at the time of their appointment.

D. In making all appointments to the board of registration or as alternates to the board of registration from the lists of the county chairmen, the board of county commissioners shall give preference to the names in the order indicated by the numbers on the list.

#### **1-4-35. Board of registration; secretary.**

The county clerk or his authorized deputy shall be secretary to the board of registration and shall serve without additional compensation.

#### **1-4-36. Board of registration; compensation.**

Each member of the board of registration shall be paid per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for nonsalaried public officers. Such compensation shall be included as an item in the regular county budget.

#### **1-4-37. Board of registration; term; qualification.**

A. Members of the board of registration shall hold office until their successors are appointed and qualified.

B. Members of the board of registration shall qualify by taking and filing in the office of the county clerk the oath required of county officials.

#### **1-4-38. Board of registration; place of meetings.**

The board of registration shall meet at the office of the county clerk.

#### **1-4-39. Deputy registration officers; classifications; definitions.**

As used in Sections 1-4-1 through 1-4-47 NMSA 1978:

A. "municipal clerk deputy registration officer" means a clerk of a municipality, as defined in the Municipal Code [Chapter 3 NMSA 1978], in the county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

B. "precinct deputy registration officer" means a voter of a precinct in the county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

C. "representative district deputy registration officer" means a voter of a state representative district or portion thereof in a county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

D. "senatorial district deputy registration officer" means a voter of a state senatorial district or portion thereof in a county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

E. "minor political party deputy registration officer" means a voter whose certificate of registration shows him to be affiliated with a minor political party in a county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;



F. "special deputy registration officer" means a voter of a county who has been sponsored in writing by an organization and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

G. "organization" means a corporate employer employing one hundred or more persons, the state league of women voters, a civic service organization, the county or state headquarters of any qualified political party, any candidate for state, congressional, presidential or vice presidential office, a member of congress, a state labor council or a state management association;

H. "deputy registration officer" means a voter of a county appointed and qualified as a registration officer by the county clerk and includes the categories of deputy registration officers listed in Subsections A through F and I of this section; and

I. "motor vehicle deputy registration officer" means an employee of the motor vehicle division of the taxation and revenue department selected by the secretary of taxation and revenue and appointed by the county clerk to be a deputy registration officer at the motor vehicle division office or a field office of the division or an employee of an entity on contract with the secretary of taxation and revenue to provide motor vehicle registration and licensure service to the public who is selected by the secretary and appointed by the county clerk to be a deputy registration officer at a division contract field office.

**1-4-40. Deputy registration officers; purpose; submission of names to county clerk; appointment by county clerk; filling of vacancies.**

A. It is the purpose of Sections 1-4-40 through 1-4-47 NMSA 1978 to encourage and facilitate the registration of qualified electors, facilitate the change of registered voter information of voters and facilitate the voluntary cancellation of voter registration. Sections 1-4-40 through 1-4-47 NMSA 1978 shall be liberally construed to accomplish that purpose.

B. Names of voters to be considered for appointment under the provisions of this section shall be submitted in writing to the county clerk. The number of deputy registration officers to which the various persons and organizations are entitled and the number of names to be submitted are as follows:

(1) the county chairman of each major political party may at any time submit lists of names of voters affiliated with the party, as shown on the voters' certificates of registration, on the following basis:

(a) one voter for each precinct in the county to be appointed as a precinct deputy registration officer;

(b) two voters for each state representative district or portion thereof within the county to be appointed as representative district deputy registration officers; and

(c) four voters for each state senatorial district or portion thereof within the county to be appointed as senatorial district deputy registration officers;

(2) the county chairman of each minor political party may at any time submit lists of names of not more than fifteen voters affiliated with that minor political party, as shown on their certificates of registration, to be appointed as minor political party deputy registration officers;

(3) a member of congress may submit the names of not more than two voters for each office maintained by a member of congress in a county to be appointed as special deputy registration officers;

(4) any candidate for state, congressional, presidential or vice presidential office may submit the names of not more than two voters for each office maintained by the candidate in a county to be appointed as special deputy registration officers;

(5) the state chairman of any qualified political party may submit the names of not more than two voters for the state office maintained by that party to be appointed as special deputy registration officers;

(6) the county chairman of any qualified political party may submit the names of not more than two voters for the county office maintained by that political party to be appointed as special deputy registration officers;

(7) the state president of the league of women voters may submit the names of not more than fifteen voters in each county to be appointed as special deputy registration officers;

(8) an elected or appointed officer of a corporate employer may submit the names of not more than two voters of the county who are employees of that employer for one office maintained by the employer in a county to be appointed as special deputy registration officers;

(9) the president of a civic organization may submit the names of not more than two voters of a county who are members of that organization to be appointed as special deputy registration officers;

(10) the executive officer of a state central labor council may submit the names of not more than fifteen voters of a county who are members of a labor organization defined in Chapter 7 of Title 29 of the United States Code to be appointed as special deputy registration officers;

(11) the executive officer of a state management association or council may submit the names of not more than fifteen voters of a county who are members of that association or council to be appointed as special deputy registration officers;

(12) the local governing body of an Indian tribe or pueblo may submit the names of not more than five voters of the county in which the tribal lands or any portion thereof lie to be appointed as special deputy registration officers; and

(13) the secretary of taxation and revenue shall submit to the county clerk in each county where a motor vehicle division office, field office or contract field office is located the names of voters to be appointed as motor vehicle deputy registration officers.

C. A county clerk shall appoint the municipal clerk of each municipality in a county as a municipal clerk deputy registration officer. The appointment shall be valid during the person's tenure as municipal clerk unless canceled as provided in the Election Code [this chapter].

D. A county clerk shall appoint from the lists submitted in accordance with Paragraphs (1) and (2) of Subsection B of this section the authorized number of deputy registration officers. If the clerk fails to act to appoint within fourteen days after the submission of any such list, the persons on the list shall be deemed automatically appointed deputy registration officers.

E. Upon application of an organization therefor, a county clerk shall appoint from the lists submitted in accordance with Paragraphs (3) through (13) of Subsection B of this section the authorized number of special deputy registration officers.

F. If vacancies occur in the number of authorized and appointed deputy registration officers and special deputy registration officers, the county clerk shall notify the person or organization making the original submittal of the vacancy and shall request the person or organization to submit additional names to fill the vacancies. When the names are submitted, the county clerk shall appoint the authorized number to fill the vacancies from the submitted lists.

G. In addition to the special deputy registration officers already provided for in this section, a county clerk shall appoint any person qualified under the Election Code to serve as a special deputy registration officer upon a request in writing to the clerk from such person. A person applying for appointment under this subsection shall include in his written application sufficient information to enable the clerk to make a decision about the applicant's qualifications.

H. All registration officers appointed under this section shall serve without compensation for fulfilling their duties as registration officers.

I. All registration officers appointed under this section shall serve until December 31 of the first odd-numbered year following the date of their appointment or until their successors are appointed and qualified. A notice of expiration of term, signed by the county clerk, shall be immediately mailed to a deputy registration officer whose term has expired. The notice of expiration of term may contain a statement of the person's eligibility for reappointment and the necessary application forms for such reappointment.

J. Appointments of special deputy registration officers appointed for the offices of candidates for state, congressional, presidential and vice presidential offices shall be canceled on the day following the primary or general election when the person ceases to be a candidate. The county clerk shall notify each such special deputy registration officer of the fact of such cancellation.

#### **1-4-41. Deputy registration officers; duties and powers of appointed officer.**

A. When appointed and qualified by the taking of the oath required of county officials, a deputy registration officer shall assist in the preparation of:

(1) the certificate of registration for qualified electors and those persons meeting all the qualifications of an elector except that of age who shall be eighteen years of age on or before the day of the next election; and

(2) the application of a voter to change or cancel his registration.

B. The deputy registration officer may:

(1) assist in the preparation of absentee ballot applications; and

(2) witness the oath on absentee ballot applications and on absentee ballot outer envelopes.

C. The deputy registration officer is authorized to administer all oaths to such persons, but without cost to the qualified elector, the voter and those persons meeting all the qualifications of an elector except that of age and who shall be eighteen years of age on or before the day of the next election.

D. The deputy registration officer may perform his lawful duties in any precinct of the county in which appointed.

E. The original and the voter's copy of certificates of registration completed by the deputy registration officer shall be delivered by the deputy registration officer to the county clerk within ninety-six hours after application of a qualified elector but not later than 5:00 p.m. on the Friday immediately following the close of registration.

F. Failure or refusal of any deputy registration officer to deliver a completed certificate of registration in his possession to the office of the county clerk as required in Subsection E of this section is grounds for automatic termination of his appointment as deputy registration officer by the county clerk.

G. A motor vehicle deputy registration officer shall not perform his registration duties outside of the motor vehicle division office, the division field office or contract field office to which he is assigned, and shall have only the authority and duties specified in Paragraph (1) of Subsection A of this section and Subsections C and E of this section.

#### **1-4-42. Deputy registration officer; instructions; materials; training.**

A. The secretary of state shall provide written instructions on the proper performance of a deputy registration officer's duties, powers and responsibilities.

B. The county clerk shall issue the necessary registration materials and applications to each deputy registration officer. The deputy registration officer shall receipt for all materials issued to him.

C. The county clerk shall provide a training program as prescribed by the secretary of state to educate deputy registration officers in the proper performance of their duties.

#### **1-4-43. Deputy registration officer; cancellation of appointment.**

A. If any deputy registration officer becomes a candidate by filing for an office to be voted upon at any election, his appointment as deputy registration officer is canceled and his position is deemed vacant. The appointment as deputy registration officer of the spouse or child of such candidate is also canceled and the position is deemed vacant.

B. If any deputy registration officer fails or refuses to perform any duty imposed upon him by the Election Code [this chapter], his appointment as a deputy registration officer is canceled and his position is deemed vacant.

C. A notice of cancellation signed by the county clerk under the seal of the clerk shall be immediately mailed to a deputy registration officer whose appointment is canceled.

D. Upon the receipt of a notice of cancellation of appointment, the deputy registration officer shall immediately cease his duty and shall return all registration materials in his possession to the county clerk. Failure to comply with this subsection is a petty misdemeanor.

#### **1-4-44. Deputy registration officer; qualifications.**

A. A deputy registration officer must be able to read, write legibly and be otherwise competent to perform the duties prescribed by the Election Code [this chapter].

B. No person who is, or the spouse or child of a person who is, a candidate in any election shall be appointed as a deputy registration officer.

C. No person who is, or the spouse or child of a person who is, an elected official shall be appointed as a deputy registration officer.

D. Unless appointed as provided in the Election Code, a notary public is not a deputy registration officer and shall not perform the duties of a deputy registration officer.

E. A deputy registration officer shall be a voter who has been registered for at least thirty days in the county in which appointed.

#### **1-4-45. Deputy registration officers; publication of list; list made available.**

The county clerk may publish the names of the deputy registration officers and a copy of such list shall be made available to the county chairman of each qualified political party.

#### **1-4-46. Clerical assistance for county clerk.**

The board of county commissioners shall provide for necessary clerical assistance to the county clerk to perform work pertaining to registration. Such clerical assistance shall be paid for by order of the board of county commissioners. Such expenditure shall be included as an item in the regular county budget.

#### **1-4-47. Driver's license voter registration.**

A. Every person applying for a driver's license or to renew a driver's license shall, if otherwise qualified to register to vote, be permitted to register to vote with a motor vehicle deputy registration officer. The applicant shall complete an affidavit of voter registration.

B. The secretary of taxation and revenue shall select certain employees of the motor vehicle division of the taxation and revenue department or employees of entities on contract to provide field services to the motor vehicle division of the taxation and revenue department to be motor vehicle deputy registration officers.

C. Every motor vehicle division office, field office or contract field office of the division shall display within the offices clearly visible signs stating "voter registration available". Personnel in the offices shall make available a motor vehicle deputy registration officer to any person requesting to be registered as a voter.

D. No motor vehicle deputy registration officer may intentionally influence the prospective registrant in the selection of political party, or independent status, by word or act.

## **ARTICLE 5**

### **Automated Voter Records System**

Sec.  
1-5-1. Short title.  
1-5-2. Definitions.

Sec.  
1-5-3. Act is mandatory and supplemental to Election Code.

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| <p>Sec.<br/>         1-5-4. County register; establishment.<br/>         1-5-5. Entry of data into machine data processing system; county register; maintenance.<br/>         1-5-6. Voter lists; signature rosters; machine prepared.<br/>         1-5-7. Voter lists; signature rosters; contents.<br/>         1-5-8. Voter lists; signature rosters; number; distribution.<br/>         1-5-9. Signature rosters; certificate.<br/>         1-5-10. Voter lists; signature rosters; use during election.<br/>         1-5-11. Voter lists; signature rosters; disposition after the polls close.<br/>         1-5-12. Voter whose name is not on list or roster.<br/>         1-5-13. Signature roster; use by board of registration.<br/>         1-5-14. File maintenance lists.<br/>         1-5-15. Voter file; duplicate voter file; use.<br/>         1-5-16. Voter file; duplicate voter file; storage; protection.<br/>         1-5-17. Program records; instructions; status; protection.<br/>         1-5-18. Machine preparation; compatible duplicate means.<br/>         1-5-19. Registration; form.<br/>         1-5-20. Registration; filing.</p> | <p>Sec.<br/>         1-5-21. Data processor; custody and protection of voter file; delivery of voter file and program records.<br/>         1-5-22. Unlawful disposition of voter file; penalty.<br/>         1-5-23. Unlawful destruction or alteration of active data processing media, voter file, file maintenance list, program records, instructions and voter lists; penalty.<br/>         1-5-24. Requests for statistical data, voter data, mailing labels or special voter lists.<br/>         1-5-25. Unlawful use of statistical data; unlawful use of voter data, mailing labels or special voter lists; penalties.<br/>         1-5-26. Contractual agreement required with data processor.<br/>         1-5-27. Automated voter records system advisory committee; creation.<br/>         1-5-28. Automated voter records system advisory committee; duties.<br/>         1-5-29. Automated voter records system advisory committee; compensation; meetings.<br/>         1-5-30. Secretary of state; establishment of statewide computerized voter registration system.<br/>         1-5-31. Uniform procedures for counties.</p> |
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### 1-5-1. Short title.

Sections 1-5-1 through 1-5-29 NMSA 1978 may be cited as the "Automated Voter Records System Act".

### 1-5-2. Definitions.

As used in the Election Code [this chapter]:

- A. "county" means any county in this state;
- B. "county register" means an official file of original affidavits of registration of the county or any precinct thereof, arranged in alphabetical order by voter surname and, if for more than one precinct, without regard to precincts;
- C. "voter list" means any machine-prepared list of voters;
- D. "signature roster" means a copy of a voter list with space provided opposite each voter's name for the voter's signature or witnessed mark;
- E. "active data processing media" means punched cards, punched tape, magnetic cards, magnetic discs, magnetic tape or functionally similar devices containing data capable of being read and processed by suitable machinery for the eventual machine preparation of voter lists;
- F. "intermediate records" means records on active data processing media;
- G. "voter file" means all voter registration information required by law and by the secretary of state which has been extracted from the affidavit of registration of each voter in the county, stored on active data processing media and certified by the county clerk as the source of all information required by the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978];
- H. "program records" means the necessary detailed program and instructions for carrying out and controlling machine processing of information derived from the voter file. Program records shall exist in written English or coded form and they may exist on active data processing media;
- I. "mailing labels" means machine-prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;
- J. "special voter lists" means machine-prepared lists of selected voters arranged in the order in which requested and providing no more than the name, gender, address,

telephone number if its dissemination is not prohibited by the voter, political party affiliation and precinct of the voter;

K. "statistical data" means information derived from the voter file and includes no more than the precinct, gender, political party affiliation and year of birth;

L. "voter data" means selected information derived from the voter file and includes no more than the voter's name, gender, address, telephone number if its dissemination is not prohibited by the voter, political party affiliation and precinct;

M. "data processor" means a data processing facility and associated employees and agents thereof contracted to provide data processing services required by the Automated Voter Records System Act;

N. "file maintenance list" means any machine-prepared listing that reflects additions, deletions or changes to the voter file;

O. "precinct voter list" means a voter list arranged in alphabetical order of voter surname within and for each precinct;

P. "county voter list" means a voter list arranged in alphabetical order of voter surname within and for each county;

Q. "unofficial election canvassing file" means the compilation by the county clerk of the results of any election prior to official certification of the election results; and

R. "unofficial election canvassing system" means the automated data processing computer program used to create the unofficial election canvassing file.

### **1-5-3. Act is mandatory and supplemental to Election Code.**

A. Effective January 1, 1984, the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978] is mandatory and supplemental to the provisions of the Election Code [this chapter]. The provisions of that act shall be implemented by order of the board of county commissioners of the county in all precincts of a county.

B. The secretary of state shall maintain a current registration list of state voters based on county voter lists and shall prescribe any rules, forms and instructions necessary for the orderly transition to and the efficient implementation of procedures required by the Automated Voter Records System Act. The secretary of state shall maintain a log which shall be public containing all transactions regarding requests for current registration lists of state voters. The log shall indicate the requesting party, the date of the request, the date of fulfilling the request, charges made and any other information deemed advisable by the secretary of state. Requests for registration lists in printed or magnetic form shall be fulfilled within a period of ten working days.

C. All registration records required by the Election Code shall be maintained for each of the precincts in addition to those records required by the Automated Voter Records System Act, but the procedures of that act shall be used in lieu of others prescribed in the Election Code.

### **1-5-4. County register; establishment.**

The board of county commissioners shall direct the county clerk to establish a county register. The county register shall be filed in fire-resistant containers in the county courthouse. The files containing the county register shall be arranged to provide ready and convenient access and shall be kept locked except when being used by authorized persons in accordance with the Election Code [this chapter].

### **1-5-5. Entry of data into machine data processing system; county register; maintenance.**

A. The county clerk, upon receipt of a proper certificate of registration within the period prescribed for registration, shall immediately enter in the proper spaces thereon the precinct of the voter.

B. All information required is then entered into the voter file and evidenced by the file maintenance list. A new certificate of registration, or change of information to an existing

certificate of registration, shall not be inserted into the county register until the county clerk has had all pertinent information necessary for the preparation of voter files and voter lists transcribed from it to a record appropriate for use for machine preparation of such lists.

C. After entry of data into the machine data processing system, the county clerk shall insert each original certificate of registration in its proper order in the county register.

D. A certificate of registration shall not be removed from the county register pursuant to a cancellation of registration until the county clerk has entered into the voter file all deletions and changes and such deletions and changes are evidenced by the file maintenance list.

### **1-5-6. Voter lists; signature rosters; machine prepared.**

The county clerk shall provide for machine preparation of voter lists and signature rosters for any precincts. Such voter lists and signature rosters shall be used at any election for which registration of voters is required in lieu of bound original certificates of registration and poll books.

### **1-5-7. Voter lists; signature rosters; contents.**

A. The voter lists and signature rosters for any precinct shall contain for each voter, as shown in the county register:

- (1) his name;
- (2) gender;
- (3) place of residence;
- (4) social security number;
- (5) year of birth;
- (6) party affiliation, if any; and
- (7) precinct of residence.

B. In addition, the names on each voter list and signature roster shall be numbered consecutively beginning with the number "1".

C. On each page of each voter list and on each signature roster there shall be printed the page number and the date and name of the election for which they are to be used.

D. For those counties who, prior to June 18, 1993, utilized voter files that do not contain telephone numbers of registered voters, the provisions of Subsections J and L of Section 1-5-2 NMSA 1978 and Paragraph (4) of Subsection A of Section 1-5-7 NMSA 1978 regarding dissemination of voter telephone numbers shall apply only to individuals registering to vote after January 1, 1994.

### **1-5-8. Voter lists; signature rosters; number; distribution.**

A. One copy of the signature roster shall be prepared for each precinct. On the cover of such signature roster shall be printed the words, "Copy for the County Clerk". Upon its preparation and certification as to its accuracy and completeness, the county clerk shall deliver the copy of the signature roster to the precinct board in lieu of the poll book.

B. The county clerk shall prepare three copies of the voter list for each precinct. He shall deliver two of such copies to each precinct board in lieu of bound certificates of registration. One copy of the voter list shall be retained by the county clerk for verification purposes on election day and one copy for the secretary of state shall be marked to verify those voters on the list who voted.

C. Two copies of the county voter list, arranged in alphabetical order, shall be prepared for election day for verification purposes only.

### **1-5-9. Signature rosters; certificate.**

Any certificate required by the Election Code [this chapter] for pollbooks shall be similarly required for signature rosters in substantially the same form to the extent it serves the same purpose.

**1-5-10. Voter lists; signature rosters; use during election.**

A. Each precinct board using voter lists shall post securely at or near the entrance of the polling place one copy of the voter list for use of the voters prior to voting.

B. The precinct judge of the precinct board shall assign one judge of the board to be in charge of one copy of the voter list which shall be used to confirm the registration and voting of each person offering to vote.

C. The presiding judge of the precinct board shall assign one election clerk to be in charge of the signature roster.

D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the case of a primary election, that such voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, then the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list.

E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board.

F. No voter shall be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster.

G. After the poll is closed, the election clerk in charge of a signature roster shall draw a single horizontal line in ink through each signature space in the signature roster where no signature or mark appears.

**1-5-11. Voter lists; signature rosters; disposition after the polls close.**

A. After the polls are closed, the signature roster shall be properly certified by the precinct board and returned to the county clerk with the election returns destined for the county clerk. The voter list marked for the secretary of state shall be returned to the secretary of state with the election returns destined for the secretary of state.

B. The signed and certified signature rosters used in any election shall be considered a part of the election returns and treated accordingly. They shall be preserved and finally disposed of in the same manner as provided in the Election Code [this chapter] for poll books.

C. The punishment for willful destruction, defacement, unauthorized alteration or improper disposition of signature rosters used in an election shall be the same as for similar treatment of poll books.

**1-5-12. Voter whose name is not on list or roster.**

A. A voter whose name does not appear on the voter list and signature roster for the precinct in which he offers to vote shall be permitted to vote in such precinct provided the voter meets the requirements specified in the Election Code [this chapter] for voting on a voter's copy of a certificate of registration, or has in his possession a certificate of eligibility bearing the seal and signature of the county clerk stating that the voter's original certificate of registration is in the county register of that county wherein such precinct is located.

B. The election clerks in charge of the signature rosters shall add the voter's name and address in ink to the signature roster on the line immediately following the last entered voter's name, and the voter shall be allowed to cast his ballot provided he has first signed or marked both rosters.

C. The voting machine public counter number or the ballot number for the voter shall be entered on his certificate of eligibility or copy of his certificate of registration. The



certificate of eligibility or voter's copy of his certificate of registration shall be retained by the precinct board and returned to the county clerk with the election returns.

D. Such certificate of eligibility shall be valid for use only in the precinct and for the election and date specified thereon.

E. In a primary election, a voter whose party affiliation is not shown on the certificate of eligibility or copy of his certificate of registration shall not be permitted to receive or cast a ballot. No voter shall be permitted to vote for a candidate of a party different from the party designation shown on his certificate of eligibility or the copy of his certificate of registration.

F. No verbal authorization from the county clerk to allow a person to vote under this section shall be permitted.

### **1-5-13. Signature roster; use by board of registration.**

The board of registration shall use the signature roster in lieu of the voter's original certificate of registration to determine when voters have not voted.

### **1-5-14. File maintenance lists.**

A. At least once a month the county clerk shall have made from the voter file a machine-prepared file maintenance list of additions, deletions and changes, if any, to the county register.

B. The county clerk shall be furnished with two copies of the machine-prepared file maintenance lists.

C. One copy of the list shall be stored by the county clerk for at least twelve months.

D. The county clerk shall also be furnished with two copies of the list to give to the county chairman of each of the major political parties in the county. The copy of the chairman's list shall contain only the name, address, party affiliation and precinct of the voter and shall indicate whether each item is an addition, deletion or change.

E. Beginning the first Monday of February of an election year and every month thereafter, the county clerks shall furnish the secretary of state with a copy of the magnetic voter file, except that during the months of April and September of an election year, the county clerks shall furnish a copy of the magnetic voter file to the secretary of state at least one time each week. The final copy shall be furnished to the secretary of state by the county clerks within seven days of the close of registration.

### **1-5-15. Voter file; duplicate voter file; use.**

A. After preparation of the file maintenance list, the county clerk shall immediately have a duplicate voter file prepared. Thereafter, the duplicate voter file shall be maintained unused and intact under the supervision of the county clerk except as otherwise provided in the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978].

B. All derivative and incidental machine processing shall be done from the voter file.

C. In case of loss or damage of the voter file, a new voter file shall be made from the corresponding duplicate voter file. No other use shall be made of the duplicate voter file.

D. During the time of such duplication, the county clerk shall see that the duplicate voter file is safeguarded against loss, damage or unauthorized alteration.

### **1-5-16. Voter file; duplicate voter file; storage; protection.**

A. All voter files shall be stored to safeguard them from loss, damage or unauthorized alteration.

B. All duplicate voter files shall be stored in a fireproof safe or vault located at a place remote from, and which is considered a separate damage risk from, the place of storage or use of the voter files from which they were duplicated.

C. No voter file and its duplicate shall be stored or transported in any manner that will subject both to possible loss or damage from common or related perils.

**1-5-17. Program records; instructions; status; protection.**

A. Program records and instructions for their use in controlling the machine processing of information derived from the voter file shall be verified functionally, identified and approved by the secretary of state.

B. Program records and instructions for their use shall remain the property of the designated data processor.

C. Verified, identified and approved program records and instructions shall be safeguarded at all times against loss or damage. The designated data processor shall be in charge of these safeguards subject to approval by the secretary of state.

**1-5-18. Machine preparation; compatible duplicate means.**

A. The county clerk shall employ such means for machine preparation of voter lists and signature rosters as can be functionally duplicated elsewhere with reasonable cost and convenience.

B. At least one compatible duplicate means shall be provided for on a standby basis and it shall be capable of performing the preparation of voting lists and signature rosters with minimum delay in case the original means is unable to perform.

C. The county clerk shall procure and preserve sufficient duplicate program information and operating instructions with each duplicate program record so that in case of disaster the duplicate master record, the duplicate program record and the duplicate additional program information and operating instructions will be all that will be required for another compatible machine facility to prepare registered voter lists and signature rosters with minimum delay.

**1-5-19. Registration; form.**

A. The secretary of state shall prescribe the form and assure that the certificate of registration to be used in any county is compatible with the machine data processing systems.

B. The certificate of registration form shall require the following elements of information concerning the applicant for registration: name, gender, residence, municipality, post office, county, county of former registration, social security number, date of birth, place of birth, political party affiliation, zip code, telephone number at the applicant's option and statement of qualification for voting.

C. Provision shall be made for the usual signature or mark of the applicant, for the signature of the county clerk and for the dates of such signatures.

D. The certificate form may be multipurpose by providing for an indication of whether the certificate of registration is for a new registration, a change in the existing registration or a cancellation of an existing registration. Provision shall be made on any multipurpose form for entry of any existing registered information for which a change may be requested.

E. The certificate of registration forms shall be serially numbered and shall be furnished promptly and in adequate supply by the secretary of state upon application from the county clerk.

**1-5-20. Registration; filing.**

The secretary of state shall prescribe the method of filing and maintaining certificates of registration in any county implementing the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978].

**1-5-21. Data processor; custody and protection of voter file; delivery of voter file and program records.**

A. The designated data processor shall provide the county clerk or county with data processing services in the implementation and maintenance of the Automated Voter

Records System Act [1-5-1 to 1-5-29 NMSA 1978] and in carrying out such other services as are reasonably related to providing automated data processing of the voter records system.

B. The designated data processor shall be responsible for the identification of the voter file and program records and parts thereof and shall preserve and safeguard them from loss, damage, unauthorized alteration, unauthorized access thereto and unauthorized reproduction thereof and shall insure their continued use and accessibility while such file and records are in the data processor's custody.

C. No copies of the voter file or information or listings derived therefrom shall be furnished by the data processor to any person other than the county clerk or his designated agent.

D. The designated data processor shall provide the county clerk of the county with data processing services in the implementation and maintenance of the unofficial election canvassing system.

E. The unofficial election canvassing system shall be tested by the secretary of state at least thirty days prior to an election.

F. The secretary of state shall certify the unofficial election canvassing system of any county at least twenty days prior to an election.

### **1-5-22. Unlawful disposition of voter file; penalty.**

A. Unlawful disposition of voter file consists of the willful selling, loaning or otherwise surrendering the voter file, duplicates of such file or a part thereof by any of the following persons:

- (1) a data processor;
- (2) his agent or employee;
- (3) a state or county officer;
- (4) his deputy or assistant; or
- (5) his employee or agent

to anyone not authorized by the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978] to have possession of such file.

B. For purposes of this section, a file maintenance list shall be considered a voter file or a part thereof.

C. Any data processor, officer, deputy, assistant, agent or employee who commits unlawful disposition of voter file is guilty of a fourth degree felony.

### **1-5-23. Unlawful destruction or alteration of active data processing media, voter file, file maintenance list, program records, instructions and voter lists; penalty.**

A. Unlawful destruction or alteration of active data processing media, voter file, file maintenance list, program records, instructions or voter lists consists of the unauthorized destruction of, or the unauthorized alteration of, or the erasure of information from, or the rendering unusable for their lawfully intended purpose of such media, files, records, instructions and lists or parts thereof by any person.

B. Any person who commits unlawful destruction or alteration of active data processing media, voter file, file maintenance lists, program records, instructions or voter lists is guilty of a fourth degree felony.

### **1-5-24. Requests for statistical data, voter data, mailing labels or special voter lists.**

A. The county clerk shall authorize the data processor to furnish statistical data, voter data, mailing labels or special voter lists only upon written request to the county clerk and after compliance with the requirements of this section, provided, however, all requesters shall be treated equally by the data processor in regard to the charges and the furnishing of the materials.

B. Each requester of voter data, mailing labels or special voter lists shall sign an affidavit that the voter data, mailing labels and special voter lists shall be used for governmental or election and election campaign purposes only, and shall not be made available or used for commercial or unlawful purposes.

C. Each requester of statistical data shall sign an affidavit that such statistical data shall be used for information or research purposes only, and shall not be made available or used for commercial or unlawful purposes.

D. The secretary of state shall prescribe the form of the affidavit.

### **1-5-25. Unlawful use of statistical data; unlawful use of voter data, mailing labels or special voter lists; penalties.**

A. Unlawful use of statistical data shall consist of use of statistical data in such a manner as to derive information, the use or possession of which would be otherwise prohibited under the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978].

B. Unlawful use of voter data, mailing labels or special voter lists shall consist of the knowing and willful use of such information for purposes prohibited by the Automated Voter Records System Act.

C. Any person, organization or corporation or agent, officer, representative or employee thereof who commits unlawful use of statistical data, voter data, mailing labels or special voter lists shall be guilty of a fourth degree felony and upon conviction shall be fined ten dollars (\$10.00) for each and every line of voter information which was unlawfully used.

D. Each and every unlawful use of statistical data, voter data, mailing labels or special voter lists shall constitute a separate offense.

### **1-5-26. Contractual agreement required with data processor.**

A. Each county implementing the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978] shall enter into a written contractual agreement with the data processor notwithstanding the fact that the data processor may be a department of county, municipal or state government. Parties to the contractual agreement shall be the county, the county clerk and the data processor.

B. All contractual agreements shall be approved by the secretary of state, with the assistance of the automated voter records system advisory committee, before they are valid.

C. The secretary of state shall provide by regulation the contractual provisions necessary for approval.

### **1-5-27. Automated voter records system advisory committee; creation.**

A. There is created the "automated voter records system advisory committee" consisting of the director of the bureau of elections, who shall be chairman, and eight members appointed by the secretary of state, as follows:

- (1) two data processors;
- (2) four county clerks selected from a list submitted by the recognized state association of county clerks; and
- (3) two registered voters.

B. No more than four of the eight appointed members shall be registered from the same political party.

### **1-5-28. Automated voter records system advisory committee; duties.**

The automated voter records system advisory committee shall assist the secretary of state to:

- A. establish policy and uniform procedure for the implementation and operation of the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978];

- B. establish standardized computer inputs and outputs;
- C. functionally prove the adequacy of program records;
- D. create and administer tests for use in approval of data processors; and
- E. aid the counties in the orderly transition to an automated voter records system.

**1-5-29. Automated voter records system advisory committee; compensation; meetings.**

A. Members of the automated voter records system advisory committee, except the director of the bureau of elections, shall be paid per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for nonsalaried state officers.

B. No less than two meetings shall be called annually by the secretary of state.

C. At the first meeting of each odd-numbered year, the committee shall review the certificate of registration and the automated voter records system format and make recommendations for necessary revisions to the secretary of state.

**1-5-30. Secretary of state; establishment of statewide computerized voter registration system.**

A. The secretary of state shall develop, implement, establish and supervise a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for New Mexico.

B. The statewide computerized voter registration system shall:

- (1) provide for the establishment and maintenance of a central database for all voter registration information;
- (2) permit the offices of all county clerks to add, modify and delete information from the system to provide for accurate and up-to-date records;
- (3) permit the offices of the county clerks and the bureau of elections to have access to the central database for review and search capabilities;
- (4) provide security and protection for all information in the central database and monitor the central database to ensure the prevention of unauthorized entry;
- (5) provide procedures for entering data into the central database;
- (6) provide a centralized system for each county to identify the precinct to which a voter should be assigned for voting purposes; and
- (7) prescribe a procedure for phasing in or converting existing computerized records generated and maintained pursuant to the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978].

**1-5-31. Uniform procedures for counties.**

The secretary of state shall:

- A. assist county clerks by devising uniform procedures and forms that are compatible with the statewide computerized voter registration system;
- B. develop and provide to each county clerk the computer software necessary for the use and maintenance of the statewide computerized voter registration system; and
- C. adopt such rules and regulations as are necessary to establish and administer the statewide computerized voter registration system, to require deadlines and time limits for updating of voter files, and to provide for the update of voter files at each polling place for the next election.

## ARTICLE 6

### Absentee Voting

**Sec.**

- 1-6-1. Absent Voter Act; short title.
- 1-6-2. Definitions.
- 1-6-3. Right to absentee ballot; right to vote.
- 1-6-4. Absentee ballot application.
- 1-6-4.1. Federal write-in absentee ballot for overseas voters in general elections for federal offices.
- 1-6-5. Processing application; issuance of ballot; making and delivery of ballot in person.
- 1-6-5.1. Federal absentee ballot distribution.
- 1-6-5.2. Secretary of state; emergency authority.
- 1-6-6. Absentee ballot register.
- 1-6-7. Form of absentee ballot.
- 1-6-8. Absentee ballot envelopes.
- 1-6-9. Manner of voting.
- 1-6-9.1. Using the marksense ballot.
- 1-6-10. Receipt of absentee ballots by clerk.
- 1-6-11. Delivery of absentee ballots to absent voter precincts.
- 1-6-12, 1-6-13. Repealed.

**Sec.**

- 1-6-14. Handling absentee ballots by absent voter precinct boards.
- 1-6-15. Canvass; recount or recheck; disposition.
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- 1-6-17. Cancellation of absentee ballot at death.
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- 1-6-24. Absent voter precinct board appointment.
- 1-6-25. Watchers and challengers for absent voter precinct; appointment.

#### 1-6-1. Absent Voter Act; short title.

Sections 1-6-1 through 1-6-18 NMSA 1978 may be cited as the "Absent Voter Act".

#### 1-6-2. Definitions.

As used in the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978]:

A. "absent uniformed services voter" means:

- (1) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;
- (2) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(3) a spouse or dependent of a member referred to in Paragraphs (1) and (2) of this subsection who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

B. "election" means any statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections except as modified by the school election law;

C. "federal office" means the office of president, vice president or of a senator or representative in congress;

D. "federal qualified elector" means:

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

E. "marksense ballot" means a paper ballot card used on an optical-scan vote-tabulating machine;

F. "member of the merchant marine" means an individual, other than a member of a uniformed service, or an individual employed, enrolled or maintained on the Great Lakes or the inland waterways who:

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

(2) is enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as an officer or crew member of any such vessel;

G. "overseas voter" means:

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

(2) a person who resides outside the United States and, but for such residence, would be qualified to vote in the last place in which the person was domiciled before leaving the United States; and

H. "uniformed services" means the army, navy, air force, marine corps and coast guard and the commissioned corps of the national oceanic and atmospheric administration.

### **1-6-3. Right to absentee ballot; right to vote.**

A. Any voter may vote by absentee ballot for all candidates and on all questions appearing on the ballot at his precinct poll as if he were able to cast his ballot in person at the precinct poll.

B. Any federal qualified elector may register absentee and vote by an absentee ballot for any federal office.

### **1-6-4. Absentee ballot application.**

A. Application by a federal qualified elector for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of his residence.

B. Application by a voter for an absentee ballot shall be made only on a form prescribed, printed and furnished by the secretary of state to the county clerk of the county in which he resides. The form shall identify the applicant and contain information to establish his qualification for issuance of an absentee ballot under the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978].

C. Each application for an absentee ballot shall be subscribed by the applicant.

#### **1-6-4.1. Federal write-in absentee ballot for overseas voters in general elections for federal offices.**

A. Except as provided in Subsection C of this section, a federal write-in absentee ballot for federal offices in a general election shall be processed in the same manner as provided by law for other absentee ballots.

B. In completing the ballot, the overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for all candidates of that political party for federal office. Any abbreviation, misspelling or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot, if the intention of the overseas voter can be ascertained.

C. A federal write-in absentee ballot of an overseas voter shall not be counted if:

(1) the ballot is submitted from any location in the United States;

(2) the application of the overseas voter for a New Mexico absentee ballot is received by the county clerk less than thirty days before the election; or

(3) the New Mexico absentee ballots of the overseas voter is received by the county clerk later than seven p.m. on election day.

### **1-6-5. Processing application; issuance of ballot; making and delivery of ballot in person.**

A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee

ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant has no valid certificate of registration on file in the county and he is not a federal qualified elector or if the applicant states he is a federal qualified elector but his application indicates he is not a federal qualified elector, no absentee ballot shall be issued and the county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. The county clerk shall notify in writing each applicant of the fact of acceptance or rejection of his application and, if rejected, shall explain why the application was rejected.

D. If the applicant is determined to be a voter or a federal qualified elector, the county clerk shall mark the application "accepted" and deliver or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. No absent voter shall be permitted to change his party affiliation during those periods when change of party affiliation is prohibited by the Election Code [this chapter]. Upon delivery or mailing of an absentee ballot to any applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot.

E. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall deliver the absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state in the courthouse, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the applicant leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code other than is provided in this subsection. It shall be unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office. Absentee ballots may be marked in person during the regular hours and days of business at the county clerk's office from 8:00 a.m. on the fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter may be assisted by one person of the voter's own choice upon the execution with the county clerk of an affidavit for assistance stating therein that the voter meets at least one of the conditions for receiving such assistance as is set forth by the provisions of Section 1-12-12 NMSA 1978.

F. Absentee ballots shall be air mailed to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Thursday immediately prior to the date of the election.

G. No absentee ballot shall be delivered or mailed to any person other than the applicant for such ballot.

H. The county clerk shall accept and process with respect to a primary or general election for any federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less than thirty days before the election. The county clerk shall also accept and process federal write-in absentee ballots from overseas voters in general elections for federal offices in accordance with the provisions of Section 103 of the federal Uniformed and Overseas Citizens Absentee Voting Act.

### **1-6-5.1. Federal absentee ballot distribution.**

In the distribution of federal absentee ballots:

A. absent uniformed services voters, federal qualified electors, members of the merchant marine and members of the uniformed service shall receive the entire ballot; and



B. overseas voters shall receive only ballots for federal candidates.

### **1-6-5.2. Secretary of state; emergency authority.**

Because of the activation of the New Mexico national guard and reserve units and the call to active duty of many individual reservists for military duty overseas and in order to prevent such citizens from being technically disenfranchised, the secretary of state shall have emergency authority to prescribe by regulation:

A. procedures to accommodate the special requirements brought on by operation desert storm in providing absentee ballots;

B. provisions for a special write-in absentee ballot available at least ninety days prior to an election to cover candidates for federal and state offices; and

C. provisions to allow one absentee ballot request to cover the automatic mailing of absentee ballots for each primary, general or statewide election during the same election year.

### **1-6-6. Absentee ballot register.**

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

(1) the name and county address of each absentee ballot applicant;

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

(3) whether the application was accepted or rejected;

(4) the date of delivery or mailing of an 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 citizen voter; and

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

B. Within twenty-four hours after receipt of a voter's application for an absentee ballot, the county clerk shall mail either the ballot or notice of rejection.

C. The absentee ballot register is a public record open to public inspection in the county clerk's office during regular office hours.

D. The county clerk shall deliver to the absentee board on election day a complete list of all absentee ballot applicants with applicable information shown in the absentee ballot register for each applicant up to noon of the day preceding the election. The county clerk shall deliver a signature roster containing the same information as the lists to the absentee board.

E. The county clerk shall transmit to the 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 weeks immediately prior to the election. A final copy shall be transmitted on the Friday immediately following the election.

### **1-6-7. Form of absentee ballot.**

As soon as candidates and questions to be voted upon have been determined for each election, the county clerk shall procure a supply of suitable absentee ballots. The absentee ballot shall be numbered and shall be, as nearly as practicable, in the same form as prescribed by the secretary of state for emergency ballots. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as possible. Absentee ballots shall be printed at least forty days prior to the date of a primary election and forty-nine days prior to the date of a general election. Absentee ballots for any other election shall be printed at least thirty-five days prior to the date of the election.

### **1-6-8. Absentee ballot envelopes.**

A. The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of:

- (1) official inner envelopes for use in sealing the completed absentee ballot;
- (2) official mailing envelopes for use in returning the official inner envelope to the county clerk;
- (3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and
- (4) official transmittal envelopes for use by the county clerk in mailing absentee ballot materials.

B. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and federal qualified electors shall be printed in red in the form prescribed by the federal Uniformed and Overseas Citizens Absentee Voting Act. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and voters shall be printed in black in substantially similar form. All official inner envelopes shall be printed in black.

C. The reverse of each official mailing envelope shall contain a form to be executed by the person completing the absentee ballot. The form shall identify the person and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."

### **1-6-9. Manner of voting.**

A. Any person voting under provisions of the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978] shall secretly mark his ballot in the manner provided in the Election Code [this chapter] for marking emergency paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope which shall include an affirmation by the voter under penalty of perjury that the facts stated in the form are true.

B. Federal qualified electors shall either deliver or mail the official mailing envelope to the county clerk of their county of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the county clerk of the county of residence or former residence as the case may be. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence.

#### **1-6-9.1. Using the marksense ballot.**

Any person voting on the marksense ballot shall secretly mark the ballot by completing the arrow ( ) ( ) in pencil directly to the right of the candidate's name or the proposed question. The voter shall then place the marked ballot in the official inner envelope and securely seal the envelope and then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope.

### **1-6-10. Receipt of absentee ballots by clerk.**

A. The county clerk shall mark on each completed official mailing envelope the date and time of receipt in the clerk's office, record this information in the absentee ballot register and safely keep the official mailing envelope unopened in a locked ballot box until it is delivered on election day to the proper precinct board or until it is canceled and destroyed in accordance with law.

B. The county clerk shall accept completed official mailing envelopes until 7:00 p.m. on election day. Any completed official mailing envelope received after that time shall not be

delivered to a precinct board but shall be preserved by the county clerk until the time for election contests has expired. In the absence of a restraining order after expiration of the time for election contests, the county clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the county clerk shall count the numbers of late ballots from voters, federal voters, overseas citizen voters and federal qualified electors and report the number from each category to the secretary of state.

C. At 5:00 p.m. on the Monday immediately preceding the date of election, the county clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the county clerk's office all such unused ballots. The county clerk shall execute a certificate of such destruction which shall include the numbers on the ballots destroyed. A copy of the certificate of destruction shall be sent to the secretary of state.

### **1-6-11. Delivery of absentee ballots to absent voter precincts.**

On election day, the county clerk shall deliver the absentee ballots received by him prior to 7:00 p.m. on election day to the special deputy county clerks for delivery to the absent voter precinct boards. The absentee ballots for each absent voter precinct shall be separately wrapped, and the special deputy county clerk shall receipt for all ballots taken by him for the county clerk. Upon delivery of the absentee ballots to the absent voter precinct board, the special deputy county clerk shall remain in the polling place of the absent voter precinct until he has observed the opening of the official mailing envelope, the deposit of the ballot in the locked ballot box and the listing of the names on the official mailing envelope in the signature rosters. Upon such delivery of absentee ballots, the special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge and he shall return such receipt to the county clerk for filing. The receipts shall specify the number of envelopes received by the special deputy county clerk from the county clerk for each absent voter precinct and the number of envelopes received by the absent voter precinct board from the special deputy county clerk.

### **1-6-12, 1-6-13. Repealed.**

### **1-6-14. Handling absentee ballots by absent voter precinct boards.**

A. Before opening any official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

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

C. The accredited challengers may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector, overseas citizen voter or voter as provided in the Election Code [this chapter].

Upon the challenge of an absentee ballot, the election judges and the presiding judge shall follow the same procedure as when ballots are challenged when a person attempts to vote in person. If a challenge is upheld, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

D. If the official mailing envelopes have been properly subscribed and the voters have not been challenged:

(1) the election judges shall open the official mailing envelopes and deposit the ballots in their still sealed official inner envelopes in the locked ballot box; and

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

E. Prior to the closing of the polls, the election judges and the presiding judge may either remove the absentee ballots from the official inner envelopes and count and tally the results of absentee balloting or, under the personal supervision of the presiding judge and one election judge from each party, register the results of each absentee ballot on a voting machine the same as if the absent voter had been present and voted in person. It shall be unlawful for any person to disclose the results of such count and tally or such registration on a voting machine of absentee ballots prior to the closing of the polls.

F. Absentee ballots shall be counted and tallied or registered on a lever voting machine or an electronic voting machine as provided in the Election Code; provided that any county with a population in excess of one hundred thousand shall count and tally or register absentee ballots on an electronic voting machine.

G. Absent voter precinct polls shall close at the time prescribed by the Election Code for other polling places, and the results of the election shall be certified as prescribed by the secretary of state.

### **1-6-15. Canvass; recount or recheck; disposition.**

Where no voting machines are used to register absentee ballots, such ballots shall be canvassed, recounted and disposed of in the manner provided by the Election Code [this chapter] for the canvassing, recounting and disposition of emergency paper ballots. Where voting machines are used to register absentee ballots, such ballots shall be canvassed and rechecked in the manner provided by the Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register absentee ballots shall not be rechecked but the absentee ballots shall be recounted in the manner provided by the Election Code for the recounting of emergency paper ballots. As used in this section, "voting machines" means lever voting machines or electronic voting machines as provided in the Election Code.

### **1-6-16. Voting in person prohibited.**

A. No person who has been issued an absent voter ballot shall vote in person at his precinct poll.

B. At any time prior to 5:00 p.m. on the Monday immediately preceding the date of the election, any person whose absentee ballot application has been accepted and who was mailed an absentee ballot but who has not received the absentee ballot may execute, in the office of the county clerk of the county where he is registered to vote, a sworn affidavit stating that he did not receive or vote his absentee ballot. Upon receipt of the sworn affidavit, the county clerk shall issue the voter a replacement absentee ballot.

C. The secretary of state shall prescribe the form of the affidavit and the manner in which the county clerk shall void the first ballot mailed to the applicant.

### **1-6-16.1. Absentee ballot; conduct of election; when not timely received; emergency procedure for voting and counting.**

A. Any applicant for an absentee ballot who has not received the absentee ballot by mail as of the date of the election may present himself at his assigned precinct polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be permitted to vote on an emergency paper ballot or a marksense ballot.

B. The completed ballot shall be placed in an official inner envelope substantially as prescribed by Section 1-6-8 NMSA 1978 and sealed. The official inner envelope shall then

be placed in an official envelope substantially as prescribed for a transmittal envelope or mailing envelope in Section 1-6-8 NMSA 1978. This envelope shall contain a form on its back that identifies the voter by name and signature roster number and the printed statement to the effect that the voter made application for an absentee ballot but had not received it as of the date of the election and is permitted to vote by emergency paper ballot or a marksense ballot.

C. The presiding judge shall put all such ballots in a special envelope provided for that purpose by the county clerk, seal it and return it to the county clerk along with the machine tally sheets. The sealed envelope shall not be put in the locked ballot box.

D. Upon receipt of the envelope containing such ballots, the county clerk, no later than forty-eight hours after the close of the election, shall remove the transmittal envelopes and, without removing or opening the inner envelopes, determine that:

(1) such voter did in fact make application for an absentee ballot; and

(2) no such absentee ballot was received by the county clerk from the voter by 7:00 p.m. on election day.

E. Upon making such determination, the county clerk shall remove the inner envelope without opening it, destroy the transmittal envelope and place the inner envelope in a secure place to be transmitted to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.

F. The secretary of state shall prescribe and furnish the necessary envelopes for purposes of this section and shall adopt rules and regulations deemed necessary to preserve the secrecy of the ballot.

### **1-6-16.2. Additional emergency procedure for voting.**

A. After the close of the period for requesting absentee voter ballots by mail, any voter unable to go to the polls due to unforeseen illness or disability resulting in his confinement in a hospital, sanatorium, nursing home or residence who is unable to vote at his polling place, voting booth, or voting apparatus or machinery, may request in writing that an alternative ballot be made available to him. The written request shall be signed by the voter and a health care provider under penalty of perjury.

B. The alternative ballot shall be made available by the clerk of the county in which the voter resides to any authorized representative of the voter who through his representative has presented the written request to the office of the clerk.

C. Before releasing the alternative ballot, the county clerk shall compare the signature on the written request with the signature on the voter's affidavit of registration. If the county clerk determines that the signature on the written request is not the signature of the voter, he shall reject the request for an alternative ballot.

D. The voter shall mark the alternative ballot, place it in an identification envelope similar to that used for absentee ballots, fill out and sign the envelope and return the ballot to the office of the clerk of the county in which the voter resides no later than the time of closing of the polls on election day. The voter's name shall be compared to the roster of voters and the ballot shall only be counted if there is no signature for that voter on the roster of the precinct where that voter's name appears.

E. Alternative ballots shall be processed and counted in the same manner as absentee ballots.

F. The secretary of state shall prescribe the form of alternative ballots and shall distribute an appropriate number of alternative ballots to each county clerk.

### **1-6-17. Cancellation of absentee ballot at death.**

If any person voting under the provisions of the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978] dies after mailing or delivering his absentee ballot to the county clerk but before the absentee ballot is delivered to the deceased person's precinct board, his official outer envelope shall be marked "canceled by board of registration" and preserved by the county

clerk in the same manner as provided for other uncast ballots in Section 1-6-10B NMSA 1978.

**1-6-18. Repealed.**

**1-6-19. Short title.**

This act [1-6-19, 1-6-20, 1-6-22, 1-6-24, 1-6-25 NMSA 1978] may be cited as the "Absent Voter Precinct Act".

**1-6-20. Creation of absent voter precinct.**

A. The board of county commissioners shall adopt a resolution creating, for absent voting purposes only, an absent voter precinct for each state representative district in the county. The boundaries of such precinct shall coincide with the boundaries of the state representative district except for multicounty representative districts. In multicounty representative districts, the boundaries [boundaries] of the absent voter precinct in each county shall coincide with the boundaries of that portion of the representative district lying within the county.

B. Absent voter precincts shall be identified by the name of the county and the state representative district number. In the case of multicounty representative districts, the absent voter precinct in each county shall be distinguished by the name of the county.

**1-6-21. Consolidation of absent voter precincts.**

Absent voter precincts may be consolidated if the governing authority deems it desirable and so directs by resolution.

**1-6-22. Designation of absent voter precinct polling place.**

The board of county commissioners of each county shall designate a polling place in each absent voter precinct at the time such precinct is created or consolidated.

**1-6-23. Absent voter precinct polling place; hours on election day.**

The hours in which the absent voter precinct polling place shall be open for delivery and counting of ballots shall be set by the county clerk or statutorily appointed supervisor of the election.

**1-6-24. Absent voter precinct board appointment.**

The county clerk of each county shall appoint and compensate precinct board members and their respective alternates for each absent voter precinct in the manner specified in the Election Code [this chapter] for other precinct board members.

**1-6-25. Watchers and challengers for absent voter precinct; appointment.**

Watchers, challengers and alternate challengers may be appointed for each absent voter precinct in the manner specified for the appointment of watchers, challengers and alternate challengers in the Election Code [this chapter].

## ARTICLE 6A

### Absentee-Early Voting Act

Sec.		Sec.	
1-6A-1.	Absentee-early voting act; short title.	1-6A-6.	Voting device preparation.
1-6A-2.	Definitions.	1-6A-7.	Manner of voting.
1-6A-3.	Right to vote absentee-early.	1-6A-8.	Delivery of voting machine to precinct board.
1-6A-4.	Absentee-early application.	1-6A-9.	Security.
1-6A-5.	Processing application.		

#### 1-6A-1. Absentee-early voting act; short title.

Sections 1-6A-1 through 1-6A-9 NMSA 1978 may be cited as the "Absentee-Early Voting Act".

#### 1-6A-2. Definitions.

As used in the Absentee-Early Voter Act [1-6A-1 to 1-6A-9 NMSA 1978]:

A. "election" means any statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections except as modified by the School Election Law [1-22-1 to 1-22-19 NMSA 1978]; and

B. "marksense ballot" means a paper ballot card used on an optical-scan vote-tabulating machine.

#### 1-6A-3. Right to vote absentee-early.

A. Any voter may vote absentee-early for all candidates and on all questions appearing on the ballot at his precinct as if he were able to cast his ballot in person at the polling place.

B. Any federal qualified elector may register and vote absentee-early.

#### 1-6A-4. Absentee-early application.

Application by a voter for absentee-early voting shall be made on a form prescribed by the secretary of state to the county clerk of the county in which he resides. The form shall identify the applicant and contain such information as is necessary for voting under the Absentee-Early Voting Act [1-6A-1 to 1-6A-9 NMSA 1978].

#### 1-6A-5. Processing application.

A. The county clerk shall mark each completed absentee-early application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register.

B. If the applicant has no valid affidavit of registration on file in the county and he is not a federal qualified elector, he shall not be allowed to vote. The county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. If the applicant is determined to be a voter or a federal qualified elector, the county clerk shall mark the application "accepted" and deliver a marksense ballot or allow the voter to vote on the direct-recording electronic machine. Upon acceptance of the application, an appropriate designation shall be made on the absentee register.

D. Absentee-early voting may be done in person during the regular hours of business at the county clerk's office from 8:00 a.m. on the fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In voting absentee-early, the voter may be assisted by one person of the voter's own choice.

#### 1-6A-6. Voting device preparation.

A. Five days before the absentee-early voting period commences, the county clerk may begin to prepare, inspect and seal the voting devices in accordance with the specifications for electronic voting machines adopted by the secretary of state.

B. One day prior to the absentee-early voting period, the county clerk shall certify to the secretary of state and all county party chairmen, the type and serial number of each voting machine to be used.

### **1-6A-7. Manner of voting.**

- A. Any person voting an absentee-early paper ballot shall:
- (1) receive a ballot issued by the county clerk;
  - (2) take the ballot to a voting booth and, with the marking instrument provided, mark it by completing the arrow to the right of the candidate's name or question on which he desires to vote; and
  - (3) make all selections and feed the ballot into the machine to record his vote.
- B. Any person voting absentee-early on the direct-recording electronic voting machine shall:
- (1) enter the machine;
  - (2) press the square to the right of the candidate's name or question on which he desires to vote; and
  - (3) make all selections and press the vote button in the lower right hand corner of the voting machine to record his vote.

### **1-6A-8. Delivery of voting machine to precinct board.**

At 7:00 a.m. on election day the county clerk shall deliver the absentee-early voting machine to the absentee voter precinct board. A special deputy county clerk shall receipt for the voting machine. Upon delivery of the absentee-early voting machine, the special deputy shall obtain a receipt executed by the presiding judge and each election judge specifying the serial number of the machine and the number of votes recorded on the machine, and he shall return such receipt to the county clerk for filing. Thereafter, the absentee voter precinct board shall proceed as specified in Sections 1-6-1 through 1-6-25 NMSA 1978.

### **1-6A-9. Security.**

The secretary of state shall adopt rules and regulations for protecting the integrity, security and secrecy of the absentee-early ballot.

## **ARTICLE 7**

### **Political Parties**

<p>Sec. 1-7-1. Political parties; conditions for use of ballot. 1-7-2. Qualification; removal; requalification. 1-7-3. Rules and regulations; contents.</p>	<p>Sec. 1-7-4. Rules and regulations; filing; fee. 1-7-5. Rules and regulations; amendment. 1-7-6. Party name and emblem.</p>
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### **1-7-1. Political parties; conditions for use of ballot.**

All nominations of candidates for public office in New Mexico made by political parties shall be made pursuant to the Election Code [this chapter]. No political party shall be permitted to have the names of its candidates printed on any election ballot unless and until it has qualified as provided in the Election Code.

### **1-7-2. Qualification; removal; requalification.**

A. To qualify as a political party in New Mexico, each political party through its governing body shall adopt rules and regulations providing for the organization and government of that party and shall file the rules and regulations with the secretary of state. Such rules and regulations shall be adopted uniformly throughout the state by the county organizations of that party and shall be filed with the county clerks. At the same time the



rules and regulations are filed with the secretary of state, the governing body of the political party shall also file with the secretary of state a petition containing the hand printed names, signatures, addresses of residence and counties of residence of at least one-half of one percent of the total votes cast for the office of governor or president at the preceding general election who declare by their signatures on such petition that they are voters of New Mexico and that they desire the party to be a qualified political party in New Mexico.

B. Each county political party organization may adopt such supplementary rules and regulations insofar as they do not conflict with the uniform state rules and regulations or do not abridge the lawful political rights of any person. Such supplementary rules shall be filed with the county clerk and the secretary of state in the same manner as other rules are filed.

C. All political parties that appeared on the 1988 New Mexico general election ballot shall continue to be qualified political parties unless disqualified in accordance with this subsection. Beginning with the general election in 1990, a qualified political party shall cease to be qualified for the purposes of the Election Code [this chapter] if two successive general elections are held without at least one of the party's candidates on the ballot or if the total votes cast for the party's candidates for governor or president of the United States in a general election do not equal at least one-half of one percent of the total votes cast for the office of governor or president of the United States, as applicable. After giving notice by registered mail to the state chairman of the party at his last known address, the secretary of state shall remove all material dealing with the political party from his file of parties qualified in New Mexico.

D. The secretary of state shall then notify all county clerks of the removal and nonqualification of the political party. The county clerk is then authorized to remove such rules and regulations from the county files. The county clerk shall immediately notify by mail all voters registered as members of such party of the removal and nonqualification of the party.

E. To requalify, the party must again comply with the provisions of the Election Code dealing with filing requirements for political parties.

### **1-7-3. Rules and regulations; contents.**

The secretary of state and the county clerk shall not accept the rules and regulations of any political party for filing unless such rules and regulations provide:

- A. a method for nominating candidates for the general election;
- B. a method for calling and conducting conventions;
- C. a method for selection of delegates to conventions;
- D. a method for selection of state central committee members, a state chairman and other party officers, and all other members of governing bodies of the party;
- E. a method for filling vacancies in party offices, committees and other governing bodies;
- F. the powers and duties of party officers, committees and other governing bodies;
- G. for the structure of the state and county party organizations;
- H. that meetings to elect any party officers, including delegates, shall be held at a public place during the week specified by the state party chairman;
- I. that notice of such meetings shall be published by the officers of the county party organization in a newspaper of general circulation at least fourteen days prior to the meeting and the notice shall specify the time, date and place for holding the meeting; and
- J. a method for amending the party rules and regulations.

### **1-7-4. Rules and regulations; filing; fee.**

A. Each political party shall file its rules and regulations within thirty days after its organization and no later than the second Tuesday in July before any election in which it is authorized to participate.

B. Political parties filing rules and regulations with the county clerk shall pay the standard filing fee.

### 1-7-5. Rules and regulations; amendment.

Political party rules and regulations filed as required by the Election Code [this chapter] are subject to amendment only in the manner provided for in such rules and regulations. No amendments shall be made less than one hundred twenty days prior to any general election, nor shall any amendment be effective until thirty days after being filed. Amendments shall be filed in the same manner as original party rules and regulations are filed.

### 1-7-6. Party name and emblem.

A. The chairman of the state central committee of a qualified political party shall file with the secretary of state a certificate setting forth the name selected for the political party and showing a representation of the emblem by which the party is to be represented.

B. The certified party name and emblem shall thereafter be used to designate the ticket of that political party on all ballots.

C. The secretary of state shall certify the party name and emblem of the party to each county clerk.

D. The state convention of a political party may change the party name and party emblem by adopting in their stead another name and emblem. The new party name and party emblem shall be filed in the same manner as was the original party name and party emblem, provided the certificate shall be signed by the presiding officer and the secretary of the state convention adopting the new party name and party emblem.

E. No political party shall adopt any party name or party emblem which is the same as, similar to, or which conceivably can be confused with or mistaken for the party name or party emblem of any other qualified political party in New Mexico.

## ARTICLE 8

### Nominations and Primary Elections

Sec.	Sec.
1-8-1. Nominating procedures; major political parties; minor political parties.	1-8-16. Primary Election Law; proclamation; amendment.
1-8-2. Nomination by minor political party; convention-designated nominees.	1-8-17. Primary Election Law; offices affected; questions prohibited.
1-8-3. Nomination by minor political party; other methods.	1-8-18. Primary Election Law; who may become a candidate.
1-8-4. Secretary of state; certification of nominees; minor political party.	1-8-19. Candidacy in primary of one party bars general election ballot designation of different party or as an unaffiliated candidate.
1-8-5. Canvassing boards; certification of nominees of parties participating in primary.	1-8-20. Primary Election Law; candidacy for more than one office.
1-8-6. Vacancy on primary ballot.	1-8-21. Primary Election Law; method of placing names on primary ballot. (Effective until November 15, 1993.)
1-8-7. Vacancy on general election ballot; death of candidate or resignation or death of office holder before primary.	1-8-21. Primary election law; method of placing names on primary ballot. (Effective November 15, 1993.)
1-8-8. Vacancy on general election ballot; occurring after primary.	1-8-21.1. Designation of candidates by convention. (Effective November 15, 1993.)
1-8-9. General election; withdrawal of candidates.	1-8-22 to 1-8-24. Repealed.
1-8-10. Primary Election Law; short title.	1-8-25. Primary Election Law; declaration of candidacy; proper filing officer.
1-8-11. Primary Election Law; time of holding primary.	1-8-26. Primary election law; declaration of candidacy; time of filing.
1-8-12. Primary Election Law; proclamation.	1-8-27. Primary Election Law; declaration of candidacy; manner of filing. (Effective until November 15, 1993.)
1-8-13. Primary Election Law; contents of proclamation. (Effective until November 15, 1993.)	1-8-27. Primary election law; declaration of candi-
1-8-13. Primary election law; contents of proclamation. (Effective November 15, 1993.)	
1-8-14. Primary Election Law; proclamation; duties of secretary of state.	
1-8-15. Primary Election Law; proclamation; duties of county clerk.	



districts, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county; and

(2) the chairman and secretary of the county political convention shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or that is composed of only one county.

B. The names certified to the secretary of state shall be filed on the second Tuesday in July in the year of the general election and shall be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than one-half of one percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be:

- (1) in the state for statewide offices; and
- (2) in the district for offices other than statewide offices.

The petition shall contain a statement that the voters signing the petition are residents of the state, district, county or area to be represented by the office for which the person being nominated is a candidate.

C. The names certified to the county clerk shall be filed on the second Tuesday in July in the year of the general election and shall be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than one-half of one percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be:

- (1) in the county for countywide offices; and
- (2) in the district for offices other than countywide offices.

The petition shall contain a statement that the voters signing the petition are residents of the state, district, county or area to be represented by the office for which the person being nominated is a candidate.

D. Such persons certified as nominees shall be members of that party, as shown by their certificates of registration, at the time their names are certified.

E. No voter shall sign any petition prescribed by this section for more persons than the number of minor party candidates necessary to fill such office at the next ensuing general election.

### **1-8-3. Nomination by minor political party; other methods.**

If the rules and regulations of a minor political party require nomination by a method other than a political convention:

A. the state chairman and the governing board of the state party shall certify to the secretary of state the names of their party's nominees for United States senator, United States representative, all elective state offices, legislative offices elected from multicounty districts, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county;

B. the county chairman and the governing board of the county party shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or which is composed of only one county; and

C. the names of such nominees shall be filed in the same time and manner prescribed by the Election Code [this chapter] for convention-designated nominees of minor political parties, and each list of names certified shall be accompanied by the petition containing a list of signatures and addresses of voters as prescribed for convention-designated nominees.

### **1-8-4. Secretary of state; certification of nominees; minor political party.**

Upon receipt of certificates of nomination of any minor political party, the secretary of state shall:

A. determine whether the method of nomination used by the certifying political party complies with the current rules and regulations of that party on file in his office;

B. determine whether all the requirements of Sections 1-8-1, 1-8-2 and 1-8-3 NMSA 1978 have been complied with and that the petition and list of signatures and addresses of voters are valid and comply with law; and

C. if such determinations are answered in the affirmative, certify the names of the party's nominees as candidates for the office for which each is nominated to each county clerk in the state.

### **1-8-5. Canvassing boards; certification of nominees of parties participating in primary.**

Immediately upon completion of their respective canvasses, the state and county canvassing boards shall certify to the county clerk the name of each person who has been nominated by each participating political party in the primary election, and the offices for which they have been nominated. The county clerk shall send a certified list of all persons so nominated to the secretary of state.

### **1-8-6. Vacancy on primary ballot.**

Regardless of the cause, no vacancy on the primary election ballot occurring after the period for filing a declaration of candidacy or the date of filing with the secretary of state a certificate of designation by state convention, whichever the case may be, shall be filled.

### **1-8-7. Vacancy on general election ballot; death of candidate or resignation or death of office holder before primary.**

A. Vacancies on the general election ballot may be filled as provided in Subsection B of this section if after a primary election there is no nominee of a major political party for a public office to be filled in the general election and if the vacancy was caused by:

(1) the death of a candidate after filing of the declaration of candidacy or after certification as a convention-designated nominee and before the primary election; or

(2) the resignation or death of a person holding a public office after the date for filing a declaration of candidacy or after the date required for certification as a convention-designated nominee, and before the primary election, when such office was not included in the governor's proclamation and is required by law to be filled at the next succeeding general election after the vacancy is created.

B. The vacancy may be filled subsequent to the primary election by the central committee of the state or county political party, as the case may be, as provided by Subsection A of Section 1-8-8 NMSA 1978. The name of the person to fill the vacancy on the general election ballot shall be filed with the proper filing officer within fifteen days after the primary election and when so filed, it shall be placed on the general election ballot as the party's nominee for such office.

### **1-8-8. Vacancy on general election ballot; occurring after primary.**

A. If after a primary election a vacancy occurs, for any cause, in the list of nominees of a qualified political party for any public office to be filled in the general election, or a vacancy occurs because of the resignation or death of a person holding a public office not included in the governor's proclamation and which office is required by law to be filled at the next succeeding general election, the vacancy on the general election ballot may be filled by:

(1) the central committee of the state political party filing the name of its nominee for the office with the proper filing officer when such office is a federal, state, district or multi-county legislative district office; and

(2) the central committee of the county political party filing the name of its nominee for the office with the proper filing officer when such office is a magistrate, county or a

legislative district office where the district is entirely within the boundaries of a single county.

B. Appointments to fill vacancies in the list of a party's nominees shall be made and filed at least fifty-six days prior to the general election. If the vacancy is caused by the death of a nominee, the central committee may in like manner file the name of its nominee to fill the vacancy up until five days prior to the general election.

C. When the name of a nominee is filed as provided in this section, such name shall be placed on the general election ballot as the party's candidate for that office. In the case of a nominee appointed after the general election ballots are printed, such name shall be placed on the ballot by pasting the printed name of the nominee over the name of the candidate whose vacancy he fills on the general election ballot.

### **1-8-9. General election; withdrawal of candidates.**

No candidate shall withdraw from a general election unless he withdraws at least sixty-three days prior to that election.

### **1-8-10. Primary Election Law; short title.**

Sections 1-8-10 through 1-8-52 NMSA 1978 may be cited as the "Primary Election Law".

### **1-8-11. Primary Election Law; time of holding primary.**

A primary election shall be held in each county in this state on the first Tuesday in June of each even-numbered year.

### **1-8-12. Primary Election Law; proclamation.**

The governor shall issue a public proclamation calling a primary election to be held in each county and precinct of the state on the date prescribed by the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978]. The proclamation shall be filed with the secretary of state on the last Monday in January of each even-numbered year.

### **1-8-13. Primary Election Law; contents of proclamation. (Effective until November 15, 1993.)**

The proclamation shall contain:

- A. the names of the major political parties participating in the primary election;
- B. the offices for which each political party shall nominate candidates; provided that if any law is enacted by the legislature in the year in which the primary election is held and such law does not take effect until after the date of the proclamation but prior to the date of the primary election, the proclamation shall conform to the intent of such law with respect to the offices for which each political party shall nominate candidates;
- C. the date on which declarations of candidacy and nominating petitions for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, state board of education or magistrate shall be filed and the places where they shall be filed in order to have the candidates' names printed on the official ballot of their party at the primary election;
- D. the date on and place at which declarations of candidacy must be filed for any other office and filing fees paid or, in lieu thereof, a pauper's statement of inability to pay;
- E. the date on and place at which declarations of intent to be a write-in candidate for a statewide office or office of United States representative shall be filed; and
- F. the date on and place at which declarations of intent to be a write-in candidate for any other office shall be filed.

**1-8-13. Primary election law; contents of proclamation. (Effective November 15, 1993.)**

*The proclamation shall contain:*

- A. the names of the major political parties participating in the primary election;*
  - B. the offices for which each political party shall nominate candidates; provided that if any law is enacted by the legislature in the year in which the primary election is held and such law does not take effect until after the date of the proclamation but prior to the date of the primary election, the proclamation shall conform to the intent of such law with respect to the offices for which each political party shall nominate candidates;*
  - C. the date on which declarations of candidacy and nominating petitions for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, state board of education or magistrate shall be filed and the places where they shall be filed in order to have the candidates' names printed on the official ballot of their party at the primary election;*
  - D. the date on and place at which declarations of candidacy shall be filed for any other office and filing fees paid or, in lieu thereof, a pauper's statement of inability to pay;*
  - E. the date on and place at which declarations of intent to be a write-in candidate for a statewide office or office of United States representative shall be filed;*
  - F. the date on and place at which declarations of intent to be a write-in candidate for any other office shall be filed;*
  - G. the final date on and place at which candidates for the office of United States representative and for any statewide office seeking pre-primary convention designation by the major parties shall file petitions and declarations of candidacy;*
  - H. the final date on which the major political parties shall hold state pre-primary conventions for the designation of candidates; and*
  - I. the final date on and place at which certificates of designation of primary election candidates shall be filed by political parties with the secretary of state.*
- As used in the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], "statewide office" means any office voted on by all the voters of the state.*

**1-8-14. Primary Election Law; proclamation; duties of secretary of state.**

Upon the proclamation being filed, the secretary of state shall immediately:

- A. publish the proclamation for five consecutive days in at least four daily newspapers of general circulation in the state; and
- B. send by certified mail an authenticated copy of the proclamation to each county clerk.

**1-8-15. Primary Election Law; proclamation; duties of county clerk.**

Upon receipt of the authenticated copy of the proclamation, the county clerk shall immediately specify the offices for which each major political party may nominate candidates and have the itemized proclamation published once each week for two consecutive weeks. If there is no newspaper of general circulation in the county, the proclamation shall be printed and posted in six public places in the county. Such publication and posting shall be in Spanish and in English.

**1-8-16. Primary Election Law; proclamation; amendment.**

The governor may amend the proclamation between the time of its issuance and the time set for filing declarations of candidacy or statements of candidacy for convention designation, whichever the case may be, to include an office becoming vacant by removal, resignation or death, or to provide for any corrections or omissions.

**1-8-17. Primary Election Law; offices affected; questions prohibited.**

A. The Primary Election Law [1-8-10 to 1-8-52 NMSA 1978] applies to major political party nominations for all offices that are to be filled at the general election with the exception of presidential electors.

B. The Primary Election Law does not apply to the election of persons to fill municipal, school district or special district offices, nor does it apply to special elections to fill vacancies in any office filled at the general election. No bond issue or other question shall be voted upon at any primary election.

**1-8-18. Primary Election Law; who may become a candidate.**

A. No person shall become a candidate for nomination by a political party or have his name printed on the primary election ballot unless his record of voter registration shows:

(1) his affiliation with that political party on the date of the governor's proclamation for the primary election; and

(2) his residence in the district of the office for which he is a candidate on the date of the governor's proclamation for the primary election or in the case of a person seeking the office of United States senator or United States representative, his residence within New Mexico on the date of the governor's proclamation for the primary election.

B. Any voter may challenge the candidacy of any person seeking nomination by a political party for the reason that he does not meet the requirements of Subsection A of this section by filing a petition in the district court within ten days after the last day for filing a declaration of candidacy or a statement of candidacy for convention designation. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith.

**1-8-19. Candidacy in primary of one party bars general election ballot designation of different party or as an unaffiliated candidate.**

If a person has been a candidate for the nomination of a major political party in the primary election, he shall not have his name printed on the ballot at the next succeeding general election except under the party name of the party designated on his declaration of candidacy filed for such primary election.

**1-8-20. Primary Election Law; candidacy for more than one office.**

No person shall be a candidate in the primary election for more than one office, except that any person may be a candidate for both the expiring term and the next succeeding term for an office when both terms are to be voted upon at the next succeeding general election.

**1-8-21. Primary Election Law; method of placing names on primary ballot. (Effective until November 15, 1993.)**

A. All candidates for nomination to be made at any primary election for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, state board of education or magistrate shall have their names placed on the primary election ballot by filing a declaration of candidacy and a nominating petition as prescribed in Section 1-8-30 NMSA 1978.

B. All other candidates for nominations to be made at any primary election shall have their names placed on the primary election ballot by filing a declaration of candidacy and paying the filing fee prescribed by law or by filing a declaration of candidacy and filing a pauper's statement of inability to pay the prescribed filing fee.



**1-8-21. Primary election law; method of placing names on primary ballot. (Effective November 15, 1993.)**

A. All candidates for nomination to be made at any primary election for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, state board of education or magistrate shall have their names placed on the primary election ballot by filing a declaration of candidacy and a nominating petition as prescribed in Section 1-8-30 NMSA 1978.

B. All candidates designated by a major political party at a state pre-primary convention shall have their names placed on the primary election ballot pursuant to a certificate of designation submitted to the secretary of state by the major political party.

C. All other candidates for nominations to be made at any primary election shall have their names placed on the primary election ballot by filing a declaration of candidacy and paying the filing fee prescribed by law or by filing a declaration of candidacy and filing a pauper's statement of inability to pay the prescribed filing fee.

**1-8-21.1. Designation of candidates by convention. (Effective November 15, 1993.)**

A. State conventions of major political parties may designate candidates for nomination to statewide office or the office of United States representative.

B. No state convention for designating candidates shall be held later than the third Sunday in March preceding the primary election, and delegates to the convention shall be elected according to state party rules filed in the office of the secretary of state.

C. The state convention shall take only one ballot upon candidates for each office to be filled. Every candidate receiving twenty percent or more of the votes of the duly elected delegates to the convention for the office to be voted upon at the ensuing primary election shall be certified to the secretary of state as a convention-designated nominee for that office by the political party. Certification shall take place no later than 5:00 p.m. on the first Tuesday succeeding the state convention.

D. The certificate of designation submitted to the secretary of state shall state the name of the office for which each person is a candidate, his name and address and the name of the political party that the candidate represents, and shall certify that the candidate has been a member of that political party for the period of time required by the Election Code [this chapter].

**Effective dates.** — Laws 1993, ch. 55, § 14 makes the act effective on November 15, 1993.

**1-8-22 to 1-8-24. Repealed.**

**1-8-25. Primary Election Law; declaration of candidacy; proper filing officer.**

The proper filing officer for filing declarations of candidacy is:

A. the secretary of state for the offices of:

- (1) United States senator;
- (2) United States representative;
- (3) all state elective offices;
- (4) legislative offices elected from multicounty districts;
- (5) all elective judicial offices in the judicial department, except magistrates;

and

- (6) all offices representing a district composed of more than one county; and

B. the county clerk for the offices of:

- (1) all elective county offices;
- (2) magistrates; and

(3) legislative offices elected from a district located wholly within one county or which is composed of only one county.

**1-8-26. Primary election law; declaration of candidacy; time of filing.**

A. Declarations of candidacy for statewide office or office of the United States representative shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the first Tuesday in March of each even-numbered year and ending at 5:00 p.m. on the same day.

B. Declarations of candidacy for any other office shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the first Tuesday of April of each even-numbered year and ending at 5:00 p.m. on that same day.

C. No candidate's name shall be placed on the ballot until the candidate has been notified in writing by the proper filing officer that the declaration of candidacy, the petition and the certificate of registration of the candidate on file are in proper order and that the candidate, based on such documents, is qualified to have his name placed on the ballot. The proper filing officer shall mail such notice no later than 5:00 p.m. on the Tuesday following the filing date.

**1-8-27. Primary Election Law; declaration of candidacy; manner of filing. (Effective until November 15, 1993.)**

Each declaration of candidacy shall be delivered for filing in person by the candidate therein named or by a person acting, by virtue of written authorization, solely on the candidate's behalf. The proper filing officer shall not accept for filing more than one declaration of candidacy from any one individual.

***1-8-27. Primary election law; declaration of candidacy; manner of filing. (Effective November 15, 1993.)***

*Each declaration of candidacy, by nominating petition or by pre-primary convention designation, shall be delivered for filing in person by the candidate therein named or by a person acting, by virtue of written authorization, solely on the candidate's behalf. The proper filing officer shall not accept for filing more than one declaration of candidacy from any one individual except that candidates who seek but fail to receive pre-primary convention designation shall file a declaration of candidacy by nomination, according to provisions of the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], to have their names placed on the primary election ballot.*

**1-8-28. Repealed.**

**1-8-29. Primary election law; declaration of candidacy; form.**

In making a declaration of candidacy, the candidate shall submit substantially the following form:

**"DECLARATION OF CANDIDACY**

I, ....., (candidate's name on certificate of registration) being first duly sworn, say that I reside at ....., as shown by my certificate of registration as a voter of Precinct No. .... of the county of ....., State of New Mexico;

I am a member of the ..... party as shown by my certificate of registration and I have not changed such party affiliation subsequent to the governor's proclamation calling the primary in which I seek to be a candidate;

I desire to become a candidate for the office of ..... at the primary election to be held on the date set by law for this year, and if the office be that of a member of the

legislature or that of a member of the state board of education, that I actually reside at the address designated on my certificate of voter registration;

I will be eligible and legally qualified to hold this office at the beginning of its term;

If a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Primary Election Law; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

.....  
(Declarant)

.....  
(Mailing Address)

.....  
(Residence Address)

Subscribed and sworn to before me this ..... day of ....., 19 .....

.....  
(Notary Public)

My commission expires:  
.....”

**1-8-30. Primary Election Law; declaration of candidacy; nominating petition; filing and form. (Effective until November 15, 1993.)**

A. As used in the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], “nominating petition” means the authorized form used for obtaining the required number of signatures of voters which is signed on behalf of the person wishing to become a candidate for a political office in the primary election requiring a nominating petition.

B. In making a declaration of candidacy or statement of candidacy for convention designation, the candidate at the same time shall file a nominating petition which shall be on forms prescribed by law.

C. The nominating petition shall be on paper approximately eight and one-half inches wide and fourteen inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

**“NOMINATING PETITION**

I, the undersigned, a registered voter of the county of ....., New Mexico, and a member of the ..... party, hereby nominate ....., who resides at ..... in the county of ....., New Mexico, for the party nomination for the office of ....., to be voted for at the primary election to be held on the first Tuesday of June, 19....., and I declare that I am a resident of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1. ....  
(usual signature) (name printed as registered) (address as registered) (city or rt. no.)

2. ....  
(usual signature) (name printed as registered) (address as registered) (city or rt. no.)”

D. In October of odd-numbered years, the secretary of state shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. The signature of the voter shall not be counted unless the entire line indicates the voter's usual signature, his name printed as registered and his address as registered and his city or route number and is upon the form furnished by the secretary of state to the county clerks or a duplicate thereof.

F. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section and all sheets shall be firmly secured by a staple or other suitable fastening.

**1-8-30. Primary election law; declaration of candidacy; nominating petition; filing and form. (Effective November 15, 1993.)**

A. As used in the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], "nominating petition" means the authorized form used for obtaining the required number of signatures of voters which is signed on behalf of the person wishing to become a candidate for a political office in the primary election requiring a nominating petition.

B. In making a declaration of candidacy, whether by petition or pre-primary convention designation, the candidate at the same time shall file a nominating petition which shall be on forms prescribed by law.

C. The nominating petition shall be on paper approximately eight and one-half inches wide and fourteen inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

**"NOMINATING PETITION**

I, the undersigned, a registered voter of the county of ....., New Mexico, and a member of the ..... party, hereby nominate ....., who resides at ..... in the county of ....., New Mexico, for the party nomination for the office of ....., to be voted for at the primary election to be held on the first Tuesday of June, 19 ....., and I declare that I am a resident of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

- 1. ....  

(usual signature)	(name printed as registered)	(address as registered)	(city or rt. no.)
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- 2. ....  

(usual signature)	(name printed as registered)	(address as registered)	(city or rt.no.)".
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D. In October of odd-numbered years, the secretary of state shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. The signature of the voter shall not be counted unless the entire line indicates the voter's usual signature, his name printed as registered and his address as registered and his city or route number and is upon the form furnished by the secretary of state to the county clerks or a duplicate thereof.

F. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section and all sheets shall be firmly secured by a staple or other suitable fastening.

**1-8-31. Primary election law; nominating petition; signatures to be counted.**

A. Each signer of a nominating petition shall sign but one petition for the same office unless more than one candidate is to be elected to such office, and in that case not more than the number of nominating petitions equal to the number of candidates to be elected to the office shall be signed.

B. A signature shall be counted on a nominating petition unless there is evidence presented that the person signing:

(1) is not a voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate;

(2) has signed more than one petition for the same office, except as provided in Subsection A of this section, or has signed one petition more than once;

(3) is not of the same political party as the candidate named in the nominating petition as shown by the signer's certificate of registration; or

(4) is not the person whose name appears on the nominating petition.

C. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code [this chapter].

**1-8-32. Primary Election Law; nominating petition; offenses; penalty.**

A. Any person who knowingly falsifies any information on a nominating petition is guilty of falsifying an election document.

B. It is unlawful for any person to knowingly circulate, present or offer to present for the signature of another person a nominating petition that does not clearly show on the face of the petition the name of the candidate, the address at which the candidate resides, the candidate's county of residence and the office for which the candidate seeks nomination. Any person violating the provisions of this subsection is guilty of a misdemeanor and upon conviction therefor shall be imprisoned in the county jail for a definite term less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000), or to both such imprisonment and fine in the discretion of the judge.

**1-8-33. Primary Election Law; nominating petition; number of signatures required. (Effective until November 15, 1993.)**

A. The basis of percentage for the votes of the party in each instance referred to in this section shall be the total vote for the party's candidates for governor at the last preceding primary election at which the party's candidate for governor was nominated.

B. Nominating petitions for a candidate for United States senator, any statewide officer or any candidate for United States representative shall be signed by a number of voters equal to at least three percent of the total vote of the candidate's party in the state or congressional district, as the case may be.

C. Nominating petitions for candidates for any other office to be voted on at the primary election for which nominating petitions are required shall be signed by a number of voters equal to at least three percent of the total vote of the candidate's party in the district or division, as the case may be; provided that in determining the total vote of the party on the nominating petition for a candidate for member of the legislature, absentee votes shall be excluded.

**1-8-33. Primary election law; nominating petition; number of signatures required. (Effective November 15, 1993.)**

A. As used in this section, "total vote" means the sum of all votes cast for all of the party's candidates for governor at the last preceding primary election at which the party's candidate for governor was nominated.

B. Nominating petitions for a candidate for United States senator, any statewide officer or any candidate for United States representative shall be signed by a number of voters equal to

*at least three percent of the total vote of the candidate's party in the state or congressional district, as the case may be.*

*C. Nominating petitions for candidates for any other office to be voted on at the primary election for which nominating petitions are required shall be signed by a number of voters equal to at least three percent of the total vote of the candidate's party in the district or division, as the case may be.*

*D. Nominating petitions for candidates for United States representative or any statewide office are required to be submitted with the declaration of candidacy by pre-primary convention designation filed by a candidate and shall be signed by a number of voters equal to at least two percent of the total vote of the candidate's party statewide or in the congressional district, whichever applies to the office for which the candidate is declaring.*

*E. A candidate who fails to receive the pre-primary convention designation that he sought may collect signatures from an additional one percent of the total vote of the candidate's party in the state or congressional district, whichever applies to the office he seeks, and file a new declaration of candidacy by nominating petition for the office for which he failed to receive a pre-primary designation. The declaration of candidacy by nominating petition shall be filed with the secretary of state either ten days following the date of the pre-primary convention at which he failed to receive the designation or on the date all declarations of candidacy by nominating petition are due pursuant to the provisions of the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], whichever is later.*

**1-8-34. Primary Election Law; nominating petition; withdrawals and additions; copies made available.**

A. A nominating petition when filed shall not be withdrawn nor added to, nor shall any person be permitted to revoke his signature thereon. A nominating petition shall be complete when filed. The proper filing officer shall not permit additions to or withdrawals from a nominating petition after it is filed nor shall any person be permitted to revoke his signature on a petition after it has been filed.

B. The original nominating petition shall remain in the filing officer's office and copies shall be made available by the filing officer for a nominal cost.

**1-8-35. Primary Election Law; nominating petition; limitation on appeals of validity of nominating petitions. (Effective until November 15, 1993.)**

A. Any voter filing any court action challenging a nominating petition provided for in the Primary Election Law [1-8-10 to 1-8-36, 1-8-40 to 1-8-52 NMSA 1978] shall do so within ten days after the last day for filing a declaration of candidacy. Within ten days after the filing of the action, the district court shall hear and render a decision on the matter. Such decision shall be appealable only to the supreme court and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

B. For the purposes of an action challenging a nominating petition, each person filing a nominating petition under the Primary Election Law appoints the proper filing officer as his agent to receive service of process. Immediately upon receipt of process served upon the proper filing officer, such officer shall, by certified mail, return receipt requested, mail the process to the person.

**1-8-35. Primary election law; nominating petition; limitation on appeals of validity of nominating petitions. (Effective November 15, 1993.)**

A. Any voter filing any court action challenging a nominating petition provided for in the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978] shall do so within ten days after the last day for filing the declaration of candidacy with which the nominating petition was filed.

*Within ten days after the filing of the action, the district court shall hear and render a decision on the matter. The decision shall be appealable only to the supreme court and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.*

*B. For the purposes of an action challenging a nominating petition, each person filing a nominating petition under the Primary Election Law appoints the proper filing officer as his agent to receive service of process. Immediately upon receipt of process served upon the proper filing officer, the officer shall, by certified mail, return receipt requested, mail the process to the person.*

## **1-8-36. Repealed.**

### **1-8-36.1. Primary election law; write-in candidates.**

A. Write-in candidates are permitted in the primary election only for the offices of United States representative, members of the legislature, district judges, district attorneys, state board of education, magistrates and any office voted upon by all voters of the state.

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

C. A person desiring to be a write-in candidate for the offices listed in Subsection A of this section in the primary election shall file with the proper filing officer a declaration of intent to be a write-in candidate. Such declaration of intent shall be filed as follows:

(1) before 5:00 p.m. on the seventh day preceding the date for filing a declaration of candidacy for those offices which require a declaration of candidacy to be considered on the primary election ballot; and

(2) before 5:00 p.m. on the fiftieth day preceding the date of the primary election if the declarant is a candidate for statewide office or for United States representative.

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

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

(2) the name is written in the proper slot on the voting machine or on the proper line provided on an absentee ballot or emergency paper ballot for write-in votes for the office for which the candidate has filed a declaration of intent.

E. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code [this chapter] including the obligations to report under the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] except that he shall not be entitled to have his name printed on the ballot.

F. No unopposed write-in candidate shall have his nomination certified unless he receives at least the number of write-in votes in the primary election as he would need signatures on a nominating petition pursuant to the requirements set out in Section 1-8-33 NMSA 1978.

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

## **1-8-37 to 1-8-39. Repealed.**

### ***1-8-39.1. Declaration of pre-primary designation; certification by secretary of state. (Effective November 15, 1993.)***

*A. Not later than six days after the dates for filing declarations of candidacy by pre-primary convention designation, the secretary of state shall certify to the chairman of each*

*state political party the names of that party's candidates for office of United States representative or for other statewide office who have filed their declarations of candidacy by convention designation and have otherwise complied with the requirements of the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978].*

*B. No person shall be placed in nomination at the convention unless he has been certified by the secretary of state.*

**Effective dates.** — Laws 1993, ch. 55, § 14 makes the act effective on November 15, 1993.

**1-8-40. Primary Election Law; declaration of candidacy; false statement. (Effective until November 15, 1993.)**

Any person knowingly making a false statement in his declaration of candidacy is guilty of a fourth degree felony.

**1-8-40. Primary election law; declaration of candidacy; false statement. (Effective November 15, 1993.)**

*Any person knowingly making a false statement in his declaration of candidacy by nominating petition or by pre-primary convention designation is guilty of a fourth degree felony.*

**1-8-41. Primary Election Law; filing fee.**

The filing fee for any county office shall be fifty dollars (\$50.00), which shall be paid at the time of the filing of the declaration of candidacy; provided the filing fee for candidates for the office of county councilman, county clerk, county assessor or sheriff in H-class counties or incorporated counties under Article 10, Section 5 of the constitution of New Mexico shall be five dollars (\$5.00).

**1-8-42. Primary Election Law; pauper's statement in lieu of filing fee.**

In the event any candidate is unable to pay the filing fee prescribed by the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978] he may file a statement with the proper filing officer at the time he files his declaration of candidacy to the effect that he is without financial means to pay such filing fee. The statement shall be sworn and subscribed to on the form prescribed by the secretary of state and furnished to each county clerk and shall be attached by the proper filing officer to the declaration of candidacy.

**1-8-43. Primary Election Law; order of candidates on ballot.**

A. The names of all federal and statewide candidates in the primary election shall be arranged on the ballot as determined by the provisions of the Ballot Positioning Act [1-10A-1 to 1-10A-3 NMSA 1978]. The names of all other candidates shall be arranged on the primary election ballot as determined by lot.

B. The determination by lot for all candidates except federal and statewide candidates shall be made immediately following the closing time for filing declarations of candidacy, and all candidates or their agents shall be entitled to be present at such time.

C. The order of preference for position on the ballot shall be first, the top name position on the left-hand column for each office, and thereafter, consecutively down each name position in that column to the last name position. If the number of candidates filing for the office so requires, the order of preference shall continue consecutively from the top name position on the left-hand column to the top name position on the right-hand column, thence to the second name position on the left-hand column, then to the second name position on the right-hand column, and thereafter continuing in the same manner until all the candidates are positioned on the ballot.



**1-8-44. Primary Election Law; withdrawal of candidates.**

No candidate shall withdraw from a primary election unless he withdraws no later than the first Friday after the filing date.

**1-8-45. Independent candidates for general or United States representative special elections; definition.**

As used in the Election Code [this chapter], an independent candidate means a person who:

- A. is a candidate without party affiliation for an office to be voted on at a general election or any United States representative special election;
- B. except for a candidate for the office of president or vice president, is a person who will be qualified to hold the office for which he is a candidate under the provisions of the constitution of New Mexico and the Election Code;
- C. except for a candidate for the office of president or vice president, is a qualified elector registered to vote in New Mexico at the time of filing the declaration of independent candidacy and nominating petition;
- D. except for a candidate for the office of president or vice president, has indicated on such person's certificate of registration a declination to designate a party affiliation;
- E. has complied with the nomination procedures set forth in the Election Code for independent candidates; and
- F. was not a person who appeared as a major party candidate for the same office on the primary election ballot.

**1-8-46. Independent candidates for general or United States representative special elections; right to be placed on ballot.**

The name of any independent candidate for an office to be voted on at a general election or United States representative special election shall be placed by the proper filing officer on such ballot.

**1-8-47. Independent candidates for general or United States representative special elections; withdrawal of name.**

The provisions of the Election Code [this chapter] pertaining to the withdrawal of candidates from the general election shall apply to the withdrawal of independent candidates.

**1-8-48. Independent candidates for general or United States representative special elections; declaration of independent candidacy and nominating petition.**

- A. Nomination as an independent candidate shall be made by filing a declaration of independent candidacy and a nominating petition with the proper filing officer.
- B. In making a declaration of independent candidacy, the candidate for an office other than that of president or vice president shall submit a sworn statement in the following form:

**"DECLARATION OF INDEPENDENT CANDIDACY**

I, ..... (candidate's name on certificate of registration) being first duly sworn, say that I reside at ..... in the county of ....., New Mexico, and that I am a voter of Precinct No. .... of the county of ....., State of New Mexico;

I have declined to designate my party affiliation as shown by my certificate of registration and I have not changed such declination subsequent to the date of issuance

of the governor's proclamation for the primary election in the year of the general election at which I seek to be a candidate;

I desire to become a candidate for the office of ..... at the general election to be held on the date set by law for this year, and if the office be that of a member of the legislature, that I actually reside within the legislative district for which I declare my candidacy;

I will be eligible and legally qualified to hold this office at the beginning of its term;

If a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Election Code; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

.....  
(Declarant)

.....  
(Mailing Address)

.....  
(Residence Address)

Subscribed and sworn to before me this ..... day of ....., 19 .....

.....  
(Notary Public)

My commission expires:  
....."

C. The secretary of state shall prescribe and furnish the form for the declaration of independent candidacy for the office of president and vice president.

**1-8-49. Independent candidates for general or United States representative special elections; candidates for president.**

If the person filing the declaration of independent candidacy is a candidate for president of the United States, he shall also file the names and addresses of the required number of presidential electors who intend to vote for such independent candidate in the electoral college.

**1-8-50. Independent candidates for general or United States representative special elections; nominating petition form.**

A. As used in Sections 1-8-45 through 1-8-52 NMSA 1978, "nominating petition" means the form or forms used for obtaining the required number of signatures of voters which is signed on behalf of the person wishing to become an independent candidate for a political office in a general or United States representative special election requiring a nominating petition.

B. The nominating petition shall be on paper approximately eight and one-half inches wide and fourteen inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

**"NOMINATING PETITION FOR INDEPENDENT CANDIDACY**

I, the undersigned, a registered voter of the county of ....., New Mexico, hereby nominate ....., who resides at ..... in the county of ....., New Mexico, as an independent candidate for the office of ....., to be voted for at the general election (United States representative special

election) to be held on November . . . , 19. . . , and I declare that I am a resident of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

- 1. ....  
 (usual signature) (name printed as registered) (address as registered) (city)
- 2. ....  
 (usual signature) (name printed as registered) (address as registered) (city)".

C. The secretary of state shall furnish to each county clerk a sample of the nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate as provided by the Election Code [this chapter].

D. The signature of the voter shall not be counted unless the entire line is filled out in full and is upon the form prescribed by this section.

E. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section and all sheets shall be firmly secured by a staple or other suitable fastening.

**1-8-51. Independent candidates for general or United States representative special elections; nominating petitions; required number of signatures.**

A. The basis of percentage for the total number of votes cast in each instance referred to in this section shall be the total vote cast for governor at the last preceding general election at which a governor was elected.

B. Nominating petitions for an independent candidate for president of the United States shall be signed by a number of voters equal to at least three percent of the total number of votes cast in the state.

C. Nominating petitions for an independent candidate for United States senator or any other statewide elective office shall be signed by a number of voters equal to at least three percent of the total number of votes cast in the state.

D. Nominating petitions for an independent candidate for United States representative shall be signed by a number of voters equal to at least three percent of the total number of votes cast in the district.

E. Nominating petitions for an independent candidate for a member of the legislature, district judge, district attorney, member of the state board of education, magistrate or county office shall be signed by a number of voters equal to at least three percent of the total number of votes cast in the district, division or county, as the case may be.

F. The voter shall not sign a petition for an independent candidate as provided in this section if he has signed a petition for another independent candidate for the same office.

**1-8-52. Independent candidates for general or United States representative special elections; nominating petitions; circulation; date of filing.**

A. Declarations of independent candidacy and nominating petitions shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the second Tuesday of July of each even-numbered year and ending at 5:00 p.m. on that same day and not later than 5:00 p.m. on the fifty-sixth day preceding any United States representative special election.

B. Declarations of independent candidacy and nominating petitions for the office of president of the United States shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the fifty-sixth day prior to the general election and ending at 5:00 p.m. on the same day.

**1-8-53. Short title.**

This act [1-8-53 to 1-8-63 NMSA 1978] may be cited as the "Presidential Primary Act".

**1-8-54. Presidential primary; date of election.**

In the year in which the president and vice president of the United States are to be elected, the registered voters of this state shall be given an opportunity to express their preference for the person to be the presidential candidate of their party. The presidential primary election shall be held on the same date as the primary election is held in this state.

**1-8-55. Conduct of election.**

The presidential primary election shall be conducted and canvassed along with and in the manner provided by law for the conduct and canvassing of the primary election.

**1-8-56. Nomination by committee.**

There shall be convened in Santa Fe a committee consisting of the chief justice of the supreme court, as chairman, the speaker of the house of representatives and the minority floor leader of the house of representatives, the president pro tempore of the senate, the minority floor leader of the senate and the state chairmen of those major political parties participating in the presidential primary. The committee shall nominate as presidential primary candidates, and certify to the secretary of state, not later than February 15 before the presidential primary election, the names of all those generally advocated and nationally recognized as candidates of the major political parties participating in the presidential primary for the office of president of the United States.

**1-8-57. Nomination by petition.**

No later than 5:00 p.m. on the thirtieth day following the nominations by committee, any person seeking the endorsement by the national political party for the office of president of the United States, or any group organized in this state on behalf of, and with the consent of, such person, may submit to the secretary of state a petition on a form prescribed and furnished by the secretary of state to have such candidate's name printed on the presidential primary ballot. The petition shall be signed by a number of registered voters in each of the congressional districts equal to not less than two percent of the total number of votes for president cast in each district at the last preceding presidential election. Each signer of such petition shall sign but one such petition. In verifying the petition, the secretary of state shall count each signature unless it is determined that the person signing is not a registered voter of this state, has signed more than one petition or is not the person whose name appears on the nominating petition.

**1-8-58. Notification to candidates.**

The secretary of state shall contact each person who has been nominated by the committee or by petition and notify him in writing by certified mail, with return receipt requested, that his name will be printed as a candidate on the New Mexico presidential primary ballot unless he requests in writing otherwise at least fifty days prior to the election.

**1-8-59. Voting in presidential primary; ballot position.**

A. All candidates in the presidential primary shall appear with the candidates for other offices of their respective parties at an appropriate place on the ballot. Candidates who are nominated by committee and by petition shall be placed first as a group on the presidential primary ballot with each candidate's respective position in that group determined by the provisions of the Ballot Positioning Act [1-10A-1 to 1-10A-3 NMSA 1978]. The ballot

position for the uncommitted category shall be placed last on the presidential primary ballot.

B. The voter shall be able to cast his ballot for one of the presidential candidates of his party or for an uncommitted delegation. A vote of the latter kind shall express the preference for an uncommitted delegation from New Mexico to the national convention of that voter's party.

### **1-8-60. National convention.**

A. Upon the completion of the state canvass of the results of the presidential primary, the secretary of state shall forthwith certify to the state chairman of each political party participating in the primary and to the credentials committee of the national convention of each such political party the following:

- (1) the names of all candidates and uncommitted category; and
- (2) the total vote and the percentage of the total vote of such candidates or uncommitted category received.

B. Each political party shall select as many delegates and alternates to the national party convention in the manner prescribed by the rules of that party and [sic] as are allotted to it by the national committee of that party.

C. The vote of the delegates or their alternates to the national convention from each such political party from New Mexico shall be cast on the first presidential nomination ballot of the national convention by the chairman of the delegation. The manner of casting the vote of each party delegation shall be as follows:

- (1) each candidate and the uncommitted category shall be entitled to a share of the total vote allotted to the delegation that is equal to the proportion that the vote he received in the presidential primary bears to the total combined vote received by all qualified candidates; provided that no candidate shall be excluded who has received at least fifteen percent of the total vote cast for candidates for president of that party, and no candidate shall be excluded in violation of any political party rule; and

- (2) the method used to compute the total votes allowed to a candidate or the uncommitted category shall be determined by the party rules on file in the office of the secretary of state.

D. The provisions of this section with regard to the manner of voting by the New Mexico delegations at the national party conventions apply only to the first nominating ballot cast at such conventions. Such delegations may be released prior to the first ballot from voting in the manner provided by this section upon death of the candidate or upon his written unconditional release of such votes allotted to him. Any votes so released shall be cast in the manner of votes allotted to the uncommitted category.

### **1-8-61. Delegate pledge.**

A. No person selected as a delegate or alternate shall qualify to attend the national convention of his political party unless he files with the state chairman of his political party at least fifteen days prior to the convening of the applicable national party convention a written declaration of acceptance, signed by himself, in the form herein prescribed and the state chairman deposits this declaration of acceptance in the office of the secretary of state no later than ten days before convening of the applicable national convention.

B. The declaration of acceptance shall be in the form of an affidavit and shall contain the following information:

- (1) the name, residence and post-office address of the delegate or alternate delegate;
- (2) a statement that he is a registered voter in New Mexico affiliated with the political party for which he is a delegate or alternate, and that he was a registered voter and affiliated with such party forty-two days prior to the presidential primary election held in the year in which he is a delegate to the national convention;
- (3) a statement that he accepts his selection as a delegate or alternate to the national convention; and

(4) if delegates are pledged to specific candidates for the office of president, a pledge in the following form:

"As a delegate to the 19. . . . national convention of . . . . . party, I pledge myself to vote on the first ballot for the nomination of president by the . . . . . party as required by Section 1-8-60 NMSA 1978."

C. Any delegate representing the uncommitted category may vote for any candidate at the national convention or remain uncommitted.

### **1-8-62. Repealed.**

### **1-8-63. Penalty.**

It is unlawful for any alternate or delegate to fail to vote at the national party convention in accordance with the delegate pledge he signed as required by the Presidential Primary Act [1-8-53 to 1-8-63 NMSA 1978]. Any alternate or delegate violating any of the provisions of the Presidential Primary Act is guilty of a petty misdemeanor.

### **1-8-64. Authority of secretary of state and county clerks with regard to acceptance or rejection of petitions.**

The secretary of state or the county clerk shall refuse to accept any petition or any signature on any such petition which does not comply with the provisions of Sections 1-8-1 through 1-8-63 NMSA 1978.

## **ARTICLE 9**

### **Voting Machines**

Sec.	Sec.
1-9-1. Secretary of state; duties.	
1-9-2. Secretary of state; manner of approval.	
1-9-3. Secretary of state; experts; compensation.	
1-9-4. Lever-type voting machine; specifications.	1-9-13. Voting machine technicians; approval of contracts.
1-9-5. Requirement to purchase and use voting machines.	1-9-14. Computer voting devices; authority of the secretary of state to test.
1-9-6. Voting machines; use in other elections.	1-9-15. Electronic voting machines; recording and tabulating voting machines; standards.
1-9-7. Voting machines; acquisition.	1-9-16. Electronic voting machines; vote tabulating machines; standards.
1-9-8. Board of finance; lease-purchase contract; terms.	1-9-17. Electronic voting machines; board of finance; lease-purchase contract; terms.
1-9-9. Repealed.	1-9-18. Electronic voting machines; method of payment by counties.
1-9-10. Lever machine disposition.	1-9-19. Electronic voting machine revolving fund.
1-9-11. Repealed.	
1-9-12. Care and custody of machines; care and custody of keys and seals; responsibility for transportation; repair and programming; charge for such use, transportation or programming.	

### **1-9-1. Secretary of state; duties.**

The secretary of state shall study, examine and approve all voting machines used in elections for public office in New Mexico. Any type of voting machine not approved by the secretary of state shall not be used in any election for public office in New Mexico.

### **1-9-2. Secretary of state; manner of approval.**

A. Any person desiring to have a type of voting machine approved for use in New Mexico may apply to the secretary of state to have such machine examined and approved. At the time application is made the applicant shall pay to the secretary of state an examination fee of three hundred dollars (\$300).

B. Upon receipt of the application and examination fee, the secretary of state shall examine and study the machine. As part of the examination, the secretary of state shall

require the machine to be independently inspected by two mechanical experts and shall require from each of them a written report on the results of their inspection.

C. Upon completion of her examination the secretary of state shall make a written report on the result of her examination and findings, and shall file such report, together with the inspection reports of the two mechanical experts, in the office of the secretary of state. Such reports and findings are public records.

D. The secretary of state shall inform the applicant in writing of the findings. If the findings show that the voting machine type is adequate for the election needs of New Mexico, it shall be deemed approved for use at elections in this state.

### **1-9-3. Secretary of state; experts; compensation.**

A. Each mechanical expert employed by the secretary of state shall be paid a sum not to exceed sixty-five dollars (\$65.00) for his inspection and written report.

B. Compensation of the mechanical experts shall be paid from the examination fee collected by the secretary of state. Any balances remaining after completion of the examination and report shall be deposited in the general fund.

### **1-9-4. Lever-type voting machine; specifications.**

No lever-type voting machine shall be approved by the secretary of state unless:

A. it permits a voter to vote for any person for any office, whether or not the name of the person appears upon a ballot label as a candidate for nomination or election;

B. it permits and requires voting in absolute secrecy and is so constructed that no person can see or know for whom any other person has voted, except a voter who is being assisted as prescribed by the Election Code [this chapter];

C. it has a protective counter or other device, the register of which cannot be reset, that records the cumulative total number of movements of the operating mechanism;

D. it is provided with a lock or locks, by the use of which, immediately after the polls are closed or the operation of the machine for an election is completed, all movement of the registering mechanism is absolutely prevented;

E. it is constructed of material of good quality, in a neat and workmanlike manner, and is easily and safely transportable;

F. it is capable of adjustment so as to permit each voter at a primary election to vote only for the candidates seeking nomination by the political party shown on the voter's certificate of registration;

G. it is constructed to prevent voting for more than one person for the same office, except where the voter is entitled to vote for more than one person for that office;

H. it permits each voter, at other than primary elections, to vote a straight party ticket in one operation; and

I. it provides a "printout" of voting results.

### **1-9-5. Requirement to purchase and use voting machines.**

A. Voting machines shall be used in all precincts in all statewide elections.

B. The county clerk of each county shall provide one voting machine in each precinct for use in the general and primary elections when the total number of registered voters in that precinct amounted to less than four hundred at the close of registration.

C. At least one additional voting machine shall be provided in such precinct for every four hundred registered voters in that precinct.

D. When authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting or electronic vote tabulating machines, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, which machines may be used in any election for public office. The acquisition of these machines may be in excess of the number provided in this section.

E. Except for intercounty acquisitions of equipment approved by the secretary of state, a previously owned voting or electronic vote tabulating machine shall have a warranty equal to the warranty required of a new voting or electronic vote tabulating machine.

### **1-9-6. Voting machines; use in other elections.**

A. The county clerk may provide for the use of voting machines in other elections or for educational purposes; provided, however, that the county clerk shall make available:

(1) to the school district for use in the school district election, a sufficient number of voting machines necessary to conduct the election in those polling places located within that county; and

(2) to a municipality located in the county, a sufficient number of voting machines to conduct the municipal election.

B. The county clerk shall schedule the use of the voting machines.

### **1-9-7. Voting machines; acquisition.**

A. Ninety days prior to each primary and general election, the board of county commissioners of each county shall make application to the state board of finance for those additional voting machines required by the Election Code [this chapter].

B. The additional voting machines shall be of a type approved by the secretary of state. They shall be purchased by the state board of finance. The cost of the voting machines, including all transportation costs, shall be paid out of the voting machine revolving fund. The state board of finance shall cause to be delivered to each county clerk the additional voting machines.

### **1-9-8. Board of finance; lease-purchase contract; terms.**

A. The state board of finance shall execute a lease-purchase contract with the county for purchase of additional voting machines upon receipt of the application of the board of county commissioners.

B. The lease-purchase contract shall include, but not be limited to, the following terms:

(1) the county agrees to purchase from the state board of finance the specified number of voting machines;

(2) the county will pay therefor the cost of such machines including reimbursement for costs of transportation;

(3) the term of the lease-purchase contract shall not exceed twenty years;

(4) the care, custody and maintenance of such voting machines is the responsibility of the county; and

(5) upon good cause shown, the terms of the lease-purchase contract may, at any time, be renegotiated.

### **1-9-9. Repealed.**

### **1-9-10. Lever machine disposition.**

In the event that a county finds it necessary to dispose of any lever voting machine which is being acquired under a lease-purchase contract with the state board of finance, the board of county commissioners may certify that fact to the state board of finance and may sell such machine to any other county or state. In such event the state board of finance shall renegotiate the lease-purchase contract under which the machine is being acquired obligating the county to reimburse the state board of finance for the unpaid balance on such contract. The lever voting machine to be disposed of shall not be sold by the county until the new contract has been negotiated and signed.



**1-9-11. Repealed.****1-9-12. Care and custody of machines; care and custody of keys and seals; responsibility for transportation; repair and programming; charge for such use, transportation or programming.**

A. The county clerk shall have custody of all voting machines, shall keep such machines in good repair and shall be responsible for the transportation of voting machines to and from polling places.

B. The county clerk shall have care and custody of, and be responsible for, the keys and seals for the voting machines and shall be responsible for the programming of such machines. All keys for the voting machines shall be kept in a secure place in the county clerk's office until such time as supplies are available to program or maintain the voting machines. When voting machines are being programmed for any election or maintained after an election, the county clerk or the county clerk's assigned deputy who is knowledgeable of the procedure of programming voting machines shall have custody of the keys and shall assure the security of the keys at all times during the period the voting machines are being programmed or maintained. In any event, all keys shall be returned to the office of the county clerk at the end of each day for safekeeping; providing that, if the deputy is programming the voting machines outside of the county seat and it is impractical for such deputy to return the keys at the end of the day, the county clerk may give written authorization in advance to such deputy to retain the keys for as long as is needed to program such voting machines outside of the county seat, and a copy of such authorization with the deputy named therein shall be kept on file in the county clerk's office subject to public inspection. The county clerk shall submit an affidavit to the secretary of state describing the method to be used in keeping the voting machine keys secure. This affidavit shall be submitted to the secretary of state in January of each even-numbered year for the secretary of state's approval or disapproval. The security method approved by the secretary of state shall be the only method of safekeeping the voting machine keys until a new affidavit is submitted and approved. Failure of the county clerk to assure the security of voting machine keys in his custody shall constitute a neglect to discharge the duties of his office.

C. A reasonable fee may be charged by the county for the use, transportation and programming of the voting machines, but in no case shall such fee exceed the actual cost to the county.

**1-9-13. Voting machine technicians; approval of contracts.**

A. The secretary of state shall approve all contracts, employment or otherwise, between a county and a voting machine technician. Approval shall be based on the following:

- (1) adequacy of the training and expertise of the voting machine technician; and
- (2) reasonableness of the compensation for the contracted services based upon the type of election and the number of machines to be used, but in no instance shall such compensation exceed thirty-five dollars (\$35.00) per machine for programming plus ten dollars (\$10.00) for clearing each lever-type voting machine. The technician shall receive seventeen dollars and fifty cents (\$17.50) for each hour of election school and for standby trouble shooting services. The technician may also be paid mileage.

B. Voting machine technicians shall be certified by the secretary of state as to their adequacy of training and expertise on lever voting machines and electronic voting machines.

C. For purposes of this section, "voting machine technician" means any person who programs, clears, inspects and repairs lever voting machines and electronic voting machines for compensation.

D. The secretary of state shall adopt rules and regulations governing the use, maintenance and repair of lever voting machines and electronic voting machines.

**1-9-14. Computer voting devices; authority of the secretary of state to test.**

A. Notwithstanding any other provision of the Election Code [this chapter], the secretary of state shall provide for the testing and evaluation of internal computers designed for the purpose of recording and tabulating votes within polling places in New Mexico. Any person who has an internal computer which is designed for the purpose of recording and tabulating votes within a polling place may apply on or before June 1 of any odd-numbered year to the secretary of state to have his equipment examined and tested. At the time application is made, the applicant shall pay for testing each machine in an amount that reflects the actual cost of such test. Upon receipt of the application the secretary of state shall examine and study the computer voting machine. As part of the examination, the secretary of state shall require the machine to be independently inspected by persons or testing laboratories technically qualified to evaluate and test the operation and component parts of an internal computer for recording and tabulating votes and shall require a written report on the results of such testing. The secretary of state may authorize field testing of the equipment in one or more precincts in any state or local government election, provided that such field tests shall be conducted at no cost to the state or any local government. These tests and inspections shall be completed within six months of the date of application.

B. Upon completion of all tests and examination of all written test reports, the secretary of state shall make a written report of the result of the findings and shall submit that report for consideration by a committee consisting of the secretary of state, the director of the information systems division of the general services department and a county clerk who is appointed by and serves at the pleasure of the governor and who is appointed with regard to political party affiliation so that no more than two members of the committee are from one political party. The committee shall make recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code. Such report shall be a public record.

C. If the committee recommends that the internal computer for recording and tabulating votes is suitable for use in polling places for the conduct of elections in New Mexico, such equipment shall be deemed approved for use in elections in this state no later than January 1 of the succeeding year.

D. In the event the committee approves the use of internal computers for use in polling places for the conduct of elections in New Mexico, then the secretary of state shall prescribe by regulation promulgated under the provisions of the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] specifications for internal computers designed for the purpose of providing for a system of recording and tabulating votes within polling places. The prescribed specifications shall have as their purpose securing the secrecy of the ballot, protecting against fraud in the voting process, preserving in all respects the purity of elections, facilitating voting by the voters of this state and carrying out the provisions of the Election Code with respect to the administration of the conduct of elections in New Mexico.

**1-9-15. Electronic voting machines; recording and tabulating voting machines; standards.**

A. Electronic recording and tabulating voting machines, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, may be used in any election for public office in New Mexico.

B. The electronic recording and tabulating voting machines shall meet the following standards:

(1) the machine shall be an electronic computer-controlled voting machine which provides for direct electronic recording and tabulating of votes cast;

(2) the operating software of the machine shall be stored in a nonvolatile memory (firmware) and shall include internal quality checks such as purity or error detection and correction codes. The firmware shall include comprehensive diagnostics to insure that failures do not go undetected;

(3) the machine shall have a battery back-up system that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures;

(4) the machine shall have, as a standard or as an option, software and hardware provisions for remote transmission of election results to a central location by a common carrier, such as telephone networks;

(5) subsistence, such as printer, power sources, microprocessor, switch and indicator matrices, shall be modular and pluggable. Electronic components shall be mounted on printed circuit boards;

(6) the machine shall be supplied with a dust- and moisture-proof cover for transportation and storage purposes;

(7) the machine shall be able to operate in a temperature range of fifty degrees fahrenheit to ninety degrees fahrenheit;

(8) the machine shall have a temperature range for storage of zero degrees fahrenheit to one hundred twenty degrees fahrenheit;

(9) the machine shall have an operating and storage humidity range of thirty percent to eighty percent noncondensing;

(10) the machine shall be able to accept line voltage of 115 VAC / + - 15 percent, 60 HZ;

(11) the machine shall be able to record and document the total time polls are open at a precinct location;

(12) the machine shall prevent any voter from selecting more than the allowable number of candidates for any office and shall preclude over-voting;

(13) the machine shall be capable of operating continuously for a minimum time period of sixteen hours without external power (115 VAC);

(14) the tabulation of votes on the machine shall be stored, ballot by ballot, in three or more memory locations on separate integrated circuit chips and shall be electronically compared throughout the election. Any differences between votes tabulated and votes stored in such multiple storage locations shall be detected immediately and generate an error message defining required maintenance on the electronic voting machine before it can continue to be used in the election;

(15) the machine shall contain the entire ballot which shall be placed on the face of the machine and shall be visible to the voter on a single page;

(16) the machine shall have a privacy booth in which the voter casts his vote, and the privacy booth shall be an integral part of the machine; and

(17) the machine shall be designed to meet the needs of physically disabled voters with or without adjustment of the unit by poll workers.

C. In determining compliance with the standards set forth in Subsection B of this section, the qualification test report made pursuant to the performance and test standards of the federal election commission shall be considered in so far as it is applicable.

### **1-9-16. Electronic voting machines; vote tabulating machines; standards.**

A. Electronic vote tabulating machines, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, may be used in any election for public office in New Mexico for the purpose of tabulating ballots.

B. The electronic vote tabulating machines shall meet the following standards:

(1) the machine shall be an electronic computer-controlled voting machine which provides for the direct electronic tabulation of votes cast;

(2) the operating software of the vote tabulating machine shall be stored in a nonvolatile memory (firmware) and shall include internal quality checks such as purity or error detection and correction codes. The firmware shall include comprehensive diagnostics to insure that failures do not go undetected;

(3) the machine shall have a battery back-up system that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures;

(4) the machine shall provide alphanumeric printouts of the vote totals at the closing of the polls;

(5) the machine shall have, as a standard or as an option, software and hardware provisions for remote transmission of election results to a central location by common carriers, such as telephone networks;

(6) subsistence, such as printer, power sources, microprocessor, switch and indicator matrices, shall be modular and pluggable. Electronic components shall be mounted on printed circuit boards;

(7) the machine shall be supplied with a dust- and moisture-proof cover for transportation and storage purposes;

(8) the machine shall be able to operate in a temperature range of fifty degrees fahrenheit to ninety degrees fahrenheit;

(9) the machine shall have a temperature range for storage of zero degrees fahrenheit to one hundred twenty degrees fahrenheit;

(10) the machine shall have an operating and storage humidity of thirty percent to eighty percent noncondensing;

(11) the machine shall accept a line voltage of 115 VAC /+- 15 percent, 60 HZ;

(12) the machine memory pack shall be able to accept over one thousand five hundred voting positions and tabulate over sixty-five thousand votes for each position;

(13) the machine shall accept a ballot inserted in any orientation and one which is six inches wide and twenty-four inches long, dual column and printed on both sides. The ballot should be able to hold a maximum of five hundred twenty candidate positions;

(14) the machine shall recognize all errors and be able to reject or return the errant ballot. The tabulator shall automatically be able to detect an overvoted ballot;

(15) the machine shall contain an RS-232 data communications capability to transmit totals over regular voice-grade telephone lines;

(16) the machine shall contain a public display counter to record number of ballots processed; and

(17) the machine should be programmable with control cards.

C. In determining compliance with the standards set forth in Subsection B of this section, the qualification test report made pursuant to the performance and test standards of the federal election commission shall be considered in so far as it is applicable.

### **1-9-17. Electronic voting machines; board of finance; lease-purchase contract; terms.**

A. The state board of finance shall execute a lease-purchase contract with the county for purchase of electronic voting machines and the necessary support equipment upon receipt of the application of the board of county commissioners.

B. The lease-purchase contract shall include, but not be limited to, the following terms:

(1) the county agrees to purchase from the state board of finance the specified number of electronic voting machines and the necessary support equipment;

(2) the county will pay for the cost of such machines and support equipment, including reimbursement for costs of transportation;

(3) the term of the lease-purchase contract shall not exceed twenty years;

(4) the care, custody and maintenance of such machines and support equipment is the responsibility of the county clerk; and

(5) upon good cause shown, the terms of the lease-purchase contract may, at any time, be renegotiated.

### **1-9-18. Electronic voting machines; method of payment by counties.**

A. The department of finance and administration and the board of county commissioners shall budget annually for as many years as may be necessary from county funds in each county acquiring electronic voting machines and support equipment an amount sufficient to

enable the county to pay to the state board of finance installment payments required to be paid under the terms of the lease-purchase contract.

B. The board of county commissioners of each county having a lease-purchase contract with the state board of finance shall pay such payments, at the times and in the amounts as provided by the terms of the lease-purchase contract. The state board of finance shall deposit the payments into the severance tax bonding fund if the electronic voting machines and support equipment were originally purchased with severance tax bond proceeds. The state board of finance shall deposit the payments into the electronic voting machine revolving fund if the electronic voting machines were originally purchased with money from the electronic voting machine revolving fund.

### **1-9-19. Electronic voting machine revolving fund.**

The electronic voting machine revolving fund is created. The electronic voting machine revolving fund may be used to finance, by contract, the purchase of electronic voting machines and necessary support equipment under the conditions stated in Section 1-9-17 NMSA 1978. The electronic voting machine revolving fund may be expended upon vouchers signed by the secretary of finance and administration. If at the end of the fiscal year, the electronic voting machine revolving fund exceeds two million dollars (\$2,000,000), the amount in excess of two million dollars (\$2,000,000) shall revert to the general fund.

## **ARTICLE 10**

### **Ballots and Ballot Labels**

Sec.		Sec.	
1-10-1.	Ballot.	1-10-7.	Ballots; name shall appear but once.
1-10-2.	Ballots; duty to provide.	1-10-8.	Ballots; primary and general elections; order of offices.
1-10-2.1.	Ballots; equipment.	1-10-8.1.	General election; party position on ballot.
1-10-3.	Ballots; uniformity.	1-10-9.	Ballots; errors and omissions.
1-10-4.	Ballots; preparation.	1-10-10.	Ballots; sample.
1-10-5.	Ballots; printing.	1-10-11.	Sample ballots; penalty.
1-10-6.	Ballots; name to be printed; candidates with similar names.		

### **1-10-1. Ballot.**

As used in the Election Code [this chapter]:

A. "ballot" means a system for arranging and designating for the voter the names of candidates, constitutional amendments and other questions to be voted on and for the marking, casting or otherwise recording of such votes, and the term includes absentee ballots, ballot labels, ballot cards, ballot sheets and emergency paper ballots;

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

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

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

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

### **1-10-2. Ballots; duty to provide.**

The county clerk shall prepare and supply the ballots used in elections conducted under the Election Code [this chapter]. Ballots other than those prepared by the county clerk shall not be used in such elections.

**1-10-2.1. Ballots; equipment.**

The county clerk shall procure ballot-creating equipment when direct recording electronic machines are used or contract with a vendor who has those capabilities.

**1-10-3. Ballots; uniformity.**

A. Ballots shall be uniform throughout the state and compatible with the type of voting machine used in the county.

B. The secretary of state shall determine in each election, where applicable, the position of the parties, constitutional amendments, questions and the names of nominees to be voted on by the voters of the entire state.

**1-10-4. Ballots; preparation.**

A. Not less than forty-nine days before the primary election, the county clerk shall group all candidates for each party and prepare in writing a separate ballot for each party and certify the candidates for each ballot position to the printer and have the ballots for each party printed.

B. Not less than fifty-three days before the general election, the county clerk shall prepare in writing the ballot containing the name of each candidate which has been certified and filed as the nominee of his party and any constitutional amendments, questions or other propositions that are to be voted on and certify all such information to the ballot printer. A copy of the certification shall be transmitted to the secretary of state.

C. The county clerk shall furnish to the county chairman of a major political party upon his request proof sheets or a copy of the proof sheets of the ballot as soon as they become available.

**1-10-5. Ballots; printing.**

Ballot labels shall be printed and in the hands of the county clerk at least thirty days before the election.

**1-10-6. Ballots; name to be printed; candidates with similar names.**

In the preparation of ballots:

A. the candidate's name shall be printed on the ballot as it appears on the candidate's certificate of registration that is on file in the county clerk's office on the day the governor issues the proclamation for the primary election; and

B. if it appears that the names of two or more candidates for any office to be voted on at the election are the same or are so similar as to tend to confuse the voter as to the candidates' identities, the occupation and post office address of each such candidate shall be printed immediately under the candidate's name on the ballot.

**1-10-7. Ballots; name shall appear but once.**

Except in the case of a candidate for United States senate or United States representative who is also a candidate for president or vice president of the United States, no candidate's name shall appear more than once on the ballot. Whenever a person is, with his knowledge and consent, a candidate at any nominating convention or primary for nomination as the candidate of any political party for any office to be voted on at the election to be held next after such convention or primary, his name shall not be printed on the ballot at such election except in the column under the party name and emblem of the party designated on his declaration of candidacy or statement of candidacy for convention designation.

**1-10-8. Ballots; primary and general elections; order of offices.**

The ballot used in the primary and general elections shall contain, when applicable, the offices to be voted on in the following order:

- A. president and vice president;
- B. United States senator;
- C. United States representative;
- D. candidates for state offices to be voted on at large, in order prescribed by the secretary of state;
- E. state senator;
- F. state representative;
- G. other district candidates, in the order prescribed by the secretary of state;
- H. metropolitan and magistrate judges;
- I. county commissioners;
- J. county clerk;
- K. county treasurer;
- L. county assessor;
- M. county sheriff;
- N. probate judge;
- O. county surveyor, if applicable; and
- P. other issues as prescribed by the secretary of state.

### **1-10-8.1. General election; party position on ballot.**

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

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

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

D. Where lever voting machines are used, the sample ballot posted in the polling place shall reflect the actual positioning of parties on the voting machine in that precinct. The secretary of state may require that sample ballots distributed to each polling place reflect the actual positioning of parties on the voting machines used in that precinct.

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

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

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

### **1-10-9. Ballots; errors and omissions.**

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

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

for such candidate for the office for which he was nominated as shown by the certificate of nomination.

### **1-10-10. Ballots; sample.**

A. At the time of printing the official ballots, the county clerk shall cause to be printed in both English and Spanish a number of sample ballots in a quantity equal to ten percent of the number of voters in each precinct.

B. The sample ballots shall be the same in all respects as the official ballots, except that they shall be printed on colored paper and shall not contain the facsimile signature of the county clerk or any endorsement on the back thereof. Each sample ballot shall be marked in large black capital letters, "SAMPLE BALLOT".

C. Sample ballots shall be made available in reasonable quantities to all interested persons for distribution to the voters within the appropriate precincts.

D. Nothing in this section shall preclude any person from having printed at his own expense sample ballots.

### **1-10-11. Sample ballots; penalty.**

A. After the official ballot labels are arranged for voting purposes, the county clerk shall provide sample ballots which shall show the entire front of the voting machine as it will appear for voting purposes on election day.

B. The county clerk shall provide at least four sample ballots for use in each precinct. Two of the sample ballots shall be displayed for public inspection on the outside of the polling place and two on the inside. The sample ballots shall be displayed throughout election day. It is a petty misdemeanor for any person to deface, alter, remove or in any way destroy the sample ballots displayed for public inspection at the polling place during the hours the election is being conducted.

## **ARTICLE 10A**

### **Ballot Positioning**

Sec.

1-10A-1. Short title.

1-10A-2. Purpose of act.

Sec.

1-10A-3. Rotation of names on the ballot.

#### **1-10A-1. Short title.**

Sections 1 through 3 [1-10A-1 to 1-10A-3 NMSA 1978] of this act may be cited as the "Ballot Positioning Act".

#### **1-10A-2. Purpose of act.**

The purpose of the Ballot Positioning Act [1-10A-1 to 1-10A-3 NMSA 1978] is to assure, to the extent practicable, that each candidate for certain offices in those elections to which the act applies, any advantages that accrue from having the candidate's name appear at the preferred position on the ballot with respect to every other candidate of that party for the same office.

#### **1-10A-3. Rotation of names on the ballot.**

In the preparation of ballots for a presidential primary and a primary election for each major political party, the secretary of state shall insure that the names of candidates for the presidential office and for federal and statewide offices shall be rotated on the ballot for those offices in the following manner:

A. state representative districts shall be the basis for the rotation of candidates' names on the ballot; and



B. the ballot positions for the representative district number 1 shall be that order of names as determined by lot. The procedure for determining the ballot position for each successive rotation of names shall be as follows:

(1) for the ballot rotation in representative district number 2 and for each successively numbered representative district, the name appearing first in the last preceding representative district shall be placed last in the preferred position on the ballot, the order of the other names remaining unchanged; and

(2) the ballot rotation shall continue in like serial sequence through each representative district so that the name of each candidate in the group of candidates for that party for a political office shall appear on the several ballots an equal number of times as nearly practicable in the order of preference.

## ARTICLE 11

### Notices, Preparation for Elections and Election Supplies

Sec.		Sec.	
1-11-1.	Notice of election; proclamation.	1-11-12.	Certifying county register.
1-11-2.	Contents of proclamation.	1-11-13.	Voters alphabetical index.
1-11-3.	Proclamation; publication; posting.	1-11-14.	Tally sheets and statements of canvass; preparation.
1-11-4.	Proclamation; notice of errors and omissions.	1-11-15.	Signature rosters; checklist of registered voters; tally sheets; form.
1-11-5.	Voting device; preparation.	1-11-16.	Signature roster certificates; checklist of registered voter's certificates; precinct board member's oath.
1-11-6.	Voting machines; manner of preparing.	1-11-17.	Repealed.
1-11-6.1.	Electronic voting machines; testing.	1-11-18.	Election supplies.
1-11-7.	Voting machine; certificate of preparation.		
1-11-8.	Voting machines; notice of sealing.		
1-11-9.	Voting machines; sealing of keys.		
1-11-10.	Voting machines; objections to use.		
1-11-11.	Election supplies; voting machines; delivery.		

#### 1-11-1. Notice of election; proclamation.

The county clerk shall, at least twelve days prior to any county or statewide election, give notice of the election by proclamation.

#### 1-11-2. Contents of proclamation.

The proclamation shall:

- A. give notice of the election;
- B. set forth the purpose of the election;
- C. list the offices to be filled;
- D. list all properly certified candidates for each of the offices to be filled;
- E. list the declared write-in candidate's name and party affiliation;
- F. list the names of all precinct board members and the precinct to which they are appointed; and
- G. give the address or location of the polling place in each precinct where the election is to be held.

#### 1-11-3. Proclamation; publication; posting.

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

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

C. If no legal newspaper is published in the county, the proclamation shall be published in a legal newspaper of general circulation in the county.

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

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

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

#### **1-11-4. Proclamation; notice of errors and omissions.**

A. The county clerk may amend the proclamation between the time of its issuance and the day of election to provide for any corrections or to supply any omissions.

B. Upon petition of any voter that an error or omission has occurred in the proclamation, the district court may forthwith order the county clerk to correct the error or to supply the omission, or immediately show cause why the error should not be corrected or the omission should not be supplied.

#### **1-11-5. Voting device; preparation.**

Thirty days before the election, the county clerk may begin to prepare, inspect and seal lever voting machines and electronic voting machines which are to be used in the election, and such preparation, inspection and sealing shall continue until all machines are prepared, inspected and sealed.

#### **1-11-6. Voting machines; manner of preparing.**

Thirty days prior to an election the county clerk shall:

A. certify to the secretary of state and all county party chairmen the type and serial number of each voting machine intended to be used in each precinct, by precinct number; and

B. prepare, in the presence of those persons entitled to be present, the lever voting machines and electronic voting machines for the election as follows:

- (1) all public, candidate and question counters shall be set at zero;
- (2) assisted by watchers, each such counter shall be tested for accuracy by casting votes upon it until it correctly registers each vote cast;
- (3) each such counter shall be reset at zero and the voting machine shall be immediately sealed with a numbered metal seal so as to prevent operation of the machine or its registering counters without breaking the seal; and
- (4) on the certificate for that voting machine there shall be recorded:
  - (a) the number on the seal; and
  - (b) the reading shown on the protective counter.

#### **1-11-6.1. Electronic voting machines; testing.**

A. The county clerk shall insure that all electronic voting machine programs are tested not later than ten days prior to the election. The tests shall be conducted by the county clerk in the presence of the county chairman of each major political party and any interested candidate or representative of the candidate. The county clerk shall seal and retain the logic and accuracy test printout, known as the internal audit trail, for forty-five days after the election. The county clerk shall also seal and retain the test ballots used in the marksense voting machines for a period of forty-five days after the election.

B. All programming of vote tabulating machines shall be performed under the supervision of the secretary of state and the county clerk. The machines shall be programmed so that votes will be counted in accordance with the specifications for electronic voting machines adopted by the secretary of state.

C. After testing, all counters shall be set at zero, and the machine shall be immediately sealed with a numbered metal or plastic seal so as to prevent operation of the machine or its registering counters without breaking the seal.

D. On the certificate for that machine there shall be recorded:

- (1) the number of the seal; and

(2) the reading shown on the protective counter.

### **1-11-7. Voting machine; certificate of preparation.**

Immediately after each lever voting machine and electronic voting machine has been prepared for the election, the county clerk shall prepare a written certificate which shall be filed in his office. A copy of the certificate shall be posted on the voting machine and one copy shall be forwarded to the secretary of state. The certificate shall show the serial number for the voting machine, whether or not the machine has all of its resettable registering counters set at zero and whether or not the machine has been tested by voting on each registering counter to prove the counter is in perfect condition. The certificate shall also show the number of the seal which has sealed the machine and the number registered on the protective counter.

### **1-11-8. Voting machines; notice of sealing.**

A. Before preparing any type of voting machine for an election, the county clerk shall send written notice to the county chairman of each political party having a candidate on the ballot in the election. The notice shall state the times when and places where the voting machines will be prepared.

B. Party and organization representatives and candidates may be present at the preparation, inspection and sealing of the voting machines to insure compliance with the Election Code [this chapter].

### **1-11-9. Voting machines; sealing of keys.**

A. When all types of voting machines are locked and sealed, the key to each voting machine shall be enclosed in a sealed envelope on which shall be written:

- (1) the number of the precinct to which the machine is assigned;
- (2) the number of that voting machine;
- (3) the number of the seal on the voting machine;
- (4) the number registered on the protective counter; and

(5) the signature of the county clerk and the signatures of two watchers of different parties or opposing interests, if there be such, which shall be written across the seal of the envelope.

B. The envelope containing the key shall be opened in the presence of all members of the precinct board, and they shall verify that the seal on the envelope has not been previously opened and that the numbers on the envelope correspond with the numbers on the machine.

C. If any number does not match the corresponding number on the machine:

- (1) the presiding judge shall notify the county clerk; and

(2) no further action shall be taken regarding that machine until the county clerk or his authorized representative arrives at the polling place and has inspected, tested and certified that the voting machine is in proper order.

### **1-11-10. Voting machines; objections to use.**

Unless an objection to the use of a particular voting machine is filed in the district court within two days after it is prepared, inspected and sealed, the voting machine when certified to be correct by the county clerk shall be conclusively presumed to be properly prepared for the election. Any objection so filed shall specify the number of the voting machine objected to and the reason for the objection.

### **1-11-11. Election supplies; voting machines; delivery.**

A. Voting machines shall be delivered to the assigned precinct polling place at least three days before the polls are required to be opened. The election supplies and the keys of voting machines shall be delivered to the presiding judge at least one hour before the polls are required to be opened.

B. The county clerk of any county shall certify to the secretary of state on forms provided by the secretary of state, that he has inspected each voting machine after delivery but before the date of the election and has found each machine to have been correctly labeled, that there has been no obvious external damage in delivery and that each machine has been delivered to the proper polling place in each precinct.

#### **1-11-12. Certifying county register.**

A. At least twenty days before a statewide election, general election or primary election, the county clerk shall certify the county voter file as representing the county register.

B. If the original certificate of registration is missing, the county clerk shall make a replacement copy from the information contained in the county voter file. The replacement certificate shall be stamped "REPLACEMENT COPY" and shall be inserted in the appropriate file. The county clerk shall make a list of all replacement copies. The list shall include the name and address of the voter. The county clerk shall certify the list and file it with the district court.

C. The replacement copy shall have the same validity as the certificate of registration that it replaces.

#### **1-11-13. Voters alphabetical index.**

Not more than twenty nor less than ten days before a general or primary election, the county clerk shall send an alphabetical index, by precinct, of all voters, their party affiliation and their addresses to the secretary of state and to the county chairman of each of the major political parties. Each alphabetical index shall be certified by the county clerk as being an accurate listing of all voters in the county by precinct, party and address.

#### **1-11-14. Tally sheets and statements of canvass; preparation.**

Prior to election day the secretary of state shall cause to be printed in the tally sheets and statements of canvass, in the proper places and under the proper designations, the names of all candidates appearing on the official ballot.

#### **1-11-15. Signature rosters; checklist of registered voters; tally sheets; form.**

Signature rosters, checklists of registered voters and tally sheets shall be in the form prescribed by the secretary of state.

#### **1-11-16. Signature roster certificates; checklist of registered voter's certificates; precinct board member's oath.**

The secretary of state shall prescribe the form of the signature roster certificates, checklist of registered voter's certificates and the precinct board member's oath.

#### **1-11-17. Repealed.**

#### **1-11-18. Election supplies.**

The secretary of state shall prescribe the types and number of election supplies to be used in the precincts.

## ARTICLE 12

### Conduct of Elections

Sec.	Sec.
1-12-1. Conduct of election; opening and closing of polls.	chinese; admittance of watchers and candidates; proclamation of results.
1-12-2. Conduct of election; precinct board attendance.	1-12-39. Conduct of election; voting machine; completion of locking procedures.
1-12-3. Conduct of election; precinct board duties.	1-12-40. Conduct of election; voting machine; duration of locking and sealing.
1-12-4. Conduct of election; maintenance of order.	1-12-41. Repealed.
1-12-5. Conduct of election; state police; other peace officers.	1-12-42. Conduct of election; employees; time to vote.
1-12-6. Conduct of election; memoranda of actions or omissions.	1-12-43. Emergency situations; emergency paper ballots; when used.
1-12-7. Conduct of election; persons not permitted to vote.	1-12-44. Emergency situations; emergency paper ballots; general requirements.
1-12-8. Conduct of election; voter's copy or certificate voting.	1-12-45. Emergency situations; emergency paper ballots; form for primary.
1-12-9. Conduct of election; fraudulent and double voting.	1-12-45.1. Emergency situations; counties using marksense ballots.
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1-12-11. Conduct of election; entries by precinct board.	1-12-47. Emergency situations; emergency paper ballots; write-in candidates.
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1-12-14. Repealed.	1-12-50. Emergency situations; emergency paper ballots; one to a voter.
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1-12-18. Conduct of election; disclosure of vote.	1-12-54. Emergency situations; voting on constitutional amendments and other questions by emergency paper ballot.
1-12-19. Repealed.	1-12-55. Emergency situations; emergency paper ballots; use of pen.
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1-12-20. Conduct of election; interposing challenges.	1-12-57. Emergency situations; emergency paper ballots; procedure after marking.
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1-12-35. Conduct of election; voting machines; closing polls; locking machine.	
1-12-36. Repealed.	
1-12-37. Conduct of election; voting machines; verification of returns.	
1-12-38. Voting machines; printomatic voting ma-	

Sec.	ballots; material to be placed in ballot box.	Sec. 1-12-69.	Emergency situations; disposition of emergency paper ballots.
1-12-68.	Emergency situations; emergency paper ballots; county canvass; when recount is required.		

### **1-12-1. Conduct of election; opening and closing of polls.**

Polls shall be opened at 7:00 a.m. on the date required by law for the election and shall be closed at 7:00 p.m. on the same day.

### **1-12-2. Conduct of election; precinct board attendance.**

Precinct board members shall present themselves at the polling place not later than 6:00 a.m. on the date required by law for the election.

### **1-12-3. Conduct of election; precinct board duties.**

The secretary of state shall prescribe the duties of the precinct board. Copies of such duties shall be furnished each county clerk and the clerk shall distribute them to each precinct.

### **1-12-4. Conduct of election; maintenance of order.**

A. The presiding judge and the election judges shall maintain order within the polling place.

B. Crowding or confusion shall not be permitted in the polling place.

C. Admittance of voters to the polling place shall be controlled and limited to prevent crowding or rushing the precinct board in the performance of its duties.

D. The presiding judge or any election judge may call upon any peace officer to assist in the maintenance of order in the polling place. When so requested, the peace officer shall render assistance.

E. The presiding judge or any election judge may designate any peace officer to assist in the conduct of the election by standing outside the polling place entrance and controlling the admission of voters to the polling place.

### **1-12-5. Conduct of election; state police; other peace officers.**

A. Any member of the state police or other peace officer may enter a polling place upon request for the purpose of observing the conduct of the election.

B. No member of the state police or other peace officer shall interfere in any way with a member of the precinct board, a voter or the conduct of the election, except to assist in maintaining order and orderly control of access when requested by the presiding judge or an election judge.

C. Any member of the state police or other peace officer violating Subsection B of this section is guilty of a petty misdemeanor and in addition to any other penalty provided by law shall be subject to dismissal and is ineligible for reinstatement.

### **1-12-6. Conduct of election; memoranda of actions or omissions.**

Any member of the precinct board may in the polling place make written memoranda and preserve them for future reference. The memoranda may concern any action or omission on the part of any person charged with a duty under the Election Code [this chapter].

### **1-12-7. Conduct of election; persons not permitted to vote.**

A. No person shall vote in any primary, general or statewide special election unless he is a voter of the precinct in which he offers to vote. A valid original certificate of registration in the county register is prima facie evidence of being a voter in the precinct.

B. No person shall vote in any primary election whose party affiliation is not designated on his original certificate of registration.

C. No voter at any primary election shall be permitted to vote for the candidate of any party other than the party designated on his original certificate of registration at the time the governor issues the primary election proclamation.

D. No person shall vote in any primary, general or statewide special election whose name and certificate of registration number appears on the list of voters purged from the rolls. The list shall be placed with the signature rosters and delivered to the polls with the other election supplies by the county clerk and shall consist of those voters in the precinct purged since the last preceding general election.

### **1-12-8. Conduct of election; voter's copy or certificate voting.**

A. Notwithstanding the provisions of Section 1-12-7 NMSA 1978, a person shall be permitted to vote even though his original certificate of registration cannot be found in the county register or even if his name does not appear on the signature roster, provided:

- (1) his residence is within the boundaries of the precinct in which he offers to vote;
- (2) his name is not on the purged list;
- (3) his name is not on the list of persons submitting absentee ballots;
- (4) he presents the voter's copy of the certificate of registration which appears on its face to be valid or he presents a certificate of eligibility bearing the seal and signature of the county clerk stating that the voter's duplicate certificate of registration is on file at the county clerk's office and that such voter has not received an absentee ballot nor has he been purged and that he shall be permitted to vote in the precinct and election specified therein, provided that such authorization shall not be given orally by the county clerk; and

- (5) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in that election.

B. An election judge shall insert the voter's ballot number or voter number on the public counter on the voter's copy of the certificate of registration or certificate of eligibility and on the executed statement. The voter's copy of the certificate of registration or certificate of eligibility shall be retained by the precinct board and the voter's copy of his certificate of registration or certificate of eligibility, along with the executed statement, shall be returned with the election returns to the county clerk.

C. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code of this state, and voting on the basis of such falsely executed statement constitutes fraudulent voting.

D. To be valid, a voter's copy of the certificate of registration dated after June 30, 1955 shall bear the signature stamp of the county clerk.

E. Within thirty days after the election, the county clerk shall examine each executed statement and investigate the truth of the statements made therein. The county clerk shall also determine the reason why the original certificate of registration of the voter was not in the county register or the signature roster sent to the precinct board and shall take such actions to avoid similar circumstances requiring the use of the voter's copy of the certificate of registration or certificate of eligibility by voters in future elections.

### **1-12-9. Conduct of election; fraudulent and double voting.**

Every person not entitled to vote who fraudulently votes, and every person who votes or offers to vote more than once at any one election, is guilty of a fourth degree felony.

### **1-12-10. Conduct of election; voter's name, address, signature.**

When a voter presents himself at the polls to vote, he shall announce his name and address in an audible tone of voice. When an election judge finds the voter's name in the signature roster, he shall in like manner repeat the name of the voter. The voter shall then

sign his name or make his mark on the signature line in the copy of the signature roster to be returned to the county clerk. Upon the voter's name or mark being written in the signature roster, a challenge may be interposed as provided in the Election Code [this chapter].

### **1-12-11. Conduct of election; entries by precinct board.**

If no challenge is interposed, an election judge shall write or stamp in the space provided therefor on the signature roster the number of the paper ballot cast by the voter or the vote number shown on the public counter of the voting machine.

### **1-12-12. Conduct of election; eligibility for assistance.**

A voter may request assistance in voting only if:

- A. he is blind;
- B. he is physically disabled;
- C. he is unable to read or write; or
- D. he is a member of a language minority who has an inability to read well enough to exercise the elective franchise.

### **1-12-13. Conduct of election; aid or assistance to voter in marking ballot.**

A. When a voter who is eligible for assistance pursuant to Section 1-12-12 NMSA 1978 requires assistance in marking his paper ballot or recording his vote by voting machine, the voter shall announce this fact in an audible tone before receiving his paper ballot or before entering the voting machine.

B. The voter's request for assistance shall be noted by his name in the signature roster and initialed by the presiding judge.

C. After noting the request for assistance in the signature roster, the voter shall be permitted assistance in marking his paper ballot or recording his vote as provided in Section 1-12-15 NMSA 1978.

D. Any person who swears falsely in order to secure assistance is guilty of perjury.

### **1-12-14. Repealed.**

### **1-12-15. Conduct of election; persons who may assist voter.**

In any primary, general or statewide special election, if a voter who has requested assistance in marking his ballot is blind, has a physical disability, has an inability to read or write or is a member of a language minority who has requested assistance pursuant to Subsection D of Section 1-12-12 NMSA 1978, he may be accompanied into the voting machine only by a person of his own choice other than the voter's employer or an agent of that employer, an officer or agent of the voter's union or a candidate whose name appears on the ballot in this election.

### **1-12-16. Conduct of election; type of assistance.**

Persons accompanying the voter into the voting booth or voting machine may assist the voter in marking and folding his paper ballot or recording his vote on the voting machine.

### **1-12-17. Repealed.**

### **1-12-18. Conduct of election; disclosure of vote.**

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



## **1-12-19. Repealed.**

### **1-12-19.1. General elections; write-in candidates.**

A. A person desiring to be a write-in candidate in a general election, a special election for United States representative or a statewide special election shall file with the proper filing officer a declaration of intent to be a write-in candidate. The declaration of intent shall be filed between 9:00 a.m. and 5:00 p.m. on the sixty-third day immediately preceding the election.

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

C. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code [this chapter], including the obligation to report under the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], except that he shall not be entitled to have his name printed on the ballot.

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

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

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

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

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

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

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

### **1-12-20. Conduct of election; interposing challenges.**

A challenge may be interposed by a member of the precinct board or by a party challenger for the following reasons:

A. the person presenting himself to vote is not registered;

B. the person presenting himself to vote is listed on the purge list placed with the signature rosters or is listed among those persons in the precinct from whom an absentee ballot was received;

C. the person presenting himself to vote is improperly registered because he is not a qualified elector;

D. in the case of a primary election, the person presenting himself to vote is not affiliated with a political party represented on the ballot; or

E. in the case of an absentee ballot, the official outer envelope of the absentee voter has been opened prior to the counting of the ballots.

### **1-12-21. Conduct of election; challenges; entries.**

When a challenge is interposed, the election clerks shall enter the word "CHALLENGED" under the notation headings in the signature rosters.

**1-12-22. Conduct of election; challenges; disposition.**

Challenges shall be handled as follows:

A. if the challenge is unanimously affirmed by the presiding judge and the two election judges, the person shall nevertheless be furnished a paper ballot, regardless of whether or not voting machines are being used in the precinct, and he shall be allowed to mark it. The paper ballot shall then be returned to the presiding judge who shall announce the voter's name in an audible tone and in the voter's presence and place the challenged ballot in an envelope marked "Rejected". Then this envelope shall be sealed, and the voter's name shall be written on the envelope. The envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted. The election clerks shall enter such voter's name in the signature roster to be sent to the secretary of state, and the voter shall sign his name in the other signature roster. The word "Affirmed" shall be written opposite such voter's name under the challenge notation in both signature rosters together with the number of the ballot so furnished.

B. if the challenge is not unanimously affirmed by the presiding judge and the two election judges, the voter shall be allowed to vote, and the election clerks shall enter the words "Not Affirmed" under the challenge notation after the voter's name in the signature roster and the checklist of registered voters.

**1-12-23. Conduct of election; voting machines; instructions.**

Before each voter enters the voting machine, a member of the precinct board shall, so far as possible, instruct him on how to operate the voting machine, illustrate its operation on the model and call his attention to the posted sample ballot. If any voter, after entering the voting machine and before drawing its curtain, asks for further information regarding the machine's operation, the two election judges shall give him the necessary information and retire before the curtain is drawn.

**1-12-24. Conduct of election; voting machines; inspection of face after vote.**

The member of the precinct board attending the voting machine shall inspect the face of the machine after each voter has recorded his vote to see that the ballot labels are in their proper places.

**1-12-25. Conduct of election; voting machines; entry into machine.**

After a voter has announced his name, had his registration confirmed, signed or marked the signature roster and has had no challenge affirmed against his casting a ballot, he may enter the voting machine. No more than one voter shall be permitted in the voting machine at one time unless the voter is being assisted.

**1-12-25.1. Procedures for voting on lever, electronic and marksense voting machines.**

A. A voter voting on a lever type machine shall:

- (1) enter the machine and push the red handle to the left to close the curtain;
- (2) set the pointer directly under the candidate's name or question on which he desires to vote; and
- (3) make all selections and pull the red handle to the right to open the curtain and record his vote.

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

- (1) enter the machine;
- (2) press the square to the right of the candidate's name or question on which he desires to vote; and

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

C. A voter voting on a marksense machine shall:

(1) receive a ballot issued by the precinct board;

(2) take the ballot to a voting booth and, with the pencil provided, mark it by completing the arrow to the right of the candidate's name or question on which he desires to vote; and

(3) make all selections and feed the ballot into the machine to record his vote.

### **1-12-26. Conduct of election; closing polls.**

When the polls are closed, the precinct board shall proclaim that fact aloud at the place of election. After the proclamation no voter shall cast a vote. However, if at the hour of closing there are other voters in the polling place, or in line at the door, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote. In the instructions to the precinct board the secretary of state shall specify procedures whereby the precinct board shall determine the identity of the last person in line at the time the polls closed.

### **1-12-27. Conduct of election; arrival of voter after closing time.**

Any person who arrives at the polling place after the time provided for closing the polls is not entitled to vote, even though the polls are open when he arrives.

### **1-12-28. Conduct of election; election certificate.**

Immediately upon the closing of the polls, the precinct board shall complete and sign a certificate which shall state: "We certify the ..... election complete with the voting of voting machine number ..... by voter number ..... on the signature roster.

### **1-12-29. Conduct of election; counting and tallying; who may be present.**

Only the members of the precinct board, candidates or their representatives, representatives of the news media and lawfully appointed challengers and watchers may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots, signature rosters or tally sheets or take part in the counting and tallying.

### **1-12-30. Conduct of election; disposition of poll book, signature roster and machine printed return reporting unofficial returns.**

A. After all certificates have been executed, the presiding judge and the two election judges shall place the check list of registered voters voting and one copy of the machine printed returns in the stamped, addressed envelope provided for that purpose and immediately mail it to the secretary of state.

B. The signature roster, the machine printed returns and the direct recording electronic cartridge for electronic and marksense machines shall be returned to the county clerk. The signature roster, the machine printed returns and the direct recording electronic cartridge for electronic and marksense machines shall not be placed in the ballot box.

C. Signature rosters and machine printed returns in the custody of the county clerk may be destroyed three years after the election to which they apply.

D. The county clerk shall report the unofficial total returns for the county to the secretary of state within ten hours after the polls close.

**1-12-31. Conduct of election; disposition of ballot boxes and other election materials.**

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

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

B. In the event emergency paper ballots have been voted, the election judge of the party different from that of the presiding judge shall place the other ballot box key in the envelope addressed to the district court and immediately mail it to the district court.

**1-12-32. Conduct of election; return of ballot boxes and election materials.**

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

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

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

**1-12-33. Conduct of election; office of county clerk to remain open.**

The county clerk or some duly authorized deputy or assistant shall keep the office of the county clerk continuously open for twenty-four hours next after the closing of the polls for any primary, general or statewide special election. The office shall be kept open for the purpose of receiving the ballot boxes, election returns and materials. If all such items have been received from each precinct in the county before the expiration of the twenty-four hour period, the office of the county clerk may be closed except during regular office hours.

**1-12-34. Conduct of election; copies of election return certificates.**

Upon completion of the certificate of returns, the presiding judge shall deliver all returns to the county clerk on election night with the exception of the one legible copy from each voting machine posted on the outside of the entrance door to the polling place.

**1-12-35. Conduct of election; voting machines; closing polls; locking machine.**

As soon as the last voter has voted, the precinct board, in the presence of all persons lawfully permitted to be present, shall immediately lock and seal the voting machine against further voting. The precinct board shall release the machine-printed returns from the machine. The precinct board shall then sign a certificate stating that the machine was locked and sealed, giving the exact time; stating the number of voters shown on the public counters, which shall be the total number of votes cast on the machine in that precinct; stating the number on the seal; and stating the number registered on the protective counter.

**1-12-36. Repealed.****1-12-37. Conduct of election; voting machines; verification of returns.**

A. Two election officials of different parties shall verify that the counter settings registered on the machine-printed returns are legible. The machine-printed returns shall show the number of votes cast for each candidate and the number of votes cast for and against any constitutional amendment or other question submitted, and the return shall be signed by each member of the precinct board and two watchers of opposing interest, if there be such.

B. If the machine-printed returns are not legible, the precinct officials shall call the county clerk in order to have the center counter compartment door opened and shall proceed to canvass the results from the counters of the machine.

**1-12-38. Voting machines; printomatic voting machine; admittance of watchers and candidates; proclamation of results.**

During the reading of the results of the votes cast, any candidate or watcher who desires to be present shall be admitted to the polling place. The proclamation of the results of the votes cast shall be distinctly announced by the presiding judge, who shall read the name of each candidate and the vote registered on the printed returns. The presiding judge shall also read the vote cast for and against each constitutional amendment or other question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the result so proclaimed with the printed returns, and any necessary corrections shall then and there be made by the precinct board.

**1-12-39. Conduct of election; voting machine; completion of locking procedures.**

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

**1-12-40. Conduct of election; voting machine; duration of locking and sealing.**

A. On the voting machine, the machine return sheet is the official vote tally for that precinct.

B. If in the district court's opinion a contest is likely to develop, it may order a voting machine to remain locked and sealed for such time it deems necessary, which period of time shall not interfere with or prohibit the use of the machine at a subsequent election.

C. The county clerk shall break the seal for purposes of lawful investigation when ordered to do so by a court of competent jurisdiction, the state legislature or the governing body of a local government calling the election. When the investigation is completed, the voting machine shall again be sealed and across the envelope containing the keys shall be written the signature of the person having broken the seal.

**1-12-41. Repealed.****1-12-42. Conduct of election; employees; time to vote.**

A. On election day any voter may absent himself from employment in which he is engaged for two hours for the purpose of voting between the time of opening and the time of closing the polls. The voter shall not be liable to any penalty for such absence; however, the employer may specify the hours during this period in which the voter may be absent.

B. The provisions of Subsection A of this section do not apply to any employee whose work day begins more than two hours subsequent to the time of opening the polls, or ends more than three hours prior to the time of closing the polls.

C. Any person or corporation who refuses the right granted in this section to any employee is guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100).

### **1-12-43. Emergency situations; emergency paper ballots; when used.**

A. If any voting machine becomes disabled while being used to the extent that any voter is unable to cast a vote for all the candidates or questions of his choice and have such vote recorded by the machine, it shall be repaired, if possible, or another voting machine shall be promptly substituted.

B. The board of county commissioners shall appropriate funds for servicing, repairing and substituting voting machines that become disabled.

C. If a disabled voting machine cannot be repaired in a reasonable length of time, and if there are no other voting machines available for substitution, the presiding judge shall order emergency paper ballots to be substituted and used.

D. The county clerk shall provide additional emergency paper ballots if needed and when requested by the precinct board.

### **1-12-44. Emergency situations; emergency paper ballots; general requirements.**

Emergency paper ballots used in the primary and general elections shall:

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

B. be uniform in size;

C. be printed on good quality white paper;

D. be printed in plain black type;

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

F. have the legislative district, commissioner district and precinct numbers printed on each emergency paper ballot.

### **1-12-45. Emergency situations; emergency paper ballots; form for primary.**

A. Emergency paper ballots used in the primary election by each party shall be set up on the ballot paper as follows:

(1) across the top shall be printed the words, "OFFICIAL PRIMARY ELECTION BALLOT";

(2) on the next line shall be printed the name of the qualified political party and the date of the primary election;

(3) on the next line shall be printed the name of the county in which the ballot is used;

(4) on the next line shall be printed the words, "To vote for a person, mark either a cross (X) or a check ( ) in the box at the right of the name of each person for whom you desire to vote.";

(5) thereafter, there shall be printed consecutively the designated office and to the extreme right of that same line shall be printed the words, "Vote For," then the words, "one," "two" or another spelled number designating how many persons under that office are to be voted for;

(6) following and below the designation of office there shall be printed the name of each candidate for that office, with a box directly opposite and to the right of the name wherein the voter may make his cross (X) or check ( ). The names of the candidates shall be printed on equal margin, one under another, and in the order and manner provided by

law. The boxes following each name shall be of the same size and each shall not be more than one-sixth of an inch apart; and

(7) the name of each office for which candidates are to be nominated along with the candidates' names shall be separated from the succeeding office and list of candidates on the emergency paper ballot by a heavy black line to designate that office clearly.

B. The emergency paper ballot used in the primary election shall have no other printing or distinguishing mark on the ballot, except at the bottom shall appear the facsimile signature of the county clerk and the words in bold, black type, "OFFICIAL PRIMARY ELECTION BALLOT."

C. Emergency paper ballots used in the primary election shall be numbered consecutively by party.

**1-12-45.1. Emergency situations; counties using marksense ballots.**

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

**1-12-46. Emergency situations; emergency paper ballots; form for general election.**

Emergency paper ballots used in the general election shall be in the form prescribed by the secretary of state and shall conform to the following requirements:

A. each emergency paper ballot shall have printed thereon the name of each candidate whose certificate of nomination has been filed according to the Election Code [this chapter], and no other names;

B. the names of each party's candidates shall be printed on the ballot in the column under the party name and emblem, and the name of each candidate shall be printed under the title of the office for which he has been nominated. No party name or emblem shall appear on the emergency paper ballot unless certificates thereof have been filed as provided by the Election Code;

C. there shall be printed on the top of each emergency paper ballot the following:

"OFFICIAL GENERAL ELECTION BALLOT

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

D. there shall be printed on the bottom of each ballot the following:

"OFFICIAL GENERAL ELECTION BALLOT"

followed by a facsimile signature of the county clerk.

**1-12-47. Emergency situations; emergency paper ballots; write-in candidates.**

Where space is allowed on an emergency paper ballot for entering the name of a write-in candidate, that space shall be clearly designated by the use of the heading "write-in candidate".

**1-12-48. Emergency situations; emergency paper ballots; number supplied.**

A. The county clerk shall supply to each precinct a quantity of emergency paper ballots equal to five percent of the total number of voters in that precinct. Such emergency paper ballots shall be used only as provided in Section 1-12-43 NMSA 1978.

B. Emergency paper ballots are official ballots and shall meet the same requirements and safeguards as all other official ballots.

**1-12-49. Emergency situations; election supplies.**

The secretary of state shall provide for the procurement of emergency paper ballot election supplies.

**1-12-50. Emergency situations; emergency paper ballots; one to a voter.**

If a voting machine cannot be used in an emergency situation, the election clerk shall give each voter only one of the emergency paper ballots being used in the election. At primary elections, the voter shall be given the emergency paper ballot of the political party designated in his original certificate of registration. The emergency paper ballots shall be numbered consecutively and shall be delivered to incoming voters in consecutive order, beginning with emergency paper ballot number one.

**1-12-51. Emergency situations; unauthorized receipt or delivery of emergency paper ballot.**

Unless otherwise provided by law a voter shall not receive an emergency paper ballot from any person other than from a member of the precinct board of the polling place where he is authorized to vote. No person other than a member of the precinct board or officer authorized by law shall deliver an emergency paper ballot to any voter.

**1-12-52. Emergency situations; occupation of voting machines when used to mark emergency paper ballots.**

Unless otherwise provided by law, when voting machines are used as voting booths to mark emergency paper ballots, they shall not be occupied by more than one person at a time. A voter shall not remain in or occupy such voting machine longer than is necessary to prepare his emergency paper ballot, which shall not exceed five minutes.

**1-12-53. Emergency situations; voters; emergency paper ballot; general election; marking.**

The voter in preparing an emergency paper ballot in a general election shall:

A. if he wishes to vote a straight party ticket, mark a cross (X) or a check ( ) in the circle beneath the name of the party and his vote shall be considered as having been cast for every candidate named on the ticket of that party on the ballot, unless he also votes for one or more candidates in some other column or for some person whose name is not printed on the ballot;

B. if he marks a cross (X) or a check ( ) in any circle and also desires to vote for a candidate of another political party (the ticket of which also appears on the ballot) or for any person by write-in, mark a cross (X) or a check ( ) in the box immediately to the right of the name of the candidate or write in the name of the person for whom he desires to vote in the blank provided therefor and mark a cross (X) or a check ( ) in the box immediately to the right thereof, and his vote shall be considered as having been cast for every candidate of the political party below the party name where he marked his cross (X) or a check ( ) in the circle, except for the candidates for whom he has otherwise voted; or

C. if he wishes, mark the ballot by omitting the cross (X) or check ( ) in the circle and marking a cross (X) or a check ( ) in the box immediately to the right of the name of every candidate or person for whom he desires to vote, and his vote shall be considered as having been cast only for the candidate or person opposite whose name the cross or check has been marked.



**1-12-54. Emergency situations; voting on constitutional amendments and other questions by emergency paper ballot.**

If a constitutional amendment or other question is submitted to the voters by emergency paper ballot, the voter shall mark his emergency paper ballot by making a cross (X) or a check ( ) in the box for or against the proposed amendment.

**1-12-55. Emergency situations; emergency paper ballots; use of pen.**

All crosses or checks on the emergency paper ballot shall be made only with pen. The cross used in marking emergency paper ballots shall be two lines intersecting at any angle within the circle or box. The check shall be a "V"-shaped mark with it being permissible for either side of the "V" being longer than the other side. Any mark discernible either as a cross or a check, whether or not any of the lines extend outside the circle or box, shall be counted as a valid marking of the ballot.

**1-12-56. Emergency situations; emergency paper ballots; identification marks.**

A voter shall not place any mark on his emergency paper ballot by which it may be afterwards identified as one voted by him.

**1-12-57. Emergency situations; emergency paper ballots; procedure after marking.**

After marking and preparing his emergency paper ballot, the voter:

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

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

C. shall deliver it to the presiding judge who shall then detach the visible number on the ballot, hand it to the voter, then deposit the emergency paper ballot in the ballot box in the presence of the voter.

**1-12-58. Emergency situations; emergency paper ballots; delivery of two or more ballots folded together.**

Every voter who knowingly hands to the presiding judge two or more emergency paper ballots folded together is guilty of a fourth degree felony.

**1-12-59. Emergency situations; person authorized to receive emergency paper ballot.**

Only the presiding judge shall receive from any voter an emergency paper ballot prepared by such voter. No person shall examine or solicit the voter to show his emergency paper ballot.

**1-12-60. Emergency situations; emergency paper ballots; removal of ballot numbers.**

The presiding judge shall not deposit in the ballot box any emergency paper ballot from which the slip containing the number of the emergency paper ballot has not been removed by the presiding judge and handed to the voter.

**1-12-61. Emergency situations; removal of emergency paper ballots.**

No person shall remove any emergency paper ballot from any polling place before the completion of the ballot count.

**1-12-62. Emergency situations; emergency paper ballots; spoiled or defaced.**

A. A voter who accidentally spoils or erroneously prepares his emergency paper ballot may return the spoiled or erroneously prepared emergency paper ballot to the presiding judge and receive a new emergency paper ballot.

B. The presiding judge in delivering the new emergency paper ballot shall announce the name of the voter and the number of the new emergency paper ballot in an audible tone.

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

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

**1-12-63. Emergency situations; election judges; unused emergency paper ballots.**

Immediately upon the closing of the polls and before any ballot box is unlocked, the election judges and presiding judge, in the presence of those lawfully permitted to be present, shall publicly destroy all unused emergency paper ballots.

**1-12-64. Emergency situations; county clerk; destruction of unused emergency paper ballots.**

On the day of the election, immediately upon the arrival of the hour when the polls are required by law to be closed, the county clerk shall publicly, in his main office, in the presence of as many persons as may assemble there to observe, proceed to destroy every unused emergency paper ballot that remains in his control and forthwith make and file his affidavit in writing as to the number of emergency paper ballots so destroyed.

**1-12-65. Emergency situations; emergency paper ballots; counting and tallying procedures.**

A. The presiding judge and the election judges, assisted by the election clerks, shall count and tally the emergency paper ballots and certify the results of the election on the form on the tally sheet setting opposite the name of each candidate in figures the total number of votes cast for the candidate, and they shall set forth in the spaces provided therefor the total number of votes cast for and against each constitutional amendment and other questions. Emergency paper ballots not marked as required by the Election Code [this chapter] shall not be counted. The precinct board shall sign the tally sheet certificate.

B. The counting and tallying of emergency paper ballots shall be in accordance with procedures prescribed by the secretary of state.

**1-12-66. Emergency situations; emergency paper ballots; signature rosters and tally sheets; disposition.**

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

B. The remaining copy of the signature roster and the tally sheet shall be returned to the county clerk. The signature roster and the tally sheet shall not be placed in the ballot box.

C. Signature rosters, checklists of registered voters and tally sheets in the custody of the county clerk and the secretary of state may be destroyed three years after the election to which they apply.

**1-12-67. Emergency situations; emergency paper ballots; material to be placed in ballot box.**

A. After the emergency paper ballots are tallied, the precinct board shall place the following in the ballot box:

- (1) the bundles of counted emergency paper ballots;
- (2) the envelopes containing spoiled ballots; and
- (3) the envelopes containing rejected ballots.

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

**1-12-68. Emergency situations; emergency paper ballots; county canvass; when recount is required.**

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

B. The district court shall fix a time and place which shall be not more than one week after receipt of notice from the county canvassing board for a recount of the emergency paper ballots from the precinct.

C. The county clerk shall immediately notify the county chairmen of the political parties who participated in the election of the time and place of the recount.

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

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

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

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

**1-12-69. Emergency situations; disposition of emergency paper ballots.**

A. Forty-five days after adjournment of the state canvassing board, each county clerk in the presence of the district judge or his designated representative shall open all ballot boxes of the precincts for which he has received no notice by registered mail of contest or no judicial inquiry, and he shall take and burn or shred the contents thereof.

B. On those ballot boxes where a recount or judicial inquiry or inspection of contents is sought, the county clerk shall hold them and their contents intact subject to order of the district court or other authority having jurisdiction of the contest or inspection.

C. At least three days prior to the opening of the ballot boxes and burning or shredding of their contents, the county clerk shall notify the county chairman of each political party participating in the election of the time, place and date thereof. The chairman of each political party may be present or may have his accredited representative present.

## ARTICLE 13

### Post-Election Duties

Sec.	Sec.
1-13-1. Post-election duties; county canvassing board.	1-13-11. Post-election duties; tie vote.
1-13-2. Post-election duties; missing returns.	1-13-12. Post-election duties; mandamus to compel canvass.
1-13-3. Post-election duties; county canvass; commencement.	1-13-13. Post-election duties; county canvassing board; certifying results.
1-13-4. Post-election duties; county canvass; method.	1-13-14. Post-election duties; opening the ballot box.
1-13-5. Post-election duties; county canvass; defective returns; correction.	1-13-15. Post-election duties; state canvass.
1-13-6. Post-election duties; county canvass; defective returns; notification of secretary of state.	1-13-16. Post-election duties; state canvass method.
1-13-7. Post-election duties; county canvass; when recheck is required.	1-13-17. Post-election duties; nature of documents.
1-13-8. Post-election duties; county canvass; search for missing returns.	1-13-18. Post-election duties; state canvass; corrections.
1-13-9. Post-election duties; county canvass; voting machine recheck.	1-13-19. Post-election duties; proceedings for contempt.
1-13-10. Post-election duties; voting machine recheck; cost.	1-13-20. Post-election duties; expense of corrections.
	1-13-21. Clearing voting machines.
	1-13-22. Post-election duties; responsibility for voting machines.

#### **1-13-1. Post-election duties; county canvassing board.**

The board of county commissioners is ex officio the county canvassing board in each county.

#### **1-13-2. Post-election duties; missing returns.**

A. If at the time the county canvassing board meets it appears that a precinct board has not delivered the election returns to the county clerk, the county canvassing board shall immediately issue a summons to bring before it the delinquent precinct board together with the missing election returns. The summons shall be served by the sheriff, without cost to the county, and the members of the precinct board shall not be paid for their service on election day.

B. If within ten days after the date of the election the secretary of state has not received the election returns of any precinct, the secretary of state may send a special messenger to the county and precinct to secure and convey the missing returns to the secretary of state.

#### **1-13-3. Post-election duties; county canvass; commencement.**

The county canvassing board shall meet within three days after the election and proceed to canvass the returns of the election.

#### **1-13-4. Post-election duties; county canvass; method.**

The county canvassing board shall canvass the election returns by carefully examining such returns of each precinct to ascertain if they contain the properly executed certificates required by the Election Code [this chapter] and to ascertain whether any discrepancy, omission or error appears on the face of the election returns.

#### **1-13-5. Post-election duties; county canvass; defective returns; correction.**

A. The county canvassing board shall immediately issue a summons directed to the precinct board, commanding them to forthwith appear and make the necessary corrections or supply omissions if:

(1) it appears on the face of the election returns that any certificate has not been properly executed;

(2) it appears that there is a discrepancy within the election returns;

(3) it appears that there is a discrepancy between the number of votes set forth in the certificate for any candidate and the number of electors voting as shown by the election returns; or

(4) it appears that there is any omission, informality, ambiguity, error or uncertainty on the face of the returns.

B. The summons shall be served by the sheriff as in the manner of civil cases, and for each service the sheriff shall be allowed the same mileage as is paid in civil cases. The mileage shall be paid by each member of the precinct board served.

C. After issuing the necessary summonses, the county canvassing board shall proceed with the canvass of all correct election returns.

### **1-13-6. Post-election duties; county canvass; defective returns; notification of secretary of state.**

If the county canvassing board discovers any defective returns and issues a summons for the precinct board, it shall immediately notify the secretary of state both orally and in writing that the returns from the specified precinct are defective. The secretary of state shall immediately transmit to the county canvassing board the defective returns from the precinct specified, after first making a photocopy of each of the covers and pages of the returns. The photocopy shall be kept on file for inspection as are the original returns.

### **1-13-7. Post-election duties; county canvass; when recheck is required.**

A. If it appears that the defective returns cannot be corrected without a recheck of the voting machines, the county canvassing board shall immediately notify the district court in writing.

B. The district court shall fix a time and place which shall be not more than one week after receipt of notice from the county canvassing board for a recheck of the machines from the precinct.

C. The county clerk shall immediately notify the county chairmen of the political parties who participated in the election of the time and place of the recheck.

D. At the time and place set by the district court the recheck shall be conducted as provided in Section 1-13-9 NMSA 1978.

E. After the recheck, the election returns shall be corrected in duplicate to conform to the facts.

F. After being properly corrected, the election returns shall be disposed of as in the first instance: one each to the county clerk and one each to the secretary of state.

### **1-13-8. Post-election duties; county canvass; search for missing returns.**

If it is necessary to open a ballot box to ascertain if missing election returns are enclosed therein, the ballot box shall be opened in the presence of the county canvassing board by the county clerk and the district judge, or someone designated by him. If it is necessary to send the key of the ballot box to his designated representative, the district judge shall send it by certified mail, and it shall be returned in the same manner. Where such omission or negligence of the precinct board causes an additional expense to be incurred, no compensation shall be paid to the precinct board for its services on election day.

### **1-13-9. Post-election duties; county canvass; voting machine recheck.**

A. During the official canvass of an election the county canvassing board, upon written request of any candidate in the election or upon receipt of a written petition of twenty-five voters of the county, shall make in the presence of the district judge a recheck and

comparison of the results shown on the official returns being canvassed with the results appearing and registered on the counter dials of each voting machine used in the election.

B. For the purpose of making the recheck and comparison, the county canvassing board may unlock and raise the cover of the counter compartment and check the figures shown by the counter dials on the voting machine. At the conclusion of the recheck and comparison the voting machine shall again be locked.

C. The necessary corrections, if any, shall be made on the returns and the results of the election, as shown by the recheck and comparison, shall be declared.

### **1-13-10. Post-election duties; voting machine recheck; cost.**

A. Before any recheck and comparison of returns and voting machines is made pursuant to Section 1-13-10 NMSA 1978, the candidate making the request, or the petitioners, shall deposit a sum of money or a surety bond made in favor of the county to defray the cost of the recheck. The deposit or the surety bond shall be in the amount of ten dollars (\$10.00) for each machine to be rechecked.

B. If the recheck alters the winner of the election, the deposit or surety bond shall be returned and the cost of the recheck shall be paid by the county. If the recheck does not alter the winner of the election, the deposit or surety bond shall be forfeited and the money from the deposit or bond shall be placed in the county general fund.

### **1-13-11. Post-election duties; tie vote.**

In the event of a tie vote between any candidates in the election for the same office, the determination as to which of the candidates shall be declared to have been nominated or elected shall be decided by lot. The method of determining by lot shall be agreed upon by a majority of a committee consisting of the tied candidates, the county chairmen of the political parties that participated in the election and the district judge. The county canvassing board shall issue the certificate of nomination or election to the candidate chosen by lot.

### **1-13-12. Post-election duties; mandamus to compel canvass.**

A. The county canvassing board shall not adjourn until it has canvassed all the returns of the election.

B. The district court, upon petition of any qualified elector, may issue a writ of mandamus to the county canvassing board to compel it to canvass, declare and certify the election returns.

### **1-13-13. Post-election duties; county canvassing board; certifying results.**

A. The county canvassing board shall complete the canvass of the returns and declare the results within ten days from the date of the election.

B. On the thirty-first day after any primary, general or district special election, the county canvassing board shall issue to those candidates entitled by law election certificates, or certificate of nomination in the case of the primary election, to all county officers, magistrates and to members of the legislature elected from districts wholly within the county. In addition, the county canvassing board shall declare the results, immediately after completion of the canvass, of the election and of all questions affecting only the county.

C. The county canvassing board, immediately after completion of the canvass, shall also certify to the state canvassing board the number of votes cast for all other candidates and questions respectively and shall immediately deliver to the county chairman of each political party that participated in the election a certificate showing the total number of votes cast for each candidate in the election in the county.

**1-13-14. Post-election duties; opening the ballot box.**

Once the ballot box has been locked by the precinct board after its first count and tally, no person shall open the ballot box or remove its contents except as provided by the Election Code [this chapter].

**1-13-15. Post-election duties; state canvass.**

The state canvassing board shall meet in the state capitol on the third Tuesday after each election and proceed to canvass and declare the results of the election or nomination of each candidate voted upon by the entire state and by the voters of more than one county. The state canvassing board shall also canvass and declare the result of the vote on any constitutional amendment or any question voted upon by the voters of more than one county. Upon the completion of the state canvass, the secretary of state shall notify each county clerk of that fact.

**1-13-16. Post-election duties; state canvass method.**

A. The state canvass shall be made from the election returns transmitted directly to the secretary of state from each of the precinct boards and, in the case of candidates voted upon by a district composed of two or more counties, from the certificates transmitted by the county canvassing boards.

B. Upon the completion of the canvass, but not sooner than the thirty-first day after any primary, general or district special election, the state canvassing board shall issue to those candidates entitled by law the appropriate certificate of election or, in the case of a primary election, a certificate of nomination.

C. The state canvassing board may designate a person or persons to compare the totals appearing on the election returns, statements of canvass and certificates and to certify the results of their findings to the state canvassing board.

**1-13-17. Post-election duties; nature of documents.**

The returns and certificates sent to the secretary of state are public documents, subject to inspection during customary office hours by candidates and by the chairman of the state central committee of each political party or his accredited representative, and may be copied upon request of a candidate or state chairman.

**1-13-18. Post-election duties; state canvass; corrections.**

The state canvassing board shall carefully examine all election returns and certificates issued by the county canvassing boards. If any discrepancy, omission or error appears on their face, the state canvassing board shall immediately forward such returns or certificate to the district court in which the precinct or county canvassing board is situated. The district judge upon receipt of such returns or certificate shall issue a summons to the responsible precinct board or county canvassing board, directing them to appear forthwith before him to complete or correct such returns or certificate.

**1-13-19. Post-election duties; proceedings for contempt.**

Failure of any person to obey any summons required to be issued by, or issued pursuant to, the Election Code [this chapter] is contempt and is punishable as provided by law.

**1-13-20. Post-election duties; expense of corrections.**

The expense of any proceeding to complete or correct any returns or certificate shall be paid from the county general fund upon voucher signed by the county clerk.

### **1-13-21. Clearing voting machines.**

A. Thirty days after adjournment of the state canvassing board, each county clerk in the presence of the district judge or his designated representative shall open all voting machines of the precincts for which he has received no notice by registered mail of contest or no judicial inquiry, and he shall clear such machines of all votes cast thereon.

B. The county clerk shall keep locked those voting machines whereof a recount, judicial inquiry or inspection is sought, subject to order of the district court or other authority having jurisdiction of the contest or inspection.

C. At least three days prior to the opening and clearing of the voting machines, the county clerk shall notify the county chairman of each political party participating in the election of the time, place and date thereof. The chairman of the political party may be present or may have his accredited representative present at such opening and clearing.

D. Nothing in this section shall prohibit the use of voting machines in a subsequent election. If the voting machine must be cleared before the thirty-day period prescribed in Subsection A of this section for use in any election, the county clerk shall first obtain an order from the district court for such clearance.

### **1-13-22. Post-election duties; responsibility for voting machines.**

After the election, the county clerk shall have custody of the voting machines. The county clerk shall furnish all necessary protection to see that the transported and stored voting machines are not tampered with or damaged. The county clerk shall take the proper action to see that the voting machines are not tampered with or damaged during the time the machines are at the polling places.

## **ARTICLE 14**

### **Contests and Recounts**

Sec.	Sec.
1-14-1. Contest of elections; who may contest.	1-14-12. Disposition of deposit in impoundment proceedings.
1-14-2. Contest of elections; status of person holding certificate.	1-14-13. Post-election duties; proof that no corruption occurred; rejection of ballots.
1-14-3. Contest of election; filing of complaint.	1-14-14. Recounts; rechecks; application.
1-14-4. Contest of election; judgment; effect; costs.	1-14-15. Recounts; rechecks; cost of proceedings.
1-14-5. Contest of election; appeal.	1-14-16. Recount or recheck proceedings; state.
1-14-6. Contest of election; preservation of ballots.	1-14-17. Recount and recheck proceedings; county.
1-14-7. Contest of election; disqualification of trial judge.	1-14-18. Recount; recheck; recanvass by canvassing boards.
1-14-8. Impounding ballots; ballots defined.	1-14-19. Recount; recheck; candidate for district judge.
1-14-9. Impounding ballots; application for court order; deposit required.	1-14-20. Recounts; rechecks; appointment of a special master.
1-14-10. Order of impoundment; contents.	1-14-21. Recounts; rechecks; mandamus.
1-14-11. Impoundment; subsequent orders; access; termination of order.	

#### **1-14-1. Contest of elections; who may contest.**

Any unsuccessful candidate for nomination or election to any public office may contest the election of the candidate to whom a certificate of nomination or a certificate of election has been issued.

#### **1-14-2. Contest of elections; status of person holding certificate.**

In case of a contest of an election, the person holding the certificate of election shall take possession and discharge the duties of the office until the contest is decided.

#### **1-14-3. Contest of election; filing of complaint.**

Any action to contest an election shall be commenced by filing a verified complaint of contest in the district court of the county where either of the parties resides. Such complaint



shall be filed no later than thirty days from issuance of the certificate of nomination or issuance of the certificate of election to the successful candidate. The party instituting the action shall be known as the contestant, and the party against whom the action is instituted shall be known as the contestee. The Rules of Civil Procedure apply to all actions commenced under the provisions of this section.

#### **1-14-4. Contest of election; judgment; effect; costs.**

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.

#### **1-14-5. Contest of election; appeal.**

An appeal shall lie from any judgment or decree entered in the contest proceeding to the supreme court of New Mexico within the time and in the manner provided by law for civil appeals from the district court.

#### **1-14-6. Contest of election; preservation of ballots.**

Either the contestant or contestee, within the time provided by the Election Code [this chapter] for the preservation of ballots, may give notice by registered mail to the county clerk of those counties wherein he wishes the ballots preserved that a contest is pending in a designated court, and thereupon it is the duty of the county clerk to preserve the ballots of all precincts named in the notice of contest and answer until the contest has been finally determined.

#### **1-14-7. Contest of election; disqualification of trial judge.**

Any election contest shall be an action or proceeding within the meaning of Section 38-3-9 NMSA 1978. Any affidavit of disqualification shall be filed on or before the date when the answer is required to be filed to the notice of contest.

#### **1-14-8. Impounding ballots; ballots defined.**

As used in Sections 1-14-9 through 1-14-12 NMSA 1978, "ballots" includes tally sheets, registration certificates, paper ballots, absentee ballots, statements of canvass, absentee ballot applications and absentee ballot registers, but does not include voting machines.

#### **1-14-9. Impounding ballots; application for court order; deposit required.**

Any candidate in an election may petition the district court for an order impounding ballots in one or more precincts within which he is a candidate. The action shall be brought in the district court for the county in which the precincts are located. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along with a cash deposit of twenty-five dollars (\$25.00) per precinct, the court shall issue an order of impoundment.

#### **1-14-10. Order of impoundment; contents.**

The court order of impoundment shall specify the items of ballots to be impounded and shall direct the state police to:

A. take immediate physical custody of any items ordered impounded and not in use in the precinct in the conduct of the election;

B. take legal custody of items ordered impounded and being used in the conduct of the election by assigning an officer to be physically present in the precinct polling place until the polling place is closed and the results in the precinct have been tallied and certified as required by the Election Code [this chapter];

C. take physical custody of items ordered impounded and being used in the conduct of the election as soon as the polling place is closed and the results in the precinct have been tallied and certified as required by the Election Code; and

D. deliver all items ordered impounded and taken into physical custody to the district court clerk of the court entering the order for safekeeping subject to further orders of the court.

### **1-14-11. Impoundment; subsequent orders; access; termination of order.**

A. The party petitioning the court for the original order of impoundment may by motion to the court request an order allowing the party or his attorney access to and inspection of any items impounded. The court shall enter its order allowing access and inspection under conditions set by the court that will assure adequate safeguarding of the impounded items. The order shall, if requested by the petitioner, allow for the copying or reproduction of any items by and at the expense of the petitioner.

B. Ten days from the date of the original order of impoundment or, if an order granting access and inspection has been entered, ten days after that order, the order of impoundment shall automatically terminate unless the court extends the time for good cause shown. The court shall in all cases order the impoundment of ballots terminated no later than thirty days after the entry of the original order of impoundment.

C. Upon the termination of an impoundment of ballots the items impounded shall be delivered by the district court clerk to the person that would have been entitled to the possession of the items under the Election Code [this chapter] if there had been no impoundment.

### **1-14-12. Disposition of deposit in impoundment proceedings.**

If the petitioner shall successfully prosecute an election content [contest] or recount proceeding that results in a change in his favor the court shall refund to him the deposit required under Section 1-14-9 NMSA 1978 less any amount expended for guarding and preserving the impounded ballots. In all other cases there shall be no refund. Any amounts not refunded shall be transmitted to the state treasurer for credit to the state general fund.

### **1-14-13. Post-election duties; proof that no corruption occurred; rejection of ballots.**

A. In any election contest a prima facie showing that the precinct board of any precinct has failed to substantially comply with the provisions of the Election Code [this chapter] that protect the secrecy and sanctity of the ballot and prescribe duties of the precinct board during the conduct of election, shall cast upon the candidates of the political party having majority representation on the precinct board the burden of proving that no fraud, intimidation, coercion or undue influence was exerted by such members of the precinct board, and that the secrecy and purity of the ballot was safeguarded and no intentional evasion of the substantial requirements of the law was made.

B. Upon failure to make such a showing upon which the court shall so find, the votes of that entire precinct shall be rejected; provided, that no such rejection shall be made where it appears to the court that the members of the precinct board ignored the requirements of the Election Code with the probable interest of procuring the rejection of the entire vote in the precinct.

**1-14-14. Recounts; rechecks; application.**

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

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

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

**1-14-15. Recounts; rechecks; cost of proceedings.**

A. Any applicant for a recount shall deposit with the proper canvassing board fifty dollars (\$50.00) in cash, or a sufficient surety bond in an amount equal to fifty dollars (\$50.00), for each precinct for which a recount is demanded. Any applicant for a recheck shall deposit with the proper canvassing board ten dollars (\$10.00) in cash, or a sufficient surety bond in an amount equal to ten dollars (\$10.00), for each voting machine to be rechecked.

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

C. If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the state upon warrant issued by the secretary of finance and administration supported by a voucher of the state canvassing board, or shall be paid by the county upon warrant of the county clerk from the general fund of the county, as the case may be.

D. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of any docket fees, mileage of the sheriff in serving summons, and fees and mileage of precinct board members, at the same rates allowed witnesses in civil actions. If error or fraud has been committed by a precinct board, they shall not be entitled to such mileage or fees.

**1-14-16. Recount or recheck proceedings; state.**

A. Immediately after filing of the application for recount or recheck, the state canvassing board shall issue a summons directed to the precinct board of each precinct specified in the application commanding it to appear at the county seat of the county wherein the precinct is situated on a day fixed in the summons, which date shall not be more than ten days after the filing of the application for a recount or recheck. The summons shall be forwarded to the county clerk of the concerned county.

B. Upon receipt of the summons, the county clerk shall deliver it to the sheriff who shall forthwith personally serve it upon each of the precinct board members. The county clerk shall thereupon send notices by registered mail of the date fixed for recount or recheck to the district judge for the county and to the county chairman of each of the political parties that participated in the election in that precinct.

C. The precinct boards, district judge and the county clerk shall meet at the county courthouse at 10:00 a.m. on the date fixed for the recount or recheck, and the ballot boxes or voting machines of the precincts involved in the recount or recheck shall be opened. The

precinct boards shall recount and retally the emergency paper ballots or the absentee ballots, or recheck the votes cast on the voting machine, as the case may be, for the office in question in the presence of the county clerk, district judge or person designated to act for him, and any other person who may desire to be present.

D. During the recount or recheck, the precinct board of a precinct where emergency paper ballots or absentee ballots were used shall recount and retally only the ballots which the presiding judge accepted and placed in the ballot box as legal ballots at the time they were cast or received, as the case may be.

E. After completion of the recount or recheck, the precinct board shall replace the emergency paper ballots or absentee ballots in the ballot box and lock it, or the voting machines shall be locked and resealed, and the precinct board shall certify to the secretary of state the results of the recount or recheck. The district judge, or the person designated to act for him, and the county clerk shall also certify that the recount or recheck was made in their presence.

### **1-14-17. Recount and recheck proceedings; county.**

A. Immediately upon filing of the application for recount or recheck, the district judge shall by order fix the place and date of the recount or recheck, which date shall not be more than ten days after the filing of the application. Such order of the district judge shall direct the county clerk to issue a summons to the precinct board of the precinct complained of. It shall command them to attend at the time and place specified therein and to make such recount or recheck.

B. The summons shall be forthwith personally served by the sheriff upon each precinct board member.

C. The county clerk shall notify the county chairman of each political party that participated in the election in that precinct of the date and place fixed for the recount or recheck. The notice shall be by registered mail.

D. The precinct board, district judge and county clerk shall meet at the county courthouse at 10:00 a.m. on the date set.

E. The ballot boxes or voting machines of the precincts involved in the recount or recheck shall be unlocked, and the precinct board shall recount and retally the emergency paper and absentee ballots or recheck the votes cast on the voting machine for the office in question in the presence of the district judge, or person designated to act for him, the county clerk and any other person who desires to be present.

F. At the recount the precinct board of a precinct using emergency paper ballots or absentee ballots shall recount and retally only the ballots which the presiding judge accepted and placed in the ballot box as legal ballots at the time they were cast.

G. After completion of the recount or recheck, the emergency paper ballots or absentee ballots shall be placed in the ballot box and locked, or the voting machines shall be locked and resealed, and the precinct board shall certify to the county canvassing board the results of the recount or recheck. The district judge and county clerk shall certify that such recount or recheck was made in their presence.

### **1-14-18. Recount; recheck; recanvass by canvassing boards.**

A. Immediately upon receipt of the certificate of recount or recheck from all the precinct boards making a recount or recheck, the proper canvassing board shall meet and recanvass the returns for the office in question.

B. In making the recanvass, the proper canvassing board shall be bound by the certificates of recount or recheck from the precinct boards instead of the original returns from those precinct boards.

C. After the recanvass, if it appears that fraud or error has been committed sufficient to change the winner of the election, then the proper canvassing board shall revoke the certificate of nomination or election already issued to any person for that office and shall issue a certificate of nomination or election in favor of the person receiving a plurality of the

votes cast at the election as shown by the recount or recheck, and such certificate shall supersede all others and entitle the holder to the same rights and privileges as if such certificate had been originally issued by the canvassing board.

### **1-14-19. Recount; recheck; candidate for district judge.**

If a recount or recheck is demanded on the election of a district judge and the judge of the district was a candidate at the election, the chief justice of the supreme court shall designate a district judge who shall act in such proceedings.

### **1-14-20. Recounts; rechecks; appointment of a special master.**

If the judge of the district court for the county, or any judge designated in his place, cannot be present at any recount or recheck on the day set, he shall appoint a member of the bar to act for him.

### **1-14-21. Recounts; rechecks; mandamus.**

If the state canvassing board, the county canvassing board, secretary of state, county clerk or any member of a precinct board fails or refuses to do or perform any of the acts required of them pertaining to recounts or rechecks, the applicant for recount or recheck may apply to any district court, the court of appeals or the supreme court of New Mexico for writ of mandamus to compel the performance of the required act and such court shall entertain such application.

## **ARTICLE 15**

### **Presidential Electors, Senators, Congressmen and Expiring Terms**

Sec.	Sec.
1-15-1. Presidential electors; notification of state chairmen.	1-15-15. United States representative; congressional districts established.
1-15-2. Presidential electors; primary election.	1-15-16. United States representative; composition of districts.
1-15-3. Presidential electors; nomination.	1-15-16.1. Precincts.
1-15-4. Presidential electors; election.	1-15-17. United States representative; nomination and election.
1-15-5. Presidential electors; duties.	1-15-17.1. Repealed.
1-15-6. Presidential electors; organization.	1-15-18. Repealed.
1-15-7. Presidential electors; when governor fills vacancy.	1-15-18.1. United States representative; vacancy.
1-15-8. Presidential electors; electoral college casting ballots; certification of results.	1-15-19. Expiring and succeeding terms.
1-15-9. Presidential electors; penalty.	1-15-20. Expiring term and next succeeding term in same election.
1-15-10. Presidential electors; per diem and mileage.	1-15-21. Expiring term and next succeeding term; nomination.
1-15-11. United States senator; nomination.	1-15-22. Expiring term and next succeeding term; filing fee.
1-15-12. United States senator; election.	1-15-23. Expiring term and next succeeding term; ballot; write-in.
1-15-13. United States senator; canvass of vote.	
1-15-14. United States senator; vacancy.	

### **1-15-1. Presidential electors; notification of state chairmen.**

On or before June 1 of each year in which the president and vice president of the United States are to be elected, the secretary of state shall send written notice to the state chairman of each qualified political party in New Mexico setting forth the method and requirements for nominating and electing presidential electors in this state at the general election.

### **1-15-2. Presidential electors; primary election.**

Presidential electors shall not be nominated at the primary election.

**1-15-3. Presidential electors; nomination.**

A. Any qualified political party in New Mexico desiring to have candidates for president and vice president on the general election ballot in a presidential election year shall, at a state party convention held in the year of such election, choose from the voters of such party the number of presidential electors required by law and no more.

B. The presidential electors shall be nominated by the state convention according to the rules of that party on file with the secretary of state.

C. Upon the nomination of presidential electors, the chairman and secretary of the convention shall certify the names and addresses of such nominees not less than fifty-six days prior to the election to the secretary of state. The secretary of state shall record the nominees' names in his office as the presidential elector nominees of that party.

**1-15-4. Presidential electors; election.**

A. The names of the presidential elector nominees shall not be placed upon the general election ballot; instead, the secretary of state shall certify to the county clerks the names of persons nominated by each qualified political party for the offices of president and vice president of the United States.

B. The names of such nominees for president and vice president for each qualified political party shall be printed together in pairs upon the general election ballot. A vote for any such pair of nominees shall be a vote for the presidential electors of the political party by which such nominees were named.

C. The presidential elector nominees of the party whose nominees for president and vice president receive the highest number of votes at the general election shall be the elected presidential electors for this state, and each shall be granted a certificate of election by the state canvassing board.

**1-15-5. Presidential electors; duties.**

Presidential electors for the state shall perform the duties of the presidential electors required by law and the constitution of the United States.

**1-15-6. Presidential electors; organization.**

A. Presidential electors of the state shall meet at 11:00 a.m. in the office of the secretary of state on the day fixed by the laws of the United States for presidential electors to cast their ballots for president and vice president of the United States.

B. At such meeting the presidential electors shall organize by choosing a presiding officer and a secretary.

C. If the full number of electors required by law are not present at such meeting for any reason, those presidential electors present shall, from a list of names nominated by the state chairman of that party, forthwith choose electors from the voters of that state party.

D. The secretary of state shall provide such clerical assistance as needed by the presidential electors in performing their duties.

**1-15-7. Presidential electors; when governor fills vacancy.**

In the case of the death or absence of any presidential elector or failure to complete the number of presidential electors by noon of the day fixed by the laws of the United States for presidential electors to cast their ballots, the governor shall fill any vacancy by appointment. In filling the vacancy the governor shall appoint a voter of the state from a list of names nominated by the state chairman of the same political party represented by the presidential elector whose death or absence caused the vacancy.

**1-15-8. Presidential electors; electoral college casting ballots; certification of results.**

The presidential electors of the state shall meet at noon in the office of the secretary of state on the day fixed by the laws of the United States for presidential electors to cast their

ballots for president and vice president and shall proceed to vote by ballot for president and vice president of the United States and to certify the results of such election in accordance with the constitution and laws of the United States. The presidential elector chosen as secretary shall keep a journal of the proceedings and deposit the journal in the office of the secretary of state, where it shall be kept on file.

### **1-15-9. Presidential electors; penalty.**

A. All presidential electors shall cast their ballots in the electoral college for the candidates of the political party which nominated them as presidential electors.

B. Any presidential elector who casts his ballot in violation of the provisions contained in Subsection A of this section is guilty of a fourth degree felony.

### **1-15-10. Presidential electors; per diem and mileage.**

Each presidential elector shall be paid per diem for each day's attendance and mileage from his residence to the state capitol and return to his place of residence one time, as provided for state officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and he shall receive no other compensation. Per diem and mileage shall be paid by the state treasurer on warrants drawn by the secretary of finance and administration in accordance with vouchers approved by the presiding officer of the presidential electors.

### **1-15-11. United States senator; nomination.**

Candidates for the office of United States senator shall be nominated during the year of the general election next preceding the expiration of the term of office of the United States senator whose successor is to be nominated and elected. Nominations shall be in the manner prescribed by the Election Code [this chapter] for state officers.

### **1-15-12. United States senator; election.**

The United States senator shall be elected at the general election next succeeding nomination for that office.

### **1-15-13. United States senator; canvass of vote.**

The vote for the office of United States senator shall be cast, counted, returned and canvassed in the same manner as the vote is cast, counted, returned and canvassed for state officers. Upon completion of the canvass, the state canvassing board shall immediately transmit the results of such election of United States senator to the president of the United States senate.

### **1-15-14. United States senator; vacancy.**

A. Immediately upon there being a vacancy in the office of United States senator, the governor shall make a temporary appointment to fill the vacancy until such time as an election is held to fill the vacancy for the unexpired term.

B. The election to fill the vacancy for the unexpired term shall be held at the next general election occurring not less than thirty days subsequent to the happening of such vacancy.

C. If the vacancy occurs within thirty days next preceding a general election, the person appointed by the governor to fill the vacancy shall hold office until the next general election occurring more than thirty days subsequent to the happening of the vacancy unless the term of office of such senator shall sooner expire.

D. Candidates to fill a vacancy in the office of United States senator for an unexpired term shall be nominated and elected in the same manner as candidates are nominated and elected for the full term.

### **1-15-15. United States representative; congressional districts established.**

New Mexico is divided into three congressional districts to be known and designated as congressional district number one, congressional district number two and congressional district number three.

### **1-15-16. United States representative; composition of districts.**

A. Congressional district number one is composed of Torrance county; Bernalillo county precincts number 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 61, 62, 63, 64, 65, 66, 67, 71, 72, 73, 74, 75, 76, 77, 81, 82, 83, 84, 86, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 101, 102, 103, 104, 105, 106, 107, 121, 122, 123, 124, 125, 131, 132, 133, 134, 135, 151, 152, 153, 154, 161, 162, 163, 164, 165, 166, 181, 182, 183, 184, 185, 186, 187, 191, 192, 193, 194, 195, 196, 197, 211, 212, 213, 214, 215, 216, 217, 221, 222, 223, 224, 225, 226, 241, 242, 243, 244, 245, 246, 251, 252, 253, 254, 255, 256, 257, 258, 271, 272, 273, 274, 275, 276, 277, 278, 280, 281, 282, 283, 284, 285, 286, 287, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 311, 312, 313, 314, 315, 316, 317, 318, 319, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 341, 342, 343, 344, 345, 346, 347, 351, 352, 353, 354, 355, 356, 357, 358, 371, 372, 373, 374, 375, 381, 382, 383, 384, 385, 386, 387, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 451, 452, 453, 454, 461, 462, 463, 464, 465, 466, 467, 471, 472, 473, 474, 475, 476, 477, 478, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 561, 562, 563, 564, 565, 566, 567, 568 and 569; Sandoval county precincts number 1, 2, 3, 4, 5, 6, 28, 29 and 38; Santa Fe county precinct number 73; and Valencia county precincts number 6, 8, 15, 16, 28, 29, 30, 32, 33 and 34.

B. Congressional district number two is composed of Catron, Chaves, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Hidalgo, Lea, Lincoln, Luna, Otero, Sierra and Socorro counties; Bernalillo county precincts number 31 and 93; Cibola county precincts number 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17; and Valencia county precincts number 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 35, 36 and 37.

C. Congressional district number three is composed of Colfax, Curry, Harding, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Taos and Union counties; Bernalillo county precincts number 1, 2, 19, 23, 80 and 85; Cibola county precinct number 5; Sandoval county precincts number 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51; and Santa Fe county precincts number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78 and 79.

#### **1-15-16.1. Precincts.**

A. Precinct designations and boundaries used in the 1991 congressional redistricting are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] and revised and approved pursuant to that act by the secretary of state as of August 16, 1991.

B. The boards of county commissioners shall not create any precinct that lies in more than one congressional district, nor shall the boards of county commissioners divide any precinct so that the divided parts of the precinct are situated in two or more congressional



districts. Votes cast in any general, primary or other statewide election from precincts created or divided in violation of this subsection shall be invalid and shall not be counted or canvassed.

### **1-15-17. United States representative; nomination and election.**

One representative in congress shall be nominated and elected from each congressional district for voting purposes. Ballots for representatives in congress shall designate the office as congressional district number one, congressional district number two and congressional district number three. Only voters of each district shall be eligible to vote for the respective candidates of the district.

#### **1-15-17.1. Repealed.**

#### **1-15-18. Repealed.**

#### **1-15-18.1. United States representative; vacancy.**

A. Ten days after a vacancy occurs in the office of United States representative, the governor shall, by proclamation, call a special election to be held not less than eighty-four nor more than ninety-one days after the date of the vacancy for the purpose of filling the vacancy, except as provided in Subsection E of this section.

B. Upon the issuance of the governor's proclamation, each qualified political party may nominate in the manner provided by the rules of that party a candidate to fill the vacancy in the office of United States representative; provided that such nomination is certified to the secretary of state by the state chairman of that party no later than 5:00 p.m. on the fifty-sixth day preceding the date of the special election.

C. Declarations of independent candidacy to fill the vacancy in the office of United States representative and nominating petitions pertaining thereto shall be filed with the secretary of state no later than 5:00 p.m. on the fifty-sixth day preceding the date of the special election.

D. Special elections called for the purpose of filling a vacancy in the office of United States representative shall be conducted in accordance with the provisions of the Election Code [this chapter]; provided, however, if there is a conflict between this section and other provisions of the Election Code, the provisions of this section shall control.

E. If a vacancy occurs in the office of United States representative after the date of the primary election and before the date of the general election of that same year, such vacancy shall be filled at that general election of the same year. Candidates seeking the office of United States representative in such general election for the next succeeding term shall be deemed to be candidates for the unexpired term as well, and the candidate elected shall take office upon the certification of the election results.

#### **1-15-19. Expiring and succeeding terms.**

"Expiring term" means a term of office which expires not later than three months after the general election at which it is filled.

#### **1-15-20. Expiring term and next succeeding term in same election.**

In all instances where the expiring term of any elective state or district office or the office of United States senator or representative and the term next succeeding such expiring term are to be voted upon at the same general election, the same individual may be a candidate for both such expiring term and next succeeding term whether at a primary election, nominating convention or general election.

#### **1-15-21. Expiring term and next succeeding term; nomination.**

A. If any political party convention nominates any individual to be placed on the general election ballot for the term next succeeding the expiring term, then such person nominated

by the party convention shall be deemed to also be designated by the convention for the expiring term. No candidate may be designated by the convention for the expiring term only.

B. Any candidate whose name is placed on the direct primary ballot in the primary election for the term next succeeding the expiring term shall be conclusively presumed to have declared as a candidate for both the expiring term and the succeeding term.

### **1-15-22. Expiring term and next succeeding term; filing fee.**

Notwithstanding any of the provisions of the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], a candidate for both the expiring term and the next succeeding term of the same office shall pay only the fee required of a candidate for the office for one full term of such office.

### **1-15-23. Expiring term and next succeeding term; ballot; write-in.**

A. If the same individual is a candidate at a general election for both the expiring term and the next succeeding term, his name shall appear but once on the ballot, and the name of the office, followed by the words, "full and expiring terms."

B. Provisions shall be made in the general election to permit any voter to write in a separate name for the expiring term and a separate name for the next succeeding term. A voter may write in the name of any candidate he chooses for either term and such vote shall be valid and counted even though the candidate's name is printed on the paper ballot or ballot label.

## **ARTICLE 16**

### **State Constitutional Amendments and Other Questions Submitted**

Sec.	Sec.
1-16-1. State constitutional amendments; application of Election Code.	1-16-7. State constitutional amendments; ballot labels; form.
1-16-2. State constitutional amendments; ballots; special elections.	1-16-8. Other questions.
1-16-3. State constitutional amendments; certification.	1-16-9. State constitutional amendments; single emergency paper ballot and absentee ballot.
1-16-4. State constitutional amendments; publication.	1-16-10. State constitutional amendments; sample ballots.
1-16-5. State constitutional amendments; ballot; forms for emergency paper ballots and absentee ballots.	1-16-11. State constitutional amendments; expense.
1-16-6. State constitutional amendments; marking emergency paper ballots and absentee ballots.	1-16-12. State constitutional amendments; general elections.
	1-16-13. Constitutional amendments; text provided.

### **1-16-1. State constitutional amendments; application of Election Code.**

At all elections at which any proposed constitutional amendment or question is submitted to a vote of the electors, the election shall be held and conducted in accordance with the Election Code [this chapter].

### **1-16-2. State constitutional amendments; ballots; special elections.**

The secretary of state shall provide ballots for the use of voters in all special elections where constitutional amendments or other questions are submitted to the voters of the entire state. Paper ballots shall bear on their face the facsimile signature of the secretary of state and shall be furnished to each of the county clerks.

**1-16-3. State constitutional amendments; certification.**

Whenever a proposed constitutional amendment or other question is to be submitted to the voters of the entire state, the secretary of state, not less than fifty-six days before the election at which it is to be submitted, shall certify the proposed constitutional amendment or question to the county clerk of each county.

**1-16-4. State constitutional amendments; publication.**

Upon receipt of the certified proposed constitutional amendment or other question, the county clerk shall include it in the proclamation to be issued and shall publish the full text of each proposed constitutional amendment or other question in accordance with the constitution of New Mexico.

**1-16-5. State constitutional amendments; ballot; forms for emergency paper ballots and absentee ballots.**

A. All emergency paper ballots and absentee ballots proposing constitutional amendments shall have printed thereon in both English and Spanish the full title of the joint resolution proposing the constitutional amendment and the constitutional amendment number assigned to the joint resolution by the secretary of state. Below the printed title there shall be printed on the ballot two one-quarter inch blank boxes. Opposite one of the blank boxes there shall be printed in both English and Spanish the words "FOR" and opposite the other blank box shall be printed in both such languages the words "AGAINST".

B. There shall be printed across the top of such ballot the following: "Instructions to voters: If you desire to vote for the amendment, mark a cross (X) or a check ( ) or any other mark clearly indicating intention in the  opposite the words "FOR." If you desire to vote against the amendment, mark a cross (X) or a check ( ) or any other mark clearly indicating intention in the  opposite the words "AGAINST".

**1-16-6. State constitutional amendments; marking emergency paper ballots and absentee ballots.**

A voter desiring to mark his emergency paper ballot or absentee ballot for or against a proposed constitutional amendment shall do so in the manner specified in the instructions printed on the emergency paper ballot or absentee ballot.

**1-16-7. State constitutional amendments; ballot labels; form.**

The secretary of state shall prescribe the form in which state constitutional amendments shall appear on the ballot. Such form shall include the full title of the joint resolution proposing the constitutional amendment and the constitutional amendment number assigned to the joint resolution by the secretary of state. The secretary of state may provide an analysis of the proposed constitutional amendment on the ballot. The ballot shall be printed in both English and Spanish.

**1-16-8. Other questions.**

The form for ballots on questions other than proposed constitutional amendments to be submitted to the voters of the entire state shall be prescribed by the secretary of state. The form for ballots on those questions not statewide in application to be submitted to the voters of the county shall be furnished by the county clerk, and a copy of the resolution proposing such question shall be sent by the county clerk to the secretary of state not less than thirty days prior to the election. In each case the ballots shall conform as nearly as practicable to the form required for ballots on proposed constitutional amendments.

### **1-16-9. State constitutional amendments; single emergency paper ballot and absentee ballot.**

Proposed constitutional amendments or other questions submitted to the voters on emergency paper ballots or absentee ballots at any election shall be printed upon one ballot only.

### **1-16-10. State constitutional amendments; sample ballots.**

At the time ballots are printed for special elections on proposed constitutional amendments or other questions, the secretary of state shall have sample ballots printed and furnished to the counties. The form and number of sample ballots furnished to each precinct shall be the same as required for sample ballots in general elections.

### **1-16-11. State constitutional amendments; expense.**

The expense incurred by the secretary of state in printing and distributing the ballots for proposed constitutional amendments or other questions to be furnished by him shall be paid by the state.

### **1-16-12. State constitutional amendments; general elections.**

At all general elections at which any proposed constitutional amendment or question is submitted to the voters, the emergency paper ballot or absentee ballot on the proposed constitutional amendment or question shall be printed on the emergency paper ballot or absentee ballot for the election of officers.

### **1-16-13. Constitutional amendments; text provided.**

In any election in which a constitutional amendment is being considered, the secretary of state shall cause to be printed samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The secretary of state shall then distribute the sample constitutional proposals to the county clerk in each county, who in turn, will distribute them to the precincts in the same manner and number as sample ballots.

## **ARTICLE 17**

### **Referendum Petitions**

Sec.	Sec.
1-17-1. Referendum petitions; who may sign.	1-17-9. Referendum petitions; number; popular name.
1-17-2. Referendum petitions; form.	1-17-10. Referendum petitions; sufficiency or insufficiency.
1-17-3. Referendum petitions; solicitor of signatures; duty.	1-17-11. Referendum petitions; sufficiency of petition; burden of proof.
1-17-4. Referendum petitions; penalty.	1-17-12. Referendum petitions; determination of insufficiency; duty of secretary of state.
1-17-5. Referendum petitions; requirements as to contents.	1-17-13. Referendum petitions; writ of mandamus.
1-17-6. Referendum petitions; form of certificate.	1-17-14. Referendum petitions; notice of election.
1-17-7. Referendum petitions; false certification; penalty.	
1-17-8. Referendum petitions; approval before circulation.	

### **1-17-1. Referendum petitions; who may sign.**

Any person who is a qualified elector of New Mexico and who disapproves any law not excepted by the constitution of New Mexico may sign a referendum petition in his own proper handwriting, and not otherwise, to order a referendum vote upon a law enacted at the last preceding session of the legislature.

**1-17-2. Referendum petitions; form.**

The petition and order for referendum shall be in the following form:

**"PETITION FOR REFERENDUM**

To the Honorable . . . . .  
(Name of secretary of state)

We, the undersigned, qualified electors of . . . . . county, New Mexico, who disapprove Laws 19. . . . , Chapter . . . . , of New Mexico, approved . . . . . day of . . . . . , 19 . . . . , entitled 'An Act . . . . .,' respectfully request by this our petition that it be referred to the people of New Mexico, to the end that the same may be approved or rejected by vote of the qualified electors of the state at the next regular general election to be held on the . . . . . day of . . . . . , 19. . . . ; and each of us for himself says: I am a qualified elector of . . . . . county, New Mexico, and my residence, post-office address and voting precinct are correctly written after my name.

NAME                      RESIDENCE                      POST-OFFICE                      VOTING PRECINCT."

**1-17-3. Referendum petitions; solicitor of signatures; duty.**

Every person who solicits signatures to any petition for referendum shall present a full and correct copy of the law on which the referendum is sought to the person whose signature is solicited.

**1-17-4. Referendum petitions; penalty.**

It is a fourth degree felony for any person, on a petition for referendum, to:

- A. sign any name other than his own, except to write thereon the name of a person who cannot write and who signs his name with his mark;
- B. sign his name more than once on a petition on the same law;
- C. sign his name when he is not a qualified elector in the county specified in the petition; or
- D. knowingly misrepresent the purpose and effect of the petition or law thereby affected, for the purpose of causing anyone to sign the petition in reliance upon such misrepresentation.

**1-17-5. Referendum petitions; requirements as to contents.**

- A. Each page of a referendum petition upon which signatures of petitioners are to be solicited shall be an exact copy of all other pages of the referendum petition, except as to the county name and actual signatures.
- B. Each page of any referendum petition to be filed shall have attached thereto the certificate of the person who circulated such petition.
- C. No page of a referendum petition shall contain signatures of petitioners from more than one county. When a complete set of pages is delivered to the secretary of state as a completed petition, the sponsors shall also deliver a certified list of the registered voters of the county in which the particular pages were circulated and signed.
- D. When a sufficient number of pages of a referendum petition are signed by the required number of qualified electors and are filed and duly certified by the secretary of state, they shall be treated and considered as one petition.
- E. Each referendum petition shall be headed in boldface type, over the signature of the attorney general, with necessary instructions to the person who solicits signatures for the petition and to the signers of the petition, informing them of the privileges granted by the constitution and penalties imposed for violations of the law pertaining to referendum petitions.

**1-17-6. Referendum petitions; form of certificate.**

The back of each page of every referendum petition containing the signatures shall bear the following certificate executed by the person who circulated that page of the referendum petition:

**"STATE OF NEW MEXICO  
COUNTY OF .....**

I, ....., do hereby certify that the signatures appearing on the front hereof were signed in my presence; that to the best of my knowledge and belief each such signature is genuine; and that the person so signing is a qualified elector in the county named on this page.

.....  
(signature of person soliciting  
signatures for petition)  
.....  
(post-office)".

**1-17-7. Referendum petitions; false certification; penalty.**

Falsely certifying to the statements contained in the certificate required of persons soliciting signatures on a referendum petition is a fourth degree felony.

**1-17-8. Referendum petitions; approval before circulation.**

A. Before any referendum petition is circulated for signatures, the sponsors shall submit the original draft thereof to the secretary of state to determine whether or not it meets the requirements of law for referendum petitions. At the same time the original draft is submitted to the secretary of state, the sponsors shall also submit a suggested popular name for the law which is the object of the petition.

B. Within ten days after submission of the original draft and suggested popular name, the secretary of state shall:

- (1) approve and certify the original draft of the petition, and approve and certify the suggested popular name or a more suitable and correct popular name; or
- (2) disapprove the original draft and specify each deficiency not in compliance with the law.

**1-17-9. Referendum petitions; number; popular name.**

The secretary of state shall fix and declare the number of the referendum petition and the popular name of the law to which it refers and by which it shall be designated on the ballot.

**1-17-10. Referendum petitions; sufficiency or insufficiency.**

The secretary of state shall ascertain and declare the sufficiency or insufficiency of each complete referendum petition within fifteen days after it is filed in his office.

**1-17-11. Referendum petitions; sufficiency of petition; burden of proof.**

A. In considering the sufficiency of a referendum petition the burden of proving that all signatures appearing on the page are genuine and that the signers are qualified electors of the county named on the page and are in all respects entitled to sign the petition shall be upon the sponsors of the petition, if it is apparent beyond a reasonable doubt to the secretary of state that twenty percent or more of the signatures on any one page thereof are fictitious, forged or otherwise clouded, or that the challenged petitioners were ineligible to sign the petition, which fact was known or could have been ascertained by the exercise of reasonable diligence on the part of the person soliciting the signatures on that page.

B. If the sponsors of the referendum petition refuse or fail to assume and meet such burden, the secretary of state shall reject the entire page and shall not count as petitioners any of the names appearing thereon.

### **1-17-12. Referendum petitions; determination of insufficiency; duty of secretary of state.**

A. If the complete referendum petition filed with the secretary of state is found to be insufficient, the secretary of state shall forthwith notify the sponsors in writing, through their designated agent, and shall set forth his reasons for so finding.

B. After delivery of such notice of insufficiency, the sponsors shall have thirty days in which:

- (1) to solicit and obtain additional signatures;
- (2) to submit proof to show that a rejected signature is valid and should be counted;

or

- (3) to make the petition more definite and certain.

C. Any amendment and correction to the referendum petition shall not materially change the purpose and effect of the petition, and no change shall be made in petition except to correct apparent typographical errors and omissions.

D. If no action is taken as prescribed in Subsection B of this section within the time limit prescribed, the petition for purposes of referral to the people at the general election is void.

### **1-17-13. Referendum petitions; writ of mandamus.**

A. If the secretary of state fails or refuses to examine and certify the sufficiency or insufficiency of any referendum petition within the time prescribed, any twenty-five qualified electors who feel aggrieved thereby may within fifteen days thereafter apply to the supreme court for a writ of mandamus.

B. If the court decides that such petition is legally sufficient, it shall order the secretary of state to file and certify the sufficiency thereof as of the date upon which it was first offered for filing. A certified copy of the court's finding and order shall be attached to such petition.

C. On a proper showing that the referendum petition is not legally sufficient, the court may enjoin the secretary of state from certifying its sufficiency.

### **1-17-14. Referendum petitions; notice of election.**

Before the general election at which any law subject to referendum petition is to be voted upon by the people, the secretary of state shall give notice by publication and posting in the manner required by law for the publication and posting of notice of election on proposed constitutional amendments. The notice shall contain the number of the petition, the ballot title, the certified popular name of the law to which the petition refers and a complete text of the law to which the petition refers.

## **ARTICLE 18**

### **Federal Constitutional Amendments**

Sec.

1-18-1. Federal constitutional amendments; ratification convention; proclamation.

1-18-2. Federal constitutional amendments; contents of proclamation.

1-18-3. Federal constitutional amendments; ratification convention; composition.

Sec.

1-18-4. Federal constitutional amendments; per diem and mileage of delegates.

1-18-5. Federal constitutional amendments; certification of proceedings.

**1-18-1. Federal constitutional amendments; ratification convention; proclamation.**

Within ten days after receipt of official notification of an action of congress proposing to conventions in the several states an amendment to the constitution of the United States, the governor shall, by proclamation, call a convention for the purpose of ratifying or rejecting the proposed amendment.

**1-18-2. Federal constitutional amendments; contents of proclamation.**

The proclamation shall specify the time and place of holding the convention and shall set forth the proposed amendment to the constitution of the United States.

**1-18-3. Federal constitutional amendments; ratification convention; composition.**

The ratification convention shall be composed of each member of the state legislature. The convention shall meet in the chamber of the house of representatives and, where applicable, the rules of the house of representatives shall govern the proceedings of the convention. The lieutenant governor shall be the president of the convention and shall be the presiding officer. He shall be assisted in his duties by the speaker of the house of representatives and the president pro tempore of the senate.

**1-18-4. Federal constitutional amendments; per diem and mileage of delegates.**

Delegates to the ratification convention shall be paid per diem and mileage at the same rate as provided for members of the legislature; provided that such per diem shall not be paid for any period of time exceeding three calendar days.

**1-18-5. Federal constitutional amendments; certification of proceedings.**

The proceedings of the ratification convention shall be certified to in the manner and form prescribed by existing law in respect to state action on proposed amendments to the constitution of the United States.



## ARTICLE 19

### Campaign Practices

Sec.

- 1-19-1. Campaign practices; primary election; expenditure of party money.
- 1-19-2 to 1-19-15. Repealed.
- 1-19-16. Campaign practices; printing or publishing campaign material without specifying sponsor; penalty.
- 1-19-17. Campaign practices; circulation of campaign material without specifying sponsor; penalty.
- 1-19-18 to 1-19-24. Repealed.
- 1-19-25. Short title.
- 1-19-26. Definitions.
- 1-19-26.1. Political committees; registration; disclosures.
- 1-19-27. Reports required.
- 1-19-27.1, 1-19-27.2. Repealed.
- 1-19-28. Furnishing report forms; political committees; candidates.
- 1-19-29. Time of filing reports.
- 1-19-29.1. Campaign funds; limitation on use; federal campaign funds prohibited in state races.
- 1-19-30. Repealed.

Sec.

- 1-19-31. Contents of report.
- 1-19-32. Public inspection of reports.
- 1-19-32.1. Reports examination; forwarding of reports.
- 1-19-33. Exclusion of certain candidates from reporting.
- 1-19-34. Candidates; political committees; treasurer; bank account; anonymous contributions; contributions from special events.
- 1-19-34.1. Legislative session fundraising prohibition.
- 1-19-34.2. Regulated industry solicitations prohibited.
- 1-19-34.3. Contributions in one name given for another prohibited; bundling disclosure required.
- 1-19-34.4. Education and voluntary compliance; investigations; binding arbitration; referrals for enforcement.
- 1-19-35. Reports; late filing penalty; failure to file.
- 1-19-36. Penalties; enforcement.
- 1-19-37. Applicability.

#### **1-19-1. Campaign practices; primary election; expenditure of party money.**

A. No contribution of money, or the equivalent thereof, made directly or indirectly to any political party, to any political party committee, to members of any political party committee or to any person representing or acting on behalf of a political party, and no money in the treasury of any political party or political party committee shall be expended directly or indirectly in the aid of the nomination at a primary election of any one or more persons as against any one or more other persons of the same political party running in such primary election.

B. Any person who expends money, or is responsible for the expenditure of money, in violation of this section is guilty of a petty misdemeanor.

#### **1-19-2 to 1-19-15. Repealed.**

#### **1-19-16. Campaign practices; printing or publishing campaign material without specifying sponsor; penalty.**

A. It is unlawful for any person, organization or political committee to publish or print any campaign advertising or communication which does not specify the name of the sponsor or the name of a responsible officer who authorized the printing or publication of such material, in any election, special election, school district election or an election authorizing a bond issue. This prohibition extends only to handbills, petitions, circulars, letters or similar written material.

B. Any printing establishment shall identify itself as the printer of the campaign material.

C. Any person, organization or political committee violating the provisions of Subsection A or B of Section 1-19-16 NMSA 1978 is guilty of a fourth degree felony and shall be punished as provided in the Criminal Code.

**1-19-17. Campaign practices; circulation of campaign material without specifying sponsor; penalty.**

A. It is unlawful for any person, organization or political committee to circulate or distribute any campaign advertising or communication which does not specify the name of the sponsor of such material, in any election, special election, school district election or an election authorizing a bond issue. This prohibition extends to handbills, petitions, circulars or similar written material.

B. Any person, organization or political committee violating the provisions of Subsection A of Section 1-19-17 NMSA 1978 is guilty of a misdemeanor and shall be punished as provided in the Criminal Code.

**1-19-18 to 1-19-24. Repealed.****1-19-25. Short title.**

Sections 1-19-25 through 1-19-36 NMSA 1978 may be cited as the "Campaign Reporting Act".

**1-19-26. Definitions.**

As used in the Campaign Reporting Act [1-19-25 to 1-19-36]:

A. "anonymous contribution" means a contribution the contributor of which is unknown to the candidate or his agent or the political committee or its agent who accepts the contribution;

B. "bank account" means an account in a financial institution located in New Mexico;

C. "campaign committee" means two or more persons authorized by a candidate to raise, collect or expend contributions on the candidate's behalf for the purpose of electing him to office;

D. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act and who either has filed a declaration of candidacy or:

(1) for a non-statewide office, has received contributions or made expenditures of one thousand dollars (\$1,000) or more or authorized another person or campaign committee to receive contributions or make expenditures of one thousand dollars (\$1,000) or more for the purpose of seeking election to the office; or

(2) for a statewide office, has received contributions or made expenditures of two thousand five hundred dollars (\$2,500) or more or authorized another person or campaign committee to receive contributions or make expenditures of two thousand five hundred dollars (\$2,500) or more for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of the election;

E. "contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

F. "deliver" or "delivery" means by certified or registered mail, by telecopier, electronic mail or facsimile or by personal service;

G. "election" means any regular, primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes municipal, school board and special district elections;

H. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign or pre-primary convention, but does not include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

I. "political committee" means two or more persons, other than members of a candidate's immediate family or campaign committee or a husband and wife who make a contribution out of a joint account, who are selected, appointed, chosen, associated, organized or operated primarily for a political purpose and includes political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose; provided that a political committee includes a single individual who by his actions represents that he is a political committee;

J. "political purpose" means influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters;

K. "prescribed form" means a form prepared and prescribed by the secretary of state; and

L. "reporting individual" means every candidate or treasurer of a campaign committee and every treasurer of a political committee who contributes, receives contributions or makes expenditures as defined in the Campaign Reporting Act.

### **1-19-26.1. Political committees; registration; disclosures.**

A. It is unlawful for any political committee that receives, contributes or expends in excess of five hundred dollars (\$500) in any calendar year to continue to receive or make any contribution or expenditure for a political purpose unless that political committee appoints and maintains a treasurer and registers with the secretary of state.

B. A political committee shall register with the secretary of state no later than ten days after the effective date of this section or within ten days of receiving, contributing or expending in excess of five hundred dollars (\$500) by paying a filing fee of fifty dollars (\$50.00) and filing a statement of organization under oath on a prescribed form showing:

(1) the full name of the political committee, which shall fairly and accurately reflect the sponsoring organization, and its address;

(2) a statement of the purpose for which the political committee was organized;

(3) the name, address and relationship of any connected or associated organization or entity;

(4) the name and address of the officers of the committee; and

(5) an identification of the bank account used by the committee for all expenditures or contributions made or received.

### **1-19-27. Reports required.**

Each reporting individual shall file with the proper filing officer, as defined in the Election Code [this chapter], a report of expenditures and contributions on a prescribed form furnished by the proper filing officer. In the case where the candidate files a report for the campaign committee, the treasurer of the committee need not file a report of expenditures and contributions for the period covered in the candidate's report.

### **1-19-27.1, 1-19-27.2. Repealed.**

### **1-19-28. Furnishing report forms; political committees; candidates.**

A. The secretary of state annually shall furnish to registered political committees the prescribed form for the reporting of expenditures and contributions and the specific dates the reports are due.

B. At the time of filing a declaration of candidacy by nominating petition or pre-primary convention designation for nomination at a primary election or for an office not requiring a primary election, the proper filing officer shall give the candidate the prescribed reporting forms and the schedule of specific dates for filing the required reports.

### **1-19-29. Time of filing reports.**

A. In an election year, candidates running for statewide office shall deliver the following reports to the secretary of state:

(1) a report, delivered thirty days after filing a declaration of candidacy, of all expenditures made and contributions received on or before the twenty-fifth day after filing the declaration and not previously reported;

(2) a report, delivered not later than twenty days prior to an election, of all expenditures made and contributions received on or before the twenty-fifth day prior to the election and not previously reported;

(3) a report, received by the secretary of state not later than 5:00 p.m. on the Thursday before the election, of all expenditures made and contributions received by 5:00 p.m. of the Wednesday before the election and not previously reported; and

(4) a report, delivered thirty days after the election, of all expenditures made and contributions received on or before twenty-five days after the election and not previously reported.

B. In an election year, all other candidates covered by the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] shall deliver the following reports to the proper filing officer, except for legislative candidates representing multi-county districts who may file the reports with the county clerk in the county in which they reside:

(1) a report, delivered fifteen days after filing a declaration of candidacy, of all expenditures made and contributions received on or before the tenth day after filing the declaration and not previously reported;

(2) a report, delivered not later than twenty days prior to the election, of all expenditures made and contributions received on or before the twenty-fifth day prior to the election and not previously reported;

(3) a report, received by the proper filing officer not later than 5:00 p.m. on the Thursday before the election, of all expenditures made and contributions received by 5:00 p.m. of the Wednesday before the election and not previously reported; and

(4) a report, delivered thirty days after the election, of all expenditures made and contributions received on or before twenty-five days after the election and not previously reported.

C. In an election year, all other reporting individuals covered by the Campaign Reporting Act shall deliver the following reports to the proper filing officer:

(1) a report, delivered not later than twenty days prior to the election, of all expenditures made and contributions received on or before the twenty-fifth day prior to the election and not previously reported;

(2) a report, received by the proper filing officer not later than 5:00 p.m. on the Thursday before the election, of all expenditures made and contributions received by 5:00 p.m. of the Wednesday before the election and not previously reported; and

(3) a report, delivered thirty days after the election, of all expenditures made and contributions received on or before twenty-five days after the election and not previously reported.

D. Annually on the first Monday in May in nonelection years, a reporting individual shall file with the proper filing officer a report of all expenditures made or contributions received on or before April 30 of that year and not previously reported in the nonelection year, or not previously reported, and the opening and closing cash balance of the bank account. This report shall be filed annually until it is reported that the bank account is closed. Legislators representing and legislative candidates seeking to represent multi-county districts may file the report with the county clerk in the county in which they reside instead of with the proper filing officer.

E. A reporting individual who is a candidate within the meaning of the Campaign Reporting Act because of the contributions he receives or expenditures he makes pursuant to the provisions of Subsection D of Section 1-19-26 NMSA 1978 and who does not ultimately file a declaration of candidacy shall file a report of expenditures and contributions not later than thirty days after the deadline for filing a declaration of candidacy.

### **1-19-29.1. Campaign funds; limitation on use; federal campaign funds prohibited in state races.**

A. It is unlawful for any candidate, elected official or his agent to make an expenditure of contributions received except for the following purposes:

- (1) expenditures of the campaign;
- (2) expenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses;
- (3) donations to the state general fund;
- (4) donations to an organization to which a federal income tax deduction would be permitted under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended; and
- (5) donations to a political party, donations to another candidate or donations to be used to eliminate the campaign debt of the candidate for the same or another office.

B. No contributions solicited for or received in a federal election campaign may be used in a state election campaign.

### **1-19-30. Repealed.**

### **1-19-31. Contents of report.**

A. Each required report of expenditures and contributions shall be typed or printed legibly, or on a computer disc or format approved by the secretary of state, and shall include:

- (1) the name and address of the person or entity to whom an expenditure was made or from whom a contribution was received, except as provided for anonymous contributions or contributions received from special events as provided in Section 1-19-34 NMSA 1978; provided that, for contributors, the name of the entity or the first and last names of any individual shall be the full name of the entity or individual, and initials only shall not constitute a full name of an entity unless that is its complete legal name;
- (2) the occupation or type of business of any person or entity making contributions of two hundred fifty dollars (\$250) or more in the aggregate per election;
- (3) the amount of the expenditure or contribution or value thereof;
- (4) the purpose of the expenditure; and
- (5) the date of the expenditure or contribution.

B. The report of expenditures and contributions shall be subscribed and sworn to by the candidate or treasurer of the political committee.

C. Each report shall contain an opening and closing cash balance for the bank account maintained by the reporting individual during the reporting period and the financial institution name.

D. Each report shall specify the amount of each unpaid debt and the identity of the person to whom the debt is owed, except that the debts to suppliers of goods and services that are not more than thirty days past due need not be reported.

### **1-19-32. Public inspection of reports.**

The report of expenditures and contributions is a public record that shall be retained by the state for five years and shall at all reasonable times be open to public inspection. Unless an action or prosecution is pending requiring the preservation of the report, it may be destroyed five years after the date of filing.

**1-19-32.1. Reports examination; forwarding of reports.**

A. In addition to reviewing all reports for accuracy and thoroughness, the bureau of elections of the secretary of state's office shall conduct an extensive examination of at least ten percent of the reports, selected at random, that are filed by candidates and reporting individuals to determine compliance with the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], investigate any discrepancies and release a report on any unresolved discrepancies found after an examination of political committee contributions and contributions reported by candidates. A copy of this report shall also be transmitted to the attorney general.

B. A county clerk shall arrange for the secretary of state to receive within twenty-four hours of the county clerk's receipt any required campaign contribution and expenditure report subject to the provisions of the Campaign Reporting Act. Within twenty-four hours of receipt, the secretary of state shall arrange for a county clerk in a multi-county legislative district to receive any campaign contribution and expenditure report of a legislative candidate for that county that is filed with the secretary of state pursuant to the provisions of the Campaign Reporting Act.

**1-19-33. Exclusion of certain candidates from reporting.**

A. Any candidate who anticipates receiving or expending less than one thousand dollars (\$1,000) to influence the outcome of his election shall file a statement to that effect at the time of filing a declaration of candidacy, or at the time of filing the first report of expenditures and contributions required by Section 1-19-29 NMSA 1978, whichever is later. Upon the filing of the statement, the candidate shall not be required, except as provided in Subsection B of this section, to file a report of expenditures and contributions as required by the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978].

B. If at any time either the expenditures or contributions of a candidate who has filed a statement as provided in Subsection A of this section exceeds one thousand dollars (\$1,000), the candidate shall file the next report and each succeeding report as required by the Campaign Reporting Act.

**1-19-34. Candidates; political committees; treasurer; bank account; anonymous contributions; contributions from special events.**

A. It is unlawful for the members of any political committee or any candidate to make any expenditure or solicit or accept any contribution for a political purpose unless:

(1) a treasurer has been appointed and is constantly maintained; however, when a duly appointed treasurer is unable for any reason to continue as treasurer, the candidate or political committee shall appoint a successor; provided a candidate may serve as his own treasurer;

(2) all disbursements of money and receipts of contributions are authorized by and through the candidate or treasurer;

(3) a separate bank account has been established and all receipts of money contributions and all expenditures of money shall be deposited in and disbursed from the one bank account maintained by the treasurer in the name of the candidate or political committee; provided that nothing in this section shall prohibit investments from the account to earn interest as long as the investments and earnings are fully reported. All disbursements except for disbursements made from a petty cash fund of one hundred dollars (\$100) or less shall be by check made payable to the person or entity receiving the disbursement and not to "cash" or "bearer"; and

(4) the treasurer upon disbursing or receiving money or other things of value shall immediately enter and thereafter keep in a proper book to be preserved by him a full, true and itemized statement and account of each sum disbursed or received, the date of such

disbursal or receipt, to whom disbursed or from whom received and the object or purpose for which it was disbursed or received.

B. No anonymous contributions may be accepted in excess of one hundred dollars (\$100). The aggregate amount of anonymous contributions received by a reporting individual during a primary or general election or a statewide special election shall not exceed two thousand dollars (\$2,000) for statewide races and five hundred dollars (\$500) for all other races.

C. Cash contributions received at special events that are unidentifiable as to specific contributor but identifiable as to the special event are not subject to the anonymous contribution limits provided for in this section so long as no single special event raises, after expenses, more than one thousand dollars (\$1,000) in such cash contributions. For those contributions, due diligence and best efforts shall be made to disclose on a special prescribed form the sponsor, date, place, total amount received, expenses incurred, estimated number of persons in attendance and other identifiable factors that describe the special event. For purposes of this subsection, "special event" includes an event such as a barbecue or similar fundraiser where tickets costing fifteen dollars (\$15.00) or less are sold or an event such as a coffee, tea or similar reception.

D. Any contributions received pursuant to this section in excess of the limits established in Subsections B and C of this section shall be donated to the general fund or an organization to which a federal income tax deduction would be available under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended.

#### **1-19-34.1. Legislative session fundraising prohibition.**

A. It is unlawful during the prohibited period for a state legislator or a candidate for state legislator, or any agent on their behalf, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on adjournment of the regular or special session.

B. It is unlawful during the prohibited period for a person holding a state office, or any agent on his behalf, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on the twentieth day following the adjournment of the regular or special session.

#### **1-19-34.2. Regulated industry solicitations prohibited.**

It is unlawful for an elected state official, public officer or employee who works for a regulatory office, or a candidate who seeks election to a regulatory office, or anyone authorized by a candidate to solicit funds on his behalf, to knowingly solicit a contribution from an entity, its officers or employees, or a person that is directly regulated by the office. For purposes of this section, an entity or person is directly regulated by an office when the entity's or person's charges for services offered to the public are set or directly subject to approval by the office or when a license to do business in the state is determined by the office.

#### **1-19-34.3. Contributions in one name given for another prohibited; bundling disclosure required.**

A. It is unlawful for a person or political committee to make, or a candidate or his agent to accept, a contribution that is reported as coming from one person or entity when the candidate knows that the contribution is actually from another person or entity that directed that its contribution not be publicly reported.

B. No person shall deliver, in the aggregate for each election, five or more separate contributions, or contributions in excess of five hundred dollars (\$500), to a candidate or anyone authorized by a candidate to receive funds on his behalf without identifying the name, address, organization represented, if any, and occupation or type of business of the person who delivers the contributions.

#### **1-19-34.4. Education and voluntary compliance; investigations; binding arbitration; referrals for enforcement.**

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] of those duties. This includes advising all known reporting individuals at least annually of the Campaign Reporting Act's deadlines for submitting required reports. The secretary of state in consultation with the attorney general shall issue advisory opinions, when requested in writing to do so, on matters concerning the Campaign Reporting Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may initiate investigations to determine whether the Campaign Reporting Act has been violated. Additionally, any person who believes that act has been violated may file a written complaint with the secretary of state anytime prior to ninety days after an election, except that no complaints from the public may be filed within eight days prior to an election. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Campaign Reporting Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed; provided, however, that if a person fails to file or files late any required report of expenditures and contributions, the fines provided for in Section 1-19-35 NMSA 1978 shall be imposed immediately, unless the matter is subject to an advisory opinion request that is pending, and those fines may be reimbursed if it is determined the violation occurred for good cause.

D. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged with a violation and impose the penalty. If the person protests the secretary of state's determination, including an advisory opinion, the person charged may request binding arbitration. If an advisory opinion is subject to binding arbitration, no penalty shall be imposed until the arbitration decision is issued, and the penalty shall not include any fine to cover days before the arbitration decision is issued.

E. The arbitration decision shall be decided by a panel of three persons. The secretary of state shall choose one panel member within fifteen days of receipt of the request for arbitration; the person against whom the penalty has been imposed shall choose another panel member and submit the arbitrator's name with the request for arbitration; and those two members shall choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of the district court for the first judicial district shall appoint the third panel member. No panel member may be a person subject to the Campaign Reporting Act, Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978] or Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978]. Panel members shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] plus reimbursement for reasonable actual expenses.

F. The arbitration panel may impose any penalty the secretary of state is authorized to impose. The panel shall state the reasons for its decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within forty-five days of the conclusion of the hearing. Unless otherwise provided for in this section, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7-1 to 44-7-22 NMSA 1978], including the procedures set forth in Section 44-7-7 NMSA



1978 authorizing the issuance of subpoenas. No panel member shall be subject to liability for actions taken pursuant to this section.

G. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or for criminal enforcement.

### **1-19-35. Reports; late filing penalty; failure to file.**

A. Except for the final report required to be filed and delivered the Thursday prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978, if any reporting individual files a report of expenditures and contributions after any deadline imposed by the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] or if the reporting individual files an incomplete or false report, such person, in addition to any other penalties or remedies prescribed by the Election Code [this chapter], shall be liable and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required by the Campaign Reporting Act for the filing of reports of expenditures and contributions until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

B. If any reporting individual files a report of expenditures and contributions after the deadline for filing the report on the Thursday prior to the election or files an incomplete report, the person shall be liable and pay to the secretary of state five hundred dollars (\$500) the first working day and fifty dollars (\$50.00) for each subsequent working day after the time required for the filing of this report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

C. All sums collected for the penalty shall be deposited in the general fund of the state. If sent by certified or registered mail, the report shall be deemed filed on the date three days following the date of the postmark.

D. Any candidate who fails or refuses to file a report of expenditures and contributions as required by the Campaign Reporting Act, shall, in addition to any other penalties provided by law:

(1) not have his name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or

(2) not be issued a certificate of nomination or election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate files the report of expenditures and contributions as required by the Campaign Reporting Act.

E. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions as required by the Campaign Reporting Act shall, in addition to any other penalties provided by law and in addition to filing a declaration of candidacy or a declaration of intent to be a write-in candidate for any future office, pay the penalty owed and file all outstanding reports of expenditures and contributions required by the Campaign Reporting Act.

### **1-19-36. Penalties; enforcement.**

A. Any person who knowingly and willfully violates any of the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

B. The Campaign Reporting Act may be enforced by the attorney general or the district attorney in the county where the candidate resides, where a political committee has its principal place of business or where the violation occurred.

### **1-19-37. Applicability.**

The provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] do not apply to any candidate subject to the provisions of the federal law pertaining to campaign practices and finance.

## ARTICLE 20

### Offenses and Penalties

Sec.	Sec.
1-20-1. Effect of article.	1-20-13. Coercion of employees.
1-20-2. Scope of penalty provision.	1-20-14. Intimidation.
1-20-3. Registration offenses.	1-20-15. Conspiracy to violate Election Code.
1-20-4. Unlawful opening of ballot box.	1-20-16. Electioneering too close to the polling place.
1-20-5. Unlawful opening of a voting machine.	1-20-17. Obstructing the polling place.
1-20-6. Unlawful possession of keys.	1-20-18. Permitting prisoners to vote.
1-20-7. Unlawful possession of absentee ballot.	1-20-19. Offenses by messengers.
1-20-8. False voting.	1-20-20. Disturbing the polling place.
1-20-9. Falsifying election documents.	1-20-21. Unlawful possession of alcoholic liquors.
1-20-10. False swearing.	1-20-22. Violation of Election Code; general penalty.
1-20-11. Offering a bribe.	1-20-23. Violation of code by officers.
1-20-12. Accepting a bribe.	

#### 1-20-1. Effect of article.

The penalties imposed by Sections 1-20-3 through 1-20-23 NMSA 1978 do not apply to offenses for which penalties are otherwise provided in the Election Code [this chapter].

#### 1-20-2. Scope of penalty provision.

A. Unless otherwise provided in the law governing elections of a political subdivision, Sections 1-20-4 through 1-20-22 NMSA 1978 describing offenses and imposing penalties shall apply to all elections conducted in the state.

B. "Election Code" as used in Sections 1-20-4 through 1-20-22 NMSA 1978 includes laws governing the elections of municipalities, school districts or bond elections held pursuant to the Bond Election Act [6-15-23 to 6-15-28 NMSA 1978].

#### 1-20-3. Registration offenses.

Registration offenses consist of performing any of the following acts willfully and with knowledge and intent to deceive any registration officer or to subvert the registration requirements of the law or rights of any qualified elector:

- A. signing or offering to sign a certificate of registration when not a qualified elector;
- B. falsifying any information on the certificate of registration;
- C. soliciting, procuring, aiding, abetting, inducing or attempting to solicit, procure, aid, abet or induce any person to register or attempt to register with the name of any other person, whether real, deceased or fictitious; or
- D. destroying the certificate of registration of any qualified elector, or removing such certificate from its proper binder or file, except as provided in the Election Code [this chapter].

Whoever commits a registration offense is guilty of a fourth degree felony.

#### 1-20-4. Unlawful opening of ballot box.

Unlawful opening of a ballot box consists of opening any ballot box or inspecting or removing the contents thereof without lawful authority, or conspiring with others to have the same done.

Whoever commits unlawful opening of a ballot box is guilty of a fourth degree felony.

#### 1-20-5. Unlawful opening of a voting machine.

Unlawful opening of a voting machine consists of, without lawful authority, opening, unlocking, inspecting, tampering, resetting or adjusting a voting machine owned by any county, or conspiring with others to have the same done.

Whoever commits unlawful opening of a voting machine is guilty of a fourth degree felony.

**1-20-6. Unlawful possession of keys.**

Unlawful possession of keys consists of the possession at any time of any key to a voting machine or ballot box, or possession of an imitation or duplicate thereof, or making or causing to be made any imitation or duplicate thereof, unless authorized by the Election Code [this chapter].

Whoever commits unlawful possession of keys is guilty of a fourth degree felony.

**1-20-7. Unlawful possession of absentee ballot.**

Unlawful possession of absentee ballot consists of the possession at any time of absentee ballot materials when not authorized by the Election Code [this chapter] to be in possession of such materials, or when such materials were obtained in an unlawful manner. As used in this section, "absentee ballot materials" means an absentee ballot, absentee ballot envelopes, the absentee ballot register or an absentee ballot return.

Whoever commits unlawful possession of absentee ballot is guilty of a fourth degree felony.

**1-20-8. False voting.**

False voting consists of:

- A. voting, or offering to vote, with the knowledge of not being a qualified elector;
- B. voting, or offering to vote, in the name of any other person;
- C. knowingly voting, or offering to vote, in any precinct except that in which one is registered;
- D. voting, or offering to vote, more than once in the same election;
- E. inducing, abetting or procuring, or attempting to induce, abet or procure, a person known to not be a qualified elector to vote; or
- F. inducing, abetting or procuring, or attempting to induce, abet or procure, a person who, having voted once in any election, to vote, or attempt to vote again at the same election.

Whoever commits false voting is guilty of a fourth degree felony.

**1-20-9. Falsifying election documents.**

Falsifying election documents consists of performing any of the following acts willfully and with knowledge and intent to deceive or mislead any voter, precinct board, canvassing board or other election official:

- A. printing, causing to be printed, distributing or displaying false or misleading instructions pertaining to voting or the conduct of the election;
- B. printing, causing to be printed, distributing or displaying any official ballot, sample ballot, facsimile diagram, ballot label or pretended ballot which includes the name of any person not entitled by law to be on the ballot, or omits the name of any person entitled by law to be on the ballot, or otherwise contains false or misleading information or headings;
- C. defacing, altering, forging, making false entries in or changing in any way a certificate of nomination, registration record or election return required by or prepared and issued pursuant to the Election Code [this chapter];
- D. suppressing any certificate of nomination, registration record or election return required by or prepared and issued pursuant to the Election Code;
- E. preparing or submitting any false certificate of nomination, registration record or election return; or
- F. knowingly falsifying any information on a nominating petition.

Whoever falsifies election documents is guilty of a fourth degree felony.

**1-20-10. False swearing.**

False swearing consists of taking any oath required by the Election Code [this chapter] with the knowledge that the thing or matter sworn to is not a true and correct statement.

Whoever falsely swears is guilty of a fourth degree felony.

### **1-20-11. Offering a bribe.**

Offering a bribe consists of willfully advancing, paying, or causing to be paid, or promising, directly or indirectly, any money or other valuable consideration, office or employment, to any person for the following purposes connected with or incidental to any election:

A. to induce such person, if a voter, to vote or refrain from voting for or against any candidate, proposition, question or constitutional amendment;

B. to induce such person, if a precinct board member or other election official, to mark, alter, suppress or otherwise change any ballot that has been cast, any election return, or any certificate of election; or

C. to induce such person to use such payment or promise to bribe others for the purposes specified in this section.

Whoever offers a bribe is guilty of a fourth degree felony.

### **1-20-12. Accepting a bribe.**

Accepting a bribe consists of knowingly accepting any payment or promise of payment, directly or indirectly, of money, valuable consideration, office or employment for the unlawful purposes specified in Section 1-20-11 NMSA 1978.

Whoever accepts a bribe is guilty of a fourth degree felony.

### **1-20-13. Coercion of employees.**

Coercion of employees consists of any officer or agent of any corporation, company or association, or any person having under his control or in his employment persons entitled to vote at any election, directly or indirectly discharging or threatening to discharge such employee because of the employee's political opinions or belief or because of such employee's intention to vote or refrain from voting for any candidate, party, proposition, question or constitutional amendment.

Whoever commits coercion of employees is guilty of a fourth degree felony.

### **1-20-14. Intimidation.**

Intimidation consists of inducing or attempting to induce fear in any member of a precinct board, voter, challenger or watcher by use of or threatened use of force, violence, infliction of damage, harm or loss or any form of economic retaliation, upon any voter, precinct board member, challenger or watcher for the purpose of impeding or preventing the free exercise of the elective franchise or the impartial administration of the election or Election Code [this chapter].

Whoever commits intimidation is guilty of a fourth degree felony.

### **1-20-15. Conspiracy to violate Election Code.**

Conspiracy to violate the Election Code [this chapter] consists of knowingly combining, uniting or agreeing with any other person to omit any duty or commit any act, the omission of which duty, or combination of such act, would by the provisions of the Election Code constitute a fourth degree felony.

Whoever commits conspiracy to violate the Election Code is guilty of a fourth degree felony.

### **1-20-16. Electioneering too close to the polling place.**

Electioneering too close to the polling place consists of any form of campaigning on election day within one hundred feet of the building in which the polling place is located, and includes the display of signs or distribution of campaign literature.

Whoever commits electioneering too close to the polling place is guilty of a petty misdemeanor.

### **1-20-17. Obstructing the polling place.**

Obstructing the polling place consists of:

A. approaching nearer than fifty feet from any polling place during the conduct of the election unless a voter offering to vote, a member of the precinct board, a lawfully appointed challenger or watcher, an election official having business in the polling place or a person authorized by the Election Code [this chapter] to give assistance to a voter; or

B. willfully blocking the entrance to the polling place so as to prevent free ingress and egress.

Whoever obstructs the polling place is guilty of a petty misdemeanor.

### **1-20-18. Permitting prisoners to vote.**

A. Permitting prisoners to vote consists of any warden of a penitentiary, sheriff or jailer, or other person having custody of convicts or prisoners, taking or permitting to be taken such convicts or prisoners to any polling place for the purposes of voting in any election.

Whoever permits prisoners to vote is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment for not less than thirty days nor more than ninety days, or both.

B. This section does not prohibit permitting prisoners to vote by absentee ballot pursuant to the provisions of the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978].

### **1-20-19. Offenses by messengers.**

Offense by messenger consists of the willful delay or failure of any official messenger to convey or deliver election supplies to the precinct board, or the willful delay or failure of any official messenger to convey or deliver the ballot box, key, election returns or other supplies to the county clerk.

Any messenger committing such offense is guilty of a petty misdemeanor.

### **1-20-20. Disturbing the polling place.**

Disturbing the polling place consists of creating any disorder or disruption at the polling place on election day, or consists of interfering with in any manner the conduct of the election or with a member of the precinct board, voter, challenger or watcher, in the performance of his duties.

Whoever disturbs the polling place is guilty of a petty misdemeanor.

### **1-20-21. Unlawful possession of alcoholic liquors.**

Unlawful possession of alcoholic liquors consists of the use or possession of any alcoholic liquor by any member of the precinct board while performing his official duties on election day. Unlawful possession also consists of the use, possession or carrying of alcoholic liquor within two hundred feet of the polling place during any election.

Whoever commits unlawful possession of alcoholic liquors is guilty of a petty misdemeanor.

### **1-20-22. Violation of Election Code; general penalty.**

If the Election Code [this chapter] does not impose a specific penalty for the violation of a provision prohibiting a specific act, whoever knowingly commits such violation is guilty of a petty misdemeanor.

## 1-20-23. Violation of code by officers.

Violation of the Election Code [this chapter] by officers consists of the willful violation of the Election Code by any state or county officer or by any deputy or assistant thereto, or the willful failure or refusal of any such person to perform any act or duty required of him by the Election Code.

Any officer, deputy or assistant who commits such willful violation of the Election Code is guilty of a fourth degree felony and, in addition, violation is sufficient cause for removal from office in a proceeding instituted for that purpose as provided by law.

## ARTICLE 21

### Federal Voting Rights Compliance

Sec.	Sec.
1-21-1. Short title.	1-21-8. Presidential ballot envelopes.
1-21-2. Definitions.	1-21-9. Manner of voting of new residents and former residents.
1-21-3. Eligibility of new resident and former resident to vote.	1-21-10. Delivery of presidential ballots to absent voter precincts.
1-21-4. Application for presidential ballot.	1-21-11. Handling presidential ballots by absent voter precinct board.
1-21-5. Processing application; issuance of ballot; casting of ballot.	1-21-12. Cancellation of presidential ballot at death.
1-21-6. New resident; former resident; presidential ballot register.	1-21-13. Application of election laws.
1-21-7. Form of presidential ballot.	1-21-14. Penalty.

#### 1-21-1. Short title.

This act [1-21-1 to 1-21-14 NMSA 1978] may be cited as the "Federal Voting Rights Compliance Act".

#### 1-21-2. Definitions.

As used in the Federal Voting Rights Compliance Act [1-21-1 to 1-21-14 NMSA 1978]:

- A. "state" includes the District of Columbia;
- B. "new resident" means any citizen of the United States not qualified to vote in New Mexico by reason of his period of residence in this state who, immediately prior to his removal to New Mexico, was a citizen of another state and who has been a resident of this state for not less than thirty days immediately prior to a presidential election and who will be eighteen years of age or over on the day of such election;
- C. "former resident" means any citizen of the United States not qualified to vote in another state by reason of his period of residence in such state who, immediately prior to his removal to such state, was a citizen of New Mexico who, had he remained in New Mexico, would have qualified to vote in a presidential election and who has been a resident of such other state for less than thirty days immediately prior to a presidential election;
- D. "federal election" means any general election, primary election or special election to fill a vacancy in the office of representative in congress;
- E. "federal officers" means presidential electors, vice presidential electors, president, vice president, United States senator and United States representative in congress;
- F. "federal ballot" means a ballot containing only the names of federal officers to be voted for in a federal election;
- G. "presidential election" means any primary election or general election held for the purpose of voting for electors for president and vice president or for president and vice president;
- H. "presidential ballot" means a ballot containing only the names of presidential electors, vice presidential electors, or president and vice president; and
- I. "presidential officers" means presidential electors, vice presidential electors, president and vice president.

**1-21-3. Eligibility of new resident and former resident to vote.**

Any new resident or former resident may vote for presidential officers in a presidential election, but for no other officers or upon any questions or in any other election, if he:

A. otherwise possesses the substantive qualifications to vote in this state except the requirement of residence; and

B. complies with the provisions of the Federal Voting Rights Compliance Act [1-21-1 to 1-21-14 NMSA 1978].

**1-21-4. Application for presidential ballot.**

A. A new resident desiring to vote for presidential officers under the provisions of the Federal Voting Rights Compliance Act [1-21-1 to 1-21-14 NMSA 1978] shall, at least thirty days prior to the date of a federal election, individually execute in the presence of the county clerk of the county in which he claims residence an application for a presidential ballot for the presidential election.

B. A former resident desiring to vote for presidential officers under the provisions of the Federal Voting Rights Compliance Act shall individually execute an application for a presidential ballot for the presidential election. The application for a presidential ballot shall be made by a former resident on a form obtainable in person or upon written application therefor from the county clerk of the county in which the former resident claimed New Mexico residence prior to his removal to another state. The application for a presidential ballot by a former resident shall be authorization for the county clerk to cancel the former resident's certificate of registration, if such there be.

**1-21-5. Processing application; issuance of ballot; casting of ballot.**

A. If satisfied that the application is proper and that the new resident or former resident is qualified to vote under the Federal Voting Rights Compliance Act [1-21-1 to 1-21-14 NMSA 1978], the county clerk shall mark the application "accepted" and shall return the executed original application to the applicant.

B. Acceptance of an application under the provisions of the Federal Voting Rights Compliance Act constitutes registration only for the presidential election in which the presidential ballot is to be cast.

C. The county clerk shall mail the duplicate original of each application accepted under the provisions of the Federal Voting Rights Compliance Act to the appropriate official in the state in which the new resident last resided or in which the former resident now resides.

D. The county clerk shall file, in alphabetical order in his office for six months following each presidential election, the following public records:

(1) a triplicate original of each application of all persons who have applied for a presidential ballot under the provisions of the Federal Voting Rights Compliance Act to vote as new residents or former residents; and

(2) official information received by him from another state indicating that a former resident of New Mexico has made application to vote at a presidential election in another state. Such official information shall be sufficient evidence for the county clerk to cancel the resident's certificate of registration in that county.

E. Notwithstanding any provision of the Election Code [this chapter], new residents and former residents shall cast their presidential ballots in the same manner as absentee voters except as provided in the Federal Voting Rights Compliance Act.

F. If presidential ballots are available at the time of application in person therefor, the county clerk shall deliver the presidential ballot to the new resident or former resident, and it shall be marked by the applicant in a voting booth in the courthouse, sealed in the proper envelopes and otherwise properly executed, and returned to the county clerk or his authorized representative before the new resident or former resident leaves the office of the county clerk. Presidential ballots may be cast in person at the county clerk's office until 5:00 p.m. on Thursday immediately prior to the date of the presidential election.

G. If presidential ballots are not available at the time of application in person therefor by a new resident or former resident selecting the absentee option, the county clerk shall mail the presidential ballot to the address shown on the new resident's or former resident's application, as applicable.

H. Notwithstanding any provision of the Election Code, presidential ballots shall be mailed to all new residents, former residents, federal qualified electors, federal voters and voters who have qualified and applied therefor not less than seven days immediately prior to a presidential election.

#### **1-21-6. New resident; former resident; presidential ballot register.**

A. For each presidential election, the county clerk shall keep a "new resident — former resident presidential ballot register" containing the names of new residents and former residents in a form and manner prescribed by the secretary of state.

B. Such register is a public record open to public inspection in the county clerk's office during regular office hours.

C. The county clerk shall transmit to the 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 such register. Such transmission shall be made once each week beginning four weeks immediately prior to the presidential election. A final copy shall be transmitted on the Friday immediately following the presidential election.

#### **1-21-7. Form of presidential ballot.**

The form of the absentee presidential ballot for new residents and former residents shall be the same as that specified for absentee ballots in the Election Code [this chapter].

#### **1-21-8. Presidential ballot envelopes.**

The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of presidential ballot envelopes in the same manner as prescribed for absentee ballot envelopes in the Election Code [this chapter].

#### **1-21-9. Manner of voting of new residents and former residents.**

A. Any new resident or any former resident, not voting in person at the absent voter precinct, voting under provision of the Federal Voting Rights Compliance Act [1-21-1 to 1-21-14 NMSA 1978], shall secretly mark his ballot, place it in the official inner envelope and securely seal the envelope. He shall then place the official inner envelope inside the official outer envelope and securely seal the envelope. The person voting shall then fill in the form on the reverse of the official outer envelope and subscribe and swear to it before a person authorized to administer oaths.

B. The new resident or former resident, not voting in person at the absent voter precinct, shall deliver the voted presidential ballot to the county clerk or his designated representative.

C. A former resident voting in person at an absent voter precinct shall cast his presidential ballot in person at the absent voter precinct.

#### **1-21-10. Delivery of presidential ballots to absent voter precincts.**

The county clerk shall deliver presidential ballots to the absent voter precincts at the same time and in the same manner as that specified for absentee ballots in the Election Code [this chapter] except that all presidential ballots received by the county clerk not later than the time of closing of the polls shall be delivered to the absent voter precincts and processed the same as any other absentee ballot.



**1-21-11. Handling presidential ballots by absent voter precinct board.**

Presidential ballots shall be handled in the same manner as that specified for absentee ballots in the Election Code [this chapter].

**1-21-12. Cancellation of presidential ballot at death.**

The cancellation of a presidential ballot due to death of a new resident or former resident shall be the same as that specified for absentee voters in the Election Code [this chapter].

**1-21-13. Application of election laws.**

Except as provided in the Federal Voting Rights Compliance Act [1-21-1 to 1-21-14 NMSA 1978], the provisions of law relating to elections held under the provisions of the Election Code [this chapter] apply to the casting and counting of ballots and challenging of votes by new residents and former residents, the furnishing of election supplies, ballots, canvassing and making proper returns of the results of the election.

**1-21-14. Penalty.**

Any person willfully making a false statement or affidavit under the Federal Voting Rights Compliance Act [1-21-1 to 1-21-14 NMSA 1978] is guilty of a fourth degree felony.

## ARTICLE 22

### School Election Law

Sec.

- 1-22-1. Short title.
- 1-22-2. Definitions.
- 1-22-3. School district elections; qualifications of candidates.
- 1-22-4. Regular election; proclamation; publication.
- 1-22-5. Special election; proclamation; publication.
- 1-22-6. Precincts; consolidation; polling places.
- 1-22-7. Declaration of candidacy; filing date; penalty.
- 1-22-8. Declaration of candidacy; sworn statement of intent; form.

Sec.

- 1-22-9. Withdrawal of candidates.
- 1-22-10. Ballots.
- 1-22-11. Publication.
- 1-22-12. Conduct of elections.
- 1-22-13. Challengers; watchers.
- 1-22-14. Votes required.
- 1-22-15. Canvassing board; duties.
- 1-22-16. Election contests.
- 1-22-17. Records.
- 1-22-18. Write-in candidates.
- 1-22-19. Absentee voting.

**1-22-1. Short title.**

Sections 1-22-1 through 1-22-19 NMSA 1978 may be cited as the "School Election Law".

**1-22-2. Definitions.**

As used in the School Election Law [1-22-1 to 1-22-19 NMSA 1978]:

- A. "board" means the governing authority of the local school district;
- B. "county clerk" means the clerk of each county in which the school district is situate;
- C. "proper filing officer" means the county clerk or, in the case of a multicounty school district, the clerk of the county in which the administrative office of the school district is situate;
- D. "magistrate" means the magistrate whose office is situated in the municipality where the administrative office of the school district is located or in close proximity to the municipality;
- E. "school district election" means any regular or special school district election except a recall election; and
- F. "superintendent" means the superintendent of schools of the local school district.

**1-22-3. School district elections; qualifications of candidates.**

A. A school district election shall be held in each school district to elect qualified persons to membership on a local school board. No person shall become a candidate for membership on a board unless his record of voter registration shows that he is a qualified elector of the state and a resident of the school district in which he is a candidate.

B. A regular school district election shall be held in each school district on the first Tuesday in February of each odd-numbered year.

C. A school district election held at any time other than the date for the regular school district election shall be a special school district election.

D. Except as otherwise provided in the School Election Law [1-22-1 to 1-22-19 NMSA 1978], school district elections shall be called, conducted and canvassed as provided in the Election Code [this chapter].

**1-22-4. Regular election; proclamation; publication.**

A. The board shall by resolution issue a public proclamation in Spanish and English calling a regular school district election within the school district on the date prescribed by the School Election Law [1-22-1 to 1-22-19 NMSA 1978]. The proclamation shall be filed by the superintendent with the county clerk of record on the last Friday in November of the even-numbered year immediately preceding the date of the election.

B. The proclamation shall specify:

- (1) the date when the election will be held;
- (2) the positions on the board to be filled;
- (3) the date on which declarations of candidacy are to be filed;
- (4) the date on which declarations of intent to be a write-in candidate are to be filed;
- (5) the questions to be submitted to the voters;
- (6) the precincts in each county in which the election is to be held and the location of each polling place;
- (7) the hours each polling place will be open; and
- (8) the date and time of the closing of the registration books by the county clerk of record as required by law.

C. After filing the proclamation with the county clerk of record and not less than fifty days before the date of the election, the county clerk of record shall publish the proclamation at least once in a newspaper of general circulation within the school district. The publication of the proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended.

**1-22-5. Special election; proclamation; publication.**

A. Whenever a special school district election is to be called or is required by law, the board shall by resolution issue a public proclamation in Spanish and English calling the election. The proclamation shall forthwith be filed by the superintendent with the county clerk of record.

B. The proclamation shall specify:

- (1) the date on which the special election will be held;
- (2) the positions on the board to be filled;
- (3) the date on which declarations of candidacy are to be filed;
- (4) the date on which declarations of intent to be a write-in candidate are to be filed;
- (5) the questions to be submitted to the voters;
- (6) the precincts in each county in which the election is to be held and the location of each polling place;
- (7) the hours each polling place will be open; and
- (8) the date and time of the closing of the registration books by the county clerk of record as required by law.

C. After filing the proclamation with the county clerk of record and not less than fifty days before the date of the election, the county clerk of record shall publish the proclamation

at least twice in a newspaper of general circulation in the school district. The publication of the proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended.

**1-22-6. Precincts; consolidation; polling places.**

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

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

(2) all of the area within the exterior boundaries of a school district may constitute one precinct for a school district election.

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

C. Except as otherwise provided in the School Election Law [1-22-1 to 1-22-19 NMSA 1978], the county clerk shall consolidate precincts for a school district election as provided in the proclamation for that election and shall provide for a polling place within each precinct or consolidated precinct.

**1-22-7. Declaration of candidacy; filing date; penalty.**

A. A declaration of candidacy for membership on the board to be filled at a regular school district election shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the third Tuesday in December of the even-numbered year immediately preceding the date of the regular school district election and ending at 5:00 p.m. on the same day.

B. A declaration of candidacy for membership on the board to be filled at a special school district election shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the forty-eighth day before the election and ending at 5:00 p.m. on the same day.

C. Any person knowingly making a false statement in his declaration of candidacy is guilty of a fourth degree felony.

**1-22-8. Declaration of candidacy; sworn statement of intent; form.**

In making a declaration of candidacy, the candidate shall submit a sworn statement of intent in substantially the following form:

**"DECLARATION OF CANDIDACY—STATEMENT OF INTENT**

I, ....., (candidate's name on certificate of registration) being first duly sworn, say that I am a voter of Precinct No. .... of the county of ....., State of New Mexico. I reside at .....

I am a qualified elector of the State of New Mexico residing within ..... school district;

I desire to become a candidate for the office of ....., Position No. .... at the school district election to be held on the date set by law;

I will be eligible and legally qualified to hold this office at the beginning of its term; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

.....  
(Declarant)

.....  
(Mailing Address)

.....  
(Residence Address)

Subscribed and sworn to before me this ..... day of ....., 19 .....

.....  
(Notary Public)

My commission expires:  
.....”

**1-22-9. Withdrawal of candidates.**

A candidate for membership on the board may file an affidavit with the proper filing officer for the district in which he is a candidate withdrawing his candidacy in the election. The affidavit shall be filed before 5:00 p.m. on the thirty-fifth day before the date of the school district election. The county clerk shall not place on the ballot the name of any person properly filing the affidavit of withdrawal.

**1-22-10. Ballots.**

A. The proper filing officer shall determine whether a candidate filing a declaration of candidacy is a registered qualified elector of the state residing within the school district. If the candidate is so qualified and no withdrawal of candidacy has been filed as provided in the School Election Law [1-22-1 to 1-22-19 NMSA 1978], the proper filing officer shall place the candidate’s name on the ballot for the position specified in the declaration of candidacy. A declaration of candidacy shall not be amended after it has been filed with the proper filing officer.

B. Ballots for the school district election shall be prepared by the proper filing officer and printed by the thirtieth day preceding the election. The cost of printing the ballots shall be paid by the school district. The proper filing officer shall furnish printed ballots to the county clerk of each county in which the school district is situate. The printed ballot shall contain the name of each candidate and the position on the board for which he is a candidate. The ballot shall also contain all questions to be submitted to the voters of the district as certified to the proper filing officer by the board.

C. Paper ballots and ballot labels shall be printed in a form in substantial compliance with the provisions of Section 1-12-44 NMSA 1978 and in compliance with the provisions of the federal Voting Rights Act of 1965, as amended.

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

E. Whenever two or more members of the board are to be elected for terms of the same length of time, the positions shall be numerically designated on the ballot as “position one”, “position two” and such additional consecutively numbered positions as are necessary, but only one member shall be elected for each position.

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

G. Voting machines shall be used for the recording of votes cast in a school district election; provided that paper ballots may be used in lieu of a voting machine for:

- (1) school districts of less than five hundred average daily membership;
- (2) school district elections in which only one candidate has filed a declaration of candidacy for each position to be filled at the election, no declared write-ins have filed for

any position and there are no questions or bond issues on the ballot and notwithstanding any other provision in this chapter; or

(3) for emergency ballots in case of a malfunction of the voting machine.

### **1-22-11. Publication.**

The proper filing officer for the district shall issue and publish the proclamation listing the name of each candidate for membership on the board, each question to be submitted to the voters of the school district and the names of the precinct board members of the school district. The publication shall be made once each week for two successive weeks, with the last publication being made within seven days but not later than two days before the date of the school district election. The names of the candidates shall be published in the same order and for the same positions as will appear on the ballot. The publication shall be in a newspaper of general circulation in the school district and shall conform to the provisions of the federal Voting Rights Act of 1965, as amended. The cost of the publication shall be paid by the school district.

### **1-22-12. Conduct of elections.**

A. Except as otherwise provided in the School Election Law [1-22-1 to 1-22-19 NMSA 1978], the county clerk shall administer and conduct school district elections pursuant to the provisions of the Election Code [this chapter] for the conduct of general elections.

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

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

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

### **1-22-13. Challengers; watchers.**

Upon petition filed with the county clerk, any candidate for membership on the board may:

A. appoint one person as challenger for each precinct in the school district election who shall have the powers and be subject to the restrictions provided for challengers in the Election Code [this chapter]; and

B. appoint one person as a watcher for each precinct in the school district election who shall have the powers and be subject to the restrictions provided for watchers in the Election Code.

### **1-22-14. Votes required.**

A. The candidate receiving a plurality of the votes cast for a designated position on the board shall be elected to that designated position.

B. All questions submitted to the voters shall be decided by a majority of the voters voting on the question.

### **1-22-15. Canvassing board; duties.**

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

B. Ballots cast in each county in which the school district is situate shall be transported by the presiding judge of the precinct board upon the closing of the polls to the office of the proper filing officer. Each ballot box shall have two locks. The key to one lock on each ballot box and one copy of the signature roster shall at that time be placed in a stamped, addressed envelope provided for that purpose and shall be mailed to the designated magistrate or the presiding judge of the metropolitan court, as the case may be, of the county in which the administrative office of the school district is situate.

C. Within three days after the date of the school district election, the canvassing board shall meet in the office of the proper filing officer and shall:

- (1) canvass the returns in the same manner as county election returns are canvassed;
- (2) determine the total number of persons in the school district voting in the election;

and

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

- (a) to the board;
- (b) to the secretary of state; and
- (c) to the proper filing officer to be filed in his office.

D. The canvassing board shall issue a certificate of election to each candidate which it determines to be elected.

E. The county clerk of record shall cause the results of the election to be published once in a newspaper of general circulation in the school district.

### **1-22-16. Election contests.**

The district court shall entertain election contests for any position on the board or on any question placed on the school district election ballot. The procedure to be followed in contest cases shall be the same as provided by the Election Code [this chapter] for contests for candidates for county offices, including the recount of ballots.

### **1-22-17. Records.**

The returns and certificates of the result of the canvass are public documents, subject to inspection during the customary hours and days of business. Signature rosters and tally sheets may be destroyed three years after the election to which they apply. The certificate of results of the canvass of the election shall thirty days after the election or immediately after any contest has been settled by the court be placed on file as a permanent record in the state records center. A copy of the certificate of results of the canvass of the election shall be kept on file in the office of the proper filing officer for a period of three years.

### **1-22-18. Write-in candidates.**

A. Write-in candidates for the office of board member shall be permitted in school district elections.

B. A person may be a write-in candidate only if he has the qualifications to be a candidate for membership on the board in the school district election as provided in the School Election Law [1-22-1 to 1-22-19 NMSA 1978].

C. A person desiring to be a write-in candidate for the office of board member shall file with the proper filing officer a declaration of intent to be a write-in candidate. The declaration shall be filed before 5:00 p.m. on the thirty-fifth day preceding the date of the election.

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

- (1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of intent to be a write-in candidate and if misspellings of those combinations can be reasonably determined by a majority of the members of the precinct board to identify a declared write-in candidate; and

(2) the name is written in the proper slot on the voting machine or on the proper line provided on the paper ballot, absentee ballot or emergency ballot for write-in votes for the office and position for which the candidate has declared his intent.

E. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the School Election Law except that he shall not be entitled to have his name printed on the ballot.

F. A write-in vote shall be cast by writing in the name. As used in this section, "write-in" does not include the imprinting of any name by rubber stamp or similar device or the use of a preprinted sticker or label.

### **1-22-19. Absentee voting.**

A. Any registered qualified elector of the school district who cannot be present at his precinct polling place on the day of the school district election because of illness, injury or disability; who will be absent from his school district of residence because his duties, occupation, business or vacation requires him to be elsewhere; or who cannot attend his precinct polling place because of the tenets of his religion may vote by absentee ballot for all candidates and on all questions appearing on the ballot at the election as if he were able to cast his ballot in person at the precinct polling place.

B. The provisions of the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978] of the Election Code apply to absentee voting in school district elections, provided that absentee ballots may be marked in person during the regular hours and days of business at the county clerk's office from 8:00 a.m. on the twenty-fifth day preceding the election until 5:00 p.m. on the Friday immediately prior to the date of the election. Absentee ballots shall be printed at least thirty days prior to the date of the election.

C. A regular precinct board may be designated to serve as the absent voter precinct board. Members of the absent voter precinct board shall receive the same compensation as other precinct board members, but in no case shall a precinct board member who also serves as a member of the absent voter precinct board be entitled to extra compensation for serving on the absent voter precinct board.

## **ARTICLE 23**

### **Mail Ballot Elections**

Sec.

1-23-1. Short title.

1-23-2. Definition.

1-23-3. Election by all-mailed ballots.

1-23-4. Law governing.

1-23-5. No polling place.

Sec.

1-23-6. Notice to voters.

1-23-6.1. Checklist of registered voters.

1-23-7. Mail ballot election not to be combined with other elections.

#### **1-23-1. Short title.**

This act [1-23-1 to 1-23-7 NMSA 1978] may be cited as the "Mail Ballot Election Act".

#### **1-23-2. Definition.**

As used in the Mail Ballot Election Act [1-23-1 to 1-23-7 NMSA 1978], "local government" means any county, school district or incorporated municipality.

#### **1-23-3. Election by all-mailed ballots.**

Notwithstanding any other provision of law and regardless of the number of eligible voters within its boundaries, a local government may, by resolution of its governing body, conduct by all-mailed ballot any bond election, any election on the imposition of a mill levy or a property tax rate for a specified purpose or any special election at which no candidates are to be nominated for or elected to office.

**1-23-4. Law governing.**

Except as otherwise provided in the Mail Ballot Election Act [1-23-1 to 1-23-7 NMSA 1978], mail ballot elections shall be conducted in accordance with the provisions of the local government's absentee voter law.

**1-23-5. No polling place.**

Upon the adoption of a resolution by the governing body to conduct an election by an all-mailed ballot, each registered voter of the local government shall be mailed an absentee ballot along with a statement that there will be no polling place for the election. The voter shall not be required to file an application for the absentee ballot. The ballot shall be mailed to each voter no earlier than the thirty-fifth day prior to the election, and the mailing shall be completed by the fifth day before the election.

**1-23-6. Notice to voters.**

The local government election official may include in the mailing set forth in Section 5 of the Mail Ballot Election Act [1-23-5 NMSA 1978] a printed notice to the voters informing the voters that they shall return the voted ballot by mail.

**1-23-6.1. Checklist of registered voters.**

The local government official shall prepare a checklist of registered voters in the county. The checklist of registered voters shall be marked indicating that the voter has returned his all mail ballot immediately upon receipt.

**1-23-7. Mail ballot election not to be combined with other elections.**

Mail ballot elections shall be used exclusively for voting in those elections specified in Section 1-23-3 NMSA 1978 and shall not be used in connection with elections at which candidates are to be nominated for or elected to office.

**ARTICLE 24****Special Election Procedures**

Sec.

1-24-1. Special election procedures; application.  
1-24-2. Special election procedures; proclamation;  
publication.

Sec.

1-24-3. Special election procedures; conduct.  
1-24-4. Special election procedures; records.

**1-24-1. Special election procedures; application.**

To the extent separate laws pertaining to the conduct of special elections by local governments or special districts or to the extent procedures are not specified under such separate laws for the conduct of special elections, the provisions of Sections 1 through 4 [1-24-1 to 1-24-4 NMSA 1978] of this act shall apply.

**1-24-2. Special election procedures; proclamation; publication.**

A. Whenever a special election is to be called or is required by law, the governing body shall by resolution issue a public proclamation calling the election. The proclamation shall forthwith be filed with the county clerk.

B. The proclamation shall specify:

- (1) the date on which the special election will be held;
- (2) the purpose for which the special election is called;
- (3) if officers are to be elected or positions on the governing body are to be filled, the date on which declarations of candidacy are to be filed;



- (4) if a question is to be voted upon, the test of that question;
- (5) the precincts in each county in which the election is to be held and the location of each polling place in the precinct;
- (6) the hours that each polling place will be open; and
- (7) the date and time of closing the registration books by the county clerk as required by law.

C. After filing the proclamation with the county clerk and not less than fifty days before the date of the election, the governing body shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation within the boundaries of the local government or special district. The proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended.

### **1-24-3. Special election procedures; conduct.**

Special elections shall be conducted and canvassed in the same manner that regular elections are conducted in the local government or special district; provided, the governing body may, as set forth in the proclamation, consolidate precincts. A polling place shall be provided within each of the consolidated precincts.

### **1-24-4. Special election procedures; records.**

The returns and certificates of the results of special elections are public documents, subject to inspection during the customary hours and days of business. Poll books, signature rosters and tally books may be destroyed three years after the election to which they apply. The certificate of results of the canvass of the election shall after three years be placed on file as a permanent record in the records center.

**CHAPTER 2**  
**Legislative Branch**  
**ARTICLE 11**  
**Lobbyist Regulation**

Sec.		Sec.	
2-11-1.	Short title.	2-11-8.	Contingent fees prohibited in lobbying the legislative branch of state government.
2-11-2.	Definitions.	2-11-8.1.	Restrictions on campaign activities and contributions.
2-11-3.	Registration statement to be filed; contents; modification to statement.	2-11-8.2.	Compliance with act; enforcement of act; binding arbitration; civil penalties.
2-11-4.	Recompiled.	2-11-9.	Penalties.
2-11-5.	Other powers and duties of attorney general not limited or restricted.		
2-11-6.	Expenditure statement to be filed; contents; reporting periods.		
2-11-7.	Registration and expenditure statement; preservation as public record.		

**2-11-1. Short title.**

Chapter 2, Article 11 NMSA 1978 may be cited as the "Lobbyist Regulation Act".

**2-11-2. Definitions.**

As used in the Lobbyist Regulation Act [this article]:

A. "compensation" means any money, per diem, salary, fee or portion thereof or the equivalent in services rendered or in-kind contributions received or to be received in return for lobbying services performed or to be performed;

B. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value but does not include a lobbyist's own personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer;

C. "legislative committee" means a committee created by the legislature, including interim and standing committees of the legislature;

D. "lobbying" means attempting to influence:

(1) a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor; or

(2) an official action;

E. "lobbyist" means any individual who:

(1) is compensated for lobbying;

(2) is designated by an interest group to represent it for the purpose of lobbying;

or

(3) in the course of his employment is engaged in lobbying on a substantial or regular basis, except:

(a) any elected or appointed officer of the state or Indian tribe or pueblo or their political subdivisions acting in his official capacity;

(b) a member of the legislature, the staff of any member of the legislature or the staff of any legislative committee when addressing legislation;

(c) any witness called by any legislative committee or administrative agency to appear before that legislative committee or agency on behalf of or in opposition to legislation or an official action; or

(d) any individual who merely appears for himself before a legislative committee or an administrative agency to testify in support of or in opposition to legislation or an official action;

F. "lobbyist's employer" means the person whose interests are being represented and by whom a lobbyist is directly or indirectly retained, compensated or employed;

G. "official action" means the action or nonaction of a state official or state agency, board or commission acting in a rulemaking proceeding;

H. "person" means an individual, partnership, association, committee, federal, state or local governmental entity or agency however constituted, public or private corporation, or any other organization or group of persons who are voluntarily acting in concert;

I. "political contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for the purpose of influencing a primary, general or statewide election, including a constitutional or other question submitted to the voters, or for the purpose of paying a debt incurred in any such election;

J. "prescribed form" means a form prepared and prescribed by the secretary of state;

K. "rulemaking proceeding" means a formal process conducted by a state agency, board or commission for the purpose of adopting a rule, regulation, standard, policy or other requirement of general applicability and does not include adjudicatory proceedings; and

L. "state public officer" means a person holding a statewide office provided for in the constitution.

### **2-11-3. Registration statement to be filed; contents; modification to statement.**

A. In the month of January prior to each regular session or before any service covered by the Lobbyist Regulation Act [this article] commences, any individual who is initially employed or retained as a lobbyist shall register with the secretary of state by paying an annual filing fee of twenty-five dollars (\$25.00) for each of the lobbyist's employers and by filing a single registration statement under oath on a prescribed form showing:

(1) the lobbyist's full name, permanent business address and business address while lobbying; and

(2) the name and address of each of the lobbyist's employers.

B. No registration fee shall be required of individuals receiving only reimbursement of personal expenses and no other compensation or salary for lobbying. No expenditure statement required by Section 2-11-6 NMSA 1978 shall be required if the lobbyist anticipates making or incurring and makes or incurs no expenditures or political contributions under Section 2-11-6 NMSA 1978. The lobbyist shall indicate in his registration statement whether those circumstances apply to him.

C. For each employer listed in Paragraph (2) of Subsection A of this section, the lobbyist shall file the following information:

(1) a full disclosure of the sources of funds used for lobbying;

(2) a written statement from each of the lobbyist's employers authorizing him to lobby on the employer's behalf;

(3) a brief description of the matters in reference to which the service is to be rendered; and

(4) the name and address of the person, if other than the lobbyist or his employer, who will have custody of the accounts, bills, receipts, books, papers and documents required to be kept under the provisions of the Lobbyist Regulation Act.

D. For each succeeding year that an individual is employed or retained as a lobbyist by the same employer, and for whom all the information disclosed in the initial registration statement remains substantially the same, the lobbyist shall file a simple annual registration renewal in January and pay the twenty-five dollar (\$25.00) filing fee for each of the lobbyist's employers together with a short, abbreviated prescribed form for renewal.

E. Whenever there is a modification of the facts required to be set forth by this section or there is a termination of the lobbyist's employment as a lobbyist before the end of the calendar year, the lobbyist shall notify the secretary of state within one month of such occurrence and shall furnish full information concerning the modification or termination. If

the lobbyist's employment terminates at the end of a calendar year, no separate termination report need be filed.

#### **2-11-4. Recompiled.**

#### **2-11-5. Other powers and duties of attorney general not limited or restricted.**

The powers and duties of the attorney general pursuant to the Lobbyist Regulation Act [this article] shall not be construed to limit or restrict the exercise of his power or the performance of his duties.

#### **2-11-6. Expenditure statement to be filed; contents; reporting periods.**

A. Each lobbyist or lobbyist's employer who makes or incurs expenditures or political contributions for the benefit of a state legislator, or candidate for the state legislature, a state public officer, or a candidate for state public office, a ballot issue, or a board or commission member or state employee who is involved in an official action affecting the lobbyist's employer, shall file with the secretary of state on a prescribed form a sworn statement that sets forth:

(1) the cumulative total of the expenditures made or incurred, separated into categories that identify the total separate amounts spent on:

- (a) meals and beverages;
- (b) other entertainment expenditures;
- (c) gifts; and
- (d) other expenditures; and

(2) each political contribution made, identified by amount, date and name of the candidate or ballot issue supported or opposed.

B. In identifying expenditures pursuant to the provisions of Paragraph (1) of Subsection A of this section, any individual expenditure that is more than the threshold level established in the Internal Revenue Code of 1986, as amended, that must be reported separately to claim a business expense deduction, as published by the secretary of state, shall be identified by amount, date, purpose, type of expenditure and name of the person who received or was benefited by the expenditure; provided that in the case of special events, including parties, dinners, athletic events, entertainment and other functions, to which all members of the legislature, to which all members of either house or any legislative committee, or to which all members of a board or commission, are invited, expenses need not be allocated to each individual who attended but the date, location, name of the body invited and total expenses incurred shall be reported.

C. The reports required pursuant to the provisions of the Lobbyist Regulation Act [this article] shall be filed semiannually:

(1) in January for all pre-session or other expenditures and political contributions made or incurred up to the date of filing and not previously reported; and

(2) in July for all expenditures and political contributions made or incurred since the January filing.

D. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer need not be reported.

E. A lobbyist or lobbyist's employer shall obtain and preserve all accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act for a period of two years from the date of filing of the statement containing such items. When the lobbyist is required under the terms of his employment to turn over any such records to his employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

F. Any lobbyist's employer who also engages in lobbying shall comply with the provisions of the Lobbyist Regulation Act.

### **2-11-7. Registration and expenditure statement; preservation as public record.**

Each registration and expenditure statement as required by the Lobbyist Regulation Act [this article] shall be preserved by the secretary of state for a period of two years from the date of filing as a public record, open to public inspection at any reasonable time. Unless an action or prosecution is pending that requires preserving the report, it may be destroyed two years after the date of filing.

### **2-11-8. Contingent fees prohibited in lobbying the legislative branch of state government.**

No person shall accept employment as a lobbyist and no lobbyist's employer shall employ a lobbyist for compensation contingent in whole or in part upon the outcome of the lobbying activities before the legislative branch of state government or the approval or veto of any legislation by the governor.

#### **2-11-8.1. Restrictions on campaign activities and contributions.**

A. No lobbyist may serve as a campaign chairman, treasurer or fundraising chairman for a candidate for the legislature or a statewide office.

B. It is unlawful during the prohibited period for any lobbyist or lobbyist's employer to contribute to or act as an agent or intermediary for political contributions to or arrange for the making of political contributions to the campaign funds of any statewide elected official or legislator or any candidate for those offices.

C. For purposes of this section, "prohibited period" is that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on the twentieth day following the adjournment of the regular or special session.

#### **2-11-8.2. Compliance with act; enforcement of act; binding arbitration; civil penalties.**

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act [this article] of those duties. This includes advising all registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may conduct thorough examinations of reports and initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Any person who believes that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed.

D. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged and impose the penalty. If the person charged disputes the secretary of state's determination, including an advisory opinion, the person charged may request binding arbitration. If an advisory opinion is subject to binding arbitration, no penalty shall be imposed until the arbitration

decision is issued, and the penalty shall not include any fine to cover days before the arbitration decision is issued.

E. The arbitration decision shall be decided by a panel of three persons. The secretary of state shall choose one panel member within fifteen days of receipt of the request for arbitration; the person charged shall choose another panel member and submit the arbitrator's name with the request for arbitration; and those two members shall choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of the district court for the first judicial district shall appoint the third panel member. No panel member may be a person subject to the Lobbyist Regulation Act, Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] or Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978]. Panel members shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] plus reimbursement for reasonable actual expenses.

F. The arbitration panel may take any action the secretary of state is authorized to take. The panel shall state the reasons for its decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within forty-five days of the conclusion of the hearing. Unless otherwise provided for in this section, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7-1 to 44-7-22 NMSA 1978], including the procedures set forth in Section 44-7-7 NMSA 1978 authorizing the issuance of subpoenas. No panel member shall be subject to liability for actions taken pursuant to this section.

G. Any person who files a statement or report after the deadline imposed by the Lobbyist Regulation Act, or any person who files a false or incomplete statement or report, shall be liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

H. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

### **2-11-9. Penalties.**

In addition to any other penalties that may be assessed, any person who knowingly and willfully violates any of the provisions of the Lobbyist Regulation Act [this article] shall be punished by a fine of up to five thousand dollars (\$5,000) and may have his lobbyist registration revoked or his lobbying activities enjoined for up to three years.

## ARTICLE 15

### Governmental Ethics Oversight Committee

Sec.		Sec.	
2-15-1.	Governmental ethics oversight committee created; termination.	2-15-8.	Interim legislative ethics committee; duties.
2-15-2.	Membership; appointment; vacancies.	2-15-9.	Interim legislative ethics committee; procedures; confidentiality.
2-15-3.	Powers and duties.	2-15-10.	Criminal sanctions.
2-15-4.	Subcommittees.	2-15-11.	Staff.
2-15-5.	Report.	2-15-12.	New Mexico legislative council; budget.
2-15-6.	Staff.		
2-15-7.	Interim legislative ethics committee; creation; appointment.		

#### **2-15-1. Governmental ethics oversight committee created; termination.**

The joint interim "governmental ethics oversight committee" is created. The committee shall function from the date of its appointment until the first day of December prior to the first session of the forty-third legislature.

#### **2-15-2. Membership; appointment; vacancies.**

A. The governmental ethics oversight committee shall be composed of fourteen voting members, consisting of four legislators and ten public members, and four advisory members, consisting of two legislators from each house.

B. The members of the house of representatives shall be appointed by the speaker of the house of representatives. The members of the senate shall be appointed by the committees' committee of the senate or, if the senate appointments are made in the interim, by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee. Legislator voting and advisory members shall be appointed annually from each house after consultation with the floor leaders of the two major political parties so as to give the two major political parties in each house equal representation on the committee.

C. Four public members shall be appointed to the committee by the speaker of the house of representatives, four public members shall be appointed by the president pro tempore of the senate, one public member shall be appointed by the governor and one public member shall be appointed by the chief justice of the New Mexico supreme court. The public members shall be appointed in such a manner so that neither major political party has a majority of members on the committee.

D. The speaker of the house of representatives and the president pro tempore of the senate shall each designate one co-chairman of the committee.

E. Vacancies on the committee shall be filled by appointment in the same manner as the original appointments.

F. The public members of the committee shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] plus reimbursement for reasonable actual expenses.

#### **2-15-3. Powers and duties.**

A. After its appointment, the governmental ethics oversight committee shall hold one organizational meeting to develop a workplan and budget for the ensuing interim. The workplan and budget shall be submitted to the New Mexico legislative council for approval. Upon approval of the workplan and budget by the New Mexico legislative council, the committee shall:

(1) examine the statutes, constitutional provisions and regulations governing governmental ethics in New Mexico;

(2) monitor and oversee the implementation of the legislative directives pertaining to financial disclosure, campaign reporting, lobbyist regulation and governmental conduct and financial disclosure laws;

(3) review issues related to statewide and legislative campaign expenditure and contribution limitations, public financing of political campaigns, nepotism, legislative expense reimbursement and extension of campaign reporting requirements to various political subdivisions of the state; and

(4) make recommendations relating to the adoption of rules and legislation, if any are found to be necessary.

B. The committee shall regularly receive testimony from the secretary of state and the attorney general relating to the implementation of the legislative directives and shall review any proposed rules, regulations or reporting forms prior to adoption.

#### **2-15-4. Subcommittees.**

Subcommittees shall be created only by majority vote of all members appointed to the governmental ethics oversight committee and with the prior approval of the New Mexico legislative council. A subcommittee shall be composed of at least one member from the senate and one member from the house of representatives, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the members of the full committee in advance of such meeting or expenditure and the approval shall be shown in the minutes of the committee.

#### **2-15-5. Report.**

The governmental ethics oversight committee shall make a report of its findings and recommendations for the consideration of the second session of the forty-first legislature, the first and second sessions of the forty-second legislature and the first session of the forty-third legislature. The report and suggested legislation shall be made available to the New Mexico legislative council on or before December 15 preceding each session.

#### **2-15-6. Staff.**

The staff for the governmental ethics oversight committee shall be provided by the legislative council service. The committee may employ outside consultants.

#### **2-15-7. Interim legislative ethics committee; creation; appointment.**

A. An interim legislative ethics committee, appointed by the legislative council, is created. Members of the legislative council shall be allowed to serve on the interim legislative ethics committee.

B. All matters arising in the interim pertaining to legislative ethics shall be referred to this special interim legislative ethics committee.

C. The committee shall be appointed by the New Mexico legislative council so as to give the two major political parties in each house equal representation on the committee. In appointing the members to the committee, the legislative council shall adopt the recommendations of the respective floor leaders of each house.

D. The New Mexico legislative council shall name the interim ethics committee at the beginning of each interim, but shall convene the committee only upon the receipt of a complaint, a request for an advisory opinion or a referral.

#### **2-15-8. Interim legislative ethics committee; duties.**

The interim legislative ethics committee is authorized to:

A. issue advisory opinions on the interpretation and enforcement of ethical principles as applied to the legislature;



B. investigate complaints from another member of the legislature or a member of the public alleging misconduct of a legislator;

C. investigate referrals made to the co-chairmen of the New Mexico legislative council from the attorney general, the secretary of state or a district attorney;

D. hire special counsel or independent hearing officers as necessary; and

E. make recommendations to the respective houses by the end of the first full week of the next convened regular session regarding proposed sanctions for ethical misconduct.

### **2-15-9. Interim legislative ethics committee; procedures; confidentiality.**

A. Except as provided in this section, the New Mexico legislative council shall develop procedures to carry out the provisions of this section, in accordance with the existing procedures in the house and senate rules.

B. A member of the interim legislative ethics committee shall be ineligible to participate in any matter relating directly to that member's conduct. In any such case, a substitute member to the committee shall be appointed from the same house from the same political party by the appropriate appointing authority. A member may seek to be disqualified from any matter brought before the ethics committee on the grounds that the member cannot render a fair and impartial decision. Disqualification must be approved by a majority vote of the remaining members of the committee. In any such case, a substitute member to the committee shall be appointed from the same political party as provided in this section.

C. The interim legislative ethics committee is authorized to issue advisory opinions on matters relating to ethical conduct during the interim. Any question relating to the interpretation and enforcement of ethical principles as applied to the legislature may be submitted in writing to the New Mexico legislative council by a legislator describing a real or hypothetical situation and requesting an advisory opinion establishing an appropriate standard of ethical conduct for that situation. The question shall be referred to the joint interim legislative ethics committee.

D. To initiate any action during the interim on alleged misconduct, any legislator or member of the public may file a written, sworn complaint setting forth, with specificity, the facts alleged to constitute unethical conduct. A complaint shall be filed with the New Mexico legislative council. Upon receipt of the complaint, the cochairmen [co-chairmen] shall convene the interim legislative ethics committee.

E. The interim legislative ethics committee shall maintain rules of confidentiality, unless the legislator against whom a complaint is filed waives the rules or any part of them in writing. The confidentiality rules shall include the following provisions:

(1) the complainant, the committee and its staff shall not publicly disclose any information relating to the filing or investigation of a complaint, including the identity of the complainant or respondent, until after a finding of probable cause has been made that a violation has occurred;

(2) the identity of the complainant shall be released to the respondent immediately upon request; and

(3) no member of the committee or its staff may knowingly disclose any confidential information except as authorized by the committee.

### **2-15-10. Criminal sanctions.**

If the interim legislative ethics committee determines that in addition to recommending that sanctions be imposed by the respective house on the member, the conduct involves criminal activity, the interim ethics committee may refer the matter to the district attorney of the first judicial district, the district attorney of the judicial district where the member resides or the attorney general.

**2-15-11. Staff.**

The staff for the interim ethics committee shall be provided by the legislative council service, but the committee is authorized to hire such special counsel or independent hearing officers as necessary to assist the legislative ethics committee when it is convened.

**2-15-12. New Mexico legislative council; budget.**

The New Mexico legislative council shall annually provide an amount sufficient to carry out the duties and mandate of the interim [legislative] ethics committee.



# CHAPTER 3

## Municipalities

### ARTICLE 8

#### Municipal Elections

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| 3-8-2.   | Definitions.   | 3-8-39. | Conduct of election; maintenance of order; peace officer; memoranda of actions or omissions.  |
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	3-8-80. Uniform procedure.

### **3-8-1. Election code; short title; purpose; "shall" and "may"; headings; construction; counting days.**

A. Articles 8 and 9 of Chapter 3 NMSA 1978 may be cited as the "Municipal Election Code".

B. It is the purpose of the Municipal Election Code to:

- (1) secure the secrecy of the ballot;
- (2) secure the purity and integrity of elections;
- (3) guard against the abuse of the elective franchise; and
- (4) provide for the efficient administration and conduct of elections.

C. As used in the Municipal Election Code, "shall" is mandatory and "may" is permissive.

D. Article and section headings do not in any manner affect the scope, meaning or intent of the provisions of the Municipal Election Code.

E. The Municipal Election Code shall govern the conduct of all aspects of all municipal elections except when the Municipal Election Code is in conflict with the state Election Code with respect to any procedures or protections required of the state by federal law, then the state Election Code [Chapter 1 NMSA 1978] shall govern, as appropriate. The provisions of the Municipal Election Code shall not apply to home rule municipalities or municipalities incorporated under special act unless the Municipal Election Code is adopted by reference by such municipality.

F. When computing time, the first day shall be excluded and the last included unless the last falls on a Sunday or legal holiday, in which case, the time prescribed shall be extended to include the whole of the following business day.

G. In the event that a municipality is required by law or ordinance to elect any or all members of the governing body from districts, then that municipality shall adopt an ordinance setting forth rules and regulations necessary to implement elections by district, and such municipal ordinance may conflict with and supersede the Municipal Election Code to the extent such ordinance must do so to legally implement elections by district.

### **3-8-2. Definitions.**

A. The definitions in Section 3-1-2 shall apply to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] in addition to those definitions set forth in the Municipal Election Code.

B. As used in the Municipal Election Code:

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

(2) "ballot" means a system for arranging and designating for the voter the names of candidates and other questions to be voted on and for the marking, casting or otherwise recording of such votes, and the term includes absentee ballots, ballot labels, emergency paper ballots and paper ballots used in lieu of voting machines;

(3) "ballot label" means that portion of cardboard, paper or other material placed on the front of the voting machine containing the names of the candidates, the offices the candidates are seeking, and a statement of the proposed questions to be voted upon;

(4) "clerk" or "municipal clerk" means the municipal clerk or any deputy or assistant municipal clerk;

(5) "county clerk" means the clerk of the county within which the municipality is located;

(6) "election returns" means all certificates of the precinct board including but not limited to the certificate showing the total number of votes cast for each candidate, if any, and for or against each question, if any, and shall include statements of canvass, signature rosters, registered voter lists, machine printed returns, emergency paper ballots, paper ballots used in lieu of voting machines, absentee ballots, absentee ballot registers, and absentee voter list or absent voter machine printed returns;

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

(8) "precinct" means a portion of a county situated entirely in or partly in a municipality which has been designated by the county as a precinct for election purposes and which is entitled to a polling place and a precinct board. If a precinct includes territory both inside and outside the boundaries of a municipality, then "precinct", for municipal elections, shall mean only that portion of the precinct lying within the boundaries of the municipality;

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

(10) "precinct board" means the appointed election officials serving a single or consolidated precinct;

(11) "recheck" pertains to voting machines and means a verification procedure where the counter compartment of the voting machine is opened and the results of the balloting as shown on the counters of the machine are compared with the results shown on the official returns; and

(12) "recount" pertains to emergency paper ballots, paper ballots used in lieu of voting machines, and absentee ballots, and means a retabulation and retallying of individual ballots.

### **3-8-3. Residency.**

For the purpose of determining the residence of a person desiring to be a candidate for a municipal elected office, or the residence of a person who has signed a petition to cause a special or regular municipal election, or for determining residency for any other purpose pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], the following rules shall govern:

A. residence shall be presumed to be at the address or location shown on the original affidavit of voter registration on file with the county clerk; and

B. the presumption established in Subsection A of this section may be overcome if residence is shown to be elsewhere pursuant to the rules set forth in Section 1-1-7 NMSA 1978.

### **3-8-4. Oaths.**

A. A person authorized to administer oaths, as the term is used in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], means any person empowered by the laws of any state, the federal government, or of any foreign country to administer oaths.

B. The words "swear" and "oath" include affirmation in all cases where an affirmation can be substituted for swearing or an oath.

### **3-8-5. Major fractions.**

In any section in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] requiring counting or computation of numbers, any fraction greater than one half of a whole number shall be counted as a whole number.

### **3-8-6. County clerk; election duties.**

The county clerk shall maintain accurate voter registration information for each municipality located in the county. The county clerk shall provide to the municipal clerk, in advance of a municipal regular or special election, the names of only those registered voters entitled to vote in the municipal election as required in Subsection B of Section 3-8-7 NMSA 1978.

#### **3-8-6.1. Secretary of state; duties.**

The secretary of state shall investigate complaints concerning conduct of elections held pursuant to the Municipal Election Code [Articles 8 and 9 of Chapter 3 NMSA 1978] and issue the findings to the appropriate enforcement authority.

### **3-8-7. Municipal clerk; county clerk; election duties.**

A. The municipal clerk shall:

- (1) administer the municipal election;
- (2) with the consent of the governing body, secure the necessary polling places;
- (3) see that all necessary supplies and equipment are present at each polling place prior to the opening of the polls on the day of the election;
- (4) certify voting machines;
- (5) conduct an election school for precinct board members as required in Section 3-8-21 NMSA 1978;
- (6) keep the office of the municipal clerk open on election day for the purpose of receiving ballot boxes, election returns and materials until all election returns and materials are received; and
- (7) serve as a deputy registration officer as provided in Subsection C of Section 1-4-40 NMSA 1978.

B. Within fifteen days of the adoption of the election resolution, the municipal clerk shall request in writing from the county clerk the registered voter lists and signature rosters containing only the qualified electors eligible to vote in the municipal election. At least seven days prior to every municipal election, the county clerk shall furnish to the municipal clerk the registered voter list and signature roster containing only the qualified electors eligible to vote in the municipal election. A municipal clerk shall not amend, add or delete any information from the registered voter list. The registered voter list shall constitute the registration list for the municipal election. The registered voter list does not have to be returned to the county clerk. The municipality shall bear the reasonable cost of preparation of the voter lists and signature rosters.

### **3-8-8. Time to register to vote.**

Voter registration, for purposes of all municipal elections, shall occur during the times allowed pursuant to Section 1-4-8 NMSA 1978.

### **3-8-9. Election scheduling; conflicts; notice.**

A. Except as otherwise provided by law, no municipal election shall be held within forty-two days prior to or within thirty days after any statewide special, general or primary

election or any regular school district election. Whenever a municipal election would be or has been scheduled within the prohibited time, the governing body shall adopt an election resolution scheduling or rescheduling the election on a date as soon as is practicable outside the prohibited period and in compliance with the requirements of the Municipal Election Code [Articles 8 and 9 of Chapter 3 NMSA 1978] and any other statute specifically related to such election. If an election resolution has already been adopted, the new election resolution shall supersede the existing election resolution and the new election resolution shall be published as required by the Municipal Election Code.

B. Except as otherwise provided by law, one or more municipal special elections, including but not limited to bond elections, may be held in conjunction with a regular municipal election or one or more special municipal elections.

C. When concurrent elections are called for, publications, notices, selection of precinct boards, election schools, ordering election supplies, conduct of the election, canvassing, record keeping and all other election matters shall be conducted to comply with all election requirements for each such election as if it were held separately. However, any requirement may be satisfied by a combined action if such action would satisfy the requirements set by law for each individual election. Allowable combined actions include but are not limited to, combined:

- (1) publications;
- (2) notices;
- (3) appointment of precinct boards;
- (4) ordering of election supplies;
- (5) conduct of election;
- (6) canvassing; and
- (7) record keeping.

### **3-8-10. Consolidation of precincts.**

A. In the interest of economy, any precinct where the total votes cast in person in that precinct in the last preceding regular municipal election was less than six hundred, may be combined with one or more adjacent and contiguous precincts by the governing body. No such combination shall be made where the total vote [votes] cast in person in all precincts proposed to be consolidated in the last preceding regular municipal election exceeded one thousand.

B. Precincts may be consolidated in any regular or special municipal election including bond elections, except when prohibited by law.

### **3-8-11. Polling places.**

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

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

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

D. Upon application of the governing body or municipal clerk, the governing board of any school district shall permit the use of any school buildings or a part thereof for the conduct of any municipal election.



### **3-8-12. Election resolutions; notices; correction of errors and omissions.**

The election resolution, publication of the election resolution, or any notice regarding municipal election matters may be amended by the municipal clerk to correct any ministerial errors or omissions. The corrected resolution or notice shall be published, in the manner that the original is required to be published as required by law. However, if publication as required by law cannot be made, then such notice shall be given as is practicable under the circumstances in order to best reach those people to whom notice was intended under the law.

### **3-8-13. Voting machines; paper ballots.**

Voting machines shall be used in all municipal elections, except paper ballots may be used in lieu of voting machines for the recording of votes cast in a municipal special or regular election in municipalities of less than one thousand five hundred population. A decision to use paper ballots shall be made by the governing body at the time the election resolution is adopted. Nothing in this section shall prevent the use of emergency paper ballots or absentee ballots as allowed by law.

### **3-8-14. Voting machines; ordering; preparation; certification; delivery.**

A. If voting machines are to be used, the municipal clerk shall order the machines from the county clerk within fifteen days of the adoption of the election resolution, and the county clerk shall supply such voting machines pursuant to Section 1-9-6 NMSA 1978. The county shall provide voting machine technicians, voting machine programming and voting machine transportation and the municipality shall pay the reasonable fee charged by the county for such services and the use of the voting machines, but in no case in an amount which exceeds the actual cost to the county pursuant to Section 1-9-12 NMSA 1978.

B. If voting machines are to be used, the municipal clerk shall order at least one voting machine for every polling place, provided that the clerk shall order a sufficient number of voting machines to assure that the eligible voters in that polling place shall be able to vote in a timely manner.

C. The municipal clerk shall deliver the printer packs and voting machine strips to the county clerk within two days after receipt. The county clerk, within fifteen days of receipt of the printer packs and voting machine strips, shall:

(1) insert the voting machine strips;

(2) program the voting machines;

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

(4) set all counters at zero; and

(5) notify the municipal clerk of the date, time and place for inspection and certification of the voting machines, which notification shall be not less than twelve hours prior to the time for inspection and certification.

D. Immediately upon receipt of the notice of date, time and place of inspection and certification, the municipal clerk shall post such notice in the office of the municipal clerk and attempt to telephone the candidates at the phone number listed on the declaration of candidacy to give each candidate notice of the date, time and place of inspection and certification.

E. Inspection and certification shall occur not later than seven days prior to the election and shall be open to the public.

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

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

(2) test each voting machine to assure that it has been correctly programmed; and  
 (3) inform the county clerk when each machine is satisfactory and ready to be certified.

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

(1) the county clerk shall reset each counter at zero;  
 (2) the county clerk shall insert the printer pack into the machine;  
 (3) the voting machine shall be immediately sealed with a numbered metal seal so as to prevent operation of the machine or its registering counters without breaking the seal;  
 (4) the municipal clerk shall prepare a certificate in triplicate for each machine that shall:

(a) show the serial number of the voting machine;  
 (b) state that the voting machine has all of its resettable registering counters set at zero;  
 (c) state that the machine has been tested by voting on each registered counter to prove the counter is in perfect condition;  
 (d) show the number of the metal seal that has sealed the machine; and  
 (e) show the number registered on the protective counter;

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

(6) the keys to the voting machine shall be enclosed in a sealed envelope on which shall be written:

(a) the number of the precinct and polling place to which the machine is assigned;  
 (b) the serial number of that voting machine;  
 (c) the number of the metal seal that has sealed the voting machine;  
 (d) the number registered on the protective counter; and  
 (e) across the seal of the envelope, the signatures of the county clerk, the municipal clerk and all candidates present, if any, at the inspection and certification.

H. After certification of the voting machines, the county clerk shall keep the keys to the voting machines in his custody and shall deliver the keys to the municipal clerk when the voting machines are delivered for election. The municipal clerk shall secure in the office of the municipal clerk all the envelopes containing the keys to the voting machines until delivered to the presiding judge of the election.

I. An objection to the use of a particular voting machine shall be filed in the district court within two days after the machine has been certified. Any objection so filed shall specify the number of the voting machine objected to and the reason for the objection. Each voting machine shall be conclusively presumed to be properly prepared for the election if it has been certified, unless a timely objection has been filed.

J. Voting machines certified in accordance with this section shall be delivered to the assigned precinct polling place no earlier than five days prior to the election and no later than noon on the day prior to the election.

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

### **3-8-15. Emergency paper ballots; when used; amount required; safeguards.**

A. When voting machines are used in an election, and one or more machines becomes disabled so that a voter is unable to vote for the candidates or the questions of the voter's choice, or both, and have such vote correctly recorded by the voting machine, and when no substitute voting machine is available, then emergency paper ballots shall be used.

B. The municipal clerk shall supply to each polling place, a quantity of emergency paper ballots equal to twenty percent of the total number of qualified electors in the precinct or consolidated precinct. Such ballots shall only be used as allowed in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

C. Emergency paper ballots are official ballots and shall meet the same requirements and safeguards as all other official ballots.

### **3-8-16. Paper ballots in lieu of voting machines; emergency paper ballots; form; general requirements.**

As used in this section, "paper ballots" means paper ballots used in lieu of voting machines and emergency paper ballots. Paper ballots shall be in the form prescribed by the municipal clerk which shall conform to the following rules.

A. Paper ballots shall:

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

(2) be uniform in size;

(3) be printed on good quality paper;

(4) be printed in plain black type; and

(5) have all words and phrases printed correctly and in their proper places.

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

"OFFICIAL ELECTION BALLOT

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

C. If the election is a regular municipal election, then the paper ballot shall be prepared consistent with the requirements of Subsections A through E of Section 3-8-29 NMSA 1978. In addition, next to each candidate's name shall appear an empty box to be used when voting for that candidate. Below the candidates' names for each office shall appear the heading "Write-In Candidates". Below the heading shall appear one line, with a box to the right of the line, for each individual office-holder to be elected. Below the last candidate's name shall appear any question presented, in the order designated by the governing body.

D. If the election is a special municipal election, then questions presented shall be placed on the paper ballot in the order designated by the governing body.

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

F. At the bottom of all paper ballots shall be printed:

"OFFICIAL ELECTION BALLOT"

followed by a facsimile signature of the municipal clerk.

### **3-8-17. Sample ballots.**

A. At the same time official ballots are printed for voting with machines or paper ballots, the municipal clerk shall cause sample ballots to be printed, which shall:

(1) be printed in both English and Spanish;

(2) be printed in a total number equal to at least ten percent of the number of qualified electors in each precinct or consolidated precinct;

(3) be the same in all respects as the official ballots, except that they shall be printed on colored paper and shall not contain the facsimile signature of the municipal clerk or any endorsement on the sample ballot or the back thereof;

(4) be marked in large black capital letters, "SAMPLE BALLOT"; and  
 (5) be made available in reasonable quantities to all interested persons for distribution to the voters;

B. Nothing in this section shall prevent any person from having printed at his expense sample ballots, of a different color than the official sample ballot, which comply with the provisions of this subsection, so long as no marks, notations, words or other material are added to, taken from or deface, change or hide the information on or the appearance of the sample ballot as authorized by the municipal clerk.

### **3-8-18. Election supplies.**

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

B. No later than 5:00 p.m. on the fifty-third day preceding the day of the election, the municipal clerk shall:

- (1) order absentee ballots;
- (2) order printer packs, voting machine strips, sample voting machine ballots and emergency paper ballots, if voting machines are to be used; and
- (3) order all other election supplies necessary for the conduct of the election.

C. Absentee ballots, emergency paper ballots, printer packs, voting machine strips and sample voting machine ballots shall be delivered to the municipal clerk not less than thirty-five days prior to the day of the election.

### **3-8-19. Precinct boards; appointments; compensation.**

A. In order to qualify as a member of the precinct board, a person shall:

- (1) be a resident qualified elector of the municipality and a resident of the precinct or consolidated precinct within the jurisdiction of the precinct board. However, if there is a shortage or absence of precinct board members in certain precincts or consolidated precincts, then a person who is a resident qualified elector of the municipality and a nonresident of the precinct or consolidated precinct may be appointed;
- (2) be able to read and write;
- (3) have the necessary capacity to carry out the functions of the office with acceptable skill and dispatch; and
- (4) execute the precinct board member's oath of office.

B. No person shall be qualified for appointment or service on a precinct board if that person is a:

- (1) candidate for any municipal office;
- (2) spouse, parent, child, brother or sister of any candidate to be voted for at the election;
- (3) sheriff, deputy sheriff, marshal, deputy marshal, state or municipal policeman;
- (4) spouse, parent, child, brother or sister of the municipal clerk or any deputy or assistant municipal clerk; or
- (5) municipal clerk or deputy or assistant municipal clerk.

C. Not less than thirty-five days before the day of the municipal election, the governing body shall appoint a precinct board for each polling place. The precinct board shall consist of three election judges, two of whom may also be appointed as election clerks; two election clerks; and not less than two alternates who shall become either election judges or election clerks or both as the need arises. On the thirty-fifth day before the day of the election, the municipal clerk shall post and maintain in the clerk's office until the day of the election the names of the election judges, election clerks and alternates for each polling place. The posting of the names of the election judges, election clerks and alternates for each polling place may be proved by an affidavit signed by the municipal clerk. The municipal clerk shall, by mail, notify each person appointed, request a written acceptance, and keep a record

of all notifications and acceptances. The notice shall state the date by which the person must accept the appointment. If any person appointed to a precinct board, or as an alternate, fails to accept an appointment within seven days after the notice is sent, the position shall be deemed vacant and the position shall be filled as provided in this section.

D. The county clerk shall furnish upon request of the municipal clerk the names and addresses of qualified precinct board members for general elections, and such precinct board members may be appointed as precinct board members for municipal elections.

E. The municipal clerk shall appoint a qualified elector as a precinct board member to fill any vacancy which may occur between the day when the list of precinct board members is posted and the day of the election. If a vacancy occurs on the day of the election, the precinct board members present at the polling place may appoint by a majority vote a qualified elector to fill the vacancy. If the vacancy was filled after the date of the election school, then that person need not attend an election school in order to validly serve on the precinct board.

F. Members of a precinct board shall be compensated for their services at the rate provided in Section 1-2-16 NMSA 1978 for the day of the election. The governing body may authorize payment to alternates who are required by the precinct board or municipal clerk to stand by on election day at the rate of not more than twenty dollars (\$20.00) for the day of the election.

G. Compensation shall be paid within thirty days following the date of election.

### **3-8-20. Precinct boards; duties.**

A. The precinct board shall:

(1) conduct the municipal election in the manner provided for the conduct of elections in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]; and

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

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

C. No person shall serve on a precinct board unless that person has attended an election school conducted by the municipal clerk in the previous four years.

### **3-8-21. Municipal clerk; precinct board; election school.**

A. The municipal clerk shall conduct or cause to be conducted an election school not less than five days prior to the election. All major details of the conduct of elections shall be covered at the school, with special emphasis given to recent changes in the Municipal Election Code [Articles 8 and 9 of Chapter 3 NMSA 1978]. The school of instruction shall be open to the public, with notice published not less than four days prior to the school.

B. Notice of the school shall be mailed to each precinct board member and alternate not less than seven days prior to the school.

C. Two or more municipalities may jointly conduct a combined election school.

D. The governing body may authorize payment of mileage to precinct board members who attend the election school.

### **3-8-22. Oral assistance for language minority voters.**

A. Oral assistance shall be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise. "Language minority" means a person who is an American Indian or of Spanish heritage and "inability to read well enough to exercise the elective franchise" means inability to read the languages in which the ballot is printed or the inability to understand instructions for operating the voting machine.

B. The position of election translator is created. The election translator shall be an additional member of the regular precinct board unless oral assistance to language minorities can otherwise be rendered by a member of the regular precinct board. The election translator shall be appointed by the municipal clerk in the same manner as other

precinct board members are appointed, except that the municipal clerk in appointing American Indian election translators shall seek the advice of the pueblo or tribal officials residing in that municipality. The election translator shall take the oath required of precinct board members and shall meet the same qualifications as other precinct board members.

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

### **3-8-23. Messengers; compensation.**

A. The municipal clerk may appoint messengers to deliver ballot boxes, signature rosters, keys, election supplies and other materials pertaining to the election.

B. Messengers shall be paid mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] each way over the usually traveled route. The mileage shall be paid within thirty days following the date of election.

### **3-8-24. Uniform procedure.**

The provisions of 3-8-1 NMSA 1978 through 3-8-23 NMSA 1978 relate to overall election matters and pre-election day matters, and shall apply to all municipal elections except as otherwise specified.

### **3-8-25. Regular municipal elections; time of holding election.**

Regular municipal elections for the purpose of electing municipal officers and considering any other question placed on the ballot by the governing body shall be held on the first Tuesday in March of each even-numbered year; provided, that any municipality which has adopted a charter shall elect its municipal officers at the time provided for in the charter.

### **3-8-26. Regular municipal election; notice; choice of ballots or voting machines.**

A. Not earlier than one hundred and twelve days nor later than eighty-four days prior to the date of a regular municipal election, the governing body shall adopt an election resolution calling for the regular municipal election. The election resolution shall be published once, within fifteen days of adoption, and again not less than sixty days prior to the election nor more than seventy-five days prior to the election, as provided in Section 3-1-2J NMSA 1978. In addition, the election resolution shall be posted in the office of the municipal clerk from the date of adoption until the date of the election. For information purposes and coordination, one copy of the election resolution shall be mailed within fifteen days of adoption to the secretary of state and the county clerk of the county in which the municipality is located.

B. The resolution shall state the date when the election will be held, the offices to be filled, the questions to be submitted to the voters, the date and time of the closing of the registration books by the county clerk as required by law, the date and time for filing the declaration of candidacy, the location of polling places, and the consolidation of precincts, if any[,] notwithstanding any conflicting provisions of Section 1-3-5 NMSA 1978. Any question to be submitted to the voters in addition to the election of municipal officers may be included in the election resolution, but such inclusion shall not substitute for any additional or separate resolution or publication thereof as required by law.

C. In those municipalities allowed by law to use paper ballots, the election resolution shall also state whether paper ballots or voting machines will be used in the election.

### **3-8-27. Regular municipal election; declaration of candidacy; withdrawing name from ballot; penalty for false statement.**

A. Candidate filing day shall be between the hours of 8:00 a.m. and 5:00 p.m. on the fifty-sixth day preceding the day of election. On candidate filing day, a candidate for

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

B. On candidate filing day, each candidate shall cause to be filed in the office of the municipal clerk:

- (1) a declaration of candidacy; and
- (2) a certified copy of the candidate's current affidavit of voter registration on file with the county clerk which has been certified by the office of the county clerk on a date not earlier than the adoption of the election resolution; or
- (3) the triplicate copy of the candidate's current affidavit of registration which has been stamped by the office of the county clerk as accepted for filing on a date not earlier than the adoption of the election resolution.

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

D. The municipal clerk shall provide a form for the declaration of candidacy and shall accept only those declarations of candidacy which contain:

- (1) the identical name and the identical resident street address as shown on the affidavit of registration of the candidate submitted with the declaration of candidacy;
- (2) the office and term to which the candidate seeks election and district designation, if appropriate;
- (3) a statement that the candidate is eligible and legally qualified to hold the office for which the candidate is filing;
- (4) a statement that the candidate has not been convicted of a felony or, if the candidate has been convicted of a felony, a statement that the candidate's elective franchise has been restored;
- (5) a statement that the candidate or the candidate's authorized representative shall personally appear at the office of the municipal clerk during normal business hours on the fifty-fourth day before the election to ascertain whether the municipal clerk has certified the declaration of candidacy as valid;
- (6) a telephone number at which the candidate or the candidate's authorized representative can be reached for purposes of giving telephone notice;
- (7) a statement to the effect that the declaration of candidacy is an affidavit under oath and that any false statement knowingly made therein constitutes a fourth degree felony under the laws of New Mexico; and
- (8) the notarized signature of the candidate on the declaration of candidacy.

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

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

G. Not later than the fifty-fifth day preceding the day of the election, the municipal clerk shall determine whether the declaration of candidacy shall be certified. In order to be certified as a candidate, the documents submitted to the municipal clerk must prove that the individual is a qualified elector as defined in Subsection K of Section 3-1-2 NMSA 1978 and, if appropriate, that the individual resides in and is registered to vote in the municipal election district from which the individual seeks election. In the event that an individual fails to submit to the municipal clerk on candidate filing day the documents listed in Subsection B of this section in the form and with the contents as required by this section, then the municipal clerk shall not certify that individual as a candidate for municipal office.

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

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

J. Not later than 10:00 a.m. on the forty-eighth day preceding the election, the municipal clerk shall confirm with the printer on contract with the municipality the names of the candidates and their position on the ballot.

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

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

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

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

(3) the municipal clerk shall on the forty-first day preceding the election certify those individuals who have satisfied the requirements of this section as declared write-in candidates;

(4) not later than 9:00 a.m. on the fortieth day preceding the election the municipal clerk shall in the office of the municipal clerk:

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

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

(5) not later than 5:00 p.m. on the twenty-eighth day preceding the election, a declared write-in candidate may file an affidavit that he is no longer a write-in candidate for municipal office. In the event that a declared write-in candidate files such an affidavit of withdrawal, any votes for such a candidate shall not be counted and canvassed.

### **3-8-28. Regular municipal election; candidate for office.**

Any qualified elector who complies with Section 3-8-27 NMSA 1978 may be a candidate or write-in candidate for municipal office in the municipality in which he resides.

### **3-8-29. Regular municipal election; ballots.**

A. At 5:01 p.m. on the fifty-fourth day preceding the election, in the presence of the certified candidates or their authorized representatives [representatives] who desire to be present, the municipal clerk shall administer an impartial and fair drawing by lot to determine the order in which the candidates for each office shall be listed on the ballot. If a candidate or an authorized representative fails to appear, then the municipal clerk shall draw a lot for the absent candidate.

B. The ballot shall first set forth candidates running for executive office (mayor), if any; then candidates running for legislative office (councilors, trustees, commissioners), if any; and finally candidates running for judicial office (municipal judge), if any. For each office to be filled, the ballot shall contain:

(1) the office to be filled and its term;

(2) the names of the candidates running for office exactly as shown on the candidate's declaration of candidacy and in the order determined by the drawing by lot;

(3) a space for a qualified elector to write in the name of one candidate per position to be filled; and

(4) any necessary reference to districts, positions or other similar official designations for office.

C. The only reference to a candidate for office to be placed on a ballot is the candidate's name as it appears on the candidate's declaration of candidacy. No ticket designations or party affiliations shall be shown on the ballot. Municipal elections shall be nonpartisan.



D. If it appears to the municipal clerk that the name of two or more candidates for any office are the same or so similar as to tend to confuse the voter as to the candidates' identities, the occupation and address of each such candidate shall be printed immediately under the candidate's name on the ballot.

E. The municipal clerk shall place on the ballot any question in the order designated by the governing body.

### **3-8-30. Regular municipal election; publication of names of candidates and other election data.**

The municipal clerk shall publish the names of the candidates for each office to be filled, the order their names will appear on the ballot, the location and address of the polling place for each precinct and the names of all precinct board members and alternates and the precincts to which they are appointed. If districted, the municipal clerk shall also publish the precincts or portion of precincts in each election district. Publication shall be once each week for two successive weeks with the first publication not more than twenty-eight days prior to the day of the election and the last publication not less than two days before the day of election. This material shall also be posted in the office of the municipal clerk from the day it is first published until the day of the election.

### **3-8-31. Regular municipal election; challengers; watchers.**

A. Upon petition filed with the municipal clerk by an unopposed candidate or by both candidates for a municipal office, if only two candidates are running for the office, or by a majority of the candidates for a municipal office, if more than two candidates are running for the office, those candidates may:

(1) appoint one person as a challenger and one alternate for each polling place in the municipal election; and

(2) appoint one person as a watcher and one alternate for each polling place in the municipal election.

B. The petition appointing a challenger and watcher and alternates shall be filed not later than 5:00 p.m. on the fourth day preceding the election.

C. Upon receipt of the petition, the municipal clerk shall verify whether the challengers, watchers and alternates are properly qualified pursuant to Subsection D of this section. Not later than 3:00 p.m. on the day prior to the election, the municipal clerk shall prepare official identification badges for those challengers, watchers and alternates who are properly qualified. Such identification badges shall be signed by the municipal clerk and contain the name of the challenger, watcher or alternate and state that person's title and the polling place where such person serves. Challengers, watchers and alternates shall be responsible to obtain their identification badges from the office of the municipal clerk prior to the opening of the polls on election day.

D. A challenger, watcher or alternate shall function only at a polling place that serves the precinct within which such challenger, watcher or alternate resides. No sheriff, deputy sheriff, marshal, deputy marshal, municipal or state police officer, candidate or any person who is a spouse, parent, child, brother or sister of a candidate to be voted for at the election or any municipal clerk, deputy clerk or assistant shall serve as a challenger, watcher or alternate. No person shall serve as a challenger or watcher unless that person is a qualified elector of the municipality.

E. Upon presentation of their official identification badges to the precinct board, challengers, watchers, and alternates shall be permitted to be present at the polling place from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close.

F. Challengers, watchers and alternates shall wear their official identification badges at all times while they are present in the polling place. They shall not wear any other form of identification or any pins or other identification associated with any candidate, group of candidates or any question presented at the election.

**G. Challengers, watchers and alternates shall not:**

- (1) be permitted to perform any duty of a precinct board member;
- (2) handle the ballots, signature rosters, absentee voter lists or voting machines;
- (3) take any part in the tallying or counting of the ballots; or
- (4) interfere with the orderly conduct of the election.

**H. If a challenger, watcher or alternate is wearing his official identification badge, it is a petty misdemeanor to:**

- (1) deny him the right to be present at the polling place;
- (2) deny him the right to examine voting machines as authorized by law;
- (3) deny a challenger or alternate challenger the right to challenge voters pursuant to Section 3-8-43 NMSA 1978 and inspect the signature rosters; or
- (4) deny him the right to witness the counting and tallying of ballots.

**I. A challenger or alternate challenger, for the purposes of interposing challenges pursuant to Section 3-8-43 NMSA 1978, shall be permitted to:**

- (1) inspect the voter registration list;
- (2) inspect the signature rosters or absentee voter lists to determine whether entries are being made in accordance with law;
- (3) examine each voting machine before the polls are opened to compare the number on the metal seal and the numbers on the counters with the numbers on the key envelope, to see that all ballot labels are in their proper places and to see that the voting machine is ready for voting at the opening of the polls;
- (4) make written memoranda of any action or omission on the part of any member of the precinct board and preserve such memoranda for future use; and
- (5) witness the counting and tallying of the ballots.

**J. A watcher or alternate watcher shall be permitted to:**

- (1) observe the election to assure that it is conducted in accordance with law;
- (2) examine any voting machine used at the polling place in the same manner that challengers may examine voting machines;
- (3) make written memoranda of any action or omission on the part of any member of the precinct board and preserve such memoranda for future use; and
- (4) witness the counting and tallying of ballots.

**K.** The governing body of a municipality may, at its discretion, appoint one qualified elector for each polling place to serve as an observer of the election. The governing body shall make such appointment not later than 3:00 p.m. on the day before the election and shall notify the municipal clerk of such appointment. The municipal clerk shall issue identification badges to all observers. An observer shall have no powers other than to observe the conduct of the election and observe the counting and tallying and report to the governing body.

**3-8-32. Regular municipal election; plurality of votes cast required for election.**

**A.** The candidate who receives a plurality of the votes cast for a designated office and term and who is qualified to hold office shall be elected to the office for the term designated.

**B.** If more than one candidate is to be elected to an office and term or the candidates are not running for a designated term, the candidates, in the number to be elected, receiving the largest pluralities shall be elected.

**C.** No candidate shall take office if the candidate has not remained legally qualified to hold office from the time the candidate was certified by the municipal clerk as a candidate or declared write-in candidate through the time at which the candidate is to take office.

**3-8-33. Regular municipal election; certificates of election; qualification of official; taking office.**

**A.** After canvass and not later than 5:00 p.m. on the sixth day following the election, the municipal clerk shall prepare a certificate of election for each candidate elected and shall

post, in the office of the municipal clerk, the election results and the date, time and place where the oath of office will be administered.

B. Each candidate elected shall personally appear before the municipal clerk after canvass and after the municipal clerk has prepared the certificate of election and not later than 7:00 p.m. on the sixth day following the election. When the candidate appears, the municipal clerk shall deliver the certificate of election to the candidate and the candidate shall sign a written statement acknowledging receipt of the certificate of election and acknowledging that the candidate is legally qualified to hold office. The municipal clerk shall file a copy of the certificate of election and the written receipt and qualification statement in the official minute book of the municipality. At 7:00 p.m. on the sixth day following the election the municipal clerk or any other person allowed by law to administer oaths shall administer the oath of office to each candidate who has provided the written receipt and qualifications statement to the municipal clerk. Upon taking the oath of office, the candidate shall be deemed to have taken office.

C. If a candidate fails to appear as required in Subsection B of this section, then the candidate or the candidate's authorized personal representative shall file an affidavit with the municipal clerk, not later than 5:00 p.m. on the tenth day following the election, stating that the candidate was unable to personally appear before the municipal clerk as required by law and the reasons therefor. If such an affidavit is timely filed, the candidate shall appear before the municipal clerk not later than 5:00 p.m. on the thirtieth day after the election to receive the election certificate, file the receipt and qualifications statement and take the oath of office.

D. If a candidate fails to comply with Subsection B of this section, then the municipal clerk shall administer an impartial drawing by lot to determine which person shall remain in office until the candidate takes office or the office is declared vacant.

E. If a candidate fails to comply with Subsection B and Subsection C of this section, then the governing body shall declare by resolution that the office is vacant.

F. After each elected candidate has taken the oath of office, the municipal clerk shall mail, within five days thereof, a copy of the certificate of election to the county clerk and the secretary of state for information purposes.

G. An elected official shall remain in office as provided in this section until the official's successor has taken office as provided in this section.

H. The newly elected officials of the governing body who have taken office, the elected officials of the governing body whose terms have not expired and the elected officials of the governing body whose successors have not taken office shall meet not earlier than the sixth day after the election or later than the twenty-first day after the election for an organizational meeting. Such a meeting may be a special meeting or a regular meeting of the governing body.

### **3-8-34. Uniform procedure.**

The provisions of Section 3-8-25 NMSA 1978 through 3-8-33 NMSA 1978 shall apply to all regular municipal elections.

### **3-8-35. Special election; giving notice.**

A. When a special election is called or required by law, an election resolution shall be adopted by the governing body calling for the election, and the election resolution shall be published once each week for four consecutive weeks. The first publication of the election resolution shall be between fifty and sixty days before the day of the election. The election resolution shall be posted in the office of the municipal clerk from the date of adoption until the date of the election. For information purposes and coordination, one copy of the election resolution shall be mailed to the secretary of state and the county clerk of the county in which the municipality is located.

B. The election resolution shall state the purpose for calling the election, the date of the election, the date and time of the closing of the registration books by the county clerk as

required by law, the questions to be submitted to the voters, the location of polling places, the consolidation of precincts, if any, and regarding those municipalities authorized by law to use paper ballots in lieu of voting machines, if paper ballots or voting machines will be used in the election.

### **3-8-36. Special elections; publication of election data.**

The municipal clerk shall publish the location or address of the polling place for each precinct or consolidated precinct and the names of all precinct board members and alternates and the precincts to which they are appointed. Publication shall be once each week for two successive weeks. The first publication shall be not more than twenty-eight days before the day of election and the last publication shall be not less than two days prior to the election. This material shall also be posted in the office of the municipal clerk from the day it is first published until the day of the election.

### **3-8-37. Uniform procedure.**

The provisions of 3-8-35 NMSA 1978 through 3-8-36 NMSA 1978 shall apply to all municipal special elections.

### **3-8-38. Conduct of election; swearing in; delivery of supplies; opening and closing of polls; precinct board attendance.**

A. Not earlier than 3:00 p.m. on the day before the election and not later than one hour prior to the opening of the polls, the municipal clerk shall swear in the presiding judge and cause the election supplies, voting machine keys, ballot box and other election materials to be delivered to the presiding judge.

B. The presiding judge shall cause all materials delivered to him to be delivered to the polling place not later than 6:00 a.m. on election day.

C. The presiding judge shall swear in all precinct board members upon their arrival at the polling place.

D. Polls shall be opened at 7:00 a.m. on the date of the election and shall be closed at 7:00 p.m. on the same day.

E. Precinct board members shall present themselves at the polling place not later than 6:00 a.m. on the day of the election and shall remain at the polling place until all duties of the precinct board are properly completed.

### **3-8-39. Conduct of election; maintenance of order; peace officer; memoranda of actions or omissions.**

A. The election judges shall maintain order within the polling place.

B. Crowding or disruption of the voting process shall not be permitted in the polling place.

C. Admittance of voters to the polling place shall be controlled and limited to prevent crowding or rushing the precinct board in the performance of its duties.

D. The election judges may call upon any state or local law enforcement officer to assist in the maintenance of order in the polling place. When so requested, the law enforcement officer shall render assistance.

E. The election judges may request any state or local law enforcement officer to assist in the conduct of the election by standing outside the polling place entrance and controlling the admission of voters to the polling place.

F. Any state or local law enforcement officer may enter a polling place upon request of a precinct board member for the purpose of observing the conduct of the election.

G. No state or local law enforcement officer shall interfere in any way with a member of the precinct board, a person voting, or the conduct of the election, except to assist in maintaining order and orderly control of access, when requested by an election judge.

H. Any state or local law enforcement officer violating Subsection B of this section is guilty of a petty misdemeanor and in addition to any other penalty provided by law shall be subject to dismissal and is ineligible for reinstatement.

I. Any member of the precinct board may make written memoranda and preserve them for future reference. The memoranda may concern any action or omission on the part of any person charged with a duty under the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

### **3-8-40. Conduct of election; persons not permitted to vote; triplicate or certificate voting; fraudulent and double voting.**

A. No person shall vote in a municipal special or regular election unless that person is a qualified elector and he has appeared to vote at the polling place in the precinct or consolidated precinct which encompasses his place of residence as shown on the signature roster.

B. No person shall vote whose name and affidavit of registration number appears on the list of voters purged from the rolls unless that person has again completed an affidavit of registration and his name also appears on the signature roster.

C. Notwithstanding the provisions of Subsections A and B of this section, a person shall be permitted to vote even though that person's name cannot be found in the signature roster, provided:

(1) his residence is within the boundaries of the municipality and within the boundaries of the precinct in which he offers to vote;

(2) his name is not on the purged list or his name has been incorrectly placed on the purged list;

(3) his name is not on the list of persons having been issued absentee ballots;

(4) he presents a triplicate affidavit of registration which appears on its face to be valid or he presents a certificate bearing the seal and signature of the county clerk stating that his duplicate affidavit of registration is on file at the county clerk's office that he has not been purged and that he shall be permitted to vote in the precinct and election specified therein, provided that such authorization shall not be given orally by the county clerk; and

(5) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector resident of the municipality, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in the election.

D. Upon compliance with the requirements of Subsection C of this section, the election judge shall cause the election clerks to:

(1) write the person's name and address, as shown on the certificate or the triplicate affidavit of voter registration, in the signature roster under the heading for name and address in the first blank space immediately below the last name and address appearing in the signature roster;

(2) insert the person's ballot number or voter number as shown on the public counter of the voting machine on the triplicate affidavit of voter registration or the certificate and on his executed sworn statement;

(3) retain the completed triplicate affidavit of voter registration or certificate and the executed sworn statement, which shall be returned to the municipal clerk with the election returns; and

(4) comply with all relevant requirements of Section 3-8-41 NMSA 1978.

E. After canvass, the municipal clerk shall in writing notify the county clerk of the names of all individuals voting on triplicate affidavits of registration or certificates.

F. A person who knowingly executes a false statement required by Paragraph (5) of Subsection C of this section is guilty of perjury as provided in the Criminal Code of this state [30-1-1 to 30-28-3 NMSA 1978], and voting on the basis of such falsely executed statement constitutes fraudulent voting.

G. To be valid, a triplicate affidavit of registration dated after June 30, 1955 shall bear the signature stamp of the county clerk.

H. A person not entitled to vote who fraudulently votes or a person who votes or offers to vote more than once at any election is guilty of a fourth degree felony.

### **3-8-41. Conduct of election; voter's name, address, signature; entries by precinct board.**

A. When a person presents himself at the polls to vote, he shall announce his name and address in an audible tone of voice and locate his name and number in the registered voter list posted for such purpose. An election clerk shall locate the person's name and number in the signature roster. The person shall then sign his name in the signature roster, or if he is unable to write, the election clerk shall sign his name in the signature roster which shall be initialed by an election judge in the signature roster. Thereupon, a challenge may be interposed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. If no challenge is interposed, an election clerk shall issue a voting machine permit to the person upon which shall be written his voter registration list number. The person shall present the voting machine permit to the precinct board member activating the machine and the person shall be allowed to vote. The precinct board member shall enter the public counter number onto the voting machine permit as shown on the voting machine after the person has voted. All voting machine permits shall be retained in consecutive order and made part of the election returns.

### **3-8-42. Repealed.**

### **3-8-43. Conduct of election; challenges; required challenges; entries; disposition.**

A. A challenge may be interposed by a member of the precinct board or by a challenger for the following reasons which must be stated in an audible tone by the person making the challenge:

- (1) the person offering to vote is not registered;
- (2) the person offering to vote is listed on the purge list or is listed among those persons in the precinct to whom an absentee ballot was issued;
- (3) the person offering to vote is not a qualified elector;
- (4) the person offering to vote is not listed on the signature roster or voter registration list;
- (5) in the case of an absentee ballot, if the official mailing envelope containing an absentee ballot has been opened prior to delivery of absentee ballots to the absent voter precinct board; or
- (6) the person offering to vote is a qualified elector of the municipality but does not reside in the district where he is offering to vote.

B. When a person has offered to vote and a challenge is interposed and the person's name appears in the signature roster or his name has been entered in the signature roster pursuant to Subsection D of Section 3-8-40 NMSA 1978, the election clerk shall write the word "challenged" above the person's signature in the signature roster.

- (1) If the challenge is unanimously affirmed by the election judges, then:
  - (a) the election clerk shall write the word "affirmed" above the person's signature next to the challenge notation in the signature roster;
  - (b) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster;
  - (c) the person shall be allowed to mark and prepare the ballot. He shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in his presence place the challenged ballot in an envelope marked "rejected", which shall be sealed and the person's name shall be written on such envelope; and

(d) the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted.

(2) If the challenge is not unanimously affirmed by the election judges, then:

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

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

C. A required challenge shall be interposed by the precinct board when a person attempts to offer himself to vote and demands to vote and his name does not appear on the signature roster and cannot be entered pursuant to Subsection D of Section 30-8-40 NMSA 1978. A required challenge shall be interposed by the precinct board as follows:

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

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

(3) the person shall sign his name in the signature roster;

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

(5) the person shall be allowed to mark and prepare the ballot. He shall return the paper ballot to an election judge who shall announce his name in an audible tone and in his presence place the required challenge ballot in an envelope marked "rejected—required challenge" which shall be sealed. The person's name shall be written on the envelope and the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted.

### **3-8-44. Conduct of election; voting machines; instructions; inspection of voting machine face after vote; entry into machine.**

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

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

C. After a person has announced his name and address, had voter registration confirmed, signed the signature roster and has had no challenge affirmed against casting a ballot, the person may vote. Unless an affidavit for assistance has been executed, no more than one person shall be permitted in the voting booth at one time. No person shall be permitted to occupy the voting booth longer than three and one-half minutes.

### **3-8-45. Conduct of election; closing polls; arrival of voter after the polls close; election clerk certificate.**

A. When the polls are closed, the precinct board shall proclaim that fact aloud at the place of election. After the proclamation no person shall cast a vote. However, if at the hour of closing there are other persons inside the polling place and in line to offer themselves to vote, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote. When the polls are proclaimed closed, an election judge shall determine the last person in the polling place and in line who may offer themselves to vote, announce that person's name in an audible tone, and no person arriving at the polling place thereafter may vote.

B. Immediately after the last vote is cast and the polls are closed, the precinct board shall complete and sign a certificate which shall state: "We certify the ..... election complete with the voting of voting machine number ..... by voter number ..... on the signature roster."

**3-8-46. Conduct of elections; closing polls; locking voting machines; opening voting machines; verification of votes; admittance of watchers and candidates; proclamation of results; completion of locking; duration of locking and sealing.**

A. When the last person has voted, the precinct board, in the presence of all persons lawfully permitted to be present, shall immediately lock and seal the voting machine against further voting. The precinct board shall release the machine-printed returns from the machine. The precinct board shall then sign a certificate stating that the machine was locked and sealed; giving the exact time; stating the number of voters shown on the public counters, which shall be the total number of votes cast on the machine in that precinct; stating the number on the seal; and stating the number registered on the protective counter.

B. The precinct board shall verify that the counter settings registered on the machine-printed returns are legible. The machine-printed returns shall show the number of votes cast for each candidate and the number of votes cast for and against any other question submitted, and the return shall be signed by each member of the precinct board and the challengers and watchers, if there be such.

C. If the machine-printed returns are not legible, the precinct officials shall call the municipal clerk who shall immediately contact the county clerk to have the counter compartment opened and shall proceed to count and tally the results from the counters of the machine.

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

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

(2) the name is written in the proper slot on the voting machine or on the proper line for write-in votes provided on an absentee ballot, emergency paper ballot or paper ballot used in lieu of voting machines;

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

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

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

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



G. When the precinct board is satisfied that the election results have been correctly tallied, an election judge shall complete a separate election return certificate in quadruplicate on which is recorded the total number of votes cast in that polling place for each candidate and for and against each question. The certificate shall be signed by all the members of the precinct board. One copy shall be posted at the door of the polling place, one copy mailed to the district court in the envelope provided, one copy returned to the municipal clerk to be used as unofficial returns and the original returned to the municipal clerk in the envelope provided.

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

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

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

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

### **3-8-47. Conduct of elections; disposition of signature roster; machine printed returns; ballot boxes; election return certificate; affidavits; and other election materials.**

A. After all certificates have been executed, the precinct board shall place one copy of the signature roster and one copy of the machine printed returns in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The following election returns and materials shall not be placed in the ballot box and shall be returned by the precinct board to the municipal clerk in the envelope provided by the municipal clerk for such purpose:

- (1) all ballot box keys;
- (2) one signature roster;
- (3) one voter registration list;
- (4) the election returns certificate;
- (5) one copy of the machine-printed returns;
- (6) voting machine permits; and
- (7) all unused election supplies.

C. The locked ballot box containing any paper ballot cast in the election, election returns, and all material listed in Subsection B of this section shall be returned by the precinct board to the municipal clerk within twenty-four hours after the polls close.

D. After receipt of ballot boxes and election returns and materials but not later than twenty-four hours after the polls close, the municipal clerk shall ascertain whether the locked ballot box and all the election returns and materials enumerated in Subsection B of this section have been returned to the municipal clerk as provided in Subsection C of this section. If the locked ballot box or all such election returns and materials are not timely returned by each precinct board, then the municipal clerk shall immediately issue a summons requiring the delinquent precinct board to appear and produce the missing ballot box or election returns or materials within twenty-four hours. The summons shall be served by a sheriff or state police officer without cost to the municipality and the members of the precinct board shall not be paid for their service on election day unless the delay was unavoidable. If delivery pursuant to the summons is not timely made, then the vote in the precinct shall not be canvassed or made a part of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

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

**3-8-48. Conduct of elections; emergency paper ballots; paper ballots; one to a voter; receipt or delivery; occupation of voting machines.**

A. Only one emergency paper ballot or paper ballot shall be given to each qualified elector entitled to vote. The ballots shall be delivered to qualified electors entitled to vote in consecutive order, beginning with the lowest numbered ballot.

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

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

**3-8-49. Conduct of election; paper ballots; emergency paper ballots; marking; use of pen or other writing implement; identification marks.**

A. In order to vote for a candidate, the person voting shall mark a cross (X) or a check ( ) in the box next to the name of that candidate, or write in the name of the person for whom he desires to vote in the space for write-in candidates and mark a cross (X) or a check ( ) in the box next to the line upon which the write-in vote is cast. Such write-in vote shall be cast in accordance with the provisions of Subsection D of Section 3-8-46 NMSA 1978. Notwithstanding the requirements of this subsection, if a different mark, other than a cross or check, is required for proper counting of the ballot, then the person voting shall make such mark on the ballot in the place so designated on the ballot utilizing the required writing implement pursuant to the instructions of the precinct board.

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

C. All crosses, checks or other proper marks on the ballot shall be made only with pen or other writing implement and in the manner required for the proper counting of the ballot. The cross used in marking ballots shall be two lines intersecting at any angle within the circle or box. The check shall be a "✓"-shaped mark with it being permissible for either side of the "✓" being longer than the other side. Any mark discernible either as a cross or a check, whether or not any of the lines extend outside the circle or box, shall be counted as a valid marking of the ballot when crosses or checks are required.

D. A person voting shall not place any mark on the ballot by which it may be afterwards identified as one voted by him.

**3-8-50. Conduct of election; emergency paper ballots; paper ballots; procedure after marking; delivery of two or more ballots; person authorized to receive ballots; spoiled or defaced ballots.**

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

(1) shall not show it to any person in such a way as to reveal its contents; and  
 (2) shall deliver it to an election judge who shall then remove any visible number on the ballot, hand the detached number to the person voting, and deposit the paper ballot in the ballot box in the presence of the person voting.

B. Only an election judge shall receive a ballot from a person voting. No person shall examine or solicit a person to reveal or show the contents of his paper ballot.

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

D. A person who accidentally spoils or erroneously prepares the ballot may return the spoiled or erroneously prepared ballot to the election judge and receive a new ballot.

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

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

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

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

### **3-8-51. Conduct of election; emergency paper ballots; paper ballots; unused ballots; destruction of unused ballots; counting and tallying.**

A. Immediately upon closing of the polls, the election judge shall prepare a certificate of destruction which shall state the number of the last ballot which was used for voting, the numbers of the ballots that were destroyed, and the fact that all unused ballots were destroyed.

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

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

D. The precinct board shall count and tally the ballots and certify the results of the election on the form provided on the cover of the signature roster by writing opposite the name of each candidate in words and figures the total number of votes cast for the candidate, and they shall set forth in the spaces provided therefor in words and figures the total number of votes cast for or against each question submitted. Ballots not marked as required by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] shall not be counted.

E. Only the members of the precinct board, candidates, municipal clerk, representatives of the news media, and certified challengers and watchers may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots and signature rosters, or take part in the counting and tallying.

F. The proclamation of the results of the votes cast shall be distinctly announced by the election judge, who shall read the name of each candidate and the total vote cast for each candidate. The election judge shall also read the total vote cast for and against each question submitted. The election judge shall thereupon complete an election return certificate on which is recorded the total number of votes cast for each candidate and for and against each question. The certificate shall be signed by all the members of the precinct board.

### **3-8-52. Conduct of election; emergency paper ballots; paper ballots; signature rosters; disposition.**

A. After the counting and tallying of ballots is completed and after all certificates have been executed, the precinct board shall place one copy of the signature roster and one copy

of all certificates and tally sheets in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The remaining copy of the signature roster, all certificates, tally sheets and all ballot box keys shall be returned to the municipal clerk. The signature roster, certificates, tally sheets and ballot box key shall not be placed in the ballot box.

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

(1) the bundles of counted paper ballots used in lieu of voting machines or emergency paper ballots;

(2) the envelopes containing spoiled ballots; and

(3) the envelopes containing rejected ballots.

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

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

F. Once the ballot box is locked it shall not be opened prior to canvassing.

### **3-8-53. Post-election duties; canvass of returns; majority vote for questions.**

A. After the polls are closed and after the return of the ballot box, election returns and other materials by a precinct board and not later than noon on the third day after the election, the municipal clerk shall call to his assistance to open the returns either a magistrate within the county, so long as the magistrate is not a candidate for an office of the municipality, or the members of the governing body of the municipality at a special meeting. The municipal clerk and the persons called to open the returns are the municipal canvassing board, and the municipal clerk shall be the presiding officer of the municipal canvassing board.

B. In the presence of the other members of the municipal canvassing board, the municipal clerk shall publicly:

(1) canvass the returns in the manner set forth in the Municipal Election Code [Articles 8 and 9 of Chapter 3 NMSA 1978];

(2) prepare and execute a certificate of canvass certifying the results of the election. Such certificate shall contain the total number of voters who voted at the election, the total number of votes cast for each candidate, each write-in candidate and for and against each question, which candidates were elected to office and whether each question passed or failed;

(3) sign the certificate of canvass with the municipal canvassing board signing the certificate of canvass as witnesses; and

(4) immediately file the certificate of canvass in the official minute book of the municipality.

C. The matters to be performed pursuant to Subsection B of this section shall be completed not later than 5:00 p.m. on the third day following the election and such matters shall be performed solely at the office of the municipal clerk.

D. All questions submitted to the voters shall be decided by a majority of the voters voting on the question except as otherwise provided by law.

### **3-8-54. Post-election duties; canvass method.**

The municipal clerk in the presence of the other members of the municipal canvassing board shall canvass the election returns by carefully examining such returns of each precinct to ascertain if they contain the properly executed certificates required by the

Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] and to ascertain whether any discrepancy, omission or error appears on the face of the election returns.

### **3-8-55. Post-election duties; canvass; defective returns; correction.**

A. The municipal clerk shall immediately issue a summons directed to the precinct board, commanding them to appear and make the necessary corrections, or supply omissions or any missing election returns if:

(1) it appears on the face of the election returns that any certificate has not been properly executed;

(2) it appears that there is a discrepancy within the election returns;

(3) it appears that there is a discrepancy between the number of votes set forth in the certificate for all candidates and the number of electors voting as shown by the election returns;

(4) it appears that there is any omission, informality, ambiguity, error or uncertainty on the face of the returns; or

(5) it appears that there are missing election returns.

B. The summons shall be served by a sheriff or state police officer as in the manner of civil cases, and for each service a sheriff or state police officer shall be allowed the same mileage as is paid in civil cases.

C. After issuing the necessary summonses, the canvass of all correct election returns shall proceed.

### **3-8-56. Post-election duties; canvass; when recheck is required.**

A. If it appears that the defective returns cannot be corrected without a recheck of the voting machine, the municipal clerk shall immediately cause written notice to be hand-delivered to the district court.

B. The district court shall fix a time and place which shall be not more than one week after receipt of notice from the municipal clerk for a recheck of the machines from that precinct.

C. The municipal clerk shall immediately notify all candidates for municipal office, if any, of the time and place of the recheck.

D. At the time and place set by the district court the recheck shall be conducted as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

E. After the recheck, the election returns shall be corrected in duplicate to conform to the facts.

F. After being properly corrected, the election returns shall be retained by the municipal clerk and the municipal clerk shall execute an amended certificate of canvass.

### **3-8-57. Post-election duties; canvass; search for missing returns.**

During canvass, if it is necessary to open a ballot box to ascertain if missing election returns are enclosed therein, then the ballot box shall be opened by the municipal clerk in the presence of the canvassing board.

### **3-8-58. Post-election duties; canvass; voting machine recheck.**

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

B. For the purpose of making the recheck and comparison, the municipal clerk may request the county clerk to unlock and raise the cover of the counter compartment and check

the figures shown by the counter dials on the voting machine. At the conclusion of the recheck and comparison the voting machine shall again be locked.

C. The necessary corrections, if any, shall be made on the returns and the results of the election, as shown by the recheck and comparison, shall be declared.

### **3-8-59. Post-election duties; voting machine recheck cost.**

A. Before any recheck and comparison of returns and voting machines is made pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], the candidate making the request or the petitioners shall deposit a sum of money or a surety bond made in favor of the municipality to defray the cost of the recheck. The deposit or the surety bond shall be in the amount of ten dollars (\$10.00) for each machine to be rechecked.

B. If the recheck alters the winner of the election, the deposit or surety bond shall be returned and the cost of the recheck shall be paid to the county by the municipality. If the recheck does not alter the winner of the election, the deposit or surety bond shall be forfeited and the money from the deposit or bond shall be remitted to the county.

### **3-8-60. Post-election duties; tie vote.**

In the event of a tie vote between any candidates in the election for the same office, the determination as to which of the candidates shall be declared to have been elected shall be decided by drawing by impartial lot. The method of determining by lot shall be mutually agreed upon by the candidates who are tied. The municipal clerk shall issue a certificate of election to the candidate chosen by lot.

### **3-8-61. Post-election duties; nature of documents; expense of corrections; proceedings for contempt; responsibility for voting machines.**

A. Municipal election returns are public records, subject to inspection during customary office hours by candidates and by members of the public, and may be copied upon request of a candidate or member of the public at a reasonable charge.

B. The expense of any proceeding to complete or correct any election returns or certificates shall be paid from the municipal general fund upon voucher signed by the municipal clerk.

C. Failure of any person to obey any summons required to be issued by or issued pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], is contempt and is punishable as provided by law.

D. The municipal clerk shall have custody of all voting machines at all polling places. Within three days after the election, the county clerk shall take physical custody of and secure such machines for thirty days after certificates of election are issued to candidates, or thirty days after canvass is completed, in an election with no candidates for municipal office. The county clerk shall take the proper action to see that the voting machines in custody remain unopened, untampered with, and undamaged during the thirty day period.

### **3-8-62. Contest of elections; destruction of ballots.**

A. The district court shall entertain contests for any municipal office or on any question placed on the ballot and the procedure shall be as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. The ballots only shall be destroyed:

(1) thirty days after the issuance of the certificate of election, or thirty days after completion of canvassing for elections in which there are no candidates for municipal office, for those precincts in which the municipal clerk has received no notice of contest or judicial inquiry; or

(2) upon order of the district court having jurisdiction for those precincts where a contest, recount or judicial inquiry is sought.

### **3-8-63. Contest of elections; who may contest; status of person holding certificate; filing of complaint.**

A. Any unsuccessful candidate for election to any municipal office may contest the election of the candidate to whom a certificate of election has been issued. Twenty percent of those people who voted at the municipal election may contest the election on a question.

B. In case of a contest of an election, the person holding the certificate of election shall take possession and discharge the duties of the office until the contest is decided. If a contest of a question occurs, the question shall be considered passed or defeated according to the official certificate of canvass of the election filed by the municipal clerk in the official records of the municipality until the contest is decided.

C. Any action to contest an election shall be commenced by the filing of a verified complaint of contest in the district court. Such complaint shall be filed no later than thirty days from issuance of the certificate of election to the successful candidate, or thirty days after completion of canvassing for elections in which there are no candidates for municipal office. The one instituting the action shall be known as the contestant, and the one against whom the action is instituted shall be known as the contestee. The Rules of Civil Procedure shall apply to all actions commenced under the provisions of this section.

### **3-8-64. Contest of elections; judgment; effect; costs; disqualification of trial judge; appeal.**

A. Judgment shall be rendered in favor of the person legally qualified to take office for whom a plurality of the legal votes shall be proven to have been cast in accordance with 3-8-32 NMSA 1978, and shall be to the effect that the person is entitled to the office in controversy with all the privileges, powers and emoluments belonging thereto and for his costs. If the contestant prevails, then that person shall have judgment placing the contestant in possession of the contested office and for the emoluments thereof from the beginning of the term for which the contestant was elected and for costs.

B. When a contest involves a question, judgment shall be rendered to cause the question to be passed or defeated based upon whether a majority of the legal votes favored passage or defeat of the question. Successful contestants shall recover costs.

C. Any election contest shall be an action or proceeding within the meaning of Section 38-3-9 NMSA 1978. Any affidavit of disqualification shall be filed on or before the date when the answer is required to be filed to the notice of contest.

D. An appeal shall lie from any judgment or decree entered in the contest proceeding within the time and in the manner provided by law for civil appeals from the district court.

### **3-8-65. Contest of elections; preservation of ballots; ballots defined; application for order; deposit.**

A. Either the contestant or contestee, within the time provided by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for the preservation of ballots, may give notice by certified mail to the municipal clerk that a contest is pending in a designated court, and thereupon it is the duty of the municipal clerk to preserve the ballots of all precincts named in the notice of contest and to notify the county clerk to impound the ballot labels and voting machines used in all of the precincts named in the notice of contest until the contest has been finally determined.

B. "Ballots", as used in Subsection A of this section, includes signature rosters, registered voter lists, machine-printed returns, voting machine permits, affidavits for assistance, registration affidavits, paper ballots, absentee ballots, statements of canvass, absentee ballot applications, absentee ballot registers, and absentee voter lists.

C. Any contestant or contestee may petition the district court for an order impounding ballots in one or more precincts or consolidated precincts. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along

with a cash deposit of twenty-five dollars (\$25.00) per precinct or consolidated precinct, the court may issue an order of impoundment.

**3-8-66. Contest of elections; order of impoundment; subsequent orders; access; termination of order; disposition of deposit.**

A. The court order of impoundment shall specify the items of ballots to be impounded and may direct the state police to:

- (1) take immediate physical custody of any items ordered impounded and not in use in the precinct in the conduct of the election;
- (2) take legal custody of items ordered impounded and being used in the conduct of the election by assigning an officer to be physically present in the polling place until the polling place is closed and the results have been tallied and certified as required by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978];
- (3) take physical custody of items ordered impounded and being used in the conduct of the election as soon as the polling place is closed and the results in the precinct have been tallied and certified as required by the Municipal Election Code; and
- (4) deliver all items ordered impounded and taken into physical custody to the district court clerk of the court entering the order for safekeeping subject to further orders of the court.

B. The party petitioning the court for the original order of impoundment may by motion to the court request an order allowing the party or his attorney access to and inspection of any items impounded. The court shall enter its order allowing access and inspection under conditions set by the court that will assure adequate safeguarding of the impounded items. The order shall, if requested by the petitioner, allow for the copying or reproduction of any items by and at the expense of the petitioner.

C. Ten days from the date of the original order of impoundment or, if an order granting access and inspection has been entered, ten days after that order, the order of impoundment shall automatically terminate unless the court extends the time for good cause shown. The court shall in all cases order the impoundment of ballots terminated no later than thirty days after the entry of the original order of impoundment.

D. Upon the termination of an impoundment of ballots the items impounded shall be delivered by the district court clerk to the person that would have been entitled to the possession of the items under the Municipal Election Code if there had been no impoundment.

E. If the petitioner shall successfully prosecute an election contest or recount proceeding that results in a change in the petitioner's favor the court shall refund to the petitioner the deposit required under Section 3-8-65 NMSA 1978 less any amount expended for guarding and preserving the impounded ballots. In all other cases there shall be no refund. Any amounts not refunded shall be transmitted to the municipal treasurer for credit to the municipal general fund.

**3-8-67. Contest of election; burden of proof.**

A. If a contestant makes a prima facie showing that the precinct board or municipal clerk failed to substantially comply with those provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] which protect the secrecy and sanctity of the ballot and prescribe the duties of the precinct board or municipal clerk, then the burden shall be on the contestee to prove that no fraud, intimidation, coercion or undue influence was exerted by such precinct board members or the municipal clerk, and that the secrecy and purity of the ballot was safeguarded and no intentional evasion of the substantial requirements of the law was made.

B. If the contestee fails to make such a showing, the votes of that entire polling place shall be rejected; provided, that no such rejection shall be made where it appears to the court that the members of the precinct board or municipal clerk ignored the requirements of the



Municipal Election Code with the probable intent of procuring the rejection of the entire vote in the precinct.

### **3-8-68. Recount; recheck; application; costs.**

A. Whenever any candidate for any office for which the municipal clerk issues a certificate of election believes that any error or fraud has been committed by any precinct board in counting or tallying the paper ballots used in lieu of voting machines, emergency paper ballots or absentee ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the municipal canvassing board, may have a recount of the paper ballots used in lieu of voting machines, emergency paper ballots or absentee ballots, or a recheck of the votes shown on the voting machines, that were cast in the precinct.

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

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

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

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

F. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of any docket fees, mileage of a sheriff or state police officer in serving summons, and fees and mileage of precinct board members, at the same rates allowed witnesses in civil actions. If fraud has been committed by a precinct board, they shall not be entitled to such mileage or fees.

### **3-8-69. Recount; recheck; proceedings.**

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

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

C. The precinct board, district judge or the district court judge's designee, county clerk and the municipal clerk shall meet on the date, time and places fixed for the recount or recheck, and the ballot boxes or voting machines of the precinct or consolidated precinct involved in the recount or recheck shall be opened. The precinct boards shall recount and retally the paper ballots used in lieu of voting machines or emergency paper ballots, or recheck the votes cast on the voting machine, as the case may be, and recount and retally the absentee ballots, for the office in question in the presence of the municipal clerk, the

county clerk, district judge or person designated to act for the judge, and any other person who may desire to be present.

D. During the recount or recheck, the precinct board of a precinct or consolidated precinct where emergency paper ballots, paper ballots used in lieu of voting machines or absentee ballots were used shall recount and retally only the ballots which the election judge accepted and placed in the ballot box at the time they were cast or received, as the case may be.

E. After completion of the recount or recheck, the precinct board shall replace the emergency paper ballots, paper ballots used in lieu of voting machines, or absentee ballots in the ballot box, and lock it, or the voting machines shall be locked and resealed, and the precinct board shall certify to the municipal clerk the results of the recount or recheck. The district judge, or the person designated to act for the judge, the county clerk, and the municipal clerk shall also certify that the recount or recheck was made in their presence.

### **3-8-70. Recount; recheck; recanvass.**

A. Immediately upon receipt of the certificate of recount or recheck from all the precinct boards making a recount or recheck, the municipal canvassing board shall meet and recanvass the returns for the office in question.

B. In making the recanvass, the municipal canvassing board shall be bound by the certificates of recount or recheck from the precinct boards instead of the original returns from those precinct boards.

C. After the recanvass, if it appears that fraud or error has been committed sufficient to change the winner of the election, then the municipal clerk shall revoke the certificate of election already issued to any person for that office and shall issue a certificate of election in favor of the person receiving a plurality of the votes cast at the election as shown by the recount or recheck, and such certificate shall supersede all others and entitle the holder to all of the rights and privileges of the office. The person shall take office after complying with Section 3-8-33 NMSA 1978 with the time to take office running from the date that the new certificate is issued.

### **3-8-71. Preservation of election information.**

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

- (1) the absentee ballot register and ballots, application for absentee ballots, absentee voter lists, and affidavits of destruction;
- (2) the signature roster and registered voter list;
- (3) the machine printed returns;
- (4) oaths of office of the precinct board;
- (5) the declarations of candidacy and withdrawals;
- (6) election resolution;
- (7) proof of all publications;
- (8) copies of all election material required to be published or posted;
- (9) copies of all paper ballots, sample ballots and ballot labels;
- (10) affidavits of assistance;
- (11) voting machine permits;
- (12) affidavits of triplicate voter registration or certificates submitted by voters;
- (13) copies of all affidavits and certificates prepared in connection with the election;
- (14) certificates of canvass and amended certificates of canvass, if any;
- (15) all results of recounts, rechecks, contests, and recanvass; and
- (16) all other significant election materials.

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

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

### **3-8-72. Penalties; applicability.**

The penalties imposed by Sections 3-8-73 NMSA 1978 through 3-8-79 NMSA 1978 do not apply to offenses for which penalties are otherwise provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

### **3-8-73. Unlawful opening of ballot box or voting machine; penalty.**

A. Unlawful opening of a ballot box consists of opening any ballot box or inspecting or removing the contents thereof without lawful authority, or conspiring with others to have the same done.

B. A person who commits unlawful opening of a ballot box is guilty of a fourth degree felony.

C. Unlawful opening of a voting machine consists of, without lawful authority, opening, unlocking, inspecting, tampering, resetting or adjusting a voting machine which has been certified by the municipal clerk, or conspiring with others to have the same done.

D. A person who commits unlawful opening of a voting machine is guilty of a fourth degree felony.

### **3-8-74. Unlawful possession of keys or absentee ballot; penalty.**

A. Unlawful possession of keys consists of the possession at any time by any person of any key to a voting machine or ballot box, or possession of an imitation or duplicate thereof, or making or causing to be made any imitation or duplicate thereof, unless authorized by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. A person who commits unlawful possession of keys is guilty of a fourth degree felony.

C. Unlawful possession of an absentee ballot consists of the possession by any person at any time of absentee ballot materials when not authorized by the Municipal Election Code to be in the possession of such materials, or when such materials were obtained in an unlawful manner. As used in this section, "absentee ballot materials" means an absentee ballot, absentee ballot envelopes, the absentee ballot register or absentee ballot return.

D. A person who commits unlawful possession of an absentee ballot is guilty of a fourth degree felony.

### **3-8-75. False voting; falsifying election documents; false swearing; penalty.**

A. False voting consists of:

- (1) voting, or offering to vote, with the knowledge of not being a qualified elector;
- (2) voting, or offering to vote, in the name of any other person;
- (3) knowingly voting, or offering to vote, in any precinct except that in which one is registered;
- (4) voting, or offering to vote, more than once in the same election;
- (5) inducing, abetting or procuring, or attempting to induce, abet or procure, a person known not to be a qualified elector to vote; or
- (6) inducing, abetting or procuring, or attempting to induce, abet or procure, a person who, having voted once in any election, to vote, or attempt to vote again at the same election.

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

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

- (1) printing, causing to be printed, distributing, or displaying, false or misleading instructions pertaining to voting or the conduct of the election;
- (2) printing, causing to be printed, distributing, or displaying, any official ballot, absentee ballot, sample ballot, facsimile diagram, ballot label or pretended ballot, which

includes the name of any person not entitled by law to be on the ballot, or omits or defaces the name of any person entitled by law to be on the ballot, or otherwise contains false or misleading information or headings;

(3) defacing, altering, forging, making false entries in or changing any election document, including but not limited to election returns, a certificate of election registration record or signature rosters, affidavits, certificates, or any other election document except as authorized in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978];

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

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

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

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

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

### **3-8-76. Offering a bribe; accepting a bribe; intimidation; penalty.**

A. Offering a bribe consists of willfully offering, advancing, paying or causing to be paid or promising, directly or indirectly, any money, other valuable consideration, office or employment to any person for any of the following purposes connected with or incidental to any election:

(1) to induce such person to vote or refrain from voting for or against any candidate or question;

(2) to induce such person, if a precinct board member, municipal clerk or other election official, to mark, alter, withhold or otherwise change or falsify any ballot or vote that has been cast, any election return, any certificate of election or any other election document; or

(3) to induce such person to use such payment or promise to bribe others for the purposes specified in this section.

B. A person who offers a bribe is guilty of a fourth degree felony.

C. Accepting a bribe consists of knowingly accepting any payment or promise of payment, directly or indirectly, of money, other valuable consideration, office or employment for the unlawful purposes specified in Subsection A of this section.

D. A person who accepts a bribe is guilty of a fourth degree felony.

E. Intimidation consists of any person, including but not limited to any elected or appointed municipal official or employee, inducing or attempting to induce fear by use of or threatened use of force, violence, infliction of damage, harm or loss to any person or property or any form of economic retaliation upon any person voting or intending to vote, precinct board member, challenger, watcher or municipal clerk to impede or prevent the free, fair and secret exercise of the elective franchise or the impartial and legally correct administration of the election pursuant to the Municipal Election Code [Articles 8 and 9 of Chapter 3 NMSA 1978].

F. A person who commits intimidation is guilty of a fourth degree felony.

### **3-8-77. Electioneering too near polling place; obstructing polling place; disturbing polling place; penalty.**

A. Electioneering too close to the polling place consists of any form of campaigning on election day within one hundred feet of the entrances being utilized for access into the building in which the polling place is located, and includes but is not limited to the display of signs, bumper stickers, or distribution of campaign literature.

B. A person who commits electioneering too close to the polling place is guilty of a petty misdemeanor.

C. Obstructing the polling place consists of:

(1) approaching nearer than fifty feet from any polling place during the conduct of the election with the intention of knowingly interfering with the legal conduct of the election; or

(2) willfully blocking an entrance to the polling place so as to prevent free ingress and egress.

D. A person who obstructs the polling place is guilty of a petty misdemeanor.

E. Disturbing the polling place consists of doing one or more of the following acts in the building in which the polling place is located, or outside the building in which the polling place is located, on election day:

(1) any act which knowingly interferes with or impedes the legal conduct of the election or the legal performance of any election official's duties, or any act which unintentionally causes such result if such act is continued after an election judge orders a person to cease and desist such activity; or

(2) any act which knowingly interferes with or impedes a person's right to cast a vote in quiet, secret, and orderly surroundings, or any act which unintentionally causes such result if such act is continued after an election judge orders a person to cease and desist such activity.

F. A person who disturbs the polling place is guilty of a petty misdemeanor.

### **3-8-78. Coercion of employees; permitting prisoners to vote; offenses by messengers; unlawful possession of liquor or illegal drugs; penalty.**

A. Coercion of employees consists of any officer or agent of any corporation, company or association, or any person having supervision over or employing persons entitled to vote at any election, directly or indirectly discharging or penalizing or threatening to discharge or penalize such employee because of the employee's opinions or beliefs or because of such employee's intention to vote, or to refrain from voting, for any candidate or for or against any question.

B. A person who commits coercion of employees is guilty of a fourth degree felony.

C. Permitting prisoners to vote consists of any person who has custody of convicts or prisoners, taking such convicts or prisoners or permitting them to be taken to any polling place for the purpose of voting in any election.

D. A person who permits prisoners to vote is guilty of a misdemeanor.

E. Subsection C and Subsection D of this section do not prohibit permitting prisoners who are legally qualified to vote to cast an absentee ballot pursuant to the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

F. Malfeasance by messengers consists of the willful delay or failure of any official messenger to convey or deliver election supplies to the precinct board or municipal clerk, the willful delay or failure of any official messenger to convey or deliver the ballot box, key, election returns or other election materials, documents, or supplies to the municipal clerk or precinct board, or the willful delay or failure of any official messenger to perform as required by any precinct board member or the municipal clerk who makes a legal demand.

G. Any messenger committing such malfeasance is guilty of a petty misdemeanor.

H. Unlawful use or possession of alcoholic liquor or illegal drug [drugs] consists of the use or possession of any alcoholic liquor or illegal drug by any member of the precinct board, challengers, watchers or the municipal clerk prior to or while performing official duties on election day. Unlawful use or possession also consists of the use, possession or carrying of alcoholic liquor or illegal drug within two hundred feet of the polling place during any election.

I. A person who commits unlawful possession of alcoholic liquor or illegal drug is guilty of a petty misdemeanor.

### **3-8-79. Conspiracy; general penalty; violation by municipal clerk; penalty.**

A. Conspiracy to violate the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] consists of two or more persons knowingly combining, uniting or agreeing to cause or attempt to cause the omission or commission of any duty or act which violates the provisions of the Municipal Election Code.

B. A person who commits conspiracy to violate the Municipal Election Code is guilty of a fourth degree felony.

C. If the Municipal Election Code does not impose a specific penalty for the violation of a provision prohibiting a specific act, a person who knowingly commits such violation is guilty of a misdemeanor.

D. Violation of the Municipal Election Code by the municipal clerk consists of the willful violation of the Municipal Election Code by any municipal clerk or by any deputy or assistant municipal clerk, or the willful failure or refusal of any such person to perform any act or duty required by the Municipal Election Code.

E. Any municipal clerk, deputy or assistant who commits such willful violation of the Municipal Election Code is guilty of a fourth degree felony and, in addition, such violation is sufficient cause for removal from office in a proceeding instituted for that purpose as provided by law.

### **3-8-80. Uniform procedure.**

The provisions of 3-8-38 NMSA 1978 through 3-8-79 NMSA 1978 concerning election day matters, post-election duties, election challenges and penalties and shall apply to all municipal elections except as otherwise specified.

## **ARTICLE 9**

### **Absentee Voting**

Sec.	Sec.
3-9-1. Definitions.	3-9-9. Absent voter precinct.
3-9-2. Certain applications constitute registration.	3-9-10. Delivery of absentee ballots to absent voter precinct.
3-9-3. Absentee voting; regular or special municipal elections; right to vote.	3-9-11. Handling absentee ballots by absent voter precinct boards.
3-9-4. Absentee ballot application; rejection; acceptance.	3-9-12. Canvass; recount or recheck; disposition.
3-9-5. Absentee ballot register.	3-9-13. Voting in person prohibited.
3-9-6. Form of absentee ballot; form of absentee ballot envelopes.	3-9-14. Cancellation of absentee ballot at death.
3-9-7. Manner of voting.	3-9-15. Watchers and challengers for absent voter precinct.
3-9-8. Care of absentee ballots; destruction of unused ballots by municipal clerk.	3-9-16. Penalties.

#### **3-9-1. Definitions.**

As used in this article:

A. "federal qualified elector" means a qualified elector covered under the provisions of the Federal Voting Assistance Act of 1955;

B. "federal voter" means a voter covered under the provisions of the Federal Voting Assistance Act of 1955;

C. "covered under the provisions of the Federal Voting Assistance Act of 1955" means:

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

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

(3) citizens of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia, and their spouses and dependents when residing with or accompanying them;

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

E. "members of the merchant marine" means persons other than members of the armed forces:

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

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

F. "voter" means a qualified elector of the municipality; and

G. "election" means a regular or special municipal election.

### **3-9-2. Certain applications constitute registration.**

An application from a federal qualified elector or federal voter shall, when received by the municipal clerk, constitute a registration for purposes of that election.

### **3-9-3. Absentee voting; regular or special municipal elections; right to vote.**

A. Any voter or any federal voter or federal qualified elector entitled to vote in the municipal election may vote by absentee ballot for all candidates and on all questions appearing on the ballot at such regular or special election at his polling place, as if he were able to cast his ballot in person at such polling place.

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

### **3-9-4. Absentee ballot application; rejection; acceptance.**

A. Application by a federal qualified elector or federal voter shall be made on the federal postcard application form to the municipal clerk.

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

C. Upon receipt of a properly completed and delivered application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

D. The municipal clerk shall reject an absentee ballot application for any of the following reasons:

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

(2) the application is not signed by the applicant; or

(3) the applicant:

(a) has no valid affidavit of registration on file with the county clerk and is not a federal qualified elector or federal voter; or

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

(c) is a federal qualified elector or federal voter, but is not entitled to vote in the municipal election; and

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

E. If the municipal clerk rejects the absentee ballot application pursuant to Subsection D of this section, then the municipal clerk shall refuse to issue an absentee ballot and shall mark the application "rejected" and enter "rejected" in the absentee ballot register and file the application in a separate file. The municipal clerk shall, within twenty-four hours of

rejection of the application, notify the applicant in writing by certified mail, return receipt requested, by telephone or in person of the reasons for rejection of the application. In addition, if the application is incomplete, the clerk shall mail immediately a new application for absentee ballot. Notwithstanding any provisions of this section to the contrary, the only method of notification pursuant to rejection of an absentee ballot under the provisions of Paragraph (3) of Subsection D of this section shall be by certified mail, return receipt requested. The person whose application has been rejected shall have ten days from receipt of notice to appeal or show cause why the application should be accepted.

F. If the application for absentee ballot is accepted, the municipal clerk shall:

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

G. The municipal clerk shall hand deliver or mail an absentee ballot to any qualified elector, federal qualified elector or federal voter whose application for an absentee ballot has been accepted. The municipal clerk shall notify the county clerk who shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. Names of individuals which have been labeled "absentee ballot" shall appear on a separate list called the "absentee voter list". This list shall be submitted to the municipal clerk by the county clerk in the same manner as provided in Subsection B of Section 3-8-7 NMSA 1978.

H. It is the duty of the municipal clerk to verify the signature roster and absentee voter list to ensure that all names of individuals who have been issued absentee ballots have been labeled "absentee ballot" on the signature roster and their names listed on the absentee voter list. If not, then the municipal clerk shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. The municipal clerk shall then enter the name and all required information on the absentee voter list.

I. If the application for an absentee ballot is delivered in person to the municipal clerk during regular hours and days of business and is accepted, the municipal clerk shall deliver the absentee ballot and it shall be marked by the applicant in a voting booth in the municipal clerk's office, sealed in the proper envelopes and otherwise properly executed and returned to the municipal clerk or the clerk's authorized representative before the applicant leaves the office of the municipal clerk. Absentee ballots may be cast in person at the municipal clerk's office until 5:00 p.m. on the Thursday immediately prior to the date of election.

J. The act of marking the absentee ballot in the office of the municipal clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the municipal clerk a polling place subject to the requirements of a polling place in the Municipal Election Code [Articles 8 and 9 of this chapter] other than is provided in this subsection. During the period of time between the date a person may first apply in person for an absentee ballot and the final date for such application and marking of the ballot in the office of the municipal clerk, it is unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office.

K. Absentee ballots shall be air mailed to federal qualified electors and federal voters whose applications have been accepted not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on the Thursday immediately prior to the date of the election.

L. Absentee ballots shall be mailed to voters whose applications have been approved not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on Thursday immediately prior to the date of the election.

M. No absentee ballot shall be delivered or mailed to any person other than the applicant for such ballot.

### **3-9-5. Absentee ballot register.**

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



- (1) in numerical sequence, the name and municipal address of each absentee ballot applicant;
- (2) the date and time of receipt of the application;
- (3) whether the application was accepted or rejected;
- (4) the date of hand delivery or mailing of an absentee ballot to the applicant, the method of delivery, and if mailed, the address to which the ballot was mailed;
- (5) the applicant's precinct;
- (6) whether the applicant is a voter, a federal voter or a federal qualified elector;
- (7) affidavits of voters who did not receive absentee ballots; and
- (8) the date and time the completed ballot was received from the applicant by the municipal clerk.

B. The absentee ballot register is a public record open to public inspection in the municipal clerk's office during regular office hours and shall be preserved for two years after the date of the election.

### **3-9-6. Form of absentee ballot; form of absentee ballot envelopes.**

A. The form of the absentee ballot shall be, as nearly as practicable, in the same form as prescribed by the municipal clerk for emergency paper ballots or paper ballots used in lieu of voting machines. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as is practicable. The ballots shall provide for sequential numbering.

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

C. The municipal clerk shall prescribe the form of:

- (1) official inner envelopes for use in sealing the completed absentee ballot;
- (2) official mailing envelopes for use in returning the official inner envelope to the municipal clerk;
- (3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and
- (4) official transmittal envelopes for use by the municipal clerk in mailing absentee ballot materials.

D. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk and federal voters and federal qualified electors shall be printed in blue in the form prescribed by postal regulations and the Federal Voting Assistance Act of 1955. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk shall be printed in green in substantially similar form. All official inner envelopes shall be printed in green.

E. The reverse of each official mailing envelope shall contain a form to be executed under oath by the person completing the absentee ballot. The form shall identify the person and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."

### **3-9-7. Manner of voting.**

A. Any person voting an absentee ballot under the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] shall secretly mark the ballot in the manner provided in the Municipal Election Code for marking emergency paper ballots, remove any visible number on the ballot, place the ballot in the official inner envelope and securely seal the envelope. The person voting shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The person voting shall then fill in the form on the reverse of the official mailing envelope and subscribe and swear to it before a person authorized to administer oaths.

B. Federal voters and federal qualified electors shall either deliver or mail the official mailing envelope to the municipal clerk of their municipality of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the municipal clerk of the municipality of residence. Voters shall either deliver or mail the official mailing envelope to the municipal clerk of their municipality of residence.

### **3-9-8. Care of absentee ballots; destruction of unused ballots by municipal clerk.**

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

B. The municipal clerk shall accept completed official outer envelopes until 7:00 p.m. on election day. Any completed outer envelope received after that time and date shall be marked as to the time and date received, shall not be delivered to the precinct board, and shall be preserved until the time for election contests has expired. In the absence of a court order, after the expiration of the time for election contests, the municipal clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the municipal clerk shall count the numbers of late ballots from voters, federal voters and federal qualified electors and record the number from each category in the absentee ballot register.

C. At 5:00 p.m. on the Thursday immediately preceding the date of the election, the municipal clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the municipal clerk's office all such unused ballots. The municipal clerk shall execute a certificate of such destruction which shall include the numbers on the ballots destroyed, and such certificate shall be placed within the absentee ballot register.

D. At 7:00 p.m. on the day of the election the municipal clerk shall determine the number of ballots that were mailed and have not been received and execute a "Certificate of Unreceived Absentee Ballots". Such certificate shall be placed in the absentee ballot register and shall become an official part of the register. The municipal clerk shall determine the form of the "Certificate of Unreceived Absentee Ballots".

### **3-9-9. Absent voter precinct.**

For the purposes of absentee voting, the governing body shall create a special absent voter precinct, cause a precinct board to be appointed consisting of election judges and election clerks as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], and designate the municipal clerk's office as the polling place for the counting and tallying of absentee ballots in the election. The municipal clerk shall administer the oath to the election judges. A regular precinct board may be designated to serve as the absent voter precinct board. Members of the absent voter precinct board shall receive the same compensation as other precinct board members, but in no case shall a precinct board member who also serves as a member of the absent voter precinct board be entitled to extra compensation for serving on the absent voter precinct board.

### **3-9-10. Delivery of absentee ballots to absent voter precinct.**

After 8:00 a.m. on election day, the municipal clerk shall deliver to the absent voter precinct board the absentee ballot register and the absent voter ballots received by the clerk. Prior to 7:00 p.m. on election day, the municipal clerk shall deliver any ballots received on election day to the absent voter precinct board and the precinct board shall note the receipt of ballots in the absent [absentee] ballot register and on the absentee voter list. On delivery of said ballots, the municipal clerk shall remain in the presence of the absent

voter precinct board until the clerk has observed the opening of all official mailing envelopes, the deposit of all ballots in the locked ballot box, and the listing of the names on all of the official mailing envelopes in the absentee voter list. All functions of the absent voter precinct board shall be conducted in the office of the municipal clerk which is the absent voter precinct.

### **3-9-11. Handling absentee ballots by absent voter precinct boards.**

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

B. If one or both signatures are missing, an election judge shall write "rejected" on the front of the official mailing envelope. The election clerks shall write the notation "rejected — missing signature" in the "notations" column on the absentee voter list. An election judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box.

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

(1) the official mailing envelope has been opened prior to being received by the precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector, or voter as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

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

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

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

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

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

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

G. Absent voter precinct polls shall close at 7:00 p.m. on the day of the election by the absent voter precinct board.

### **3-9-12. Canvass; recount or recheck; disposition.**

Where no voting machines are used to register absentee ballots, such ballots shall be canvassed, recounted and disposed of in the manner provided by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for the canvassing, recounting and disposition of emergency paper ballots. Where voting machines are used to register absentee ballots, such ballots shall be canvassed and rechecked in the manner provided by the Municipal Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register absentee ballots shall not be rechecked, but the absentee ballots shall be recounted in the manner provided by the Municipal Election Code for the recounting of emergency paper ballots.

**3-9-13. Voting in person prohibited.**

A. No person who has been issued an absentee ballot shall vote in person at that person's polling place.

B. At any time prior to 5:00 p.m. on the Thursday immediately preceding the date of the election, any person whose absentee ballot application has been accepted and who was mailed an absentee ballot but who has not received the absentee ballot may execute, in the office of the municipal clerk of the municipality where that person is registered to vote, a sworn affidavit stating that the person did not receive or vote his absentee ballot. Upon receipt of the sworn affidavit, the municipal clerk shall issue the voter a replacement absentee ballot.

C. The municipal clerk shall prescribe the form of the affidavit and the manner in which the municipal clerk shall void the first ballot mailed to the applicant.

**3-9-14. Cancellation of absentee ballot at death.**

If any person voting under the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] governing absentee ballots dies after mailing or delivering his absentee ballot to the municipal clerk but before the absentee ballot is delivered to the absent voter precinct board, then that person's official outer envelope shall be marked "canceled — deceased" by the municipal clerk in the same manner as provided for other uncast ballots and recorded in the absentee ballot register. The ballot shall not be delivered to the precinct board. Such ballot shall be preserved by the municipal clerk until the time prescribed for the destruction of ballots in the Municipal Election Code.

**3-9-15. Watchers and challengers for absent voter precinct.**

Watchers and challengers may be appointed for the absent voter precinct in the manner specified for the appointment of watchers and challengers for other precincts used in municipal elections.

**3-9-16. Penalties.**

A. Any person who knowingly votes or offers to vote an absentee ballot to which he is not lawfully entitled to vote or offer to vote is guilty of a fourth degree felony.

B. Any municipal official or employee or any other person who furnishes absentee ballots to persons who are not entitled to such ballots under the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] is guilty of a fourth degree felony.

C. Any municipal official or employee, precinct board member or any other person who knowingly destroys or otherwise disposes of an absentee ballot other than in the manner provided by this act is guilty of a fourth degree felony.

D. Any person who knowingly or willfully makes any false statement in any application for an absentee ballot or in the absentee ballot register or in any certificate required by the Municipal Election Code is guilty of a fourth degree felony.

E. A municipal clerk or any other person who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when not legally entitled to possession thereof, or who otherwise knowingly authorizes, aids, or abets the unlawful removal of an executed or unexecuted absentee ballot from the physical confines of the municipal clerk's office, is guilty of a fourth degree felony.



# CHAPTER 10

## Public Officers and Employees

### ARTICLE 16

#### Governmental Conduct

Sec.		Sec.	
10-16-1.	Short title.	10-16-9.	Contracts involving legislators; representation before state agencies.
10-16-2.	Definitions.	10-16-10.	Repealed.
10-16-3.	Ethical principles of public service; certain official acts prohibited; penalty.	10-16-11.	Codes of conduct.
10-16-4.	Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.	10-16-12.	Repealed.
10-16-4.1.	Honoraria prohibited.	10-16-13.	Prohibited bidding.
10-16-5.	Repealed.	10-16-13.1.	Education and voluntary compliance.
10-16-6.	Confidential information.	10-16-14.	Enforcement procedures.
10-16-7.	Contracts involving public officers or employees.	10-16-15.	Repealed.
10-16-8.	Contracts involving former public officers or employees; representation of clients after government service.	10-16-16.	Medicaid; human services department employees; standards of conduct; enforcement.
		10-16-17.	Criminal penalties.

#### 10-16-1. Short title.

Chapter 10, Article 16 NMSA 1978 may be cited as the "Governmental Conduct Act".

#### 10-16-2. Definitions.

As used in the Governmental Conduct Act [this article]:

- A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;
- B. "confidential information" means information that by law or practice is not available to the public;
- C. "employment" means rendering of services for compensation in the form of salary as an employee;
- D. "financial interest" means an interest held by an individual, his spouse or dependent minor children that is:
  - (1) an ownership interest in business; or
  - (2) any employment or prospective employment for which negotiations have already begun;
- E. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;
- F. "person" means an individual or entity;
- G. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges;
- H. "standards" means the conduct required by the Governmental Conduct Act; and
- I. "substantial interest" means an ownership interest that is greater than twenty percent.

#### 10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.

A. A legislator, public officer or employee shall treat his government position as a public trust. He shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests incompatible with the public interest.

B. A legislator, public officer or employee shall conduct himself in a manner that justifies the confidence placed in him by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator, public officer or employee may request or receive, and no person may offer a legislator, public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

#### **10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.**

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing his own financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall disqualify himself from engaging in any official act directly affecting his financial interest.

C. If the public interest so requires, the governor may make an exception to Subsection B of this section for a public officer or employee by expressing the exception and the reasons for it in writing. The exception is effective when the public officer or employee files this writing with the secretary of state.

#### **10-16-4.1. Honoraria prohibited.**

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

#### **10-16-5. Repealed.**

#### **10-16-6. Confidential information.**

No legislator, public officer or employee shall use confidential information acquired by virtue of his state employment or office for his or another's private gain.

#### **10-16-7. Contracts involving public officers or employees.**

A state agency shall not enter into any contract with a public officer or employee of the state or with a business in which the public officer or employee has a substantial interest unless the public officer or employee has disclosed his substantial interest and unless the contract is awarded pursuant to the Procurement Code; provided that this section does not apply to a contract of official employment with the state or to contracts made pursuant to the provisions of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978].

#### **10-16-8. Contracts involving former public officers or employees; representation of clients after government service.**

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in his dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the government agency at which the former public officer or employee served or worked.

### **10-16-9. Contracts involving legislators; representation before state agencies.**

A. A state agency shall not enter into any procurement contract for services, construction or items of personal property with a legislator or with a business in which the legislator has a substantial interest unless the legislator has disclosed his substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code.

B. A legislator shall not appear for, represent or assist another person in any matter before a state agency, unless without compensation or for the benefit of a constituent, except for legislators who are attorneys or other professional persons engaged in the conduct of their professions and, in those instances, the legislator shall refrain from references to his legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions.

### **10-16-10. Repealed.**

### **10-16-11. Codes of conduct.**

A. By January 1, 1994, each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to his control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act [this article].

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the secretary of state and are open to public inspection.



D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of one hour of ethics continuing education and training annually.

### **10-16-12. Repealed.**

### **10-16-13. Prohibited bidding.**

No state agency shall accept any bid from a person who directly or indirectly participated in the preparation of specifications on which the competitive bidding was held.

#### **10-16-13.1. Education and voluntary compliance.**

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

### **10-16-14. Enforcement procedures.**

A. The secretary of state may refer suspected violations of the Governmental Conduct Act [this article] to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the secretary of state, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the attorney general determines that there is sufficient cause to file a complaint against a public officer removable only by impeachment, he shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the attorney general shall make public the nature of the charges, but he shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules.

E. Subject to the provisions of this section, the Governmental Conduct Act may be enforced by the attorney general. Except as regards legislators or statewide elected officials, a district attorney in the county where a person resides or where a violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

**10-16-15. Repealed.****10-16-16. Medicaid; human services department employees; standards of conduct; enforcement.****A. As used in this section:**

(1) "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

(2) "department" means the human services department;

(3) "employee" means any person who has been appointed to or hired for any department office connected with the administration of medicaid funds and who receives compensation in the form of salary;

(4) "employee with responsibility" means an employee who is directly involved in or has a significant part in the medicaid decision-making, regulatory, procurement or contracting process; and

(5) "financial interest" means an interest held by an individual, his spouse or minor child which is:

(a) an ownership interest in business; or

(b) any employment or prospective employment for which negotiations have already begun.

**B.** No employee with responsibility shall for twenty-four months following the date on which he ceases to be an employee act as agent or attorney for any other person or business in connection with a judicial or administrative proceeding, application, ruling, contract, claim or other matter relating to the medicaid program with respect to which the employee made any investigation, rendered any ruling or was otherwise substantially and directly involved during the last year he was an employee and which was actually pending under his responsibility within that period.

**C.** No department secretary, income support division director or medical assistance bureau chief or their deputies shall for twelve months following the date on which he ceases to be an employee participate in any manner with respect to a judicial or administrative proceeding, application, ruling, contract, claim or other matter relating to the medicaid program and pending before the department.

**D.** No employee with responsibility shall participate in any manner with respect to a judicial or administrative proceeding, application, ruling, contract, claim or other matter relating to the medicaid program and involving his spouse, minor child or any business in which he has a financial interest unless prior to such participation:

(1) full disclosure of his relationship or financial interest is made in writing to the secretary of the department; and

(2) a written determination is made by the secretary that the disclosed relationship or financial interest is too remote or inconsequential to affect the integrity of the services of the employee.

**E.** Violation of any of the provisions of this section by an employee is grounds for dismissal, demotion or suspension. A former employee who violates any of the provisions of this section shall be subject to assessment by the department of a civil money penalty of two hundred fifty dollars (\$250) for each violation. The department shall promulgate regulations to provide for an administrative appeal of any assessment imposed.

**10-16-17. Criminal penalties.**

Unless specified otherwise in the Governmental Conduct Act [this article], any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

## ARTICLE 16A

### Financial Disclosures

<p>Sec. 10-16A-1. Short title; financial disclosure act. 10-16A-2. Definitions. 10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment. 10-16A-4. Disclosures by certain public officers or</p>	<p>Sec. employees of state agencies; condition of employment. 10-16A-5. Education and voluntary compliance. 10-16A-6. Investigations; binding arbitration; fines; enforcement. 10-16A-7. Criminal penalties.</p>
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#### **10-16A-1. Short title; financial disclosure act.**

Sections 39 through 45 [10-16A-1 to 10-16A-7 NMSA 1978] of this act may be cited as the "Financial Disclosure Act".

#### **10-16A-2. Definitions.**

As used in the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978]:

- A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;
- B. "employment" means rendering of services for compensation in the form of salary as an employee;
- C. "financial interest" means an interest held by an individual or his spouse that is:
  - (1) an ownership interest in business; or
  - (2) any employment or prospective employment for which negotiations have already begun;
- D. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;
- E. "person" means an individual or entity; and
- F. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges.

#### **10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.**

A. At the time of filing a declaration of candidacy, a candidate for legislative or statewide office shall file with the proper filing officer, as defined in the Election Code [Chapter 1 NMSA 1978], a financial disclosure statement. In addition, each year during the month of January, a legislator and a person holding a statewide office shall file with that position's proper filing officer, as defined in the Election Code, a financial disclosure statement or a subsequent statement for each succeeding year that identifies changed circumstances, as provided in Subsection D of this section. If the proper filing officer is not the secretary of state, the proper filing officer shall promptly forward a copy of the financial disclosure statement to the secretary of state.

B. A state agency head or official whose appointment to a board or commission is subject to confirmation by the senate shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter.

C. The financial disclosure statement shall include for any person identified in Subsection A or B of this section and his spouse the following information for the prior calendar year:

- (1) the full name, mailing address and residence address of each person covered in the disclosure statement, except the address of the spouse need not be disclosed; the name

and address of the person's and spouse's employer and the title or position held; and a brief description of the nature of the business or occupation;

(2) all sources of gross income of more than five thousand dollars (\$5,000) to each person covered in the disclosure statement, identified by general category descriptions that disclose the nature of the income source, in the following broad categories: finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described. In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978], the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed;

(3) a general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located;

(4) all other New Mexico business interests not otherwise listed of ten thousand dollars (\$10,000) or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(5) all memberships by the reporting individual and his spouse on boards of for-profit businesses in New Mexico;

(6) all New Mexico professional licenses held;

(7) each state agency that was sold goods or services in excess of five thousand dollars (\$5,000) during the prior calendar year by a person covered in the disclosure statement;

(8) each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of his employment during the prior calendar year; and

(9) a general category that allows the person filing the disclosure statement to provide whatever other financial interest or additional information the person believes should be noted to describe potential areas of interest that should be disclosed.

D. After filing the first financial disclosure statement required by this section, a subsequent statement for each of the next four years need only identify changes that must be disclosed to describe current circumstances. A complete financial disclosure statement shall be filed every five years. The secretary of state shall prepare a simplified financial disclosure statement form so that subsequent reports need disclose only changed circumstances.

E. The financial disclosure statements required by this section shall be retained by the state for five years from the date of filing and shall be made available for inspection by any citizen of the state.

F. A person who files a financial disclosure statement shall be allowed to file an amended statement at any time to reflect significant changed circumstances that occurred since the last report was filed.

G. Any candidate for a legislative or statewide office who fails or refuses to file a financial disclosure statement required by this section before the final date for the withdrawal of candidates shall not have his name printed on the ballot.

H. For a state agency head or an official whose appointment to a board or commission is subject to confirmation by the senate, the filing of the financial disclosure statement required by this section is a condition of entering upon and continuing in state employment or holding an appointed position.

#### **10-16A-4. Disclosures by certain public officers or employees of state agencies; condition of employment.**

A. Every employee who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978] and who has a

financial interest that he believes or has reason to believe may be affected by his official act or actions of the state agency by which he is employed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before entering state employment and during the month of January every year thereafter.

B. Every public officer who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the board or commission to which he is appointed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before taking office and during the month of January every year thereafter.

C. The information on the disclosures shall be made available by the secretary of state for inspection to any citizen of this state.

D. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in state employment or, for persons subject to Subsection B of this section, of holding public office.

### **10-16A-5. Education and voluntary compliance.**

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978] of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Financial Disclosure Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed. Referrals for civil enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

### **10-16A-6. Investigations; binding arbitration; fines; enforcement.**

A. The secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978] has been violated. Any person who believes that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for processing complaints and notifications of violations.

B. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged and impose the penalty. If the person charged disputes the secretary of state's determination, the person charged may request binding arbitration.

C. The arbitration decision shall be decided by a panel of three persons. The secretary of state shall choose one panel member within fifteen days of receipt of the request for arbitration; the person charged shall choose another panel member and submit the arbitrator's name with the request for arbitration; and those two members shall choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of the district court for the first judicial district shall appoint the third panel member. No panel member may be a person subject to the Financial Disclosure Act, Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] or Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978]. Panel members shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] plus reimbursement for reasonable actual expenses.

D. The arbitration panel may take any action the secretary of state is authorized to take. The panel shall state the reasons for its decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within forty-five days of the conclusion of the hearing. Unless otherwise provided for in this section, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7-1 to 44-7-22 NMSA 1978], including the procedures set forth in Section 44-7-7 NMSA 1978

authorizing the issuance of subpoenas. No panel member shall be subject to liability for actions taken pursuant to this section.

E. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act, or any person who files a false or incomplete statement or report, shall be liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

F. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

#### **10-16A-7. Criminal penalties.**

Any person who knowingly and willfully violates any of the provisions of the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978] is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

# CHAPTER 22

## Public Schools

### ARTICLE 6

#### School District Elections

(Repealed by Laws 1985, ch. 168, § 22 and Laws 1993, ch. 226, § 54.)

### ARTICLE 7

#### Local School Board Member Recall

Sec.		Sec.	
22-7-1.	Short title. (Delayed repeal — See note.)	22-7-9.1.	Court hearing. (Delayed repeal — See note.)
22-7-2.	Purpose of act. (Delayed repeal — See note.)	22-7-10.	Signatures. (Delayed repeal — See note.)
22-7-3.	Definitions. (Delayed repeal — See note.)	22-7-11.	Repealed.
22-7-4.	Members subject to recall. (Delayed repeal — See note.)	22-7-12.	Recall petition; limitation on appeals of validity of recall petition. (Delayed repeal — See note.)
22-7-5.	Expenses. (Delayed repeal — See note.)	22-7-13.	Special recall election. (Delayed repeal — See note.)
22-7-6.	Petition. (Delayed repeal — See note.)	22-7-14.	Vacancy. (Delayed repeal — See note.)
22-7-7.	Affidavit with petition; penalty. (Delayed repeal — See note.)	22-7-15.	Mandamus. (Delayed repeal — See note.)
22-7-8.	Responsibilities of petitioner. (Delayed repeal — See note.)	22-7-16.	Penalties. (Delayed repeal — See note.)
22-7-9.	Duties of county clerk. (Delayed repeal — See note.)		

#### **22-7-1. Short title. (Delayed repeal — See note.)**

*This act [22-7-1 to 22-7-16 NMSA 1978] may be cited as the "Local School Board Member Recall Act".*

**Delayed repeals.** — Laws 1993, ch. 152, § 1 repeals 22-7-1 to 22-7-16 NMSA 1978, as enacted by Laws 1977, ch. 308, §§ 1 to 9, Laws 1987, ch. 142, § 2 and Laws 1977, ch. 308, §§ 10 to 16, and as amended by Laws 1985, ch. 169, §§ 2 to 4 and 6 to 8, and by

Laws 1987, ch. 142, § 1, relating to local school board member recall, effective on the date that election results are canvassed and certified that a majority of people voting approved an amendment repealing N.M. Const., art. XII, § 14.

#### **22-7-2. Purpose of act. (Delayed repeal — See note.)**

*The purpose of the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978] is to establish the methods and procedures by which a local school board member may be recalled as provided in Article 12, Section 14 of the constitution of New Mexico.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

#### **22-7-3. Definitions. (Delayed repeal — See note.)**

*As used in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978]:*

A. "canvasser" means a registered voter who circulates a petition and collects signatures;

B. "date of closure" means the date on which the county clerk receives signed petitions for the recall of one or more named members;

C. "date of initiation" means the date on which the county clerk stamps the face sheet of the petition initiating the recall procedure;

D. "face sheet" means the first page of a petition containing the information as provided in Subsections D and E of Section 22-7-6 NMSA 1978;

E. "member" means any person elected to the local school board of a school district;

F. "named member" means a local school board member named on a petition and subject to recall;

G. "petition" means a document consisting of a completed face sheet or exact duplicate thereof and as many subsequent pages as are necessary for signatures;

H. "petitioner" means a person, group or organization initiating the petition;

I. "registered voter" means any qualified elector who is registered to vote as provided in the Election Code [Chapter 1 NMSA 1978];

J. "signature" means the name of a person as written by himself;

K. "subsequent page" means the pages in a petition after the face sheet arranged as provided in Subsection G of Section 22-7-6 NMSA 1978; and

L. "county clerk" means the clerk of the county in which the school district is situate or, in the case of a multi-county school district, the clerk of the county in which the administrative office of the school district is situate.

Delayed repeals. — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

**22-7-4. Members subject to recall. (Delayed repeal — See note.)**

Any elected member of the local school board of any school district may be recalled as provided in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978].

Delayed repeals. — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

**22-7-5. Expenses. (Delayed repeal — See note.)**

The local school board shall ensure the payment of the cost of a special recall election and any costs incurred by the county clerk in carrying out his duties as provided in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978].

Delayed repeals. — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

**22-7-6. Petition. (Delayed repeal — See note.)**

A. A separate petition shall be initiated for each named member.

B. The petition shall be on eight and one-half inch by fourteen inch paper.

C. All information written on the petition form shall be in compliance with the federal Voting Rights Act of 1965, as amended.

D. Each face sheet of a petition shall contain the following:

(1) a space for the initiation date;

(2) a notice at the top of the sheet stating: "Recall is a local decision to be funded by local money. Additional state funds will not be advanced to support recall.";

(3) a space for the name of the named member;

(4) a space for the name of the person, group or organization initiating the petition;

(5) a space in which to list the specific charges in support of the recall of the named member that constitute malfeasance in office, misfeasance in office or violation of oath of office; and

(6) a notice stating "Signatures are valid for a maximum of one hundred ten days from date of initiation."

E. The remaining portion of the face sheet shall be substantially in the following form:

"I, the undersigned, a registered voter in the county of ....., New Mexico, and a resident of the ..... school district, hereby petition for the recall of the local school board member named on the face sheet of this petition.

I. ....

Usual signature	Name printed	Address as	City	Date
	As registered	Registered		



2. .... ”.  
*Usual signature      Name printed      Address as      City      Date*  
*As registered      Registered*

*F. One completed face sheet or duplicate thereof shall be the first page of all circulated petitions.*

*G. Each subsequent page of the petition shall have approximately twenty-five lines numbered one to twenty-five and shall be substantially in the form as provided in Subsection E of this section.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

**22-7-7. Affidavit with petition; penalty. (Delayed repeal — See note.)**

*A. When submitted to the county clerk, each petition shall have a notarized affidavit attached. The affidavit shall state that the canvasser is a registered voter of the district and that the canvasser circulated that particular petition and witnessed each signer write his signature and any other information recorded on the petition.*

*B. According to the best information and belief of the canvasser, the canvasser shall insure the following:*

- (1) each signature is the signature of the person whose name it purports to be;*
- (2) each signer is a registered voter of the county and school district listed on the petition;*
- (3) each signature was obtained on or after the date of initiation; and*
- (4) each signer had an opportunity to read the information on the completed face sheet or an exact duplicate thereof.*

*C. Any knowingly false statement made in the affidavit constitutes a fourth degree felony.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

**22-7-8. Responsibilities of petitioner. (Delayed repeal — See note.)**

*A. The petitioner may obtain a face sheet form and a subsequent page form from the county clerk, or the petitioner may assemble both as provided in Section 22-7-6 NMSA 1978.*

*B. The petitioner shall complete the following portions of the face sheet:*

- (1) name of the named member; and*
- (2) name of the person, group or organization initiating the petition.*

*C. The petitioner shall cite the specific charges in support of the recall of the named member on the face sheet in compliance with the federal Voting Rights Act of 1965, as amended. The charges shall constitute misfeasance in office, malfeasance in office or violation of oath of office.*

*D. The petitioner shall submit the completed face sheet to the county clerk for affixing of the initiation date.*

*E. The petitioner shall duplicate the completed face sheet with the initiation date affixed.*

*F. The petitioner shall file all petitions collected to recall the named member with the county clerk on the same day within one hundred ten calendar days from the initiation date.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

**22-7-9. Duties of county clerk. (Delayed repeal — See note.)**

*A. The county clerk shall perform the following duties:*

- (1) provide standard face sheet forms to include a place for the mailing address of the petitioner, standard subsequent page forms and standard affidavit forms to the general public upon request;*

(2) *affix the initiation date to the completed face sheet only after the district court has issued an order permitting the continuation of the recall process after a hearing pursuant to Section 22-7-9.1 NMSA 1978 on the sufficiency of facts supporting the charges of malfeasance or misfeasance in office or violation of oath of office;*

(3) *send one copy of the completed face sheet to the named member by registered mail, return receipt requested; and*

(4) *keep one copy of the completed face sheet on file.*

*B. Upon receipt of completed petitions, the county clerk shall stamp the petitions with the date of closure. All completed petitions for the recall of one or more named members shall be filed with the county clerk on the same day within one hundred ten calendar days from the date of initiation.*

*C. The county clerk shall verify the signatures on the completed petitions within ten working days.*

*D. Within five working days of the validation by the county clerk, the county clerk shall determine whether the verified signatures meet the minimum number required by Section 22-7-10 NMSA 1978.*

*E. If the county clerk determines that sufficient signatures have not been submitted, he shall notify the petitioner at the mailing address listed on the face sheet and the named member by registered mail, return receipt requested, within three working days after the determination.*

*F. If the county clerk determines that sufficient signatures have been submitted, he shall do the following within three working days after the determination:*

(1) *notify the petitioner at the mailing address listed on the face sheet and the named member by registered mail, return receipt requested; and*

(2) *initiate procedures for a special recall election as provided in Section 22-7-13 NMSA 1978.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

### **22-7-9.1. Court hearing. (Delayed repeal — See note.)**

*A. Prior to affixing the date of initiation to the completed face sheet, the county clerk shall file an application with the district court within five days from the date the completed face sheet is presented to the county clerk, requesting a hearing for a determination by the court of whether sufficient facts exist to allow the petitioner to continue with the recall process.*

*B. Upon the filing of the application, the district court shall set a hearing date on the issue of sufficiency of the facts alleged, which hearing shall be held not more than ten days from the date the application is filed by the county clerk. The court shall notify the petitioner at the mailing address listed on the face sheet of the time and place of the hearing.*

*C. Upon review of the completed face sheet together with affidavits submitted by the petitioner setting forth specific facts in support of the charges specified on the face sheet, the district court shall make a determination whether sufficient facts exist to allow petitioners to continue with the recall process.*

*D. Upon entry of an order by the court that sufficient facts exist to allow the petitioner to continue the recall process, the county clerk shall affix the date of initiation to the completed face sheet.*

*E. The district court's decision is appealable by the petitioner only to the supreme court, and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

### **22-7-10. Signatures. (Delayed repeal — See note.)**

*A. No signature may be signed on the petition prior to the initiation date.*

*B. Signatures are valid for a maximum of one hundred ten calendar days from the date of initiation.*

*C. Each signer of a recall petition shall sign but one petition unless more than one member is a named member, and in that case not more than the number of recall petitions equal to the number of named members shall be signed.*

*D. The signature shall not be counted unless the entire line is filled in full and is upon the form prescribed by the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978].*

*E. A signature shall be counted on a recall petition unless there is evidence presented that the person signing:*

*(1) is not a registered voter of the county and of the school district listed on the face sheet of the petition;*

*(2) has signed more than one recall petition for one named member or has signed one petition more than once; or*

*(3) is not the person whose name appears on the recall petition.*

*F. The minimum number of verified signatures needed to validate a petition is thirty-three and one-third percent of the number of registered voters who voted for the school board position of the named member at the last preceding school board election.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

## **22-7-11. Repealed.**

## **22-7-12. Recall petition; limitation on appeals of validity of recall petition. (Delayed repeal — See note.)**

*A. Any person filing any court action challenging a recall petition provided for in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978] shall do so within ten days after the determination of the county clerk as set forth in Section 22-7-9 NMSA 1978. Challenges to the recall petition shall be directed to:*

*(1) the validity of the signatures on the petitions;*

*(2) the determination of the county clerk as to the minimum number of signatures; or*

*(3) the sufficiency of the charge.*

*Within ten days after the filing of the action, the district court shall hear and render a decision on the matter. The decision shall be appealable only to the supreme court, and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.*

*B. For the purpose of an action challenging a recall petition, each petitioner filing a recall petition under the Local School Board Member Recall Act appoints the proper filing officer as his agent to receive service of process. Immediately upon receipt of process served upon the proper filing officer, that officer shall, by certified mail, return receipt requested, mail the process to the person.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

## **22-7-13. Special recall election. (Delayed repeal — See note.)**

*A. The date of the special recall election shall be set no later than ninety days after the date of the determination by the county clerk.*

*B. The question to be submitted to the voters at the special recall election shall be whether or not the named member shall be recalled.*

*C. A special recall election may be held in conjunction with a regular or a special school district election.*

*D. Whenever a special recall election is called, the county clerk shall give public notice of the special recall election by publishing information regarding the election once each week for*

*four consecutive weeks. The first publication of the information shall be made between forty-five and sixty days before the date of the special recall election.*

*Information regarding the election shall be in compliance with the federal Voting Rights Act of 1965, as amended, and shall include the date when the special recall election will be held, the question to be submitted to the voters, a brief description of the boundaries of each precinct, the location of each polling place, the hours each polling place will be open and the date and time of the closing of the registration books by the county clerk as required by law.*

*E. The ballot shall be in compliance with the federal Voting Rights Act of 1965, as amended, and shall present the voter the choice of voting "for the removal of the named member" or "against the removal of the named member".*

*F. All special recall elections shall be held in compliance with the federal Voting Rights Act of 1965, as amended.*

*G. Except as otherwise provided in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978], special recall elections in a school district shall be conducted as provided in the Election Code.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

#### **22-7-14. Vacancy. (Delayed repeal — See note.)**

*A. The vacancy created by a recalled member shall be filled as provided in Section 22-5-9 NMSA 1978.*

*B. Under no circumstances may a recalled member be appointed to fill any vacancy for the remainder of the term of office for which he was elected.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

#### **22-7-15. Mandamus. (Delayed repeal — See note.)**

*If the county clerk or local school board fails or refuses to do or perform any of the acts required in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978], the petitioner may apply to any district court for writ of mandamus to compel the performance of the required act, and the court shall entertain that application.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.

#### **22-7-16. Penalties. (Delayed repeal — See note.)**

*Any person violating Section 9 [22-7-9 NMSA 1978] of the Local School Board Member Recall Act is guilty of a petty misdemeanor.*

**Delayed repeals.** — For delayed repeal of this section see note following 22-7-1 NMSA 1978.



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