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ARTICLE 1
Definitions and General Provisions

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1-1-1. Election Code.

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


It is the purpose of the Election Code [Chapter 1 NMSA 1978] 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.

History: 1978 Comp., § 1-1-1.1, enacted by Laws 1979, ch. 74, § 1.


Article and section headings do not in any manner affect the scope, meaning or intent of the provisions of the Election Code [Chapter 1 NMSA 1978].


1-1-2.1. Ballot box key.

As used in the Election Code, "ballot box key" means:
A. a physical key that opens a lock used to secure a ballot box; or
B. the number on a numbered seal affixed to secure a ballot box.

History: Laws 2011, ch. 137, § 3.

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

As used in the Election Code [Chapter 1 NMSA 1978], "shall" is mandatory and "may" is permissive.

History: 1953 Comp., § 3-1-3, enacted by Laws 1969, ch. 240, § 3.
1-1-3.1. **Election cycle.**

Except as otherwise provided, as used in the Election Code:

A. "election cycle" means the period beginning on the day after the last general election and ending on the day of the general election;

B. "general election cycle" means the period beginning on the day after the primary election and ending on the day of the general election; and

C. "primary election cycle" means the period beginning on the day after the last general election and ending on the day of the primary election.


1-1-3.2. **Election observer.**

As used in the Election Code, "election observer" means a person registered with the United States department of state as an international election observer or a person registered with the New Mexico secretary of state who is an academic engaged in research on elections and the election process.

History: Laws 2011, ch. 137, § 1.

1-1-3.3. **Election-related organization.**

As used in the Election Code, "election-related organization" means an organization registered with the secretary of state that is involved in election monitoring or voter turnout activities.


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

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


1-1-4.1. **Federal qualified elector.**

As used in the Election Code, "federal qualified elector" means:

A. a uniformed-service voter; or

B. an overseas voter.

History: Laws 2015, ch. 145, § 1.

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

As used in the Election Code, "voter" means any qualified elector or federal qualified elector who is registered under the provisions of the Election Code.
1-1-5.1. Early voter.

As used in the Election Code [Chapter 1 NMSA 1978], "early voter" means a voter who votes in person before election day, and not by mail.


1-1-5.2. Definition of a vote; counting of hand-tallied ballots.

A. A vote on a paper ballot used on an electronic vote tabulating system, optical scan vote tabulating system or high-speed central count vote tabulator consists of a voter's selection of a candidate or answer to a ballot question indicated in the voting response area of the paper ballot marked in accordance with the instructions for that ballot type.

B. For paper ballots that are hand-tallied, a vote shall be counted if:
   (1) the ballot is marked in accordance with the instructions for that ballot type;
   (2) the preferred candidate's name or answer to a ballot question is circled;
   (3) there is a cross or check within the voting response area for the preferred candidate or answer to the ballot question; or
   (4) the presiding judges and election judges for the precinct unanimously agree that the voter's intent is clearly discernable.


1-1-5.3. Overseas voter.

As used in the Election Code, "overseas voter" means an individual who is a United States citizen, who is outside the United States and who:
   A. is temporarily absent from the individual's residence in this state;
   B. before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements;
   C. before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements; or
   D. was born outside the United States, is not otherwise described in this section and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if:
      (1) the last place where a parent or legal guardian of the individual was, or would have been, eligible to vote before leaving the United States is within this state; and
      (2) the individual has not previously registered to vote in any other state.


1-1-5.4. Uniformed-service voter.

As used in the Election Code, "uniformed-service voter" means an individual who is a United States citizen, whose voting residence is in this state, who otherwise satisfies this state's voter eligibility requirements and who is:
A. a member of the active or reserve components of the army, navy, air force, marine corps or coast guard of the United States who is on active duty and who by reason of that active duty is absent from the state;

B. a member of the merchant marine, the commissioned corps of the public health service, the astronaut program of the national aeronautics and space administration or the commissioned corps of the national oceanic and atmospheric administration of the United States and who by reason of that service is absent from the state;

C. a member on activated status of the national guard or state militia and who by reason of that active duty is absent from the member's county of residence; or

D. a spouse or dependent of a member referred to in Subsection A, B or C of this section and who, by reason of active duty or service of the member, is absent from the state; provided the spouse or dependent is an individual recognized as a spouse or dependent by the entity under which the member is serving.

History: Laws 2015, ch. 145, § 3.

1-1-5.5. Power of attorney; prohibited use.

A power of attorney or other form of proxy is not valid for use by a person in any procedure or transaction concerning elections, including voter registration, petition signature, voter-registration cancellation, absentee ballot requests or voting another person's ballot.

History: Laws 2015, ch. 145, § 5.

1-1-6. Recheck and recount.

As used in the Election Code [Chapter 1 NMSA 1978]:

A. "recheck" pertains to electronic vote tabulating systems and means a verification procedure whereby a printout of the electronic record of votes cast in an election is made from each electronic memory device in the electronic vote tabulating system and the results are compared with the results shown on the official returns; and

B. "recount" pertains to all paper ballots, including absentee ballots, provisional paper ballots, optical scan paper ballots and any other paper ballot and means a verification procedure whereby the voters' selections for an office are retallied and the results compared with the results shown on the official returns.

History: 1953 Comp., § 3-1-5.1, enacted by Laws 1977, ch. 222, § 1; 2005, ch. 270, § 8; 2007, ch. 337, § 3; 2009, ch. 150, § 1.

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.

History: 1953 Comp., § 3-1-6, enacted by Laws 1969, ch. 240, § 6; 1973, ch. 70, § 1.

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 [Chapter 1 NMSA 1978] 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 [Chapter 1 NMSA 1978], "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.


1-1-10. Qualified political party.

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


As used in the Election Code [Chapter 1 NMSA 1978], "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.

History: 1953 Comp., § 3-1-10, enacted by Laws 1969, ch. 240, § 10.

1-1-12. Consolidated precinct.

A. As used in the Election Code, "consolidated precinct" means the combination of two or more precincts into one polling place pursuant to the provisions of Section 1-3-4 NMSA 1978.

B. When consolidated precincts are used in an election, references to "precincts" in the voting process shall be applicable to consolidated precincts.


As used in the Election Code, "precinct board" or "poll workers" means the appointed election officials serving a single precinct, a consolidated precinct, an absent voter precinct or an alternate voting location.


1-1-14. Publication.

A. As used in the Election Code, "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 that 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.

B. In addition to publication as required by Subsection A of this section, any publication required of:
(1) the secretary of state shall also be posted in the office of the secretary of state and on
the secretary of state's web site; and
(2) the county clerk shall also be posted in the office of the county clerk and on the county's
web site, if the county maintains a web site.

History: 1953 Comp., § 3-1-13, enacted by Laws
1969, ch. 240, § 14; 1975, ch. 255, § 5; 1983, ch. 4, § 1;


A. As used in the Election Code, "posting" means posting for not less than seven days prior to
an election or to an action to be taken.
B. A posting as described in Subsection A of this section is satisfied by posting in the office of:
(1) the secretary of state and on the secretary of state's web site, when the secretary of state
has the duty to post; or
(2) the county clerk and on the county's web site, if the county maintains a web site, when
the county clerk has the duty to post.

History: 1953 Comp., § 3-1-14, enacted by Laws

1-1-16. Registration officer.

As used in the Election Code [Chapter 1 NMSA 1978], "registration officer" means the secretary of
state, a county clerk or a clerk's authorized deputy, a member of the board of registration or a state
employee performing registration duties in accordance with the federal National Voter Registration
Act of 1993 or Section 1-4-5.2 NMSA 1978.

History: 1953 Comp., § 3-1-15, enacted by Laws

1-1-16.1. Registration agent.

As used in the Election Code [Chapter 1 NMSA 1978], "registration agent" means a state or fed-
eral employee who provides voter registration at a state agency, or a tribal registration agent office,
or any other individual who assists another person in completion of a voter registration application.

History: Laws 2005, ch. 270, § 3.

1-1-16.2. New registrant.

As used in the Election Code [Chapter 1 NMSA 1978], "new registrant" means a person who was
not registered to vote in the state at the time the person registered to vote.

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

As used in the Election Code [Chapter 1 NMSA 1978], "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.

History: 1953 Comp., § 3-1-16, enacted by Laws 1969, ch. 240, § 17.

1-1-18. Oath includes affirmation.

As used in the Election Code [Chapter 1 NMSA 1978], "oath" includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word "swear" includes affirm.

History: 1953 Comp., § 3-1-17, enacted by Laws 1969, ch. 240, § 18.


A. The Election Code [Chapter 1 NMSA 1978] 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 [Chapter 1 NMSA 1978] 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.

History: 1978 Comp., § 1-1-20, enacted by Laws 1979, ch. 378, § 2.
1-1-21. County chairman.

In the event that a county chairman is designated a duty under the Election Code [Chapter 1 NMSA 1978] and a political party in a county does not have a county chairman to carry out the designated duty and where there are no other provisions delegating the duty assigned to the county chairman, the state chairman of the political party shall carry out the designated duty.


1-1-22. Computation of time; deadlines.

For the purpose of the Election Code, time periods of less than eleven days shall be computed as calendar days; provided, however, that if an actual deadline falls on a weekend or state-recognized holiday, the next business day shall be the deadline, unless the deadline is expressed as a day of the week, in which case that day remains the actual deadline.


1-1-23. Unique identifier.

As used in the Election Code [Chapter 1 NMSA 1978], "unique identifier" means a randomly generated series of numbers, letters or symbols assigned to a voter, which shall not be the voter's social security number or date of birth.


As used in the Election Code [Chapter 1 NMSA 1978], "required voter identification" means any of the following forms of identification as chosen by the voter:

A. a physical form of identification, which may be:
   (1) an original or copy of a current and valid photo identification with or without an address, which address is not required to match the voter's certificate of registration; or
   (2) an original or copy of a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and address of the person, the address of which is not required to match the voter's certificate of registration; or
B. a verbal or written statement by the voter of the voter's name, registration address and year of birth; provided, however, that the statement of the voter's name need not contain the voter's middle initial or suffix.


As used in the Election Code [Chapter 1 NMSA 1978], "voter information" means a document containing the person's name, address and precinct number that is issued by the county clerk or the secretary of state.

ARTICLE 2
Election Officers and Boards

Sec. 1-2-1. Secretary of state; chief election officer; rules.
1-2-1.1. Attorney general required to assist secretary of state; district attorneys required to assist secretary of state and county clerks.
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1-2-1. Secretary of state; chief election officer; rules.

A. The secretary of state is the chief election officer of the state.
B. The secretary of state shall:
  (1) obtain and maintain uniformity in the application, operation and interpretation of the Election Code; and
  (2) subject to the State Rules Act [Chapter 14, Article 4 NMSA 1978], make rules 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; provided that no rule is adopted or amended within the fifty-six days before a primary or a general election.
C. 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 required to assist secretary of state; district attorneys required to assist secretary of state and county clerks.

A. The attorney general shall, upon request of the secretary of state, provide legal advice, assistance, services and representation as counsel in any action to enforce the provisions of the Election Code and the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].
B. Upon the request of the secretary of state or a county clerk, the attorney general and the several district attorneys of the state shall assign investigators or lawyers to aid the secretary of state and county clerks to ensure the proper conduct of an election.
C. Each district attorney shall assign a lawyer to be the elections prosecutor for the judicial district or for each county in the judicial district. The district attorney shall communicate and maintain current the name and contact information of the assigned elections prosecutor to the secretary of state and to each county clerk in the judicial district. The assigned elections prosecutor shall receive from the county clerk in the prosecutor's county or judicial district referrals of suspected violations of the Election Code. The assigned elections prosecutor shall each month report in writing to the county clerk and the district attorney the status of each referral until the matter is concluded.

History: 1978 Comp., § 1-2-1.1, enacted by Laws 1979, ch. 74, § 3; 1981, ch. 159, § 1; 2015, ch. 145, § 8.

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

The secretary of state shall:
A. generally supervise all elections by administering the Election Code [Chapter 1 NMSA 1978] in its statewide application;
B. prepare instructions for the conduct of election and registration matters in accordance with the laws of the state;
C. 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;
D. report possible violations of the Election Code of which the secretary of state has knowledge to the district attorney or the attorney general for prosecution;
E. cause to be published in book 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;
F. be responsible for the education and training of county clerks regarding elections;
G. be responsible for the education and training of voting machine technicians; and
H. assist the county clerks in the education and training of registration officers.


1-2-2.1. Administrative complaints; procedures.

A. The secretary of state shall adopt rules for an administrative procedure for hearing complaints on violations of the provisions of Title III of the federal Help America Vote Act of 2002, including provisions related to voting system standards, provisional voting procedures, voter registration procedures and operational standards of the statewide voter registration system.
B. A person who determines that there is a violation or that a violation is about to occur pursuant to this section may file a complaint with the secretary of state. Complaints may be consolidated by the secretary.
C. Complaints shall be in writing, signed and sworn by the person filing the complaint and notarized.
D. The hearing shall be on the record if the complainant requests.
E. If the hearing officer determines that there is a violation, an appropriate remedy shall be provided. If there is no violation, the complaint shall be dismissed and the results of the hearing made available to the public.
F. A final decision shall be made within ninety days of the filing of the complaint unless the complainant consents to extending the deadline. If the deadline is not met, the complaint shall be resolved within sixty days through alternative dispute resolution procedures established pursuant to the Governmental Dispute [Prevention] Resolution Act [Chapter 12, Article 8A NMSA 1978]. Records and materials from the hearing shall be available for use in an alternative dispute resolution procedure.


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; training and instructions to precinct boards; training manual.

A. The secretary of state shall provide:
   (1) instructions for the precinct board, which shall include a brief nontechnical explanation of its duties as required by the Election Code [Chapter 1 NMSA 1978]; and
   (2) a single training manual containing standard guidelines for the operations and processes of statewide elections, including pre-election day activities, election-day activities and post-election-day activities. Separate manuals for voting systems may be provided for each county, or if
the single training manual is in a looseleaf binder format, sections for the voting systems used in
a given county may be inserted in the training manual for that county.

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.

History: 1953 Comp., § 3-2-4, enacted by Laws 1969,
ch. 240, § 25; 1975, ch. 255, § 10; 2005, ch. 270, § 11;

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

In carrying out his duties under the Election Code [Chapter 1 NMSA 1978], 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.

History: 1953 Comp., § 3-2-5, enacted by Laws 1969,
ch. 240, § 26; 1975, ch. 255, § 11.

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.

History: 1953 Comp., § 3-2-7, enacted by Laws 1969,
ch. 240, § 28; 1971, ch. 317, § 2; 1975, ch. 255, § 12;

1-2-7. Precinct board; qualification of members; qualification of presiding
judges; qualification of minors.

A. In order to qualify as a member of the precinct board, a person shall:
(1) be a voter of the county in which the person is appointed to serve;
(2) be able to read and write;
(3) have the necessary capacity to carry out a precinct board member's functions with accep-
table skill and dispatch; and
(4) execute the precinct board member's oath of office.

B. Before serving as a presiding judge of a precinct board, a person shall receive training in the
duties of that position and be certified for the position by the county clerk.

C. No person shall be qualified for appointment or service on a precinct board:
(1) who is a candidate to be voted for at the election;
(2) who is a spouse, parent, child, brother or sister of any candidate to be voted for at the
election;

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(3) who is married to a parent, child, brother or sister of any candidate to be voted for at
the election or who is the parent of the spouse of any candidate to be voted for at the election; or
(4) who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police
officer.

D. A county clerk may appoint not more than two minors to serve on a precinct board under the
direct supervision of the presiding judge. A minor appointed by the county clerk shall:
(1) meet the qualifications set forth in Subsection A of this section, except the minor need
not be eligible to vote;
(2) be sixteen or seventeen years of age at the time of the election in which the minor is
serving as a member of a precinct board;
(3) be a citizen at the time of the election for which the minor will be serving as a member
of a precinct board;
(4) have the approval of the minor's parent or legal guardian, unless the minor is emanci-
pated;
(5) attend at least one school of instruction in accordance with the provisions of Section
1-2-17 NMSA 1978; and
(6) be appointed to a precinct board in the county in which the minor's parent or legal
guardian resides, in accordance with the provisions of Section 1-2-11 NMSA 1978.

E. A minor appointed to a precinct board shall not serve as the presiding judge or as an election
judge.

History: 1953 Comp., § 3-2-8, enacted by Laws 1969, 1981, ch. 159, § 2; 2005, ch. 270, § 12; 2010, ch. 90, § 1;

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.

History: 1953 Comp., § 3-2-9, enacted by Laws 1975,

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 chairs in the order stated thereon;
B. from the list of minors who qualify to be precinct board members at the discretion of the county clerk;
C. from the standby list; and
D. 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 on any precinct board 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.

A. For primary, general and special federal elections, the precinct board shall consist of:
   (1) a presiding judge;
   (2) two election judges; and
   (3) one election clerk.
B. The county clerk, in appointing precinct boards for primary, general and special federal elections:
   (1) shall appoint presiding judges and election judges so that at least one election judge shall not be of the same political party, if any, as the presiding judge; and
   (2) may appoint teams of presiding judges and election judges for absent voter precincts, recount precinct boards and alternate voting locations, provided that each team meets the requirements pursuant to Paragraph (1) of this subsection.
C. For all other elections, the precinct board shall consist of:
   (1) a presiding judge;
   (2) one election judge; and
   (3) one election clerk.
D. If the county clerk determines that additional election clerks are needed, the clerk may appoint such additional election clerks as the clerk deems necessary.
E. County clerk employees may be appointed to assist a precinct board.


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 polling location, by precinct where applicable, post the list in a conspicuous and accessible place in the county clerk's office and keep it posted for five days and send a copy of the list upon request to the county chair of each political party participating in the election and to the secretary of state; and
   (2) notify each person appointed, request the person's acceptance and keep a record of all notifications and acceptances.

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


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

A. If 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 the federal minimum hourly wage rate nor more than two hundred dollars ($200) for an election day.

B. Members of a precinct board assigned to alternate voting locations or absent voter precincts may be compensated at an hourly rate set by the county clerk.

C. Compensation shall be paid within thirty days following the date of election.
D. For purposes of determining eligibility for membership in the public employees retirement association and pursuant to the provisions of Subsection B of Section 10-11-3 NMSA 1978, precinct board members are designated as seasonal employees.

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

A. 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 elections.

B. The schools for instruction provided for in this section shall be as follows:
   (1) one school not less than seven days before the primary election;
   (2) one school not less than seven days before the general election; and
   (3) one school not less than seven days before any other statewide election.

C. All major details of the conduct of elections shall be covered by the county clerk or the clerk's authorized representative at such school, with special emphasis being given to recent changes in the Election Code.

D. 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 at least seven days prior to commencement of the school.

E. A person shall not serve as a judge or member of a precinct board in any election unless that person has attended at least one such school of instruction in the calendar year of the election at which the person 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.


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 [Chapter 1 NMSA 1978], "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.

History: 1953 Comp., § 3-2-17.1, enacted by Laws 1977, ch. 124, § 2; 1989, ch. 392, § 3.

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. Messengers may also be authorized to collect absentee ballots and removable media storage devices from polling places and deliver them to locations designated by the county clerk.

B. Messengers shall be paid mileage as provided in the Per Diem and Mileage Act [10-8-1 through 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.


A. The county chair of each political party represented on the ballot may appoint in writing challengers for each polling location. If more than one challenger is appointed to a polling location, the challengers shall be listed in ranking order.

B. If any county chair fails to make such appointments, the precinct chair of the political party may appoint in writing one challenger for the polling location corresponding to the precinct.

C. If any precinct chair 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 in writing.

1-2-22. Challengers, watchers and election observers; qualifications; restrictions.

Challengers and watchers shall be voters of a precinct located in that county to which they are appointed. No person shall be qualified for appointment or service as a challenger, watcher or election observer:

A. who is a candidate for any office to be voted for at the election;
B. who is a spouse, parent, child, brother or sister of any candidate to be voted for at the election;
C. who is married to a parent, child, brother or sister of any candidate to be voted for at the election or who is the parent of the spouse of any candidate to be voted for at the election; or
D. who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.


1-2-23. Challengers; permitted activities.

A. A challenger, upon presentation of the written appointment to the precinct board, shall be permitted to be present at any time from the time the precinct board convenes at the polling place until the completion of the precinct board's duties after the polls close.

B. A challenger, for the purpose of interposing challenges, may:
   (1) view the signature roster or precinct voter list for the purpose of determining whether the challenger desires to interpose a challenge when a signature roster or precinct voter list is used;
   (2) view the application to vote form before the voter receives a ballot for the purpose of determining whether the challenger desires to interpose a challenge when an application to vote form is used;
   (3) view the signature roster or checklist of voters to determine whether entries are being made in accordance with the Election Code;
   (4) view each voting machine before the polls are opened to ensure that the public counter is at zero, that the results tape contains no votes and that there are no voted ballots in the voting machine bins; and
   (5) 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.


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, watchers, county canvass observers; permitted and prohibited activities.

A. Challengers, watchers and county canvass observers shall:
   (1) not be permitted to perform any duty of a precinct board member;
   (2) not handle the ballots, signature rosters, checklist of voters or voting machines or take any part in the counting or tallying of the ballots or the county canvass;
   (3) not be allowed to view a voter's full date of birth or any portion of the voter's social security number;
   (4) not interfere with the orderly conduct of the election, the counting or tallying of the ballots or the county canvass;
   (5) be allowed in the room in which the voting is being conducted at a polling location, provided that at any given time each political party, candidate or election-related organization may have no more than one person present; and
   (6) be allowed in the room in which the absent voter precinct board conducts its business or, in the case of county canvass observers, in which the county canvass is conducted, provided that each political party, candidate or election-related organization shall have no more than:
      (a) two persons present at any given time in counties with more than ten thousand registered voters;
      (b) four persons present at any given time in counties with more than fifty thousand registered voters; or
      (c) fifteen persons present at any given time in counties with more than two hundred fifty thousand registered voters.

B. Subject to permission granted by the county clerk, additional challengers may be present in the room in which the absent voter precinct board conducts its business, provided that the number of additional challengers allowed pursuant to this subsection is identical for each political party participating in the election.


The act of denying a challenger, who has presented a written appointment to the precinct board and who is not interfering with the orderly conduct of the election, the right to be present at the polling place, or denying a challenger the right to challenge voters and view the signature rosters or checklist of voters or denying a challenger the right to witness the precinct board in the conduct of its duties is a petty misdemeanor.


1-2-27. Watchers; appointment.

A. An election-related organization may appoint watchers in a county if the organization provides a written notice to the secretary of state at least ten days prior to the election date and specifies the names of the qualified appointees. The secretary of state shall notify the county clerk of the qualified appointees at least five days before the election.
B. Any group of three candidates for elected office may appoint watchers in a county if the candidates provide a written notice to the secretary of state at least ten days prior to the election date and specify the names of the qualified appointees. The secretary of state shall notify the county clerk of the qualified appointees at least five days before the election.


1-2-29. Watchers and election observers; permissible activities.

A. Upon presentation to a precinct board of a written appointment, a watcher or election observer may:

(1) be present at any time from the time the precinct board convenes at the polling place until the completion of the precinct board's duties after the polls close;

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

(3) view the precinct voter list to ascertain whether a voter has voted, subject to the same prohibitions and restrictions as are placed upon challengers by the Election Code;

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

(5) 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 appointed on behalf of candidates may be present only in polling locations within the county of appointment at which ballots are cast for at least one of the candidates making the appointment.


1-2-30. Watchers and election observers; penalty.

The act of denying a watcher or an election observer, who has presented a written appointment to the precinct board and who is not interfering with the orderly conduct of the election, the right to be present at the polling place or denying a watcher or election observer the right to witness the precinct board in the conduct of its duties is a petty misdemeanor.


1-2-31. County canvass observers.

A. The county chair of each political party represented on the ballot may appoint in writing county canvass observers. A candidate for elected office and an election-related organization may each appoint county canvass observers in a county if the candidate or organization makes a written request to the secretary of state at least ten days prior to the election date and specifies the names
of the qualified appointees. The secretary of state shall notify the county clerk of the qualified appointees at least five days before the election.

B. County canvass observers shall be voters of a precinct located in that county to which they are appointed. No person shall be qualified for appointment or service as a county canvass observer who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.

C. A county canvass observer or an election observer, upon presentation of the observer's written appointment, shall be permitted to be present at any time from the time the county canvassing begins until the completion of the canvass.

D. A county canvass observer or election observer is strictly limited to observing and documenting the canvassing process and shall not interrupt the canvassing process.

E. County canvass observers and election observers shall not interfere with the orderly conduct of the canvass and may be removed by the county clerk if the observer does not comply with the law.

F. As used in this section, "county canvass" means the process of qualifying and verifying paper ballots and counting and tallying votes for each precinct beginning upon the closing of the polls and ending with the certification and announcement of the results by the county canvassing board.


1-2-32. State canvass observers.

A. The state chair of each political party represented on the ballot may appoint in writing state canvass observers. A candidate for elected office and an election-related organization may each appoint state canvass observers if the candidate or organization makes a written request to the secretary of state at least ten days prior to the election date and specifies the names of the qualified appointees.

B. State canvass observers shall be voters of the state. No person shall be qualified for appointment or service as a state canvass observer who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.

C. The state canvass observer or election observer, upon presentation of the observer's written appointment, shall be permitted to be present at any time from the time the state canvassing begins until the completion of the canvass.

D. A state canvass observer or election observer is strictly limited to observing and documenting the canvassing process, and shall not interrupt the canvassing process.

E. State canvass observers shall not interfere with the orderly conduct of the canvass and may be removed by the secretary of state if the observer does not comply with the law.

F. As used in this section, "state canvass" means the process of examining election returns and certificates issued by the county canvassing boards and ending with the certification and announcement of the results by the state canvassing board.

History: Laws 2011, ch. 137, § 11.

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.

Sec. 1-3-3.1. Repealed.
1-3-4. Consolidation of precincts.
1-3-5. Precincts; powers of county commissioners.

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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. All 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 voting participants 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.

History: 1953 Comp., § 3-3-1, enacted by Laws 1969, ch. 240, § 50; 1975, ch. 255, § 27; 1977, ch. 64, § 1; 1984, 1st S.S., ch. 3, § 1; 1991 (1st S.S.), ch. 6, § 1; 1995, ch. 126, § 1.

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;

(4) consolidate any precincts pursuant to Section 1-3-4 NMSA 1978;

(5) divide any precincts as necessary to meet legal and constitutional requirements for redistricting; and

(6) designate any mail ballot election precincts.

B. The county clerk shall notify the secretary of state in writing of any proposed 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. Any necessary precinct boundary adjustments shall be made and submitted to the secretary of state no later than the first Monday in December of each odd-numbered 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 from 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 from both precincts in the last preceding general election exceeds eight hundred or where such combinations would cross legislative district boundary lines.


1-3-3.1. Repealed.

1-3-4. Consolidation of precincts.

A. Precincts may be consolidated by the board of county commissioners for the following elections:

1. primary and general elections;
2. statewide special elections;
3. countywide special elections; and
4. elections to fill vacancies in the office of United States representative.

B. Precincts may be consolidated by the governing body of a municipality for municipal candidate and bond elections, unless otherwise prohibited.

C. Precincts may be consolidated by the local school board for school district candidate and bond elections, unless otherwise prohibited.

D. When precincts are consolidated for a primary and general election, the resolution required by Section 1-3-2 NMSA 1978, in addition to the other matters required by law, shall state therein which precincts have been consolidated and the designation of the polling place. In addition, when consolidating precincts for primary and general elections:

1. any voter of the county shall be allowed to vote in any consolidated precinct polling location in the county;
2. each consolidated precinct in a primary or general election shall be composed of no more than ten precincts;
3. each consolidated precinct shall comply with the provisions of Section 1-3-7 NMSA 1978;
4. each consolidated precinct polling location shall have a broadband internet connection and real-time access to the statewide voter registration electronic management system;
5. the county clerk may maintain any alternative voting locations previously used in the same election open for voting on election day for any voter in the county, in addition to the polling location established in each consolidated precinct; and
6. the board of county commissioners may permit rural precincts to be exempted from operating as or being a part of a consolidated precinct; provided that if the precinct is not designated
as a mail ballot election precinct pursuant to Section 1-6-22.1 NMSA 1978 and the polling place for
the rural precinct does not have real-time access to the statewide voter registration electronic man-
agement system, voters registered in a rural precinct as described in this paragraph are permitted
to vote in any consolidated precinct polling location on election day only by use of a provisional
paper ballot, which shall be counted after the county clerk confirms that the voter did not also vote
in the rural precinct.

E. When precincts are consolidated for a municipal election, school election or special county
election, the proclamation, in addition to the other matters required by law, shall state which
precincts have been consolidated and the designation of the polling place. Precincts consolidated
for a municipal election, school election or special county election may allow any voter to vote in
any consolidated precinct in the county, which shall be stated in the proclamation.

F. When precincts are consolidated for a statewide special election or for a special election to fill
a vacancy in the office of United States representative, within twenty-one days after the procla-
amation of election is issued by the governor; the board of county commissioners shall pass a resolution
that, in addition to other matters required by law, shall state which precincts have been consoli-
dated and the designation of the polling place. Precincts consolidated for a statewide special elec-
tion or for a special election to fill a vacancy in the office of United States representative may allow
any voter to vote in any consolidated precinct in the county, which shall be stated in the resolution.

G. Unless the county clerk receives a written waiver from the secretary of state specifying the
location and specific provision being waived, each consolidated precinct polling location shall:

(1) have ballots available for voters from every precinct that is able to vote in the consoli-
dated precinct;
(2) have at least one optical scan tabulator programmed to read every ballot style able to
be cast in the consolidated precinct;
(3) have at least one voting system available to assist disabled voters to cast and record
their votes;
(4) have sufficient spaces for at least five voters to simultaneously and privately mark their
ballots, with at least one of those spaces wheelchair-accessible;
(5) have sufficient check-in stations to accommodate voters throughout the day as provided
in Section 1-9-5 NMSA 1978;
(6) have a secure area for storage of preprinted ballots or for storage of paper ballot stock
and a system designed to print ballots at a polling location;
(7) issue a ballot to voters who have provided the required voter identification after the
voter has signed a signature roster or an electronic equivalent approved by the voting system cer-
tification committee or after the voter has subscribed an application to vote on a form approved by
the secretary of state; and
(8) be in a location that is accessible and compliant with the requirements of the federal

H. As a prerequisite to consolidation, the authorizing resolution must find that consolidation
will make voting more convenient and accessible to voters of the consolidated precinct and does not
result in delays for voters in the voting process and the consolidated precinct voting location will
be centrally located within the consolidated precinct.

History: 1953 Comp., § 3-3-4, enacted by Laws 1975,
ch. 255, § 30; 2011, ch. 131, § 3; 2015, ch. 145, § 11.
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 twenty-five 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.

History: 1953 Comp., § 3-3-7, enacted by Laws 1969, ch. 240, § 56; 1995, ch. 126, § 3.

1-3-6.1. Repealed.

1-3-7. Polling places.

A. No less than one polling place shall be provided for each precinct that is not a mail ballot election precinct.

B. The board of county commissioners shall designate as the polling place or places, as the case may be, in each precinct, other than a mail ballot election 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.

D. If, in a precinct that is not a mail ballot election precinct or a consolidated precinct, there is no public building or public school building available in the precinct, and 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. 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 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.

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 [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-3-9, enacted by Laws 1969, ch. 240, § 58; 1975, ch. 255, § 32.

1-3-9. Precincts; exclusions.

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

History: 1953 Comp., § 3-3-10, enacted by Laws 1975, ch. 255, § 33; 1991 (1st S.S.), ch. 6, § 5.

1-3-10. Short title.

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

History: Laws 1983, ch. 223, § 1; 1991 (1st S.S.), ch. 6, § 6.

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 election precincts by
the bureau of the census in the federal decennial census and in order to provide such enumeration data to the New Mexico legislature for purposes of legislative reapportionment.

**History:** Laws 1983, ch. 223, § 2; 1995, ch. 126, § 4.

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

A. Before each federal decennial census, every precinct boundary shall be adjusted to coincide with a feature or a boundary that is:
   1. shown on the standard base maps developed pursuant to Subsection B of this section;
   2. a designated census block boundary on the proposed federal PL 94-171 2010 census block maps; or
   3. approved by the secretary of state and the bureau of the census.

B. Prior to commencement of the federal decennial census, the secretary of state shall have prepared and shall furnish to each county clerk standard base maps of the county. The standard base map for urban and nonurban areas of the county shall, as nearly as practical, show:
   1. all state and federal highways;
   2. all numbered and named county roads that have been certified to the department of transportation;
   3. all military installation boundaries and federal and state prison boundaries;
   4. all major railroad lines;
   5. federal, state and county political boundaries, municipal boundaries and school district boundaries;
   6. all streets within urban areas; and
   7. other major terrain features such as flowing rivers and streams, arroyos, powerlines, pipelines, roads, trails and ridgelines and other acceptable census block boundaries.

C. The board of county commissioners and the county clerks, upon receipt of the standard base maps from the secretary of state, shall:
   1. adjust all precinct boundaries to coincide with numbered or named street boundaries or suitable visible terrain features shown on the standard base map; provided that the precincts shall be composed of contiguous and compact areas, and state, county, municipal, school district and other political boundary lines shall serve as precinct boundaries whenever possible; and
   2. 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 an electronic copy in a format approved by the secretary of state or four copies of the precinct maps to the secretary of state for approval.

D. The precincts shown upon the standard base maps submitted pursuant to the provisions of this section and as revised and approved 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 2011 redistricting. For the 2012 and subsequent primary and general elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978.

E. A local public body, when creating or redrawing districts, shall not split a precinct into two or more districts for any elected office unless necessary to comply with federal law or to preserve communities of interest.

F. Precincts shall be designated solely by whole numbers.

**History:** 1978 Comp., § 1-3-12, enacted by 1984 (1st S.S.), ch. 3, § 4; 1991 (1st S.S.), ch. 6, § 7; 1995, ch. 126, § 5; 1997, ch. 85, § 1; 2005, ch. 270, § 16; 2009, ch. 222, § 2.

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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 with the precinct boundary criteria set forth in Subsection A of Section 1-3-12 NMSA 1978 shall be rejected and returned to the appropriate county clerk with a written statement setting forth those instances in which the map does not comply. 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, 2012, if any precinct boundary adjustments are necessary to meet the legal and constitutional requirements of redistricting, 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 2012 primary and general elections.


1-3-14. Standard base map required.

All precinct maps prepared by the county clerk as required in the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] 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 to 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 bureau of elections and do not apply to precincts that are consolidated pursuant to the provisions of Section 1-3-4 NMSA 1978.

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 the clerk's 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 shall be furnished and have available equipment necessary to assist voters in reading the ballot.


1-3-19. Election-day polling places; adequate resources.

A. Each election-day polling place in a primary or general election that does not contain mail ballot election precincts or precincts consolidated pursuant to Section 1-3-4 NMSA 1978 shall comply with the requirements for polling places and precincts as provided in Subsections B and C of this section, unless the county clerk receives a written waiver from the secretary of state specifying the location and specific provision being waived.

B. Each polling place shall:
   (1) have at least one voting system available to assist disabled voters to cast and record their votes; and
   (2) be in a location that is accessible and compliant with the requirements of the federal Americans with Disabilities Act of 1990.

C. Each precinct polling place located within a single polling place shall have:
   (1) a separate precinct board and signature roster for the precinct;
   (2) at least one optical scan tabulator for the precinct; and
   (3) sufficient spaces for at least five voters to simultaneously and privately mark their ballots, with at least one of those spaces wheelchair-accessible, for the precinct.

History: Laws 2013, ch. 189, § 1.

**ARTICLE 4**

Registration of Electors

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1-4-48. Agency registration.

1-4-49. Third-party registration agents; registration required; procedures; reports; penalty.

1-4-50. Prohibition on release of registration information.

1-4-1. Registration required.

No person shall vote at any election unless he is registered as required by the Election Code [Chapter 1 NMSA 1978]. No ballot of any unregistered or otherwise unqualified elector shall be cast, counted or canvassed.

History: 1953 Comp., § 3-4-1, enacted by Laws 1969, ch. 240, § 59.

1-4-1.1. Authorization to verify voter registration information; investigation and reconciliation.

A. The secretary of state may:

(1) provide to the chief election officer of another state or a consortium of chief election officers of other states information that is requested, including social security numbers, dates of birth, driver's licenses and identification card numbers and other information that the secretary of state deems necessary for the chief election officer of that state or for the consortium to maintain a voter registration list, if the secretary of state is satisfied that the information provided pursuant to this paragraph will be used only for the maintenance of that voter registration list; and

(2) request from the chief election officer of another state or a consortium of chief election officers of other states information that the secretary of state deems necessary to maintain the statewide voter registration list.

B. The secretary of state may enter into a written agreement with an agency or political subdivision of this state or with a department of the federal government pursuant to which the state agency, political subdivision or federal department shall provide to the secretary of state information that is in the possession of the state agency, political subdivision or federal department and that the secretary of state deems necessary to maintain the statewide voter registration list.

C. The secretary of state may enter into a written agreement with the secretary of taxation and revenue to match information in the database of the voter registration electronic management system with information in the database of the motor vehicle division of the taxation and revenue department to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration. Upon the execution of the written agreement, the secretary of taxation and revenue shall enter into an agreement with the federal commissioner of social security pursuant to 42 U.S.C. Section 15483 (now 52 U.S.C. Section 21083), for the purpose of verifying applicable information.
D. The secretary of state shall provide to the appropriate county clerk in this state and to no other person necessary information or documentation received by the secretary of state from or through an agency or political subdivision of this state, a federal department, the chief election officer of another state or a consortium of chief election officers of other states that calls into question the information provided on a certificate of registration; that raises questions regarding the status of a person registered to vote in this state; or that suggests that a voter may have voted in two states during the same election. The county clerk shall only disclose information received from the secretary of state pursuant to this subsection to complete an investigation pursuant to this section.

E. The county clerk shall investigate or reconcile the information received from the secretary of state. The secretary of state shall develop and maintain a manual for county clerks that describes best practices in investigating and reconciling information that is derived from comparisons of different databases, including safeguards to ensure that eligible voters are not removed in error from the official list of voters.


1-4-2. Qualification for registration.

Any resident of New Mexico who will be a qualified elector at the date of the next ensuing election shall be permitted within the provisions of the Election Code [Chapter 1 NMSA 1978] to register and become a voter.


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 [Chapter 1 NMSA 1978].


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 [Chapter 1 NMSA 1978] in connection with registration.

History: 1953 Comp., § 3-4-4, enacted by Laws 1969, ch. 240, § 62.

1-4-5. Method of registration; unlawful use of information; penalty.

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

B. The registration officer or agent or qualified elector shall fill out each of the blanks on the certificate of registration by typing or printing in ink. The qualified elector shall be given a receipt that shall contain:

(1) a number traceable to the registration agent or officer;
(2) a statement informing the qualified elector that if the qualified elector does not receive confirmation of the qualified elector's registration within fifteen days of the receipt date, the qualified elector should contact the office of the county clerk in the county where the qualified elector resides; and

(3) a toll-free number for the office of the county clerk and an address for the web site of the secretory of state.

C. The qualified elector shall subscribe a certificate of registration as follows:

(1) by signing the certificate of registration using the qualified elector's given name, middle name or initial and last name; or

(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 or agent and the name of the qualified elector so registering shall be subscribed by the making of the qualified elector's mark.

D. When properly executed by the registration agent or officer or qualified elector, the original of the certificate of registration shall be presented, either in person or by mail by the qualified elector or by the registration agent or officer, to the county clerk of the county in which the qualified elector resides. It is unlawful for the qualified elector's month and day of birth or any portion of the qualified elector's social security number required on the certificate of registration to be copied, conveyed or used by anyone other than the person registering to vote, either before or after it is filed with the county clerk, and by elections administrators in their official capacity.

E. A person who unlawfully copies, conveys or uses information from a certificate of registration is guilty of a fourth degree felony.


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

A. A qualified elector may apply for registration by mail, in the office of the secretary of state or county clerk or with a registration agent or officer.

B. A person may request certificate of registration forms from the secretary of state or any county clerk in person, by telephone or by mail for that person or for other persons.

C. Except as provided in Subsection D of this section, 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. A qualified elector who has filed for an order of protection pursuant to the provisions of the Family Violence Protection Act [Chapter 40, Article 13 NMSA 1978] and who presents a copy of that order from a state or tribal court to the registration officer shall not be required to provide physical residence address information on the certificate of registration.

E. 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.

F. 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.

G. Within one business day after 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. Within one business day after receipt of a certificate of registration of another county, a county clerk shall
send the certificate of registration to the county clerk in the county where the qualified elector resides.

H. 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 the county clerk's signature or stamp and the date of acceptance thereon shall it constitute an official public record of the registration of the qualified elector. A qualified elector complies with a voter registration deadline established in the Election Code when a properly filled-out voter registration certificate has been received by a county clerk or the secretary of state, regardless of the date the certificate is processed.

I. The secretary of state shall prescribe the form of the certificate of registration, which form 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. The form shall also include:

(1) the question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen;

(2) the question "Will you be at least eighteen years of age on or before the next general election?" and boxes for the applicant to check to indicate whether the applicant will be eighteen years of age or older on or before the next general election;

(3) the statement "If you checked 'no' in response to either of these questions, do not complete this form.");

(4) a statement informing the applicant that:

(a) if the form is submitted by mail by the applicant and the applicant is registering for the first time in New Mexico, the applicant must submit with the form a copy of: 1) a current and valid photo identification; or 2) a current utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and current address of the applicant; and

(b) if the applicant does not submit the required identification, the applicant will be required to do so when voting in person or absentee; and

(5) a statement requiring the applicant to swear or affirm that the information supplied by the applicant is true.


1-4-5.2. Agency registration; form.

A. A qualified elector may register to vote at certain state government offices.

B. Pursuant to Section 1-4-47 NMSA 1978, a qualified elector who applies for a driver's license, license renewal or motor vehicle identification card may simultaneously register to vote or file a change of address for voter registration purposes.

C. Pursuant to Section 1-4-48 NMSA 1978, a qualified elector may register to vote in any state agency that provides public assistance or services to persons with disabilities. The secretary of state may designate other state or local public offices with the agreement of those offices.

History: 1978 Comp., § 1-4-5.2, enacted by Laws 1993, ch. 198, § 3.
1-4-5.3. Registration; lack of physical address.

A. If a qualified elector resides in an area lacking a specific physical address, the qualified elector shall be allowed to substitute a mailing address along with a description, such as a map or the latitude and longitude, indicating where the qualified elector resides. The qualified elector shall be assigned to a precinct based on the geographic description of where the qualified elector resides.

B. The secretary of state shall issue rules regarding acceptable forms of non-physical addresses.


1-4-5.4. 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 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 of former registration, social security number, date 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.


1-4-5.5. Requests for voter data, mailing labels or special voter lists.

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

B. In furnishing voter data, mailing labels or special voter lists, the county clerk or secretary of state shall not provide data or lists that include voters' social security numbers, codes used to identify agencies where voters have registered, a voter's day and month of birth or voters' telephone numbers if prohibited by voters.

C. 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 unlawful purposes.

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

E. As used in this section:

(1) "election campaign purposes" means relating in any way to a campaign in an election conducted by a federal, state or local government;
(2) "governmental purposes" means noncommercial purposes relating in any way to the structure, operation or decision-making of a federal, state or local government;

(3) "mailing labels" means prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;

(4) "special voter list" means a prepared list of selected voters arranged in the order in which requested; and

(5) "voter data" means selected information derived from the voter file.


1-4-5.6. Unlawful use of voter data, mailing labels or special voter lists; penalties.

A. Unlawful use of voter data, mailing labels or special voter lists consists of the knowing and willful use of such information for purposes prohibited by the Voter Records System Act [Chapter 1, Article 5 NMSA 1978].

B. Any person, organization or corporation or agent, officer, representative or employee thereof who commits unlawful use of voter data, mailing labels or special voter lists is guilty of a fourth degree felony and upon conviction shall be fined one hundred dollars ($100) for each and every line of voter information that was unlawfully used.

C. Each and every unlawful use of voter data, mailing labels or special voter lists constitutes a separate offense.


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 [Chapter 1 NMSA 1978].


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

For qualified electors, the following provisions shall apply:

A. the county clerk shall receive certificates of registration at all times during normal working hours, except that the clerk 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 any certificate of registration in the registration book until the Monday following the election, at which time a voter information document 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; and
F. the county clerk shall accept for filing any certificate of registration that is subscribed and dated on or before the twenty-eighth day preceding the election and:
   (1) received by the county clerk before 5:00 p.m. on the Friday immediately following the close of registration;
   (2) mailed and postmarked not less than twenty-eight days prior to any election referred to in this section; or
   (3) accepted at a state agency designated pursuant to Section 1-4-5.2 NMSA 1978.


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.

History: 1953 Comp., § 3-4-8.1, enacted by Laws 1977, ch. 124, § 3.

1-4-10. Recompiled.

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

A. Upon receipt of a complete certificate of registration, if the certificate of registration is 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, the qualified elector's name and the date the certificate was accepted for filing in the county registration records. Voter information shall be handed or mailed immediately to the qualified elector and to no other person.
B. If the qualified elector is already registered in the county as shown by the qualified elector's 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 Section 1-4-13, 1-4-15, 1-4-17 or 1-4-18 NMSA 1978. If the applicant's certificate of registration is rejected for any reason, the county clerk shall stamp or write the word "rejected" on the new certificate of
registration and hand or mail it, if possible, to the applicant with an explanation of why the new certificate of registration was rejected and what remedial action, if any, the applicant must take to bring the registration up to date or into compliance with the Election Code.

C. The county clerk shall reject any certificate of registration that does not contain the qualified elector's name, address, social security number and date of birth, along with a signature or usual mark. The county clerk shall reject any certificate of registration in which the question regarding citizenship is not answered or is answered in the negative.

D. If the qualified elector does not register in person, indicates that the qualified elector has not previously voted in a general election in New Mexico and does not provide the registration officer with the required identification, the registration officer shall indicate this on the qualified elector's certificate of registration and the county clerk shall note this on the appropriate precinct signature roster.


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. a voter information document 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 that are in proper form and that were received in the county clerk's office up to 5:00 p.m. on the preceding Friday. The county clerk shall not process certificates of registration when the registration books are closed pursuant to Section 1-4-8 NMSA 1978, during the county canvass or during the period of time following the county canvass when voter credit is entered into the voter registration electronic management system, provided such credit is entered for all voters no later than forty-five days following an election.


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. Repealed.

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

A. A voter may change the voter's designated party affiliation by executing a new certificate of registration indicating the 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 execute a new certificate of registration indicating the desired party affiliation.

C. A voter who does not designate on the certificate of registration a party affiliation shall be considered to have declined to designate a party affiliation.


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 the voter's registered residence address from one county in this state to another county in this state, the voter shall complete a new certificate of registration and file it with the appropriate county clerk.

1-4-18.1. Online voter registration updates.

A. A person may complete a certificate of registration in person or by mail. In addition, the secretary of state shall, not later than January 1, 2016, allow a voter to submit an update to an existing certificate of registration and, not later than July 1, 2017, allow a qualified elector to submit a new certificate of registration form electronically through a web site authorized by the secretary of state or through any computer system maintained by a state agency for electronic voter registration that is approved by the secretary of state; provided that the person is qualified to register to vote and has a current or expired New Mexico driver's license or state identification card issued by the motor vehicle division of the taxation and revenue department.

B. An online certificate of registration form shall contain all of the information that is required for a paper form. The person shall also be required to provide the person's full New Mexico driver's license number or state identification card number.

C. When a person submits a new certificate of registration or an update to an existing certificate of registration, the person shall mark the box associated with the following statement included as part of the electronic certificate of registration form:

"By clicking the boxes below, I swear or affirm all of the following:

I am the person whose name and identifying information is provided on this form, and I desire to register to vote in the state of New Mexico; and
all of the information that I have provided on this form is true and correct as of the date I am submitting this form.".

D. Prior to January 1, 2016, the secretary of state, in conjunction with the county clerks of the state, shall adopt rules establishing a uniform and nondiscriminatory process to match the information contained in the voter registration election management system with the database of the motor vehicle division of the taxation and revenue department or the federal social security administration for electronic certificates of registration updates completed pursuant to this section.

E. Prior to January 1, 2017, the secretary of state, in conjunction with the county clerks of the state, shall adopt rules establishing a uniform and nondiscriminatory process to match the information contained in the voter registration election management system with the database of the motor vehicle division of the taxation and revenue department or the federal social security administration for all electronic certificates of registration completed pursuant to this section.

F. Electronically submitted certificate of registration application forms shall retain the dates of submission by the qualified elector and of acceptance by the county clerk.

G. For purposes of deadlines contained in the Election Code, the time and date of the submission by the qualified elector shall be considered the time and date when the certificate of registration is received by the county clerk.

H. The secretary of state shall ensure that the web sites used for electronic voter registration are secure and that the confidentiality of all users and the integrity of data submitted are preserved.

History: Laws 2013, ch. 91, § 1; 2015, ch. 145, § 20.

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; appeal.

A qualified elector whose registration has been refused or the county chairman of any major political party who alleges that certain persons are qualified electors but have been refused registration may bring an appeal regarding the refused registration pursuant to the provisions of Section 39-3-1.1 NMSA 1978.


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

A. At any time not less than ninety days prior to a primary or general election, the secretary of state may file and present to the district court a verified petition alleging, 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 the facts upon which such allegation is made.

B. Upon filing and presentation of the petition, the court shall by order fix a day for hearing thereon, which date shall be not less than fourteen days nor more than twenty-one days after such order. The court shall direct the county clerk to use the address on the certificates of registration to forthwith notify the persons named in the petition whose registration is sought to be canceled of the date and purpose of the hearing and that each person should contact the county clerk no later than the close of business the day before the hearing or be present at the hearing if the person desires to oppose the cancellation.

C. 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 the registrations.


1-4-23. Repealed.

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;
C. a felony conviction of the voter;
D. at the request of the voter; or
E. at the direction of the board of registration.


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 or probate records or by comparison of registration records with monthly certified lists of deceased residents filed with the secretary of state.

B. The state registrar of vital statistics shall file monthly with the secretary of state certified lists of deceased residents over the age of eighteen years, sorted by county, regardless of the place of death.

C. The monthly 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.

D. The secretary of state shall, upon receipt of the monthly certified list of deceased residents, forward each county's list to the county clerk.

E. The county clerk shall, upon receipt of the monthly certified list of deceased residents, cancel any deceased resident's certificate of registration.

F. Upon receipt of a notarized document from the president or governor of an Indian nation, tribe or pueblo or from a tribal enrollment clerk indicating that a tribal member is deceased, the county clerk shall cancel the certification of registration of that deceased tribal member.


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. Repealed.

1-4-27.1. Cancellation of registration following conviction; eligibility for voting upon satisfaction of conditions.

A. When a voter has been convicted of a felony in any state or federal court, the voter's registration shall be canceled.

B. A person convicted of a felony who is otherwise a qualified elector is eligible to register to vote when that person:
   (1) has been unconditionally discharged from a correctional facility or detention center;
   (2) has completed all conditions of parole or supervised probation; or
   (3) has had the conviction overturned on appeal.

C. The secretary of state shall each month maintain current in the statewide voter registration electronic management system the eligibility status of persons convicted of felonies to register to vote pursuant to this section.

D. The corrections department, the New Mexico sentencing commission and the administrative office of the courts shall deliver to the secretary of state information and data as needed to carry out the provisions of this section.

E. The secretary of state shall request from the United States attorney for the district of New Mexico, in conformance with 42 U.S.C. Section 1973gg-6(g), information and data as needed to carry out the provisions of this section.


1-4-28. Cancellation of registration; change of residence; notice.

A. The secretary of state, county clerks and boards of registration, in compliance with the federal National Voter Registration Act of 1993, shall remove from the official list of eligible voters the names of voters who are ineligible to vote due to change of residence.

B. The secretary of state shall conduct a general program that identifies voters who may no longer reside at their address of registration. This program shall use information supplied by the United States postal service national change of address service. This program may also include, among other practices, identification of voters whose official election-related mail is returned and periodic mailings to voters to verify continued residency at their address of registration, provided such practices are uniform, nondiscriminatory and in compliance with the federal Voting Rights Act of 1965.
C. Between ninety and one hundred twenty days before the next general election, the secretary of state shall send to each voter who it appears has changed address from the voter’s precinct of registration a notice, sent by forwardable mail, that shall include a postage prepaid and pre-addressed return card. The notice shall state that:

(1) if the voter did not change residency, the voter should return the card no later than twenty-eight days before the next general election;

(2) if the voter does not return the card, the voter may be provided an opportunity to update the voter’s registration address before the voter casts a ballot in any election during the period beginning on the date of the notice and ending on the day after the second general election that occurs after the date of the notice;

(3) if the voter does not vote in any election during the period beginning on the date of that notice and ending on the day after the second general election that occurs after the date of the notice, the voter’s registration may be canceled;

(4) if the voter has changed residence within the same county, the voter should complete the place on the return card for the voter to indicate the address of the new residence and a request to have the voter’s registration moved to that address in the same county; and

(5) if the voter has changed residence outside of the county, the voter should follow the information provided concerning how the voter can continue to be eligible to vote.

D. The county clerk shall correct the official list of eligible voters in accordance with change of residence information obtained on the prepaid and pre-addressed return card to a new address in the same county, and such names shall not be removed from the list of eligible voters for reason of change of residence.

E. No later than the fifteenth day of March following a general election, the board of registration shall review the list of eligible voters. The board of registration shall direct the county clerk to cancel the registration of any voter who has been sent notice in conformance with this section and who:

(1) has failed to respond to the notice sent in conformance with this section and has not voted or appeared to vote in any election during the period beginning on the date of the notice and ending on the day after the second general election that occurs after the date of the notice; or

(2) has confirmed in writing that the voter has changed residence to a place outside the county.


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 the voter's registered residence address to another county within the state;

(2) when the voter moves to another state; and

(3) upon the written request of the voter.

B. A written request by a voter to cancel the voter's 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. The voter's certificate of registration shall be deemed canceled upon receipt by the county clerk of the request when the request is for the reasons specified in Subsection A of this section.

1-4-31. Repealed.

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. No more than two of the three persons appointed to the board of registration shall be members of the same major political party at the time of their appointment; provided that if a major party has no registered, qualified elector who is able to fill the position, a registered, qualified elector from another major party may be chosen by the county clerk.

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.

History: 1953 Comp., § 3-4-33, enacted by Laws 1969, ch. 240, § 91.

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 [Chapter 10, Article 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.

History: 1953 Comp., § 3-4-35, enacted by Laws 1969, ch. 240, § 93.

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 to 1-4-45. Repealed.

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.

History: 1953 Comp., § 3-4-44, enacted by Laws 1969, ch. 240, § 102; 1973, ch. 4, § 3.

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

A. Every person who is a qualified elector and is applying for a driver's license, to renew a driver's license or for an identification card shall, if qualified to register to vote, with the consent of the applicant be simultaneously registered to vote.

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 to provide assistance to any applicant requesting voter registration assistance.

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 assistance available" and:

   1. personnel in each office shall advise each person who is a qualified elector and an applicant for licensure or renewal or for an identification card that initial voter registration or a change of address for voter registration may be made simultaneously with the motor vehicle application;

   2. voter registration shall be conducted in a manner such that the applicant completes the full certificate of registration electronically; and

   3. the applicant's digital signature shall be affixed to the certificate of registration using an electronic signature in conformance with the Electronic Authentication of Documents Act [Chapter 14, Article 15 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978].

D. A motor vehicle division employee or contractor shall not intentionally influence the prospective registrant in the selection of political party, or independent status, by word or act. A motor vehicle division employee or contractor shall not reveal the existence of or the nature of the voter registration to anyone other than a registration officer.

E. Any voter registration made or accepted at a motor vehicle division office or motor vehicle division field office shall be transmitted to the secretary of state and the appropriate registration officer within seven calendar days.

F. The secretary of state shall work with the motor vehicle division to:

   1. ensure compliance in the application of the provisions of this section with the federal National Voter Registration Act of 1993;

   2. ensure consistent implementation in the various counties, based on county classification and developing technology; and

   3. develop procedures to ensure that, once voter registration information is transmitted to the appropriate registration officer, the voter's certificate of registration is printed and placed in the county's register of voters.

1-4-48. Agency registration.

A. The secretary of state shall adopt and publish in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules for the administration of a state-agency-based voter registration program. The rules shall provide for distribution of voter registration forms, provisions for the acceptance of voter registration forms and procedures for reporting voter registration activity in accordance with the federal National Voter Registration Act of 1993.

B. Voter registration shall be made available at all state agencies providing public assistance or services to people with disabilities. The secretary of state may, with the agreement of those offices, designate other state and local public offices to provide voter registration services.

C. Each state agency participating in the voter registration program shall maintain sufficient records for the secretary of state to comply with federal voter registration reporting requirements and the federal Help America Vote Act of 2002. Any records maintained by a state agency regarding voter registration activities in that agency are confidential and shall not be released as public records.

D. Any voter registration made or accepted at a state agency pursuant to this section shall be transmitted to the appropriate registration officer within ten calendar days.

E. A state agency employee or agency contractor who participates in the voter registration process may not intentionally influence the prospective registrant in the selection of political party, or independent status, by word or act. A state agency employee or agency contractor who participates in the voter registration process may not reveal the existence of or the nature of the voter registration to anyone other than a registration officer.


1-4-49. Third-party registration agents; registration required; procedures; reports; penalty.

A. Registration agents who either register or assist persons to register to vote on behalf of an organization that is not a state or federal agency shall register with the secretary of state, and the organization shall register and provide the secretary of state with:

(1) the names of the officers of the organization and the name and permanent address of the organization;

(2) the names, permanent addresses, temporary addresses, if any, and dates of birth of each person registering persons to vote in the state on behalf of the organization; and

(3) a sworn statement from each registration agent employed by or volunteering for the organization stating that the agent will obey all state laws and rules regarding the registration of voters on a form that gives notice of the criminal penalties for false registration.

B. Organizations employing registration agents or using volunteer registration agents shall deliver or mail a certificate of registration to the secretary of state or county clerk within forty-eight hours of its completion by the person registering to vote or deliver it the next business day if the appropriate office is closed for that forty-eight-hour period.

C. The secretary of state may issue rules to ensure the integrity of the registration process, including rules requiring that organizations account for all state and federal registration forms used by their registration agents.

D. A person who intentionally violates the provisions of this section is guilty of a petty misdemeanor and the person’s third-party registration agent status shall be revoked. If the person who violates a provision of this section is an employee of an organization and has decision-making au-
authority involving the organization's voter registration activities or is an officer of the organization, that organization shall be subject to civil penalties as described in Subsection E of this section.

E. If the secretary of state reasonably believes that a person committed a violation of the provisions of this section, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement. The attorney general or district attorney may institute a civil action in district court for a violation of the provisions of this section or to prevent a violation of the provisions of this section. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of two hundred fifty dollars ($250) for each violation, not to exceed five thousand dollars ($5,000).


1-4-50. Prohibition on release of registration information.

The secretary of state, county clerk or any other registration agent shall not release to the public a voter's social security number or a voter's month and day of birth, and no person shall release to the public or share that information with someone other than a registration officer if the person learned of that information from the voter's certificate of registration.


ARTICLE 5
Voter Records System

Sec. 1-5-1. Short title.
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1-5-16. Voter file; duplicate voter file; storage; protection.
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Sec. 1-5-19. Recompiled.
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1-5-21. Data processor; custody and protection of voter file; delivery of voter file and program records.
1-5-22. Unlawful disposition of voter file; penalty.
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1-5-24. Recompiled.
1-5-25. Recompiled.
1-5-26. Contractual agreement required with data processor.
1-5-27. Repealed.
1-5-29. Repealed.
1-5-30. Secretary of state; establishment of statewide computerized voter registration system.
1-5-31. Uniform procedures for counties.

1-5-1. Short title.

Chapter 1, Article 5 NMSA 1978 may be cited as the "Voter Records System Act".

1-5-2. Definitions.

As used in the Election Code [Chapter 1 NMSA 1978]:
A. "county" means any county in this state;
B. "county register" means an official file of original certificates of registration of the county or any of its precincts;
C. "county voter list" means a voter list arranged in alphabetical order of voter surname within and for each county;
D. "data processor" means a data processing facility and its associated employees and agents contracted to provide data processing services required by the Voter Records System Act;
E. "data recording media" means a manual, electronic or other device containing data capable of being read and processed by any means for the eventual preparation of voter lists;
F. "election campaign purposes" means relating in any way to a campaign in an election conducted by a federal, state or local government;
G. "file maintenance list" means any prepared listing that reflects additions, deletions or changes to the voter file;
H. "governmental purposes" means noncommercial purposes relating in any way to the structure, operation or decision making of a federal, state or local government;
I. "mailing labels" mean prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;
J. "precinct voter list" means a voter list arranged in alphabetical order of voter surname within and for each precinct;
K. "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;
L. "special voter list" means a prepared list of selected voters arranged in the order in which requested;
M. "voter data" means selected information derived from the voter file;
N. "voter file" means all voter registration information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on data recording media and certified by the county clerk as the source of all information required by the Voter Records System Act; and
O. "voter list" means any prepared list of voters.


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

A. The Voter Records System Act is mandatory and supplemental to the provisions of the Election Code [Chapter 1 NMSA 1978]. The provisions of that act shall be implemented in all counties by order of the secretary of state in accordance with the provisions of the federal Help America Vote Act of 2002.
B. The secretary of state shall maintain the official state voter file based on county registers and shall provide access to the file to the county clerks. The secretary of state shall prescribe any rules, forms and instructions necessary to implement procedures required by the Voter Records System Act and federal law. 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 electronic 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 Voter Records System Act and federal law.

History: 1953 Comp., § 3-5-3, enacted by Laws 1969, ch. 240, § 103; 1975, ch. 255, § 64; 1983, ch. 227, § 1;

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 [Chapter 1 NMSA 1978].


1-5-5. Entry of data into 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 shall then be 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 preparation of such lists.

C. After entry of data into the 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. Precinct voter lists; signature roster preparation.

The county clerk shall provide for preparation of precinct voter lists and signature rosters generated from the official state voter file for any precincts. The precinct 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. Recompiled.
1-5-8. Recompiled.
1-5-9. Repealed.
1-5-10. Recompiled.
1-5-11. Recompiled.
1-5-12. Recompiled.
1-5-13. Repealed.
1-5-14. File maintenance reports; voter file updates.
   A. At least once a month, the secretary of state shall have made from the state voter file a file maintenance report of additions, deletions and changes, if any, to each of the county registers. The file maintenance report shall indicate whether each entry listed is an addition, deletion or change to the county register.
   B. A digital version of the file maintenance report shall be stored by the secretary of state for at least one year.
   C. Upon request, the secretary of state shall furnish an updated voter file to the state chair of each of the qualified political parties in the state. Upon request, the county clerk shall provide a file maintenance report or an updated voter file to the county chair of each of the qualified political parties in the county.
   D. File maintenance reports and updated voter files shall be provided in a manipulable digital format and shall not include the voter's social security number, codes used to identify the agency where the voter registered, the voter's day and month of birth, the voter's email address, or, if prohibited by the voter, the voter's telephone number.


1-5-15. Repealed.

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. Voter registration system software; instructions; status; protection.

A. Voter registration system software and instructions for its use in controlling the processing of information derived from the voter file shall be verified functionally, identified and approved by the secretary of state.

B. Verified, identified and approved voter registration system software 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. List and roster preparation; compatible duplicate means.

A. The secretary of state shall provide to the county clerk means for the preparation of voter lists and signature rosters.

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 voter lists and signature rosters with minimum delay in case the original means is unable to perform.

C. The secretary of state shall procure and preserve sufficient duplicate voter registration system software and operating instructions so that in case of disaster the duplicate master record and the duplicate voter registration system software and operating instructions will be all that will be required for another compatible facility to prepare registered voter lists and signature rosters with minimum delay.


1-5-19. Recompiled.

1-5-20. Repealed.

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 secretary of state, county clerk or county with data processing services in the implementation and maintenance of the Voter Records System Act and in carrying out such other services as are reasonably related to providing data processing of the voter records system.

B. The designated data processor shall preserve and safeguard voter files and voter registration system software from loss, damage, unauthorized alteration, unauthorized access and unauthorized reproduction and shall ensure their continued use and accessibility while they 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 secretary of state, the county clerk or their designated agents.
1-5-22. Unlawful disposition of voter file; penalty.

A. Unlawful disposition of voter file consists of the willful selling, loaning, providing access to or otherwise surrendering of the voter file, duplicates of the file or a part of the file by a data processor; a data processor's agent or employee; a state or county officer; or a state or county officer's deputy, assistant, employee or agent to anyone not authorized by the Voter Records System Act to have possession of the file.

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

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

1-5-23. Unlawful destruction or alteration of data recording media, voter files, file maintenance lists, voter registration system software and instructions or voter lists; penalty.

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

B. Any person who commits unlawful destruction or alteration of data recording media, voter files, file maintenance lists, voter registration system software and instructions or voter lists is guilty of a fourth degree felony.

1-5-24. Recompiled.

1-5-25. Recompiled.

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

The secretary of state shall enter into a written contractual agreement with the data processor notwithstanding the fact that the data processor may be a department of state government.
1-5-27. Repealed.


1-5-29. Repealed.

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 that complies with the federal Help America Vote Act of 2002 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 county 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 the electronic receipt of voter registration application and update information, including digitized and electronic signatures, photographs and other data provided by the motor vehicle division of the taxation and revenue department or the federal social security administration;
6. provide procedures for entering data into the central database; and
7. provide a centralized system for each county to enter the precinct to which a voter should be assigned for voting purposes.


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 voter registration electronic management system;
B. provide to each county clerk the computer software necessary for the use and maintenance of the voter registration electronic management system;
C. provide to each county clerk, through an agreement with the motor vehicle division of the taxation and revenue department, access to the division's driver's license database for the purpose of verifying voter registrations, processing absentee ballots and qualifying provisional ballots; and
D. adopt such rules as are necessary to establish and administer the voter registration electronic management system and to regulate the use of the driver's license database by county clerks.

ARTICLE 6
Absentee Voting

Sec. 1-6-1. Absent Voter Act; short title.
1-6-2. Repealed.
1-6-3. Right to vote by absentee ballot.
1-6-4. Absentee ballot application.
1-6-4.1. Repealed.
1-6-4.2. Repealed.
1-6-4.3. Third party agents collecting absentee ballot applications.
1-6-5. Processing application; issuance of ballot.
1-6-5.1. Repealed.
1-6-5.2. Repealed.
1-6-5.3. Repealed.
1-6-5.4. Repealed.
1-6-5.5. Repealed.
1-6-5.6. Early voting; alternate voting locations; procedures.
1-6-5.7. Early voting; use of absentee voting procedures; alternate voting locations.
1-6-5.8. Early voting; Native American early voting locations.
1-6-6. Absentee ballot register.
1-6-7. Repealed.
1-6-8. Absentee ballot envelopes.
1-6-9. Manner of voting; alternate delivery methods.
1-6-9.1. Repealed.
1-6-9.2. Preparation of electronic voting machines.
1-6-10. Receipt of absentee ballots by clerk.

Sec. 1-6-10.1. Absentee ballot; delivery to county clerk.
1-6-10.2. Repealed.
1-6-11. Delivery of absentee ballots to absent voter precincts.
1-6-12, 1-6-13. Repealed.
1-6-14. Handling absentee ballots by absent voter precinct boards.
1-6-15. Canvass; recount or recheck; disposition.
1-6-16. Casting ballot in person prohibited.
1-6-16.1. Absentee ballot; conduct of election; when not timely received; emergency procedure for voting and counting.
1-6-16.2. Additional emergency procedure for voting.
1-6-17. Repealed.
1-6-18. Repealed.
1-6-18.1. Repealed.
1-6-19. Short title.
1-6-20. Creation of absent voter precinct.
1-6-21. Repealed.
1-6-22. Designation of absent voter precinct polling place.
1-6-22.1. Mail ballot election precinct; absentee voting in lieu of polling place.
1-6-23. Absentee voter precinct polling place; hours on election day and subsequent days.
1-6-24. Repealed.
1-6-25. Repealed.

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".

History: 1953 Comp., § 3-6-1, enacted by Laws 1969, ch. 240, § 127.

1-6-2. Repealed.

1-6-3. Right to vote by absentee ballot.
A voter may vote by absentee ballot for all candidates and on all questions appearing on the ballot as if the voter were able to cast the ballot in person.


1-6-4. Absentee ballot application.
A. Application by a voter for an absentee ballot shall be made only on a form prescribed by the secretary of state. The form shall identify the applicant and contain information to establish the applicant’s qualification for issuance of an absentee ballot under the Absent Voter Act; provided
that on the application form for a general election ballot there shall be no box, space or place provided for designation of the voter's political party affiliation.

B. Each application for an absentee ballot shall be signed by the applicant and shall require the applicant's printed name, registration address and year of birth to be supplied by the applicant, which shall constitute the required form of identification, except for new registrants who have registered by mail and at that time did not provide acceptable identification. The secretary of state shall issue rules to exempt voters from submitting identification only as required by federal law and shall review and, if necessary, update these rules no later than March 15 of even-numbered years.

C. A person who willfully and with knowledge and intent to deceive or mislead any voter, precinct board, canvassing board, county clerk or other election official and who falsifies any information on an absentee ballot request form or who affixes a signature or mark other than the person's own on an absentee ballot request form is guilty of a fourth degree felony.


1-6-4.1. Repealed.

1-6-4.2. Repealed.

1-6-4.3. Third party agents collecting absentee ballot applications.

A. A person or organization that is not part of a government agency and that collects absentee ballot applications shall submit the applications to the appropriate office for filing within forty-eight hours of their completion or the next business day if the appropriate office is closed for that forty-eight-hour period.

B. A person who collects absentee ballot applications and fails to submit a voter's completed absentee ballot application is guilty of a petty misdemeanor.

C. A person who intentionally alters another voter's completed absentee ballot application is guilty of a fourth degree felony.


1-6-5. Processing application; issuance of ballot.

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, and if the voter is a uniformed-service voter or an overseas voter. If the applicant is a uniformed-service voter or overseas voter, the application shall be processed pursuant to the Uniform Military and Overseas Voters Act.

B. If the applicant does not have a valid certificate of registration on file in the county, an absentee ballot shall not 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 the application and, if rejected, shall explain why the application was rejected.
D. If the applicant has on file with the county a valid certificate of registration that indicates that the applicant is a voter who is a new registrant and who registered by mail without submitting the required voter identification, the county clerk shall notify the voter that the voter must submit with the absentee ballot the required physical form of identification. The county clerk shall note on the absentee ballot register and signature roster that the applicant's absentee ballot must be returned with the required identification.

E. If the applicant has on file with the county a valid certificate of registration, the county clerk shall mark the application "accepted" and, beginning twenty-eight days before the election, deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. An absent voter shall not be permitted to change party affiliation during those periods when change of party affiliation is prohibited by the Election Code. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an 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 voter who has been provided or mailed an absentee ballot.

F. Absentee ballots may be marked in person at the county clerk's office during the regular hours and days of business beginning on the twenty-eighth day preceding the election and from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior to the date of the election. 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. If the county clerk establishes an additional alternate voting location near the clerk's office, absentee ballots may be marked in person at that location during the regular hours and days of business beginning on the twenty-eighth day preceding the election and during the hours for voting at alternate voting locations commencing on the third Saturday prior to the election through the Saturday immediately prior to the election. The additional alternate voting location shall be operated by the county clerk and the county clerk's staff.

G. When marking an absentee ballot in person at the county clerk's office, the voter shall provide the required voter identification to the county clerk or the clerk's authorized representative. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot. If the voter provides the required voter identification, the voter, after subscribing an application for an absentee ballot, shall be allowed to vote by inserting the ballot into an optical scan tabulator certified for in-person absentee voting at the county clerk's office. The county clerk or the clerk's authorized representative shall make an appropriate designation indicating that the voter has voted absentee. In marking the absentee ballot, the voter may be assisted pursuant to the provisions of Section 1-12-15 NMSA 1978.

H. Absentee ballots shall be sent to applicants not later than on the Friday immediately prior to the date of the election.

I. An absentee ballot shall not be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

J. The secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting; provided, however, that notice is provided at least ten days before early voting begins.

K. The secretary of state shall establish procedures for the submittal, when required by federal law, of required voter identification with mailed-in absentee ballots.

L. It is unlawful to electioneer in the county clerk's office or in any alternate voting location.
1-6-5.1. Repealed.

1-6-5.2. Repealed.

1-6-5.3. Repealed.

1-6-5.4. Security; counting and canvassing.

A. The secretary of state shall adopt rules for protecting the integrity, security and secrecy of the absentee ballots; procedures for voting by absentee ballot; separation of absentee ballots voted on electronic voting machines twenty days before the election from those received through the mail; disposition of absentee ballots rejected by a voting machine; and handling of, registering, counting and canvassing of absentee ballots.

B. As used in Chapter 1, Article 6 NMSA 1978, "registering of absentee ballots" means inserting the paper absentee ballot into an electronic voting system for recording and retention.

History: Laws 1999, ch. 267, § 3; 2005, ch. 270, § 44.

1-6-5.5. Repealed.

1-6-5.6. Early voting; alternate voting locations; procedures.

The county clerk shall:
A. ensure that voters have adequate access to alternate voting locations for early voting in the county, taking into consideration population density and travel time to the location of voting;
B. ensure that early voters are not allowed to vote in person on election day;
C. ensure that adequate interpreters are available at alternate voting locations in those precincts having a majority of qualified electors who are part of a recognized language minority; and
D. based on rules adopted by the secretary of state, allow for mobile alternate voting locations in rural areas of the state that may be set up temporarily in specified precincts of the county during the period when early voting is allowed at alternate voting locations.


1-6-5.7. Early voting; use of absentee voting procedures; alternate voting locations.

A. Commencing on the third Saturday prior to an election and ending on the Saturday immediately preceding the election, an early voter may vote in person on a voting system at an alternate voting location established by the county clerk.

B. Early voting shall be conducted in each office of the county clerk and at such alternate voting locations as may be established by the county clerk, provided that the county clerk shall establish:
   (1) in counties with more than ten thousand voters, not fewer than one alternate voting location;
(2) in counties with more than fifty thousand voters, not fewer than four alternate voting locations; and
(3) in counties with more than two hundred fifty thousand voters, not fewer than fifteen alternate voting locations.
C. Not later than ninety days before each primary and general election, the county clerk shall publicly fix the hours of operation for alternate voting locations in the county, which shall open no earlier than 7:00 a.m. and shall close no later than 9:00 p.m. Within ninety days of a primary or general election, a county clerk may modify the hours of operation of alternate voting locations with the written approval of the secretary of state. Alternate voting locations shall be open each day of early voting for at least eight consecutive hours. Alternate voting locations may be closed Sundays and Mondays during the early voting period.
D. Each alternate voting location shall comply with the following provisions, unless the county clerk receives a written waiver from the secretary of state specifying the location and specific provision being waived:
   (1) have ballots available for voters from every precinct in the county;
   (2) have at least one optical scan tabulator programmed to read every ballot style in the county;
   (3) have at least one voting system available to assist disabled voters to cast and record their votes;
   (4) have a broadband internet connection;
   (5) have sufficient spaces for at least five voters to simultaneously and privately mark their ballots, with at least one of those spaces wheelchair-accessible;
   (6) have a secure area for storage of pre-printed ballots or for storage of a paper ballot stock and a system designed to print ballots at a polling location; and
   (7) be in a location that is accessible and compliant with the requirements of the federal Americans with Disabilities Act of 1990.
E. When voting early, the voter shall provide the required voter identification to the county clerk or the clerk's authorized representative. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot. If the voter provides the required identification, the voter shall be allowed to vote after subscribing an application to vote on a form approved by the secretary of state. The county clerk or the clerk's authorized representative shall make an appropriate designation on the signature roster or register next to the voter's name indicating that the voter has voted early.

History: Laws 2005, ch. 270, § 40; 2009, ch. 251, § 8;
2011, ch. 137, § 42.

1-6-5.8. Early voting; Native American early voting locations.

A county clerk shall provide at least one alternate early voting or mobile alternate voting location on Indian nation, tribal or pueblo land when requested by the Indian nation, tribe or pueblo in the county; provided that:
A. the Indian nation, tribe or pueblo submits a written request to the county clerk no later than the first Monday in November of each odd-numbered year;
B. the alternate early voting or mobile alternate voting location may operate for less than the full early voting period, to be decided upon between the Indian nation, tribe or pueblo and the county clerk;
C. the county clerk may limit voting to precincts on and near the Indian nation, tribe or pueblo;
D. the location of the alternate early voting or mobile alternate voting location on Indian nation, tribal or pueblo land conforms to the requirements for alternate early voting locations, except as specified in this section;

E. the county clerk provides federally mandated language translators at the alternate early voting or mobile alternate voting locations;

F. the Indian nation, tribe or pueblo provides the facility and services for the alternate early voting or mobile alternate voting location; and

G. the costs of voting equipment and personnel for the alternate early voting or mobile alternate voting locations on Indian nation, tribal or pueblo land pursuant to this section are reimbursed to the county by the secretary of state.


1-6-6. Absentee ballot register.

A. For each election, the county clerk shall keep an "absentee ballot register", in which the county clerk shall enter:
   (1) the name and 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 issue of an absentee ballot in the county clerk's office or at an alternate location or the mailing of an absentee ballot to the applicant;
   (5) the applicant's precinct;
   (6) whether the applicant is a voter and whether the voter is a uniformed-service voter or an overseas voter;
   (7) whether the voter is required to submit identification pursuant to Section 1-6-5 NMSA 1978; and
   (8) the date and time the completed absentee ballot was received from the applicant by the county clerk or the absent voter voted early in person in the county clerk's office or at an alternate location.

B. Absentee ballots shall be sent to applicants beginning twenty-eight days before the election. For each application for an absentee ballot received twenty-three or more days before the election, the county clerk shall send either the ballot or a notice of rejection to the applicant as soon as practicable, provided it is sent not later than twenty-two days before the election. Within twenty-two days of election day, the county clerk shall send either the ballot or a notice of rejection to the applicant within twenty-four hours after receipt of the voter's application for an absentee ballot.

C. The absentee ballot register is a public record open to public inspection in the county clerk's office during regular office hours. The county clerk shall have an updated absentee ballot register available for public inspection Monday through Friday during regular office hours.

D. The county clerk shall deliver to the absent voter precinct on election day a complete list of all absentee ballot applicants and early voters with applicable information shown in the absentee ballot register for each applicant and early voter up to 6:00 p.m. on the Saturday preceding the election. The county clerk shall deliver a signature roster containing the same information as the lists to the absent voter precinct board.

E. Upon request, the county clerk shall transmit to the county chair 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 Saturday immediately following the election.
F. If the county clerk has available the technology to do so, at the request of a candidate or chair of a political party of the county, the county clerk shall electronically transmit to the candidate or chair via the internet the information, when updated, on the absentee ballot register indicating voters who have requested absentee ballots, returned their absentee ballots or voted early in person.


1-6-7. Repealed.

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; provided the official mailing envelope for absentee ballots in a general election shall contain no designation of party affiliation;

(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 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 voter completing the absentee ballot. The form shall identify the voter 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."

D. The official mailing envelope shall contain a space for the voter to record the voter's name, registration address and year of birth. The envelope shall have a security flap to cover this information.


1-6-9. Manner of voting; alternate delivery methods.

Except as provided in Section 1-6-5 or Section 1-6-5.7 NMSA 1978, a person voting pursuant to the Absent Voter Act shall secretly mark the absentee ballot in the manner provided in the Election Code for marking 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 a statement by the voter under penalty of perjury that the facts stated in the form are true and the voter's name, registration address and year of birth. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence.
1-6-9.1. Repealed.

1-6-9.2. Preparation of electronic voting machines.

A. Beginning ten days before an electronic voting machine is issued for absentee voting, the county clerk may begin to prepare, inspect and seal the voting machine in accordance with Section 1-11-6 NMSA 1978.

B. At least one day before an electronic voting machine is used for absentee voting, the county clerk shall certify to the secretary of state and the county chair of each political party represented on the ballot the type and serial number of each voting machine to be used.

History: Laws 1999, ch. 267, § 1; 2011, ch. 137, § 43.

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 and number-sealed ballot box until it is delivered to the absent voter precinct board or until it is canceled and destroyed in accordance with law.

B. Completed official mailing envelopes shall be accepted until 7:00 p.m. on election day. Any completed official mailing envelope received after that time shall not be delivered to the absent voter 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, uniformed-service voters and overseas voters and report the number from each category to the secretary of state.

C. No later than 5:00 p.m. on the Monday immediately preceding the date of election, the county clerk shall record the numbers of unused ballots and shall publicly destroy in the county clerk's office all such unused ballots or prepare the unused ballots for delivery to precinct boards. The county clerk shall execute a certificate of 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.


1-6-10.1. Absentee ballot; delivery to county clerk.

A voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the county clerk in person or by mail, provided that the voter has subscribed the outer envelope of the absentee ballot.

1-6-10.2. Repealed.

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

A. Beginning on the Thursday immediately preceding election day, the county clerk may deliver to the special deputy county clerk for delivery to the absent voter precinct board the absentee ballots received prior to the delivery day. The special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk and shall observe the listing of the names on the official mailing envelopes in the signature rosters. The special deputy county clerk shall then obtain a receipt executed by the presiding judge and each election judge and shall return the 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 the absent voter precinct and the number of envelopes received by the absent voter precinct board from the special deputy county clerk.

B. On election day, the county clerk shall deliver all absentee ballots not yet delivered to the absent voter precinct board but received prior to 7:00 p.m. on election day to the special deputy county clerks for delivery to the absent voter precinct boards. The special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk and shall observe the listing of the names on the official mailing envelope in the signature rosters. The special deputy county clerk shall then obtain a receipt executed by the presiding judge and each election judge and shall return the 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.

C. At 7:00 a.m. on the Thursday prior to election day or on the day the absent voter precinct board begins early processing of absentee ballots, the county clerk shall deliver the electronic voting machines used for absentee voting by mail to the absent voter precinct board. The machines shall not be used to vote on or count additional ballots for that election. A special deputy county clerk shall issue a receipt for each voting machine. Upon delivery of a voting machine, the special deputy shall:

1. obtain a receipt executed by the presiding judge and each election judge specifying the serial number and the seal number of the machine;
2. verify the public counter number on the machine; and
3. return the receipt to the county clerk for filing.


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

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

A. Before opening an 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 judge or election clerk shall enter the voter's name in the signature rosters or register and shall write the notation "Rejected--Missing Signature" in the "Notations" column of the signature rosters or register. 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. A lawfully appointed challenger may view 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 by someone other than the voter prior to being received by the absent voter precinct board;
   (2) the official mailing envelope does not contain a signature; or
   (3) the person offering to vote is not a voter as provided in the Election Code [Chapter 1 NMSA 1978].

D. If a challenge is upheld by unanimous vote of the presiding judge and the election judges, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. If the reason for the challenge is satisfied by the voter before the conclusion of the county canvass, the official mailing envelope shall be opened and the vote counted. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

E. If the official mailing envelope has been properly subscribed and the voter has not been challenged:
   (1) the judges or 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 or register; and
   (2) only between 8:00 a.m. and 10:00 p.m. on the five days preceding election day, including Saturday and Sunday, and beginning at 7:00 a.m. on election day, under the personal supervision of the presiding election judge, shall the election judges open the official mailing envelope and the official inner envelope and insert the enclosed ballot into an electronic voting machine to be registered and retained until votes are counted and canvassed following the closing of the polls on election night.

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

G. Absentee ballots shall be counted and tallied, where possible, on an electronic voting machine as provided in the Election Code.

H. Absent voter precinct polls shall close in accordance with Section 1-6-23 NMSA 1978, and the results of the election shall be certified as prescribed by the secretary of state.

I. If an absentee ballot does not contain the identification required pursuant to Subsection D of Section 1-6-5 NMSA 1978, it shall be handled as a provisional paper ballot in accordance with the Election Code.

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

If voting machines are not used to register absentee ballots, the absentee ballots shall be canvassed, recounted and disposed of in the manner provided by the Election Code [Chapter 1 NMSA 1978] for the canvassing, recounting and disposition of paper ballots. If voting machines are used to register absentee ballots, the 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 paper ballots. As used in this section, "voting machines" means electronic voting machines as provided in the Election Code.


1-6-16. Casting ballot in person prohibited.

A. No person who has been issued an absentee ballot shall vote in person other than on a replacement absentee ballot.

B. At any time prior to 5:00 p.m. on the Monday immediately preceding the date of the election, a 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 or at an alternate voting location in the county where the voter is registered to vote, during operational hours, a sworn affidavit stating that the person did not receive or vote the absentee ballot. Upon receipt of the sworn affidavit, the county clerk shall issue the voter a replacement absentee ballot.

C. Replacement absentee ballots shall be delivered to the absent voter precinct board for tabulation and shall not be placed in a voting system for tabulation of votes cast at the office of the county clerk or at an alternate voting location.

D. 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. A voter who applies for an absentee ballot but has not received the absentee ballot by mail as of the date of the election may go to the voter's assigned polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be permitted to vote on a replacement absentee paper 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 a 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 replacement absentee paper ballot.

C. The presiding judge shall put all replacement absentee 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 replacement absentee 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. the voter did in fact make application for an absentee ballot; and
2. no absentee ballot was received by the county clerk from the voter by 7:00 p.m. on election day.
E. Upon making that determination, the county clerk shall remove the inner envelope without opening it, retain the transmittal envelope with the other election returns and place the inner unopened envelope in a secure container 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 deemed necessary to preserve the secrecy of the replacement absentee paper ballots.


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

A. After the close of the period for requesting absentee ballots by mail, any voter who is unable to go to the polls due to unforeseen illness or disability resulting in his confinement in a hospital, sanatorium, nursing home or residence and who is unable to vote at his regular polling place or alternate location 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. Repealed.

1-6-18. Repealed.

1-6-18.1. Repealed.

1-6-19. Short title.

This act [1-6-19 to 1-6-23 NMSA 1978] may be cited as the "Absent Voter Precinct Act".

History: 1953 Comp., § 3-6-18, enacted by Laws 1969, ch. 54, § 1.
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 county.

B. Absent voter precincts shall be identified by the name of the county.


1-6-21. Repealed.

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 the precinct is created.


1-6-22.1. Mail ballot election precinct; absentee voting in lieu of polling place.

A. Notwithstanding the provisions of Sections 1-1-11 and 1-1-12 NMSA 1978, not later than the first Monday in November of each odd-numbered year, a board of county commissioners may designate a precinct as a mail ballot election precinct if, upon a written request of the county clerk, it finds that the precinct has fewer than one hundred voters and the nearest polling place for an adjoining precinct is more than twenty miles driving distance from the boundary for the precinct in question.

B. If a precinct is designated a mail ballot election precinct, in addition to the notice required pursuant to Section 1-3-8 NMSA 1978, the county clerk shall notify by mail with delivery confirmation all voters in that precinct at least forty-two days before an election that each voter will be sent an absentee ballot twenty-eight days before the election and that there will be no polling place for the precinct on election day. The county clerk shall include in the notice a card informing the voter that if the voter does not want to receive an absentee ballot for that election, the voter should return the card before the date the county clerk is scheduled to mail out absentee ballots. The notice shall also inform the voter that a voting system equipped for persons with disabilities will be available at all early voting sites before election day and in the office of the county clerk on election day in case the voter prefers to vote in person and not by mail. In addition, the notice shall inform the voter if the county is consolidating precincts on election day and, if so, the ability of the voter to cast a ballot at any consolidated precinct on election day if the voter chooses not to receive an absentee ballot, or to cast a provisional ballot at any consolidated precinct if the voter does not receive an absentee ballot, which will be counted upon confirmation that the voter has not returned the absentee ballot.

C. The county clerk shall mail each voter in the mail ballot election precinct an absentee ballot on the twenty-eighth day before an election, unless the voter has requested otherwise, along with a notice that there will be no polling place in that precinct on election day.

D. The county clerk shall keep a sufficient number of ballots from a mail ballot election precinct such that if a voter from that precinct does not receive an absentee ballot before election day, the
voter may vote on an absentee ballot in the office of the county clerk on election day in lieu of voting on the missing ballot.


1-6-23. Absentee voter precinct polling place; hours on election day and subsequent days.

The county clerk or statutorily appointed supervisor of the election shall determine the hours between 8:00 a.m. and 5:00 p.m. during which the absent voter precinct polling place shall be open for delivery and registering of absentee ballots on the five days preceding election day and the hours during which the absent voter precinct polling place shall be open for the delivery, registering and counting of ballots on election day and subsequent days until all ballots are counted; provided that the absent voter precinct polling place opens at 7:00 a.m. on election day.


1-6-24. Repealed.

1-6-25. Repealed.

ARTICLE 6A
Absentee-Early Voting Act
(Repealed by Laws 1999, ch. 267, § 36.)

1-6A-1 to 1-6A-12. Repealed.

ARTICLE 6B
Uniform Military and Overseas Voters

Sec.
1-6B-1. Short title.
1-6B-2. Definitions.
1-6B-3. Elections covered; form of ballot and ballot materials; benefits of the Uniform Military and Overseas Voters Act.
1-6B-4. Role of secretary of state; federal Uniformed and Overseas Citizens Absentee Voting Act.
1-6B-5. Methods of registering to vote.
1-6B-6. Methods of applying for military-overseas ballot; timeliness; scope of application for military-overseas ballot.
1-6B-7. Transmission of unvoted military-overseas ballots to federal qualified electors.
1-6B-8. Receipt of voted military-overseas ballots from federal qualified electors.

Sec.
1-6B-10. Use of federal write-in absentee ballot; qualification.
1-6B-11. Confirmation of receipt of application and voted ballot. (Effective January 1, 2018.)
1-6B-12. Use of voter's electronic-mail address.
1-6B-13. Prohibition of nonsubstantive requirements.
1-6B-14. Absentee ballots; reports.
1-6B-15. Equitable relief.
1-6B-16. Uniformity of application and construction.
1-6B-17. Relation to Electronic Signatures in Global and National Commerce Act.
1-6B-1. Short title.

Sections 25 through 41 [1-6B-1 through 1-6B-17 NMSA 1978] of this act may be cited as the "Uniform Military and Overseas Voters Act".


1-6B-2. Definitions.

As used in the Uniform Military and Overseas Voters Act:
A. "appropriate clerk" means a county clerk for elections conducted pursuant to the Election Code and a municipal clerk for elections conducted pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9];
B. "federal postcard application" means the application prescribed under the federal Uniformed and Overseas Citizens Absentee Voting Act;
C. "federal write-in absentee ballot" means the ballot approved pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act;
D. "military-overseas ballot" means:
   (1) a federal write-in absentee ballot; or
   (2) a ballot sent to a federal qualified elector by the appropriate clerk and cast in accordance with the provisions of the Uniform Military and Overseas Voters Act;
E. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and
F. "United States", used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States.


1-6B-3. Elections covered; form of ballot and ballot materials; benefits of the Uniform Military and Overseas Voters Act.

A. The procedures in the Uniform Military and Overseas Voters Act apply to elections conducted pursuant to the Election Code and the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].
B. A federal qualified elector may vote for all candidates and on all questions as if the voter were able to cast a ballot in person.
C. The form of the military-overseas ballot shall be the same as the ballot provided to all other voters. The form of the military-overseas ballot materials shall be the same as the ballot materials provided to all other voters, except as required by the Uniform Military and Overseas Voters Act.
D. To receive the benefits of the Uniform Military and Overseas Voters Act, a federal qualified elector shall inform the appropriate clerk that the individual is a federal qualified elector. Methods of informing the appropriate clerk include:
   (1) the use of a federal postcard application or federal write-in absentee ballot;
   (2) the use of an army post office, fleet post office or diplomatic post office address in the correct format as a mailing address on a certificate of registration or as a delivery address on an absentee ballot application;
(3) the use of an overseas address as a mailing address on a certificate of registration or as a delivery address on an absentee ballot application; or

(4) the inclusion on a certificate of registration or an absentee ballot application or other information sufficient to identify the voter as a federal qualified elector.

History: Laws 2015, ch. 145, § 27.

1-6B-4. Role of secretary of state; federal Uniformed and Overseas Citizens Absentee Voting Act.

A. The secretary of state shall make available to federal qualified electors information regarding voter registration procedures for federal qualified electors and procedures for casting military-overseas ballots.

B. The secretary of state shall establish an electronic transmission system through which a federal qualified elector may apply for and receive voter registration materials, military-overseas ballots and other information pursuant to the Uniform Military and Overseas Voters Act. The secretary of state shall ensure that the electronic transmission system is capable of accepting a federal postcard application, any other approved electronic registration application and any other approved electronic military-overseas ballot application sent to a county clerk or municipal clerk.

C. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from federal qualified electors shall be in the same form as those used in the jurisdiction where the voter is registered except as modified to comply with the Uniform Military and Overseas Voters Act or federal law. The secretary of state may, to the extent reasonably possible, coordinate with other states to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this state.

D. The secretary of state shall prescribe the form and content of a declaration for use by a federal qualified elector to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a federal qualified elector and timely and proper completion of a military-overseas ballot. The declaration shall be based on the declaration prescribed to accompany a federal write-in absentee ballot, as modified to be consistent with the Uniform Military and Overseas Voters Act. The secretary of state shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

E. The secretary of state shall prescribe to the appropriate clerk the form of 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 appropriate clerk; provided that only the official mailing envelope for absentee ballots in a primary election shall contain a designation of party affiliation;
3. absentee ballot instructions describing the proper methods for completion and return of the ballot, including instructions for those federal qualified electors returning a ballot electronically;
4. official transmittal envelopes for use by the appropriate clerk in mailing absentee ballot materials; and
5. official holding envelopes for ballots returned electronically by federal qualified electors.

1-6B-5. Methods of registering to vote.

A. A federal qualified elector may register to vote using any of the following methods; provided that the document is received by the county clerk by the deadline for registering to vote as provided in Section 1-4-8 NMSA 1978:
   (1) using the procedures provided in Article 4 of the Election Code;
   (2) using a federal postcard application or the application's approved electronic equivalent; or
   (3) using the declaration accompanying a federal absentee write-in ballot.

B. A voter's certificate of registration completed pursuant to the Uniform Military and Overseas Voters Act shall remain valid until the voter's certificate of registration is canceled in accordance with the procedures specified in Article 4 of the Election Code.

C. In registering to vote, a federal qualified elector shall use and must be assigned to the voting precinct of the address of:
   (1) the residence of the voter, if the voter resides in this state; or
   (2) the last place of residence of the voter in this state, or the last place of residence in this state of the parent or legal guardian of the voter if the voter did not reside in this state; provided that if that address is no longer a recognized residential address, the voter shall be assigned an address or other location within that precinct or that precinct part.


1-6B-6. Methods of applying for military-overseas ballot; timeliness; scope of application for military-overseas ballot.

A. A federal qualified elector who is currently registered to vote in this state may, by the deadline specified in the Absent Voter Act [1-6-1 through 1-6-18 NMSA 1978] or Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for receipt of absentee ballot applications, apply for a military-overseas ballot by:
   (1) using an absentee ballot application pursuant to the Absent Voter Act or Municipal Election Code;
   (2) using the federal postcard application or the application's electronic equivalent; or
   (3) using the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot.

B. A federal qualified elector who is not currently registered to vote in this state may, by the deadline in the Election Code for registering to vote, simultaneously register to vote and apply for a military-overseas ballot by using a federal postcard application or the application's electronic equivalent.

C. An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an automatic application for a military-overseas ballot for the general election.

D. An application for a military-overseas ballot is effective as an automatic application for a military-overseas ballot for a runoff election necessary to conclude the election for which the application was submitted.

1-6B-7. Transmission of unvoted military-overseas ballots to federal qualified electors.

A. Not later than forty-five days before an election, even if the forty-fifth day before an election falls on a weekend or a holiday, the appropriate clerk shall transmit a ballot and balloting materials to all federal qualified electors who by that date submit a valid military-overseas ballot application.

B. The appropriate clerk shall transmit a ballot and balloting materials as soon as practicable when the ballot application from a federal qualified elector arrives after the forty-fifth day before the election and before absentee ballots are transmitted to other voters pursuant to the Absent Voter Act [1-6-1 through 1-6-18 NMSA 1978] or the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

C. The appropriate clerk shall transmit a ballot and balloting materials in accordance with the procedures for processing of all other absentee ballot applications for that jurisdiction when the ballot application from a federal qualified elector arrives after the appropriate clerk has begun transmitting ballots and balloting materials to other voters.

D. A federal qualified elector may request that the ballot and balloting materials be sent by facsimile transmission, electronic mail delivery or other equivalent electronic transmission available to the appropriate clerk where the ballot and balloting materials are sent directly by the clerk to the federal qualified elector. The clerk shall transmit the ballot and balloting materials using the means of transmission requested by the federal qualified elector. The clerk shall determine the most reasonable expedited means of delivery for a ballot and balloting materials for a federal qualified elector who does not request a particular means of transmission.


1-6B-8. Receipt of voted military-overseas ballots from federal qualified electors.

A. A military-overseas ballot shall be considered timely if it is received by the appropriate clerk no later than the closing of the polls on election day.

B. A federal qualified elector may transmit, and the appropriate clerk shall accept, a military-overseas ballot by facsimile transmission, electronic mail delivery or other equivalent electronic delivery available to the appropriate clerk when the military-overseas ballot is sent directly by the voter to that clerk; provided that, when sending a military-overseas ballot utilizing any method described in this subsection:

1. the federal qualified elector signs an affidavit waiving the right of secrecy of the federal qualified elector's ballot;
2. the federal qualified elector transmits the affidavit with the military-overseas ballot; and
3. the appropriate clerk places the received ballot in a holding envelope provided by the secretary of state for this purpose and delivers the ballot to the absent precinct board.

History: Laws 2015, ch. 145, § 32.


A. An emergency response provider may benefit from the ability to apply for an absentee ballot and to return the marked ballot in the same manner as provided in the Uniform Military and
Overseas Voters Act for federal qualified electors; provided that the emergency response provider may not use the federal postcard application or the federal write-in absentee ballot.

B. The appropriate clerk shall transmit to, receive from and process an absentee ballot of an emergency response provider in the same manner as provided in the Uniform Military and Overseas Voters Act for a federal qualified elector.

C. As used in this section, "emergency response provider" means a resident of this state who otherwise satisfies this state's voter eligibility requirements and who, in response to an emergency, is temporarily assigned by a governmental or nongovernmental relief agency or employer to provide support to the victims of the emergency or to rebuild the infrastructure in the affected area and:

   (1) the assignment is for a period beginning on or after the thirty-five days immediately prior to an election;
   (2) the affected area is outside the individual's county of residence; and
   (3) the president of the United States or the governor of a state has declared an emergency in the affected area.

History: Laws 2015, ch. 145, § 33.

1-6B-10. Use of federal write-in absentee ballot; qualification.

A. A federal qualified elector may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election.

B. In completing the federal write-in absentee ballot, the federal qualified elector may designate a candidate by writing in the name of the candidate. In a general election when voting for a specified office, a federal qualified elector may in the alternate complete the federal write-in absentee ballot by writing in the name of a political party, in which case the ballot shall be counted for the candidate of that political party.

C. A qualified federal write-in absentee ballot shall be processed by the canvassing board in the same manner as a provisional ballot. A federal write-in absentee ballot from a federal qualified elector shall not be qualified if the federal qualified elector voted on any other type of ballot. A federal write-in absentee ballot of an overseas voter shall not be qualified if the ballot is submitted from any location in the United States.

History: Laws 2015, ch. 145, § 34.

1-6B-11. Confirmation of receipt of application and voted ballot. (Effective January 1, 2018.)

The secretary of state, upon the recommendation of the voting system certification committee, shall implement an electronic free-access system by which a federal qualified elector may determine by telephone, electronic mail or internet whether the federal qualified elector's:

A. federal postcard application or other registration or military-overseas ballot application has been received and accepted; and

B. military-overseas ballot has been received and the current status of the ballot.

History: Laws 2015, ch. 145, § 35.
1-6B-12. Use of voter's electronic-mail address.

A. The county clerk shall request an electronic-mail address from each federal qualified elector who registers to vote. An electronic-mail address provided by a federal qualified elector shall not be made available to the public and is exempt from disclosure pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. The electronic-mail address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and ballot materials if the voter has requested electronic transmission by electronic mail, and verifying the voter's mailing address and physical location. The request for an electronic-mail address shall describe the purposes for which the electronic-mail address may be used and include a statement that any other use or disclosure of the electronic-mail address is prohibited.

B. If an absentee ballot is transmitted to a federal qualified elector via electronic mail, the appropriate clerk shall note in the absentee ballot register the voter's registration address, that the ballot was delivered to the voter electronically and the date on which it was sent, but shall not disclose the voter's electronic-mail address.

C. A federal qualified elector who provides an electronic-mail address may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections in the election cycle. The appropriate clerk shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable as an automatic application for a military-overseas ballot.

History: Laws 2015, ch. 145, § 36.

1-6B-13. Prohibition of nonsubstantive requirements.

A. If the intention of the voter is clearly discernable in accordance with the provisions of Section 1-1-5.2 NMSA 1978, an abbreviation, misspelling or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

B. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted pursuant to the Uniform Military and Overseas Voters Act.

C. Notarization is not required for the execution of any document required by the Uniform Military and Overseas Voters Act."

History: Laws 2015, ch. 145, § 37.

1-6B-14. Absentee ballots; reports.

A. Within thirty days following a general election, the county clerk shall report to the secretary of state the number of absentee ballots transmitted in the general election to uniformed-service voters and overseas voters for the election and the number of those ballots returned, rejected or counted.

B. Within ninety days following a general election, the secretary of state shall report to the federal election assistance commission the combined absentee ballot numbers submitted by the counties pursuant to this section.

History: Laws 2015, ch. 145, § 38.
1-6B-15. Equitable relief.

A court of competent jurisdiction of this state may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, the Uniform Military and Overseas Voters Act on application by:

A. a federal qualified elector alleging a grievance under the Uniform Military and Overseas Voters Act; or
B. an election official in this state.


1-6B-16. Uniformity of application and construction.

In applying and construing the Uniform Military and Overseas Voters Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2015, ch. 145, § 40.

1-6B-17. Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Military and Overseas Voters Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersedes Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History: Laws 2015, ch. 145, § 41.

ARTICLE 7
Political Parties

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 [Chapter 1 NMSA 1978]. 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.

History: 1953 Comp., § 3-7-1, enacted by Laws 1969, ch. 240, § 144.
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 providing for the organization and government of that party and shall file the rules with the secretary of state. Uniform rules shall be adopted throughout the state by the county organizations of that party, where a county organization exists, and shall be filed with the county clerks. At the same time the rules 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 registration and counties of residence of at least one-half of one percent of the total votes cast for the office of governor at the preceding general election who declare by their signatures on the petition that they are voters of New Mexico and that they desire the party to be a qualified political party in New Mexico. Blank petition forms shall be available at any time from the secretary of state.

B. Each county political party organization may adopt supplementary rules insofar as they do not conflict with the uniform state rules 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. A qualified political party shall cease to be qualified for the purposes of the Election Code [Chapter 1 NMSA 1978] 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, provided that the party has a candidate seeking election to either of these offices, 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. No later than March 15 of an odd-numbered year, the secretary of state shall send notice of nonqualification to the state chair of any political party that fails to remain qualified. The notice shall be delivered by registered mail to the last known address of the state chair of the political party, and a copy shall be kept in the secretary of state's 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 and shall post the notice on the web site maintained by the secretary of state. The secretary of state shall within forty-five days notify by mail all voters registered as members of such party of the removal and nonqualification of the party.

E. To requalify, the party shall 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.

History: 1953 Comp., § 3-7-3, enacted by Laws 1969, ch. 240, § 146.

1-7-4. Rules and regulations; filing; fee.
A. Each political party shall file its rules and regulations, along with petitions containing the required number of signatures, if the signature provision is applicable to the party, within thirty days after its organization and no later than twenty-three days after the primary election before any general election in which it is authorized to participate.
B. Within seven days after the filing of the political party's rules and qualifying petitions, the secretary of state shall notify the political party whether the rules and qualifying petitions are in proper order and that the party has qualified. The secretary of state shall notify all county clerks in the state of the qualification of that political party and post notice of qualification on the secretary of state's web site.
C. 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 [Chapter 1 NMSA 1978] 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.

History: 1953 Comp., § 3-7-6, enacted by Laws 1969, ch. 240, § 149.

1-7-7. Major political party; minor political party.

As used in the Election Code [Chapter 1 NMSA 1978]:

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 whose membership totals not less than one-third of one percent of the statewide registered voter file on the day of the governor's primary election proclamation; and

B. "minor political party" means any qualified political party that is not qualified as a major political party pursuant to Subsection A of this section.


ARTICLE 8
Nominations and Primary Elections

Sec. 1-8-1. Nominating procedures; major political parties; minor political parties.
1-8-2. Nomination by minor political party; convention-designated nominees.
1-8-3. Nomination by minor political party; other methods.
1-8-3.1. Nominating petition for candidate of an unqualified state political party; qualification as an independent candidate.
1-8-4. Secretary of state; certification of nominees; minor political party.
1-8-5. Canvassing boards; certification of nominees of parties participating in primary.
1-8-6. Vacancy on primary ballot.
1-8-7. Vacancy on general election ballot; death of candidate or resignation or death of office holder before primary.
1-8-8. Vacancy on general election ballot; occurring after primary.
1-8-9. General election; withdrawal of candidates.
1-8-10. Primary Election Law; short title.
1-8-11. Primary Election Law; time of holding primary.

Sec. 1-8-12. Primary Election Law; proclamation.
1-8-13. Primary Election Law; contents of proclamation.
1-8-14. Primary Election Law; proclamation; duties of secretary of state.
1-8-15. Primary Election Law; proclamation; duties of county clerk.
1-8-16. Primary Election Law; proclamation; amendment.
1-8-17. Primary Election Law; offices affected; questions prohibited.
1-8-18. Primary Election Law; who may become a candidate.
1-8-19. Candidacy in primary of one party bars general election ballot designation of different party or as an unaffiliated candidate.
1-8-20. Primary Election Law; candidacy for more than one office.
1-8-21. Primary election; methods of placing names on primary ballot.
1-8-21.1. Designation of candidates by convention.
1-8-22 to 1-8-24. Repealed.
1-8-1. Nominating procedures; major political parties; minor political parties.

A. Any major political party in New Mexico, as defined in Section 1-7-7 NMSA 1978, shall nominate its candidates, other than its presidential candidates, by secret ballot at the next succeeding primary election as prescribed in the Primary Election Law [1-8-10 through 1-8-52 NMSA 1978].

B. Any minor political party in New Mexico, as defined in Section 1-7-7 NMSA 1978, shall nominate candidates for public office in the manner prescribed in its party rules and regulations and according to the provisions of the Election Code [Chapter 1 NMSA 1978].
1-8-2. Nomination by minor political party; convention-designated nominees.

A. If the rules of a minor political party require nomination by political convention:
   (1) the chair and secretary of the state political convention 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, the public regulation commission, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county; and
   (2) the chair 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 twenty-third day following the primary election in the year of the general election and shall be accompanied by nominating petitions containing the signatures of voters totaling not less than one percent of the total number of votes cast for governor at the last preceding general election at which a governor was elected:
   (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 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 twenty-third day following the primary election in the year of the general election and shall be accompanied by a nominating petition containing the signatures of voters totaling not less than one percent of the total number of votes cast for governor at the last preceding general election at which a governor was elected:
   (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 area to be represented by the office for which the person being nominated is a candidate.

D. Except in the case of a political party certified in the year of the election, persons certified as candidates shall be members of that party on the day the governor issues the primary election proclamation.

E. When a political party is certified in the year of the general election, and after the day the governor issues the primary election proclamation, a person certified as a candidate shall be:
   (1) a member of that party not later than the date the political party filed its rules and qualifying petitions pursuant to Sections 1-7-2 and 1-7-4 NMSA 1978; and
   (2) a resident in the district of the office for which the person 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, a resident within New Mexico on the date of the governor's proclamation for the primary election. No person who is a candidate for a party in a primary election may be certified as a candidate for a different party in the general election in the same election cycle.

F. No voter shall sign a petition prescribed by this section for more persons than the number of candidates necessary to fill the 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, public regulation commission, 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 that 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 [Chapter 1 NMSA 1978] 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.


1-8-3.1. Nominating petition for candidate of an unqualified state political party; qualification as an independent candidate.

The declaration of candidacy and petition signatures submitted to the proper filing officer by a candidate for nomination as a minor party candidate shall be counted toward the requirements for qualification as an independent candidate for the same office in the same election if the candidate's party files for, but does not obtain status as, a qualified political party in that election cycle. To qualify as an independent candidate, the candidate must meet all requirements for an independent candidate in Section 1-8-45 NMSA 1978 and submit the required number of petition signatures for an independent candidate as prescribed in Section 1-8-51 NMSA 1978. No candidate may circulate petitions for candidacy for more than one political party in an election cycle.


1-8-4. Secretary of state; certification of nominees; minor political party.

A. Upon receipt of certificates of nomination of any minor political party and nominating petitions, and no later than 5:00 p.m. on the first Tuesday following the filing date, the proper filing officer shall:

(1) determine whether the method of nomination used by the certifying political party complies with the current rules of that party on file in the secretary of state's office;

(2) determine whether the number of signatures required have been submitted and all the requirements of Sections 1-8-1 through 1-8-3 NMSA 1978 have been complied with; and

(3) if such determinations are answered in the affirmative, mail notice to the certifying party and the candidate no later than 5:00 p.m. on the Tuesday following the filing date that the certificates of nomination and nominating petitions are in proper order and that the candidate, based on those documents, is qualified to have the candidate's name placed on the ballot.
B. If a minor political party candidate is notified by the proper filing officer that the candidate is not qualified to have the candidate's name appear on the ballot, the candidate may challenge the decision by filing a petition with the district court within ten days of the notification. The district court shall hear and render a decision on the matter within ten days after the petition is filed. 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 no later than fifty-six days prior to the general election.

C. Any voter may file a court action challenging a minor political party candidate's nominating petitions pursuant to the provisions of Section 1-8-35 NMSA 1978.

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.

History: 1953 Comp., § 3-8-6, enacted by Laws 1969, ch. 240, § 156; 1975, ch. 295, § 1.

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 last Friday before the first Tuesday in March, 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 political 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 the 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, or a vacancy occurs because a new public office is created and was not included in the governor's proclamation but is capable by law of being 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 the office is a federal office, state office, district office or multicounty 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 the office is a magistrate office, county office or legislative district office where the district is entirely within the boundaries of a single county.

B. Appointments made pursuant to Subsection A of this section shall qualify pursuant to Section 1-8-18 NMSA 1978.

C. The county or state central committee members making the appointment pursuant to Subsection A of this section shall be as provided for in the rules of the respective party; provided that, at a minimum, the committee shall include those members residing within the boundaries of the area to be represented by the public office.

D. 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.

E. When the name of a nominee is filed as provided in this section, the name shall be placed on the general election ballot as the party's candidate for that office.


1-8-9. General election; withdrawal of candidates.

No candidate shall withdraw from a general election unless the candidate withdraws at least sixty-three days prior to that election and the candidate files a signed and notarized statement of withdrawal with the proper filing officer.

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".

History: 1953 Comp., § 3-8-9, enacted by Laws 1969, ch. 240, § 159.

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 after the first Monday 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.

The proclamation calling a primary election 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 the 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 the 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, public regulation commission 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 final date on and place at which candidates for the office of United States representative and for any statewide office seeking preprimary convention designation by the major parties shall file petitions and declarations of candidacy;
F. the final date on which the major political parties shall hold state preprimary conventions for the designation of candidates; and
G. 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;

B. post the proclamation and any amended proclamation on the secretary of state's web site; and

C. send an authenticated copy of the proclamation or any amended proclamation to each county clerk along with a copy of the text in an editable electronic format.


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.

History: 1953 Comp., § 3-8-14, enacted by Laws 1969, ch. 240, § 164; 1975, ch. 255, § 105; 1981, ch. 147, § 3.

1-8-16. Primary Election Law; proclamation; amendment.

The governor may amend the proclamation between the time of its issuance and the first Tuesday in March to include a newly created public office that is capable by law of being filled at the next succeeding general election, or any existing office becoming vacant by removal, resignation or death when such vacancy occurs no later than the last Friday before the first Tuesday in March, 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.

History: 1953 Comp., § 3-8-17.1, enacted by Laws 1975, ch. 255, § 106; 1981, ch. 147, § 5.

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.

History: 1953 Comp., § 3-8-18, enacted by Laws 1969, ch. 240, § 168.
1-8-21. Primary election; methods of placing names on primary ballot.

A. All candidates seeking primary election nomination to a statewide office or the office of United States representative shall file declarations of candidacy with the proper filing officer. Candidates shall file nominating petitions at the time of filing their declarations of candidacy. Candidates who seek, but do not obtain, preprimary convention designation by a major political party may file new declarations of candidacy and nominating petitions pursuant to Section 1-8-33 NMSA 1978.

B. Except as provided in Subsection C of this section, candidates for any other office listed in Section 1-8-13C shall have their names placed on the primary election ballot by filing declarations of candidacy and nominating petitions with the proper filing officer.

C. Candidates for county office shall have their names placed on the primary election ballot by filing declarations of candidacy and paying filing fees or filing the proper paupers' statements at the time of filing declarations of candidacy with the proper filing officer.


1-8-21.1. Designation of candidates by convention.

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 second 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, each candidate's name and address and the name of the political party that each candidate represents and certification that the candidate has been a member of that political party for the period of time required by the Election Code.

History: Laws 1993, ch. 55, § 11; 2013, ch. 121, § 1.

1-8-22 to 1-8-24. Repealed.

1-8-25. Proper filing officer; declaration of candidacy; nominating petitions; withdrawal of candidacy.

For the purposes of Chapter 1, Articles 8 and 12 NMSA 1978, the proper filing officer is:

A. the secretary of state for the offices of:
   (1) United States senator;
   (2) United States representative;
   (3) all state elective offices;
1-8-26. Primary Election Law; time of filing; documents necessary to qualify for ballot; challenge.

A. Declarations of candidacy by preprimary convention designation for any statewide office or for the office of United States representative shall be filed with the proper filing officer on the first Tuesday in February of each even-numbered year between the hours of 9:00 a.m. and 5:00 p.m.

B. Declarations of candidacy for any other office to be nominated in the primary election shall be filed with the proper filing officer on the second Tuesday of March of each even-numbered year between the hours of 9:00 a.m. and 5:00 p.m.

C. Certificates of designation shall be submitted to the secretary of state on the first Tuesday following the preprimary convention at which the candidate's designation took place between the hours of 9:00 a.m. and 5:00 p.m.

D. Declarations of candidacy for retention for all affected judicial offices shall be filed with the proper filing officer between the hours of 9:00 a.m. and 5:00 p.m. on the twenty-third day after the primary election.

E. 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, if required, and the certificate of registration of the candidate on file are in proper order and that the candidate, based on those documents, is qualified to have the candidate's name placed on the ballot. The proper filing officer shall mail the notice no later than 5:00 p.m. on the Tuesday following the filing date.

F. If a candidate is notified by the proper filing officer that the candidate is not qualified to have the candidate's name appear on the ballot, the candidate may challenge that decision by filing a petition with the district court within ten days of the notification. The district court shall hear and render a decision on the matter within ten days after the petition is filed. 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.

1-8-27. Primary Election Law; declaration of candidacy; manner of filing.

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.


1-8-29. 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.

A. As used in the Primary Election Law, "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, the candidate at the same time shall file a nominating petition, which shall be on the form prescribed by law.

C. The nominating petition shall be on paper approximately eight and one-half inches wide and eleven 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 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 _____, and I declare that I am a registered voter 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 zip code)

2. __________________  __________________  __________________  __________________
   (usual signature) (name printed as registered) (address as registered) (city or zip code).

D. In October of odd-numbered years, the secretary of state shall post on the secretary of state's web site and 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. 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. A person who signs a nominating petition shall sign only one petition for the same office unless more than one candidate is to be elected to that office, and in that case, a person may sign not more than the number of nominating petitions equal to the number of candidates to be elected to the office.

B. A person who signs a nominating petition shall indicate the person's registration address. If the person does not have a standard street address, the person may provide the mailing address as shown on the person's certificate of registration.

C. A signature shall be counted on a nominating petition unless there is evidence presented that the person signing:

1) was not a registered member of the candidate's political party ten days prior to the filing of the nominating petition;
2) failed to provide information required by the nominating petition;
3) 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;
4) 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;
5) 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
6) is not the person whose name appears on the nominating petition.

D. The following information shall be listed in the appropriate space at the top of the nominating petition before the petition has been signed by any voter: the party affiliation of voters signing the petition, the candidate's name, the candidate's address, the candidate's county of residence and the office sought by the candidate, which shall include the district or division of the office sought, if applicable. A nominating petition, including all signatures on the petition page, shall be invalid if any of the preceding information is not listed before the petition is signed by a voter or if any of the preceding information is altered.

E. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code, except that Paragraphs (1) and (5) of Subsection C of this section shall not apply to petitions filed by unaffiliated candidates or petitions filed by candidates of minor political parties.


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.

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. Candidates who seek preprimary convention designation shall file nominating petitions at the time of filing declarations of candidacy. Nominating petitions for those candidates shall be signed by a number of voters equal to at least two percent of the total vote of the candidate's party in the state or congressional district, or the following number of voters, whichever is greater: for statewide offices, two hundred thirty voters; and for congressional candidates, seventy-seven voters.

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, or the following number of voters, whichever is greater: for metropolitan court and magistrate courts, ten voters; for the public regulation commission, fifty voters; for the public education commission, twenty-five voters; for state representative, ten voters; for state senator, seventeen voters; and for district attorney and district judge, fifteen voters.

D. A candidate who fails to receive the preprimary convention designation that the candidate sought may collect additional signatures to total at least four percent of the total vote of the candidate's party in the state or congressional district, whichever applies to the office the candidate seeks, and file a new declaration of candidacy and nominating petitions for the office for which the candidate failed to receive a preprimary designation. The declaration of candidacy and nominating petitions shall be filed with the secretary of state either ten days following the date of the preprimary convention at which the candidate failed to receive the designation or on the date all declarations of candidacy and nominating petitions 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.

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, public regulation commission, public education commission, 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 the person is affiliated as shown by the certificate of registration, and such person shall have the qualifications to be a candidate in the primary election for the political party for which the person is a write-in candidate.

C. A person desiring to be a write-in candidate for one of 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 between 9:00 a.m. and 5:00 p.m. on the third Tuesday in March.

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 on the proper line provided on the ballot for write-in votes for the office for which the candidate has filed a declaration of intent and the voter has followed the directions for casting a vote for the write-in candidate.

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, including the obligations to report pursuant to the Campaign Reporting Act, except that the write-in candidate’s name shall not be printed on the ballot.
F. No unopposed write-in candidate shall have the write-in candidate's nomination certified unless the write-in candidate receives at least the number of write-in votes in the primary election as the write-in candidate 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 and following the directions for casting a vote for the write-in candidate. 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 pre-printed 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.

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.

History: Laws 1993, ch. 55, § 10.

1-8-40. Primary Election Law; declaration of candidacy; false statement.

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 in the primary election 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 for nomination by a political party.


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. Candidates designated and certified by state convention for a statewide office or the office of United States representative shall be placed on the primary election ballot in the order of the vote received at the state convention. The candidate receiving the highest vote shall be placed first in order on the ballot, followed by the candidate receiving the next highest vote, and so on until all the candidates designated for that office have been placed on the ballot, provided that the names of two or more candidates receiving an equal number of votes for designation by convention for the same office shall be placed on the primary ballot in the order determined by lot. Names of candidates for statewide office or the office of United States representative who do not receive preprimary convention designation but who are qualified candidates by declaration of candidacy shall be placed on the ballot as determined by lot following convention designated candidates.

B. The names of candidates for any other office in the primary election who are candidates by declaration of candidacy shall be arranged on the ballot as determined by lot.

C. The determination by lot 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.

D. 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.

A candidate seeking to withdraw from a primary election shall withdraw no later than the first Tuesday in April before that primary election by filing a signed and notarized statement of withdrawal with the proper filing officer.

1-8-45. Independent candidates for general or United States representa-
tive special elections; definition.

A. As used in the Election Code [Chapter 1 NMSA 1978], an independent candidate means a person who:
   (1) is a candidate for any state or county office to be voted on at a general election:
      (a) whose certificate of voter registration shows affiliation with no qualified political
          party on the date of the governor's proclamation for the primary election and, if applicable, shows
          residence on the date of the governor's proclamation for the primary election in the district or county
          of the office for which the person is a candidate; and
      (b) who has complied with the nomination procedures set forth in the Election Code for
          independent candidates;
   (2) is a candidate for United States senator or United States representative:
      (a) whose certificate of voter registration, if any, shows affiliation with no qualified po-
          litical party on the date of the governor's proclamation for the primary election;
      (b) who will be a resident of New Mexico when elected; and
      (c) who has complied with the nomination procedures set forth in the Election Code for
          independent candidates; or
   (3) is a candidate for the office of president or vice president who:
      (a) has complied with the nomination procedures set forth in the Election Code for in-
          dependent candidates; and
      (b) was not a major party candidate for the same office on the primary election ballot.

B. No person shall become an independent candidate for any office, and the person's name shall
   not be printed on the general election ballot, unless the person complies with the requirements of
   this section.

C. Any voter may challenge the candidacy of any person seeking to become an independent
candidate for any office for the reason that the person does not meet the requirements of this section
or because the nominating petitions, if required, do not meet the requirements of Section 1-8-31
NMSA 1978 by filing a petition in the district court within ten days after the last day for filing a
declaration of candidacy. 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.

History: 1953 Comp., § 3-8-27.1, enacted by Laws
1977, ch. 322, § 1; 1981, ch. 147, § 6; 1993, ch. 314, §

1-8-46. Independent candidates for general or United States representa-
tive 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.

History: 1953 Comp., § 3-8-27.2, enacted by Laws
1977, ch. 322, § 2.
1-8-47. Independent candidates for general or United States representative special elections; withdrawal of name.

The provisions of the Election Code [Chapter 1 NMSA 1978] pertaining to the withdrawal of candidates from the general election shall apply to the withdrawal of independent candidates.

History: 1953 Comp., § 3-8-27.3, enacted by Laws 1977, ch. 322, § 3.

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), being first duly sworn, say that:
I reside at __________________________;
I did not designate any current affiliation with a qualified political party on my certificate of registration on or before 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 meet the qualifications listed in Section 1-8-45 NMSA 1978 for the office that I seek;
I desire to become a candidate for the office of __________________________, District __________ at the general election to be held on the date set by law for this year;
if the office I seek be a state or county district office, I actually reside within the district of the office for which I declare my candidacy, and if the office I seek be a countywide office, I actually reside in the county of the office 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 or affirmation knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

________________________________________
(Declarant)

________________________________________
(Residence Address)

________________________________________
(Mailing Address, if different)
Subscribed and sworn to or affirmed before me this ______ day of ____________,

(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 elections; candidates for president and vice president.

A. Nomination as an independent candidate for president or vice president shall be made by filing a declaration of independent candidacy with the proper filing officer. The candidate for president shall also at the same time file a nominating petition with the required number of signatures.

B. In making a declaration of independent candidacy for president, the candidate shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY FOR PRESIDENT

I, __________________________ (candidate's name), being duly sworn, say that I am a citizen of the United States, have been a resident of the United States for at least fourteen years and have attained the age of thirty-five.

I desire to become a candidate for the office of president of the United States at the general election to be held on the date set by law for this year. I will be eligible and legally qualified to hold this office at the beginning of its term.

The name of my vice presidential running mate, whom I selected, is _________________. The names and addresses of the required number of presidential electors who intend to vote for me and for my vice presidential running mate in the electoral college are:

__________________________   ____________________________
(name)                        (name)
__________________________   ____________________________
(residence address)           (residence address)
__________________________   ____________________________
(mailing address)             (mailing address)
__________________________   ____________________________
(city)                        (city)
__________________________   ____________________________
(state and zip code)           (state and zip code)
__________________________   ____________________________
(name)                        (name)
(residence address) ________________________________
(mailing address) ________________________________
(city) ________________________________
(state and zip code) ________________________________
(name) ________________________________
(residence address) ________________________________
(mailing address) ________________________________
(city) ________________________________
(state and zip code) ________________________________

I submit with this statement a nominating petition in the form and manner prescribed by the Election Code. I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable in accordance with the criminal laws of New Mexico.

(declarant) ________________________________
(residence address) ________________________________
(mailing address) ________________________________
(city) ________________________________
(state and zip code) ________________________________

Subscribed and sworn to me this _______ day of __________, _______ (year)
____________________________ notary public
My commission expires: ________________________________

C. In making a declaration of independent candidacy for vice president, the candidate shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY FOR VICE PRESIDENT"

I, ________________ (candidate's name), being duly sworn, say that I am a citizen of the United States, have been a resident of the United States for at least fourteen years and have attained the age of thirty-five.

I have been selected by independent presidential candidate ________________ as his vice presidential running mate and desire to be that candidate for vice president. I will be eligible and legally qualified to hold this office at the beginning of its term.
I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable in accordance with the criminal laws of New Mexico.

______________________________
(declarant)

______________________________
(residence address)

______________________________
(mailing address)

______________________________,
(city)

______________________________,
(state and zip code)

Subscribed and sworn to me this ________ day of __________, _______ (year)

______________________________
(notary public)

My commission expires:

__________________".

D. The independent presidential electors whom the independent candidate for president is required to name shall be registered voters of New Mexico; they may or may not be affiliated with a political party in New Mexico. United States senators, United States representatives and persons holding federal offices of trust or profit are not eligible to be electors.

E. When independent candidates for president and vice president appear on the general election ballot, a vote for that pair of nominees is a vote for that presidential candidate's electors.

F. If the independent candidates for president and vice president receive the highest number of votes at the general election, the independent presidential candidate's electors shall be the presidential electors of the state of New Mexico. As such, each elector shall be granted a certificate of election by the state canvassing board, and each elector shall be subject to the provisions of Sections 1-15-5 through 1-15-10 NMSA 1978.


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 authorized form used for obtaining the required number of signatures of voters that 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. In making a declaration of candidacy, the candidate shall file a nominating petition at the same time, which shall be on forms prescribed by law.

C. The nominating petition for an independent candidate for any office except president of the United States shall be on paper approximately eight and one-half inches wide and eleven 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 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, or United States representative special election to be held on ________________, (month) (day) ___________ (year) and I declare that I am a registered voter 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 the office at the next ensuing general election or at a United States representative special election.

1. ____________________ ____________________ ____________________ ____________________
   (usual signature) (name printed as registered) (address as registered[)] (city or zip code)

2. ____________________ ____________________ ____________________ ____________________
   (usual signature) (name printed as registered) (address as registered[)] (city or zip code).

D. The nominating petition for an independent candidate for the office of president of the United States shall be on paper approximately eight and one-half inches wide and eleven 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 FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of New Mexico, by endorsement hereon, petition that the name of ________________ be printed on the general election ballot as an independent candidate for the office of president of the United States, to be voted on at the general election to be held on November __________, __________. I also declare that I am that person whose name appears hereon and that I have not signed, nor will I sign, any nominating petition for any other candidate seeking the office of president of the United States at the next ensuing general election.".

E. In March of even-numbered years, the secretary of state shall post on the secretary of state's web site and 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.

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.

1-8-51. 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, public regulation commission, 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. A 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 between 9:00 a.m. and 5:00 p.m. on the twenty-third day following the primary election of each even-numbered year and between 9:00 a.m. and 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 between 9:00 a.m. and 5:00 p.m. on the twenty-third day following the primary election.


1-8-52.1. Repealed.

1-8-53. Recompiled.

1-8-54. Recompiled.
1-8-54.1. Recompiled.
1-8-55. Recompiled.
1-8-56. Recompiled.
1-8-57. Recompiled.
1-8-58. Recompiled.
1-8-59. Recompiled.
1-8-60. Recompiled.
1-8-61. Recompiled.
1-8-62. Repealed.
1-8-63. Recompiled.
1-8-64. Repealed.

1-8-65. Minor political party candidates for general or United States representative special elections; nominating petition form.

A. As used in Sections 1-8-2 through 1-8-4 NMSA 1978, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters that is signed on behalf of the person wishing to become a minor political party candidate for a political office in a general or United States representative special election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate shall file a nominating petition at the same time, which shall be on forms prescribed by law.

C. The nominating petition for a minor political party candidate for any office requiring a nominating petition shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures approximately three-eighths inch apart and shall be in the following form:

"NOMINATING PETITION FOR MINOR POLITICAL PARTY CANDIDACY (GENERAL ELECTION)

I, the undersigned, a registered voter of New Mexico, 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 general election or United States representative special election to be held on __________, and I declare that I am a registered voter of the 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 or at a United States representative special election. I understand that if the candidate's political party does not qualify as a minor political party, the candidate may run as an unaffiliated independent candidate.

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D. In March of even-numbered years, the secretary of state shall post on the secretary of state's web site and 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. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section.


ARTICLE 9
Voting Machines

Sec. 1-9-1. Secretary of state; duties; voting system defined.

A. The secretary of state shall study, examine and certify all voting systems used in elections for public office in New Mexico. The secretary of state shall maintain a current list of certified voting systems and copies of filed testing and evaluation reports accessible by the public on the secretary
of state's web site. Only voting systems certified by the secretary of state and acquired pursuant to a competitive bid process in accordance with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] shall be used in any election for public office in New Mexico.

B. As used in Chapter 1, Article 9 NMSA 1978, "voting system" means a combination of mechanical, electromechanical or electronic equipment, including the software and firmware required to program and control the equipment, that is used to cast and count votes, and also including any type of system that is designed to print or to mark ballots at a polling location; equipment that is not an integral part of a voting system but that can be used as an adjunct to it is considered to be a component of the system.


1-9-2. Repealed.


1-9-4. Repealed.

1-9-4.1. Repealed.

1-9-4.2. Recompiled.

1-9-5. Requirement to use voting systems; sufficient check-in stations and voting booths.

A. Certified voting systems shall be used in all polling locations in all statewide elections.

B. The secretary of state shall provide to the county clerk of each county at least one optical scan tabulator for use in each polling location in the general and primary elections. At the request of a county clerk, the secretary of state shall provide additional optical scan tabulators for use in a polling place to accommodate the anticipated number of voters in that polling place and to preserve the secrecy of the ballot. The request shall be made no later than the first Monday in August of each odd-numbered year.

C. The secretary of state shall provide to the county clerk of each county a sufficient number of check-in stations for use in each polling location in the primary and general elections when electronic rosters or their equivalents are used. The number of check-in stations at a polling location shall be capable of accommodating the number of voters who appeared to vote in person on election day from the precincts represented in a consolidated precinct in the same election held four years earlier or the number of voters who actually voted in that polling location four years earlier, whichever is greater; provided that no polling location shall be provided fewer than two check-in stations. No later than the last Tuesday in June of each odd-numbered year, the secretary of state shall determine how many voters a check-in station can accommodate in a day and develop a formula so that a check-in station is in use no more than seventy-five percent of the time. No later than the first Monday in August of the odd-numbered year, the county clerk in each county shall provide to the secretary of state the number of check-in stations required per polling location based on the formula provided by the secretary of state. Nothing in this section prohibits the board of county commissioners from acquiring additional check-in stations for use in an election, in addition to those provided by the secretary of state.
D. The county clerk shall ensure that an adequate number of voting booths are provided to ensure that voters in each polling location may cast their ballots in secret.


1-9-6. Voting systems; use in other elections.

A. The county clerk may provide for the use of voting systems 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 systems 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 systems to conduct the municipal election.

B. The county clerk shall schedule the use of the voting systems.


1-9-7. Voting systems; acquisition.

A. The secretary of state shall provide to the county clerk of each county a sufficient number of voting systems as required by the Election Code for the conduct of primary and general elections.

B. When authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting systems. No less than ninety days prior to each primary and general election, the board of county commissioners of each county may make application to the state board of finance for any additional voting systems to be acquired by a county in excess of the number of voting systems required by the Election Code for the conduct of primary and general elections.

C. The additional voting systems shall be of a type certified by the secretary of state. They shall be purchased by the state board of finance. Unless paid in full by the county at the time of purchase, the cost of the voting systems, including all transportation costs, shall be paid out of the voting system revolving fund. The state board of finance shall cause to be delivered to each county clerk the additional voting systems.

D. Except for intercounty acquisitions of equipment approved by the secretary of state, a previously owned voting system shall have a warranty equal to the warranty required of a new voting system.


1-9-7.1. Voting system; use of paper ballot.

A. All voting systems used in elections covered by the Election Code [Chapter 1 NMSA 1978] shall use a paper ballot on which the voter physically or electronically marks the voter's choices on the ballot itself.

B. The secretary of state shall purchase the paper ballots for all counties to use for primary and general elections. If a system designed to print ballots at a polling location is certified and the voting system certification committee finds that its use in a polling place would result in cost
savings, the secretary of state shall acquire such systems and paper ballot stock in lieu of fully preprinted paper ballots for those polling places where cost savings would be realized.

C. The paper ballot shall be used in a recount proceeding, and in case of a discrepancy, the paper ballot shall be considered the true and correct record of the voter's choices.


1-9-7.2. Voting systems; testing of previously certified systems.

The secretary of state may voluntarily test and certify voting systems without an application by the manufacturer if the system has been previously certified by the United States election assistance commission. Tests and inspections conducted pursuant to this section shall follow the procedures in Section 1-9-14 NMSA 1978 and shall be completed within six months of the date on which the secretary of state orders testing to begin; provided, however, if the manufacturer has not applied for certification of that voting system, the manufacturer shall not be required to pay for the costs of testing and certification.


1-9-7.3. Voting systems records.

For each certified voting system purchased in 2006 and after, including any separate component, the secretary of state shall maintain records of the voting system and any component, including:

A. a description of each voting system and any of its components;
B. its serial number or other identification number;
C. the name of the vendor, the titleholder and the acquisition date;
D. its cost;
E. the percentage of federal participation covering the cost of acquisition;
F. its location, use and condition; and
G. its ultimate disposition, including the date of disposal and sale price.

History: Laws 2010, ch. 28, § 1.

1-9-7.4. Voting systems; authority of the secretary of state to recertify and decertify.

A. Each voting system certified for use in the state shall be reviewed for recertification by the secretary of state during the year following a presidential election. Tests and inspections conducted pursuant to this section shall begin no later than June 1 and shall follow the procedures in Section 1-9-14 NMSA 1978.

B. If at any time the secretary of state becomes aware that a voting system certified for use in this state does not comply with all requirements in the Election Code [Chapter 1 NMSA 1978] or meet federal election standards, the secretary of state shall undertake an investigation to determine if the voting system should continue to be certified for use in the state. Tests and inspections conducted pursuant to this section shall commence upon the order of the secretary of state and shall follow the procedures in Section 1-9-14 NMSA 1978. A voting system that does not comply with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission shall be decertified for use in this state.
1-9-7.5. Voting systems; voting system certification committee; members.

A. The "voting system certification committee" is created. The committee shall review written test reports and the findings of the secretary of state on the certification, recertification and decertification of voting systems for use in elections in the state.

B. The voting system certification committee shall be composed of:
   (1) the secretary of information technology or the secretary's designee from within the department of information technology; and
   (2) four additional members as follows:
      (a) one member appointed by the president pro tempore of the senate;
      (b) one member appointed by the minority floor leader of the senate;
      (c) one member appointed by the speaker of the house of representatives; and
      (d) one member appointed by the minority floor leader of the house of representatives.

C. The four additional members appointed pursuant to Paragraph (2) of Subsection B of this section shall be county clerks or their chief deputies or other persons knowledgeable of elections in this state. Members shall be appointed for terms of two years beginning on May 1 of each even-numbered year. Vacancies shall be filled by the original appointing authority.

D. The members of the committee shall select a committee member to serve as chair of the committee. No person who is currently or has been within the previous twelve months an employee or contractor of a voting machine vendor or the office of the secretary of state may serve as a member of the committee. Members of the committee are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [Chapter 10, Article 8 NMSA 1978], to be paid out of the funds appropriated to the secretary of state.

E. All meetings of the voting system certification committee shall be open meetings held in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. All reports and other records that are used, created, received, maintained or held by or on behalf of the voting system certification committee shall be open to public inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

History: Laws 2010, ch. 28, § 2; 2011, ch. 137, § 70.

1-9-7.6. Voting systems; storage; custody and maintenance; authority to enforce.

A. The secretary of state shall prescribe by rule promulgated pursuant to the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978] specifications for the proper storage of voting systems.

B. Voting systems shall be held in the custody of the county that uses the voting systems. All voting systems shall be properly stored pursuant to specifications promulgated by the secretary of state. The board of county commissioners shall be responsible for the costs of properly storing voting systems in custody of the county.

C. The secretary of state may pay from the voting system revolving fund the costs of all hardware, software, firmware, maintenance and support for voting systems, whether state- or county-owned, certified for use in state elections.

D. If the secretary of state becomes aware that state- or county-owned voting systems in the custody of a county are not being stored pursuant to specifications promulgated by the secretary of...
state, the secretary of state may take action as is deemed appropriate to protect the voting equipment. Such action may include requesting a court to order the county to implement the specifications promulgated by the secretary of state or the secretary of state taking immediate physical control of the voting systems until the county has complied with the storage specifications.


1-9-7.7. Voting systems; technical requirements.

Voting systems certified for use in state elections shall:
A. have a unique embedded internal serial number for audit purposes;
B. be supplied with a dust- and moisture-proof cover for transportation and storage purposes;
C. if the net weight of the system, or aggregate of voting device parts, is over twenty pounds, have self-contained wheels so that the system can be easily rolled by one person on rough pavement and can roll through a standard thirty-inch door frame;
D. be a stand-alone, non-networked election system such that all pre-election, election day and post-election events and activities can be recorded and retained in each device;
E. employ scalable technology allowing easy enhancements that meet United States election assistance commission standards and state law;
F. have ancillary equipment, such as printers, power sources, microprocessors and switch and indicator matrices, that is installed internally or is modular and transportable;
G. display publicly the number of ballots processed;
H. be able to print:
   (1) an alphanumeric printout of the contests, candidates and vote totals when the polls are opened so that the poll workers can verify that the counters for each candidate are on zero;
   (2) an alphanumeric printout of the contests, candidates and vote totals at the close of the polls, which printouts shall contain the system serial number and public counter total; and
   (3) as many copies of the alphanumeric printouts as necessary to satisfy state law; and
I. include a feature to allow reports to be sent to an electronic data file.

History: Laws 2010, ch. 28, § 5.

1-9-7.8. Voting systems; operational requirements.

Voting systems certified for use in state elections shall:
A. have internal application software that is specifically designed and engineered for the election application;
B. include comprehensive diagnostics designed to ensure that failures do not go undetected;
C. have a real-time clock capable of recording and documenting the total time polls are opened; and
D. have a self-contained, internal backup battery that powers all components of the system that are powered by alternating current power; and, in the event of a power outage in the polling place:
   (1) the self-contained, internal backup battery power shall engage with no disruption of operation for at least two hours and with no loss of data; and
   (2) the system shall maintain all vote totals, public counter totals and the internal clock time in the event that the main power and battery backup power fail.

1-9-7.9. Voting systems; memory; removable storage media device; requirements.

Voting systems certified for use in state elections shall:
A. be programmable with removable storage media devices;
B. contain ballot control information, summary vote totals, maintenance logs and operator logs on the removable storage media device;
C. ensure that the votes stored on the removable storage media device accurately represent the actual votes cast;
D. be designed so that no executable code can be launched from random access memory;
E. have any operating system software stored in nonvolatile memory, which shall include internal quality checks such as parity or error detection and correction codes, and which software shall include comprehensive diagnostics to ensure that failures do not go undetected;
F. allow for pre-election testing of the ballot control logic and accuracy, with results stored in the memory that is used on election day, and shall be capable of printing a zero-results printout prior to these tests and a results printout after the test;
G. have internal audit trail capability such that all pre-election, election day and post-election events shall be stored, recorded and recovered in an easy-to-read printed form and be retained within memory that does not require external power for memory retention;
H. possess the capability of remote transmission of election results to a central location only by reading the removable storage media devices once they have been removed from the tabulation device after the poll closing sequence has been completed; and
I. prevent data from being altered or destroyed by report generation or by the transmission of results.

History: Laws 2010, ch. 28, § 7.

1-9-7.10. Voting systems; ballot handling and processing requirements.

Voting systems certified for use in state elections shall:
A. accept a ballot that is a minimum of six inches wide and a maximum of twenty-four inches long, in dual columns and printed on both sides;
B. accept a ballot in any orientation when inserted by a voter;
C. have the capability to reject a ballot on which a voter has made more than the allowable number of selections in any contest;
D. be designed to accommodate the maximum number of ballot styles or ballot variations encountered in the largest New Mexico election jurisdiction; and
E. be able to read a single ballot with at least four hundred twenty voting positions.

History: Laws 2010, ch. 28, § 8.

1-9-7.11. Voting systems; source code; escrow.

As a condition of initial certification and continued certification, the source code that operates a voting system shall be placed in escrow and be accessible to the state of New Mexico in the event the manufacturer ceases to do business or ceases to support the voting system.


1-9-10. Repealed.


1-9-12. Care and custody of removable storage media devices; responsibility for transportation of voting systems; responsibility for security and programming; charge for such transportation or programming.

A. The county clerk shall be responsible for transporting all voting systems to and from polling places.

B. The county clerk shall have care and custody of and be responsible for the removable storage media devices for all voting systems in the custody of the county and shall be responsible for the programming of the systems.

C. When voting systems are used in any election, the county clerk shall assure the security of the removable storage media devices at all times during the period the voting systems are being programmed and until the votes recorded on the removable storage media devices are cleared pursuant to Section 1-13-21 NMSA 1978. The county clerk may give written authorization in advance to program the removable storage media devices outside of the county seat, and a copy of the authorization with the programmer named therein shall be kept on file in the county clerk's office subject to public inspection.

D. Failure of the county clerk to assure the security of voting system removable storage media devices in the county clerk's custody shall constitute a neglect to discharge the duties of the clerk's office.

E. A reasonable fee may be charged by the county for the transportation and programming of the voting systems when used pursuant to Section 1-9-6 NMSA 1978, but in no case shall such fee exceed the actual cost to the county.


A. Voting system technicians shall be trained and certified by the secretary of state as to their adequacy of training and expertise on voting systems certified for use in the state.

B. The secretary of state shall train and recertify voting system technicians prior to each primary election.

C. For purposes of this section, "voting system technician" means any person who is trained and certified to program, inspect, properly store and troubleshoot voting systems.

D. The secretary of state shall adopt rules regulating the scope of training provided to voting system technicians to ensure that voting system warranties are not invalidated and that equipment owned by the state is protected.
1-9-14. Voting systems; authority of the secretary of state to test; certification.

A. The secretary of state shall provide for the testing and evaluation of voting systems designed for the purpose of recording and tabulating votes within polling places in New Mexico. All voting systems certified for use in the state shall be tested by an independent authority and shall comply with all requirements in the Election Code [Chapter 1 NMSA 1978] and the most recent voluntary voting system guidelines adopted by the United States election assistance commission.

B. Any person who has a voting system that 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 the equipment examined and tested for certification. At the time application is made for initial certification, the applicant shall pay for testing each system 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 voting system to ensure that it complies with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission. As part of the examination, the secretary of state shall require the system to be independently inspected by persons or testing laboratories technically qualified to evaluate and test the operation and component parts of voting systems 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 polling places 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.

C. 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 file that report, together with the written test reports, in the office of the secretary of state and post them on the secretary of state's web site. The secretary of state shall accept public comment during the twenty-one days following the filing of the written report.

D. Following the period of public comment, the secretary of state shall submit the filed reports and any public comments for consideration by the voting system certification committee. The voting system certification committee shall make recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code.

E. The voting system certification committee shall recommend that a voting system be certified for use in the state only if it complies with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission.

F. If the voting system certification committee report finds that the voting system does not comply with all requirements in the Election Code or does not meet federal election standards, the secretary of state shall allow thirty days for an appeal of the findings to be filed or for the deficiencies to be corrected, following which the secretary of state shall report back to the voting system certification committee with a written final report.

G. The voting system certification committee shall reconvene to consider the final report of the secretary of state and shall make final recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code.

H. If the voting system certification committee recommends that the voting system is suitable for use in elections in New Mexico, within thirty days of receiving the recommendation, the secretary of state shall certify or recertify the equipment for use in elections in this state.
I. If the voting system certification committee does not recommend that the voting system for recording and tabulating votes is suitable for use in elections in New Mexico, within thirty days of receiving the recommendation, the secretary of state shall deny the application or decertify the equipment for use in elections in this state.


1-9-17. Additional voting systems; state 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 systems and the necessary support equipment upon receipt of the application of the board of county commissioners pursuant to Section 1-9-7 NMSA 1978.

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 systems and the necessary support equipment;
2. the county will pay for the cost of the systems and support equipment, including reimbursement for costs of transportation;
3. the term of the lease-purchase contract shall not exceed ten years;
4. the care, custody and proper storage of the systems and support equipment pursuant to specifications issued by the secretary of state 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.


1-9-17.1. Voting systems; renegotiation of lease-purchase contract; disposition of voting systems.

A. A lease-purchase contract for a voting system entered into between the state board of finance and a county pursuant to Section 1-9-17 NMSA 1978, after a renegotiation pursuant to Paragraph (5) of Subsection B of that section, may include provisions providing that, upon the return of physical control of the voting systems to the state board of finance, the contract shall be terminated and no additional payments from the county shall be due. The state board of finance may dispose of voting systems returned pursuant to this subsection in any manner that is consistent with the interests of the state.

B. Upon application by the board of county commissioners, the secretary of state shall dispose of voting systems and support equipment purchased after January 1, 2007 by the board of county commissioners. The application shall include a provision for the transfer of ownership in the voting systems to the state without fee or compensation to the county.

History: 1978 Comp. § 1-9-17.1, as enacted by Laws 2009, ch. 173, § 1; 2010, ch. 28, § 19.
1-9-18. Electronic voting systems; 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 systems 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 systems and support equipment were originally purchased with severance tax bond proceeds. The state board of finance shall deposit the payments into the electronic voting system revolving fund if the electronic voting systems were originally purchased with money from the electronic voting system revolving fund.


A. The "voting system revolving fund" is created. The voting system revolving fund may be used:

(1) by the secretary of state to pay for hardware, software, firmware, maintenance and support for voting systems, whether state- or county-owned, certified for use in state elections; and

(2) by the counties to finance, by contract, the purchase of voting systems and necessary support equipment under the conditions stated in Section 1-9-17 NMSA 1978; provided that no expenditure shall be made pursuant to this paragraph if it would result in a fund balance of less than one million dollars ($1,000,000).

B. The voting system revolving fund may be expended upon vouchers signed by the secretary of finance and administration.

C. If at the end of a fiscal year the voting system revolving fund exceeds six million five hundred thousand dollars ($6,500,000), the amount in excess of six million five hundred thousand dollars ($6,500,000) shall revert to the general fund.


1-9-20. Systems designed to print ballots at polling locations; ballot preparation requirements.

Systems designed to print ballots at polling locations shall provide the general capabilities for ballot preparation and shall be capable of:

A. enabling the automatic formatting of ballots in accordance with the requirements of the Election Code, as amended from time to time, for offices, candidates and questions qualified to be placed on the ballot for each political subdivision and election district;

B. supporting the maximum number of potentially active voting positions;

C. generating ballots for a primary election that segregate the choices in partisan contests by party affiliation;
D. generating ballots that contain identifying codes or marks uniquely associated with each format;
E. ensuring that voting response fields properly align with the specific candidate names or questions printed on the ballot;
F. generating ballots that can be tabulated by all certified voting systems in the state;
G. generating a ballot for an individual voter based on voter registration data provided by state or county;
H. functionality in absentee, early and election day voting environments;
I. providing absentee ballot tracking ability;
J. uniform allocation of space and fonts used for each office, candidate and question such that the voter perceives no active voting position to be preferred to any other;
K. rendering the ballot in any of the written languages required by the federal Voting Rights Act of 1965, as amended;
L. conformity with optical scan vote tabulator vendor specifications for type of paper stock, weight, size and shape; size and location of voting positions used to record votes; folding; bleed-through; and ink for printing; and
M. interfacing with the statewide voter file for the exchange of data.


1-9-21. Systems designed to print ballots at polling locations; security requirements.

Systems designed to print ballots at polling locations shall provide the security capabilities for ballot preparation and shall be capable of:
A. providing a full audit trail of individual voter activity;
B. providing full ballot production audit logs for all activity, including absentee voting by mail, in-person absentee voting, early voting, provisional voting and spoiling ballots;
C. creation and preservation of an audit trail of every ballot issued, including during a period of interrupted communication in the event of loss of network connectivity;
D. suitable security passwords at user, administrator and management levels;
E. preventing the modification of ballot formatting by polling place users; and
F. retaining full functionality and capability of printing ballots during a period of interrupted communication in the event of loss of network connectivity.


1-9-22. Systems designed to print ballots at polling locations; hardware, software and usability requirements.

Systems designed to print ballots at polling locations shall:
A. provide hardware requirements that:
   (1) shall be networkable and scalable for multi-user environments;
   (2) function without degradation in capabilities after transit to and from the place of use;
   (3) function without degradation in capabilities after storage between elections;
   (4) function in the natural environment, including variations in temperature, humidity and atmospheric pressure;
(5) function in an induced environment, including proper and improper operation and handling of the system and its components during the election process;
(6) contain prominent instructions as to any special requirements;
(7) have no restrictions on space allowed for installation, except that the arrangement of the system shall not impede the performance of duties by election workers, the orderly flow of voters through the polling place or the ability of voters to vote in private; and
(8) operate with the electrical supply ordinarily found in polling place, nominal one hundred twenty volts alternating current, sixty hertz, single phase;

B. provide software requirements that shall:
   (1) be capable of exporting voter data and voter activity status data to state and county voter registration systems;
   (2) be capable of generating all required absentee and early voting signature rosters in a state-approved format;
   (3) generate daily and to-date activity reports based on user-defined criteria; and
   (4) have both single transaction and batch transaction absentee production capability; and

C. be capable of being operated by computer users familiar with a graphical user interface.

History: 2011, ch. 137, § 68.

ARTICLE 10

Ballots and Ballot Labels

Sec.
1-10-1. Ballot.
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1-10-2.1. Repealed.
1-10-3. Ballots; uniformity.
1-10-5. Ballots; printing.
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1-10-8. Ballots; primary and general elections; order of offices.
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1-10-11. Sample ballots; penalty.
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1-10-13. Paper ballots; write-in candidates.
1-10-14. Paper ballots; election supplies.

1-10-1. Ballot.

As used in the Election Code [Chapter 1 NMSA 1978]:
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, provisional paper ballots and all other paper ballots; and
B. "provisional paper ballot" means the paper ballot used pursuant to Section 1-12-7.1, 1-12-8 or 1-12-25.2 NMSA 1978.

1-10-2. Ballots; duty to provide.

The county clerk shall prepare and supply the ballots used in elections conducted under the Election Code [Chapter 1 NMSA 1978]. The secretary of state may assist in preparing and supplying ballots. Ballots other than those prepared by the county clerk or secretary of state shall not be used.


1-10-2.1. Repealed.

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.


A. Not less than fifty-six days before the primary election, each proper filing officer shall group all candidates for each party by themselves and prepare in writing a separate ballot for each party and certify the candidates for each ballot position to the printer.

B. Not less than fifty-six days before the general election, each proper filing officer shall prepare in writing the ballot containing the name of each candidate that has been certified and filed as the nominee of a 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 each certification shall be kept on file in the office of the secretary of state.

C. Upon request of the county chair of a political party participating in the election, the county clerk shall furnish proof sheets or a copy of the proof sheets of the ballot as soon as they become available.


1-10-5. Ballots; printing.

The county clerk shall have access to sufficient ballots to send to federal qualified electors no later than the last business day before the forty-fifth day prior to an election. All other ballots shall be printed and in the possession of the county clerk at least forty days before the election. When a county is using a system that is designed to print ballots at a polling location, the system shall be programmed and capable of operation at least forty 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 senator 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.


1-10-7.1. Repealed.

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. non-judicial state offices to be voted on at large, in the order prescribed by the secretary of state;
E. state senator;
F. state representative;
G. other districted offices, in the order prescribed by the secretary of state;
H. judicial offices in partisan contests, in the order prescribed by the secretary of state;
I. county commissioners;
J. county clerk;
K. county treasurer;
L. county assessor;
M. county sheriff;
N. probate judge; and
O. in the order prescribed by the secretary of state:
   (1) judicial offices in retention elections;
   (2) local government ballot questions authorized by the board of county commissioners; and
   (3) other questions 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 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. When electronic vote recording and tabulating machines or electronic vote tabulating machines are used, the offices and candidates shall be printed on the ballot in a vertical position with the order of preference being from top to bottom.

C. When paper 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 all ballots in that precinct.

D. 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.

History: 1953 Comp., § 3-10-13, enacted by Laws 1969, ch. 240, § 208.

1-10-10. Ballots; sample.

A. The county clerk shall make available in both English and Spanish a number of sample ballots in a quantity and in a printed or electronic format as prescribed by the secretary of state.

B. The sample ballots shall be the same in all respects as the official ballots, except that, if printed, 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. Printed sample ballots shall be made available in reasonable quantities to all interested persons at the county clerk's office, in each polling place and on the county's web site, if the county maintains a web site.
1-10-11. Sample ballots; penalty.

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.

1-10-12. Paper ballots; general requirements.

Paper ballots shall:
A. be numbered consecutively;
B. be uniform in size;
C. be printed on good quality white paper;
D. be printed in plain black type;
E. have the precinct numbers printed on each paper ballot; and
F. be in the form prescribed by the secretary of state.

1-10-13. Paper ballots; write-in candidates.

When a write-in candidate has been certified pursuant to the Election Code [Chapter 1 NMSA 1978], a space for entering the name of the write-in candidate shall be clearly designated by the use of the heading "Write-in Candidate" after the listing of other candidates for that office.

1-10-14. Paper ballots; election supplies.

The secretary of state shall provide for the procurement of paper ballot election supplies.
ARTICLE 10A
Ballot Positioning
(Repealed by Laws 1994, ch. 3, § 2.)

1-10A-1 to 1-10A-3. Repealed.

ARTICLE 11
Notices, Preparation for Elections and Election Supplies

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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.

History: 1953 Comp., § 3-11-1, enacted by Laws 1969, ch. 240, § 211.

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 and their party affiliation for each of the offices to be filled;
E. list all properly certified candidates for judicial retention;
F. list all properly declared write-in candidates for each of the offices to be filled;
G. list the names of all precinct board members, the polling location and the precinct, if applicable, to which they are appointed; and
H. give the address or location of each polling place and alternate voting location where the election is to be held.

1113. 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.


1114. 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.


1115. Voting device; preparation; certification.

Forty-two days before the election, the county clerk may begin to prepare, inspect, certify and seal electronic voting machines that are to be used in the election, and such preparation, inspection, certification and sealing shall continue until all machines are prepared, inspected, certified and sealed.


1116. Voting machines; manner of preparing.

When preparing, inspecting and sealing voting machines, the county clerk shall:
A. certify to the secretary of state and the county chair of each political party participating in the election the type and serial number of each voting machine intended to be used in each polling location, by precinct number, where applicable;
B. prepare, in the presence of those persons entitled to be present, the electronic voting machines for the election as follows:
   (1) all public, candidate and question counters shall be set at zero;
   (2) 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; and

C. seal and retain the logic and accuracy test printout, known as the internal audit trail, until it may be disposed of pursuant to Section 1-12-69 NMSA 1978.


1-11-6.1. Electronic voting machines; testing.

All programming of vote tabulating machines shall be tested under the supervision of the county clerk. The machines shall be programmed so that votes will be counted in accordance with the specifications for electronic voting machines.


Immediately after each electronic voting machine has been prepared for the election, the county clerk shall prepare a written certificate, which shall be filed in the county clerk's 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 public counters set at zero and whether or not the machine has been tested by voting on each public counter to prove the counter is in perfect condition. The certificate shall also show the number of the seal that has sealed the machine and the number registered on the public counter.


A. At least three days before preparing any type of voting machine for an election, the county clerk shall send notice to the county chair 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, election observers and candidates may be present at the preparation, inspection and sealing of the voting machines to ensure compliance with the Election Code.


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. Repealed.

1-11-12.1. Repealed.

1-11-13. Index of voters.

Upon the written request of a qualified political party, a candidate, an election-related organization or an election observer, the secretary of state shall send to the requester an index of all voters and their addresses, their party affiliation, their precinct, their voter history, their unique identifier and their early or absentee voting status in any election currently underway. Each index shall be certified by the secretary of state as being an accurate listing of all voters in each requested county. The written request shall specify whether the information is to be received electronically or on paper, the electronic or physical delivery address, the time period during which the information is to be received, the frequency of receiving the information and the method of payment.


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 candi-
dates appearing on the official ballot. The secretary shall approve a county's use of computer-based tally sheets upon recommendation of the voting system certification committee if the county submits the software program to be used for tallying to the secretary of state at least ninety days prior to the election and the voting system certification committee determines that the program is acceptable for the proposed use.


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.

History: 1953 Comp., § 3-11-27.1, enacted by Laws 1977, ch. 222, § 34.

ARTICLE 12

Conduct of Elections

Sec. 1-12.1. Conduct of election; opening and closing of polls.
1-12-2. Conduct of election; precinct board attendance.
1-12-2.1. Precinct board work shift option.
1-12-3. Conduct of election; precinct board duties.
1-12-4. Conduct of election; maintenance of order.
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1-12-5. Conduct of election; state police; other peace officers.
1-12-6. Conduct of election; memoranda of actions or omissions.
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1-12-7.1. Voter lists; signature rosters; checklist of voters; use during election.
Sec. 1-12-7.2. Voter whose name is not on list or roster.
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1-12-28. Conduct of election; election certificate.
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1-12-70. Reporting of vote totals by precinct; voting data maintained by precinct.
1-12-71. Restriction on local government elections.
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, excepting those members scheduled to work only the second shift, shall present themselves at the polling place not later than 6:00 a.m. on the date required by law for the election.


1-12-2.1. Precinct board work shift option.

A. The county clerk may choose to schedule precinct board members into two work shifts on election day and also may determine the length of each shift for each precinct board member so long as the first shift begins at least one hour before the polls open.

B. If the county clerk chooses to schedule precinct board members in shifts, the presiding judge on each precinct board shall be scheduled to work both shifts that day.

C. The county clerk shall notify the secretary of state of all precincts that will be following a two-shift schedule when the county clerk submits the list of precinct board appointments in accordance with Section 1-2-14 NMSA 1978.


1-12-3. Conduct of election; precinct board duties.

The secretary of state shall prescribe the duties of the precinct board, including duties that, during the conduct of the election, the presiding judge may reassign between judges and election clerks. Copies of such duties shall be furnished to each county clerk, and the clerk shall distribute them to each precinct.

History: 1953 Comp., § 3-12-3.1, enacted by Laws 1977, ch. 222, § 36; 2011, ch. 137, § 82.

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.


1-12-4.1. Conduct of elections; suspension of certain voter identification requirements.

If on election day the amount of time voters must spend in line before being able to vote in the precinct exceeds forty-five minutes, the presiding judge of the precinct shall suspend all physical forms of voter identification requirements other than those mandated by federal law; provided, however, that at the request of two or more precinct board members of different political parties, a voter shall still present the required physical form of identification, and in the case of a voter who does not provide the required name, birth year and unique identifier, the voter shall still be required to present the required physical form of identification.


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.

History: 1953 Comp., § 3-12-8, enacted by Laws 1969, ch. 240, § 244; 1981, ch. 149, § 2.

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 [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-12-9, enacted by Laws 1969, ch. 240, § 245.

1-12-7. Conduct of election; persons not permitted to vote.

A. A person shall not vote in a primary, general or statewide special election unless he is a voter of the county 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. A person whose major party affiliation is not designated on his original certificate of registration shall not vote in a primary election.
C. A person at a primary election shall not be permitted to vote for the candidate of any party other than the party designated on his current certificate of registration.


1-12-7.1. Voter lists; signature rosters; checklist of voters; use during election.

A. At each election day polling location, other than a consolidated precinct where any voter in the county may vote, the precinct board shall post securely at or near the entrance of the polling place one copy of an alphabetical list of voters and a map of the precincts represented in that polling place for use of the voters prior to voting. The posted copy shall not contain a listing of voter addresses, years, months or days of birth or social security numbers.

B. At each polling location where physical rosters are used, the presiding judge of the precinct board shall assign one judge or election clerk of the board to be in charge of one copy of the checklist of voters, 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 judge or election clerk to be in charge of the signature roster.

D. The judge or election clerk assigned to confirm registration shall determine that each person offering to vote is registered and, in the case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person’s registration is confirmed and the voter provides the required voter identification, the judge or election clerk shall announce to the judges or election clerks the list number and the name of the voter as shown on the checklist of voters. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional paper ballot and shall provide the required voter identification to the county clerk’s office before 5:00 p.m. on the second day following the election, or to the precinct board before the polls close, or the voter’s provisional ballot shall not be qualified. If the required voter identification is provided, the voter’s provisional paper ballot shall be qualified and the voter shall not vote on any other type of ballot.

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

F. If the signature roster indicates that the voter is required to present a physical form of identification before voting, the judge or election clerk shall ask the voter for the required physical form of identification. If the voter does not provide the required identification, the voter shall be allowed to vote on a provisional paper ballot; provided, however, that if the voter brings the required physical form of identification to the polling place after casting a provisional paper ballot, that ballot shall be qualified.

G. The judge or election clerk shall follow the procedures provided for in Sections 1-12-7.2 and 1-12-8 NMSA 1978 if a person whose name does not appear on the signature roster requests to vote or a person is required to vote on a provisional paper ballot.

H. A voter shall not be permitted to vote until the voter has properly signed the voter's usual signature or made the voter's mark in the signature roster.

1-12-7.2. 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 the voter offers to vote shall be permitted to vote in the precinct pursuant to the federal National Voter Registration Act of 1993 and Section 1-12-8 NMSA 1978.

B. The judges or 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 sign an affidavit of eligibility and cast a provisional paper ballot, provided the voter has first signed or marked both the signature roster and checklist of registered voters.

C. The provisional paper ballot tracking number for the voter shall be entered on the affidavit of eligibility, the signature roster and the checklist of registered voters.

D. In a primary election, a voter shall not be permitted to vote for a candidate of a party different from the party designation shown on the voter's certificate of registration. Upon making that determination, the county clerk shall transmit the ballot to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.


1-12-7.3. Signature rosters and checklists of voters; contents.

A. The signature roster and checklist of voters for any precinct shall contain for each voter, as shown in the county register, the voter's:

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

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

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


1-12-7.4. Signature roster; checklist of voters; voter list; number; distribution.

A. The county clerk shall prepare and certify the accuracy of one signature roster and one checklist of voters for each precinct. The county clerk shall deliver such roster and checklist to each precinct board. The voter shall sign the signature roster before receiving a ballot. The precinct board member shall mark the checklist of voters to verify the voters on the list who have voted.

B. The county clerk shall prepare an alphabetical listing of voters in each precinct, which will be delivered to each precinct board and posted inside the polling place for public use.
C. After the polls have closed, the presiding judge shall deliver the signed signature roster to the county clerk and mail the checklist of voters to the secretary of state.


1-12-8. Conduct of election; provisional voting.

A. A person shall be permitted to vote on a provisional paper ballot even though the person's original certificate of registration cannot be found in the county register or even if the person's name does not appear on the signature roster, provided:

1. the person's residence is within the boundaries of the county in which the person offers to vote;
2. the person's name is not on the list of persons submitting absentee ballots; and
3. the person executes a statement swearing or affirming to the best of the person's knowledge that the person is a qualified elector, is currently registered and eligible to vote in that county and has not cast a ballot or voted in that election.

B. A voter shall vote on a provisional paper ballot if the voter:

1. has not previously voted in a general election in New Mexico or has been purged from the voter list;
2. registered to vote by mail;
3. did not submit the physical form of the required voter identification with the certificate of registration form; and
4. does not present to the election judge a physical form of the required voter identification.

C. A voter shall vote on a provisional paper ballot in accordance with the provisions of Section 1-12-7.1 NMSA 1978 if the voter does not provide the required voter identification to the election judge.

D. A judge or election clerk shall have the voter sign the signature roster and issue the voter a provisional paper ballot, an outer envelope and an official inner envelope. The voter shall vote on the provisional paper ballot in secrecy and, when done, place the ballot in the official inner envelope and place the official inner envelope in the outer envelope and return it to the judge or election clerk. The judge or election clerk shall ensure that the required information is completed on the outer envelope, have the voter sign it in the appropriate place and place it in an envelope designated for provisional paper ballots.

E. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code [Chapter 30 NMSA 1978], and voting on the basis of such falsely executed statement constitutes fraudulent voting.


1-12-8.1. Conduct of election; use of voter's receipt of certificate of registration; procedures.

If a voter whose name is not in the signature roster presents the voter's receipt of the voter's certificate of registration, the voter shall be allowed to vote on a provisional paper ballot in the proper precinct in accordance with the provisions of Section 1-12-7.1 NMSA 1978. The judge or
election clerk shall inform the voter that the voter will be notified by the county clerk to provide a copy of the receipt of the certificate of registration to the county clerk if the original certificate is not located. A note shall be entered on the signature roster indicating that the voter's certificate of registration should be checked by the county clerk. For the purposes of investigation or prosecution, the county clerk shall provide the district attorney and the secretary of state with the person's name and address and the corresponding receipt number of the person's certificate of registration for each person whose certificate of registration is not located.


1-12-8.2. Conduct of election; election day delivery of absentee ballot by voter; procedures.

A. A voter who requested and received an absentee ballot shall be allowed to deliver the official mailing envelope containing the voter's absentee ballot on election day to any polling location in the county in which the voter is registered if the voter presents the official mailing envelope to the presiding judge before the polls close on election day.

B. The judge shall note that the voter delivered the absentee ballot in person on election day. The official mailing envelope shall not be opened but shall be placed in an envelope provided for delivery to the county clerk. The precinct board shall deliver the unopened official mailing envelopes to the county clerk before midnight on election day.

C. If the unopened official mailing envelope is received by the county clerk from a precinct board before the absent voter precinct board has adjourned, it shall be logged and transmitted to the absent voter precinct board to be tallied immediately. If the unopened mailing envelope is received by the county clerk from a precinct board after the absent voter precinct board has adjourned, it shall be logged and transmitted to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.


1-12-9. Recompiled.

1-12-9.1. Recompiled.

1-12-10. Conduct of election; voter's name, address, signature.

A. A voter at the polls shall announce the voter's name and address in an audible tone of voice. When a judge or election clerk finds the voter's name in the signature roster, the judge or election clerk shall in like manner repeat the name of the voter. The judge or election clerk shall then ask the voter to provide the required voter identification. The voter shall then sign the voter's name or make the voter's 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 [Chapter 1 NMSA 1978].

B. If a voter fails to provide the required voter identification, the voter shall be allowed to vote on a provisional paper ballot.
1-12-10.1. Conduct of elections; voting information.

A. The secretary of state shall provide voting information, which the county clerks shall display, in accordance with the federal Help America Vote Act of 2002, in each polling place and in each county clerk's office and at any location where voting is taking place.

B. The county clerk shall ensure that in each polling place there is posted the phone numbers of the county clerk and the secretary of state.


1-12-11. Repealed.

1-12-12. Conduct of election; eligibility for assistance.

A voter may request assistance in voting only if the voter:

A. is blind;
B. is physically disabled;
C. is unable to read or write;
D. is a member of a language minority who has an inability to read well enough to exercise the elective franchise; or
E. requires assistance in operating the voting system.


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 a ballot or using the voting system, the voter shall announce this fact before receiving the ballot or using the voting system.

B. The voter's request for assistance shall be noted by the voter's 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 the ballot or using the voting system as provided in Section 1-12-15 NMSA 1978.

D. Any person who swears falsely in order to secure assistance is guilty of a misdemeanor.


1-12-14. Repealed.
1-12-15. Conduct of election; persons who may assist voter.

A. In any election, if a voter who has requested assistance in marking the 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, the voter may be accompanied into the voting booth only by a person of the voter's 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.

B. The name of the person providing assistance to a voter pursuant to this section shall be recorded on the signature roster.

C. A person who provides assistance to a voter when the person knows the voter does not require assistance pursuant to Section 1-12-12 NMSA 1978 is guilty of a misdemeanor.


1-12-16. Conduct of election; type of assistance.

Persons providing assistance to a voter may assist the voter in reading and marking the ballot or using the voting system.


1-12-17. Repealed.

1-12-18. Conduct of election; disclosure of vote.

An election official, a member of the precinct board, a watcher or a challenger shall not disclose the name of any candidate for whom any voter has voted.

History: 1953 Comp., § 3-12-34, enacted by Laws 1969, ch. 240, § 270; 2009, ch. 251, § 12.

1-12-19. Repealed.

1-12-19.1. General elections; special elections; write-in candidates.

A. A person desiring to be a write-in candidate in a general election shall file with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the twenty-third day after the primary election a declaration of intent to be a write-in candidate. A person desiring to be a write-in candidate in a special election for United States representative or a statewide special election shall file with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the sixty-third day immediately preceding the election a declaration of intent to be a write-in candidate.

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 the candidate is qualified to be a candidate for and to hold the office for which the candidate 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, including the obligation to report under the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], except that the candidate shall not be entitled to have the candidate’s name printed on the ballot.

D. The secretary of state shall, not more than ten days after the filing date, 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. A write-in candidate for governor or lieutenant governor in the general election shall have a companion write-in candidate, and they shall be candidates to be elected jointly by the casting by a voter of a single vote applicable to both offices.

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 on the proper line provided on the ballot for write-in votes for the office for which the candidate has filed a declaration of intent and the voter has followed the directions for casting a vote for the write-in candidate.

G. No unopposed write-in candidate shall have an election certified unless the candidate receives at least the number of write-in votes equal to two percent of the total vote in the state, district or county in which the candidate seeks election that were cast for governor in the last preceding general election in which a governor was elected.

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 offering to vote is not registered to vote;

B. the person offering to vote is listed among those persons to whom an absentee ballot was mailed;

C. the person offering to vote has already cast a ballot in that election;

D. the person offering to vote is improperly registered because the person is not a qualified elector; or

E. in the case of a primary election, the person desiring to vote is not affiliated with a political party represented on the ballot.

1-12-21. Conduct of election; challenges; entries.

When a challenge is interposed, the judges or election clerks shall enter the word "CHALLENGED" under the notation headings in the signature rosters, along with the reason for the challenge, the time the challenge was made and the name and title of the person interposing the challenge.


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 be furnished a provisional paper ballot. The election clerks shall enter such voter's name in the checklist of registered voters, and the voter shall sign the voter's name in the signature roster. The word "Affirmed" shall be written opposite such voter's name under the challenge notation in the signature roster and checklist of registered voters, together with the number of the ballot so furnished; or
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 receives a ballot, a member of the precinct board shall, so far as possible, instruct the voter on the voting process and call the voter's attention to the posted sample ballot. If any voter asks for further information before completing the voting process, the judges or election clerks shall provide appropriate information and assist the voter with the voting process.


1-12-24. Repealed.

1-12-25. Repealed.

1-12-25.1. Procedures for voting on electronic vote tabulator systems.

A voter using an electronic vote tabulator system to vote shall:
A. receive a ballot issued by the precinct board;
B. take the ballot to a voting booth and, with the writing utensil provided, mark it in accordance with the instructions for that ballot type; and
C. feed the ballot into the electronic vote tabulator to record the vote.
1-12-25.2. Conduct of election; provisional voting; information to voter; status of voter's ballot.

A. If a voter is required to vote on a provisional paper ballot, the presiding judge or election judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted.

B. The county clerk shall provide a free access system, such as a toll-free telephone number or internet web site, that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted and, if the vote was not counted, the reason it was not counted and how to appeal the decision pursuant to rules issued by the secretary of state. Access to information about an individual voter's provisional paper ballot is restricted to the voter who cast the ballot.

C. Beginning with the closing of the polls on election day through the tenth day following the election, the county clerk shall notify by mail each person whose provisional paper ballot was not counted of the reason the ballot was not counted. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal to the county clerk a decision to reject the voter's ballot.


1-12-25.3. Provisional paper ballots; required information.

A. At a minimum, the following information shall be printed on the outer envelope for a provisional paper ballot:

1. the name and signature of the voter;
2. the voter's registered address, both present and former if applicable;
3. the voter's date of birth;
4. the reason for using the ballot;
5. the precinct and the polling place at which the voter has voted; and
6. sufficient space to list the disposition of the ballot after review by the county clerk.

B. A provisional paper ballot shall not be rejected for lack of the information required by this section and shall be qualified as long as the voter provides a valid signature and sufficient information for the clerk to determine the voter is a qualified elector.


1-12-25.4. Provisional paper ballots; disposition.

A. Upon closing of the polls, provisional paper ballots shall be delivered to the county clerk, who shall determine if the ballots will be counted prior to certification of the election.

B. A provisional paper ballot shall not be counted if the registered voter did not sign either the signature roster or the ballot's envelope.

C. If there is no record of the voter ever having been registered in the county, the voter shall be offered the opportunity to register and the provisional paper ballot shall not be counted.

D. If the voter was registered in the county, the registration was later canceled and the county clerk determines that the cancellation was in error, or that the voter's name should not have been
placed on the list of voters whose registrations were to be canceled, the voter's registration shall be immediately restored and the provisional paper ballot counted.

E. If the county clerk determines that the cancellation was not in error, the voter shall be offered the opportunity to register at the voter's correct address, and the provisional paper ballot shall not be counted.

F. If the voter is a registered voter in the county, but has voted on a provisional paper ballot at a polling place other than the voter's designated polling place, the county canvassing board shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted.

G. If the county clerk finds that the voter who voted on a provisional paper ballot at the polls has also voted an absentee ballot in that election, the provisional paper ballot shall not be counted.

H. The county canvassing board shall prepare a tally displaying the number of provisional paper ballots received, the number found valid and counted, the number rejected and not counted and the reason for not counting the ballots as part of the canvassing process and forward it to the secretary of state immediately upon certification of the election.

I. The secretary of state shall issue rules to ensure securing the secrecy of the provisional paper ballots, especially during canvassing, reviewing or recounting, and protecting against fraud in the voting process.


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.


1-12-27.1. Conduct of election; provisional paper ballots; use when polling hours extended; disposition.

A. If polling hours are extended by court order or any other order pursuant to a state law in effect at least ten days before the date of that election, during the extended hours, a voter shall vote only on a provisional paper ballot.

B. A provisional paper ballot cast pursuant to this section shall be separated and held apart from provisional paper ballots cast by those not affected by the order. The ballot shall be counted if:
(1) there is no legal challenge to the order extending polling hours within ten days of the
election; or
(2) a legal challenge to the order extending polling hours is not sustained.


1-12-28. Conduct of election; election certificate.

Immediately upon the closing of the polls, the precinct board shall complete and sign a certifi-
cate which shall state: "We certify the ............ election complete with the voting of voting machine
number ............ by voter number ............ on the signature roster."

History: 1953 Comp., § 3-12-47, enacted by Laws
1969, ch. 240, § 283; 1981, ch. 149, § 5; 1987, ch. 249, §
35.

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.

History: 1953 Comp., § 3-12-51, enacted by Laws

1-12-29.1. Qualifying provisional, absentee and other paper ballots.

A. The secretary of state shall issue rules to create a uniform process and set of criteria for
deciding if provisional, absentee and other paper ballots shall be counted.

B. When qualifying provisional, absentee and other paper ballots, middle initials, suffixes and
addresses shall not be dispositive as to whether that person's ballot is qualified and counted in the
vote totals, provided that the county clerk can otherwise verify the person is a voter based on the
information provided on the outer envelope of the paper ballot or affidavit.


1-12-30. Conduct of election; disposition of signature roster, checklist of
registered voters and machine-printed return reporting unoffi-
cial returns.

A. After all certificates have been executed, the presiding judge and the two election judges
shall place the checklist 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 removable media storage device
shall be returned to the county clerk. The signature roster, the machine-printed returns and the
removable media storage device 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 only pursuant to Section 1-12-69 NMSA 1978.
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.


1-12-30.1. 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 precinct 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 [Chapter 1 NMSA 1978] and 42 U.S.C. 1974.

C. Whoever willfully destroys, defaces, alters without authorization or improperly disposes of signature rosters used in an election is guilty of a fourth degree felony.


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 ballot box:

1. one ballot box key in an envelope addressed to the county clerk;
2. one signature roster;
3. one tally sheet; and
4. all unused election supplies not destroyed pursuant to the Election Code.

B. The removable media storage device shall not be placed in the ballot box and shall be returned immediately to the county clerk either by messenger or along with the locked ballot box.

C. 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.

History: 1953 Comp., § 3-12-57, enacted by Laws 1969, ch. 240, § 293.

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. Repealed.

1-12-36. Repealed.

1-12-37. Conduct of election; voting machines; verification of returns.

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.


1-12-37.1. Repealed.

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.

History: 1953 Comp., § 3-12-62.1, enacted by Laws 1973, ch. 358, § 3.

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.

History: 1953 Comp., § 3-12-63, enacted by Laws 1969, ch. 240, § 299.

1-12-40. Repealed.

1-12-41. Repealed.

1-12-42. Conduct of election; employees; time to vote.

A. On election day a 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 an 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. The provisions of Subsection A of this section apply to elections of Indian nations, tribes or pueblos for a voter who is enrolled as a member of the Indian nation, tribe or pueblo and is qualified to vote in the election.

D. A person who refuses the right granted in this section to an 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.

A. If any electronic vote tabulator becomes disabled while being used to the extent that any voter is unable to cast a vote for all the candidates or questions of the voter's choice and have such vote recorded by the electronic vote tabulator, it shall be repaired, if possible, or another electronic vote tabulator shall be promptly substituted.

B. If a disabled electronic vote tabulator cannot be repaired in a reasonable length of time and if there are no other electronic vote tabulators available for substitution, the presiding judge shall
order marked ballots to be collected and securely preserved until they may be tabulated pursuant to rules promulgated by the secretary of state.

C. A voter shall not be denied the opportunity to mark a ballot for later tabulation due to the lack of a functioning electronic vote tabulator.

D. The county clerk shall provide additional ballots if needed and when requested by the precinct board.


1-12-44. Recompiled.

1-12-45. Repealed.

1-12-45.1. Repealed.

1-12-46. Repealed.

1-12-47. Recompiled.

1-12-48. Repealed.

1-12-49. Recompiled.

1-12-50. Repealed.

1-12-51. Paper ballots; unauthorized receipt or delivery of paper ballot.

Except for absentee ballots and unless otherwise provided by law, a voter shall not receive a paper ballot from any person other than from a member of the precinct board or at an alternate voting location. No person other than a member of the precinct board or officer authorized by law shall deliver a paper ballot to any voter.


1-12-52. Repealed.

1-12-53. Repealed.

1-12-54. Repealed.

1-12-55. Paper ballots; marking.

All marks on the paper ballot shall be made only with the recommended or provided marking device.
1-12-56. Repealed.

1-12-57. Paper ballots; procedure after marking.

After marking and preparing a paper ballot in a polling place or alternate voting location, the voter:

A. shall not show it to any person in such a way as to reveal its contents; and
B. shall feed the paper ballot into the electronic vote tabulator.


1-12-58. Recompiled.

1-12-59. Viewing marked paper ballot.

No person shall solicit the voter to show the voter's marked paper ballot.

History: 1953 Comp., § 3-12-91, enacted by Laws 1977, ch. 222, § 60; 2009, ch. 150, § 22.

1-12-60. Repealed.

1-12-61. Removal of paper ballots from polling place.

No person shall remove any paper ballot from any polling place unless authorized by law.

History: 1953 Comp., § 3-12-93, enacted by Laws 1977, ch. 222, § 62; 2009, ch. 150, § 24.

1-12-62. Paper ballots; spoiled or defaced.

A. A voter who accidentally spoils or erroneously prepares the voter's paper ballot may return the spoiled or erroneously prepared paper ballot to the presiding judge and receive a new paper ballot.
B. The presiding judge in delivering the new paper ballot shall announce the name of the voter and the number of the new paper ballot in an audible tone.
C. Upon the announcement of the presiding judge, the election clerks shall make a record in the signature roster and checklist of registered voters that the voter received a replacement ballot.
D. The voter shall mark the spoiled or erroneously prepared 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. Election judges; unused paper ballots.

Immediately upon the time of the closing of the polls, the election judges and presiding judge, in the presence of those lawfully permitted to be present, shall publicly destroy all unused paper ballots.

History: 1953 Comp., § 3-12-97, enacted by Laws 1977, ch. 222, § 66; 2009, ch. 150, § 27.

1-12-64. Repealed.

1-12-65. Emergency situations; paper ballots; counting and tallying procedures.

A. The presiding judge and the election judges, assisted by the election clerks, shall count and tally the paper ballots that were not tabulated by the electronic vote tabulator 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. Paper ballots not marked as required by the Election Code [Chapter 1 NMSA 1978] shall not be counted. The precinct board shall sign the tally sheet certificate.

B. The counting and tallying of paper ballots in emergency situations shall be in accordance with procedures prescribed by the secretary of state.


1-12-66. Paper ballots; signature rosters, checklist of voters and tally sheets; disposition.

A. After the counting and tallying of paper ballots are completed and after all certificates have been executed, the presiding judge and the two election judges shall place the checklist of voters 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 signature roster and the original 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 only pursuant to Section 1-12-69 NMSA 1978.


1-12-67. Paper ballots to be placed in ballot box.

After the paper ballots are tallied, the precinct board shall place the bundles of counted paper ballots in the ballot box and the ballot box shall be closed and locked.
1-12-68. Paper ballots; county canvass; when recount is required.

A. If it appears that defective returns cannot be corrected without a recount of the 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 paper ballots from the precinct.

C. The county clerk shall immediately notify the county chairs of the political parties that 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 the district judge 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 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 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. Disposition of paper ballots.

A. Paper ballots marked by voters and all records related to voting in any election in which a federal candidate appears on the ballot shall be retained and preserved for a period of twenty-two months from the date of the election.

B. Paper ballots marked by voters and all records related to voting in any election in which no federal candidate appears on the ballot shall be retained and preserved for forty-five days after adjournment of the state or county canvassing board, whichever is later.

C. In precincts where a recount or judicial inquiry or inspection of contents is sought, the county clerk shall hold ballots marked by voters and records related to voting in those precincts intact until forty-five days following the recount, judicial inquiry or inspection of contents is completed, whichever is later.

D. Paper ballots marked by voters and records related to voting in any election shall only be destroyed using a destruction method approved by the state records administrator for destruction of public records.

E. The state records administrator is authorized to receive for storage and destruction paper ballots marked by voters and records related to voting in any election in which a federal candidate appears on the ballot. At least three days prior to sending the ballots and records to the state records administrator, the county clerk shall notify the county chair of each political party that participated in the election. The chairs or their designees may inspect the boxes prior to their sealing for delivery.

F. At least three days prior to the destruction by the county clerk of paper ballots marked by voters and records related to voting, the county clerk shall notify the county chair of each political
party participating in the election of the time, place and date thereof. The chair of each political
party may be present or may have the chair's accredited representative present.

G. Paper ballots marked by voters, their digitized equivalents and records related to voting are
exempt from the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] until forty-five
days following any recount, contest or other judicial inquiry or until forty-five days after adjourn-
ment of the state or county canvassing board, whichever is later. Any inspection of paper ballots
marked by voters, their digitized equivalents or records related to voting shall be conducted in such
a manner as to secure the secrecy of the ballot.

History: 1953 Comp., § 3-12-103, enacted by Laws
1977, ch. 222, § 72; 1981, ch. 149, § 9; 2008, ch. 58, § 3;
2015, ch. 145, § 66.

1-12-70. Reporting of vote totals by precinct; voting data maintained by
precinct.

A. The county clerk shall report to the secretary of state the vote totals in each precinct on
election night.

B. The county clerk shall maintain voting data by precinct that includes the number of voters
who voted early in-person, absentee by mail and on election day and the number of voters who
voted using each type of voting system. The county clerk shall report this data to the secretary
of state within sixty days following the election, and to no other person. The secretary of state
shall then combine the data within a precinct to the extent necessary to protect the secrecy of each
voter's ballot in accordance with rules issued by the secretary of state before the data as processed
becomes a public record.


1-12-71. Restriction on local government elections.

No municipal, school, county or special district election shall be held within fifty days prior to or
following any statewide election. This section does not prohibit a local government ballot question
authorized by the board of county commissioners from appearing on the general election ballot.

History: 1953 Comp., § 3-4-8.2, enacted by Laws
1977, ch. 222, § 7; 1978 Comp., § 1-4-10, recompiled
as § 1-12-71 by Laws 2011, ch. 137, § 109; 2015, ch.
145, § 67.

ARTICLE 13
Post-Election Duties

Sec. 1-13-1. Post-election duties; county canvassing board.
Sec. 1-13-2. Post-election duties; missing returns.
Sec. 1-13-3. Post-election duties; county canvass; commence-
ment.
Sec. 1-13-4. Post-election duties; county canvass; method.
Sec. 1-13-5. Post-election duties; county canvass; defective re-
turns; correction.
Sec. 1-13-6. Post-election duties; county canvass; defective re-
turns; notification of secretary of state.
Sec. 1-13-7. Post-election duties; county canvass; when
recheck is required.
Sec. 1-13-8. Post-election duties; county canvass; search for
missing returns.
Sec. 1-13-9. Post-election duties; county canvass; voting ma-
chine recheck.
Sec. 1-13-10. Post-election duties; voting machine recheck;
cost.
Sec. 1-13-11. Post-election duties; tie vote.
Sec. 1-13-12. Post-election duties; mandamus to compel can-
vass.
Sec. 1-13-13. Post-election duties; county canvassing board;
certifying results.

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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 [Chapter 1 NMSA 1978] 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.

**History:** 1953 Comp., § 3-13-5, enacted by Laws 1969, ch. 240, § 307; 1977, ch. 222, § 75.

### 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.

**History:** 1953 Comp., § 3-13-6, enacted by Laws 1969, ch. 240, § 308.

### 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.

**History:** 1953 Comp., § 3-13-7.1, enacted by Laws 1977, ch. 222, § 76.

### 1-13-8. Post-election duties; county canvass; search for missing returns.

If it is necessary to open a ballot box on election night to ascertain if missing election returns are enclosed in the ballot box, the ballot box shall be opened by the county clerk and the district
judge, or someone designated by the district judge. In the presence of the district judge or the designated representative of the district judge, the county clerk may remove the missing returns necessary to canvass the election. When 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.


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 on the alphanumeric printout of the contest, candidates and vote totals of each voting machine used in the election.

B. 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.


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.

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.


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. A county canvassing board in a county with more than two hundred fifty thousand voters shall complete the canvass of the returns and declare the results within thirteen 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 chair 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.


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 by court order or as otherwise provided by the Election Code.


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.

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.


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.


Failure of any person to obey any summons required to be issued by, or issued pursuant to, the Election Code [Chapter 1 NMSA 1978] is contempt and is punishable as provided by law.


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.


A. The county clerk shall not clear the votes recorded on the removable storage media devices until at least forty-five days after adjournment of the state canvassing board.  
B. The county clerk shall not clear and shall keep locked those removable media storage devices from voting systems used to tabulate votes for precincts where 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. Beginning forty-five days after the adjournment of the state or county canvassing board, whichever is later, or forty-five days after completion of a recount or judicial inquiry, the county clerk may transfer ballots from the locked ballot boxes for disposition pursuant to Section 1-12-69 NMSA 1978.


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. 1-14-1. Contest of elections; who may contest.  
1-14-2. Contest of elections; status of person holding certificate.  
1-14-3. Contest of election; filing of complaint.  
1-14-4. Contest of election; judgment; effect; costs.  
1-14-5. Contest of election; appeal.  
1-14-6. Contest of election; preservation of ballots.  
1-14-7. Contest of election; disqualification of trial judge.  
1-14-8. Impounding ballots; ballots defined.  
1-14-9. Impounding ballots; application for court order; deposit required.  
1-14-10. Order of impoundment; contents.

Sec. 1-14-11. Impoundment; subsequent orders; access; termination of order.  
1-14-12. Disposition of deposit in impoundment proceedings.  
1-14-13. Post-election duties; proof that no corruption occurred; rejection of ballots.  
1-14-13.1 Repealed.  
1-14-13.2 Post-election duties; voting system check.  
1-14-13.3 General election audit.  
1-14-14. Recounts; rechecks; application.  
1-14-15. Recounts; rechecks; cost of proceedings.  
1-14-16. Recount or recount proceedings.  
1-14-17. Repealed.
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.

History: 1953 Comp., § 3-14-1, enacted by Laws 1969, ch. 240, § 326.

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.

History: 1953 Comp., § 3-14-2, enacted by Laws 1969, ch. 240, § 327.

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.

History: 1953 Comp., § 3-14-12, enacted by Laws 1969, ch. 240, § 337.

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 for the preservation of ballots, may give written notice with delivery confirmation to the county clerk of those counties wherein the contestant or contestee 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.

History: 1953 Comp., § 3-14-16, enacted by Laws 1971, ch. 249, § 1; 1987, ch. 249, § 44; 1987, ch. 327, § 316, § 57.

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 [Chapter 1 NMSA 1978];

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.

History: 1953 Comp., § 3-14-16.2, enacted by Laws 1971, ch. 249, § 3.

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 [Chapter 1 NMSA 1978] if there had been no impoundment.


1-14-12. Disposition of deposit in impoundment proceedings.

If the petitioner shall successfully prosecute an election contest [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.

History: 1953 Comp., § 3-14-16.4, enacted by Laws 1971, ch. 249, § 5.

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 [Chapter 1 NMSA 1978] 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.

History: 1953 Comp., § 3-14-17, enacted by Laws 1969, ch. 240, § 342.


1-14-13.2. Post-election duties; voting system check.

A. At least ninety days prior to each general election, the secretary of state shall contract with an auditor qualified by the state auditor to audit state agencies to oversee a check on the accuracy of precinct electronic vote tabulators, alternate voting location electronic vote tabulators and absent voter precinct electronic vote tabulators. The voting system check shall be conducted for all federal offices, for governor and for the statewide elective office, other than the office of the governor, for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico. The voting system check is waived for any office for which a recount is conducted.

B. For each selected office, the auditor shall publicly select a random sample of precincts from a pool of all precincts in the state no later than twelve days after the election. The random sample shall be chosen in a process that will ensure, with at least ninety percent probability for the selected offices, that faulty tabulators would be detected if they would change the outcome of the election for a selected office. The auditor shall select precincts starting with the statewide office with the largest winning margin and ending with the precincts for the statewide office with the smallest winning margin and then, in the same manner, select precincts from each congressional district. The size of the random sample for each office shall be determined as provided in Table 1 of this subsection. When a precinct is selected for one office, it shall be used in lieu of selecting a different precinct when selecting precincts for another office in the same congressional district, or for any statewide office. If the winning margin in none of the offices for which a voting system check is required is less than fifteen percent, a voting system check for that general election shall not be required.

Table 1

<table>
<thead>
<tr>
<th>Winning margin between top two candidates for the office according to the county canvasses</th>
<th>Number of precincts in the state to be tested for that office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent greater than 15</td>
<td>no precincts for that office</td>
</tr>
</tbody>
</table>

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greater than 14
but less than or equal to 15  4

greater than 13
but less than or equal to 14  4

greater than 12
but less than or equal to 13  5

greater than 11
but less than or equal to 12  5

greater than 10
but less than or equal to 11  6

greater than 9.0
but less than or equal to 10  6

greater than 8.0
but less than or equal to 9.0  7

greater than 7.0
but less than or equal to 8.0  9

greater than 6.0
but less than or equal to 7.0 10

greater than 5.5
but less than or equal to 6.0 11

greater than 5.0
but less than or equal to 5.5 13

greater than 4.5
but less than or equal to 5.0 14

greater than 4.0
but less than or equal to 4.5 16

greater than 3.5
but less than or equal to 4.0 18

greater than 3.0
but less than or equal to 3.5 22

greater than 2.5
but less than or equal to 3.0 26
greater than 2.0  
but less than or equal to 2.5  
32

greater than 1.8  
but less than or equal to 2.0  
37

greater than 1.6  
but less than or equal to 1.8  
42

greater than 1.4  
but less than or equal to 1.6  
47

greater than 1.2  
but less than or equal to 1.4  
54

greater than 1.1  
but less than or equal to 1.2  
59

greater than 1.0  
but less than or equal to 1.1  
65

greater than 0.9  
but less than or equal to 1.0  
73

greater than 0.8  
but less than or equal to 0.9  
82

greater than 0.7  
but less than or equal to 0.8  
93

greater than 0.6  
but less than or equal to 0.7  
109

greater than 0.5  
but less than or equal to 0.6  
130

0.5 or less  
165.

C. The auditor shall notify the appropriate county clerks of the precincts that are to be included in the voting system check upon their selection. The auditor shall direct the appropriate county clerks to open the locked ballot boxes, remove ballots from the selected precincts and compare the original machine count precinct vote totals, including early absentee and absentee by mail machine count vote totals, for candidates for offices subject to the voting system check from the selected precincts for each office with the respective vote totals of a hand recount of the paper ballots from those precincts. The county clerks shall report their results to the auditor within ten days of the notice to conduct the voting system check unless a county clerk is aware of a recount in any office that includes one or more precincts in the county, in which case the county clerk shall report the
results of the post-election audit to the auditor within ten days following the conclusion of the recount.

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

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

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

G. If a recount for an office selected for a voting system check is conducted pursuant to the provisions of Chapter 1, Article 14 NMSA 1978, the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

H. All costs of a voting system check or required hand recount shall be paid in the same manner as automatic recounts.

History: Laws 2009, ch. 233, § 1; 2015, ch. 145, § 73.

1-14-13.3. General election audit.

The secretary of state shall issue rules for the conduct and procedures of the post-election voting system check, set minimum qualifications for auditors eligible for selection to conduct post-election evaluations of the accuracy of voting systems and approve the contract terms for auditors. The state auditor shall review the rules, qualification standards and contract terms to ensure they meet audit standards.


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 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 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. An applicant for a recount shall deposit with the proper canvassing board or, in the case of an office for which the state canvassing board issues a certificate of nomination or election, with the secretary of state sufficient cash, or a sufficient surety bond, to cover the cost of a recount for each precinct for which a recount is demanded. An applicant for a recheck shall deposit with the proper canvassing board or, in the case of an office for which the state canvassing board issues a certificate of nomination or election, with the secretary of state sufficient cash, or a sufficient surety bond, to cover the cost of the recheck for each voting machine to be rechecked. The state canvassing board shall determine the estimated actual cost of a recount per precinct and a recheck per voting machine no later than March 15 of even-numbered years. The secretary of state shall post the recount and recheck cost determinations on the secretary of state’s web site when the state canvassing board issues its cost determinations.

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 secretary of state, 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, the board members shall not be entitled to such mileage or fees.

1-14-16. Recount or recheck proceedings.

A. Immediately after filing of the application for recount or recheck, or notice of an automatic recount, the appropriate canvassing board shall issue an order to the county clerk of each county where a precinct specified in the application or notice is located commanding the county clerk to convene a recount precinct board at the county seat on a day specified in the order, which date shall not be more than ten days after the filing of the application for a recount or recheck or notice of an automatic recount.

B. Upon receipt of the order, the county clerk shall appoint a recount precinct board pursuant to the provisions of Section 1-2-12 NMSA 1978 and shall send notices of the names of the recount precinct board members and the date fixed for the recount or recheck to the district judge for the county and the county chair of each of the political parties that participated in the election for the office in question. The county clerk shall keep a log of how each person was notified and confirmation that the notice was received. Presiding judges and election judges on the recount precinct
board shall be appointed from among those persons who served as precinct board members in the most recent election.

C. The recount precinct board, district judge and county clerk shall meet on the date fixed for the recount or recheck, and the ballot boxes and ballot containers or voting machines of the precincts involved in the recount or recheck shall be opened. The recount precinct board shall recount and retally the ballots, or recheck the votes cast on the voting machines, as the case may be, for the office in question in the presence of the county clerk, district judge and any other person who may desire to be present.

D. After completion of the recount or recheck, the recount precinct board shall replace the ballots in the ballot boxes and ballot containers and lock them, or the voting machines shall be locked and resealed, and the precinct board shall certify to the proper canvassing board the results of the recount or recheck. The district judge and the county clerk shall also certify that the recount or recheck was made in their presence.


1-14-17. Repealed.

1-14-18. Recount; recheck; recanvass by canvassing boards.

A. Immediately upon receipt of the certificate of recount or recheck from all the recount 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 recount precinct boards instead of the original returns from the 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 for partisan office 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.


1-14-22. Contests and recounts; provisional, absentee and other paper ballots.

The secretary of state shall issue rules governing and allowing procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in the case of a contest or recount of election results. All rejected provisional paper ballot envelopes shall be included in any contest or recount of election results, and a review of the qualification of provisional ballot envelopes shall occur in a recount.


1-14-23. Recount procedures.

A. To ensure the accuracy of electronic vote tabulating systems, in a recount, the votes from a random selection of ballots shall be tallied by hand, and the votes from the same ballots shall be tabulated by the electronic vote tabulating systems to be used in the recount. For statewide and federal office, the number of ballots to be tallied and tabulated shall be equal to the greater of one hundred, or two percent, of the ballots cast in each county. For all other offices, the number of ballots to be tallied and tabulated shall be equal to the greater of one hundred, or five percent, of the ballots cast for the office, distributed by county where applicable. If more than one electronic vote tabulating system is to be used in a county, the ballots to be recounted shall be divided among the electronic vote tabulating systems to be used, and the above process shall be performed on each electronic vote tabulating system based on the number of votes to be recounted on each individual electronic vote tabulating system.

B. If the results of the hand tally and the electronic vote tabulating system tabulation do not differ, the remaining ballots shall be recounted using that electronic vote tabulating system. If the results of the hand tally and the electronic vote tabulating system differ, the electronic vote tabulating system shall not be used in the recount and the remaining ballots shall be recounted by hand or on a different electronic vote tabulating system in which the results did not differ.
C. When using an electronic vote tabulating system for a recount, a county clerk may permit a visual inspection of the ballots prior to tabulation by the optical scan tabulating system for the purpose of permitting a representative of a candidate to identify individual ballots to be selected for hand tally by the precinct board.


1-14-24. Automatic recounts; elections for state and federal offices; procedures.

A. An automatic recount of the vote is required when the canvass of returns in a primary or general election for a federal or statewide office, or a judicial office in a county with more than two hundred thousand registered qualified electors, indicates that the margin between the two candidates receiving the greatest number of votes for the office is less than one-fourth of one percent of the total votes cast for that office in that election. An automatic recount of the vote is required when the canvass of returns in a primary or general election for any other state office indicates that the margin between the two candidates receiving the greatest number of votes for the office is less than one percent of the total votes cast for that office in that election.

B. For an office for which ballots were cast in more than one county, the secretary of state shall file notice with the state canvassing board upon the completion of the state canvass that an automatic recount is required, and the state canvassing board shall order a recount of the ballots for the specified office. For an office in which ballots were cast solely within one county, the secretary of state shall file notice with the state canvassing board within seven days after receiving notice from the county clerk following the completion of the county canvass that an automatic recount is required, and the state canvassing board shall order a recount of the ballots for the specified office.

C. Automatic recounts shall be conducted pursuant to the recount procedures established in Sections 1-14-16 and 1-14-18 through 1-14-23 NMSA 1978.

D. For the purposes of this section, "state office" means the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, secretary of state, supreme court justice, court of appeals judge, district judge, magistrate judge, public regulation commissioner, commissioner of public lands, state senator or state representative.

History: Laws 2008, ch. 41, § 1; 2015, ch. 145, § 78.

1-14-25. Automatic recounts; expenses.

The secretary of state shall reimburse the counties for the costs of conducting an automatic recount with money appropriated to the secretary. In the event that current year appropriations to the secretary of state do not cover the cost of an automatic recount, the secretary may apply to the state board of finance for an emergency grant to cover those costs pursuant to Section 6-1-2 NMSA 1978.

ARTICLE 15

Presidential Electors, Senators, Congressmen and Expiring Terms

Sec. 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.


Presidential electors shall not be nominated at the primary election.


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.

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.


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.


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.


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.


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 [Chapter 10, Article 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.


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 [Chapter 1 NMSA 1978] for state officers.

The United States senator shall be elected at the general election next succeeding nomination for that office.


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.


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.


1-15-15.2. [United States representative; congressional districts.]

Congressional District One is composed of Bernalillo county precincts 2 through 79, 81 through 83, 86 through 92, 94 through 99, 101 through 114, 116, 119 through 125, 131 through 144, 150 through 154, 161 through 166, 170, 171, 180 through 187, 191 through 197, 211, 212, 214 through 217, 221, 223 through 226, 241 through 246, 251 through 258, 271 through 275, 278, 281 through 287, 289 through 308, 311 through 318, 321 through 324, 326 through 333, 341 through 347, 351
through 358, 371 through 375, 381 through 387, 400 through 456, 461 through 466, 471 through 478, 480 through 500, 502 through 573 and 601 through 603; Sandoval county precincts 1 through 5, 28, 29, 38, 52, 55 through 57, 64, 74 and 76; Santa Fe county precincts 15, 73 and 84; Torrance county; and Valencia county precincts 6, 16, 22, 28 and Census tabulation block 3506119703031019 in Valencia county precinct 36.

Congressional District Two is composed of Bernalillo county precinct 93; Catron county; Chaves county; Cibola county; De Baca county; Doña Ana county; Eddy county; Grant county; Guadalupe county; Hidalgo county; Lea county; Lincoln county; Luna county; McKinley county precincts 26, 27, 29 and 30; Otero county; Roosevelt county precincts 3 through 6, 10, 11, 19 and all of Roosevelt county precinct 2 except for Census tabulation block 350410002001111; Sierra county; Socorro county; and Valencia county precincts 1 through 5, 7 through 15, 17 through 21, 23 through 27, 29 through 35, 37 through 41 and all of Valencia county precinct 36 except for Census tabulation block 350611973031019.

Congressional District Three is composed of Bernalillo county precincts 1, 80, 84, 85, 115, 117, 118 and 127 through 129; Colfax county; Curry county; Harding county; Los Alamos county; McKinley county precincts 1 through 25, 28, 31 through 50 and 52 through 59; Mora county; Quay county; Rio Arriba county; Roosevelt county precincts 1, 7 through 9, 12, 13, 15, 17, 18, 21 and Census tabulation block 350410002001111 in Roosevelt county precinct 2; San Juan county; San Miguel county; Sandoval county precincts 6 through 27, 30 through 37, 39 through 51, 53, 54, 58 through 63, 65 through 73, 75 and 78 through 86; Santa Fe county precincts 1 through 14, 16 through 72, 74 through 83 and 85 through 88; Taos county; and Union county.


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.


1-15-18.1 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 Subsections E and F 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 chair 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 [Chapter 1 NMSA 1978]; 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, the vacancy shall be filled at that general election of the same year. Candidates seeking the office of United States representative in that 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.

F. If a vacancy occurs in the office of United States representative when there are more than one hundred vacancies in the United States house of representatives and there are more than seventy-five days before a regularly scheduled election or previously scheduled special election, then:

1. the governor shall, by proclamation, call a special election to be held not more than forty-nine days after the vacancy is announced;

2. 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 chair of that party no later than 5:00 p.m. on the tenth business day following announcement of the vacancy; and

3. 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 twentieth day following announcement of the vacancy.


"Expanding term" means a term of office which expires not later than three months after the general election at which it is filled.


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.


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. Expanding 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.


If the same individual is a candidate at a general election for both the expiring term and the 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".

ARTICLE 15A
Primary Presidential

This act [Chapter 1, Article 15A NMSA 1978] may be cited as the "Presidential Primary Act".


Sec. 1-15A-2. 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 in either a presidential primary election or in accordance with the selection procedure for presidential candidates of each voter's party. The presidential primary election shall be held on the same date as the primary election is held in this state.


Sec. 1-15A-3. Selection of national convention delegates by major political parties; certification.
A. If a major political party chooses not to participate in the presidential primary, it shall notify the secretary of state at least thirty days before the governor is required to issue the proclamation of the primary election.
B. The state chairman of a major political party that does not participate in the presidential primary shall certify to the secretary of state the names of the state party's delegates to the party's national convention and those delegates shall file a declaration of acceptance in accordance with Section 1-8-61 NMSA 1978.


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.

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 or supported by any major political party in the state as candidates of the major political parties participating in the presidential primary for the office of president of the United States.


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.


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.


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 [repealed]. 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.


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 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.


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 that party on the day of the governor's primary election proclamation 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 20 _______ 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.


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. Any alternate or delegate violating any of the provisions of the Presidential Primary Act is guilty of a petty misdemeanor.


ARTICLE 16
State Constitutional Amendments and Other Questions Submitted

Sec. 1-16-1. State constitutional amendments; application of Election Code.
Sec. 1-16-2. State constitutional amendments; ballots; special elections.
Sec. 1-16-3. State constitutional amendments; certification.
Sec. 1-16-4. State constitutional amendments; publication.
Sec. 1-16-5. State constitutional amendments; form of ballots.
Sec. 1-16-6. State constitutional amendments; marking ballots.
Sec. 1-16-7. State constitutional amendments; ballot labels; form.
Sec. 1-16-8. Other questions.
Sec. 1-16-9. State constitutional amendments; single ballot.
Sec. 1-16-10. State constitutional amendments; sample ballots.
Sec. 1-16-11. State constitutional amendments; expense.
Sec. 1-16-12. Repealed.
Sec. 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 [Chapter 1 NMSA 1978].


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.

History: 1953 Comp., § 3-16-2, enacted by Laws 1969, ch. 240, § 375.

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; form of ballots.

All ballots proposing constitutional amendments shall be in the form prescribed by the secretary of state.


1-16-6. State constitutional amendments; marking ballots.

A voter desiring to mark the ballot for or against a proposed constitutional amendment shall do so in the manner specified in the instructions printed on the 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.

History: 1953 Comp., § 3-16-6.1, enacted by Laws 1977, ch. 222, § 96; 1981, ch. 146, § 3.

1-16-9. State constitutional amendments; single ballot.

Proposed constitutional amendments or other questions submitted to the voters at any election shall be printed on 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. Repealed.

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.

History: 1953 Comp., § 3-16-13, enacted by Laws 1975, ch. 287, § 1.

ARTICLE 17

Referendum Petitions

Sec. 1-17-1. Referendum petitions; who may sign.
1-17-2. Referendum petitions; form.
1-17-3. Referendum petitions; solicitor of signatures; duty.
1-17-4. Referendum petitions; penalty.
1-17-5. Referendum petitions; requirements as to contents.
1-17-6. Referendum petitions; form of certificate.
1-17-7. Referendum petitions; false certification; penalty.
1-17-8. Referendum petitions; approval before circulation.

Sec. 1-17-9. Referendum petitions; number; popular name.
1-17-10. Referendum petitions; sufficiency or insufficiency.
1-17-11. Referendum petitions; sufficiency of petition; burden of proof.
1-17-12. Referendum petitions; determination of insufficiency; duty of secretary of state.
1-17-13. Referendum petitions; writ of mandamus.
1-17-14. Referendum petitions; notice of election.

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.

History: 1953 Comp., § 3-17-1, enacted by Laws 1969, ch. 240, § 386.

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

History: 1953 Comp., § 3-17-2, enacted by Laws 1969, ch. 240, § 387.

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.

History: 1953 Comp., § 3-17-3, enacted by Laws 1969, ch. 240, § 388.

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)".

History: 1953 Comp., § 3-17-6, enacted by Laws 1969, ch. 240, § 391.

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.

History: 1953 Comp., § 3-17-8, enacted by Laws 1969, ch. 240, § 393.
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.

History: 1953 Comp., § 3-17-9, enacted by Laws 1969, ch. 240, § 394.

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.

History: 1953 Comp., § 3-17-10, enacted by Laws 1969, ch. 240, § 395.

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.

History: 1953 Comp., § 3-17-11, enacted by Laws 1969, ch. 240, § 396.

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.

History: 1953 Comp., § 3-17-12, enacted by Laws 1969, ch. 240, § 397.
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.

History: 1953 Comp., § 3-17-14, enacted by Laws 1969, ch. 240, § 399.

ARTICLE 18
Federal Constitutional Amendments

Sec. 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.


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.
1-19-16. Campaign practices; printing or publishing campaign material without specifying sponsor; penalty.

Sec.
1-19-17. Campaign practices; circulation of campaign material without specifying sponsor; penalty.
1-19-26.1. Political committees; registration; disclosures.

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Sec. 1-19-26.3. Campaign committee and political committee expenditures; disclosure; telephone calls; records.
1-19-27. Reports required; proper filing officer.
1-19-28. Furnishing report forms; political committees; candidates.
1-19-29. Time and place of filing reports.
1-19-29.1. Campaign funds; limitation on use.
1-19-32.1. Reports examination; forwarding of reports.
1-19-34. Candidates; political committees; treasurer; bank account; anonymous contributions; contributions from special events.

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.


1-19-16. 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 [Chapter 30 NMSA 1978].

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 [Chapter 30 NMSA 1978].


Sections 1-19-25 through 1-19-36 NMSA 1978 may be cited as the "Campaign Reporting Act".


As used in the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]:

A. "advertising campaign" means an advertisement or series of advertisements used for a political purpose and disseminated to the public either in print, by radio or television broadcast or by any other electronic means, including telephonic communications, and may include direct or bulk mailings of printed materials;

B. "anonymous contribution" means a contribution the contributor of which is unknown to the candidate or the candidate's agent or the political committee or its agent who accepts the contribution;

C. "bank account" means an account in a financial institution located in New Mexico;

D. "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 the candidate to office;

E. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act, including a public official, who either has filed a declaration of candidacy or nominating petition 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;
F. "contribution" means a gift, subscription, loan, advance or deposit of 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 "contribution" 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;

G. "deliver" or "delivery" means to deliver by certified or registered mail, telecopier, electronic transmission or facsimile or by personal service;

H. "election" means any 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;

I. "election year" means an even-numbered year in which an election covered by the Campaign Reporting Act is held;

J. "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;

K. "person" means an individual or entity;

L. "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 "political committee" includes:

1. political parties, 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;

2. a single individual whose actions represent that the individual is a political committee; and

3. a person or an organization of two or more persons that within one calendar year expends funds in excess of five hundred dollars ($500) to conduct an advertising campaign for a political purpose;

M. "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;

N. "prescribed form" means a form or electronic format prepared and prescribed by the secretary of state;

O. "proper filing officer" means either the secretary of state or the county clerk as provided in Section 1-19-27 NMSA 1978;

P. "public official" means a person elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act;

Q. "reporting individual" means every public official, candidate or treasurer of a campaign committee and every treasurer of a political committee; and

R. "statement of exception" or "statement" means the prescribed form subscribed and sworn to by a candidate to indicate that the candidate does not intend to raise or expend the minimum amount required for the filing of a report of expenditures and contributions as provided in Section 1-19-33 NMSA 1978.
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 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 identity of the committee, including any 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 names and addresses of the officers of the committee; and
   (5) an identification of the bank used by the committee for all expenditures or contributions made or received.

C. The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission if the political committee reports on federal reporting forms filed with the federal election commission all expenditures for and contributions made to reporting individuals in New Mexico and files with the secretary of state, according to the schedule required for the filing of forms with the federal election commission, a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico.


The secretary of state may adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. In adopting and promulgating these rules and regulations, the secretary of state shall comply with the provisions of the Administrative Procedures Act [Chapter 12, Article 8 NMSA 1978]. In addition to any other notification required pursuant to the provisions of Paragraph (2) of Subsection A of Section 12-8-4 NMSA 1978, the secretary of state shall notify all qualified political parties in the state and the New Mexico legislative council prior to adopting, amending or repealing any rule or regulation.

1-19-26.3. Campaign committee and political committee expenditures; disclosure; telephone calls; records.

A. A campaign committee or political committee that is required to register pursuant to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] shall not expend campaign or political
committee funds to directly or indirectly pay for a telephone call without disclosing to the recipient the name of the organization that authorized or paid for the call if the call:

(1) is one of five hundred or more calls that are similar in nature made during an election cycle by an individual or individuals, or by electronic means; and

(2) advocates support for, or opposition to, a candidate for public office or ballot measure.

B. The campaign committee or political committee that pays for a call referred to in Subsection A of this section shall be disclosed in the call unless the organization that authorized the call and in whose name it is placed has filing obligations pursuant to the Campaign Reporting Act and the name announced in the call is either:

(1) the full name by which the organization or individual is identified in any statement or report required to be filed pursuant to the Campaign Reporting Act; or

(2) the name by which the organization or individual is commonly known.

C. A campaign committee or political committee that pays directly or indirectly for telephone calls as described in Subsection A of this section shall maintain a record of the script of the calls for at least ninety days following election day. If any of the calls qualifying pursuant to Subsection A of this section are recorded messages, a copy of the recording shall also be maintained for that period.

D. A campaign committee or political committee may not contract with a phone bank vendor that does not disclose the information required to be disclosed by Subsection A or B of this section.


1-19-27. Reports required; proper filing officer.

A. Except for those candidates and public officials who file a statement of no activity, all reporting individuals shall file with the proper filing officer a report of expenditures and contributions on a prescribed form.

B. The proper filing officer for filing reports of expenditures and contributions by a political committee is the secretary of state.

C. The proper filing officer for filing reports of expenditures and contributions or statements of no activity is the secretary of state for all candidates and public officials.

D. The secretary of state shall develop or contract for services to develop an electronic reporting system for receiving and for public inspection of reports of expenditures and contributions and statements of no activity to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. The electronic reporting system shall:

(1) enable a person to file reports online by filling out forms on the secretary of state's web site; and

(2) provide for encrypted transmissions.


1-19-28. Furnishing report forms; political committees; candidates.

A. The secretary of state annually shall furnish to all reporting individuals the prescribed forms for the reporting of expenditures and contributions, supplemental reports and a statement of no activity and the specific dates the reports and statement are due.
B. In addition to the provisions of Subsection A of this section, at the time of filing a declaration of candidacy or a nominating petition, the proper filing officer shall give the candidate the prescribed reporting forms and the schedule of specific dates for filing the required reports or a statement of no activity. The prescribed forms shall also be made available to all reporting individuals at the office of the secretary of state and in each county at the office of the county clerk.


1-19-29. Time and place of filing reports.

A. Except as otherwise provided in this section, all reporting individuals shall file with the proper filing officer by 5:00 p.m. on the second Monday in April and October a report of all expenditures made and contributions received on or before the first Monday in those months and not previously reported. The report shall be filed biannually until the reporting individual's bank account has been closed and the other provisions specified in Subsection F of this section have been satisfied.

B. In an election year, instead of the biannual reports provided for in Subsection A of this section, all reporting individuals, except for public officials who are not candidates in an election that year, shall file reports of all expenditures made and contributions received or, if applicable, statements of no activity, according to the following schedule:

1) by 5:00 p.m. on the second Monday in April, a report of all expenditures made and contributions received on or before the first Monday in April and not previously reported;

2) by 5:00 p.m. on the second Monday in May, a report of all expenditures made and contributions received on or before the first Monday in May and not previously reported;

3) by 5:00 p.m. on the second Monday in September, a report of all expenditures made and contributions received on or before the first Monday in September and not previously reported;

4) by 5:00 p.m. on the second Monday in October, a report of all expenditures made and contributions received on or before the first Monday in October and not previously reported;

5) by 5:00 p.m. on the Thursday before a primary, general or statewide special election, a report of all expenditures made and contributions received by 5:00 p.m. on the Tuesday before the election. Any contribution or pledge to contribute that is received after 5:00 p.m. on the Tuesday before the election and that is for five hundred dollars ($500) or more in a legislative or non-statewide judicial election, or two thousand five hundred dollars ($2,500) or more in a statewide election, shall be reported to the proper filing officer either in a supplemental report on a prescribed form within twenty-four hours of receipt or in the report to be filed by 5:00 p.m. on the Thursday before a primary, general or statewide special election, except that any such contribution or pledge to contribute that is received after 5:00 p.m. on the Friday before the election may be reported by 12:00 noon on the Monday before the election; and

6) by 5:00 p.m. on the thirtieth day after a primary, general or statewide special election, a report of all expenditures made and contributions received on or before the twenty-fifth day after the election and not previously reported.

C. If a candidate or public official has not received any contributions and has not made any expenditures since the candidate's or official's last report was filed with the proper filing officer, the candidate or official shall only be required to file a statement of no activity, which shall not be required to be notarized, in lieu of a full report when that report would otherwise be due and shall not be required to file a full report until the next required filing date occurring after an expenditure is made or a contribution is received.
D. In an election year, a public official who is not a candidate shall file biannual reports of expenditures made and contributions received or statements of no activity in accordance with the schedule provided for in Subsection A of this section.

E. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.

F. Except for candidates and public officials who file a statement of no activity, each reporting individual shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section, regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required until the reporting individual delivers a report to the proper filing officer stating that:
   (1) there are no outstanding campaign debts;
   (2) all money has been expended in accordance with the provisions of Section 1-19-29.1 NMSA 1978; and
   (3) the bank account has been closed.

G. Each treasurer of a political committee shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section until the treasurer files a report that affirms that the committee has dissolved or no longer exists and that its bank account has been closed.

H. A reporting individual who is a candidate within the meaning of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] because of the amount of contributions the candidate receives or expenditures the candidate makes and who does not ultimately file a declaration of candidacy or a nominating petition with the proper filing officer and does not file a statement of no activity shall file biannual reports in accordance with Subsection A of this section.

I. Reports required by this section shall be subscribed and sworn to by the candidate or the treasurer of the political committee. A report filed electronically shall be electronically authenticated by the candidate or the treasurer of the political committee using an electronic signature in conformance with the Electronic Authentication of Documents Act [Chapter 14, Article 15 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978]. For the purposes of the Campaign Reporting Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the candidate or the treasurer of the political committee who was required to file the report.

J. Reports required by this section shall be filed electronically by all reporting individuals.

K. Reporting individuals may apply to the secretary of state for exemption from electronic filing in case of hardship, which shall be defined by the secretary of state.


1-19-29.1. Campaign funds; limitation on use.

A. It is unlawful for a candidate or the candidate's agent to make an expenditure of contributions received, except for the following purposes or as otherwise provided in this section:
   (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;
(5) expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office covered by the Campaign Reporting Act;
(6) donations to a political committee or to another candidate seeking election to public office; or
(7) disbursements to return unused funds pro rata to the contributors if no campaign debt exists.

B. A judge subject to a nonpartisan retention election or a candidate for judicial office shall solicit or accept campaign funds and return unused funds in accordance with the provisions of the Code of Judicial Conduct.

C. No contributions solicited for or received in a federal election campaign may be used in a state election campaign.


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 unless that is the 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 the expenditure was made or the contribution was received.

B. 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 name of the financial institution.

C. Each report shall specify the amount of each unpaid debt and the identity of the person to whom the debt is owed.


A. Each of the following documents is a public record open to public inspection during regular office hours in the office in which the document was filed or from which the document was issued:
   (1) a statement of exception;
   (2) a report of expenditures and contributions;
   (3) an advisory opinion issued by the secretary of state;
   (4) a document specified as a public record in the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]; and
   (5) an arbitration decision issued by an arbitration panel and filed with the secretary of state.

B. Each public record described in Subsection A of this section shall be retained by the state for five years and may be destroyed five years after the date of filing unless a legal action or prosecution is pending that requires the preservation of the public record.

C. The secretary of state shall provide for electronic access to reports of expenditures and contributions and statements of exception submitted electronically by reporting individuals. Electronic access shall include access via the internet and shall be in an easily searchable format.


1-19-32.1. Reports examination; forwarding of reports.

A. The secretary of state shall conduct a thorough examination of at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the April reports are filed in a nonelection year, to determine compliance with the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. The examination may include an investigation of any discrepancies, including a cross-reference to reports filed by any other reporting individual. A reporting individual shall be notified in writing if a discrepancy is found in the report filed and shall be permitted to file a written explanation for the discrepancy within ten working days of the date of the notice. The notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply to examinations conducted under this section.

B. After the date stated in the notice of final action for submission of a written explanation, the secretary of state shall prepare an annual report of any unresolved discrepancies found after examination of the random sample provided for in Subsection A of this section. A copy of this report shall be transmitted to the attorney general for enforcement pursuant to the provisions of Section 1-19-36 NMSA 1978. This report is a public record open to public inspection and subject to the retention and destruction provisions set forth in Section 1-19-32 NMSA 1978.


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; provided, however, when a duly appointed treasurer is unable for any reason to continue as treasurer, the candidate or political committee shall appoint a successor; and provided further that a candidate may serve as the candidate's 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 are 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 bank 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 made in a form such that the date, amount and payee of the transaction are automatically recorded or 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 immediately enters and thereafter keeps a proper record preserved by the treasurer, including a full, true and itemized statement and account of each sum disbursed or received, the date of such disbursement 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 state 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 behalf of either, 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 the governor, 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 or 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 regulatory office or when a license to do business in the state is determined by the regulatory office.


1-19-34.3. Contributions in one name given for another prohibited.

It is unlawful for a person to make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person.


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 that act's deadlines for submitting required reports and statements of exception. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested in writing to do so, on matters concerning that act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may initiate investigations to determine whether any provision of the Campaign Reporting Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state any time 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 and processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Campaign Reporting Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the reporting individual that he has ten working days from the date of the letter to correct the matter and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the fine imposed, the secretary of state may by a written notice of final action partially or fully waive any fine imposed for any late, incomplete or false report or statement of exception. A written notice of final action shall be sent by certified mail.

D. Upon receipt of the notice of final action, the person against whom the penalty has been imposed may protest the secretary of state’s determination, including an advisory opinion, by submitting on a prescribed form a written request for binding arbitration to the secretary of state within ten working days of the date of the notice of final action. Any fine imposed shall be due and payable within ten working days of the date of notice of final action. No additional fine shall accrue pending the issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Campaign Reporting Act, Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] or Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator shall conduct the hearing within thirty days of the request for arbitration. The arbitrator may impose any penalty the secretary of state is authorized to impose. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [Chapter 44, Article 7A NMSA 1978]. No arbitrator 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.


1-19-34.5. Presumptions; civil action.

A. For purposes of a civil action, it shall be presumed that a public official or a candidate for public office subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] has authorized
and approved each solicitation for campaign contributions made by his campaign committee or a person authorized by the candidate to solicit campaign contributions on his behalf.

B. For purposes of a civil action, it shall be presumed that a candidate who seeks election to a regulatory office, as described in Section 1-19-34.2 NMSA 1978, has advised his campaign committee and all persons authorized by the candidate to solicit campaign contributions on his behalf that it is unlawful to solicit contributions from an entity or its officers or employees or a person that is directly regulated by the office the candidate seeks.


1-19-34.6. Civil penalties.

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or district attorney may institute a civil action in district court for any violation of the Campaign Reporting Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of two hundred fifty dollars ($250) for each violation not to exceed five thousand dollars ($5,000), and forfeiture of any contribution received as a result of an unlawful solicitation or unlawful contribution. Each unlawful solicitation and each unlawful contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act.

C. The attorney general or district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Campaign Reporting Act other than that specified in Subsection B of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of fifty dollars ($50.00) for each violation not to exceed five thousand dollars ($5,000).


1-19-34.7. Contribution limitations; candidates; political committees.

A. The following contributions by the following persons are prohibited:

1. from a person, not including a political committee, to a:

(a) candidate for nonstatewide office, including the candidate's campaign committee, in an amount that will cause that person's total contributions to the candidate to exceed two thousand three hundred dollars ($2,300) during the primary election or two thousand three hundred dollars ($2,300) during the general election;

(b) candidate for statewide office, including the candidate's campaign committee, in an amount that will cause that person's total contributions to the candidate to exceed five thousand dollars ($5,000) during the primary election or five thousand dollars ($5,000) during the general election; or

(c) political committee in an amount that will cause that person's total contributions to exceed five thousand dollars ($5,000) during a primary election or five thousand dollars ($5,000) during a general election; and

2. from a political committee to:

(a) a candidate for office, including the candidate's campaign committee, in an amount that will cause the political committee's total contributions to the candidate to exceed five thousand dollars ($5,000) during a primary election or five thousand dollars ($5,000) during a general election; and


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dollars ($5,000) during the primary election or five thousand dollars ($5,000) during the general election; or

(b) another political committee in an amount that will cause that political committee's total contributions to the political committee to exceed five thousand dollars ($5,000) during a primary election or five thousand dollars ($5,000) during a general election.

B. All contributions made by a person to a candidate, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person to a candidate, shall be treated as contributions from the person to that candidate.

C. A person, including a political committee, shall not knowingly accept or solicit a contribution, directly or indirectly, including a contribution earmarked or otherwise directed or coordinated through another person, including a political committee, that violates the contribution limits provided for in this section.

D. On the day after each general election, the contribution amounts provided in Subsection A of this section shall be increased by the percentage of the preceding two calendar year's increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor. The amount of the increase shall be rounded to the nearest multiple of one hundred dollars ($100). The secretary of state shall publish by October 1 before each general election the adjusted contribution limits that shall take effect the day after the following general election.

E. All contributions in excess of the limits imposed by the provisions of this section shall be deposited in the public election fund upon a finding by the secretary of state that the contribution limits have been exceeded.

F. The limitation on contributions to a candidate provided for in Subsection A of this section shall not apply to a candidate's own contribution from the candidate's personal funds to the candidate's own campaign.

G. For the purposes of this section:

(1) "primary election" means the period beginning on the day after the general election for the applicable office and ending on the day of the primary for that office; and

(2) "general election" means the period beginning on the day after the primary for the applicable office and ending on the day of the general election for that office.

History: Laws 2009, ch. 68, § 1.

1-19-35. Reports and statements; late filing penalty; failure to file.

A. Except for the report required to be filed and delivered the Thursday prior to the election and any supplemental report, as required in Paragraph (5) of Subsection B of Section 1-19-29 NMSA 1978, that is due prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978, if a statement of no activity or a report of expenditures and contributions contains false or incomplete information or is filed after any deadline imposed by the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], the responsible reporting individual or political committee, in addition to any other penalties or remedies prescribed by the Election Code, shall be liable for 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 statements of no activity or reports of expenditures and contributions until the complete or true statement or report is filed, up to a maximum of five thousand dollars ($5,000).

B. If any reporting individual files a false, intentionally incomplete or late report of expenditures and contributions due on the Thursday prior to the election, the reporting individual or
political committee shall be liable and pay to the secretary of state five hundred dollars ($500) for the first working day and fifty dollars ($50.00) for each subsequent working day after the time required for the filing of the report until the true and complete report is filed, up to a maximum of five thousand dollars ($5,000).

C. If a reporting individual fails to file or files a late supplemental report of expenditures and contributions as required in Paragraph (5) of Subsection B of Section 1-19-29 NMSA 1978, the reporting individual or political committee shall be liable for and pay to the secretary of state a penalty equal to the amount of each contribution received or pledged after the Tuesday before the election that was not timely filed.

D. All sums collected for the penalty shall be deposited in the state general fund. A report or statement of exception shall be deemed timely filed only if it is received by the proper filing officer by the date and time prescribed by law.

E. Any candidate who fails or refuses to file a report of expenditures and contributions or statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not, in addition to any other penalties provided by law:
   (1) have the candidate's name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or
   (2) 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 satisfies all reporting requirements of the Campaign Reporting Act and pays all penalties owed.

F. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions or a statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not be, in addition to any other penalties provided by law, permitted to file a declaration of candidacy or nominating petition for any future election until the candidate satisfies all reporting requirements of that act and pays all penalties owed.


1-19-36. Penalties; criminal enforcement.

A. Any person who knowingly and willfully violates any provision 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.


History: Laws 1979, ch. 360, § 14.
ARTICLE 19A
Voter Action

Sections 1 through 17 [1-19A-1 to 1-19A-17 NMSA 1978] of this act may be cited as the "Voter Action Act".


As used in the Voter Action Act:
A. "applicant candidate" means a candidate who is running for a covered office and who is seeking to be a certified candidate in a primary or general election;
B. "certified candidate" means a candidate running for a covered office who chooses to obtain financing pursuant to the Voter Action Act and is certified as a Voter Action Act candidate;
C. "contested election" means an election in which there are more candidates for a position than the number to be elected to that position;
D. "covered office" means any office of the judicial department subject to statewide elections and the office of public regulation commissioner;
E. "election cycle" means the primary and general elections for the same term of the same covered office, beginning on the day after the last general election for the office and ending with the general election; the primary election cycle begins on the first day of the election cycle and ends on the day of the primary election; the general election begins on the day after the primary election and ends on the day of the general election;
F. "fund" means the public election fund;
G. "noncertified candidate" means either a candidate running for a covered office who does not choose to participate in the Voter Action Act and who is not seeking to be a certified candidate or a candidate who files a declaration of intent to participate but who fails to qualify;
H. "qualifying contribution" means a donation of five dollars ($5.00) in the form of cash or a check or money order payable to the fund in support of an applicant candidate that is:
   (1) made by a registered voter who is eligible to vote for the covered office that the applicant candidate is seeking;
   (2) made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the applicant candidate; and
   (3) acknowledged by a receipt that identifies the contributor's name and residential address on forms provided by the bureau of elections and that is signed by the contributor, one copy of which is attached to the list of contributors and sent to the bureau of elections;
I. "qualifying period" means:
   (1) for major party applicant candidates for covered offices, the period beginning October 1 immediately preceding the election year and ending at 5:00 p.m. on the third Tuesday of March of the election year; and
   (2) for independent and minor party candidates, the period beginning February 1 of the election year and ending that year at 5:00 p.m. on the filing date for independent or minor party candidates for the office for which the candidate is running;
J. "secretary" means the secretary of state or the office of the secretary of state; and
K. "seed money" means a contribution raised for the primary purpose of enabling applicant candidates to collect qualifying contributions and petition signatures.


1-19A-3. Terms of participation; declaration of intent.
A. A candidate choosing to obtain financing pursuant to the Voter Action Act shall first file with the secretary a declaration of intent to participate in that act as an applicant candidate for a stated covered office. The declaration of intent shall be filed with the secretary prior to or during the qualifying period according to forms and procedures developed by the secretary.
B. An applicant candidate choosing to participate in the Voter Action Act shall submit a declaration of intent prior to collecting any qualifying contributions and make explicit in the declaration that the candidate has complied with and will continue to comply with that act's contribution and expenditure limits and all other requirements set forth in that act and rules issued by the secretary.
C. A candidate shall not be eligible to become an applicant candidate if the candidate has accepted contributions totaling five hundred dollars ($500) or more or made expenditures totaling five hundred dollars ($500) or more between the beginning of the qualifying period and filing a declaration of intent.

History: Laws 2003, ch. 14, § 3.

1-19A-4. Qualifying contributions.
A. Applicant candidates shall obtain qualifying contributions as follows:
   (1) for all statewide judicial elective offices, the number of qualifying contributions equal to one-tenth of one percent of the number of voters in the state; and
   (2) for the office of public regulation commissioner, the number of qualifying contributions equal to one-tenth of one percent of the number of voters in the district of the office for which the candidate is running.
B. Applicant candidates may accept qualifying contributions from persons who become registered within the statutory time frame that would enable that person to vote in the primary election.
C. Voters registered as independent are not excluded from making qualifying contributions but shall be registered within the statutory time frame as independent.
D. No payment, gift or anything of value shall be given in exchange for a qualifying contribution.

1-19A-5. Seed money.

A. An applicant candidate may collect seed money from individual donors and political action committees in amounts of no more than one hundred dollars ($100) per donor or committee. An applicant candidate may contribute an amount of seed money from the applicant candidate’s own funds up to the limits specified in Subsection H of this section.

B. An applicant candidate may collect and spend seed money during the sixty days immediately preceding the qualifying period and throughout the qualifying period.

C. An applicant candidate may not collect seed money from a corporation, association or partnership formed under state law or from labor organizations.

D. An applicant candidate may not collect or spend seed money for any purpose after certification and before the end of the election cycle for which the candidate was certified, but after the election cycle may carry forward to the next election cycle any unspent seed money to be used as seed money.

E. If a certified candidate is defeated or is elected and decides not to run again as an applicant candidate, any unspent seed money shall be forfeited to the fund.

F. After becoming an applicant candidate and prior to certification, an applicant candidate shall not accept contributions, except for seed money or qualifying contributions.

G. An incumbent, other than a public regulation commissioner, elected prior to 2008 who was not an applicant candidate when elected but who files a declaration of intent to become an applicant candidate in accordance with the Voter Action Act may transfer from the applicant candidate’s campaign fund for use as seed money up to the limits for contributions and expenditures specified in Subsection H of this section.

H. An applicant candidate shall limit seed money contributions and expenditures to five thousand dollars ($5,000).


1-19A-6. Certification.

A. Upon receipt of a final submittal of qualifying contributions by an applicant candidate, the secretary shall determine whether the applicant candidate has:

1. signed and filed a declaration of intent to obtain financing pursuant to the Voter Action Act in accordance with the requirements of that act;

2. submitted the appropriate number of qualifying contributions;

3. qualified as a candidate pursuant to other applicable state election law;

4. complied with seed money contribution and expenditure restrictions; and

5. otherwise met the requirements for obtaining financing pursuant to the Voter Action Act.

B. The secretary shall certify applicant candidates complying with the requirements of this section as certified candidates as soon as possible and no later than ten days after final submittal of qualifying contributions and certification as a candidate pursuant to other applicable state election law.

C. A certified candidate shall comply with all requirements of the Voter Action Act after certification and throughout the primary election and general election cycles. A certified candidate who accepts public campaign finance funds for the primary election shall comply with all the requirements of the Voter Action Act for the remainder of the election cycle in question, even if he decides not to accept such funds for the general election.
1-19A-7. Guidelines and restrictions for contributions to and expenditures of certified candidates.

A. All money distributed to a certified candidate shall be used for that candidate's campaign-related purposes in the election cycle in which the money was distributed.

B. A certified candidate shall return to the fund any amount that is unspent or unencumbered at the time that person ceases to be a candidate before a primary or general election for which the fund money was distributed.

C. A certified candidate shall limit total campaign expenditures and debts to the amount of money distributed to that candidate from the fund. A certified candidate shall not accept contributions or loans from any other source except the certified candidate's political party, as specified in Section 1-19A-8 NMSA 1978.

D. A certified candidate shall return to the secretary, within thirty days after the primary election, any amount that is unspent or unencumbered by the date of the primary election for direct deposit into the fund.

E. A certified candidate shall return to the secretary, within thirty days after the general election, any amount that is unspent or unencumbered by the date of the general election for direct deposit into the fund.


1-19A-8. Political party expenditures; contributions to certified candidates.

A. A certified candidate may accept monetary or in-kind contributions from a political party; provided that the aggregate amount of such contributions from all political party committees combined does not exceed the equivalent of ten percent of the value of that candidate's aggregate public financing per election cycle.

B. All in-kind contributions from a political party distributed to certified candidates shall be used for campaign-related purposes.

C. Nothing in this section shall prevent political party funds from being used for general operating expenses of the party; conventions; nominating and endorsing candidates; identifying, researching and developing the party's position on issues; party platform activities; noncandidate-specific voter registration; noncandidate-specific get-out-the-vote drives; travel expenses for noncandidate party leaders and staff; and other noncandidate-specific party building activities.


1-19A-9. Candidate reporting requirements.

A. The secretary shall publish guidelines outlining permissible campaign-related expenditures.

B. Applicant candidates shall file a report listing seed money contributions and expenditures with their application for certification.
C. Applicant candidates shall file qualifying contributions with the secretary during the qualifying period according to procedures developed by the secretary. In developing these procedures, the secretary shall use existing campaign reporting procedures and deadlines whenever practical.

D. Certified candidates shall report expenditures according to the campaign reporting requirements specified in the Election Code [Chapter 1 NMSA 1978].

E. In addition to the campaign contribution and expenditure reports specified in the Election Code, all noncertified candidates who have as an opponent a certified candidate shall report to the secretary ten days before the primary and general elections the amount of money spent by that noncertified candidate. This report shall include all previously unreported transactions through 5:00 p.m. two days before the report is due.

F. A person or political committee that makes expenditures to influence a race involving a certified candidate shall report to the secretary the amount that person or political committee has spent. These reports shall include all previously unreported transactions through 5:00 p.m. two days before the report is due, and shall be submitted as follows:

1. for the primary election, by 5:00 p.m. on the second Monday in May, by 5:00 p.m. on the eleventh day before the election and by 5:00 p.m. on the Thursday before the election; and
2. for the general election, by 5:00 p.m. the first Tuesday in October, by 5:00 p.m. on the eleventh day before the election and by 5:00 p.m. on the Thursday before the election.


1-19A-10. Public election fund; creation; use.

A. There is created in the state treasury the "public election fund" solely for the purposes of:

1. financing the election campaigns of certified candidates for covered offices;
2. paying administrative and enforcement costs of the Voter Action Act; and
3. carrying out all other specified provisions of the Voter Action Act.

B. The state treasurer shall invest the funds as other state funds are invested, and all income derived from the fund shall be credited directly to the fund. Remaining balances at the end of a fiscal year shall remain in the election fund and not revert to the general fund.

C. Money received from the following sources shall be deposited directly into the fund:

1. qualifying contributions that have been submitted to the secretary;
2. any recurring balance of unspent fund money distributed to a certified candidate who does not remain a candidate through the primary or general election period for which the money was distributed;
3. money that remains unspent or unencumbered by a certified candidate following the date of the primary election;
4. money that remains unspent or unencumbered by a certified candidate following the date of the general election;
5. unspent seed money that cannot be used for any other purpose;
6. money distributed to the fund from funds received pursuant to the Uniform Unclaimed Property Act (1995) [Chapter 7, Article 8A NMSA 1978]; and
7. money appropriated by the legislature.

D. A subaccount shall be established in the fund, and money in the subaccount shall only be used to pay the costs of carrying out the provisions of the Voter Action Act related to public regulation commission elections.
E. Two hundred thousand dollars ($200,000) per year shall be collected and deposited in the
subaccount for public regulation commission elections as follows:
   (1) one hundred thousand dollars ($100,000) from inspection and supervision fees collected
       pursuant to Section 62-8-8 NMSA 1978; and
   (2) one hundred thousand dollars ($100,000) from utility and carrier inspection fees col-
       lected pursuant to Section 63-7-20 NMSA 1978.

History: Laws 2003, ch. 14, § 10; 2007 (1st S.S.), ch.
2, § 5; 2014, ch. 2, § 1.

   A. By January 1, 2007, and every two years thereafter, the secretary shall prepare and provide
to the legislature a report documenting, evaluating and making recommendations relating to the
administration, implementation and enforcement of the Voter Action Act.
   B. In the report, the secretary shall set out the revenues received to date, the expected costs to
the fund for the next election cycle and the amount of the annual appropriation from the legislature
that will be required to meet this need.


   A. Beginning with the election cycle that ends with the general election in 2006, the secretary
shall distribute money from the fund to certified candidates.
   B. For a primary election certified candidate, the secretary shall distribute the amount due to
that certified candidate for that covered office within one week of certification.
   C. For a candidate certified for the general election, the secretary shall distribute the amount
due to that certified candidate for that covered office within one week after the primary election or,
for a minor party or independent candidate, within one week after certification of the candidate.


   A. By August 1, 2007, the secretary shall determine the amount of money to be distributed to
each certified candidate for the election cycle ending with the general election in 2008, based on the
type of election and the provisions of Subsections B through F of this section.
   B. For contested primary elections, the amount of money to be distributed to a certified can-
didate is equal to the following:
      (1) for the office of public regulation commissioner, twenty-five cents ($.25) for each voter of
the candidate's party in the district of the office for which the candidate is running; and
      (2) for the office of justice of the supreme court and judge of the court of appeals, fifteen
cents ($.15) for each voter of the candidate's party in the state.
   C. For uncontested primary elections, the amount of money to be distributed to a certified can-
didate is equal to fifty percent of the amount specified in Subsection B of this section.
   D. For contested general elections, the amount of money to be distributed to a certified can-
didate is equal to the following:
(1) for the office of public regulation commissioner, twenty-five cents ($ .25) for each voter in the district of the office for which the candidate is running; and
(2) for the office of justice of the supreme court and judge of the court of appeals, fifteen cents ($ .15) for each voter in the state.

E. For uncontested general elections, except as provided in Subsection I of this section, the amount of money to be distributed to a certified candidate is equal to fifty percent of the amount specified in Subsection D of this section. If a general election race that is initially uncontested later becomes contested because of the qualification of an independent or minor party candidate to appear on the ballot for that race, an additional amount of money shall be distributed to the certified candidate to make that candidate's total distribution amount equal to the amount distributed pursuant to Subsection D of this section.

F. Once the certification for candidates for the primary election has been completed, the secretary shall calculate the total amount of money to be distributed in the primary election cycle, based on the number of certified candidates and the allocations specified in this section. The secretary shall increase the total amount by twenty percent to provide funds for additional matching funds in the primary election. The secretary shall also prepare an estimate of the total amount of money that might be distributed in the general election cycle. This estimate shall be increased by twenty percent to provide funds for additional matching funds in the general election. If the total amount to be distributed in the primary election cycle, plus the added twenty percent and the estimated total amount to be distributed in the general election cycle, plus the added twenty percent, all taken together, exceed the amount expected to be available in the fund, the secretary shall allocate the amount available between the primary and general election cycles. This allocation shall be based on the ratio of the two total amounts.

G. If the allocation specified in Subsection F of this section is greater than the total amount available for distribution, then the amounts to be distributed to individual candidates, specified in Subsections B through E of this section, shall each be reduced by the same percentage as the reduction by which the total amount needed has been reduced relative to the total amount available.

H. At least every two years after January 1, 2007, the secretary shall evaluate and modify as necessary the dollar values originally determined by Subsections B through E of this section and shall consider and account for inflation in the evaluations.

I. No money shall be distributed to candidates in judicial retention elections. No money shall be distributed to judicial candidates in uncontested general elections, provided that if a general election race that is initially uncontested later becomes contested, the certified judicial candidate shall receive a distribution in accordance with Subsection D of this section.


When a certified or noncertified candidate has one or more opponents who are certified candidates and the candidate's campaign finance report or group of reports shows that the sum of the candidate's expenditures and obligations made, or funds raised or borrowed, whichever is greater, alone or in conjunction with expenditures made independently of the candidate to influence the election on behalf of the candidate, exceeds the amount distributed to an opposing certified candidate, the secretary shall issue immediately to any opposing certified candidate an additional amount equivalent to the excess amount reported by the opposing candidate. Total matching funds to a certified
candidate in an election are limited to twice the amount originally distributed to that candidate pursuant to Section 1-19A-13 NMSA 1978.


1-19A-15. Administration; secretary of state; duties.

A. The secretary shall adopt rules to ensure effective administration of the Voter Action Act.

B. The rules shall include procedures for:
   (1) qualifications, certification and disbursement of revenues and return of unspent fund revenues;
   (2) obtaining qualifying contributions;
   (3) certification of candidates;
   (4) collection of revenues; and
   (5) return of fund disbursements and other money to the fund.


The procedure for challenging a certification decision by the secretary is as follows:

A. a person aggrieved by a certification decision or a decision regarding the distribution of matching funds may appeal to the secretary within three days of the decision. The appeal shall be in writing and shall set forth the reasons for appeal;

B. within five days after an appeal is properly made, and after due notice is given to the parties in dispute, the secretary shall hold a hearing whereby:
   (1) the appellant has the burden of providing evidence to demonstrate that the secretary's decision was improper; and
   (2) the secretary shall rule on the appeal within three days after the completion of the hearing;

C. the parties in dispute may appeal the decision of the secretary by commencing an action in district court; and

D. certified candidates whose certification is revoked on appeal shall return to the secretary any unspent money distributed from the fund. If the secretary or court finds that an appeal was made frivolously or to result in delay or hardship, the secretary or court may sanction the moving party by requiring the party to pay costs of the administrative hearing, the court hearing and the opposing parties.

History: Laws 2003, ch. 14, § 16.

1-19A-17. Penalties.

A. In addition to other penalties that may be applicable, a person who violates a provision of the Voter Action Act is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation. In addition to a fine, a certified candidate found in violation of that act may be required to return to the fund all amounts distributed to the candidate from the fund. If the secretary makes a determination that a violation of that act has occurred, the secretary shall impose a fine or transmit the finding to the attorney general for prosecution. In determining whether a certified candidate is
in violation of the expenditure limits of that act, the secretary may consider as a mitigating factor any circumstances out of the candidate's control.

B. A person who willfully or knowingly violates the provisions of the Voter Action Act or rules of the secretary or knowingly makes a false statement in a report required by that act is guilty of a fourth degree felony and, if he is a certified candidate, shall return to the fund all money distributed to that candidate.

History: Laws 2003, ch. 14, § 17.

ARTICLE 20
Offenses and Penalties

Sec.
1-20-1. Effect of article.
1-20-2. Scope of penalty provision.
1-20-3. Registration offenses.
1-20-4. Unlawful opening of ballot box.
1-20-5. Unlawful opening of a voting machine.
1-20-6. Unlawful possession of keys.
1-20-7. Unlawful possession of absentee ballot.
1-20-8.1. Conduct of election; fraudulent and double voting.
1-20-8.2. Paper ballots; delivery of two or more ballots.
1-20-10. False swearing.
1-20-11. Offering a bribe.
1-20-12. Accepting a bribe.
1-20-16. Electioneering too close to the polling place.
1-20-17. Obstructing the polling place.
1-20-18. Permitting a prisoner to vote.
1-20-19. Offenses by messengers.
1-20-19.1. Unlawful release of election results.
1-20-20. Disturbing the polling place.
1-20-22. Violation of Election Code; general penalty.
1-20-23. Violation of code by officers.

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 [Chapter 1 NMSA 1978].


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].

History: 1953 Comp., § 3-20-1.1, enacted by Laws 1975, ch. 255, § 123.

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 [Chapter 1 NMSA 1978].

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 [Chapter 1 NMSA 1978].

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 [Chapter 1 NMSA 1978] 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.

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. voting or offering to vote more than once in the same election;
D. falsifying any information on an absentee ballot official mailing envelope or affixing a signature or mark other than one's own on an absentee ballot official mailing envelope;
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.


1-20-8.1. 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.


1-20-8.2. Paper ballots; delivery of two or more ballots.

Every voter who knowingly attempts to vote on two or more paper ballots is guilty of a fourth degree felony.


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 or pretended ballot that 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 [Chapter 1 NMSA 1978];
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.

History: 1953 Comp., § 3-20-7, enacted by Laws 1969, ch. 240, § 433; 1983, ch. 61, § 1; 2009, ch. 150, § 34.

1-20-10. False swearing.

False swearing consists of taking any oath required by the Election Code [Chapter 1 NMSA 1978] 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.


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.

History: 1953 Comp., § 3-20-11, enacted by Laws
1969, ch. 240, § 437.


Coercion of voters consists of compelling any voter at any election to vote for or to refrain from
voting for any candidate, party, proposition, question or constitutional amendment either against
the voter's will or in the absence of the voter's ability to understand the purpose and effect of his
vote. Whoever commits coercion of voters is guilty of a fourth degree felony and shall be sentenced
pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1995, ch. 198, § 15; 1978 Comp., §
1-12-9.1 recompiled as § 1-20-13.1 by Laws 2011, ch.
137, § 109.


Intimidation consists of inducing or attempting to induce fear in any member of a precinct board,
shorter 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 [Chapter 1 NMSA 1978].
Whoever commits intimidation is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-12, enacted by Laws


Conspiracy to violate the Election Code [Chapter 1 NMSA 1978] 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.

History: 1953 Comp., § 3-20-13, enacted by Laws

1-20-16. Electioneering too close to the polling place.

A. Electioneering too close to the polling place consists of any form of campaigning within:
(1) one hundred feet of the building in which the polling place is located on election day
when voting at a school, church or private residence; and
(2) one hundred feet of the door through which voters may enter to vote at the office of the
county clerk, an alternate voting location, a mobile voting site or any location used as a polling
place on election day that is not a school, church or private residence.
B. Electioneering includes the display or distribution of signs or campaign literature, campaign buttons, t-shirts, hats, pins or other such items and includes the verbal or electronic solicitation of votes for a candidate or question.
C. Whoever commits electioneering too close to the polling place is guilty of a petty misdemeanor.


1-20-17. Obstructing the polling place.
A. Obstructing the polling place consists of:
   (1) any person other than a voter offering to vote, a member of the precinct board, a lawfully appointed challenger or watcher, an election observer, an election official having business in the polling place or a person authorized by the Election Code [Chapter 1 NMSA 1978] to give assistance to a voter who, during the conduct of the election, approaches nearer than fifty feet from the door through which voters may enter to vote at the office of the county clerk, an alternate voting location, a mobile voting site or any location used as a polling place; or
   (2) any person who willfully blocks the entrance to a polling place so as to prevent free ingress and egress.
B. A person conducting lawful, non-election-related business nearer than fifty feet from the door through which voters may enter to vote is not guilty of obstructing a polling place, provided the person does not willfully block the entrance to the polling place.
C. Whoever obstructs the polling place is guilty of a petty misdemeanor.


1-20-18. Permitting a prisoner to vote.
A. Permitting a prisoner to vote consists of a warden of a penitentiary, a sheriff or jailer or any other person having custody of a convict or prisoner taking him or permitting him to be taken to a polling place for the purposes of voting in any election.
   Whoever permits a prisoner to vote is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.
B. This section does not prohibit permitting a prisoner convicted of a misdemeanor from voting 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.

History: 1953 Comp., § 3-20-17, enacted by Laws 1969, ch. 240, § 443.
1-20-19.1. Unlawful release of election results.

A. Unlawful release of election results consists of the county clerk or a duly authorized deputy or assistant releasing election results prior to the closing of the polls on election day.

B. Whoever commits unlawful release of election results is guilty of a misdemeanor, pursuant to Section 31-19-1, NMSA 1978.

History: Laws 1999, ch. 102, § 1.

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 watchman, in the performance of his duties.

Whoever disturbs the polling place is guilty of a petty misdemeanor.


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 [Chapter 1 NMSA 1978] 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.

History: 1953 Comp., § 3-20-20, enacted by Laws 1969, ch. 240, § 446.

1-20-23. Violation of code by officers.

Violation of the Election Code [Chapter 1 NMSA 1978] 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.
1-21-1. Short title.
1-21-2. Definitions.
1-21-3. Eligibility of new resident and former resident to vote.
1-21-4. Application for presidential ballot.
1-21-5. Processing application; issuance of ballot; casting of ballot.
1-21-6. New resident; former resident; presidential ballot register.
1-21-7. Form of presidential ballot.

1-21-9. Manner of voting of new residents and former residents.
1-21-10. Delivery of presidential ballots to absent voter precincts.
1-21-11. Handling presidential ballots by absent voter precinct board.
1-21-12. Cancellation of presidential ballot at death.

1-21-1. Short title.

This act [Chapter 1, Article 21 NMSA 1978] may be cited as the "Federal Voting Rights Compliance Act".

History: 1953 Comp., § 3-21-1, enacted by Laws 1971, ch. 322, § 1.

1-21-2. Definitions.

As used in the Federal Voting Rights Compliance Act:
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.


1-21-4. Application for presidential ballot.

A. A new resident desiring to vote for presidential officers under the provisions of the Federal Voting Rights Compliance Act 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, 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.

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E. Notwithstanding any provision of the Election Code [Chapter 1 NMSA 1978], 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.

History: 1953 Comp., § 3-21-6, enacted by Laws 1971, ch. 322, § 6.

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 [Chapter 1 NMSA 1978].


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 [Chapter 1 NMSA 1978].
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, 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 [Chapter 1 NMSA 1978] 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.

History: 1953 Comp., § 3-21-10, enacted by Laws 1971, ch. 322, § 10.

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 [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-21-11, enacted by Laws 1971, ch. 322, § 11.

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 [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-21-12, enacted by Laws 1971, ch. 322, § 12.


Except as provided in the Federal Voting Rights Compliance Act, the provisions of law relating to elections held under the provisions of the Election Code [Chapter 1 NMSA 1978] 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.


Any person willfully making a false statement or affidavit under the Federal Voting Rights Compliance Act is guilty of a fourth degree felony.

History: 1953 Comp., § 3-21-17, enacted by Laws 1971, ch. 322, § 17.

ARTICLE 22
School Election Law

Sec.
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1-22-17. Records.

1-22-1. Short title.

Sections 1-22-1 through 1-22-19 NMSA 1978 may be cited as the "School Election Law".


As used in the School Election Law:
A. "board" means the governing authority of the 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 a regular or special school district election but does not include a recall election; and
F. "superintendent" means the superintendent of schools of the school district.


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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 board. No person shall become a candidate for membership on a board unless the person's record of voter registration shows that the person is a qualified elector of the state, physically resides in the school district in which the person is a candidate and was registered to vote in the district on the date the board's proclamation calling a regular school district election is filed in the office of the county clerk.

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. An election on a ballot question held at any time other than the date for the regular school district election shall be a special school district election called, conducted and canvassed as provided in the Election Code.

D. Except as otherwise provided in the School Election Law, school district elections shall be called, conducted and canvassed as provided in the Election Code.


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. The proclamation shall be filed by the superintendent with the county clerk of record on the last Tuesday 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 proper filing officer.

B. The proclamation shall specify:
   (1) the date on which the special election will be held;
   (2) the questions to be submitted to the voters;
   (3) the precincts in each county in which the election is to be held and the location of each polling place;
   (4) the hours each polling place will be open; and
   (5) the date and time of the closing of the registration books by the proper filing officer as required by law.

C. After filing the proclamation with the proper filing officer and not less than fifty days before the date of the election, the proper filing officer 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 a designated polling place in the school district of the county in which the school district is located, which may include the county clerk's office if it is located within the school district.

C. Except as otherwise provided in the School Election Law, 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. A consolidated precinct in a school district election shall be composed of no more than twenty precincts.


1-22-7. Declaration of candidacy; filing date; penalty.

A. A candidate for a board position that will be filled at a regular school district election shall file a declaration of candidacy 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 candidate shall file for only one board position during a filing period.
C. Whoever knowingly makes a false statement in a declaration of candidacy is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.


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 ______________________ and was registered to vote at that place on the date the school board's proclamation calling the election was filed in the office of the county clerk;

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 School Board 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 ____________, 20____.

______________________________
(Notary Public)

My commission expires:

______________________________".


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.

**History:** 1978 Comp., § 1-22-9, enacted by Laws 1985, ch. 168, § 11.

### 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, 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 person who is a candidate and the position on the board for which the person 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 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 hand counted in lieu of using a voting machine to tabulate ballots for:

1. school districts of less than five hundred average daily membership; or
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 the Election Code [Chapter 1 NMSA 1978].

**History:** 1978 Comp., § 1-22-10, enacted by Laws 1985, ch. 168, § 12; 1993, ch. 4, § 1; 2009, ch. 150, § 35.

### 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.


A. Except as otherwise provided in the School Election Law, the county clerk shall administer and conduct school district elections pursuant to the provisions of the Election Code 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 may perform the duties of the precinct board at the request of the school district.

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


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 [Chapter 1 NMSA 1978]; 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.


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.


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 [Chapter 1 NMSA 1978] 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.


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 the person has the qualifications to be a candidate for membership on the board in the school district election as provided in the School Election Law.

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 on the proper line provided on the ballot for write-in votes for the office and position for which the candidate has declared intent and the voter has followed the directions for voting for the write-in candidate.

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 the write-in candidate's name shall not be 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.


A. A voter may vote in a school district election by absentee ballot for all candidates and on all questions appearing on the ballot in the voter's precinct as if the voter were casting the ballot in person at the polling place on election day.

B. The provisions of the Absent Voter Act [1-6-1 through 1-6-18 NMSA 1978] 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. In addition, provisions may be made by the board in the proclamation for absentee voting by electronic voting machine at alternate voting locations at any time beginning on the twentieth day preceding an election through the Saturday immediately prior to the date of the election.
C. A regular precinct board may be designated to serve as the absent voter precinct board. A member of the absent voter precinct board shall receive the same compensation as a regular precinct board member. A regular precinct board member who also serves as a member of the absent voter precinct board shall not be entitled to extra compensation for serving on the absent voter precinct board.


ARTICLE 22A
School District Campaign Reporting

This act [1-22A-1 to 1-22A-10 NMSA 1978] may be cited as the "School District Campaign Reporting Act".

History: Laws 2013, ch. 180, § 1.

As used in the School District Campaign Reporting Act:
A. "campaign committee" means one or more persons authorized by a candidate to raise, collect or expend contributions on the candidate's behalf for the purpose of electing the candidate to office;
B. "candidate" means a person who seeks or considers an office in an election covered by the School District Campaign Reporting Act, who either has filed a declaration of candidacy or has received contributions or made expenditures of five hundred dollars ($500) or more or authorized another person or campaign committee to receive contributions or make expenditures of five hundred dollars ($500) or more for the purpose of seeking election to a covered office;
C. "contribution" means a gift, subscription, loan, advance or deposit of 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 "contribution" 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 campaign committee;
D. "covered office" means the position of board of education member of a school district that has an enrollment of twelve thousand students or more or the position of board member of a community college organized or operating pursuant to the provisions of Chapter 21, Article 13 or Article 16 NMSA 1978;
E. "election cycle" means the period beginning thirty days after an election for an office and ending on the subsequent election day for that office;  
F. "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;  
G. "political purpose" means advocating the election or defeat of a candidate in an election;  
H. "prescribed form" means a form or electronic format prepared and prescribed by the secretary of state; and  
I. "reporting individual" means a candidate or treasurer of a campaign committee.

History: Laws 2013, ch. 180, § 2.

1-22A-3. Reports required; time and place of filing.

A. A candidate or campaign committee that has received contributions or made expenditures of five hundred dollars ($500) or more shall file with the secretary of state a report of all contributions received and expenditures made on a prescribed form, and the report shall be filed in the same or similar electronic system as that used for the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978]. Except as otherwise provided in this section, all reports pursuant to the School District Campaign Reporting Act shall be filed electronically and electronically authenticated by the candidate using an electronic signature in conformance with the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978].  
B. A candidate or campaign committee shall file a campaign report of all contributions received and expenditures made during an election cycle and not previously reported by midnight on the second Monday in April.  
C. If a reporting date set by Subsection B of this section falls on a weekend or holiday, the report shall be filed on the next business day.  
D. If a candidate or campaign committee has not received any contributions and has not made any expenditures since the last report filed with the secretary of state, the candidate or campaign committee shall only be required to file a statement of no activity, which shall not be required to be notarized, in lieu of a full report when that report would otherwise be due.  
E. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.  
F. Except for candidates and campaign committees that file a statement of no activity, each candidate or campaign committee shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section, regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required until the candidate or campaign committee delivers a report to the secretary of state stating that:  
   1) there are no outstanding campaign debts;  
   2) all money has been expended in accordance with the provisions of Section 6 of the School District Campaign Reporting Act; and  
   3) the bank account for campaign funds maintained by the candidate or campaign committee has been closed.  
G. A candidate who does not ultimately file a declaration of candidacy and does not file a statement of no activity shall file reports in accordance with Subsection B of this section.  
H. A candidate may apply to the secretary of state for exemption from electronic filing in case of hardship, which shall be defined by the secretary of state.

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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 to whom an expenditure was made or from whom a contribution was received; provided that for contributors, the name of the legal entity or the first and last names of the individual shall be the full name of the legal entity or individual, and initials only shall not constitute a full name unless that is the complete legal name;
   (2) the occupation and type and name of business, if any, of any person 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 that the expenditure was made or the contribution was received.

B. Each report shall contain an opening and closing cash balance for the bank account maintained for campaign funds by the reporting individual during the reporting period and the name of the financial institution.

C. Each report shall specify the amount of each unpaid debt and the identity of the person to whom the debt is owed.


1-22A-5. Anonymous contributions; special event fundraisers.

A. No anonymous contributions may be accepted in excess of one hundred dollars ($100). The aggregate amount of anonymous contributions received by a candidate in an election cycle shall not exceed five hundred dollars ($500).

B. Cash contributions received at special events that are unidentifiable as to a 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 with 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" means an event such as a barbecue or similar fundraiser where tickets costing twenty-five dollars ($25.00) or less are sold or an event such as a coffee, tea or similar reception.

C. Any contributions received pursuant to this section in excess of the limits established in Subsections A and B of this section shall be donated to the state 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.

History: Laws 2013, ch. 180, § 5.

1-22A-6. Voluntary compliance; complaints and investigations; arbitration; referrals for enforcement.

A. The secretary of state may initiate investigations to determine whether any provision of the School District Campaign Reporting Act has been violated. Additionally, any person who believes
that a provision of that act has been violated may file a written complaint with the secretary of state any time 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 and processing complaints and notifications of violations.

B. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the School District Campaign Reporting Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the reporting individual that the individual has ten working days from the date of the letter to correct the matter and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the fine imposed, the secretary of state may by a written notice of final action partially or fully waive any fine imposed for any late, incomplete or false report or statement of exception. A written notice of final action shall be sent by certified mail.

C. Upon receipt of the notice of final action, the person against whom the penalty has been imposed may protest the secretary of state's determination by submitting a written request for binding arbitration to the secretary of state within ten working days of the date of the notice of final action. Any fine imposed shall be due and payable within ten working days of the date of notice of final action. No additional fine shall accrue pending the issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

D. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the School District Campaign Reporting Act, Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978], Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] or Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

E. The arbitrator shall conduct the hearing within thirty days of the request for arbitration. The arbitrator may impose any penalty the secretary of state is authorized to impose. The arbitrator shall state the reasons for the arbitrator's decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [Chapter 44, Article 7A NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

F. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunction or other appropriate order or for criminal enforcement.


1-22A-7. Reports and statements; late filing penalty; failure to file.

A. If a statement of no activity or a report of expenditures and contributions contains false or incomplete information or is filed after any deadline imposed by the School District Campaign Re-
porting Act, the candidate, in addition to any other penalties or remedies prescribed by the Election Code, shall be liable for 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 School District Campaign Reporting Act for the filing of statements of no activity or reports of expenditures and contributions until the complete or true statement or report is filed, up to a maximum of five thousand dollars ($5,000).

B. All sums collected for the penalty shall be deposited in the general fund for credit to the current school fund. A report or statement of exception shall be deemed timely filed only if it is received by the secretary of state by the date and time prescribed by law.

C. Any candidate who fails or refuses to file a report of expenditures and contributions or statement of no activity or to pay a penalty imposed by the secretary of state as required by the School District Campaign Reporting Act shall not, in addition to any other penalties provided by law:

(1) have the candidate's name printed upon the ballot if the violation occurs before or through the final date for the withdrawal of candidates; or
(2) be issued a certificate of election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of the School District Campaign Reporting Act and pays all penalties owed.

D. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions or a statement of no activity or to pay a penalty imposed by the secretary of state as required by the School District Campaign Reporting Act shall not be, in addition to any other penalties provided by law, permitted to file a declaration of candidacy or nominating petition for any future election until the candidate satisfies all reporting requirements of that act and pays all penalties owed.


A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the School District Campaign Reporting Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or district attorney may institute a civil action in district court for any violation of the School District Campaign Reporting Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of two hundred fifty dollars ($250) for each violation not to exceed five thousand dollars ($5,000), and forfeiture of any contribution received as a result of an unlawful solicitation or unlawful contribution. Each unlawful solicitation and each unlawful contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978].

C. The attorney general or district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the School District Campaign Reporting Act other than that specified in Subsection B of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of fifty dollars ($50.00) for each violation not to exceed five thousand dollars ($5,000).

History: Laws 2013, ch. 180, § 8.

A. Any person who knowingly and willfully violates any provision of the School District Campaign Reporting 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.

B. The School District Campaign Reporting Act may be enforced by the attorney general or the district attorney in the county where the candidate resides or where the violation occurred.


1-22A-10. Campaign funds; limitations on use.

It is unlawful for a candidate or the candidate's agent to make an expenditure of contributions received, except for the following purposes:

A. expenditures of the campaign;

B. donations to the state general fund;

C. 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;

D. expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office;

E. donations to a political committee or to another candidate seeking election to a public office that is subject to the reporting provisions of the School District Campaign Reporting Act or the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978]; or

F. disbursements to return unused funds pro rata to the contributors if no campaign debt exists.

History: Laws 2013, ch. 180, § 10.

ARTICLE 23
Mail Ballot Elections

1-23-1. Short title.

This act [Chapter 1, Article 23 NMSA 1978] may be cited as the "Mail Ballot Election Act".


1-23-2. Definition.

As used in the Mail Ballot Election Act, "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.

History: Laws 1987, ch. 160, § 3; 1989, ch. 73, § 1.

1-23-4. Law governing.

A. Except as otherwise provided in the Mail Ballot Election Act, mail ballot elections shall be conducted in accordance with the provisions of the local government's absentee voter law.

B. If the local government does not have an absentee voter law, the mail ballot election shall be called, conducted and canvassed as provided in the Election Code.


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 [1-23-5 NMSA 1978] of the Mail Ballot Election Act a printed notice to the voters informing the voters that they shall return the voted ballot by mail.


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.

History: Laws 1987, ch. 160, § 7; 1989, ch. 73, § 3.

ARTICLE 24
Special Election Procedures

Sec. 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 local government 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. 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 text 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.

B. After filing with the county clerk the proclamation issued pursuant to Subsection A of this section, and not less than fifty-six 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.

C. Whenever a statewide special election is to be called or is required by law, the governor shall by resolution issue a public proclamation calling the election. Whenever an election to fill a vacancy in the office of United States representative is to be called or is required by law, the governor shall by resolution issue a public proclamation calling the election pursuant to the requirements...
of Section 1-15-18.1 NMSA 1978. The proclamation shall forthwith be filed with the secretary of state. 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 a vacancy in the office of United States representative is to be filled, the date on which declarations of candidacy are to be filed;
   (4) if a question is to be voted upon, the text of that question; and
   (5) the date and time of closing the registration books by the county clerk as required by law.

D. After the proclamation issued pursuant to Subsection C of this section is filed with the secretary of state, the secretary of state shall within five days certify the proclamation to each county clerk in the state. Not less than fifty-six days before the date of the election, the county clerk shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation, which shall include the precincts in the county in which the election is to be held and the location of each polling place in the precinct and the hours that each polling place will be open. For an election called pursuant to Subsection F of Section 1-15-18.1 NMSA 1978, the proclamation shall be published consistent with this subsection not less than thirty-six days before the date of the election. 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.

History: Laws 1989, ch. 295, § 3.

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. 2-11-1. Short title.
Chapter 2, Article 11 NMSA 1978 may be cited as the "Lobbyist Regulation Act".


Sec. 2-11-2. Definitions.

As used in the Lobbyist Regulation Act:
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 is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the course of his employment is engaged in lobbying on a substantial or regular basis. "Lobbyist" does not include:
   (1) an individual who appears on his own behalf in connection with legislation or an official action;
   (2) any elected or appointed officer of the state or its political subdivisions or an Indian tribe or pueblo acting in his official capacity;

2-11-7. Registration and expenditure statement; preservation as public record; online reports.
2-11-8. Contingent fees prohibited in lobbying the legislative branch of state government.
2-11-8.1. Restrictions on campaign activities and contributions.
2-11-8.2. Compliance with act; enforcement of act; binding arbitration; civil penalties.
(3) an employee of the state or its political subdivisions, specifically designated by an elected or appointed officer of the state or its political subdivision, who appears before a legislative committee or in a rulemaking proceeding only to explain the effect of legislation or a rule on his agency or political subdivision, provided the elected or appointed officer of the state or its political subdivision keeps for public inspection, and files with the secretary of state, such designation;

(4) any designated member of the staff of an elected state official, provided the elected state official keeps for public inspection and files with the secretary of state such designation;

(5) a member of the legislature, the staff of any member of the legislature or the staff of any legislative committee when addressing legislation;

(6) any witness called by a legislative committee or administrative agency to appear before that legislative committee or agency in connection with legislation or an official action;

(7) an individual who provides only oral or written public testimony in connection with a legislative committee or in a rulemaking proceeding and whose name and the interest on behalf of which he testifies have been clearly and publicly identified; or

(8) a publisher, owner or employee of the print media, radio or television, while gathering or disseminating news or editorial comment to the general public in the ordinary course of business;

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 of New Mexico.


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 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 fifty dollars ($50.00) 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 the lobbyist's registration statement whether those circumstances apply to the lobbyist.

C. No more than five days after a registration is filed, the secretary of state shall publish the registration statement on the secretary of state's lobbying disclosure web site.

D. 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 the lobbyist 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 the lobbyist's 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.

E. 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 fifty-dollar ($50.00) filing fee for each of the lobbyist's employers together with a short, abbreviated prescribed form for renewal.

F. 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 shall not be construed to limit or restrict the exercise of his power or the performance of his duties.


2-11-6. Expenditure report 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 or in opposition to a state legislator or candidate for the state legislature, a state public officer or candidate for state public office, a board or commission member or state
employee who is involved in an official action affecting the lobbyist's employer or in support of or in opposition to a ballot issue or pending legislation or official action shall file an expenditure report with the secretary of state on a prescribed form or in an electronic format approved by the secretary of state and published by the secretary of state in accordance with Section 2-11-7 NMSA 1978. The expenditure report shall include a sworn statement that sets forth:

(1) the cumulative total of the expenditures made or incurred by the employer or lobbyist during the covered reporting period, indicating the amount spent and a description of the expenditure. The list shall be separated into the following categories:

(a) meals and beverages;
(b) other entertainment expenditures;
(c) gifts; and
(d) other expenditures;

(2) each political contribution made, identified by amount, date and name of the candidate or ballot issue supported or opposed; and

(3) the names, addresses and occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist's employer delivers directly or indirectly separate contributions from those contributors in excess of five hundred dollars ($500) in the aggregate for each election to a candidate, a campaign committee or anyone authorized by a candidate to receive funds on the candidate's behalf.

B. If the expenditure report is filed electronically, the report shall be electronically authenticated by the lobbyist or the lobbyist's employer using an electronic signature as prescribed by the secretary of state in conformance with the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978]. For the purposes of the Lobbyist Regulation Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the lobbyist or the lobbyist's employer that is required to file the report.

C. 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, 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.

D. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed:

(1) by January 15 for all expenditures and political contributions made or incurred during the preceding year and not previously reported;

(2) within forty-eight hours for each separate expenditure made or incurred during a legislative session that was for five hundred dollars ($500) or more; and

(3) by May 1 for all expenditures and political contributions made or incurred through April 25 of the current year and not previously reported.

E. 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.

F. A lobbyist or lobbyist's employer shall obtain and preserve all records, 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 report containing such items. When the lobbyist is required under the terms of the lobbyist’s employment to turn over any such records to the lobbyist's 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.

G. A lobbyist's employer who also engages in lobbying shall also comply with the provisions of this section.

H. An organization of two or more persons, including an individual who makes any representation as being an organization, that within one calendar year expends funds in excess of two thousand five hundred dollars ($2,500) not otherwise reported under the Lobbyist Regulation Act to conduct an advertising campaign for the purpose of lobbying shall register with the secretary of state within forty-eight hours after expending two thousand five hundred dollars ($2,500). Such registration shall indicate the name of the organization and the names, addresses and occupations of any of its principals, organizers or officers and shall include the name of any lobbyist or lobbyist's employer who is a member of the organization. Within fifteen days after a legislative session, the organization shall report the contributions, pledges to contribute, expenditures and commitments to expend for the advertising campaign for the purpose of lobbying, including the names, addresses and occupations of the contributors, to the secretary of state on a prescribed form.


2-11-7. Registration and expenditure statement; preservation as public record; online reports.

A. Each registration and expenditure statement as required by the Lobbyist Regulation Act shall be archived and accessible on the secretary of state's lobbyist disclosure web site for a period of at least ten 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 ten years after the date of filing.

B. Lobbyist registrations and expenditure statements shall be kept and maintained on the secretary of state's lobbyist disclosure web site and shall be available in searchable and downloadable formats. The secretary of state shall update the web site no less than monthly throughout the year and as expeditiously as possible when the legislature is in session.

C. For the purposes of this section, "accessible" means, with respect to the secretary of state's lobbyist disclosure web site, that all records are easily searchable, sortable and downloadable by the public.


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:

   (1) the day the session ends for:
      (a) any statewide elected official or candidate for statewide office except the governor; and
      (b) a legislator or any candidate for the legislature; and
   (2) the twentieth day following the adjournment of the regular or special session for the governor or candidate for governor.


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 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. Additionally, any person who believes that a provision of 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 at all times seek to ensure voluntary compliance with the provisions of the lobbyist Regulation Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the person that he has ten working days to provide a written explanation, under penalty of perjury, stating any reason the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists, the secretary of state may by a written notice of final action partially or fully waive any fine imposed. A written notice of final action shall be sent by certified mail.

D. If the person charged disputes the secretary of state's determination, including an advisory opinion, the person charged may request binding arbitration within ten working days of the date of the final action. Any penalty imposed shall be due and payable within ten working days of the no-
tice of final action. No additional penalty shall accrue pending issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Lobbyist Regulation Act, Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] or Financial Disclosure Act [10-16A-1 through 10-16A-8 NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator may impose any penalty and take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7A-1 through 44-7A-32 NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

G. Any person who files a report after the deadline imposed by the Lobbyist Regulation Act, or any person who files a false or incomplete report, shall be liable for and shall pay to the secretary of state fifty dollars ($50.00) per day for each regular working day after the time required for the filing of the 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.


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 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. 2-15-1. Governmental ethics oversight committee created; termination.

Sec. 2-15-5. Report.
2-15-7. Interim legislative ethics committee; creation; appointment.
2-15-8. Interim legislative ethics committee; duties.
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.

History: Laws 1993, ch. 46, § 46.


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 through 10-8-8 NMSA 1978] plus reimbursement for reasonable actual expenses.

History: Laws 1993, ch. 46, § 47.


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.


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.

History: Laws 1993, ch. 46, § 49.


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.

History: Laws 1993, ch. 46, § 50.


The staff for the governmental ethics oversight committee shall be provided by the legislative council service. The committee may employ outside consultants.

History: Laws 1993, ch. 46, § 51.

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.

History: Laws 1993, ch. 46, § 52.

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.

History: Laws 1993, ch. 46, § 53.

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.

History: Laws 1993, ch. 46, § 54.


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.

History: Laws 1993, ch. 46, § 55.


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.

History: Laws 1993, ch. 46, § 56.

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.

History: Laws 1993, ch. 46, § 57.
CHAPTER 3
Municipalities

ARTICLE 8
Municipal Elections

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3-8-55. Post-election duties; canvass; defective returns; correction.
3-8-1. Election code; short title; purpose; "shall" and "may"; headings; construction; counting days.

A. Chapter 3, Articles 8 and 9 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 [Chapter 3, Articles 8 and 9 NMSA 1978], "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 silent or is in conflict with the state Election Code [Chapter 1 NMSA 1978] with respect to any procedures or protections required of the state by federal law, then the state Election Code 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 NMSA 1978 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 anddesignating for the voter the names of candidates and questions to be voted on and for the marking, casting or otherwise recording of such votes. "Ballot" includes paper ballots, absentee ballots, ballot sheets and paper ballots used in lieu of voting machines;

3. "ballot sheet" means the 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. "consolidated precinct" means the combination of two or more precincts pursuant to the Municipal Election Code;

5. "county clerk" means the clerk of the county or the county clerk's designee within which the municipality is located;

6. "election returns" means all certificates of the precinct board, including 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, paper ballots used in lieu of voting machines, absentee ballots, absentee ballot registers and absentee voter lists or absent voter machine-printed returns;

7. "municipal clerk" means the municipal clerk or any deputy or assistant municipal clerk;

8. "municipal clerk's office" means the office of the municipal clerk or any other room used in the process of absentee voting, counting and tallying of absentee ballots or canvassing the election results within the confines of the building where the municipal clerk's office is located;

9. "paper ballot" means a ballot manually marked by the voter and counted by hand without the assistance of a machine or optical-scan vote tabulating device;

10. "precinct" means a portion of a county situated entirely in or partly in a municipality that has been designated by the county as a precinct for election purposes and that is entitled to a polling place and a precinct board. If a precinct includes territory both inside and outside the boundaries of a municipality, "precinct", for municipal elections, shall mean only that portion of the precinct lying within the boundaries of the municipality;

11. "precinct board" means the appointed election officials serving a single or consolidated precinct;

12. "qualified elector" means any person whose affidavit of voter registration has been filed by the county clerk, who is registered to vote in a general election precinct established by the board of county commissioners that is wholly or partly within the municipal boundaries and who is a resident of the municipality. Persons who would otherwise be qualified electors if land on which they reside is annexed to a municipality shall be deemed to be qualified electors:

a) upon the effective date of the municipal ordinance effectuating the terms of the annexation as certified by the board of arbitration pursuant to Section 3-7-10 NMSA 1978;
(b) upon thirty days after the filing of an order of annexation by the municipal boundary commission pursuant to Sections 3-7-15 and 3-7-16 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation; or

(c) upon thirty days after the filing of an ordinance pursuant to Section 3-7-17 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation;

(13) "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;

(14) "recount" pertains to ballots and absentee ballots and means a retabulation and retallying of individual ballots;

(15) "voter" means a qualified elector of the municipality; and

(16) "voting machine" means any electronic recording and tabulating voting system as tested and approved by the secretary of state.

History: 1978 Comp., § 3-8-2, enacted by Laws 1985, ch. 208, § 10; 1997, ch. 266, § 3; 1999, ch. 278, § 1; 2003, ch. 244, § 1; 2009, ch. 278, § 1.

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.

History: 1978 Comp., § 3-8-3, enacted by Laws 1985, ch. 208, § 11.

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.

History: 1978 Comp., § 3-8-4, enacted by Laws 1985, ch. 208, § 12.

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 [Chapter 3, Articles 8 and 9 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) within fifteen days of the holding of any municipal election, forward to the county clerk a listing of all individuals voting in the municipal election.

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. The county clerk shall provide to the municipal clerk a printed registered voter list and the voter registration information in compatible electronic format containing only the qualified electors eligible to vote in the municipal election twenty days prior to the 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 to or from the registered voter list except as otherwise provided by law. 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, signature rosters and
voter registration in electronic format but in no case in an amount that exceeds the actual cost to the county.


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.

History: 1978 Comp., § 3-8-8, enacted by Laws 1985, ch. 208, § 16.

3-8-9. Election scheduling; conflicts; notice.

A. Except as otherwise provided by law, a municipal election may be held concurrently with, but shall not 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 [Chapter 3, Articles 8 and 9 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. Any precinct may be combined with one or more adjacent and contiguous precincts by the governing body when the municipal clerk determines that consolidation is in the best interest of those precincts and will not compromise the orderly and efficient conduct of the election.

B. Precincts may be consolidated in any regular or special municipal election, including bond elections, except when prohibited by law.

History: 1978 Comp., § 3-8-10, enacted by Laws 1985, ch. 208, § 18; 1997, ch. 266, § 5.

3-8-11. Polling places.

A. The governing body shall designate within the municipal boundaries a polling place, in each precinct or consolidated precinct, that is the most convenient and suitable public building or public school building in the precinct that can be obtained and that 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.

E. If only one candidate files a declaration of candidacy for each position to be filled at an election and no declared write-in candidate files for a position and there are no questions or bond issues on the ballot, the municipal clerk may designate a single polling place for the 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.

History: 1978 Comp., § 3-8-12, enacted by Laws 1985, ch. 208, § 20.
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 absentee ballots as allowed by law.

History: 1978 Comp., § 3-8-13, enacted by Laws 1985, ch. 208, § 21; 2009, ch. 278, § 3.

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. 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 that 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 municipal clerk shall order a sufficient number of voting machines to ensure that the eligible voters in that polling place shall be able to vote in a timely manner.

C. Programming of electronic machines shall be performed under the supervision of the municipal clerk and the county clerk. The machines shall be programmed so that votes will be counted in accordance with specifications for electronic voting machines adopted by the secretary of state.

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 contact the candidates using the information 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. If voting machines are to be used for absentee voting, inspection and certification shall occur not later than seven days prior to the beginning of absentee voting 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. ensure that the correct ballot sheet has been installed on each voting machine, if ballot sheets are to be installed;
2. test each counter for accuracy by casting votes upon it until it correctly registers each vote cast;
3. test each voting machine to ensure that it has been correctly programmed; and
4. 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:

1. the county clerk shall reset each counter at zero;
2. the voting machine shall be immediately sealed with a numbered seal so as to prevent operation of the machine or its registering counters without breaking the seal;
3. 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 voting machine has been tested by voting on each registered counter to prove the counter is in perfect condition;
(d) state that the correct ballot sheet has been installed on the voting machine, if ballot sheets are to be installed;
(e) show the number of the seal that has sealed the machine; and
(f) show the number registered on the protective counter;

4. 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

5. if the voting machine requires keys, 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 the voting machine;
(c) the number of the seal that has sealed the voting machine;
(d) the number registered on the protective counter; and
(e) 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, if the voting machines require keys, the county clerk shall keep the keys to the voting machines in the county clerk's 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, provided that any voting machines to be used for absentee voting shall be delivered to the municipal clerk no earlier than five days prior to the beginning of absentee voting and no later than noon on the day prior to the beginning of absentee voting in person in the office of the municipal clerk.

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. Repealed.

3-8-16. Paper ballots in lieu of voting machines; form; general requirements.

As used in this section, "paper ballots" means paper ballots used in lieu of voting machines. 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 with a perforated line appropriately placed so that the portion of the ballot bearing the number 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;
   (5) have all words and phrases printed correctly and in their proper places; and
   (6) have district and precinct, if applicable;
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, the paper ballot shall be prepared consistent with the requirements 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. Where space is allowed on a paper ballot for entering the name of a declared write-in candidate, that space shall be clearly designated by the use of the heading "Write-in Candidate". 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, 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"; and
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 five 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.

History: 1978 Comp., § 3-8-17, enacted by Laws 1985, ch. 208, § 25; 1993, ch. 22, § 2; 2003, ch. 244, § 3.

3-8-17.1, 3-8-17.2. Repealed.

3-8-18. Election supplies.

A. 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 ballots and sample voting machine ballots; and
(3) order all other election supplies necessary for the conduct of the election.

B. Ballots 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 a 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, 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 or 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 no fewer than three members. Each board shall have no fewer than three election judges and no fewer than two election clerks. Election judges may also be appointed as election clerks. Not less than two alternates shall be appointed 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 that 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, 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 board; 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 election training conducted by the municipal clerk in the previous four years.

3-8-21. Municipal clerk; precinct board; election training.

A. The municipal clerk shall conduct or cause to be conducted election training not less than five days prior to the election. All major details of the conduct of elections shall be covered at the training, with special emphasis given to recent changes in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. The training session shall be open to the public, with notice published not less than four days prior to the training.

B. Notice of the training shall be mailed to each precinct board member and alternate not less than seven days prior to the training.

C. Two or more municipalities may jointly conduct election training.

D. The governing body may authorize payment of mileage to precinct board members who attend election training.


3-8-22. Conduct of election; eligibility for assistance; oral assistance for language minority voters; aid or assistance to voter marking ballot; who may assist voter; type of assistance.

A. A voter may request assistance in voting only if the voter is:
   (1) visually impaired;
   (2) a person with a physical disability;
   (3) unable to read or write;
   (4) a member of a language minority who is unable to read well enough to exercise the elective franchise; or
   (5) not able to operate a voting machine or mark a ballot without assistance.

B. When a voter who is eligible for assistance requires assistance in marking a ballot or recording a vote on a voting machine, the voter shall announce this fact before receiving the ballot or before entering the voting machine.

C. The voter's request for assistance shall be noted next to the voter's name in the signature roster and shall be initialed by the presiding judge.

D. After noting the voter's request for assistance in the signature roster, the voter shall be allowed to receive assistance in marking a ballot or recording a vote on a voting machine. The name of the person providing assistance to a voter pursuant to this section shall be recorded on the signature roster.

E. A person who swears falsely in order to secure assistance with voting is guilty of perjury.

F. If a voter who has requested assistance in marking a ballot has a visual impairment or physical disability, is unable to read or write or is a member of a language minority who has requested assistance, the voter may be accompanied into the voting machine by a person of the voter's own choice; provided that the person shall not be the voter's employer, an agent of that employer, an officer or agent of the voter's union or a candidate whose name appears on the ballot in the election. A member of the precinct board may assist a voter, if requested to do so by that voter.

G. A person who accompanies the voter into the voting booth or voting machine may assist the voter in marking a ballot or recording a vote on the voting machine. A member of the precinct board who assists a voter shall not disclose the name of any candidate or questions for whom any voter voted.
H. Oral assistance shall be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise. As used in this subsection, "language minority" means a person who is Native American 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.

I. 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 Native American 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.

J. 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 through 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.

History: 1978 Comp., § 3-8-24, enacted by Laws 1985, ch. 208, § 32.

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; publication of resolution; choice of ballots or voting machines.

A. Not earlier than one hundred twelve days or 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 in both English and Spanish and once within fifteen days of adoption and again not less than sixty days prior to the election or more than seventy-five days prior to the election, as provided in Subsection J of Section 3-1-2 NMSA 1978. In addition, the election resolution shall be posted in the office of the municipal clerk within twenty-four hours 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 election 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, the date and time for absentee voting 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 a declaration of candidacy; a certified copy of the candidate's current affidavit of voter registration that is on file with the county clerk and that has been certified by the office of the county clerk on a date not earlier than the adoption of the election resolution; and, in a home rule or charter municipality that requires a nominating petition to be submitted by a candidate for municipal office, a nominating petition that has the required number of signatures.

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 that 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 and that the candidate has been granted a pardon or a certificate by the governor restoring the candidate's full rights of citizenship;
(5) a statement that the candidate or the candidate's authorized representative shall contact 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) the contact information for how the candidate or the candidate's authorized representative can be reached for purposes of giving notice;
(7) a statement to the effect that the declaration of candidacy is an affidavit under oath and that any false statement knowingly made in the declaration of candidacy 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 shall 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, 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 the reasons therefor. The 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 the candidate 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 and the county clerk 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-ninth 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-eighth 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 forty-seventh 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; and

(5) not later than 5:00 p.m. on the thirty-fifth day preceding the election, a declared write-in candidate may file an affidavit that the candidate is no longer a write-in candidate for municipal office. In the event that a declared write-in candidate files an affidavit of withdrawal, votes for that 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.

History: 1953 Comp., § 14-8-6, enacted by Laws 1965, ch. 300; 1978 Comp., § 3-8-6, recompiled as 1978 Comp., § 3-8-28 by Laws 1985, ch. 208, § 36; 1987, ch. 323, § 12.

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 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 declared write-in candidate, if any, 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; observers.

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. Not later than 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 qualification 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 qualification statement and take the oath of office.

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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.

History: 1978 Comp., § 3-8-34, enacted by Laws 1985, ch. 208, § 42.

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 within twenty-four hours 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.

History: 1978 Comp., § 3-8-37, enacted by Laws 1985, ch. 208, § 45.

3-8-37.1. Early voting; use of absentee voting procedures.

A. An early voter may vote in person on a voting machine beginning at 8:00 a.m. on the twenty-eighth day before the election at the municipal clerk's office during regular hours and days of business until 5:00 p.m. on the Friday immediately before the date of the election.

B. Upon receipt of a properly completed 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.

C. If the application is accepted, the municipal clerk shall:
   (1) mark the application accepted; and
   (2) enter the required information in the absentee ballot register.

D. Upon acceptance of the application, the voter shall be allowed to vote.

E. The municipal clerk shall notify the county clerk, who shall make an appropriate designation on the signature roster next to the voter's name indicating that the voter has voted early.


3-8-38. Conduct of election; swearing in; delivery of supplies; opening and closing of polls; precinct board attendance.

A. Not earlier than noon 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, ballot box keys 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 G 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].

**History:** 1978 Comp., § 3-8-39, enacted by Laws 1985, ch. 208, § 47; 1995, ch. 200, § 3.

3-8-40. Conduct of election; persons not permitted to vote; 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 that encompasses his place of residence as shown on the signature roster.
B. Notwithstanding the provisions of Subsection A 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 and the district, if applicable, in which he offers to vote;
   2. his name is not listed as having been issued an absentee ballot;
   3. he presents a certificate bearing the seal and signature of the county clerk stating that his affidavit of registration is on file at the county clerk's office, that he has not been purged from

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the voter rolls 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

(4) 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.

C. Upon compliance with the requirements of Subsection B 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, 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 certificate and on his executed sworn statement;

(3) retain the completed 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.

D. After canvass, the municipal clerk shall in writing notify the county clerk of the names of all individuals voting on certificates.

E. A person who knowingly executes a false statement required by Paragraph (4) of Subsection B of this section is guilty of perjury as provided in the Criminal Code [Chapter 30 NMSA 1978], and voting on the basis of such falsely executed statement constitutes fraudulent voting.

F. 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.


3-8-40.1. Repealed.

3-8-41. Conduct of election; voter's name, address, signature; entries by precinct board.

A. When a person goes to the polls to vote, the person shall announce the person's name and address in an audible tone of voice and locate the person's 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 the person's name in the signature roster or, if the person is unable to write, the election clerk shall sign the person's 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 the person's voter registration list number. The person shall present the voting machine permit to the precinct board member monitoring the machine or issuing ballots, 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 shall 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 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, 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 the person 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 the person's name has been entered in the signature roster pursuant to Subsection C of Section 3-8-40 NMSA 1978, the election clerk shall write the word "challenged" above the person's signature in the signature roster and:
(1) if the challenge is unanimously affirmed by the election judges:
   (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. The person shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in the person's presence place the challenged ballot in an envelope marked "rejected", which shall be sealed and the person's name shall be written on the envelope; and
   (d) the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted; or
(2) if the challenge is not unanimously affirmed by the election judges:
   (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 to vote and demands to vote and the person's name does not appear on the signature roster and cannot be entered pursuant to Subsection B of Section 3-8-40 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 the person's 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. The person shall return the paper ballot to an election judge who shall announce the person’s name in an audible tone and in the person’s presence place the required challenge ballot in an envelope marked "rejected--required challenge" that 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 the person the necessary information prior to the person’s casting a 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 the person’s 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. No more than one voter shall be permitted at the voting machine at one time unless the voter is being assisted.


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."

History: 1978 Comp., § 3-8-45, enacted by Laws 1985, ch. 208, § 53.
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, if required by the county clerk, 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; 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, or if the precinct officials are unable to obtain the returns from the voting machine, the precinct officials shall call the municipal clerk, who shall immediately contact the county clerk, who shall dispatch a voting machine technician to that polling place to help the precinct officials obtain the returns from the voting 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 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 representatives, 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 triplicate 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 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; other election materials.

A. After all certificates have been executed, the precinct board shall place the voter checklist 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 or other container provided by the municipal clerk for such purpose:

1. all ballot box keys;
2. the signature roster;
3. one voter registration list;
4. the election returns certificate, if separate from the signature roster;
5. one copy of the machine-printed returns;
6. a machine cartridge or memory card for any voting machine, if required by the county clerk;
7. voting machine permits; and
8. all unused election supplies.

C. All materials listed in Subsection B of this section, along with the locked ballot box containing any paper ballots cast in the election, including spoiled and challenged ballots, 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, 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 sum-
mons 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, 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; paper ballots; one to a voter; receipt or delivery; occupation of voting machines.

A. Only one 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 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 the paper ballot.

D. The ballot shall be completed 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.


3-8-49. Conduct of election; 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 the voter 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, 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 "$V$"-shaped mark with it being permissible for either side of the "$V$" to be longer than the other side. Any mark discernible either as a cross or a check, whether or not any of the lines extends outside the circle or box, shall be counted as a valid marking of the ballot when crosses or checks are required.

D. A vote shall be counted if:

(1) the ballot is marked in accordance with the instructions for that ballot type;
(2) the preferred candidate's name or answer to a ballot question is circled;
(3) there is a cross or check within the voting response area for the preferred candidate or answer to the ballot question; or
(4) the presiding judge and election judges for the precinct unanimously agree that the voter's intent is clearly discernable.

E. A person voting shall not place any mark on the ballot by which it may be afterwards identified as one voted by that person.

**History:** 1978 Comp., § 3-8-49, enacted by Laws 1985, ch. 208, § 57; 2009, ch. 278, § 17.

### 3-8-50. Conduct of election; 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 the person's 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.

**History:** 1978 Comp., § 3-8-50, enacted by Laws 1985, ch. 208, § 58; 2009, ch. 278, § 18.
3-8-51. Conduct of election; 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 that 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, if present, the 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 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; 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 the voter checklist 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 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 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;
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.

**History:** 1978 Comp., § 3-8-52, enacted by Laws 1985, ch. 208, § 60; 1987, ch. 323, § 22; 2009, ch. 278, § 20.

### 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:

1. a magistrate within the county, so long as the magistrate is not a candidate for an office of the municipality;

2. the members of the governing body of the municipality who are not candidates for municipal office; provided that if the members of the governing body who are not candidates for municipal office constitute a quorum, a special meeting shall be called; or

3. a district court judge from the judicial district in which the municipality is located.

B. 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.

C. 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 [Chapter 3, Articles 8 and 9 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 declared 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.

D. The matters to be performed pursuant to Subsection C 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.

E. 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.


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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.

History: 1978 Comp., § 3-8-54, enacted by Laws 1985, ch. 208, § 62.

3-8-55. Post-election duties; canvass; defective returns; correction.

A. The municipal clerk shall immediately order the precinct board to appear and make the necessary corrections or supply omissions or any missing election returns if it appears:
   (1) on the face of the election returns that any certificate has not been properly executed;
   (2) that there is a discrepancy within the election returns;
   (3) 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) that there is any omission, informality, ambiguity, error or uncertainty on the face of the returns; or
   (5) that there are missing election returns.

B. If any members of the precinct board fail to appear as required, the municipal clerk shall immediately issue a summons commanding them to appear. 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 notifications or 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.

History: 1978 Comp., § 3-8-56, enacted by Laws 1985, ch. 208, § 64.
3-8-57. Post-election duties; canvass; search for missing returns.

The municipal clerk may open the ballot box during canvass for the purpose of obtaining ballots cast in the election to be counted and tallied, to search for missing election returns and to remove all unused election supplies from the ballot box. The ballot box shall be opened by the municipal clerk only 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 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:

(1) unlock the voting machine;
(2) check the figures shown by the counter on the voting machine;
(3) insert the cartridge or memory card into the voting machine; and
(4) rerun the printed returns from the voting machine.

C. At the conclusion of the recheck and comparison, the voting machine shall again be secured.

D. 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.

History: 1978 Comp., § 3-8-60, enacted by Laws 1985, ch. 208, § 68.

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.

History: 1978 Comp., § 3-8-61, enacted by Laws 1985, ch. 208, § 69.

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. A copy of the petition shall be served on the municipal clerk, and the municipality shall be afforded an opportunity to intervene in the contest. 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.

**History: 1978 Comp., § 3-8-63, enacted by Laws 1985, ch. 208, § 71; 1999, ch. 278, § 17.**

### 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.

**History: 1978 Comp., § 3-8-64, enacted by Laws 1985, ch. 208, § 72.**

### 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, shall give notice by certified mail to the municipal clerk that a contest is pending in a designated court, and 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 sheets 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, paper ballots, absentee ballots, absentee ballot outer envelopes, 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 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 ballots or absentee ballots, or a recheck of the voting machine and the voting machine cartridge or memory card that contains the number of total votes 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, it 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 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 place 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 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 paper ballots used in lieu of voting machines or absentee ballots were used shall recount and retally only the ballots that 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 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 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.

History: 1978 Comp., § 3-8-70, enacted by Laws
1985, ch. 208, § 78.

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, application for absentee ballots, absentee voter lists and
       affidavits of destruction;
   (2) signature roster and registered voter list;
   (3) the machine-printed returns;
   (4) oaths of office of the precinct board;
   (5) declarations of candidacy and withdrawals;
   (6) copies of all election material required to be published or posted;
   (7) a copy of all sample ballots and ballot sheets;
   (8) voting machine permits;
   (9) certificates submitted by voters;
   (10) copies of all affidavits and certificates prepared in connection with the election;
   (11) all results of recounts, rechecks, contests and recanvass; and
   (12) 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].

History: 1978 Comp., § 3-8-72, enacted by Laws 1985, ch. 208, § 80.

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, unlock-
   ing, 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; 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.

History: 1978 Comp., § 3-8-73, enacted by Laws 1985, ch. 208, § 81.

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 has 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 sheet or pretended ballot that 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 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; or

(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.

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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 [Chapter 3, Articles 8 and 9 NMSA 1978].

F. A person who commits intimidation is guilty of a fourth degree felony.

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3-8-77. Electioneering too close to 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 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; malfeasance by messengers; unlawful use or 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 petty misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or by imprisonment for not less than thirty days nor more than ninety days, or both.

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 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 drugs within two hundred feet of the polling place during any election.

I. A person who commits unlawful possession of alcoholic liquor or illegal drugs 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 that 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 consists of the willful violation of the Municipal Election Code or the willful failure or refusal to perform any act or duty required by the Municipal Election Code.

E. A member of the municipal governing body, a municipal official or employee, or municipal clerk, deputy or assistant who willfully violates 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 Sections 3-8-38 through 3-8-79 NMSA 1978 concerning election day matters, post election duties, election challenges and penalties shall apply to all municipal elections, except as otherwise specified.


3-8-81 to 3-8-95. Repealed.
ARTICLE 9
Absentee Voting

Sec. 3-9-1. Definitions.

As used in Chapter 3, Article 9 NMSA 1978:

A. "absentee voting" means the casting of a vote by a qualified elector for any candidate or question prior to election day;

B. "early voter" means a voter who votes in person before election day, and not by mail;

C. "election" means a regular or special municipal election;

D. "federal qualified elector" means:
   (1) a uniformed-service voter; or
   (2) an overseas voter;

E. "immediate family" means a person's spouse, children, parents, brothers and sisters;

F. "overseas voter" means an individual who is a United States citizen, who is outside the United States and who:
   (1) is temporarily absent from the individual's residence in this state;
   (2) before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements;
   (3) before leaving the United States, would have been last eligible to vote in this state had the voter been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements; or
   (4) was born outside the United States, is not otherwise described in this subsection and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if:
      (a) the last place where a parent or legal guardian of the individual was, or under the Municipal Election Code would have been, eligible to vote before leaving the United States is within this state; and
      (b) the individual has not previously registered to vote in any other state;

G. "uniformed-service voter" means an individual whose voting residence is in this state, who otherwise satisfies this state's voter eligibility requirements and who is:
   (1) a member of the active or reserve components of the army, navy, air force, marine corps or coast guard of the United States who is on active duty and who by reason of that active duty is absent from the state;

Sec. 3-9-10. Delivery of absentee ballots to absent voter precinct.

Sec. 3-9-11. Handling absentee ballots by absent voter precinct boards.

Sec. 3-9-12. Canvass; recount or recheck; disposition.

Sec. 3-9-13. Voting in person prohibited.

Sec. 3-9-13.1. Absentee ballot; conduct of election; when not timely received; emergency procedure for voting and counting.

Sec. 3-9-14. Repealed.

Sec. 3-9-15. Watchers, challengers, and observers for absent voter precinct.

Sec. 3-9-16. Penalties.
(2) a member of the merchant marine, the commissioned corps of the United States public health service, the astronaut program of the national aeronautics and space administration or the commissioned corps of the national oceanic and atmospheric administration of the United States and who by reason of that service is absent from the state;

(3) a member on activated status of the national guard or state militia and who by reason of that active duty is absent from the member's county of residence; or

(4) a spouse or dependent of a member referred to in Paragraph (1), (2) or (3) of this subsection and who, by reason of active duty or service of the member, is absent from the state; provided

H. "voter" means a qualified elector of the municipality.

3-9.2. Repealed.

3-9.3. Absentee voting; regular or special municipal elections; right to vote.

A. Any voter 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 the voter's assigned polling place, as if the voter were able to cast a ballot in person at such polling place.

B. A federal qualified elector entitled to vote in the municipal election may vote in a municipal election pursuant to the provisions of the Uniform Military and Overseas Voters Act [16B-1 through 16B-17 NMSA 1978].

C. 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; issuance of absentee ballot.

A. The municipal clerk shall prescribe the form of the absentee ballot application.

B. An application for an absentee ballot may be obtained from the municipal clerk.

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 is not made on the form provided by the municipal clerk;

(2) the application does not set forth the applicant's full name and address;

(3) the application does not set forth the applicant's date of birth;

(4) the application is not signed by the applicant; or

(5) the applicant:

(a) has no valid affidavit of registration on file with the county clerk; or
(b) has a valid affidavit of registration on file with the county clerk, but is not a resident of the municipality; and

(c) cannot comply with Subparagraph (a) or (b) of this paragraph pursuant to Subsection B of Section 3-8-40 NMSA 1978.

E. If the municipal clerk rejects an absentee ballot application pursuant to Subsection D of this section, the municipal clerk shall mark the application "rejected", 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 of the reasons for rejection of the application. If the application is incomplete, the municipal clerk shall immediately mail a new application for an absentee ballot.

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 deliver the absentee ballot to the applicant in the office of the municipal clerk if the application for absentee ballot has been accepted and if the application is submitted in person by the applicant or mail an absentee ballot to any qualified elector whose application for an absentee ballot was received by mail and 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 that 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, 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 issue the voter 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.

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 other than as 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 or 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 issued 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 the Friday immediately prior to the date of the election.

L. No absentee ballot shall be delivered or mailed by the municipal clerk 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 the clerk 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 delivery to the voter in person in the office of the municipal clerk, 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 and district number, if applicable;
   (6) whether the applicant is a voter, and whether the voter is a uniformed-service voter or an overseas voter;
   (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. The municipal clerk shall have an updated absentee ballot register available for public inspection Monday through Friday during regular office hours.

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 other 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 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 qualified electors shall be as prescribed in the Uniform Military and Overseas Voters Act [1-6B-1 through 1-6B-17 NMSA 1978]. 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 signed 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; use of an electronic voting device.

A. Any person voting an absentee ballot under the provisions of the Municipal Election Code shall secretly mark the ballot as instructed on the ballot, place the marked ballot 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.

B. A voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the municipal clerk in person or by mail, provided that the voter has subscribed the outer envelope of the absentee ballot.

C. When an electronic voting device is used by the voter to cast an absentee vote, the municipal clerk shall ensure that each absentee voting machine is located within the office of the municipal clerk. The area shall be secured by lock and key. Each day during the time the absentee voting machine is used for absentee voting, the municipal clerk shall, in the presence of one other employee of the municipality, unlock the office where the voting machine is located. Each day, at the close of regular office hours, the municipal clerk shall, in the presence of one other municipal employee, secure the office where the voting machine is located. Each day immediately after unlocking or locking the office where the voting machine is located, the municipal clerk and the employee present shall sign or initial the absentee voting daily report. The municipal clerk shall prescribe the form of the absentee voting daily report, which shall include the following information:

1. the voting machine serial number;
2. the beginning and ending public counter number for the day;
3. the beginning and ending protective counter number for the day;
4. the closing seal number, if any;
5. the total number of voters for the day; and
6. a place for the date and signature of the municipal clerk and the municipal employee.

D. Voting shall be conducted substantially in the manner provided in the Municipal Election Code. The absentee voting daily report shall be submitted to the absent voter precinct on election day, along with any voting machines used.

### 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 the municipal clerk's 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 absentee ballot register, it cannot be returned to the voter for any reason.

B. The municipal clerk shall accept completed official outer envelopes received by mail or delivered in person to the municipal clerk's office by the voter signing the official outer envelope, by a member of the voter's immediate family or by the caregiver to the voter 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, uniformed-service voters and overseas voters and record the number from each category in the absentee ballot register.

C. After 5:00 p.m. and not later than 8:00 p.m. on the Friday 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 unused ballots. The municipal clerk shall execute a certificate of such destruction, which shall include the numbers on the ballots destroyed, and the 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". The 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.


For the purposes of absentee voting, the governing body shall create a special absent voter precinct, cause an absent voter 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 shall designate a polling place for the counting and tallying of absentee ballots in the election on election day. 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 7:00 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, any electronic
voting machines used and all absentee voting daily reports. 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 absentee ballot register and on the absentee voter list. On delivery of the ballots, the municipal clerk or his designee 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 place designated as 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 signature has been executed on the reverse side of the official mailing envelope.

B. If the signature is 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, 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 absent voter precinct board;

(2) the person offering to vote is not a voter as provided in the Municipal Election Code; or

(3) the person offering to vote is not a federal qualified elector authorized to vote in a municipal election.

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 signatures 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 ensure the secrecy of the ballot.
G. Absent voter precinct polls shall be closed 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 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.

History: 1978 Comp., § 3-9-12, enacted by Laws 1985, ch. 208, § 100; 2009, ch. 278, § 37.


A. No person who has been issued an absentee ballot shall vote in person at that person's regular precinct polling place on election day except as otherwise provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. At any time prior to 5:00 p.m. on the Friday 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.


3-9-13.1 Absentee ballot; conduct of election; when not timely received; emergency procedure for voting and counting.

A. A voter who has submitted an application for an absentee ballot that was accepted by the municipal clerk but who has not received the absentee ballot by mail as of the date of the election may go to the assigned polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be issued a ballot in lieu of an absentee ballot by the presiding judge, and shall be allowed to mark the ballot.

B. The voter shall place the completed ballot issued in lieu of an absentee ballot in an official inner envelope, substantially in the form prescribed pursuant to Section 3-9-6 NMSA 1978, which shall be sealed by the voter. The official inner envelope shall then be placed by the voter, in the presence of the presiding judge, in an official outer envelope substantially as prescribed for a trans-
mittal envelope or mailing envelope pursuant to Section 3-9-6 NMSA 1978. The presiding judge shall fill in the information on the back of the envelope that identifies the voter by name and signature roster number and contains the printed affidavit that the voter made application for an absentee ballot, which the voter believes to have been accepted by the municipal clerk, that the voter swears an absentee ballot had not been received as of the date of the election and that the voter was issued a ballot in lieu of an absentee ballot, and that the ballot was marked by the voter and submitted to the presiding judge.

C. The presiding judge shall place all ballots issued in lieu of absentee ballots in a special envelope provided for that purpose by the municipal clerk, seal the envelope and return it to the municipal clerk along with the machine tally sheets after the closing of the polls. The sealed envelope shall not be placed in the locked ballot box.

D. The municipal clerk shall, upon receipt of the envelope containing ballots in lieu of absentee ballots, and no later than forty-eight hours after the close of the polls for the election, remove the transmittal envelopes and without removing or opening the inner envelopes, determine:

(1) if the voter did in fact make application for an absentee ballot that was accepted by the municipal clerk;
(2) if an absentee ballot was mailed by the municipal clerk to the voter; and
(3) whether an absentee ballot was received by the municipal clerk from the voter by 7:00 p.m. on election day.

E. If the municipal clerk determines that the ballot in lieu of absentee ballot is valid, that an absentee ballot was mailed to the voter and that no absentee ballot was received from the voter by the municipal clerk, the municipal clerk shall remove the inner envelope without opening it, retain the transmittal envelope with the other election returns and place the inner envelope, unopened, in a secure and locked container to be transmitted to the canvassing board to be tallied and included in the canvass of the election returns for the municipality.

F. If the municipal clerk determines that the ballot in lieu of absentee ballot is not valid because the application for absentee ballot was rejected and no ballot was mailed to the voter, or that a ballot was received from the voter by the municipal clerk not later than 7:00 p.m. on election day, the municipal clerk shall write "rejected invalid ballot" on the front of the transmittal envelope and the transmittal envelope shall not be sent to the canvassing board for counting and tallying. The municipal clerk shall retain the unopened transmittal envelope in a safe and secure manner and shall notify the district attorney in writing of the alleged violation of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. A copy of the notification to the district attorney shall be sent by first class mail to the voter and to the secretary of state.

G. The municipal clerk shall furnish and shall prescribe the form of the necessary envelopes to be used in accordance with the purposes of this section, and shall take steps to preserve the secrecy of any ballots cast pursuant to this section.

History: Laws 2003, ch. 244, § 19; 2009, ch. 278, § 38.


Watchers, challengers and observers may be appointed to serve on election day for the absent voter precinct in the manner specified for the appointment of watchers, challengers and observers for other precincts used in municipal elections.
3-9-16. Penalties.

A. A person who knowingly votes or offers to vote an absentee ballot to which the person is not lawfully entitled to vote or offer to vote is guilty of a fourth degree felony.

B. A municipal official or employee or any other person who knowingly 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. A 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 the Municipal Election Code is guilty of a fourth degree felony.

D. A 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 person who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when the ballot is not the personal ballot of that person 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.

F. A municipal clerk who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when that ballot is not the personal ballot of the municipal clerk, or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot that is not the personal ballot of the municipal clerk 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

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:
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. "contract" means an agreement or transaction having a value of more than one thousand dollars ($1,000) with a state or local government agency for:
   (1) the rendition of services, including professional services;
   (2) the furnishing of any material, supplies or equipment;
   (3) the construction, alteration or repair of any public building or public work;
   (4) the acquisition, sale or lease of any land or building;
   (5) a licensing arrangement;
   (6) a loan or loan guarantee; or
   (7) the purchase of financial securities or instruments;
D. "employment" means rendering of services for compensation in the form of salary as an employee;
E. "family" means an individual's spouse, parents, children or siblings, by consanguinity or affinity;
F. "financial interest" means an interest held by an individual or the individual's family that is:
   (1) an ownership interest in business or property; or
   (2) any employment or prospective employment for which negotiations have already begun;
G. "local government agency" means a political subdivision of the state or an agency of a political subdivision of the state;
H. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;
I. "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;
J. "standards" means the conduct required by the Governmental Conduct Act;
K. "state agency" means any branch, agency, instrumentality or institution of the state; and
L. "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 or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee 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.
B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them 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 or public officer or employee may request or receive, and no person may offer a legislator or 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.


10-16-3.1. Prohibited political activities.

A public officer or employee is prohibited from:
A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;
B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.


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 the public officer's or employee's 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 be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.


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.

History: Laws 1993, ch. 46, § 38.

10-16-4.2. Disclosure of outside employment.

A public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency.

10-16-4.3. Prohibited employment.

It is unlawful for a state agency employee or local government agency employee who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.


10-16-5. Repealed.

10-16-6. Confidential information.

No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency or local government agency for the legislator's, public officer's or employee's or another's private gain.


10-16-7. Contracts involving public officers or employees.

A. A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to a contract of official employment with the state. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

B. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.

C. Subsection B of this section does not apply to a contract of official employment with a political subdivision. A person negotiating or executing a contract on behalf of a local government agency shall exercise due diligence to ensure compliance with the provisions of this section.


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 the person's 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. A local government 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 that local government agency 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 that political subdivision of the state whose official act, while in employment with that political subdivision of the state, directly resulted in the agency's making that contract or taking that action.

D. 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 state agency or local 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 a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.

B. A legislator shall not appear for, represent or assist another person in a 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 the legislator's 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.

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 two hours of ethics continuing education and training biennially.


10-16-11.1. State agency or local government agency authority.

Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act.


10-16-12. Repealed.


No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on
behalof a state agency or local government agency shall exercise due diligence to ensure compliance with this section.


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.


10-16-13.2. Certain business sales to the employees of state agencies and local government agencies prohibited.

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

C. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.

D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

10-16-13.3. Prohibited contributions; financial service contractors.

A. A business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

B. A public officer or employee of a state agency or local government agency that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

1. "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars ($100) consumed in a day; and

2. "contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.


A. The secretary of state may refer suspected violations of the Governmental Conduct Act 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 [Chapter 10, Article 9 NMSA 1978]. 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 attor-
ney 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.


10-16-16. Recompiled.

10-16-17. Criminal penalties.

Unless specified otherwise in the Governmental Conduct Act, 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.

History: Laws 1993, ch. 46, § 37.

10-16-18. Enforcement; civil penalties.

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars ($250) for each violation not to exceed five thousand dollars ($5,000).


ARTICLE 16A

Financial Disclosures

Sec. 10-16A-1. Short title; Financial Disclosure Act.
Sec. 10-16A-2. Definitions.
Sec. 10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.
Sec. 10-16A-4. Disclosures by certain public officers or employees of state agencies; condition of employment.
Sec. 10-16A-5. Education and voluntary compliance.
Sec. 10-16A-6. Investigations; binding arbitration; fines; enforcement.
Sec. 10-16A-7. Criminal penalties.
Sec. 10-16A-8. Enforcement; civil penalties.


Sections 39 through 45 [10-16A-1 to 10-16A-7 NMSA 1978] [and 10-16A-8 NMSA 1978] of this act may be cited as the "Financial Disclosure Act".

As used in the Financial Disclosure Act:
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.

History: Laws 1993, ch. 46, § 39.

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 or nominating petition, a candidate for legislative or statewide office shall file with the proper filing officer, as defined in Section 1-8-25 NMSA 1978, a financial disclosure statement on a prescribed form. In addition, each year thereafter during the month of January, a legislator and a person holding a statewide office shall file with the proper filing officer a financial disclosure statement. If the proper filing officer is not the secretary of state, the proper filing officer shall forward a copy of the financial disclosure statement to the secretary of state within seventy-two hours.

B. A state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate or a member of the insurance nominating committee 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 that the person holds public office.

C. The financial disclosure statement shall include for any person identified in Subsection A or B of this section and the person's 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: law practice or consulting operation or similar business, 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 [Chapter 2, Article 11 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 held by the reporting individual and the individual’s 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 the person’s 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. A complete financial disclosure statement shall be filed every year. The secretary of state shall mail each elected official required to file a financial disclosure statement a copy of any statement the person filed the previous year.

E. The financial disclosure statements filed pursuant to this section are public records open to public inspection during regular office hours and shall be retained by the state for five years from the date of filing.

F. A person who files a financial disclosure statement may file an amended statement at any time to reflect significant changed circumstances that occurred since the last statement was filed.

G. A 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 provided for in the Election Code [Chapter 1 NMSA 1978] shall not have the candidate’s name printed on the election ballot.

H. For a state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate or a member of the insurance nominating committee, 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 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.

History: Laws 1993, ch. 46, § 42.

**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 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.

History: Laws 1993, ch. 46, § 43.

**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 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 single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. No arbitrator 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 [Chapter 2, Article 11 NMSA 1978]. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.
D. The arbitrator may take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7A-1 to 44-7A-32 NMSA 1978]. No arbitrator 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 is 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.


Any person who knowingly and willfully violates any of the provisions of the Financial Disclosure 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.

History: Laws 1993, ch. 46, § 45.

10-16A-8. Enforcement; civil penalties.

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars ($250) for each violation not to exceed five thousand dollars ($5,000).


ARTICLE 16B
Gift Act

Sec. 10-16B-1. Short title. Sec. 10-16B-3. Limitation on gifts.

10-16B-1. Short title.

This act [10-16B-1 through 10-16B-4 NMSA 1978] may be cited as the "Gift Act".


As used in the Gift Act:
A. "family" means a spouse and dependent children;
B. "gift" means any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:
   (1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] or the Federal Election Campaign Act of 1971, as amended;
   (2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;
   (3) compensation for services rendered or capital invested that is:
       (a) normal and reasonable in amount;
       (b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;
       (c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and
       (d) not otherwise prohibited by law;
   (4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;
   (5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;
   (6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;
   (7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;
   (8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;
   (9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or
   (10) a retirement gift;
C. "market value" means the retail cost a person would incur to purchase a gift;
D. "restricted donor" means a person who:
   (1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;
   (2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;
   (3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or
(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction; and

E. "state 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.


10-16B-3. Limitation on gifts.

A. A state officer or employee or a candidate for state office, or that person's family, shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state officer or employee or a candidate for state office, or that person's family, a gift of a market value greater than two hundred fifty dollars ($250).

B. A lobbyist registered with the secretary of state, the lobbyist's employer or a government contractor shall not donate gifts of an aggregate market value greater than one thousand dollars ($1,000) in a calendar year to any one state officer or employee or to any one candidate for state office.

C. A state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity in such a manner that it appears that the purpose of the donor in making the gift is to influence the state officer or employee in the performance of an official duty.

History: Laws 2007, ch. 226, § 3.

10-16B-4. Penalties.

A person who violates the provisions of the Gift Act is guilty of a petty misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

CHAPTER 22
Public Schools
ARTICLE 6
School District Elections

22-6-1 to 22-6-34. Repealed.

ARTICLE 7
Local School Board Member Recall

Sec. 22-7-1. Short title.
This act [22-7-1 to 22-7-16 NMSA 1978] may be cited as the "Local School Board Member Recall Act".


22-7-2. Purpose of act.
The purpose of the Local School Board Member Recall Act 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.


22-7-3. Definitions.
As used in the Local School Board Member Recall Act:
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.

History: 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 3; 1985, ch. 169, § 1.

22-7-4. Members subject to recall.

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.


22-7-5. Expenses.

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.


22-7-6. Petition.

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.

1. .........................................................................................................................................................

<table>
<thead>
<tr>
<th>Usual signature</th>
<th>Name printed</th>
<th>Address as</th>
<th>City</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Registered</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. ........................................................................................................................................................."

<table>
<thead>
<tr>
<th>Usual signature</th>
<th>Name printed</th>
<th>Address as</th>
<th>City</th>
<th>Date</th>
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<tbody>
<tr>
<td></td>
<td>Registered</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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.


22-7-7. Affidavit with petition; penalty.

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.


22-7-8. Responsibilities of petitioner.

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.


22-7-9. Duties of county clerk.
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.

22-7-9.1. Court hearing.

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.


22-7-10. Signatures.

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.

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.

22-7-11. Repealed.

22-7-12. Recall petition; limitation on appeals of validity of recall petition.

A. Any person filing any court action challenging a recall petition provided for in the Local School Board Member Recall Act 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.


22-7-13. Special recall election.

A. The date of the special recall election shall be set no later than one hundred twenty days after the date of the determination by the county clerk but in no event shall the election be held within the period of time prohibited for local government elections pursuant to Section 1-12-71 NMSA 1978.

B. The question to be submitted to the voters at the special recall election shall be whether 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, special recall elections in a school district shall be conducted as provided in the Election Code [Chapter 1 NMSA 1978].


22-7-14. Vacancy.

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.


22-7-15. Mandamus.

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, 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.


22-7-16. Penalties.

Any person violating Section 9 [22-7-9 NMSA 1978] of the Local School Board Member Recall Act is guilty of a petty misdemeanor.

History: 1953 Comp., § 77-4A-16, enacted by Laws 1977, ch. 308, § 16.
User’s Guide to the Index

This index contains treatment of the laws compiled in the Election Handbook of the State of New Mexico, 2015 Edition. Statutory provisions from the New Mexico Statutes Annotated are referred to in the index by section number (e.g., §1-6-5).

The index is a combination of two approaches to indexing, topical and descriptive word. The topical approach follows the organization of the Code, and the descriptive word approach uses nonlegal terms and popular names to describe legal terminology. The result is a user-friendly index for both the lawyer and non-lawyer user.

A few basic suggestions for using this index are:

1. Begin your search with DEFINED TERMS. DEFINED TERMS is a collection of entries for terms defined in the Election Handbook of the State of New Mexico. Starting a search in this heading exposes the index user to a diverse sampling of statutory terminology, which could suggest to the user other headings to consult.

2. Cross references. Pay close attention to and make full use of the index cross references. Cross references serve to keep indexes to a manageable size by reducing the amount of repetition of treatment under different headings. An index cross reference directs the index user to go to another part of the index to find treatment. For example “ASSISTANCE TO VOTERS, See VOTERS” directs the index user from the main heading ASSISTANCE TO VOTERS to the main heading VOTERS.

3. Use descriptive words or phrases to aid in your search, including commonly used phrases or terms of art. Examples would be ABSENTEE VOTING, SPECIAL ELECTIONS and VOTING MACHINES.
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