

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**HOUSE BILL 105**

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2000**

**INTRODUCED BY**

**E. G. Smokey Blanton**

**AN ACT**

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

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

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

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

**A. generally supervise all elections;**

**B. administer the Election Code in its statewide  
application especially as it relates to federal and state  
elective offices;**

**C. prepare instructions for the conduct of**

underscored material = new  
[bracketed material] = delete

1 election and registration matters in accordance with the laws  
2 of the state;

3 D. advise county clerks, boards of county  
4 commissioners and boards of registration as to the proper  
5 methods of performing their duties prescribed by the Election  
6 Code;

7 E. report possible violations of the Election Code  
8 of which he has knowledge to the district attorney or the  
9 attorney general for prosecution;

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

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

16 H. be responsible for the education and training  
17 of voting machine technicians; [and]

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

20 J. provide county clerks, their staffs, precinct  
21 boards and canvassing boards with copies of the precinct  
22 manual. The manuals shall be used as part of the training  
23 materials for all precinct boards and staff of the county  
24 clerks. "

25 . 130783. 1

underscored material = new  
[bracketed material] = delete

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

3           "1-2-4.   SECRETARY OF STATE--INSTRUCTIONS TO PRECINCT  
4 BOARDS. --

5           A.   The secretary of state shall provide  
6 [~~instructions~~] a manual for the precinct board, which shall  
7 include a brief nontechnical explanation of [~~their~~] its  
8 duties as required by the Election Code.

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

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

14           "1-2-12.   PRECINCT BOARD--NUMBER FOR EACH PRECINCT--  
15 MULTIPARTISAN. --

16           A.   When absentee ballots are counted, the precinct  
17 board shall consist of:

- 18                   (1)   a presiding judge;
- 19                   (2)   one election judge from each of the  
20 major political parties;
- 21                   (3)   one clerk from each of the major  
22 political parties; and
- 23                   (4)   if a major party has no registered,  
24 qualified elector who is able to fill the position as  
25

underscored material = new  
[bracketed material] = delete

1 election judge or election clerk, a registered, qualified  
2 elector from another major party, chosen by the county clerk  
3 to fill the vacant position.

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

- 6 (1) a presiding judge;  
7 (2) two election judges who shall be of  
8 different political parties; and  
9 (3) one election clerk who shall be of a  
10 different political party than the presiding judge.

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

- 13 (1) a presiding judge;  
14 (2) two election judges who shall be of  
15 different political parties; and  
16 (3) two election clerks who shall be of  
17 different political parties.

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

- 20 (1) a presiding judge;  
21 (2) two election judges who shall be of  
22 different political parties; and  
23 (3) three election clerks, not more than two  
24 of whom shall belong to the same political party.  
25

underscored material = new  
[bracketed material] = delete

1           E. If the county clerk determines that additional  
2 election clerks are needed in a precinct, the clerk may  
3 appoint such additional election clerks as he deems  
4 necessary; provided, however, that such appointments shall be  
5 made in the manner that provides for representation from all  
6 major political parties. The county clerk may,  
7 proportionally by party, increase the size of the board of an  
8 absent voter precinct if the county clerk determines that,  
9 based on the number of absentee ballots requested, additional  
10 election clerks are necessary to ensure the timely tallying  
11 of the absentee ballots.

12           F. In addition to the members of the precinct  
13 board provided for in this section, the county clerk may  
14 appoint an additional election clerk for the purpose of  
15 making changes in the certificate of registration of any  
16 voter who has voted in that election at the polling place. "

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

19           "1-2-17.   PRECINCT BOARD--SCHOOLS OF INSTRUCTION.--

20           A. The secretary of state shall supervise and the  
21 county clerk shall cause to be held a public school of  
22 instruction for all presiding judges, precinct boards and  
23 others who will be officially concerned with the conduct of  
24 elections in any county with a population of one hundred  
25

. 130783. 1

underscored material = new  
[bracketed material] = delete

1 thousand or more according to the most recent federal  
2 decennial census.

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

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

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

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

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

17 D. All major details of the conduct of elections  
18 shall be covered by the county clerk or his authorized  
19 representative at such school, with special emphasis being  
20 given to recent changes in the Election Code. The topics to  
21 be covered at the school shall include those topics contained  
22 in the precinct manual.

23 E. The school of instruction shall be open to any  
24 interested person, and notice of the school shall be given to  
25

. 130783. 1

underscored material = new  
[bracketed material] = delete

1 the public press at least four days before the school is to  
2 be held. Each member of the precinct board shall be notified  
3 by mail at least seven days prior to commencement of the  
4 school.

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

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

15 "1-2-22. CHALLENGERS--QUALIFICATIONS--RESTRICTIONS.--  
16 Challengers and alternate challengers shall be voters of [~~a~~  
17 ~~precinct located in that county to which they are appointed]~~  
18 the precinct to which they are appointed; provided that, if  
19 no challenger is available, challengers shall be voters of  
20 the county in which they are appointed. No sheriff, deputy  
21 sheriff, marshal, deputy marshal, municipal or state police  
22 officer, candidate or any person who is a spouse or child of  
23 a candidate being voted on at the election shall serve as a  
24 challenger or alternate challenger. "  
25

. 130783. 1

underscored material = new  
[bracketed material] = delete

1           Section 6.   Section 1-4-5 NMSA 1978 (being Laws 1969,  
2 Chapter 240, Section 63, as amended by Laws 1993, Chapter  
3 314, Section 6 and also by Laws 1993, Chapter 316, Section 6)  
4 is amended to read:

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

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

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

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

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

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



underscored material = new  
[bracketed material] = delete

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

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

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

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

20           "1-6-6. ABSENTEE BALLOT REGISTER. --

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

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

25 . 130783. 1

underscored material = new  
[bracketed material] = delete

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

3 (3) whether the application was accepted or  
4 rejected;

5 (4) the date of issue of an absentee ballot  
6 in the county clerk's office or at an alternate location or  
7 the mailing of an absentee ballot to the applicant;

8 (5) the applicant's precinct;

9 (6) whether the applicant is a voter, a  
10 federal voter, a federal qualified elector or an overseas  
11 citizen voter; and

12 (7) the date and time the completed absentee  
13 ballot was received from the applicant by the county clerk or  
14 the absent voter voted in the county clerk's office or at an  
15 alternate location.

16 B. The county clerk shall use the absentee  
17 register to ensure that multiple absentee ballot requests are  
18 not processed for the same voter. If multiple absentee voter  
19 requests are received for the same voter, only the first  
20 request shall be honored.

21 [~~B.~~] C. Within twenty-four hours after receipt of  
22 a voter's application for an absentee ballot, the county  
23 clerk shall mail either the ballot or a notice of rejection  
24 to the applicant. If necessary, the county clerk shall hire  
25

underscored material = new  
[bracketed material] = delete

1 temporary staff to ensure that the requirements of this  
2 subsection are satisfied.

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

6           ~~[D.]~~ E. The county clerk shall deliver to the  
7 absent voter precinct on election day a complete list of all  
8 absentee ballot applicants with applicable information shown  
9 in the absentee ballot register for each applicant up to 5:00  
10 p.m. on the Thursday preceding the election. The county  
11 clerk shall deliver a signature roster containing the same  
12 information as the lists to the absent voter precinct board.

13           ~~[E.]~~ F. The county clerk shall transmit to the  
14 secretary of state and to the county chairman of each of the  
15 major political parties in the county a complete copy of  
16 entries made in the absentee ballot register. Such  
17 transmissions shall be made once each week beginning four  
18 weeks immediately prior to the election. A final copy shall  
19 be transmitted on the Friday immediately following the  
20 election. "

21           Section 8. Section 1-10-9 NMSA 1978 (being Laws 1969,  
22 Chapter 240, Section 208) is amended to read:

23           "1-10-9.    BALLOTS-- ERRORS AND OMISSIONS. --

24                    A. If an error or omission has occurred in the  
25

underscored material = new  
[bracketed material] = delete

1 printed ballot, the district court, upon petition of any  
2 voter, may order the county clerk to forthwith correct the  
3 error or supply the omission or immediately show cause why  
4 the error should not be corrected or the omission should not  
5 be supplied.

6 B. If any error occurs in the printing on the  
7 ballot of the name of any candidate or in the designation of  
8 the office for which he is nominated, the ballot shall  
9 nevertheless be counted for such candidate for the office for  
10 which he was nominated as shown by the certificate of  
11 nomination.

12 C. If an error or omission occurs on the face of  
13 the ballot that changes the outcome of the affected race and  
14 is not discovered until after voting has commenced, a voter  
15 may notify the election judge or the county clerk of the  
16 error or omission. Within twenty-four hours after  
17 notification, or on the next regularly scheduled district  
18 court day, the county clerk or a candidate may bring the  
19 matter before the district court, which shall immediately  
20 hold a hearing on the matter. Within ten days after the  
21 hearing, the district court shall grant such appropriate  
22 relief as it deems necessary, including rejection of all or a  
23 portion of the votes in a precinct or rejection of all the  
24 votes in the election. Appeals from the decision of the  
25

underscored material = new  
[bracketed material] = delete

1 district court may be taken to the supreme court and shall be  
2 heard expeditiously. Pending a final decision, the  
3 canvassing board shall not certify the affected election."

4 Section 9. Section 1-11-3 NMSA 1978 (being Laws 1969,  
5 Chapter 240, Section 213, as amended) is amended to read:

6 "1-11-3. PROCLAMATION-- PUBLICATION-- POSTING. --

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

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

12 C. If no legal newspaper is published in the  
13 county, the proclamation shall be published in a legal  
14 newspaper of general circulation in the county.

15 D. A copy of the proclamation shall be posted in a  
16 public building.

17 E. The proclamation shall be printed in English  
18 and Spanish.

19 F. The proclamation shall be broadcast on a radio  
20 station in the appropriate Native American languages in those  
21 counties affected by the federal Voting Rights Act of 1965,  
22 as amended.

23 G. The proclamation shall be posted, if possible,  
24 on state, county and municipal web sites."  
25

. 130783. 1

underscored material = new  
[bracketed material] = delete

1           Section 10. Section 1-14-3 NMSA 1978 (being Laws 1969,  
2 Chapter 240, Section 328, as amended) is amended to read:

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

4           A. Except as provided in Subsection B of this  
5 section, any action to contest an election shall be commenced  
6 by filing a verified complaint of contest in the district  
7 court of the county where either of the parties resides.  
8 Such complaint shall be filed no later than thirty days from  
9 issuance of the certificate of nomination or issuance of the  
10 certificate of election to the successful candidate. The  
11 party instituting the action shall be known as the  
12 contestant, and the party against whom the action is  
13 instituted shall be known as the contestee.

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

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

24           Section 11. Section 1-14-4 NMSA 1978 (being Laws 1969,  
25

underscored material = new  
[bracketed material] = delete

1 Chapter 240, Section 337) is amended to read:

2 "1-14-4. CONTEST OF ELECTION-- JUDGMENT-- EFFECT--  
3 COSTS. --

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

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

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

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