

AN ACT

RELATING TO MUNICIPAL ELECTIONS; REVISING THE CONDUCT OF MUNICIPAL ELECTIONS; AMENDING AND ENACTING SECTIONS OF THE MUNICIPAL ELECTION CODE.

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

Section 1. Section 3-8-14 NMSA 1978 (being Laws 1985, Chapter 208, Section 22, as amended) is amended to read:

"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 which exceeds the actual cost to the county pursuant to Section 1-9-12 NMSA 1978.

B. If voting machines are to be used, the municipal clerk shall order at least one voting machine for every polling place; provided that the clerk shall order a sufficient number of voting machines to assure that the eligible voters in that polling place shall be able to vote

in a timely manner.

C. 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 specification for electronic voting machine 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 telephone the candidates at the phone number listed on the declaration of candidacy to give each candidate notice of the date, time and place of inspection and certification.

E. Inspection and certification shall occur not later than seven days prior to the election and shall be open to the public.

F. At the date, time and place for inspection and certification, in the presence of the county clerk and those municipal candidates present, if any, the municipal clerk shall:

(1) ensure that the correct ballot face has been installed on each voting machine, if ballot faces 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 assure 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 metal 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 face has been installed on the voting machine, if ballot faces are to be installed;

(e) show the number of the metal 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 metal seal that has sealed the voting machine;

(d) the number registered on the protective counter; and

(e) across the seal of the envelope, the signatures of the county clerk, the municipal clerk and all candidates present, if any, at the inspection and certification.

H. After certification of the voting machines, if the voting machines require keys, the county clerk shall keep the keys to the voting machines in his custody and shall deliver the keys to the municipal clerk when the

voting machines are delivered for election. The municipal clerk shall secure in the office of the municipal clerk all the envelopes containing the keys to the voting machines until delivered to the presiding judge of the election.

I. An objection to the use of a particular voting machine shall be filed in the district court within two days after the machine has been certified. Any objection so filed shall specify the number of the voting machine objected to and the reason for the objection. Each voting machine shall be conclusively presumed to be properly prepared for the election if it has been certified unless a timely objection has been filed.

J. Voting machines certified in accordance with this section shall be delivered to the assigned precinct polling place no earlier than five days prior to the election and no later than noon on the day prior to the election.

K. The municipal clerk shall refuse to certify any voting machine that the municipal clerk determines is not programmed properly, is not working properly or will not fairly or accurately record votes. Only voting machines that have been certified by the municipal clerk shall be used in the election. "

Section 2. Section 3-8-22 NMSA 1978 (being Laws 1985, Chapter 208, Section 30) is amended to read:

"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 he is:

- (1) blind;
- (2) physically disabled;
- (3) unable to read or write; or
- (4) a member of a language minority who is unable to read well enough to exercise the elective franchise.

B. When a voter who is eligible for assistance requires assistance in marking his paper ballot or recording his vote on a voting machine, the voter shall announce this fact in an audible tone before receiving his paper ballot or before entering the voting machine.

C. The voter's request for assistance shall be noted next to his 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 his paper ballot or recording his vote on a voting machine.

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 his ballot is blind, has a physical disability, is unable to read or write or is a member of a language minority who has requested assistance, he may be accompanied into the voting machine by a person of his 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 and folding his paper ballot or recording his 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. "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.

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 American Indian election translators shall seek the advice of the pueblo or tribal officials residing in that municipality. The election translator shall take the oath required of precinct board members and shall meet the same qualifications as other precinct board members.

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."

Section 3. Section 3-8-26 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-4, as amended) is amended to read:

"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, the date and time for early 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. "

Section 4. Section 3-8-27 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-8, as amended) is amended to read:

"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 on file with the county clerk, which has been certified by the office of the county clerk on a date not earlier than the adoption of the election resolution, 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 which contain:

(1) the identical name and the identical resident street address as shown on the affidavit of registration of the candidate submitted with the declaration of candidacy;

(2) the office and term to which the candidate seeks election and district designation, if appropriate;

(3) a statement that the candidate is eligible and legally qualified to hold the office for which the candidate is filing;

(4) a statement that the candidate has not been convicted of a felony or, if the candidate has been convicted of a felony, a statement that the candidate's elective franchise has been restored;

(5) a statement that the candidate or the candidate's authorized representative shall personally

appear at the office of the municipal clerk during normal business hours on the fifty-fourth day before the election to ascertain whether the municipal clerk has certified the declaration of candidacy as valid;

(6) a telephone number at which the candidate or the candidate's authorized representative can be reached for purposes of giving telephone notice;

(7) a statement to the effect that the declaration of candidacy is an affidavit under oath and that any false statement knowingly made 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 he is no longer a candidate for municipal office. A municipal clerk shall not place on the ballot the name of any person who has filed an affidavit as provided in this subsection.

J. Not later than 10:00 a.m. on the forty-eighth

day preceding the election, the municipal clerk shall confirm with the printer on contract with the municipality 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-second day preceding the election between the hours of 8:00 a.m. and 5:00 p.m.;

(2) write-in candidates shall file a declaration of write-in candidacy with the same documents and satisfy the same requirements as established in this section for candidates;

(3) the municipal clerk shall, on the forty-first day preceding the election, certify those individuals who have satisfied the requirements of this section as declared write-in candidates;

(4) not later than 9:00 a.m. on the fortieth day preceding the election, the municipal clerk shall, in the office of the municipal clerk:

(a) post the names of those

individuals who have been certified as declared write-in candidates; and

(b) post the names of those individuals who have not been certified as declared write-in candidates along with the reasons therefor; and

(5) not later than 5:00 p.m. on the twenty-eighth day preceding the election, a declared write-in candidate may file an affidavit that he is no longer a write-in candidate for municipal office. In the event that a declared write-in candidate files an affidavit of withdrawal, votes for that candidate shall not be counted and canvassed. "

Section 5. Section 3-8-46 NMSA 1978 (being Laws 1985, Chapter 208, Section 54, as amended) is amended to read:

"3-8-46. CONDUCT OF ELECTIONS--CLOSING POLLS--LOCKING VOTING MACHINES--OPENING VOTING MACHINES--VERIFICATION OF VOTES--ADMITTANCE OF WATCHERS AND CANDIDATES--PROCLAMATION OF RESULTS--COMPLETION OF LOCKING--DURATION OF LOCKING AND SEALING. --

A. When the last person has voted, the precinct board, in the presence of all persons lawfully permitted to be present, shall immediately lock and seal the voting machine against further voting. The precinct board shall release the machine-printed returns from the machine. The precinct board shall then sign a certificate stating that the machine was locked and sealed; giving the exact time;

stating the number of voters shown on the public counters, which shall be the total number of votes cast on the machine in that precinct; stating the number on the seal; and stating the number registered on the protective counter.

B. The precinct board shall verify that the counter settings registered on the machine-printed returns are legible. The machine-printed returns shall show the number of votes cast for each candidate and the number of votes cast for and against any other question submitted, and the return shall be signed by each member of the precinct board and the challengers and watchers, if there be such.

C. If the machine-printed returns are not legible, 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, emergency paper ballot or paper ballot used in lieu of voting machines;

(3) the name written in is not a vote for a person who is on the ballot for that office; and

(4) the name written in is not imprinted by rubber stamp or similar device or by the use of preprinted stickers or labels.

E. Only the members of the precinct board, candidates or their 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 quadruplicate on which is recorded the total number of votes cast in that polling place for each candidate and for and against each question. The certificate shall be signed by all the members of the precinct board. One copy shall be posted at the door of the polling place, one copy mailed to the district court in the envelope provided, one copy returned to the municipal clerk to be used as unofficial returns and the original returned to the municipal clerk in the envelope provided.

H. Before adjourning, the precinct board shall complete the locking procedures on the voting machine.

I. On the voting machine, the machine return sheet is the official vote tally for that machine and the separate election return certificate is the official vote tally for that precinct or consolidated precinct.

J. If in the district court's opinion a contest is likely to develop, the court may order a voting machine

to remain locked and sealed for such time as it deems necessary.

K. The county clerk shall break the seal for purposes of lawful investigation when ordered to do so by a court of competent jurisdiction. When the investigation is completed, the voting machine shall again be sealed and across the envelope containing the keys shall be written the signature of the county clerk, unless other provisions for the use of the voting machine are ordered by the court. "

Section 6. Section 3-8-53 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-14, as amended) is amended to read:

"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;

(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. "

Section 7. Section 3-8-58 NMSA 1978 (being Laws 1985, Chapter 208, Section 66) is amended to read:

"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) break the seal and unlock the voting machine;

(2) check the figures shown by the counter on the voting machine;

(3) insert the cartridge into the voting

machine; and

(4) re-run the printed returns from the voting machine.

C. At the conclusion of the recheck and comparison, the voting machine shall again be locked.

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. "

Section 8. Section 3-8-68 NMSA 1978 (being Laws 1985, Chapter 208, Section 76, as amended) is amended to read:

"3-8-68. RECOUNT--RECHECK--APPLICATION--COSTS.--

A. Whenever any candidate for any office for which the municipal clerk issues a certificate of election believes that any error or fraud has been committed by any precinct board in counting or tallying the paper ballots used in lieu of voting machines, emergency paper ballots or absentee ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the municipal canvassing board, may have a recount of the paper ballots used in lieu of voting machines, emergency paper ballots or absentee ballots, or a recheck of the voting machine and the voting machine cartridge 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, they shall not be entitled to such mileage or fees."

Section 9. Section 3-8-81 NMSA 1978 (being Laws 1999, Chapter 278, Section 37) is amended to read:

"3-8-81. EARLY VOTING. --

A. The governing body of a municipality shall provide for early voting for any regular or special municipal election at the time of the adoption of the election resolution for a regular or special municipal election, and shall designate the office of the municipal clerk as the early voting precinct.

B. Early voting shall be done during the municipality's regular hours and days of business, between Monday and Friday, commencing on the twentieth day preceding the election and closing at 5:00 p.m. on the Friday immediately prior to the date of the election.

C. The municipal clerk shall publish notice of early voting at least twice, between twenty-four and sixty days prior to the election, and shall make reasonable efforts to publicize and inform voters of the time and location for early voting. A notice regarding early voting may be combined with other election publications that are required by law."

Section 10. Section 3-9-4 NMSA 1978 (being Laws 1973, Chapter 375, Section 3, as amended) is amended to read:

"3-9-4. ABSENTEE BALLOT APPLICATION--REJECTION--ACCEPTANCE--ISSUANCE OF ABSENTEE BALLOT.--

A. Application by a federal qualified elector or federal voter shall be made on the federal postcard application form to the municipal clerk.

B. The municipal clerk shall prescribe the form of the absentee ballot application.

C. An absentee ballot application shall be furnished by the municipal clerk by mail or in person in the office of the municipal clerk to the voter upon request by the voter.

D. A list containing the names and addresses of voters requesting absentee ballot applications shall be kept and shall be made a part of the absentee ballot register.

E. 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.

F. 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 social security number or date of birth;

(4) the applicant has voted early;

(5) the application is not signed by the applicant; or

(6) the applicant:

(a) has no valid affidavit of registration on file with the county clerk and is not a federal qualified elector or federal voter;

(b) has a valid affidavit of registration on file with the county clerk, but is not a resident of the municipality; or

(c) is a federal qualified elector or federal voter, but is not entitled to vote in the municipal election; and

(d) cannot comply with Subparagraph (a), (b) or (c) of this paragraph pursuant to Subsection B of Section 3-8-40 NMSA 1978.

G. If the municipal clerk rejects the absentee ballot application pursuant to Subsection F of this section, then the municipal clerk shall refuse to issue an absentee ballot and shall mark the application "rejected" and enter "rejected" in the absentee ballot register and file the application in a separate file. The municipal clerk shall, within twenty-four hours of rejection of the application, notify the applicant of the reasons for rejection of the

application. Upon rejection of the application, the municipal clerk shall determine the method of notification to the voter. Notification shall only be made by courier with return receipt or certified mail, return receipt requested. The person whose application has been rejected shall have ten days from receipt of notice to appeal or show cause why the application should be accepted. In addition, if the application is incomplete, the clerk shall mail immediately a new application for absentee ballot.

H. 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.

I. 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, federal qualified elector or federal voter 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.

J. 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.

K. 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.

Absentee ballots may be cast in person beginning on the twenty-seventh day before the election at the municipal clerk's office until 5:00 p. m. on the Thursday immediately prior to the date of election.

L. 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 is provided in this subsection. During the period of time between the date a person may first apply in person for an absentee ballot and the final date for such application and marking of the ballot in the office of the municipal clerk, it is unlawful to solicit votes or display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office.

M. Absentee ballots shall be air mailed to federal qualified electors and federal voters whose applications have been accepted not earlier than thirty-five days prior to the election and not later than 5:00 p. m. on the Thursday immediately prior to the date of the election.

N. Absentee ballots shall be mailed to voters whose applications have been approved not earlier than thirty-five days prior to the election and not later than 5:00 p. m. on Thursday immediately prior to the date of the

election.

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

Section 11. A new section of the Municipal Election Code is enacted to read:

"FORM OF EARLY VOTING BALLOT. --

A. When a municipality elects to use paper ballots for early voting, the form of the early voting ballot shall be in a form prescribed by the municipal clerk. The early voting ballot shall:

(1) be numbered consecutively beginning with number one. The number shall be printed in the upper right-hand corner of the ballot with a diagonal perforated line approximately placed so that the portion of the ballot bearing the number in the upper right-hand corner may be readily and easily detached from the ballot;

(2) be uniform in size;

(3) be printed on good quality paper;

(4) be printed in plain black type;

(5) have all words and phrases printed correctly and in their proper places; and

(6) have district and precinct numbers, if applicable.

B. The following heading shall be printed on each paper ballot used for early voting in municipal elections:

"OFFICIAL EARLY VOTING BALLOT

Election held..... (insert date)".

C. If the election is a regular municipal election, then the early voting ballot shall be prepared consistent with the requirements set forth in 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. When 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, then questions presented shall be placed on the early voting ballot in the order designated by the governing body.

E. Next to each question presented on an early voting ballot shall appear two empty boxes, one labeled "FOR" and the other labeled "AGAINST".

F. At the bottom of all early voting ballots shall be printed:

"OFFICIAL EARLY VOTING BALLOT",
followed by a facsimile signature of the municipal clerk. "

Section 12. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2001. _____