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SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILLS 678, 680, 718 & 735

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47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

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AN ACT

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RELATING TO ELECTIONS; PROVIDING DEFINITIONS; PRESCRIBING

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DUTIES AND TRAINING PROCEDURES; UPDATING LANGUAGE IN ARTICLES

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4, 5 AND 12 OF THE ELECTION CODE; REQUIRING CERTIFICATION OF

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PRESIDING JUDGES; SPECIFYING HOW PRECINCTS MAY BE FORMED AND

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DESIGNATED; PROVIDING FOR COUNTY CANVASS OBSERVERS; CHANGING

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FILING DATES FOR INDEPENDENT AND WRITE-IN CANDIDATES; CHANGING

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REGISTRATION PROCEDURES; REQUIRING REGISTRATION OF THIRD-PARTY

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REGISTRATION ORGANIZATIONS; PROVIDING FOR EARLY PROCESSING OF

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ABSENTEE BALLOTS; PROVIDING FOR ABSENTEE VOTING PROCEDURES;

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REQUIRING A PAPER RECORD OF VOTES; REQUIRING VOTER

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IDENTIFICATION FOR IN-PERSON AND ABSENTEE VOTING; PRESCRIBING

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POLL WORKER DUTIES ON ELECTION DAY; REQUIRING STANDARDS FOR

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COUNTING PROVISIONAL BALLOTS; CHANGING PROVISIONS FOR

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POLLWATCHERS; PROVIDING FOR DEPOSITS ON RECOUNTS AND RECHECKS;

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PROVIDING FOR AUTOMATIC AUDITS AND RECOUNTS; PROVIDING

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PENALTIES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION
OF LAW; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS
OF THE NMSA 1978.

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

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Section 1. A new section of Chapter 1, Article 1 NMSA
1978 is enacted to read:

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"[NEW MATERIAL] 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."

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Section 2. A new section of Chapter 1, Article 1 NMSA
1978 is enacted to read:

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"[NEW MATERIAL] NEW REGISTRANT.--As used in the Election
Code, "new registrant" means a person who was not registered to
vote in the state at the time the person registered to vote."

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Section 3. A new section of Chapter 1, Article 1 NMSA
1978 is enacted to read:

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"[NEW MATERIAL] REGISTRATION AGENT.--As used in the
Election Code, "registration agent" means a state or federal
employee who provides voter registration at a state agency or
any other individual who assists another person in completion
of a voter registration application."

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Section 4. Section 1-1-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 16, as amended) is amended to read:

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"1-1-16. REGISTRATION OFFICER.--As used in the Election Code, "registration officer" means the secretary of state, a county clerk or [his] a clerk's authorized deputy [or], 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."

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Section 5. A new section of Chapter 1, Article 1 NMSA 1978 is enacted to read:

"[NEW MATERIAL] UNIQUE IDENTIFIER.--As used in the Election Code, "unique identifier" means the last four digits of a voter's social security number."

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Section 6. A new section of Chapter 1, Article 1 NMSA 1978 is enacted to read:

"[NEW MATERIAL] REQUIRED VOTER IDENTIFICATION.--As used in the Election Code, "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 a voter identification card; or

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(2) an original or copy of a utility bill,

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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 sworn written statement by the voter of the voter's name, year of birth and unique identifier; provided, however, that the statement of the voter's name need not contain the voter's middle initial or suffix."

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Section 7. A new section of Chapter 1, Article 1 NMSA 1978 is enacted to read:

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"[NEW MATERIAL] VOTER IDENTIFICATION CARD.--As used in the Election Code, "voter identification card" means a document containing the person's name, address and precinct number that is issued by the county clerk or the voter's copy of the voter's certificate of registration."

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Section 8. Section 1-1-6 NMSA 1978 (being Laws 1977, Chapter 222, Section 1) is amended to read:

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"1-1-6. RECHECK AND RECOUNT.--As used in the Election Code:

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A. "recheck" pertains to electronic voting [machines] systems and means a verification procedure where

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[the center counter compartment door of the voting machine is opened] a printout of the electronic record of votes cast in an

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election is made from each electronic memory device in the electronic voting system and the results [of the balloting as shown on the counters of the machine] are compared with the results shown on the official returns; and

B. "recount" pertains to emergency paper ballots ~~[and]~~, absentee ballots, provisional paper ballots, optical scan paper ballots, voter verifiable and auditable paper ballots printed by electronic voting systems and any other paper ballot and means a [retabulation and retallying of individual ballots] verification procedure whereby the voters' selections on the paper ballots may be counted by hand and the results compared with the results shown on the official returns."

Section 9. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] VOTER IDENTIFICATION CARDS--
DISTRIBUTION.--

A. Between sixty and forty days before each statewide election, the county clerk shall send to each registered voter in the county a voter identification card indicating the voter's name, address and voting precinct; provided, however, that a registrant shall still be sent a voter identification card upon filing of the registrant's certificate of registration with the county clerk as provided ~~in Section 1-4-12 NMSA 1978.~~

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B. The county clerk may apply to the office of the secretary of state for reimbursement of costs related to supplying voter identification cards.

C. The secretary of state shall promulgate rules to ensure that all registered voters receive a voter identification card before each statewide election and reimburse the county for the costs of supplying and distributing the cards."

Section 10. Section 1-2-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 23, as amended) is amended to read:

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

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

E. report possible violations of the Election Code of which ~~he~~ the secretary of state has knowledge to the

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district attorney or the attorney general for prosecution;

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

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

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

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I. assist the county clerks in the education and training of registration officers [~~and precinct boards~~], in the recruitment and training of poll workers and other election workers and in the certification of the presiding judges of the precinct boards."

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Section 11. Section 1-2-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 25, as amended) is amended to read:

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"1-2-4. SECRETARY OF STATE--TRAINING AND INSTRUCTIONS TO PRECINCT BOARDS--TRAINING MANUAL.--

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A. The secretary of state shall provide:

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_____ (1) instructions for the precinct board, which shall include a brief nontechnical explanation of their duties as required by the Election Code; and

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_____ (2) a single training manual containing

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standard guidelines for the operations and processes of statewide elections, including pre-election day activities,

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election-day activities and post-election-day activities and county and state canvassing processes.

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."

Section 12. Section 1-2-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 29, as amended) is amended to read:

"1-2-7. PRECINCT BOARD--QUALIFICATION OF MEMBERS--QUALIFICATION OF PRESIDING JUDGES.--

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

- (1) be a resident of the representative district and county in which the precinct where he is a voter is located;
- (2) be able to read and write;
- (3) have the necessary capacity to carry out his functions with acceptable skill and dispatch; and
- (4) execute the precinct board member's oath of office.

B. 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.

~~underbracketed material to be deleted~~ [B-] C. No person shall be qualified for appointment or service on a precinct board:

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

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

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

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Section 13. Section 1-2-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 37, as amended) is amended to read:

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

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A. The secretary of state [~~shall~~] may supervise and 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. [~~in any county with a population of one hundred thousand or more according to the most recent federal decennial census.~~]

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

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G.] B. The schools for instruction provided for in this section shall be as follows:

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(1) one school not less than [~~three~~] seven

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days before the primary election;

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

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

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

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~~[E.]~~ 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 by mail at least seven days prior to commencement of the school.

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~~[F.—No]~~ E. A person shall not serve as a judge or member of a precinct board in any election ~~[who has not]~~ unless that person has attended at least one such school of instruction in the calendar year of the election at which ~~[he]~~ 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

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B of Section 1-2-15 NMSA 1978."

2 Section 14. Section 1-2-27 NMSA 1978 (being Laws 1969,
3 Chapter 240, Section 46, as amended) is amended to read:

4 "1-2-27. WATCHERS--APPOINTMENT.--

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

14 B. In a general election, a candidate for elected
15 office and an election-related organization may appoint one
16 watcher per polling place if the candidate or organization
17 makes a written request to the secretary of state at least
18 [~~twenty~~] ten days prior to the election date and specifies the
19 polling place to be watched and the name of the qualified
20 appointee. The secretary of state shall notify the county
21 clerk of the qualified appointees at least [~~ten~~] five days
22 before the election. For the purposes of this section,
23 "election-related organization" means [~~a nonpartisan~~] an
24 organization involved in voter turnout activities.

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25 C. In a primary election any group of six

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candidates for county office for each political party participating in the election may appoint in writing an additional watcher for each precinct. No candidate, however, shall join in more than one request for an additional watcher.

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

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Section 15. A new section of Chapter 1, Article 2 NMSA 1978 is enacted to read:

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"[NEW MATERIAL] COUNTY CANVASS OBSERVERS.--

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A. A candidate for elected office and an election-related organization may each appoint one county canvass observer per county if the candidate or organization makes a written request to the secretary of state or county clerk at least ten days prior to the election date and specifies the county canvass to be watched and the name of the qualified appointee. A county chair of a qualified political party may appoint as many observers as the chief election officer for that county determines is functional; provided that the state or county chair may appoint at least three observers and that the number of observers for each major political party is identical.

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B. County canvass observers shall be voters of a

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precinct located in that county to which they are appointed.

2 No sheriff, deputy sheriff, marshal, deputy marshal, municipal
3 or state police officer, candidate or person who is a spouse,
4 parent or child of a candidate being voted on at the election
5 shall serve as a county canvass observer.

6 C. The county canvass observer, upon presentation
7 of the observer's written appointment to the county clerk,
8 shall be permitted to be present from the time the county
9 canvassing begins until the completion of the canvass.

10 D. Only one county canvass observer for each
11 candidate and each election-related organization in each county
12 shall be permitted at one time in the room in which the canvass
13 is being conducted. An observer is strictly limited to
14 observing and documenting the canvassing process, and may not
15 interrupt the canvassing process.

16 E. County canvass observers shall not interfere
17 with the orderly conduct of the canvass, and may be removed by
18 the chief election officer if the observer does not comply with
19 the law.

20 F. As used in this section:

21 (1) "county canvass" means the process of
22 qualifying and verifying paper ballots and counting and
23 tallying votes for each precinct beginning upon the closing of
24 the polls and ending with the certification and announcement of
25 the results by the county canvassing board; and

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(2) "election-related organization" means an organization involved in voter turnout activities."

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Section 16. Section 1-3-12 NMSA 1978 (being Laws 1984 (1st S.S.), Chapter 3, Section 4, as amended) is amended to read:

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"1-3-12. ADJUSTING PRECINCT BOUNDARIES.--

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A. Before each federal decennial census, every precinct boundary shall be adjusted to coincide with a numbered or named street or road or with a visible terrain feature that is:

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

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(2) a designated census block boundary on the federal PL 94-171 2000 census block maps; or

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

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B. Prior to commencement of the federal decennial census, the secretary of state shall have prepared and furnish to each county clerk standard base maps of the county. The standard base map for nonurban areas of the county shall, as nearly as practical, show:

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(1) all state and federal highways;

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(2) all numbered and named county roads that

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have been certified to the ~~[state highway and]~~ department of

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transportation ~~[department]~~;

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(3) all military installation boundaries and federal and state prison boundaries;

(4) all major railroad lines; and

(5) other major terrain features such as flowing rivers and streams, arroyos, powerlines, pipelines 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 urban precinct boundaries to coincide with numbered or named street boundaries;

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

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

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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 shall become the official precincts of each county for the 2001 redistricting. For the 2002 and subsequent primary and general elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978.

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E. A county commission shall not split a precinct into two or more districts for any elected office.

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F. Precincts shall be designated solely by whole numbers."

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Section 17. A new section of Chapter 1, Article 4 NMSA 1978 is enacted to read:

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"[NEW MATERIAL] THIRD-PARTY REGISTRATION AGENTS--
REGISTRATION REQUIRED--PROCEDURES--REPORTS--PENALTY.--

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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 provide the secretary of state with:

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

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(2) the names, permanent addresses, temporary addresses, if any, dates of birth and social security numbers

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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 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 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 registration forms used by their registration agents.

D. A person who violates the provisions of this section is guilty of a fourth degree felony."

Section 18. A new section of Chapter 1, Article 4 NMSA 1978 is enacted to read:

"[NEW MATERIAL] REGISTRATION--LACK OF PHYSICAL ADDRESS.--

If a qualified elector resides in an area lacking a specific physical address, the qualified elector shall be allowed to

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substitute a map indicating where the qualified elector resides

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for a physical address and register to vote. The voter shall be assigned to a precinct based on the geographic description of where the voter resides."

Section 19. Section 1-4-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 63, as amended) is amended to read:

"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 original and the voter's copy of~~] the certificate of registration by typing or printing in ink. [~~Carbon paper may be used between the original and the voter's copy.~~] The voter shall be given a receipt, which may be a carbon copy, for the original, and the registration agent shall receive a copy that omits the voter's social security number and date of birth and which shall contain a number traceable to the registration agent or officer.

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

- (1) [~~a person shall sign his original~~] by signing the certificate of registration using [~~his~~] the ~~qualified elector's given name, middle name or initial and last name; or~~ qualified elector's given name, middle name or initial and last name; or

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(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 [~~his~~] the qualified elector's mark.

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

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E. Only when the certificate of registration is properly filled out, subscribed by the qualified elector and accepted for filing by the county clerk as evidenced by [~~his~~] 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. It is unlawful for [~~any information~~] the voter's date of birth or any portion of the voter'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, except by elections administrators for purposes of the registration and voting

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

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Section 20. Section 1-4-5.1 NMSA 1978 (being Laws 1993, Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7, as amended) is amended to read:

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"1-4-5.1. METHOD OF REGISTRATION--FORM.--

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

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

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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.

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D. A qualified elector who has filed for an order of protection pursuant to the provisions of the Family Violence Protection Act and who presents a copy of that order from a state or tribal court to the registration officer shall not be

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required to provide address information on the certificate of registration.

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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.

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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.

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

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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 and when notice has been received by the registrant shall it constitute an official public record of the registration of the qualified elector.

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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

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and understandable to the average person and shall include

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brief but sufficient instructions to enable the qualified

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elector to complete the form without assistance. The form shall also include:

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(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;

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

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

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(4) a statement informing the applicant that:

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(a) if the form is ~~not~~ submitted ~~in person~~ 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 voter identification card; or 2) 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 applicant; and

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(b) if the applicant does not submit the

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required identification, he will be required to do so when ~~he~~

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~~votes~~ voting in person or absentee; and

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

Section 21. Section 1-4-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 66, as amended) is amended to read:

"1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF REGISTRATION--CLOSE OF REGISTRATION--FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS--LATE REGISTRATION.--

A. For qualified electors other than federal qualified electors or overseas voters, the following provisions shall apply:

(1) the county clerk shall receive certificates of registration at all times during normal working hours, except that ~~he~~ 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;

(2) registration shall be reopened on the Monday following the election;

(3) 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;

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(4) during the period when registration is closed, the county clerk shall receive certificates of registration and other documents pertaining thereto but shall not file the certificate of registration in the registration book until the Monday following the election, at which time a voter identification card shall be mailed to the registrant at the address shown on the certificate of registration;

(5) 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

(6) the county clerk shall accept for filing any certificate of registration that is ~~[hand-delivered]~~ subscribed and dated on or before the twenty-eighth day preceding the election and received by the county clerk before 5:00 p.m. on the Friday immediately following the close of registration. The county clerk shall accept for filing any mailed certificate of registration postmarked not less than twenty-eight days prior to any election referred to in this section and received by 5:00 p.m. on the Friday immediately following the close of registration. The county clerk shall accept for filing any certificate of registration accepted at a state agency designated pursuant to Section 1-4-5.2 NMSA 1978 not later than twenty-eight days prior to any election.

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B. For federal qualified electors and overseas voters, the county clerk shall accept a certificate of registration by electronic transmission from a voter qualified to apply for and vote by absentee ballot in the county if the transmission is received before 5:00 p.m. on the Friday immediately preceding the election."

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Section 22. Section 1-4-23 NMSA 1978 (being Laws 1969, Chapter 240, Section 79, as amended) is amended to read:

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"1-4-23. REVIEW OF REGISTRATION--BOARD OF REGISTRATION--INACTIVE VOTER LIST CREATION.--Beginning on the third Monday of March of each odd-numbered year, the board of registration shall review all certificates of registration [~~for failure of the voter to vote~~] and, based on that review, shall establish a list of inactive voters [~~Voters who fail to vote in at least one statewide or local election in a two-year period shall be placed on an inactive voter list~~] in accordance with the provisions of the federal National Voter Registration Act of 1993. The secretary of state shall issue rules on list maintenance in accordance with the provisions of the federal National Voter Registration Act of 1993."

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Section 23. Section 1-5-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 103, as amended) is amended to read:

"1-5-1. SHORT TITLE.--Sections [~~3-5-1 through 3-5-34 NMSA 1953~~] 1-5-1 through 1-5-29 NMSA 1978 may be cited as the "[Automated] Voter Records System Act"."

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SJC/SRC/SB 678, et al.

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Section 24. Section 1-5-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 104, as amended) is amended to read:

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"1-5-2. DEFINITIONS.--As used in the Election Code:

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A. "county" means any county in this state;

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~~[B. "county register" means an official file of original certificates of registration of the county or any precinct thereof;~~

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~~C. "voter list" means any prepared list of voters;~~

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~~D. "signature roster" means a copy of a voter list with space provided opposite each voter's name for the voter's signature or witnessed mark;~~

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~~E. "active data processing media" means magnetic discs, magnetic tape or functionally similar devices containing data capable of being read and processed by computer for the eventual preparation of voter lists;~~

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~~F. "intermediate records" means records on active data processing media;~~

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~~G. "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 active data processing media and certified by the county clerk as the source of all information required by the Automated Voter Records System Act;~~

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~~H. "program records" means the necessary detailed program and instructions for carrying out and controlling~~

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~~program and instructions for carrying out and controlling~~

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~~machine processing of information derived from the voter file.~~

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~~Program records shall exist in written English or coded form~~

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~~and they may exist on active data processing media;~~

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~~I. "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;~~

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~~J. "special voter lists" means prepared lists of
selected voters arranged in the order in which requested;~~

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~~K. "statistical data" means information derived
from the voter file;~~

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~~L. "voter data" means selected information derived
from the voter file;~~

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

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

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

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

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

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

~~S. "election campaign purposes" means relating in any way to a campaign in an election conducted by a federal, state or local government; and~~

~~T. "governmental purposes" means noncommercial purposes relating in any way to the structure, operation or decision-making of a federal, state or local government]~~

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

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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

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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

0. "voter list" means any prepared list of voters."

Section 25. Section 1-5-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 105, as amended by Laws 1993, Chapter 314, Section 33 and also by Laws 1993, Chapter 316, Section 33) is amended to read:

"1-5-3. ACT IS MANDATORY AND SUPPLEMENTAL TO ELECTION CODE.--

A. ~~[Effective January 1, 1984]~~ The ~~[Automated]~~ Voter Records System Act is mandatory and supplemental to the provisions of the Election Code. The provisions of that act shall be implemented in all counties by order of the ~~[board of county commissioners of the county in all precincts of a county]~~ secretary of state in accordance with the provisions of the federal Help America Vote Act of 2002.

B. The secretary of state shall maintain ~~[a current registration list of state voters]~~ the official state voter file based on county [voter lists and] registers and shall provide access to the file to the county clerks. The secretary of state shall prescribe any rules, forms and instructions necessary [for the orderly transition to and the efficient implementation of] to implement procedures required by the

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[Automated] 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 ~~magnetic~~ electronic form shall be fulfilled within a period of ten working days.

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

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Section 26. Section 1-5-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 108, as amended) is amended to read:

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"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."

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Section 27. Section 1-5-7 NMSA 1978 (being Laws 1969,

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SJC/SRC/SB 678, et al.

Chapter 240, Section 109, as amended) is amended to read:

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"1-5-7. PRECINCT VOTER LISTS--SIGNATURE ROSTERS--

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CONTENTS.--

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

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(1) [~~his~~] name;

8

(2) gender;

9

(3) place of residence;

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(4) last four digits of the voter's social

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security number;

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(5) year of birth;

13

(6) party affiliation, if any; and

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(7) precinct of residence.

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

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

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~~[D. For those counties who, prior to June 18, 1993, utilized voter files that do not contain telephone numbers of~~

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~~registered voters, the provisions of Subsections J and L of Section 1-5-2 NMSA 1978 and Paragraph (4) of Subsection A of~~

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~~Section 1-5-7 NMSA 1978 regarding dissemination of voter telephone numbers shall apply only to individuals registering to vote after January 1, 1994.]"~~

Section 28. Section 1-5-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 110, as amended) is amended to read:

"1-5-8. PRECINCT VOTER LISTS--SIGNATURE ROSTERS--NUMBER--DISTRIBUTION.--

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

B. The county clerk shall prepare three copies of the precinct voter list for each precinct. Of the three copies prepared, one copy shall not include voter social security numbers. [~~He~~] The other two shall contain only the last four digits of the voter's social security number. The county clerk shall deliver two of the copies to each precinct board [~~in lieu of bound certificates of registration~~]. One copy of the precinct voter list shall be retained by the county clerk for verification purposes on election day and one copy for the secretary of state shall be marked to verify those voters on the list who voted.

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SJC/SRC/SB 678, et al.

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

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Section 29. Section 1-5-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 118, as amended) is amended to read:

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"1-5-14. FILE MAINTENANCE LISTS.--

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

8

~~[B. The county clerk shall be furnished with two copies of the file maintenance lists.~~

9

~~G.]~~ B. One copy of the list shall be stored by the county clerk for at least one year.

10

~~[D.]~~ C. The county clerk shall also ~~[be furnished with]~~ furnish copies of the list ~~[to give]~~ to the county chairman of each of the major political parties in the county. The copy of the chairman's list shall indicate whether each item is an addition, deletion or change. The file maintenance list 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 or the voter's telephone number, if prohibited by the voter.

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~~[E. Beginning the first Monday of February of an election year and every month thereafter, the county clerks~~

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~~shall furnish the secretary of state with a copy of the voter file, except that during the months of April and September of an election year, the county clerks shall furnish a copy of the voter file to the secretary of state at least one time each week. The final copy shall be furnished to the secretary of state by the county clerks within seven days of the close of registration.]"~~

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Section 30. Section 1-5-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 122, as amended) is amended to read:

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"1-5-17. ~~[PROGRAM RECORDS]~~ VOTER REGISTRATION SYSTEM SOFTWARE--INSTRUCTIONS--STATUS--PROTECTION.--

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A. ~~[Program records]~~ Voter registration system software and instructions for ~~[their]~~ 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.

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

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G.] B. Verified, identified and approved ~~[program records]~~ 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."

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~~undersecretary of state shall delete~~ Section 31. Section 1-5-18 NMSA 1978 (being Laws 1969, Chapter 240, Section 124, as amended) is amended to read:

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"1-5-18. LIST AND ROSTER PREPARATION--COMPATIBLE
DUPLICATE MEANS.--

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A. The ~~[county clerk]~~ secretary of state shall
~~[employ such]~~ provide to the county clerk means for the
preparation of voter lists and signature rosters ~~[as can be~~
~~functionally duplicated elsewhere with reasonable cost and~~
~~convenience]~~.

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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.

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C. The ~~[county clerk]~~ secretary of state shall
procure and preserve sufficient duplicate ~~[program information]~~
voter registration system software and operating instructions
~~[with each duplicate program record]~~ so that in case of
disaster the duplicate master record and the duplicate ~~[program~~
~~record and the duplicate additional program information]~~ 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."

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Section 32. Section 1-5-21 NMSA 1978 (being Laws 1975,
Chapter 255, Section 75, as amended) is amended to read:

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"1-5-21. DATA PROCESSOR--CUSTODY AND PROTECTION OF VOTER

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FILE--DELIVERY OF VOTER FILE AND PROGRAM RECORDS.--

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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 ~~[Automated]~~ Voter Records System Act and in carrying out such other services as are reasonably related to providing ~~[automated]~~ data processing of the voter records system.

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

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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 [his] their designated ~~[agent]~~ agents.

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

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E. ~~The unofficial election canvassing system shall~~

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SJC/SRC/SB 678, et al.

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~~be tested by the secretary of state at least thirty days prior to an election.~~

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

6

Section 33. Section 1-5-22 NMSA 1978 (being Laws 1975, Chapter 255, Section 76) is amended to read:

8

"1-5-22. UNLAWFUL DISPOSITION OF VOTER FILE--PENALTY.--

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A. Unlawful disposition of voter file consists of the willful selling, loaning, providing access to or otherwise surrendering of the voter file, duplicates of [~~such~~] the file or a part [~~thereof~~] of the file by [~~any of the following persons: (1)~~] a data processor; [~~(2) his~~] a data processor's agent or employee; [~~(3)~~] a state or county officer; [~~(4) his~~] or a state or county officer's deputy, [~~or~~] assistant, [~~or (5) his~~] employee or agent to anyone not authorized by the [~~Automated~~] Voter Records System Act to have possession of [~~such~~] the file.

19

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

22

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."

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Section 34. Section 1-5-23 NMSA 1978 (being Laws 1975,

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Chapter 255, Section 77) is amended to read:

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"1-5-23. UNLAWFUL DESTRUCTION OR ALTERATION OF [ACTIVE] DATA [PROCESSING] RECORDING MEDIA, VOTER [FILE] FILES, FILE MAINTENANCE [~~LIST, PROGRAM RECORDS~~] LISTS, VOTER REGISTRATION SYSTEM SOFTWARE AND INSTRUCTIONS [~~AND~~] OR VOTER LISTS-- PENALTY.--

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

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B. Any person who commits unlawful destruction or alteration of [~~active~~] data [~~processing~~] recording media, voter [~~file~~] files, file maintenance lists, [~~program records~~] voter registration system software and instructions or voter lists is guilty of a fourth degree felony."

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Section 35. Section 1-5-24 NMSA 1978 (being Laws 1975, Chapter 255, Section 78, as amended) is amended to read:

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"1-5-24. REQUESTS FOR [~~STATISTICAL DATA~~] VOTER DATA, MAILING LABELS OR SPECIAL VOTER LISTS.--

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A. The county clerk or secretary of state shall

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SJC/SRC/SB 678, et al.

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~~[authorize the data processor to]~~ furnish ~~[statistical data]~~ 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 ~~[by the data processor]~~ in regard to the charges and the furnishing of the materials.

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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.

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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.

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~~[D. Each requester of statistical data shall sign an affidavit that such statistical data shall be used for information or research purposes only and shall not be made available or used for unlawful purposes.]~~

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~~E.]~~ D. The secretary of state shall prescribe the form of the affidavit."

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Section 36. Section 1-5-25 NMSA 1978 (being Laws 1975,

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Chapter 255, Section 79, as amended) is amended to read:

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"1-5-25. ~~[UNLAWFUL USE OF STATISTICAL DATA]~~ UNLAWFUL USE
3 OF VOTER DATA, MAILING LABELS OR SPECIAL VOTER LISTS--
4 PENALTIES.--

5

~~[A. Unlawful use of statistical data consists of
6 use of statistical data in such a manner as to derive
7 information, the use or possession of which would be otherwise
8 prohibited under the Automated Voter Records System Act.~~

9

B.] A. Unlawful use of voter data, mailing labels
10 or special voter lists consists of the knowing and willful use
11 of such information for purposes prohibited by the ~~[Automated]~~
12 Voter Records System Act.

13

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

20

~~[D.]~~ C. Each and every unlawful use of ~~[statistical
21 data]~~ voter data, mailing labels or special voter lists
22 constitutes a separate offense."

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Section 37. Section 1-5-26 NMSA 1978 (being Laws 1975,

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Chapter 255, Section 80) is amended to read:

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"1-5-26. CONTRACTUAL AGREEMENT REQUIRED WITH DATA

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~~PROCESSOR.-- [A. Each county implementing the Automated Voter~~
~~Records System Act] 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 [county, municipal or] state government.

~~[Parties to the contractual agreement shall be the county, the~~
~~county clerk and the data processor.]~~

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

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

Section 38. Section 1-5-30 NMSA 1978 (being Laws 1989,
Chapter 298, Section 1) is amended to read:

"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

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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 entering data into the central database; and

(6) provide a centralized system for each county to [~~identify~~] enter the precinct to which a voter should be assigned for voting purposes [~~and~~

~~(7) prescribe a procedure for phasing in or converting existing computerized records generated and maintained pursuant to the Automated Voter Records System Act]."~~

Section 39. Section 1-5-31 NMSA 1978 (being Laws 1989, Chapter 298, Section 2) is amended to read:

"1-5-31. UNIFORM PROCEDURES FOR COUNTIES.--The secretary of state shall:

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A. assist county clerks by devising uniform

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procedures and forms that are compatible with the statewide computerized voter registration system;

B. ~~[develop and]~~ provide to each county clerk the computer software necessary for the use and maintenance of the statewide computerized voter registration system; and

C. adopt such rules and regulations as are necessary to establish and administer the statewide computerized voter registration system and to require deadlines and time limits for the updating of voter files ~~[and to provide for the update of voter files at each polling place for the next election]."~~

Section 40. A new section of Chapter 1, Article 6 NMSA 1978 is enacted to read:

"[NEW MATERIAL] EARLY VOTING--USE OF ABSENTEE VOTING PROCEDURES--ALTERNATE VOTING LOCATIONS.--

A. Commencing on the third Saturday prior to an election, an early voter may vote in person on a voting system at an alternate voting location established by the county clerk. In class A counties with more than two hundred thousand registered voters, the county clerk shall establish not less than twelve alternate voting locations as a convenience to the voters. For class A counties with two hundred thousand registered voters or fewer, the county clerk shall establish not less than four alternate voting locations. In non-class A counties with more than ten thousand registered voters, the

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county clerk shall establish at least one alternate voting location. In non-class A counties with ten thousand registered voters or fewer, early voting shall be conducted in the office of the county clerk or at such alternative locations as may be designated by the county clerk. Early voting may be done at an alternate location from 12:00 p.m. to 8:00 p.m., Tuesday through Friday, and 10:00 a.m. to 6:00 p.m. Saturday through the Saturday immediately prior to the election.

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B. 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 in accordance with secretary of state rules. The county clerk or the clerk's authorized representative shall make an appropriate designation on the signature roster next to the voter's name indicating that the voter has voted early."

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Section 41. A new section of Chapter 1, Article 6 NMSA 1978 is enacted to read:

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"[NEW MATERIAL] THIRD PARTY AGENTS COLLECTING ABSENTEE BALLOT APPLICATIONS.--

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A. A person or organization that is not part of a government agency and that collects absentee ballot

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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.

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B. The secretary of state shall establish procedures to ensure that absentee ballot applications collected in accordance with Subsection A of this section can be traced to the person and organization collecting the applications.

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C. A person who intentionally alters or fails to submit a completed absentee ballot application is guilty of a fourth degree felony."

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Section 42. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended by Laws 2003, Chapter 356, Section 18 and by Laws 2003, Chapter 357, Section 1) is amended to read:

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"1-6-4. ABSENTEE BALLOT APPLICATION--FEDERAL QUALIFIED ELECTOR--OVERSEAS VOTER.--

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

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The form shall allow the applicant to receive an absentee

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ballot for all elections within an election cycle.

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B. Application by a voter for an absentee ballot

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shall be made only on a form prescribed by the secretary of state in accordance with federal law. The form shall identify the applicant and contain information to establish his 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. [~~The form shall allow the applicant to receive an absentee ballot for all elections within an election cycle.~~]

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C. Each application for an absentee ballot shall be subscribed by the applicant and shall require the applicant's printed name, year of birth and unique identifier to be supplied by the applicant, which shall constitute the required form of identification, except for new registrants that have registered by mail and at that time did not provide acceptable identification.

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D. An application for an absentee ballot by a federal qualified elector or an overseas voter shall be accepted at any time preceding the general election."

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Section 43. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended by Laws 2003, Chapter 355, Section 4 and by Laws 2003, Chapter 356, Section 19 and also by Laws 2003, Chapter 357, Section 2) is amended to read:

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"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT

~~undersecretary of state shall receive and delete~~

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~~[MARKING AND DELIVERY OF BALLOT IN PERSON].--~~

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A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant does not have a valid certificate of registration on file in the county and [he] is not a federal qualified elector or if the applicant states [he] that the applicant is a federal qualified elector but [his] the application indicates [he] the applicant is not a federal qualified elector, 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 [his] 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 [he] the voter must submit with [his] the absentee ballot ~~[a copy of a current and valid photo identification; utility bill, bank statement,~~

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~~government check, paycheck or other government document that shows the name and address of the applicant]~~ 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 county clerk finds that the applicant is a voter other than a federal qualified elector or overseas voter, 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. If the county clerk finds that the applicant is a federal qualified elector or overseas voter, the county clerk shall mark the application "accepted" and beginning forty-five days before the election, mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. An absent voter shall not be permitted to change ~~his~~ party affiliation during those periods when change

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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. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall provide the voter an absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the voter leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code other than is provided in this subsection. It ~~[shall be]~~ is unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office or alternate voting location. 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

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election and from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter, pursuant to the provisions of Section 1-12-15 NMSA 1978, may be assisted by one person of the voter's choice.

~~[G. Commencing on the third Saturday prior to an election, an absent voter may vote in person, on an electronic voting machine at an alternate location established by the county clerk. In class A counties with more than two hundred thousand registered voters, the county clerk shall establish not less than twelve alternate voting locations as a convenience to the voters. For class A counties with two hundred thousand registered voters or less, the county clerk shall establish not less than four alternate voting locations. In non-class A counties with more than ten thousand registered voters, the county clerk shall establish at least one alternate voting location. In non-class A counties with ten thousand registered voters or less, early voting shall be conducted in the office of the county clerk or at such alternative locations as may be designated by the county clerk. Absentee voting may be done at an alternate location from 12:00 p.m. to 8:00 p.m., Tuesday through Friday, and 10:00 a.m. to 6:00 p.m. Saturday through the Saturday immediately prior to the election. The county clerk shall ensure that procedures established for processing an absent voter application and for voting by~~

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~~absentee ballot are complied with at each alternate location.~~

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~~H.] G. Absentee ballots shall be airmailed or, if
so requested, electronically transmitted to applicants~~

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temporarily domiciled inside or outside the continental limits

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of the United States not later than on the ~~[Thursday]~~ Friday

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immediately prior to the date of the election.

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~~[F.] H. An absentee ballot shall not be delivered~~
or mailed by the county clerk to any person other than the
applicant for such ballot.

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

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~~K.] I. 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~~

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begins.

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J. The secretary of state shall establish

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procedures for the submittal, when required by federal law, of required voter identification with mailed-in absentee ballots."

Section 44. Section 1-6-5.4 NMSA 1978 (being Laws 1999, Chapter 267, Section 3) is amended to read:

"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 [~~including procedures specifying that machines and ballot containers remain locked and that ballots not be removed prior to election day~~]; 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 [~~and sorting of absentee ballots by representative district for canvassing purposes~~].

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."

Section 45. Section 1-6-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 134, as amended) is amended to read:

"1-6-8. ABSENTEE BALLOT ENVELOPES.--

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A. The secretary of state shall prescribe the form

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of, procure and distribute to each county clerk a supply of:

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(1) official inner envelopes for use in
3 sealing the completed absentee ballot;

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(2) official mailing envelopes for use in
5 returning the official inner envelope to the county clerk;
6 provided the official mailing envelope for absentee ballots in
7 a general election shall contain no designation of party
8 affiliation;

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(3) absentee ballot instructions, describing
10 proper methods for completion of the ballot and returning it;
11 and

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(4) official transmittal envelopes for use by
13 the county clerk in mailing absentee ballot materials.

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

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C. The reverse of each official mailing envelope
25 shall contain a form to be executed by the voter completing the

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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 unique identifier, year of birth and name. The envelope shall have a security flap to cover this information."

Section 46. Section 1-6-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 135, as amended) is amended to read:

"1-6-9. MANNER OF VOTING.--

A. A person voting pursuant to the Absent Voter Act shall secretly mark ~~[his]~~ the absentee ballot in the manner provided in the Election Code for marking emergency paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope, which shall include an affirmation by the voter under penalty of perjury that the facts stated in the form are true and the voter's name, year of birth and unique identifier.

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B. Federal qualified electors and overseas voters shall either deliver or mail the official mailing envelope or

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electronically transmit the absentee ballot to the county clerk of their county of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the county clerk of the county of residence or former residence as the case may be. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence."

Section 47. Section 1-6-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 136, as amended) is amended to read:

"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 [~~except as provided in Subsection H of Section 1-6-14 NMSA 1978~~] until it is delivered [~~on election day~~] to the proper absent voter precinct board or until it is canceled and destroyed in accordance with law.

B. The county clerk shall accept completed official mailing envelopes until 7:00 p.m. on election day and the absent voter precinct board shall accept completed official mailing envelopes from precincts within the county of the voters who turned in their absentee ballots at their precinct by the close of polls on election day. Any completed official mailing envelope received after that time shall not be

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

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

Section 48. Section 1-6-10.1 NMSA 1978 (being Laws 2003, Chapter 357, Section 5) is amended to read:

"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."

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Section 49. Section 1-6-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 137, as amended) is amended to read:

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"1-6-11. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER PRECINCTS.--

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A. Beginning on the Thursday immediately preceding election day, the county clerk may deliver to the special

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deputy county clerk for delivery to the absent voter precinct

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board the absentee ballots received prior to the delivery day.

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The special deputy county clerk shall issue a receipt for all

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ballots delivered for the county clerk and shall observe the

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listing of the names on the official mailing envelopes in the

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signature rosters. The special deputy county clerk shall then

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obtain a receipt executed by the presiding judge and each

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election judge and shall return the receipt to the county clerk

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for filing. The receipts shall specify the number of envelopes

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received by the special deputy county clerk from the county

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clerk for the absent voter precinct and the number of envelopes

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received by the absent voter precinct board from the special

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deputy county clerk.

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~~[A.]~~ B. On election day, the county clerk shall

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deliver ~~[the]~~ all absentee ballots not yet delivered to the

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absent voter precinct board but received prior to 7:00 p.m. on

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election day to the special deputy county clerks for delivery

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to the absent voter precinct boards and completed official

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mailing envelopes from precincts within the county from voters

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who turned in their absentee ballots at their precinct by the
close of polls on election day. [~~The absentee ballots for each~~
~~absent voter precinct shall be separately wrapped, and~~] The
special deputy county clerk shall issue a receipt for all
ballots delivered for the county clerk [~~Upon delivery of the~~
~~absentee ballots to the absent voter precinct board, the~~
~~special deputy county clerk shall remain in the polling place~~
~~of the absent voter precinct until he has observed the opening~~
~~of the official mailing envelope, the deposit of the ballot in~~
~~the locked ballot box~~] and shall observe the listing of the
names on the official mailing envelope in the signature
rosters. [~~Upon such delivery of absentee ballots~~] The special
deputy county clerk shall then obtain a receipt executed by the
presiding judge and each election judge and [~~he~~] shall return
[~~such~~] 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.

[~~B.~~] 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

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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:

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(1) obtain a receipt executed by the presiding judge and each election judge specifying the serial number and the seal number of the machine [~~and shall~~];

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(2) verify the public counter number on the machine; and [~~he shall~~]

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(3) return the receipt to the county clerk for filing."

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Section 50. Section 1-6-14 NMSA 1978 (being Laws 1971, Chapter 317, Section 11, as amended by Laws 2003, Chapter 354, Section 1 and by Laws 2003, Chapter 356, Section 22) is amended to read:

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"1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER

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PRECINCT BOARDS.--

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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.

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B. If the voter's signature is missing, the presiding judge shall write "Rejected" on the front of the

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official mailing envelope. The election clerks shall enter the

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voter's name in the signature rosters and shall write the

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

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C. A lawfully appointed challenger may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

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

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

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

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D. If the official mailing envelope has been properly subscribed and the voter has not been challenged:

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~~[(1) the election judges shall open the official mailing envelope and deposit the ballot in its still-sealed official inner envelope in the locked ballot box; and~~

~~(2)] (1) the election clerks shall enter the absent voter's name and residence address as shown on the official mailing envelope in the signature rosters and shall mark the notation "AB" opposite the voter's name in the "Notations" column of the signature rosters; and~~

~~(2) only between 8:00 a.m. and 5:00 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.~~

~~E. [Prior to the closing of the polls, the election judges and the presiding election judge may either remove the absentee ballots from the official inner envelopes and count and tally the results of absentee balloting or, under the personal supervision of the presiding election judge and one election judge from each major political party, count and tally the absentee ballots on an electronic voting machine the same as if the absent voters had been present and voted in person.]~~

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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.

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F. Absentee ballots shall be counted and tallied on an electronic voting machine as provided in the Election Code.

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

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~~[H. The county clerk may convene the absent voter precinct board no more than three days before the day of the election to alphabetize, enter on the roster and sort the absentee ballots by legislative district; provided that a member of the absent voter precinct board shall not open an official mailing envelope or count and canvass any absentee ballot prior to the day of the election.]~~

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~~F.]~~ H. 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."

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Section 51. Section 1-6-20 NMSA 1978 (being Laws 1969, Chapter 54, Section 3, as amended) is amended to read:

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"1-6-20. CREATION OF ABSENT VOTER PRECINCT.--

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A. The board of county commissioners shall adopt a resolution creating, for absent voting purposes only, an absent

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voter precinct for each [~~state representative district in the~~
~~county. The boundaries of such precinct shall coincide with~~
~~the boundaries of the state representative district except for~~
~~multicounty representative districts. In multicounty~~
~~representative districts, the boundaries of the absent voter~~
~~precinct in each county shall coincide with the boundaries of~~
~~that portion of the representative district lying within the]~~
county.

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

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Section 52. Section 1-6-22 NMSA 1978 (being Laws 1969,
Chapter 54, Section 4, as amended) is amended to read:

"1-6-22. DESIGNATION OF ABSENT VOTER PRECINCT POLLING
PLACE.--The board of county commissioners of each county shall
designate a polling place in each absent voter precinct at the
time [~~such~~] the precinct is created [~~or consolidated~~]."

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Section 53. Section 1-6-23 NMSA 1978 (being Laws 1975,
Chapter 255, Section 95, as amended) is amended to read:

"1-6-23. ABSENT VOTER PRECINCT POLLING PLACE--HOURS ON
ELECTION DAY AND SUBSEQUENT DAYS.--The county clerk or

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statutorily appointed supervisor of the election shall
determine the hours during which the absent voter precinct

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polling place shall be open for delivery and registering of
2 absentee ballots on the five days preceding election day and
3 the delivery, registering and counting of ballots on election
4 day and subsequent days until all ballots are counted."

5 Section 54. Section 1-8-52 NMSA 1978 (being Laws 1977,
6 Chapter 322, Section 8, as amended) is amended to read:

7 "1-8-52. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED
8 STATES REPRESENTATIVE SPECIAL ELECTIONS--NOMINATING PETITIONS--
9 CIRCULATION--DATE OF FILING.--

10 A. Declarations of independent candidacy and
11 nominating petitions shall be filed with the proper filing
12 officer during the period commencing at 9:00 a.m. on the
13 [~~second Tuesday of July~~] day following the primary election of
14 each even-numbered year and ending at 5:00 p.m. on that same
15 day and not later than 5:00 p.m. on the fifty-sixth day
16 preceding any United States representative special election.

17 B. Declarations of independent candidacy and
18 nominating petitions for the office of president of the United
19 States shall be filed with the proper filing officer during the
20 period commencing at 9:00 a.m. on the [~~fifty-sixth day prior to~~
21 ~~the general election~~] day following the primary election and
22 ending at 5:00 p.m. on the same day."

23 Section 55. A new section of Chapter 1, Article 9 NMSA
24 1978 is enacted to read:

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25 "[NEW MATERIAL] VOTING SYSTEM--VOTER VERIFIABLE PAPER

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TRAIL.--

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A. All voting systems used in elections covered by the Election Code shall have a voter verifiable and auditable paper trail; provided, however, that voting systems owned or used by a county on the effective date of this 2005 act that do not have a voter verifiable and auditable paper trail may be used until the first occurrence of the following:

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(1) sufficient federal, state or local funds are available to replace the voting system; or

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(2) December 31, 2006.

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B. In any event, no voting system shall be used that has not been certified by the secretary of state.

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C. As used in this section:

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(1) "voting system" includes a paper ballot system in which the voter physically marks the paper ballot to indicate the voter's choices; and

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(2) "voter verifiable and auditable paper trail" means a paper record of the voter's choices, viewable prior to casting the ballot, which may be the paper ballot itself; the paper trail shall be used by the state or its contractor to check either the veracity of a machine count or the count itself, or may be used in a recount proceeding, and in case of a discrepancy, the voter verifiable and auditable

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paper trail shall be considered the true and correct record of the voter's choices."

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Section 56. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

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"[NEW MATERIAL] 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 other states or by the national association of state election directors. Tests and inspections conducted pursuant to this section shall follow the testing procedures in Section 1-9-14 NMSA 1978 and shall be completed within six months of the date on which testing begins; provided, however, that 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."

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Section 57. Section 1-9-4.2 NMSA 1978 (being Laws 2003, Chapter 356, Section 9) is amended to read:

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"1-9-4.2. DEFINITION OF A VOTE.--

A. A vote on a touch-screen direct recording

electronic voting system or electronic voting system consists

of a voter's selection of a candidate or answer to a ballot

question selected by the electro-optical ballot display of the

device, followed by the voter activating the cast vote

indicator.

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B. A vote on a paper ballot card used on an

electronic vote tabulating marksense voting system, optical

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scan vote tabulating system or high-speed central count
marksense 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 card marked in
accordance with the instructions for that ballot type. If the
paper ballot card is marked indistinctly or not marked
according to the instructions for that ballot type, only a
cross (X) or a check (✓) within the voting response area shall
be counted. A vote on a paper ballot card shall also be
counted if, on a ballot type requiring the completion of an
arrow to indicate a voter's selection, the voter has marked an
arrowhead on the tail portion of the arrow in the voting
response area or has circled the name of the preferred
candidate or both."

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Section 58. A new section of Chapter 1, Article 12 NMSA
1978 is enacted to read:

"[NEW MATERIAL] 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 the precinct in which the voter is registered if the voter
presents the official mailing envelope to the election judge
before the polls close on election day.

B. The election judge shall note on the signature

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roster that the voter delivered the absentee ballot in person on election day. The precinct board shall deliver the unopened official mailing envelopes to the absent voter precinct board before midnight on election day."

Section 59. A new section of Chapter 1, Article 12 NMSA 1978 is enacted to read:

"[NEW MATERIAL] 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."

Section 60. A new section of Chapter 1, Article 12 NMSA 1978 is enacted to read:

"[NEW MATERIAL] CONDUCT OF ELECTION--USE OF VOTER'S COPY OF CERTIFICATE OF REGISTRATION--PROCEDURES.--If a voter whose name is not in the signature roster presents the voter's

~~duplicate of the voter's certificate of registration, the voter shall be allowed to vote on a provisional ballot in the proper~~

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precinct in accordance with the provisions of Section 1-5-10 NMSA 1978. The election judge shall inform the voter that the voter will be notified by the county clerk to provide a copy 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."

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Section 61. Section 1-5-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 112, as amended) is recompiled as Section 1-12-7.1 NMSA 1978 and is amended to read:

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"1-12-7.1. VOTER LISTS--SIGNATURE ROSTERS--USE DURING ELECTION.--

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A. Each precinct board using voter lists shall post securely at or near the entrance of the polling place one copy of the precinct voter list for use of the voters prior to voting. The posted copy shall not contain a listing of voter social security numbers.

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

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

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D. The judge assigned to the precinct voter list

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used for confirmation of registration and voting shall
determine that each person offering to vote is registered and,
in the case of a primary election, that the voter is registered
in a party designated on the primary election ballot. If the
person's registration is confirmed by the presence of [his] the
person's name on the precinct voter list ~~[or if the person~~
~~presents a certificate under the seal and signature of the~~
~~county clerk showing that he is entitled to vote in the~~
~~election and to vote in that precinct]~~ and the voter provides
the required voter identification, the judge shall announce to
the election clerks the list number and the name of the voter
as shown on the precinct voter list. If the voter does not
provide the required voter identification, the voter shall be
allowed to vote on a provisional ballot and shall provide the
required voter identification to the county clerk's office
before the county canvass begins, 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 ballot shall be qualified and
the voter shall not vote on any other type of ballot.

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E. The election clerk shall locate that list number
and name on the signature roster and shall require the voter to
sign [his] the voter's usual signature or, if unable to write,
to make [his] the voter's mark opposite [his] the voter's
printed name. If the voter makes [his] the voter's mark, it

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shall be witnessed by one of the judges of the precinct board.

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If the signature roster indicates that the voter is required to

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present a physical form of identification before voting, the

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election judge shall ask the voter for [~~a current and valid~~

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~~photo identification or a copy of a current utility bill, bank~~

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~~statement, government check, paycheck or other government~~

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~~document that shows and matches the name and address of the~~

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~~voter as indicated on the signature roster] the required~~

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physical form of identification. If the voter does not provide

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the required identification, [~~he~~] the voter shall be allowed to

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vote on a provisional paper ballot; provided, however, that if

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the voter brings the required physical form of identification

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to the polling place after casting a provisional ballot, that

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ballot shall be qualified and the voter shall not vote on any

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other type of ballot.

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F. The election judge shall follow the procedures

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provided for in Sections [~~1-5-12~~] 1-12-7.2 and 1-12-8 NMSA 1978

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if a person whose name does not appear on the signature [~~list~~]

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roster requests to vote or a person is required to vote on a

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provisional paper ballot.

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G. A voter shall not be permitted to vote until

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[~~he~~] the voter has properly signed [~~his~~] the voter's usual

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signature or made [~~his~~] the voter's mark in the signature

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H. After the poll is closed, the election clerk in

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charge of a signature roster shall draw a single horizontal line in ink through each signature space in the signature roster where no signature or mark appears."

Section 62. Section 1-12-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 247, as amended) is amended to read:

"1-12-8. CONDUCT OF ELECTION--PROVISIONAL VOTING.--

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

(1) ~~his~~ the person's residence is within the boundaries of the county in which ~~he~~ the person offers to vote;

(2) ~~his~~ the person's name is not on the list of persons submitting absentee ballots; and

(3) ~~he~~ the person executes a statement swearing or affirming to the best of ~~his~~ the person's knowledge that ~~he~~ 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~~ has not previously voted in a general election in New Mexico or has been purged from the voter list;

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(2) ~~[did not register to vote in person]~~
registered to vote by mail;

3

(3) did not submit the physical form of the
required voter identification with the certificate of
registration form; and

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(4) does not present to the election judge
~~[one of the following forms of]~~ a physical form of the required
voter identification ~~[that matches the name and address on the~~
~~voter's certificate of registration~~

10

~~(a) a current and valid photo~~
~~identification; or~~

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~~(b) a copy of a current utility bill,~~
~~bank statement, government check, paycheck or other government~~
~~document that shows the name and address of the voter].~~

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C. A voter shall vote on a provisional 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.

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~~[E-]~~ D. An election judge 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 precinct officer. The election judge shall

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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.

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[D-] E. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code of this state, and voting on the basis of such falsely executed statement constitutes fraudulent voting."

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Section 63. Section 1-12-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 249, as amended) is amended to read:

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"1-12-10. CONDUCT OF ELECTION--VOTER'S NAME, ADDRESS, SIGNATURE.--

12

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A. When a voter presents himself at the polls to vote, he shall announce his name and address in an audible tone of voice. When an election judge finds the voter's name in the signature roster, he shall in like manner repeat the name of the voter. The election judge shall then ask the voter to provide the required voter identification. The voter shall then sign his name or make his mark on the signature line in the copy of the signature roster to be returned to the county clerk. Upon the voter's name or mark being written in the signature roster, a challenge may be interposed as provided in the Election Code.

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B. ~~If a voter fails to provide the required voter identification, the voter shall be allowed to vote on a~~

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provisional ballot."

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Section 64. Section 1-12-10.1 NMSA 1978 (being Laws 2003,

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Chapter 356, Section 2) is amended to read:

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"1-12-10.1. CONDUCT OF ELECTIONS--VOTER INFORMATION.--

5

A. The secretary of state shall issue rules

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describing the voter information the county clerks shall

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display, in accordance with the federal Help America Vote Act

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of 2002, in each polling place on election day and in each

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county clerk's office and alternate location where absentee or

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early voting is taking place.

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B. Each polling place shall post a map of the

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precincts represented in that polling place and an alphabetical

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list of the voters in each precinct represented in that polling

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place."

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Section 65. Section 1-12-12 NMSA 1978 (being Laws 1969,

16

Chapter 240, Section 265, as amended) is amended to read:

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"1-12-12. CONDUCT OF ELECTION--ELIGIBILITY FOR

18

ASSISTANCE.--A voter may request assistance in voting only if

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the voter:

20

A. [he] is blind;

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B. [he] is physically disabled;

22

C. [he] is unable to read or write; [or]

23

D. [he] is a member of a language minority who has

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an inability to read well enough to exercise the elective

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franchise; or

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E. requires assistance in operating the voting system."

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3 Section 66. Section 1-12-15 NMSA 1978 (being Laws 1969,
4 Chapter 240, Section 267, as amended) is amended to read:

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5 "1-12-15. CONDUCT OF ELECTION--PERSONS WHO MAY ASSIST
6 VOTER.--

5

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7 A. In any primary, general or statewide special
8 election, if a voter who has requested assistance in marking
9 ~~[his]~~ the ballot is blind, has a physical disability, has an
10 inability to read or write or is a member of a language
11 minority who has requested assistance pursuant to Subsection D
12 of Section 1-12-12 NMSA 1978, ~~[he]~~ the voter may be accompanied
13 into the voting machine only by a person of ~~[his]~~ the voter's
14 own choice other than the voter's employer or an agent of that
15 employer, an officer or agent of the voter's union or a
16 candidate whose name appears on the ballot in this election.

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

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20 Section 67. Section 1-12-19.1 NMSA 1978 (being Laws 1981,
21 Chapter 156, Section 2, as amended) is amended to read:

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22 "1-12-19.1. GENERAL ELECTIONS--SPECIAL ELECTIONS--WRITE-
23 IN CANDIDATES.--

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24 A. A person desiring to be a write-in candidate in
25 a ~~[general election, a]~~ special election for United States

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representative or a statewide special election shall file with the proper filing officer a declaration of intent to be a write-in candidate. The declaration of intent shall be filed between 9:00 a.m. and 5:00 p.m. on the sixty-third day immediately preceding the election. A person desiring to be a write-in candidate in a general election shall file the declaration of intent between 9:00 a.m. and 5:00 p.m. on the day after the primary election.

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B. The form of the declaration of intent shall be prescribed by the secretary of state and shall contain a sworn statement by the candidate that ~~[he]~~ the candidate is qualified to be a candidate for and to hold the office for which ~~[he]~~ the candidate is filing.

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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, except that ~~[he]~~ the candidate shall not be entitled to have ~~[his]~~ the candidate's name printed on the ballot.

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D. The secretary of state shall, not less than ten days before the general election, certify the names of the declared write-in candidates to the county clerks of every county affected by such candidacy.

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E. No person shall be a write-in candidate in the

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general election who was a candidate in the primary election immediately prior to the general election.

F. A vote for a write-in candidate shall be counted and canvassed only if:

(1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of intent to be a write-in candidate and misspellings of the above combinations that can be reasonably determined by a majority of the members of the precinct board to identify a declared write-in candidate; and

(2) the name is written in the proper office or entered upon the keyboard on the voting machine or on the proper line provided on a marksense ballot, absentee ballot or emergency paper ballot for write-in votes for the office for which the candidate has filed a declaration of intent.

G. No unopposed write-in candidate shall have ~~[his]~~ an election certified unless ~~[he]~~ the candidate receives at least the number of write-in votes as ~~[he]~~ the candidate would need signatures on a nominating petition pursuant to the requirements in Section 1-8-33 NMSA 1978.

H. A write-in vote shall be cast by writing in the name. As used in this section, "write-in" does not include the ~~imprinting of any name by rubber stamp or similar device or the~~ imprinting of any name by rubber stamp or similar device or the

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use of preprinted stickers or labels."

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Section 68. Section 1-12-25.2 NMSA 1978 (being Laws 2003, Chapter 356, Section 3) is amended to read:

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"1-12-25.2. CONDUCT OF ELECTION--PROVISIONAL VOTING--
INFORMATION TO VOTER--STATUS OF VOTER'S BALLOT.--

5

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A. If a voter is required to vote on a provisional paper ballot, the 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.

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B. The county clerk shall establish 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. Access to information about an individual voter's provisional ballot is restricted to the voter who cast the ballot.

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C. Within ten days after the election, the county clerk shall notify by mail each person whose provisional ballot was not counted of the reason the ballot was not counted. The voter shall have ten days from the date of the mailing to appeal to the county canvassing board a decision to reject the voter's ballot. The secretary of state shall establish procedures for handling appeals to the canvassing board."

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Section 69. Section 1-12-25.3 NMSA 1978 (being Laws 2003,

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Chapter 356, Section 6) is amended to read:

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"1-12-25.3. PROVISIONAL PAPER BALLOTS--REQUIRED

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INFORMATION.--

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A. At a minimum, the following information shall be printed on the outer envelope for a provisional paper ballot:

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(1) the name and signature of the voter;

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(2) the voter's registered address, both present and former if applicable;

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(3) the voter's date of birth;

10

(4) the reason for using the ballot;

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(5) the precinct and the polling place at which the voter has voted;

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(6) the voter's social security number; and

14

(7) sufficient space to list the disposition of the ballot after review by the county clerk.

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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 ~~[eligibility]~~ the voter is a qualified elector."

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Section 70. Section 1-12-25.4 NMSA 1978 (being Laws 2003, Chapter 356, Section 7) is amended to read:

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"1-12-25.4. PROVISIONAL PAPER BALLOTS--DISPOSITION.--

24

A. Upon closing of the polls, provisional paper ballots shall be delivered to the county clerk, who shall

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determine if the ballots will be counted prior to certification of the election.

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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.

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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.

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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, the voter's registration shall be immediately restored and the provisional paper ballot counted.

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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.

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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

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to vote are counted.

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G. If the county clerk finds that the voter who

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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."

Section 71. Section 1-5-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 113, as amended) is recompiled as Section 1-12-30.1 NMSA 1978 and is amended to read:

"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.

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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 ~~[for poll books]~~ and 42 U.S.C. 1974.

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C. ~~[The punishment for willful destruction, defacement, unauthorized alteration or improper disposition]~~ Whoever willfully destroys, defaces, alters without authorization or improperly disposes of signature rosters used in an election ~~[shall be the same as for similar treatment of poll books]~~ is guilty of a fourth degree felony."

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Section 72. Section 1-12-53 NMSA 1978 (being Laws 1977, Chapter 222, Section 56, as amended) is amended to read:
"1-12-53. EMERGENCY SITUATIONS--VOTERS--EMERGENCY PAPER BALLOT--GENERAL ELECTION--MARKING.--The voter in preparing an emergency paper ballot in a general election shall ~~[A. if he wishes to vote a straight party ticket, mark a cross (X) or a check (V) in the circle beneath the name of the party and his vote shall be considered as having been cast for every candidate named on the ticket of that party on the ballot, unless he also votes for one or more candidates in some other column or for some person whose name is not printed on the ballot;~~

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~~B. if he marks a cross (X) or a check (V) in any circle and also desires to vote for a candidate of another~~

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~~political party (the ticket of which also appears on the ballot) or for any person by write-in, mark a cross (X) or a check (V) in the box immediately to the right of the name of the candidate or write in the name of the person for whom he desires to vote in the blank provided therefor and mark a cross (X) or a check (V) in the box immediately to the right thereof, and his vote shall be considered as having been cast for every candidate of the political party below the party name where he marked his cross (X) or a check (V) in the circle, except for the candidates for whom he has otherwise voted; or~~

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~~C. if he wishes, mark the ballot by omitting the cross (X) or check (V) in the circle and marking a cross (X) or a check (V) in the box immediately to the right of the name of every candidate or person for whom he desires to vote, and his vote shall be considered as having been cast only for the candidate or person opposite whose name the cross or check has been marked]~~ mark the ballot in accordance with the instructions for that ballot type."

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Section 73. A new section of Chapter 1, Article 14 NMSA 1978 is enacted to read:

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"[NEW MATERIAL] POST-ELECTION DUTIES--RANDOM VOTING SYSTEM CHECK--RECOUNT.--

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A. The secretary of state shall select a random sample of one voting system from each of the state's legislative house of representatives districts following the

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2 general election to compare by hand the voter verifiable and
 3 auditable paper trail totals with the voting system totals. In
 4 addition, in counties other than class A counties, the county
 5 clerk shall select a random sample of one absentee voting
 6 system in each absent voter precinct and compare the voting
 7 system totals with the totals of a hand recount of the paper
 8 ballots from that voting system. In a class A county the
 9 county clerk shall designate one voting system as the auditable
 10 voting system and the lesser of three percent or five hundred
 11 absentee ballots cast in the absent voter precinct shall be
 12 chosen at random to be registered and counted on that voting
 13 system. The paper ballots registered on that voting system
 14 shall be hand counted and the totals compared with the voting
 15 system totals. The check of voting systems shall occur within
 16 three days of the completion of the county canvass.

17 B. If the totals from the voting system and the
 18 paper trail are not equal for an office, the county clerk of
 19 the county in which the audited voting system is located shall
 20 conduct a hand recount for that office in the precincts of the
 21 legislative district in which the discrepancy occurred."

22 Section 74. A new section of Chapter 1, Article 14 NMSA
 23 1978 is enacted to read:

24 "[NEW MATERIAL] CONTESTS, RECOUNTS AND RECHECKS--

25 ~~underbracketed material] new delete~~
 PROVISIONAL, ABSENTEE AND OTHER PAPER BALLOTS.--The secretary
 of state shall issue rules governing and allowing procedures

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for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in the case of a contest, recount or recheck of election results. All rejected provisional paper ballot envelopes shall be included in any contest, recount or recheck of election results, and a review of the qualification of provisional ballot envelopes shall occur in a recount."

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Section 75. Section 1-14-15 NMSA 1978 (being Laws 1978, Chapter 48, Section 1, as amended) is amended to read:

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"1-14-15. RECOUNTS--RECHECKS--COST OF PROCEEDINGS.--

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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 fifty dollars (\$50.00) in cash, or a sufficient surety bond in an amount equal to fifty dollars (\$50.00), for each precinct for which a recount is demanded. 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 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.

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B. The deposit or surety bond shall be security for the payment of the costs and expenses of the recount or recheck

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in case the results of the recount or recheck are not sufficient to change the results of the election. The state canvassing board may condition the issuance of the summons on a receipt of a portion of or the full estimated costs of the recount or recheck to ensure sufficient security.

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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.

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D. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of any docket fees, mileage of the sheriff in serving summons and fees and mileage of precinct board members, at the same rates allowed witnesses in civil actions. If error or fraud has been committed by a precinct board, ~~[they]~~ the board members shall not be entitled to such mileage or fees."

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Section 76. TEMPORARY PROVISION--RECOMPILATION.--Section 1-5-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 114, as amended) is recompiled as Section 1-12-7.2 NMSA 1978.

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Section 77. REPEAL.--Sections 1-5-9, 1-5-13, 1-5-15,

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1-5-20, 1-5-27 through 1-5-29 and 1-6-21 NMSA 1978 (being Laws 1969, Chapter 240, Sections 111, 115 and 120, Laws 1977, Chapter 222, Section 11, Laws 1975, Chapter 255, Sections 81 through 83 and Laws 1975, Chapter 255, Section 93, as amended) are repealed.

Section 78. REPEAL.--Laws 2003, Chapter 356, Section 18 is repealed.

Section 79. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 72 and 74 through 78 of this act is July 1, 2005.

B. The effective date of the provisions of Section 73 of this act is January 1, 2007.

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