HOUSE VOTERS AND ELECTIONS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1156

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO ELECTIONS; DEFINING TERMS; PROHIBITING RELEASE OF
CERTAIN REGISTRATION INFORMATION; ESTABLISHING RECOUNT
PROCEDURES; ESTABLISHING COUNTING STANDARDS; ALLOWING
MESSENGERS TO PICK UP ABSENTEE BALLOTS FROM POLLING PLACES;
CHANGING PROCEDURES BY WHICH VOTING RIGHTS MAY BE RESTORED TO
FELONS; REDUCING THE PENALTY FOR FAILURE TO DELIVER AN ABSENTEE
BALLOT APPLICATION; ELIMINATING PROVISIONS ALLOWING CANDIDATES
WHO FAIL TO RECEIVE PREPRIMARY CONVENTION DESIGNATION TO BECOME
A CANDIDATE; ALLOWING THE SECRETARY OF STATE TO ASSIST IN
PREPARING BALLOTS; CHANGING PROVISIONS RELATED TO ASSISTANCE OF
VOTERS AT THE POLLS; PROVIDING PROCEDURES FOR PRESERVING AND
CLEARING VOTING SYSTEM MEMORY CARDS; GIVING THE SECRETARY OF
STATE AUTHORITY TO DETERMINE THE FORM OF THE BALLOT FOR
CONSTITUTIONAL AMENDMENTS; REMOVING CERTAIN REFERENCES TO
ABSENTEE, EMERGENCY AND PROVISIONAL BALLOTS; CHANGING THE

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1 DEADLINE FOR SCHOOL BOARD ELECTION PROCLAMATIONS; PROVIDING FOR

2 PENALTIES.

3

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

5   Section 1. A new section of the Election Code is enacted

6 to read:

7   "[NEW MATERIAL] PROHIBITION ON RELEASE OF REGISTRATION

8 INFORMATION.--The secretary of state, county clerk or any other

9 registration agent shall not release to the public a voter's

10 social security number or date of birth."

11   Section 2. A new section of the Election Code is enacted

12 to read:

13   "[NEW MATERIAL] RECOUNT PROCEDURES.--

14   A. To ensure the accuracy of electronic vote

15 tabulating systems, the secretary of state shall issue rules to

16 implement the recount procedures provided for in Subsections B

17 and C of this section.

18   B. The votes from a random selection of ballots

19 shall be tallied by hand, and the votes from the same ballots

20 shall be tabulated by an electronic vote tabulating system.

21 For statewide and federal office, the number of ballots to be

22 tallied and tabulated shall be equal to at least two percent of

23 the ballots cast in each county. For all other offices, the

24 number of ballots to be tallied and tabulated shall be equal to

25 the greater of one hundred, or five percent, of the ballots

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1 cast for the office, distributed by county where applicable.

2 C. For a statewide or federal office, if the

3 results of the hand-tally and the electronic vote tabulating

4 system tabulation differ by one-fourth of one percent or less,

5 the remaining ballots shall be recounted using electronic vote

6 tabulating systems. Otherwise, the remaining ballots shall be

7 recounted by hand.

8 D. For offices other than statewide or federal

9 offices, if the results of the hand-tally and the electronic

10 vote tabulating system tabulation differ by the greater of one

11 percent or less, or two votes, the remaining ballots shall be

12 recounted using electronic vote tabulating systems. Otherwise,

13 the remaining ballots shall be recounted by hand.

14 E. Nothing in this section prohibits a candidate

15 from requesting a hand recount in accordance with the

16 provisions of Section 1-14-15 NMSA 1978."

17 Section 3. Section 1-1-6 NMSA 1978 (being Laws 1977,

18 Chapter 222, Section 1, as amended) is amended to read:

19 "1-1-6. RECHECK AND RECOUNT.--As used in the Election

20 Code:

21 A. "recheck" pertains to electronic [voting] vote

22 tabulating systems and means a verification procedure [where]

23 whereby a printout of the electronic record of votes cast in an

24 election is made from each electronic memory device in the

25 electronic [voting] vote tabulating system and the results are

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1 compared with the results shown on the official returns; and

2 B. "recount" pertains to emergency paper ballots,

3 absentee ballots, provisional paper ballots, optical scan paper

4 ballots [voter verifiable and auditable paper ballots printed

5 by electronic voting systems] and any other paper ballot and

6 means a verification procedure whereby the voters' selections

7 [on the paper ballots may be] for an office are retabulated by

8 feeding the ballots into an electronic vote tabulating system,

9 and the voters' selections on ballots that cannot be read by

10 the system are counted by hand and the results compared with

11 the results shown on the official returns."

12 Section 4. Section 1-1-23 NMSA 1978 (being Laws 2005,

13 Chapter 270, Section 5) is amended to read:

14 "1-1-23. UNIQUE IDENTIFIER.--As used in the Election

15 Code, "unique identifier" means [the last four digits of] a

16 randomly generated series of numbers, letters or symbols

17 assigned to a voter, which shall not be the voter's social

18 security number or date of birth."

19 Section 5. Section 1-1-25 NMSA 1978 (being Laws 2005,

20 Chapter 270, Section 7) is amended to read:

21 "1-1-25. VOTER IDENTIFICATION CARD.--As used in the

22 Election Code, "voter identification card" means a document

23 containing the person's name, address and precinct number that

24 is issued by the county clerk or the [voter's copy of the

25 voter's certificate of registration] secretary of state."

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1   Section 6. Section 1-2-20 NMSA 1978 (being Laws 1969,

2   Chapter 240, Section 39, as amended) is amended to read:

3   "1-2-20. MESSENGERS--COMPENSATION.--

4   A.   The county clerk may appoint messengers to

5   deliver ballot boxes, poll books, keys, election supplies and

6   other materials pertaining to the election. <u>Messengers may</u>

7   <u>also be authorized to collect absentee ballots from polling</u>

8   <u>places and deliver those absentee ballots to locations</u>

9   <u>designated by the county clerk.</u>

10   B.   Messengers shall be paid mileage as provided in

11 the Per Diem and Mileage Act each way over the usually traveled

12 route. The mileage shall be paid within thirty days following

13 the date of election if funds are available for payment."

14   Section 7. Section 1-4-27.1 NMSA 1978 (being Laws 2001,

15 Chapter 46, Section 1, as amended) is amended to read:

16   "1-4-27.1. CANCELLATION OF REGISTRATION FOLLOWING

17 CONVICTION--ELIGIBILITY FOR [REGISTRATION] <u>VOTING</u> UPON

18 SATISFACTION OF CONDITIONS.--

19   A.   When a voter has been convicted of a felony, the

20 [clerk of the district court where the conviction occurred

21 shall file a certificate of felony conviction with the

22 secretary of state. The secretary of state shall notify the

23 county clerk of the county where the convicted felon is

24 registered to vote.

25   B.   For purposes of cancellation of registration,

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1   verification of a felony conviction may be obtained by

2   comparing the voter's registration record with the certificate

3   of felony conviction filed by the clerk of the district court.

4   C. The certificate of felony conviction shall

5   include the voter's:

6   (1) name;

7   (2) age;

8   (3) sex;

9   (4) state tracking number;

10   (5) case number;

11   (6) birth date;

12   (7) social security number, if any;

13   (8) date of conviction; and

14   (9) address] voter's registration shall be

15   cancelled.

16   [D.] B. When a voter convicted of a felony [for

17   which a sentence of imprisonment is authorized but deferred or

18   suspended by order of the court] is placed on supervised

19   probation and has completed the conditions of [the court order,

20   the clerk of the court shall notify the secretary of state that

21   the person is eligible for registration. The secretary of

22   state shall notify all county clerks that] supervision as

23   ordered by the court, the person is eligible for registration.

24   [E.] C. When a voter convicted of a felony is

25   unconditionally discharged from a correctional facility under

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the jurisdiction of the corrections department, or is

conditionally discharged from a facility under the jurisdiction

of the corrections department and has completed all conditions

of probation or parole, [the corrections department shall

notify the secretary of state that the person is eligible for

registration. The secretary of state shall notify all county

clerks that] the person is eligible for registration.

[F.] D. When a voter convicted of a federal offense

constituting a felony is unconditionally discharged from a

correctional facility under the jurisdiction of a federal

corrections agency [or is conditionally discharged from a

correctional facility under the jurisdiction of a federal

corrections agency] and has completed all conditions of

probation or parole, [the federal agency having jurisdiction of

that person shall notify the secretary of state that the person

is eligible for registration. The secretary of state shall

notify all county clerks that] the person is eligible for

registration.

E.   The secretary of state shall promulgate rules to

implement and enforce the provisions of this section."

Section 8. 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

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1 prepared for each precinct. On the cover of the signature

2 roster shall be printed the words, "Copy for the County Clerk".

3 Upon its preparation and certification as to its accuracy and

4 completeness, the county clerk shall deliver the copy of the

5 signature roster to the precinct board.

6 B. The county clerk shall prepare three copies of

7 the precinct voter list for each precinct. Of the three copies

8 prepared, one copy shall not include [voter social security

9 numbers] the voters' unique identifiers. The other two shall

10 contain [only the last four digits of] the [voter's social

11 security number] voters' unique identifiers. The county clerk

12 shall deliver two of the copies to each precinct board. One

13 copy of the precinct voter list shall be retained by the county

14 clerk for verification purposes on election day and one copy

15 for the secretary of state shall be marked to verify those

16 voters on the list who voted.

17 C. Two copies of the county voter list, arranged in

18 alphabetical order, shall be prepared for election day for

19 verification purposes only."

20 Section 9. Section 1-6-4.3 NMSA 1978 (being Laws 2005,

21 Chapter 270, Section 41) is amended to read:

22 "1-6-4.3. THIRD PARTY AGENTS COLLECTING ABSENTEE BALLOT

23 APPLICATIONS.--

24 A. A person or organization that is not part of a

25 government agency and that collects absentee ballot

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1 applications shall submit the applications to the appropriate

2 office for filing within forty-eight hours of their completion

3 or the next business day if the appropriate office is closed

4 for that forty-eight-hour period.

5 [B. The secretary of state shall establish

6 procedures to ensure that absentee ballot applications

7 collected in accordance with Subsection A of this section can

8 be traced to the person and organization collecting the

9 applications.

10 C.] B. A person who [intentionally alters or] fails

11 to submit a completed absentee ballot application is guilty of

12 a [fourth degree felony] petty misdemeanor."

13 Section 10. Section 1-8-33 NMSA 1978 (being Laws 1973,

14 Chapter 228, Section 7, as amended) is amended to read:

15 "1-8-33. PRIMARY ELECTION LAW--NOMINATING PETITION--

16 NUMBER OF SIGNATURES REQUIRED.--

17 A. As used in this section, "total vote" means the

18 sum of all votes cast for all of the party's candidates for

19 governor at the last preceding primary election at which the

20 party's candidate for governor was nominated.

21 B. Candidates who seek preprimary convention

22 designation shall file nominating petitions at the time of

23 filing declarations of candidacy. Nominating petitions for

24 those candidates shall be signed by a number of voters equal to

25 at least two percent of the total vote of the candidate's party

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1   in the state or congressional district, or the following number

2   of voters, whichever is greater: for statewide offices, two

3   hundred thirty voters; and for congressional candidates,

4   seventy-seven voters.

5   C.   Nominating petitions for candidates for any

6   other office to be voted on at the primary election for which

7   nominating petitions are required shall be signed by a number

8   of voters equal to at least three percent of the total vote of

9   the candidate's party in the district or division, or the

10   following number of voters, whichever is greater: for

11   metropolitan court and magistrate courts, ten voters; for the

12   public regulation commission, fifty voters; for the [state

13   board of] public education commission, twenty-five voters; for

14   state representative, ten voters; for state senator, seventeen

15   voters; and for district attorney and district judge, fifteen

16   voters.

17   [D.   A candidate who fails to receive the preprimary

18   convention designation that he sought may collect additional

19   signatures to total at least four percent of the total vote of

20   the candidate's party in the state or congressional district,

21   whichever applies to the office he seeks, and file a new

22   declaration of candidacy and nominating petitions for the

23   office for which he failed to receive a preprimary designation.

24   The declaration of candidacy and nominating petitions shall be

25   filed with the secretary of state either ten days following the

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1   ~~date of the preprimary convention at which he failed to receive~~

2   ~~the designation or on the date all declarations of candidacy~~

3   ~~and nominating petitions are due pursuant to the provisions of~~

4   ~~the Primary Election Law, whichever is later.~~]"

5   Section 11. Section 1-9-4.2 NMSA 1978 (being Laws 2003,

6   Chapter 356, Section 9, as amended) is amended to read:

7   "1-9-4.2. DEFINITION OF A VOTE--<u>COUNTING OF HAND-TALLIED</u>

8   <u>BALLOTS</u>.--

9   [~~A. A vote on a touch-screen direct recording~~

10   ~~electronic voting system or electronic voting system consists~~

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

12   ~~question selected by the electro-optical ballot display of the~~

13   ~~device, followed by the voter activating the cast vote~~

14   ~~indicator.~~

15   ~~B.~~] <u>A.</u> A vote on a paper ballot [~~card~~] used on an

16   electronic vote tabulating [~~marksense voting~~] system, optical

17   scan vote tabulating system or high-speed central count

18   [~~marksense~~] vote tabulator consists of a voter's selection of a

19   candidate or answer to a ballot question indicated in the

20   voting response area of the paper ballot [~~card~~] marked in

21   accordance with the instructions for that ballot type. [~~If the~~

22   ~~paper ballot card is marked indistinctly or not marked~~

23   ~~according to the instructions for that ballot type, only a~~

24   ~~cross (X) or a check (√) within the voting response area shall~~

25   ~~be counted. A vote on a paper ballot card shall also be~~

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1 [counted if, on a ballot type requiring the completion of an

2 arrow to indicate a voter's selection, the voter has marked an

3 arrowhead on the tail portion of the arrow in the voting

4 response area or has circled the name of the preferred

5 candidate or both.]

6 B. For paper ballots that are hand-tallied, a vote

7 shall be counted if:

8 (1) the ballot is marked in accordance with

9 the instructions for that ballot type;

10 (2) the preferred candidate's name or answer

11 to a ballot question is circled;

12 (3) there is a cross or check within the

13 voting response area for the preferred candidate or answer to

14 the ballot question; or

15 (4) the voter's intent is clearly discernable

16 to the precinct judge, subject to review by the canvassing

17 board."

18 Section 12. Section 1-10-2 NMSA 1978 (being Laws 1977,

19 Chapter 222, Section 25) is amended to read:

20 "1-10-2. BALLOTS--DUTY TO PROVIDE.--The county clerk

21 shall prepare and supply the ballots used in elections

22 conducted under the Election Code. The secretary of state may

23 assist in preparing and supplying ballots. Ballots other than

24 those prepared by the county clerk or secretary of state shall

25 not be used [in such elections]."

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1   Section 13. Section 1-12-13 NMSA 1978 (being Laws 1969,

2   Chapter 240, Section 266, as amended) is amended to read:

3   "1-12-13. CONDUCT OF ELECTION--AID OR ASSISTANCE TO VOTER

4   IN MARKING BALLOT.--

5   A. When a voter who is eligible for assistance

6   pursuant to Section 1-12-12 NMSA 1978 requires assistance in

7   marking [his paper] a ballot or [recording his vote by] using

8   the voting [machine] system, the voter shall announce this fact

9   [in an audible tone] before receiving [his paper] the ballot or

10   [before entering] using the voting [machine] system.

11   B. The voter's request for assistance shall be

12   noted by [his] the voter's name in the signature roster and

13   initialed by the presiding judge.

14   C. After noting the request for assistance in the

15   signature roster, the voter shall be permitted assistance in

16   marking [his paper] the ballot or [recording his vote] using

17   the voting system as provided in Section 1-12-15 NMSA 1978.

18   D. Any person who swears falsely in order to secure

19   assistance is guilty of perjury."

20   Section 14. Section 1-12-16 NMSA 1978 (being Laws 1969,

21   Chapter 240, Section 268) is amended to read:

22   "1-12-16. CONDUCT OF ELECTION--TYPE OF ASSISTANCE.--

23   Persons [accompanying the voter into the voting booth or voting

24   machine] providing assistance to a voter may assist the voter

25   in reading and marking [and folding his paper] the ballot or

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1   [recording his vote on] using the voting [machine] system."

2   Section 15.   Section 1-13-21 NMSA 1978 (being Laws 1971,

3   Chapter 317, Section 21, as amended) is amended to read:

4   "1-13-21.   CLEARING VOTING [MACHINES] SYSTEMS.--

5   A.   Thirty days after adjournment of the state

6   canvassing board, each county clerk in the presence of the

7   district judge or [his] the district judge's designated

8   representative shall [open] clear the votes recorded on the

9   memory cards of all voting [machines] systems of the precincts

10   for which [he] the county clerk has not received [no] notice by

11   registered mail of contest or [no] judicial inquiry [and he

12   shall clear such machines of all votes cast thereon].

13   B.   The county clerk shall keep locked those memory

14   cards from voting [machines whereof] systems used in precincts

15   where a recount, judicial inquiry or inspection is sought,

16   subject to order of the district court or other authority

17   having jurisdiction of the contest or inspection.

18   C.   At least three days prior to the [opening and]

19   clearing of the voting [machines] system memory cards, the

20   county clerk shall notify the county [chairman] chair of each

21   political party participating in the election of the time,

22   place and date thereof.   The [chairman] chair of the political

23   party may be present or may have [his] the chair's accredited

24   representative present at [such opening and] the clearing.

25   [D.   Nothing in this section shall prohibit the use

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1   of voting machines in a subsequent election. If the voting

2   machine must be cleared before the thirty-day period prescribed

3   in Subsection A of this section for use in any election, the

4   county clerk shall first obtain an order from the district

5   court for such clearance.]"

6   Section 16. Section 1-16-5 NMSA 1978 (being Laws 1969,

7   Chapter 240, Section 378, as amended) is amended to read:

8   "1-16-5.   STATE CONSTITUTIONAL AMENDMENTS--[BALLOT--FORMS

9   FOR EMERGENCY AND PROVISIONAL PAPER BALLOTS AND ABSENTEE] FORM

10   OF BALLOTS.--[A.] All [emergency and provisional paper ballots

11   and absentee] ballots proposing constitutional amendments shall

12   [have printed thereon in both English and Spanish the full

13   title of the joint resolution proposing the constitutional

14   amendment and the constitutional amendment number assigned to

15   the joint resolution by the secretary of state. Below the

16   printed title, there shall be printed on the ballot two one-

17   quarter inch blank boxes. Opposite one of the blank boxes,

18   there shall be printed in both English and Spanish the word

19   "FOR", and opposite the other blank box shall be printed in

20   both languages the word "AGAINST".

21   B. There shall be printed across the top of the

22   ballot the following: "Instructions to voters: If you desire

23   to vote for the amendment, mark a cross (X) or a check (✓) or

24   any other mark clearly indicating intention in the ☐ opposite

25   the word "FOR". If you desire to vote against the amendment,

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1 mark a cross (X) or a check (✓) or any other mark clearly

2 indicating intention in the ☐ opposite the word "AGAINST"] be

3 in the form prescribed by the secretary of state."

4 Section 17. Section 1-16-6 NMSA 1978 (being Laws 1969,

5 Chapter 240, Section 379, as amended) is amended to read:

6 "1-16-6. STATE CONSTITUTIONAL AMENDMENTS--MARKING

7 [EMERGENCY AND PROVISIONAL PAPER] BALLOTS [AND ABSENTEE

8 BALLOTS].--A voter desiring to mark [his emergency or

9 provisional paper ballot or absentee] the ballot for or against

10 a proposed constitutional amendment shall do so in the manner

11 specified in the instructions printed on the ballot."

12 Section 18. Section 1-16-9 NMSA 1978 (being Laws 1969,

13 Chapter 240, Section 381, as amended) is amended to read:

14 "1-16-9. STATE CONSTITUTIONAL AMENDMENTS--SINGLE

15 [EMERGENCY AND PROVISIONAL PAPER BALLOT AND ABSENTEE] BALLOT.--

16 Proposed constitutional amendments or other questions submitted

17 to the voters [on emergency or provisional paper ballots or

18 absentee ballots] at any election shall be printed [upon] on

19 one ballot only."

20 Section 19. Section 1-22-4 NMSA 1978 (being Laws 1985,

21 Chapter 168, Section 6, as amended) is amended to read:

22 "1-22-4. REGULAR ELECTION--PROCLAMATION--PUBLICATION.--

23 A. The board shall by resolution issue a public

24 proclamation in Spanish and English calling a regular school

25 district election within the school district on the date

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1   prescribed by the School Election Law. The proclamation shall

2   be filed by the superintendent with the county clerk of record

3   on the last [Friday] Tuesday in November of the even-numbered

4   year immediately preceding the date of the election.

5   B.   The proclamation shall specify:

6   (1)   the date when the election will be held;

7   (2)   the positions on the board to be filled;

8   (3)   the date on which declarations of

9   candidacy are to be filed;

10   (4)   the date on which declarations of intent

11   to be a write-in candidate are to be filed;

12   (5)   the questions to be submitted to the

13   voters;

14   (6)   the precincts in each county in which the

15   election is to be held and the location of each polling place;

16   (7)   the hours each polling place will be open;

17   and

18   (8)   the date and time of the closing of the

19   registration books by the county clerk of record as required by

20   law.

21   C.   After filing the proclamation with the county

22   clerk of record and not less than fifty days before the date of

23   the election, the county clerk of record shall publish the

24   proclamation at least once in a newspaper of general

25   circulation within the school district. The publication of the

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proclamation shall conform to the requirements of the federal

Voting Rights Act of 1965, as amended."

Section 20.   EFFECTIVE DATE.--The effective date of the

provisions of this act is July 1, 2007.

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