

AN ACT

RELATING TO ELECTIONS; UPDATING PROVISIONS IN THE ELECTION CODE TO COMPORT WITH THE USE OF PAPER BALLOTS; REMOVING REFERENCES TO EMERGENCY PAPER BALLOTS FROM THE ELECTION CODE; PROVIDING FOR THE HANDLING OF PAPER BALLOTS; AMENDING, REPEALING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

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

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

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

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

Section 2. Section 1-2-12 NMSA 1978 (being Laws 1969,

Chapter 240, Section 32, as amended) is amended to read:

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

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

- (1) a presiding judge;
- (2) one election judge from each of the major political parties;
- (3) one clerk from each of the major political parties; and
- (4) if a major party has no registered, qualified elector who is able to fill the position as election judge or election clerk, a registered, qualified elector from another major party, chosen by the county clerk to fill the vacant position.

B. For primary, general and special federal elections, the precinct board shall consist of:

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

C. For all other elections, the precinct board shall consist of:

- (1) a presiding judge;

(2) one election judge; and

(3) one election clerk.

D. If the county clerk determines that additional election clerks are needed in a precinct, the clerk may appoint such additional election clerks as the clerk deems necessary; provided, however, that such appointments for partisan elections shall be made in the manner that provides for representation from all major political parties.

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

Section 3. Section 1-2-23 NMSA 1978 (being Laws 1969, Chapter 240, Section 42, as amended) is amended to read:

"1-2-23. CHALLENGERS--PERMITTED ACTIVITIES.--

A. A challenger or alternate challenger, upon presentation of the written appointment to the precinct board, shall be permitted to be present from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close.

B. A challenger or alternate challenger, for the purpose of interposing challenges, may:

(1) inspect the registration book or

precinct voter list for the purpose of determining whether the challenger or alternate challenger desires to interpose a challenge;

(2) inspect the poll books, registration book or signature rosters to determine whether entries are being made in accordance with the Election Code;

(3) examine each voting machine before the polls are opened to compare the number on the metal seal and the numbers on the counters with the numbers on the key envelope and to see that the voting machine is ready for voting at the opening of the polls; and

(4) make in any polling place and preserve for future reference written memoranda of any action or omission on the part of any member of the precinct board."

Section 4. Section 1-6-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 133, as amended) is amended to read:

"1-6-7. FORM OF ABSENTEE BALLOT.--As soon as candidates and questions to be voted upon have been determined for each election, the county clerk shall procure a supply of suitable absentee ballots. The absentee ballots shall be numbered and shall be, as nearly as possible, in the same form as prescribed by the secretary of state for paper ballots. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as possible.

Absentee ballots shall be printed at least forty-five days prior to the date of a primary election and forty-nine days prior to the date of a general election. Absentee ballots for any other election shall be printed at least thirty-five days prior to the date of the election."

Section 5. Section 1-6-15 NMSA 1978 (being Laws 1977, Chapter 222, Section 13, as amended) is amended to read:

"1-6-15. CANVASS--RECOUNT OR RECHECK--DISPOSITION.--If voting machines are not used to register absentee ballots, the absentee ballots shall be canvassed, recounted and disposed of in the manner provided by the Election Code for the canvassing, recounting and disposition of paper ballots. If voting machines are used to register absentee ballots, the ballots shall be canvassed and rechecked in the manner provided by the Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register absentee ballots shall not be rechecked but the absentee ballots shall be recounted in the manner provided by the Election Code for the recounting of paper ballots. As used in this section, "voting machines" means electronic voting machines as provided in the Election Code."

Section 6. Section 1-6-16.1 NMSA 1978 (being Laws 1989, Chapter 368, Section 1, as amended) is amended to read:

"1-6-16.1. ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN

NOT TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND  
COUNTING.--

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

B. The completed ballot shall be placed in an official inner envelope substantially as prescribed by Section 1-6-8 NMSA 1978 and sealed. The official inner envelope shall then be placed in an official envelope substantially as prescribed for a transmittal envelope or mailing envelope in Section 1-6-8 NMSA 1978. This envelope shall contain a form on its back that identifies the voter by name and signature roster number and a printed statement to the effect that the voter made application for an absentee ballot but had not received it as of the date of the election and is permitted to vote by replacement absentee paper ballot.

C. The presiding judge shall put all replacement absentee ballots in a special envelope provided for that purpose by the county clerk, seal it and return it to the county clerk along with the machine tally sheets. The sealed envelope shall not be put in the locked ballot box.

D. Upon receipt of the envelope containing

replacement absentee ballots, the county clerk, no later than forty-eight hours after the close of the election, shall remove the transmittal envelopes and, without removing or opening the inner envelopes, determine that:

(1) the voter did in fact make application for an absentee ballot; and

(2) no absentee ballot was received by the county clerk from the voter by 7:00 p.m. on election day.

E. Upon making that determination, the county clerk shall remove the inner envelope without opening it, retain the transmittal envelope with the other election returns and place the inner unopened envelope in a secure container to be transmitted to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.

F. The secretary of state shall prescribe and furnish the necessary envelopes for purposes of this section and shall adopt rules deemed necessary to preserve the secrecy of the replacement absentee paper ballots."

Section 7. Section 1-8-36.1 NMSA 1978 (being Laws 1981, Chapter 156, Section 1, as amended) is amended to read:

"1-8-36.1. PRIMARY ELECTION LAW--WRITE-IN CANDIDATES.--

A. Write-in candidates are permitted in the primary election only for the offices of United States representative, members of the legislature, district judges,

district attorneys, public regulation commission, public education commission, magistrates and any office voted upon by all voters of the state.

B. A person may be a write-in candidate only for nomination by the major political party with which the person is affiliated as shown by the certificate of registration, and such person shall have the qualifications to be a candidate in the primary election for the political party for which the person is a write-in candidate.

C. A person desiring to be a write-in candidate for one of the offices listed in Subsection A of this section in the primary election shall file with the proper filing officer a declaration of intent to be a write-in candidate. Such declaration of intent shall be filed before 5:00 p.m. on the second Tuesday in March.

D. A write-in vote shall be counted and canvassed only if:

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



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

E. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code, including the obligations to report pursuant to the Campaign Reporting Act, except that the write-in candidate's name shall not be printed on the ballot.

F. No unopposed write-in candidate shall have the write-in candidate's nomination certified unless the write-in candidate receives at least the number of write-in votes in the primary election as the write-in candidate would need signatures on a nominating petition pursuant to the requirements set out in Section 1-8-33 NMSA 1978.

G. A write-in vote shall be cast by writing in the name and following the directions for casting a vote for the write-in candidate. As used in this section, "write-in" does not include the imprinting of any name by rubber stamp or similar device or the use of preprinted stickers or labels."

Section 8. Section 1-10-1 NMSA 1978 (being Laws 1977, Chapter 222, Section 24, as amended) is amended to read:

"1-10-1. BALLOT.--As used in the Election Code:

A. "ballot" means a system for arranging and designating for the voter the names of candidates, constitutional amendments and other questions to be voted on and for the marking, casting or otherwise recording of such votes, and the term includes absentee ballots, provisional paper ballots and all other paper ballots; and

B. "provisional paper ballot" means the paper ballot used pursuant to Section 1-12-7.1, 1-12-8 or 1-12-25.2 NMSA 1978."

Section 9. Section 1-10-5 NMSA 1978 (being Laws 1977, Chapter 222, Section 28) is amended to read:

"1-10-5. BALLOTS--PRINTING.--Ballots shall be printed and in the hands of the county clerk at least forty days before the election."

Section 10. Section 1-12-44 NMSA 1978 (being Laws 1977, Chapter 222, Section 47, as amended) is recompiled in Chapter 1, Article 10 NMSA 1978 and is amended to read:

"PAPER BALLOTS--GENERAL REQUIREMENTS.--Paper ballots shall:

- A. be numbered consecutively;
- B. be uniform in size;
- C. be printed on good quality white paper;
- D. be printed in plain black type;
- E. have the precinct numbers printed on each paper

ballot; and

F. be in the form prescribed by the secretary of state."

Section 11. Section 1-12-47 NMSA 1978 (being Laws 1977, Chapter 222, Section 50) is recompiled in Chapter 1, Article 10 NMSA 1978 and is amended to read:

"PAPER BALLOTS--WRITE-IN CANDIDATES.--When a write-in candidate has been certified pursuant to the Election Code, a space for entering the name of the write-in candidate shall be clearly designated by the use of the heading "Write-in Candidate" after the listing of other candidates for that office."

Section 12. Section 1-12-49 NMSA 1978 (being Laws 1977, Chapter 222, Section 52) is recompiled in Chapter 1, Article 10 NMSA 1978 and is amended to read:

"PAPER BALLOTS--ELECTION SUPPLIES.--The secretary of state shall provide for the procurement of paper ballot election supplies."

Section 13. Section 1-10-8.1 NMSA 1978 (being Laws 1981, Chapter 166, Section 1, as amended) is amended to read:

"1-10-8.1. GENERAL ELECTION--PARTY POSITION ON BALLOT.--

A. The order of preference for position on the ballots of the candidates of political parties in the general election shall be determined by lot at the time and in the

manner prescribed by the secretary of state.

B. When electronic vote recording and tabulating machines or electronic vote tabulating machines are used, the offices and candidates shall be printed on the ballot in a vertical position with the order of preference being from top to bottom.

C. When paper ballots are used in a general election, such ballots shall be printed and bound so that the ballots for each precinct shall reflect the actual positioning of parties as they appear on all ballots in that precinct.

D. The secretary of state shall prescribe procedures and publish instructions to carry out the provisions of this section."

Section 14. Section 1-10-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 210, as amended) is amended to read:

"1-10-11. SAMPLE BALLOTS--PENALTY.--The county clerk shall provide at least four sample ballots for use in each precinct. Two of the sample ballots shall be displayed for public inspection on the outside of the polling place and two on the inside. The sample ballots shall be displayed throughout election day. It is a petty misdemeanor for any person to deface, alter, remove or in any way destroy the sample ballots displayed for public inspection at the polling place during the hours the election is being conducted."

Section 15. Section 1-12-19.1 NMSA 1978 (being Laws

1981, Chapter 156, Section 2, as amended) is amended to read:

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

A. A person desiring to be a write-in candidate in a special election for United States representative or a statewide special election shall file with the proper filing officer 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.

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

C. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code, including the obligation to report under the Campaign Reporting Act, except that the candidate shall not be entitled to have the candidate's name printed on the ballot.

D. The secretary of state shall, not less than

forty 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.

E. No person shall be a write-in candidate in the general election who was a candidate in the primary election immediately prior to the general election.

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

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

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

G. No unopposed write-in candidate shall have an election certified unless the candidate receives at least the number of write-in votes as 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 use of preprinted stickers or labels."

Section 16. Section 1-12-25.1 NMSA 1978 (being Laws 1991, Chapter 105, Section 30) is amended to read:

"1-12-25.1. PROCEDURES FOR VOTING ON ELECTRONIC VOTE TABULATOR SYSTEMS.--A voter using an electronic vote tabulator system to vote shall:

- A. receive a ballot issued by the precinct board;
- B. take the ballot to a voting booth and, with the writing utensil provided, mark it in accordance with the instructions for that ballot type; and
- C. feed the ballot into the electronic vote tabulator to record the vote."

Section 17. Section 1-12-31 NMSA 1978 (being Laws 1969, Chapter 240, Section 291, as amended) is amended to read:

"1-12-31. CONDUCT OF ELECTION--DISPOSITION OF BALLOT BOXES AND OTHER ELECTION MATERIALS.--

A. The following election returns and materials shall not be placed in the ballot box and shall be returned immediately to the county clerk along with the locked box:

- (1) one ballot box key in an envelope addressed to the county clerk;

- (2) one signature roster;
- (3) one tally sheet;
- (4) the registration binder;
- (5) all unused election supplies not destroyed pursuant to the Election Code; and
- (6) a machine cartridge for any electronic vote tabulator.

B. The election judge of the party different from that of the presiding judge shall place the other ballot box key in the envelope addressed to the district court and immediately mail it to the district court."

Section 18. Section 1-12-37.1 NMSA 1978 (being Laws 2002, Chapter 51, Section 1) is amended to read:

"1-12-37.1. BALLOTS--REMEDY FOR USE OF INCORRECT BALLOTS.--

A. As used in this section, "incorrect ballot" means an election ballot that fails to list the correct candidate for an office.

B. If an incorrect ballot is discovered after eligible voters have used the incorrect ballot to cast their votes, the precinct board shall:

- (1) lock and seal the voting machine on which the incorrect ballot appears to prevent further voting on that machine, at which time that machine shall be considered disabled;



(2) preserve a record of the voters who voted using the incorrect ballot by marking the vote number shown on the public counter of the voting machine on both the copy of the voter list marked for the secretary of state and the signature roster; and

(3) attach a note to the voter list marked for the secretary of state and the signature roster giving the number of the last voter who voted using the incorrect ballot.

C. The precinct board shall notify the county clerk and the secretary of state of the incorrect ballot and of the precinct board's compliance with the provisions of this section no later than one hour after the polls close.

D. The votes recorded on the voting machine that was locked and sealed pursuant to Subsection B of this section shall be tallied with the votes from valid ballots from the precinct, except that the votes for incorrect candidates shall not be tallied. Written notice of this procedure and a statement of the number of voters who voted using the incorrect ballot shall be sent to the secretary of state and the county clerk after the signature roster is properly certified.

E. If a candidate contests the election results and the court finds that the number of eligible voters who relied on incorrect ballots is great enough to affect the outcome of that candidate's race, the court may order the

county clerk to send ballots for that candidate's race to those voters who voted using an incorrect ballot.

F. The ballots prescribed in Subsection E of this section shall list the names of the candidates and office for the race in question, be in a form substantially similar to absentee ballots as prescribed by the secretary of state and:

- (1) indicate the number of voters that are eligible to vote in the court-ordered vote;
- (2) give the reason the voter is being asked to vote;
- (3) indicate that the voter must return the ballot within fourteen days of receiving it;
- (4) be mailed to the voter by certified mail, return receipt requested; and
- (5) be mailed with a prepaid return envelope addressed to the county clerk of the county within which the voter's precinct lies.

G. Returned ballots shall be opened, counted and tallied by the county clerk in the presence of the district court judge or the district court judge's representative and the results added to the candidates' respective vote totals and reported to the court and the secretary of state. Ballots not received by the county clerk within eighteen days of the county clerk's mailing shall not be counted."

Chapter 222, Section 46) is amended to read:

"1-12-43. EMERGENCY SITUATIONS.--

A. If any electronic vote tabulator becomes disabled while being used to the extent that any voter is unable to cast a vote for all the candidates or questions of the voter's choice and have such vote recorded by the electronic vote tabulator, it shall be repaired, if possible, or another electronic vote tabulator shall be promptly substituted.

B. The board of county commissioners shall appropriate funds for servicing, repairing and substituting electronic vote tabulators that become disabled.

C. If a disabled electronic vote tabulator cannot be repaired in a reasonable length of time and if there are no other electric vote tabulators available for substitution, the presiding judge shall order marked ballots to be collected and securely preserved until they may be tabulated pursuant to rules promulgated by the secretary of state.

D. A voter shall not be denied the opportunity to mark a ballot for later tabulation due to the lack of a functioning electronic vote tabulator.

E. The county clerk shall provide additional ballots if needed and when requested by the precinct board."

Section 20. Section 1-12-51 NMSA 1978 (being Laws 1977, Chapter 222, Section 54) is amended to read:

"1-12-51. PAPER BALLOTS--UNAUTHORIZED RECEIPT OR DELIVERY OF PAPER BALLOT.--Except for absentee ballots and unless otherwise provided by law, a voter shall not receive a paper ballot from any person other than from a member of the precinct board of the polling place where the voter is authorized to vote or at an alternate early voting location. No person other than a member of the precinct board or officer authorized by law shall deliver a paper ballot to any voter."

Section 21. Section 1-12-55 NMSA 1978 (being Laws 1977, Chapter 222, Section 58, as amended) is amended to read:

"1-12-55. PAPER BALLOTS--MARKING.--All marks on the paper ballot shall be made only with the recommended or provided marking device."

Section 22. Section 1-12-57 NMSA 1978 (being Laws 1977, Chapter 222, Section 60) is amended to read:

"1-12-57. PAPER BALLOTS--PROCEDURE AFTER MARKING.--After marking and preparing a paper ballot in a polling place or alternate voting location, the voter:

A. shall not show it to any person in such a way as to reveal its contents; and

B. shall feed the paper ballot into the electronic vote tabulator."

Section 23. Section 1-12-58 NMSA 1978 (being Laws 1977, Chapter 222, Section 61) is amended to read:

"1-12-58. PAPER BALLOTS--DELIVERY OF TWO OR MORE

BALLOTS.--Every voter who knowingly attempts to vote on two or more paper ballots is guilty of a fourth degree felony."

Section 24. Section 1-12-59 NMSA 1978 (being Laws 1977, Chapter 222, Section 62) is amended to read:

"1-12-59. VIEWING MARKED PAPER BALLOT.--No person shall solicit the voter to show the voter's marked paper ballot."

Section 25. Section 1-12-61 NMSA 1978 (being Laws 1977, Chapter 222, Section 64) is amended to read:

"1-12-61. REMOVAL OF PAPER BALLOTS FROM POLLING PLACE.--No person shall remove any paper ballot from any polling place unless authorized by law."

Section 26. Section 1-12-62 NMSA 1978 (being Laws 1977, Chapter 222, Section 65, as amended) is amended to read:

"1-12-62. PAPER BALLOTS--SPOILED OR DEFACED.--

A. A voter who accidentally spoils or erroneously prepares the voter's paper ballot may return the spoiled or erroneously prepared paper ballot to the presiding judge and receive a new paper ballot.

B. The presiding judge in delivering the new paper ballot shall announce the name of the voter and the number of the new paper ballot in an audible tone.

C. Upon the announcement of the presiding judge, the election clerks shall make a record in the signature roster and checklist of registered voters that the voter received a replacement ballot.

D. The voter shall mark the spoiled or erroneously prepared paper ballot with the word "SPOILED" and shall place it in a separate envelope marked "SPOILED BALLOTS", which shall be returned to the county clerk."

Section 27. Section 1-12-63 NMSA 1978 (being Laws 1977, Chapter 222, Section 66) is amended to read:

"1-12-63. ELECTION JUDGES--UNUSED PAPER BALLOTS.-- Immediately upon the time of the closing of the polls, the election judges and presiding judge, in the presence of those lawfully permitted to be present, shall publicly destroy all unused paper ballots."

Section 28. Section 1-12-65 NMSA 1978 (being Laws 1977, Chapter 222, Section 68, as amended) is amended to read:

"1-12-65. EMERGENCY SITUATIONS--PAPER BALLOTS--COUNTING AND TALLYING PROCEDURES.--

A. The presiding judge and the election judges, assisted by the election clerks, shall count and tally the paper ballots that were not tabulated by the electronic vote tabulator and certify the results of the election on the form on the tally sheet setting opposite the name of each candidate in figures the total number of votes cast for the candidate, and they shall set forth in the spaces provided therefor the total number of votes cast for and against each constitutional amendment and other questions. Paper ballots not marked as required by the Election Code shall not be counted. The

precinct board shall sign the tally sheet certificate.

B. The counting and tallying of paper ballots in emergency situations shall be in accordance with procedures prescribed by the secretary of state."

Section 29. Section 1-12-66 NMSA 1978 (being Laws 1977, Chapter 222, Section 69, as amended) is amended to read:

"1-12-66. PAPER BALLOTS--SIGNATURE ROSTERS, CHECKLIST OF VOTERS AND TALLY SHEETS--DISPOSITION.--

A. After the counting and tallying of paper ballots are completed and after all certificates have been executed, the presiding judge and the two election judges shall place the checklist of voters and one copy of the tally sheet in the stamped, addressed envelope provided for that purpose and an election judge shall immediately mail it to the secretary of state.

B. The signature roster and the original tally sheet shall be returned to the county clerk. The signature roster and the tally sheet shall not be placed in the ballot box.

C. Signature rosters, checklists of registered voters and tally sheets in the custody of the county clerk and the secretary of state may be destroyed three years after the election to which they apply."

Section 30. Section 1-12-67 NMSA 1978 (being Laws 1977, Chapter 222, Section 70, as amended) is amended to read:

"1-12-67. PAPER BALLOTS TO BE PLACED IN BALLOT BOX.--  
After the paper ballots are tallied, the precinct board shall place the bundles of counted paper ballots in the ballot box and the ballot box shall be closed and locked."

Section 31. Section 1-12-68 NMSA 1978 (being Laws 1977, Chapter 222, Section 71, as amended) is amended to read:

"1-12-68. PAPER BALLOTS--COUNTY CANVASS--WHEN RECOUNT IS REQUIRED.--

A. If it appears that defective returns cannot be corrected without a recount of the paper ballots, the county canvassing board shall immediately notify the district court in writing.

B. The district court shall fix a time and place, which shall be not more than one week after receipt of notice from the county canvassing board, for a recount of the paper ballots from the precinct.

C. The county clerk shall immediately notify the county chairs of the political parties that participated in the election of the time and place of the recount.

D. At the time and place set by the district court, the ballot box shall be opened in the presence of the district judge or some person designated by the district judge to act for the district court, the precinct board, the county canvassing board and other persons desiring to be present.

E. The precinct board shall then recount the paper



ballots and make a new tally sheet certificate in duplicate to conform to the facts.

F. After the recount is completed, the precinct board shall replace in the ballot box the paper ballots and other items taken therefrom and shall lock and return the ballot box and one key to the county clerk. The other key shall be returned to the district court or its representative.

G. After being properly corrected, the signature roster and tally sheets shall be disposed of as in the first instance: one each to the county clerk and one each to the secretary of state."

Section 32. Section 1-14-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 343, as amended) is amended to read:

"1-14-14. RECOUNTS--RECHECKS--APPLICATION.--

A. Whenever any candidate for any office for which the state canvassing board or county canvassing board issues a certificate of nomination or election believes that any error or fraud has been committed by any precinct board in counting or tallying the ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the proper canvassing board, may have a recount of the ballots, or a recheck of the votes shown on the voting

machines, that were cast in the precinct.

B. In the case of any office for which the state canvassing board issues a certificate of nomination or election, application for recount or recheck shall be filed with the secretary of state.

C. In the case of any office for which the county canvassing board issues a certificate of nomination or election, application for recount or recheck shall be filed with the district judge for the county in which the applicant resides."

Section 33. Section 1-16-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 385, as amended) is amended to read:

"1-16-12. STATE CONSTITUTIONAL AMENDMENTS--GENERAL ELECTIONS.--At all general elections at which any proposed constitutional amendment or question is submitted to the voters, the proposed constitutional amendment or question shall be printed on the ballot for the election of officers."

Section 34. Section 1-20-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 433, as amended) is amended to read:

"1-20-9. FALSIFYING ELECTION DOCUMENTS.--Falsifying election documents consists of performing any of the following acts willfully and with knowledge and intent to deceive or mislead any voter, precinct board, canvassing board or other election official:

A. printing, causing to be printed, distributing

or displaying false or misleading instructions pertaining to voting or the conduct of the election;

B. printing, causing to be printed, distributing or displaying any official ballot, sample ballot, facsimile diagram or pretended ballot that includes the name of any person not entitled by law to be on the ballot, or omits the name of any person entitled by law to be on the ballot, or otherwise contains false or misleading information or headings;

C. defacing, altering, forging, making false entries in or changing in any way a certificate of nomination, registration record or election return required by or prepared and issued pursuant to the Election Code;

D. suppressing any certificate of nomination, registration record or election return required by or prepared and issued pursuant to the Election Code;

E. preparing or submitting any false certificate of nomination, registration record or election return; or

F. knowingly falsifying any information on a nominating petition.

Whoever falsifies election documents is guilty of a fourth degree felony."

Section 35. Section 1-22-10 NMSA 1978 (being Laws 1985, Chapter 168, Section 12, as amended) is amended to read:

"1-22-10. BALLOTS.--

A. The proper filing officer shall determine whether a candidate filing a declaration of candidacy is a registered qualified elector of the state residing within the school district. If the candidate is so qualified and no withdrawal of candidacy has been filed as provided in the School Election Law, the proper filing officer shall place the candidate's name on the ballot for the position specified in the declaration of candidacy. A declaration of candidacy shall not be amended after it has been filed with the proper filing officer.

B. Ballots for the school district election shall be prepared by the proper filing officer and printed by the thirtieth day preceding the election. The cost of printing the ballots shall be paid by the school district. The proper filing officer shall furnish printed ballots to the county clerk of each county in which the school district is situate. The printed ballot shall contain the name of each person who is a candidate and the position on the board for which the person is a candidate. The ballot shall also contain all questions to be submitted to the voters of the district as certified to the proper filing officer by the board.

C. Paper ballots shall be printed in a form in substantial compliance with the provisions of Section 1-12-44 NMSA 1978 and in compliance with the provisions of the federal Voting Rights Act of 1965, as amended.

D. A school district election shall be a nonpartisan election, and the names of all candidates shall be listed on the ballot without party or slate designation. The order in which the names of candidates are listed on the ballot shall be determined by lot.

E. Whenever two or more members of the board are to be elected for terms of the same length of time, the positions shall be numerically designated on the ballot as "position one", "position two" and such additional consecutively numbered positions as are necessary, but only one member shall be elected for each position.

F. Space shall be provided on each ballot for a voter to write in the name of one candidate for each position to be filled when a declaration of intent to be a write-in candidate has been filed.

G. Voting machines shall be used for the recording of votes cast in a school district election; provided that paper ballots may be hand counted in lieu of using a voting machine to tabulate ballots for:

(1) school districts of less than five hundred average daily membership; or

(2) school district elections in which only one candidate has filed a declaration of candidacy for each position to be filled at the election, no declared write-ins have filed for any position and there are no questions or bond

issues on the ballot and notwithstanding any other provision in the Election Code."

Section 36. Section 1-22-18 NMSA 1978 (being Laws 1985, Chapter 168, Section 20) is amended to read:

"1-22-18. WRITE-IN CANDIDATES.--

A. Write-in candidates for the office of board member shall be permitted in school district elections.

B. A person may be a write-in candidate only if the person has the qualifications to be a candidate for membership on the board in the school district election as provided in the School Election Law.

C. A person desiring to be a write-in candidate for the office of board member shall file with the proper filing officer a declaration of intent to be a write-in candidate. The declaration shall be filed before 5:00 p.m. on the thirty-fifth day preceding the date of the election.

D. A write-in vote shall be counted and canvassed only if:

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

to identify a declared write-in candidate; and

(2) the name is written on the proper line provided on the ballot for write-in votes for the office and position for which the candidate has declared intent and the voter has followed the directions for voting for the write-in candidate.

E. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the School Election Law except that the write-in candidate's name shall not be printed on the ballot.

F. A write-in vote shall be cast by writing in the name. As used in this section, "write-in" does not include the imprinting of any name by rubber stamp or similar device or the use of a preprinted sticker or label."

Section 37. REPEAL.--Sections 1-12-24, 1-12-45 through 1-12-46, 1-12-48, 1-12-50, 1-12-52 through 1-12-54, 1-12-56, 1-12-60, 1-12-64 and 1-16-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 278, Laws 1977, Chapter 222, Section 48, Laws 1991, Chapter 105, Section 35, Laws 1977, Chapter 222, Sections 49, 51, 53, 55 through 57, 59, 63 and 67 and Laws 1969, Chapter 240, Section 385, as amended) are repealed. \_\_\_\_\_