

AN ACT

RELATING TO MUNICIPAL ELECTIONS; AMENDING AND ENACTING
SECTIONS OF THE MUNICIPAL ELECTION CODE; PROVIDING
PENALTIES.

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

Section 1. Section 3-8-2 NMSA 1978 (being Laws 1985,
Chapter 208, Section 10, as amended) is amended to read:

"3-8-2. DEFINITIONS.--

A. The definitions in Section 3-1-2 NMSA 1978 shall apply to the Municipal Election Code in addition to those definitions set forth in the Municipal Election Code.

B. As used in the Municipal Election Code:

(1) "absentee voter list" means the list prepared by the municipal and county clerks of those persons who have been issued an absentee ballot;

(2) "ballot" means a system for arranging and designating for the voter the names of candidates and questions to be voted on and for the marking, casting or otherwise recording of such votes. "Ballot" includes early voting ballots, marksense ballots, absentee ballots, ballot faces, emergency paper ballots and paper ballots used in lieu of voting machines;

(3) "ballot face" means the material placed on the front of the voting machine containing the names of the candidates, the offices the candidates are seeking and a statement of the proposed questions to be voted upon;

(4) "clerk" or "municipal clerk" means the municipal clerk or any deputy or assistant municipal clerk;

(5) "county clerk" means the clerk of the

county or his designee within which the municipality is located;

(6) "election returns" means all certificates of the precinct board, including the certificate showing the total number of votes cast for each candidate, if any, and for or against each question, if any, and shall include statements of canvass, signature rosters, registered voter lists, machine printed returns, emergency paper ballots, paper ballots used in lieu of voting machines, absentee ballots, absentee ballot registers and absentee voter lists or absent voter machine printed returns;

(7) "emergency paper ballot" means the paper ballot used when a voting machine becomes disabled so that a voter is unable to cast a vote for all of the candidates and questions of the voter's choice and have such vote correctly recorded by the voting machine and when no substitute voting machine is available;

(8) "marksense ballot" means a paper ballot card used on an optical-scan vote-tabulating machine;

(9) "municipal clerk's office" means the office of the municipal clerk or any other room used in the process of early voting, absentee voting, counting and tallying of early voting ballots or absentee ballots or canvassing the election results within the confines of the building where the municipal clerk's office is located;

(10) "paper ballot" means a ballot manually marked by the voter and counted by hand without the assistance of a machine or optical-scan vote tabulating device;

(11) "precinct" means a portion of a county situated entirely in or partly in a municipality that has been designated by the county as a precinct for election purposes and that is entitled to a polling place and a precinct board. If a precinct includes territory both inside and outside the boundaries of a municipality, "precinct", for municipal elections, shall mean only that portion of the precinct lying within the boundaries of the municipality;

(12) "consolidated precinct" means the combination of two or more precincts pursuant to the Municipal Election Code;

(13) "precinct board" means the appointed election officials serving a single or consolidated precinct;

(14) "recheck" pertains to voting machines and means a verification procedure where the counter compartment of the voting machine is opened 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

(15) "recount" pertains to emergency paper ballots, paper ballots used in lieu of voting machines, early voting ballots and absentee ballots and means a retabulation and retallying of individual ballots."

Section 2. Section 3-8-7 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-5, as amended) is amended to read:

"3-8-7. MUNICIPAL CLERK--COUNTY CLERK--ELECTION DUTIES.--

A. The municipal clerk shall:

(1) administer the municipal election;

(2) with the consent of the governing body, secure the necessary polling places;

(3) see that all necessary supplies and equipment are present at each polling place prior to the opening of the polls on the day of the election;

(4) certify voting machines;

(5) conduct an election school for precinct board members as required in Section 3-8-21 NMSA 1978;

(6) keep the office of the municipal clerk open on election day for the purpose of receiving ballot boxes, election returns and materials until all election returns and materials are received; and

(7) within fifteen days of the holding of any municipal election, forward to the county clerk a listing of all individuals voting in the municipal election.

B. Within fifteen days of the adoption of the election resolution, the municipal clerk shall request in writing from the county clerk the registered voter lists and signature rosters containing only the qualified electors eligible to vote in the municipal election. The county clerk shall provide to the municipal clerk a printed registered voter list and the voter registration information in compatible electronic format containing only the qualified electors eligible to vote in the municipal election twenty days prior to the election. At least seven days prior to every municipal election, the county clerk shall furnish to the municipal clerk the registered voter list and signature roster containing only the qualified electors eligible to vote in the municipal election. A municipal clerk shall not amend, add or delete any

information to or from the registered voter list except as otherwise provided by law. The registered voter list shall constitute the registration list for the municipal election. The registered voter list does not have to be returned to the county clerk. The municipality shall bear the reasonable cost of preparation of the voter lists, signature rosters and voter registration in electronic format but in no case in an amount that exceeds the actual cost to the county."

Section 3. Section 3-8-15 NMSA 1978 (being Laws 1985, Chapter 208, Section 23) is amended to read:

"3-8-15. EMERGENCY PAPER BALLOTS--WHEN USED--AMOUNT REQUIRED--SAFEGUARDS.--

A. When voting machines are used in an election and one or more machines becomes disabled so that a voter is unable to vote for the candidates or the questions of the voter's choice, or both, and have such vote correctly recorded by the voting machine and when no substitute voting machine is available, then emergency paper ballots shall be used.

B. The municipal clerk shall supply to each polling place a quantity of emergency paper ballots equal to ten percent of the total number of qualified electors in the precinct or consolidated precinct. Such ballots shall only be used as allowed in the Municipal Election Code.

C. Emergency paper ballots are official ballots and shall meet the same requirements and safeguards as all other official ballots."

Section 4. Section 3-8-18 NMSA 1978 (being Laws 1985, Chapter 208, Section 26, as amended) is amended to read:

"3-8-18. ELECTION SUPPLIES.--

A. If paper ballots are to be used in lieu of voting machines, then the municipal clerk shall order to be printed paper ballots and sample paper ballots no later than 5:00 p.m. on the fifty-third day preceding the day of the election. The ballots shall be delivered to the clerk not later than the eighth day preceding the day of the election.

B. No later than 5:00 p.m. on the fifty-third day preceding the day of the election, the municipal clerk shall:

(1) order absentee ballots and early voting material;

(2) order ballot faces, sample voting machine ballots and emergency paper ballots, if voting machines are to be used; and

(3) order all other election supplies necessary for the conduct of the election.

C. Absentee ballots, emergency paper ballots, early voting materials, ballot faces for the machines and sample voting machine ballots shall be delivered to the municipal clerk not less than thirty-five days prior to the day of the election."

Section 5. Section 3-8-19 NMSA 1978 (being Laws 1971, Chapter 306, Section 8, as amended) is amended to read:

"3-8-19. PRECINCT BOARDS--APPOINTMENTS--COMPENSATION.--

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

(1) be a resident qualified elector of the municipality and a resident of the precinct or consolidated

precinct within the jurisdiction of the precinct board. However, if there is a shortage or absence of precinct board members in certain precincts or consolidated precincts, a person who is a resident qualified elector of the municipality and a nonresident of the precinct or consolidated precinct may be appointed;

(2) be able to read and write;

(3) have the necessary capacity to carry out the functions of the office with acceptable skill and dispatch; and

(4) execute the precinct board member's oath of office.

B. No person shall be qualified for appointment or service on a precinct board if that person is a:

(1) candidate for any municipal office;

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

(3) sheriff, deputy sheriff, marshal, deputy marshal or state or municipal policeman;

(4) spouse, parent, child, brother or sister of the municipal clerk or any deputy or assistant municipal clerk; or

(5) municipal clerk or deputy or assistant municipal clerk.

C. Not less than thirty-five days before the day of the municipal election, the governing body shall appoint a precinct board for each polling place. The precinct board shall consist of no fewer than three members. Each board shall have no fewer than three election judges and no fewer than two election clerks. Election judges may also be

appointed as election clerks. Not less than two alternates shall be appointed who shall become either election judges or election clerks or both as the need arises. On the thirty-fifth day before the day of the election, the municipal clerk shall post and maintain in the clerk's office until the day of the election the names of the election judges, election clerks and alternates for each polling place. The posting of the names of the election judges, election clerks and alternates for each polling place may be proved by an affidavit signed by the municipal clerk. The municipal clerk shall, by mail, notify each person appointed, request a written acceptance and keep a record of all notifications and acceptances. The notice shall state the date by which the person must accept the appointment. If any person appointed to a precinct board, or as an alternate, fails to accept an appointment within seven days after the notice is sent, the position shall be deemed vacant and the position shall be filled as provided in this section.

D. The county clerk shall furnish upon request of the municipal clerk the names and addresses of qualified precinct board members for general elections, and such precinct board members may be appointed as precinct board members for municipal elections.

E. The municipal clerk shall appoint a qualified elector as a precinct board member to fill any vacancy that may occur between the day when the list of precinct board members is posted and the day of the election. If a vacancy occurs on the day of the election, the precinct board members present at the polling place may appoint by a

majority vote a qualified elector to fill the vacancy. If the vacancy was filled after the date of the election school, that person need not attend an election school in order to validly serve on the precinct board.

F. Members of a precinct board shall be compensated for their services at the rate provided in Section 1-2-16 NMSA 1978 for the day of the election. The governing body may authorize payment to alternates who are required by the precinct board or municipal clerk to stand by on election day at the rate of not more than twenty dollars (\$20.00) for the day of the election.

G. Compensation shall be paid within thirty days following the date of election."

Section 6. Section 3-8-29 NMSA 1978 (being Laws 1985, Chapter 208, Section 37, as amended) is amended to read:

"3-8-29. REGULAR MUNICIPAL ELECTION--BALLOTS.--

A. At 5:01 p.m. on the fifty-fourth day preceding the election, in the presence of the certified candidates or their authorized representatives who desire to be present, the municipal clerk shall administer an impartial and fair drawing by lot to determine the order in which the candidates for each office shall be listed on the ballot. If a candidate or an authorized representative fails to appear, then the municipal clerk shall draw a lot for the absent candidate.

B. The ballot shall first set forth candidates running for executive office (mayor), if any; then candidates running for legislative office (councilors, trustees, commissioners), if any; and finally candidates running for judicial office (municipal judge), if any. For

each office to be filled, the ballot shall contain:

- (1) the office to be filled and its term;
- (2) the names of the candidates running for office exactly as shown on the candidate's declaration of candidacy and in the order determined by the drawing by lot;
- (3) a space for a qualified elector to write in the name of one declared write-in candidate, if any, per position to be filled; and
- (4) any necessary reference to districts, positions or other similar official designations for office.

C. The only reference to a candidate for office to be placed on a ballot is the candidate's name as it appears on the candidate's declaration of candidacy. No ticket designations or party affiliations shall be shown on the ballot. Municipal elections shall be nonpartisan.

D. If it appears to the municipal clerk that the name of two or more candidates for any office are the same or so similar as to tend to confuse the voter as to the candidates' identities, the occupation and address of each such candidate shall be printed immediately under the candidate's name on the ballot.

E. The municipal clerk shall place on the ballot any question in the order designated by the governing body."

Section 7. Section 3-8-31 NMSA 1978 (being Laws 1971, Chapter 306, Section 10, as amended) is amended to read:

"3-8-31. REGULAR MUNICIPAL ELECTION--CHALLENGERS--WATCHERS--OBSERVERS.--

A. Upon petition filed with the municipal clerk by an unopposed candidate or by both candidates for a municipal office, if only two candidates are running for the

office, or by a majority of the candidates for a municipal office, if more than two candidates are running for the office, those candidates may:

(1) appoint one person as a challenger and one alternate for each polling place in the municipal election; and

(2) appoint one person as a watcher and one alternate for each polling place in the municipal election.

B. The petition appointing a challenger and watcher and alternates shall be filed not later than 5:00 p.m. on the fourth day preceding the election.

C. Upon receipt of the petition, the municipal clerk shall verify whether the challengers, watchers and alternates are properly qualified pursuant to Subsection D of this section. Not later than 3:00 p.m. on the day prior to the election, the municipal clerk shall prepare official identification badges for those challengers, watchers and alternates who are properly qualified. Such identification badges shall be signed by the municipal clerk and contain the name of the challenger, watcher or alternate and state that person's title and the polling place where such person serves. Challengers, watchers and alternates shall be responsible to obtain their identification badges from the office of the municipal clerk prior to the opening of the polls on election day.

D. A challenger, watcher or alternate shall function only at a polling place that serves the precinct within which such challenger, watcher or alternate resides. No sheriff, deputy sheriff, marshal, deputy marshal, municipal or state police officer, candidate or any person

who is a spouse, parent, child, brother or sister of a candidate to be voted for at the election or any municipal clerk, deputy clerk or assistant shall serve as a challenger, watcher or alternate. No person shall serve as a challenger or watcher unless that person is a qualified elector of the municipality.

E. Upon presentation of their official identification badges to the precinct board, challengers, watchers and alternates shall be permitted to be present at the polling place 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.

F. Challengers, watchers and alternates shall wear their official identification badges at all times while they are present in the polling place. They shall not wear any other form of identification or any pins or other identification associated with any candidate, group of candidates or any question presented at the election.

G. Challengers, watchers and alternates shall not:

(1) be permitted to perform any duty of a precinct board member;

(2) handle the ballots, signature rosters, absentee voter lists or voting machines;

(3) take any part in the tallying or counting of the ballots; or

(4) interfere with the orderly conduct of the election.

H. If a challenger, watcher or alternate is wearing his official identification badge, it is a petty

misdemeanor to:

(1) deny him the right to be present at the polling place;

(2) deny him the right to examine voting machines as authorized by law;

(3) deny a challenger or alternate challenger the right to challenge voters pursuant to Section 3-8-43 NMSA 1978 and inspect the signature rosters; or

(4) deny him the right to witness the counting and tallying of ballots.

I. A challenger or alternate challenger, for the purposes of interposing challenges pursuant to Section 3-8-43 NMSA 1978, shall be permitted to:

(1) inspect the voter registration list;

(2) inspect the signature rosters or absentee voter lists to determine whether entries are being made in accordance with law;

(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, to see that all ballot labels are in their proper places and to see that the voting machine is ready for voting at the opening of the polls;

(4) make written memoranda of any action or omission on the part of any member of the precinct board and preserve such memoranda for future use; and

(5) witness the counting and tallying of the ballots.

J. A watcher or alternate watcher shall be permitted to:

(1) observe the election to assure that it is conducted in accordance with law;

(2) examine any voting machine used at the polling place in the same manner that challengers may examine voting machines;

(3) make written memoranda of any action or omission on the part of any member of the precinct board and preserve such memoranda for future use; and

(4) witness the counting and tallying of ballots.

K. The governing body of a municipality may, at its discretion, appoint one qualified elector for each polling place to serve as an observer of the election. The governing body shall make such appointment not later than 3:00 p.m. on the day before the election and shall notify the municipal clerk of such appointment. The municipal clerk shall issue identification badges to all observers. An observer shall have no powers other than to observe the conduct of the election and observe the counting and tallying and report to the governing body."

Section 8. Section 3-8-35 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-2, as amended) is amended to read:

"3-8-35. SPECIAL ELECTION--GIVING NOTICE.--

A. When a special election is called or required by law, an election resolution shall be adopted by the governing body calling for the election, and the election resolution shall be published once each week for four consecutive weeks. The first publication of the election resolution shall be between fifty and sixty days before the day of the election. The election resolution shall be

posted in the office of the municipal clerk within twenty-four hours from the date of adoption until the date of the election. For information purposes and coordination, one copy of the election resolution shall be mailed to the secretary of state and the county clerk of the county in which the municipality is located.

B. The election resolution shall state the purpose for calling the election, the date of the election, the date and time of the closing of the registration books by the county clerk as required by law, the questions to be submitted to the voters, the location of polling places, the consolidation of precincts, if any, and, regarding those municipalities authorized by law to use paper ballots in lieu of voting machines, if paper ballots or voting machines will be used in the election."

Section 9. Section 3-8-38 NMSA 1978 (being Laws 1985, Chapter 208, Section 46, as amended) is amended to read:

"3-8-38. CONDUCT OF ELECTION--SWEARING IN--DELIVERY OF SUPPLIES--OPENING AND CLOSING OF POLLS--PRECINCT BOARD ATTENDANCE.--

A. Not earlier than noon on the day before the election and not later than one hour prior to the opening of the polls, the municipal clerk shall swear in the presiding judge and cause the election supplies, voting machine keys, ballot box, ballot box keys and other election materials to be delivered to the presiding judge.

B. The presiding judge shall cause all materials delivered to him to be delivered to the polling place not later than 6:00 a.m. on election day.

C. The presiding judge shall swear in all

precinct board members upon their arrival at the polling place.

D. Polls shall be opened at 7:00 a.m. on the date of the election and shall be closed at 7:00 p.m. on the same day.

E. Precinct board members shall present themselves at the polling place not later than 6:00 a.m. on the day of the election and shall remain at the polling place until all duties of the precinct board are properly completed."

Section 10. Section 3-8-40 NMSA 1978 (being Laws 1985, Chapter 208, Section 48, as amended) is amended to read:

"3-8-40. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO VOTE--CERTIFICATE VOTING--FRAUDULENT AND DOUBLE VOTING.--

A. No person shall vote in a municipal special or regular election unless that person is a qualified elector and he has appeared to vote at the polling place in the precinct or consolidated precinct which encompasses his place of residence as shown on the signature roster.

B. Notwithstanding the provisions of Subsection A of this section, a person shall be permitted to vote even though that person's name cannot be found in the signature roster, provided:

(1) his residence is within the boundaries of the municipality and within the boundaries of the precinct and the district, if applicable, in which he offers to vote;

(2) his name is not listed as having been issued an absentee ballot;

(3) his name is not listed as having voted

during early voting;

(4) he presents a certificate bearing the seal and signature of the county clerk stating that his affidavit of registration is on file at the county clerk's office, that he has not been purged from the voter rolls and that he shall be permitted to vote in the precinct and election specified therein; provided that such authorization shall not be given orally by the county clerk; and

(5) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector resident of the municipality, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in the election.

C. Upon compliance with the requirements of Subsection B of this section, the election judge shall cause the election clerks to:

(1) write the person's name and address, as shown on the certificate, in the signature roster under the heading for name and address in the first blank space immediately below the last name and address appearing in the signature roster;

(2) insert the person's ballot number or voter number as shown on the public counter of the voting machine on the certificate and on his executed sworn statement;

(3) retain the completed certificate and the executed sworn statement, which shall be returned to the municipal clerk with the election returns; and

(4) comply with all relevant requirements of Section 3-8-41 NMSA 1978.

D. After canvass, the municipal clerk shall in writing notify the county clerk of the names of all individuals voting on certificates.

E. A person who knowingly executes a false statement required by Paragraph (5) of Subsection B of this section is guilty of perjury as provided in the Criminal Code, and voting on the basis of such falsely executed statement constitutes fraudulent voting.

F. A person not entitled to vote who fraudulently votes or a person who votes or offers to vote more than once at any election is guilty of a fourth degree felony."

Section 11. Section 3-8-43 NMSA 1978 (being Laws 1985, Chapter 208, Section 51, as amended) is amended to read:

"3-8-43. CONDUCT OF ELECTION--CHALLENGES--REQUIRED CHALLENGES--ENTRIES--DISPOSITION.--

A. A challenge may be interposed by a member of the precinct board or by a challenger for the following reasons, which shall be stated in an audible tone by the person making the challenge:

(1) the person offering to vote is not registered;

(2) the person offering to vote is listed among those persons in the precinct to whom an absentee ballot was issued or is listed as an early voter;

(3) the person offering to vote is not a qualified elector;

(4) the person offering to vote is not listed on the signature roster or voter registration list;

(5) in the case of an absentee ballot, if the official mailing envelope containing an absentee ballot

has been opened prior to delivery of absentee ballots to the absent voter precinct board; or

(6) the person offering to vote is a qualified elector of the municipality but does not reside in the district where he is offering to vote.

B. When a person has offered to vote and a challenge is interposed and the person's name appears in the signature roster or his name has been entered in the signature roster pursuant to Subsection C of Section 3-8-40 NMSA 1978, the election clerk shall write the word "challenged" above the person's signature in the signature roster.

(1) If the challenge is unanimously affirmed by the election judges:

(a) the election clerk shall write the word "affirmed" above the person's signature next to the challenge notation in the signature roster;

(b) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster;

(c) the person shall be allowed to mark and prepare the ballot. He shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in his presence place the challenged ballot in an envelope marked "rejected", which shall be sealed and the person's name shall be written on the envelope; and

(d) the envelope containing the

rejected ballot shall then be deposited in the ballot box and shall not be counted.

(2) If the challenge is not unanimously affirmed by the election judges:

(a) the election clerks shall write the words "not affirmed" above the person's signature next to the challenge notation in the signature roster; and

(b) the person shall be allowed to vote in the manner allowed by law as if the challenge had not been interposed.

C. A required challenge shall be interposed by the precinct board when a person attempts to offer himself to vote and demands to vote and his name does not appear on the signature roster and cannot be entered pursuant to Subsection C of Section 3-8-40 NMSA 1978. A required challenge shall be interposed by the precinct board as follows:

(1) the election judge shall cause the election clerks to enter the person's name and address under the heading "name and address" in the signature roster in the first blank space immediately below the last name and address that appears in the signature roster;

(2) the election clerk shall immediately write the words "required challenge" above the space provided for the person's signature in the signature roster;

(3) the person shall sign his name in the signature roster;

(4) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk

shall write the number of the ballot so furnished next to the person's signature in the signature roster; and

(5) the person shall be allowed to mark and prepare the ballot. He shall return the paper ballot to an election judge who shall announce his name in an audible tone and in his presence place the required challenge ballot in an envelope marked "rejected--required challenge" which shall be sealed. The person's name shall be written on the envelope and the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted."

Section 12. Section 3-8-47 NMSA 1978 (being Laws 1985, Chapter 208, Section 55, as amended) is amended to read:

"3-8-47. CONDUCT OF ELECTIONS--DISPOSITION OF SIGNATURE ROSTER--MACHINE-PRINTED RETURNS--BALLOT BOXES--ELECTION RETURN CERTIFICATE--AFFIDAVITS--OTHER ELECTION MATERIALS.--

A. After all certificates have been executed, the precinct board shall place one copy of the signature roster and one copy of the machine-printed returns in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The following election returns and materials shall not be placed in the ballot box and shall be returned by the precinct board to the municipal clerk in the envelope or other container provided by the municipal clerk for such purpose:

- (1) all ballot box keys;
- (2) one signature roster;

- (3) one voter registration list;
- (4) the election returns certificate;
- (5) one copy of the machine-printed
returns;
- (6) a machine cartridge for any electronic
marksense voting machine; and
- (7) voting machine permits.

C. The locked ballot box containing any paper ballot cast in the election, election returns, all unused election supplies and all material listed in Subsection B of this section shall be returned by the precinct board to the municipal clerk within twenty-four hours after the polls close.

D. After receipt of ballot boxes and election returns and materials but not later than twenty-four hours after the polls close, the municipal clerk shall ascertain whether the locked ballot box and all the election returns and materials enumerated in Subsection B of this section have been returned to the municipal clerk as provided in Subsection C of this section. If the locked ballot box or all such election returns and materials are not timely returned by each precinct board, the municipal clerk shall immediately issue a summons requiring the delinquent precinct board to appear and produce the missing ballot box or election returns or materials within twenty-four hours. The summons shall be served by a sheriff or state police officer without cost to the municipality, and the members of the precinct board shall not be paid for their service on election day unless the delay was unavoidable. If delivery pursuant to the summons is not timely made, the vote in the

precinct shall not be canvassed or made a part of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

E. Once the ballot box is locked, it shall not be opened prior to canvassing by the municipal clerk."

Section 13. Section 3-8-51 NMSA 1978 (being Laws 1985, Chapter 208, Section 59) is amended to read:

"3-8-51. CONDUCT OF ELECTION--EMERGENCY PAPER BALLOTS--
-PAPER BALLOTS--UNUSED BALLOTS--DESTRUCTION OF UNUSED
BALLOTS--COUNTING AND TALLYING.--

A. Immediately upon closing of the polls, the election judge shall prepare a certificate of destruction, which shall state the number of the last ballot which was used for voting, the numbers of the ballots that were destroyed and the fact that all unused ballots were destroyed.

B. Immediately after preparation of the certificate of destruction and before any ballot box is unlocked, the precinct board shall destroy all unused ballots in the presence of the candidates, if present, the municipal clerk, if present, certified challengers and watchers, if any, and representatives of the news media, if any.

C. On the day of the election, immediately upon the arrival of the hour when the polls are required by law to be closed, the municipal clerk shall publicly, in the clerk's office, proceed to destroy every unused ballot that remains in the clerk's control and make and file an affidavit in writing as to the number of ballots so

destroyed.

D. The precinct board shall count and tally the ballots and certify the results of the election on the form provided on the cover of the signature roster by writing opposite the name of each candidate in words and figures the total number of votes cast for the candidate and shall set forth in the spaces provided therefor in words and figures the total number of votes cast for or against each question submitted. Ballots not marked as required by the Municipal Election Code shall not be counted.

E. Only the members of the precinct board, candidates, municipal clerk, representatives of the news media and certified challengers and watchers may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots and signature rosters or take part in the counting and tallying.

F. The proclamation of the results of the votes cast shall be distinctly announced by the election judge who shall read the name of each candidate and the total vote cast for each candidate. The election judge shall also read the total vote cast for and against each question submitted. The election judge shall thereupon complete an election return certificate on which is recorded the total number of votes cast for each candidate and for and against each question. The certificate shall be signed by all the members of the precinct board."

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

"3-8-53. POST-ELECTION DUTIES--CANVASS OF RETURNS--

MAJORITY VOTE FOR QUESTIONS.--

A. After the polls are closed and after the return of the ballot box, election returns and other materials by a precinct board and not later than noon on the third day after the election, the municipal clerk shall call to his assistance to open the returns either a magistrate within the county, so long as the magistrate is not a candidate for an office of the municipality, or the members of the governing body of the municipality at a special meeting. The municipal clerk and the persons called to open the returns are the municipal canvassing board, and the municipal clerk shall be the presiding officer of the municipal canvassing board.

B. In the presence of the other members of the municipal canvassing board, the municipal clerk shall publicly:

(1) canvass the returns in the manner set forth in the Municipal Election Code;

(2) prepare and execute a certificate of canvass certifying the results of the election. Such certificate shall contain the total number of voters who voted at the election, the total number of votes cast for each candidate, each declared write-in candidate and for and against each question, which candidates were elected to office and whether each question passed or failed;

(3) sign the certificate of canvass with the municipal canvassing board signing the certificate of canvass as witnesses; and

(4) immediately file the certificate of canvass in the official minute book of the municipality.

C. The matters to be performed pursuant to Subsection B of this section shall be completed not later than 5:00 p.m. on the third day following the election, and such matters shall be performed solely at the office of the municipal clerk.

D. All questions submitted to the voters shall be decided by a majority of the voters voting on the question except as otherwise provided by law."

Section 15. Section 3-8-55 NMSA 1978 (being Laws 1985, Chapter 208, Section 63, as amended) is amended to read:

"3-8-55. POST-ELECTION DUTIES--CANVASS--DEFECTIVE RETURNS--CORRECTION.--

A. The municipal clerk shall immediately order the precinct board to appear and make the necessary corrections or supply omissions or any missing election returns if it appears:

(1) on the face of the election returns that any certificate has not been properly executed;

(2) that there is a discrepancy within the election returns;

(3) that there is a discrepancy between the number of votes set forth in the certificate for all candidates and the number of electors voting as shown by the election returns;

(4) that there is any omission, informality, ambiguity, error or uncertainty on the face of the returns; or

(5) that there are missing election returns.

B. If any members of the precinct board fail to

appear as required, the municipal clerk shall immediately issue a summons commanding them to appear. The summons shall be served by a sheriff or state police officer as in the manner of civil cases, and for each service a sheriff or state police officer shall be allowed the same mileage as is paid in civil cases.

C. After issuing the necessary notifications or summonses, the canvass of all correct election returns shall proceed."

Section 16. Section 3-8-57 NMSA 1978 (being Laws 1985, Chapter 208, Section 65) is amended to read:

"3-8-57. POST-ELECTION DUTIES--CANVASS--SEARCH FOR MISSING RETURNS.--The municipal clerk may open the ballot box during canvass for the purpose of obtaining ballots cast in the election to be counted and tallied, to search for missing election returns and to remove all unused election supplies from the ballot box. The ballot box shall be opened by the municipal clerk only in the presence of the canvassing board."

Section 17. Section 3-8-63 NMSA 1978 (being Laws 1985, Chapter 208, Section 71) is amended to read:

"3-8-63. CONTEST OF ELECTIONS--WHO MAY CONTEST--STATUS OF PERSON HOLDING CERTIFICATE--FILING OF COMPLAINT.--

A. Any unsuccessful candidate for election to any municipal office may contest the election of the candidate to whom a certificate of election has been issued. Twenty percent of those people who voted at the municipal election may contest the election on a question.

B. In case of a contest of an election, the person holding the certificate of election shall take

possession and discharge the duties of the office until the contest is decided. If a contest of a question occurs, the question shall be considered passed or defeated according to the official certificate of canvass of the election filed by the municipal clerk in the official records of the municipality until the contest is decided.

C. Any action to contest an election shall be commenced by the filing of a verified complaint of contest in the district court. Such complaint shall be filed no later than thirty days from issuance of the certificate of election to the successful candidate or thirty days after completion of canvassing for elections in which there are no candidates for municipal office. A copy of the petition shall be served on the municipal clerk, and the municipality shall be afforded an opportunity to intervene in the contest. The one instituting the action shall be known as the contestant and the one against whom the action is instituted shall be known as the contestee. The rules of civil procedure shall apply to all actions commenced under the provisions of this section."

Section 18. Section 3-8-65 NMSA 1978 (being Laws 1985, Chapter 208, Section 73, as amended) is amended to read:

"3-8-65. CONTEST OF ELECTIONS--PRESERVATION OF BALLOTS--BALLOTS DEFINED--APPLICATION FOR ORDER--DEPOSIT.--

A. Either the contestant or contestee, within the time provided by the Municipal Election Code for the preservation of ballots, shall give notice by certified mail to the municipal clerk that a contest is pending in a designated court, and it is the duty of the municipal clerk to preserve the ballots of all precincts named in the notice

of contest and to notify the county clerk to impound the ballot faces and voting machines used in all of the precincts named in the notice of contest until the contest has been finally determined.

B. "Ballots", as used in Subsection A of this section, includes signature rosters, registered voter lists, machine-printed returns, voting machine permits, paper ballots, early voting ballots, early voting applications, early voting lists, marksense ballots, absentee ballots, absentee ballot outer envelopes, statements of canvass, absentee ballot applications, absentee ballot registers and absentee voter lists.

C. Any contestant or contestee may petition the district court for an order impounding ballots in one or more precincts or consolidated precincts. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along with a cash deposit of twenty-five dollars (\$25.00) per precinct or consolidated precinct, the court may issue an order of impoundment."

Section 19. Section 3-8-68 NMSA 1978 (being Laws 1985, Chapter 208, Section 76) is amended to read:

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

A. Whenever any candidate for any office for which the municipal clerk issues a certificate of election believes that any error or fraud has been committed by any precinct board in counting or tallying the paper ballots used in lieu of voting machines, emergency paper ballots, early voting ballots or absentee ballots, in the verification of the votes cast on the voting machines or in

the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the municipal canvassing board, may have a recount of the paper ballots used in lieu of voting machines, emergency paper ballots, early voting ballots or absentee 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 municipal clerk issues a certificate of election, application for recount or recheck shall be filed with the municipal clerk.

C. Any applicant for a recount shall deposit with the municipal clerk fifty dollars (\$50.00) in cash or a sufficient surety bond in an amount equal to fifty dollars (\$50.00) for each precinct or consolidated precinct for which a recount is demanded. Any applicant for a recheck shall deposit with the municipal clerk ten dollars (\$10.00) in cash or a sufficient surety bond in an amount equal to ten dollars (\$10.00) for each voting machine to be rechecked.

D. The deposit or surety bond shall be security for the payment of the costs and expenses of the recount or recheck in case the results of the recount or recheck are not sufficient to change the results of the election.

E. If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the municipality upon warrant of the municipal clerk from

the general fund of the municipality.

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

Section 20. Section 3-8-69 NMSA 1978 (being Laws 1985, Chapter 208, Section 77) is amended to read:

"3-8-69. RECOUNT--RECHECK--PROCEEDINGS.--

A. Immediately after filing of the application for recount or recheck, the municipal clerk shall issue a summons directed to the precinct board of each precinct or consolidated precinct specified in the application commanding it to appear at the office of the municipal clerk on a day fixed in the summons, which date shall not be more than ten days after the filing of the application for recount or recheck. A copy of the summons shall be forwarded to the county clerk of the concerned county.

B. The municipal clerk shall deliver the summons to a sheriff or state police officer who shall forthwith personally serve it upon each of the precinct board members. The municipal clerk shall send notices by registered mail of the date, time and place fixed for recount or recheck to the district judge and county clerk.

C. The precinct board, district judge or the district court judge's designee, county clerk and the municipal clerk shall meet on the date, time and places

fixed for the recount or recheck, and the ballot boxes or voting machines of the precinct or consolidated precinct involved in the recount or recheck shall be opened. The precinct boards shall recount and retally the paper ballots used in lieu of voting machines or emergency paper ballots or recheck the votes cast on the voting machine, as the case may be, and recount and retally early voting ballots, the absentee ballots for the office in question in the presence of the municipal clerk, the county clerk, district judge or person designated to act for the judge and any other person who may desire to be present.

D. During the recount or recheck, the precinct board of a precinct or consolidated precinct where emergency paper ballots, paper ballots used in lieu of voting machines, early voting ballots or absentee ballots were used shall recount and retally only the ballots which the election judge accepted and placed in the ballot box at the time they were cast or received, as the case may be.

E. After completion of the recount or recheck, the precinct board shall replace the emergency paper ballots, paper ballots used in lieu of voting machines, early voting ballots or absentee ballots in the ballot box and lock it, or the voting machines shall be locked and resealed, and the precinct board shall certify to the municipal clerk the results of the recount or recheck. The district judge or the person designated to act for the judge, the county clerk and the municipal clerk shall also certify that the recount or recheck was made in their presence."

Chapter 208, Section 79, as amended) is amended to read:

"3-8-71. PRESERVATION OF ELECTION INFORMATION.--

A. The municipal clerk shall retain for two years after each municipal election:

- (1) the absentee ballot register, application for absentee ballots, absentee voter lists and affidavits of destruction;
- (2) the early voting register, early voting applications, early voter list and affidavits of destruction;
- (3) if applicable the combined register for early voting and absentee voting;
- (4) signature roster and registered voter list;
- (5) the machine-printed returns;
- (6) oaths of office of the precinct board;
- (7) declarations of candidacy and withdrawals;
- (8) copies of all election material required to be published or posted;
- (9) a copy of all sample ballots and ballot faces;
- (10) voting machine permits;
- (11) certificates submitted by voters;
- (12) copies of all affidavits and certificates prepared in connection with the election;
- (13) all results of recounts, rechecks, contests and recanvass; and
- (14) all other significant election materials.

B. The district court shall retain for forty-five days after each municipal election all election materials sent by the precinct board. Thereafter, the material may be destroyed unless needed by the court in connection with a contest or other case or controversy.

C. The municipal clerk shall destroy election records two years after the election by shredding, burning or otherwise destroying."

Section 22. Section 3-8-74 NMSA 1978 (being Laws 1985, Chapter 208, Section 82) is amended to read:

"3-8-74. UNLAWFUL POSSESSION OF KEYS--EARLY VOTING BALLOT OR ABSENTEE BALLOT--PENALTY.--

A. Unlawful possession of keys consists of the possession at any time by any person of any key to a voting machine or ballot box or possession of an imitation or duplicate thereof or making or causing to be made any imitation or duplicate thereof unless authorized by the Municipal Election Code.

B. A person who commits unlawful possession of keys is guilty of a fourth degree felony.

C. Unlawful possession of an absentee ballot consists of the possession by any person at any time of absentee ballot materials when not authorized by the Municipal Election Code to be in the possession of such materials or when such materials were obtained in an unlawful manner. As used in this section, "absentee ballot materials" means an absentee ballot, absentee ballot envelopes, the absentee ballot register or absentee ballot return.

D. A person who commits unlawful possession of an

absentee ballot is guilty of a fourth degree felony.

E. Unlawful possession of an early voting ballot consists of the possession by any person at any time of early voting ballot materials when not authorized by the Municipal Election Code to be in the possession of such materials, or when such materials were obtained in an unlawful manner. As used in this section, "early voting ballot materials" means an early voting ballot, the early voting ballot register or early voting election returns.

F. A person who commits unlawful possession of an early voting ballot is guilty of a fourth degree felony."

Section 23. Section 3-8-75 NMSA 1978 (being Laws 1985, Chapter 208, Section 83) is amended to read:

"3-8-75. FALSE VOTING--FALSIFYING ELECTION DOCUMENTS--FALSE SWEARING--PENALTY.--

A. False voting consists of:

- (1) voting or offering to vote with the knowledge of not being a qualified elector;
- (2) voting or offering to vote in the name of any other person;
- (3) knowingly voting or offering to vote in any precinct except that in which one is registered;
- (4) voting or offering to vote more than once in the same election;
- (5) inducing, abetting or procuring or attempting to induce, abet or procure a person known not to be a qualified elector to vote; or
- (6) inducing, abetting or procuring or attempting to induce, abet or procure a person who has voted once in any election to vote or attempt to vote again at the

same election.

B. A person who commits false voting is guilty of a fourth degree felony.

C. 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, municipal clerk or other election official:

(1) printing, causing to be printed, distributing or displaying false or misleading instructions pertaining to voting or the conduct of the election;

(2) printing, causing to be printed, distributing or displaying any official ballot, absentee ballot, early voting ballot, marksense ballot, sample ballot, facsimile diagram, ballot face or pretended ballot that includes the name of any person not entitled by law to be on the ballot or omits or defaces the name of any person entitled by law to be on the ballot or otherwise contains false or misleading information or headings;

(3) defacing, altering, forging, making false entries in or changing any election document, including but not limited to election returns, a certificate of election registration record or signature rosters, affidavits, certificates or any other election document except as authorized in the Municipal Election Code;

(4) withholding any certificate of election, registered voter list, signature roster, election return or any other election document required by or prepared and issued pursuant to the Municipal Election Code;
or

(5) preparing or submitting any false

certificate of election, signature roster, registered voter list, election return or any other election document.

D. A person who falsifies election documents is guilty of a fourth degree felony.

E. False swearing consists of knowingly taking or giving any oath required by the Municipal Election Code with the knowledge that the thing or matter sworn to is not a true and correct statement.

F. A person who falsely swears is guilty of a fourth degree felony."

Section 24. Section 3-8-79 NMSA 1978 (being Laws 1985, Chapter 208, Section 87) is amended to read:

"3-8-79. CONSPIRACY--GENERAL PENALTY--VIOLATION BY MUNICIPAL CLERK--PENALTY.--

A. Conspiracy to violate the Municipal Election Code consists of two or more persons knowingly combining, uniting or agreeing to cause or attempt to cause the omission or commission of any duty or act that violates the provisions of the Municipal Election Code.

B. A person who commits conspiracy to violate the Municipal Election Code is guilty of a fourth degree felony.

C. If the Municipal Election Code does not impose a specific penalty for the violation of a provision prohibiting a specific act, a person who knowingly commits such violation is guilty of a misdemeanor.

D. Violation of the Municipal Election Code consists of the willful violation of the Municipal Election Code or the willful failure or refusal to perform any act or duty required by the Municipal Election Code.

E. A member of the municipal governing body, a

municipal official or employee, or municipal clerk, deputy or assistant who willfully violates the Municipal Election Code is guilty of a fourth degree felony and, in addition, such violation is sufficient cause for removal from office in a proceeding instituted for that purpose as provided by law."

Section 25. Section 3-8-80 NMSA 1978 (being Laws 1985, Chapter 208, Section 88) is amended to read:

"3-8-80. UNIFORM PROCEDURE.--The provisions of Sections 3-8-38 through 3-8-79 NMSA 1978 concerning election day matters, post election duties, election challenges and penalties shall apply to all municipal elections, except as otherwise specified."

Section 26. Section 3-9-3 NMSA 1978 (being Laws 1973, Chapter 375, Section 1, as amended) is amended to read:

"3-9-3. ABSENTEE VOTING--REGULAR OR SPECIAL MUNICIPAL ELECTIONS--RIGHT TO VOTE.--

A. Any voter or any federal voter or federal qualified elector entitled to vote in the municipal election may vote by absentee ballot for all candidates and on all questions appearing on the ballot at such regular or special election at his polling place, as if he were able to cast his ballot in person at such polling place.

B. The provisions of this section shall also apply to a regular or special municipal election held in conjunction with any other political subdivision."

Section 27. Section 3-9-4 NMSA 1978 (being Laws 1973, Chapter 375, Section 3, as amended) is amended to read:

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

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

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

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

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

E. Upon receipt of a properly completed and delivered application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

F. The municipal clerk shall reject an absentee ballot application for any of the following reasons:

(1) the application is not made on the form provided by the municipal clerk;

(2) the application does not set forth the applicant's full name and address;

(3) the applicant has voted early;

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

(5) the applicant:

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

(b) has a valid affidavit of

registration on file with the county clerk, but is not a resident of the municipality; or

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

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

G. If the municipal clerk rejects the absentee ballot application pursuant to Subsection F of this section, then the municipal clerk shall refuse to issue an absentee ballot and shall mark the application "rejected" and enter "rejected" in the absentee ballot register and file the application in a separate file. The municipal clerk shall, within twenty-four hours of rejection of the application, notify the applicant of the reasons for rejection of the application. Upon rejection of the application, the municipal clerk shall determine the method of notification to the voter. Notification shall only be made by courier with return receipt or certified mail, return receipt requested. The person whose application has been rejected shall have ten days from receipt of notice to appeal or show cause why the application should be accepted. In addition, if the application is incomplete, the clerk shall mail immediately a new application for absentee ballot.

H. If the application for absentee ballot is accepted, the municipal clerk shall:

(1) mark the application "accepted";

(2) enter the required information in the absentee ballot register; and

(3) issue to the applicant an absentee ballot.

I. The municipal clerk shall deliver the absentee ballot to the applicant in the office of the municipal clerk if the application for absentee ballot has been accepted and if the application is submitted in person by the applicant or mail an absentee ballot to any qualified elector, federal qualified elector or federal voter whose application for an absentee ballot was received by mail and has been accepted. The municipal clerk shall notify the county clerk who shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. Names of individuals which have been labeled "absentee ballot" shall appear on a separate list called the "absentee voter list". This list shall be submitted to the municipal clerk by the county clerk in the same manner as provided in Subsection B of Section 3-8-7 NMSA 1978.

J. It is the duty of the municipal clerk to verify the signature roster and absentee voter list to ensure that all names of individuals who have been issued absentee ballots have been labeled "absentee ballot" on the signature roster and their names listed on the absentee voter list. If not, the municipal clerk shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. The municipal clerk shall then enter the name and all required information on the absentee voter list.

K. If the application for an absentee ballot is

delivered in person to the municipal clerk during regular hours and days of business and is accepted, the municipal clerk shall issue the voter the absentee ballot and it shall be marked by the applicant in a voting booth in the municipal clerk's office, sealed in the proper envelopes and otherwise properly executed and returned to the municipal clerk or the clerk's authorized representative before the applicant leaves the office of the municipal clerk. Absentee ballots may be cast in person beginning on the twenty-seventh day before the election at the municipal clerk's office until 5:00 p.m. on the Thursday immediately prior to the date of election.

L. The act of marking the absentee ballot in the office of the municipal clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the municipal clerk a polling place subject to the requirements of a polling place in the Municipal Election Code other than is provided in this subsection. During the period of time between the date a person may first apply in person for an absentee ballot and the final date for such application and marking of the ballot in the office of the municipal clerk, it is unlawful to solicit votes or display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office.

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

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

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

Section 28. Section 3-9-5 NMSA 1978 (being Laws 1973, Chapter 375, Section 6, as amended) is amended to read:

"3-9-5. ABSENTEE BALLOT REGISTER.--

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

- (1) in numerical sequence, the name and municipal address of each absentee ballot applicant;
- (2) the date and time of receipt of the application;
- (3) whether the application was accepted or rejected;
- (4) the date of delivery to the voter in person in the office of the municipal clerk, or mailing of an absentee ballot to the applicant, the method of delivery and, if mailed, the address to which the ballot was mailed;
- (5) the applicant's precinct and district number, if applicable;
- (6) whether the applicant is a voter, a federal voter or a federal qualified elector;
- (7) affidavits of voters who did not receive absentee ballots; and
- (8) the date and time the completed ballot

was received from the applicant by the municipal clerk.

B. The absentee ballot register is a public record open to public inspection in the municipal clerk's office during regular office hours and shall be preserved for two years after the date of the election.

C. For the purposes of recordkeeping, the absentee register may be combined with the early voting register, provided that the method of balloting shall be labeled either "absentee ballot" or "early voter".

Section 29. Section 3-9-6 NMSA 1978 (being Laws 1973, Chapter 375, Section 7, as amended) is amended to read:

"3-9-6. FORM OF ABSENTEE BALLOT--FORM OF ABSENTEE BALLOT ENVELOPES.--

A. The form of the absentee ballot shall be, as nearly as practicable, in the same form as prescribed by the municipal clerk for emergency paper ballots or paper ballots used in lieu of voting machines. 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 is practicable. The ballots shall provide for sequential numbering.

B. Absentee ballots and envelopes shall be delivered by the printer to the municipal clerk not later than thirty-five days prior to the date of the election to be held.

C. The municipal clerk shall prescribe the form of:

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

(2) official mailing envelopes for use in

returning the official inner envelope to the municipal clerk;

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

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

D. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk and federal voters and federal qualified electors shall be printed in blue in the form prescribed by postal regulations and the Federal Voting Assistance Act of 1955. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk shall be printed in green in substantially similar form. All official inner envelopes shall be printed in green.

E. The reverse of each official mailing envelope shall contain a form to be signed by the person completing the absentee ballot. The form shall identify the person 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."."

Section 30. Section 3-9-7 NMSA 1978 (being Laws 1973, Chapter 375, Section 8, as amended) is amended to read:

"3-9-7. MANNER OF VOTING.--

A. Any person voting an absentee ballot under the provisions of the Municipal Election Code shall secretly mark the ballot in the manner provided in the Municipal

Election Code for marking emergency paper ballots, remove any visible number on the ballot, place the ballot in the official inner envelope and securely seal the envelope. The person voting shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The person voting shall then fill in the form on the reverse of the official mailing envelope.

B. Federal voters and federal qualified electors shall either deliver their ballots in person or mail the official mailing envelope to the municipal clerk of their municipality of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the municipal clerk of the municipality of residence. Voters shall either deliver or mail the official mailing envelope to the municipal clerk of their municipality of residence. The municipal clerk shall not accept an official outer envelope that is delivered in person to the municipal clerk's office from any person other than the voter signing the official outer envelope.

C. Any person voting on the marksense ballot shall secretly mark the ballot by completing the arrow in pencil directly to the right of the candidate's name or the proposed question. The voter shall then place the marked ballot in the official inner envelope and securely seal the envelope and 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."

Section 31. Section 3-9-8 NMSA 1978 (being Laws 1973, Chapter 375, Section 9, as amended) is amended to read:

"3-9-8. CARE OF ABSENTEE BALLOTS--DESTRUCTION OF
UNUSED BALLOTS BY MUNICIPAL CLERK.--

A. The municipal clerk shall mark on each completed official outer envelope the date and time of receipt in his office, record this information in the absentee ballot register and safely and securely keep the official outer envelope unopened until it is delivered on election day to the proper precinct board or until it is canceled and destroyed in accordance with law. Once a ballot is officially accepted by the municipal clerk and recorded in the absentee ballot register, it cannot be returned to the voter for any reason.

B. The municipal clerk shall accept completed official outer envelopes received by mail or delivered in person to the municipal clerk's office by the voter signing the official outer envelope until 7:00 p.m. on election day. Any completed outer envelope received after that time and date shall be marked as to the time and date received, shall not be delivered to the precinct board and shall be preserved until the time for election contests has expired. In the absence of a court order, after the expiration of the time for election contests, the municipal 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 municipal clerk shall count the numbers of late ballots from voters, federal voters and federal qualified electors and record the number from each category in the absentee ballot register.

C. After 5:00 p.m. and not later than 8:00 p.m. on the Thursday immediately preceding the date of the

election, the municipal clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the municipal clerk's office all such unused ballots. The municipal clerk shall execute a certificate of such destruction, which shall include the numbers on the ballots destroyed, and such certificate shall be placed within the absentee ballot register.

D. At 7:00 p.m. on the day of the election, the municipal clerk shall determine the number of ballots that were mailed and have not been received and execute a "certificate of unreceived absentee ballots". Such certificate shall be placed in the absentee ballot register and shall become an official part of the register. The municipal clerk shall determine the form of the certificate of unreceived absentee ballots."

Section 32. Section 3-9-9 NMSA 1978 (being Laws 1973, Chapter 375, Section 10, as amended) is amended to read:

"3-9-9. ABSENT VOTER PRECINCT.--For the purposes of absentee voting, the governing body shall create a special absent voter precinct, cause an absent voter precinct board to be appointed consisting of election judges and election clerks as provided in the Municipal Election Code and shall designate a polling place for the counting and tallying of absentee ballots in the election on election day. The municipal clerk shall administer the oath to the election judges. A regular precinct board may be designated to serve as the absent voter precinct board. Members of the absent voter precinct board shall receive the same compensation as other precinct board members, but in no case shall a precinct board member who also serves as a member of the

absent voter precinct board be entitled to extra compensation for serving on the absent voter precinct board."

Section 33. Section 3-9-10 NMSA 1978 (being Laws 1985, Chapter 208, Section 98, as amended) is amended to read:

"3-9-10. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER PRECINCT.--After 7:00 a.m. on election day, the municipal clerk shall deliver to the absent voter precinct board the absentee ballot register and the absent voter ballots received by the clerk. Prior to 7:00 p.m. on election day, the municipal clerk shall deliver any ballots received on election day to the absent voter precinct board and the precinct board shall note the receipt of ballots in the absentee ballot register and on the absentee voter list. On delivery of the ballots, the municipal clerk or his designee shall remain in the presence of the absent voter precinct board until the clerk has observed the opening of all official mailing envelopes, the deposit of all ballots in the locked ballot box and the listing of the names on all of the official mailing envelopes in the absentee voter list. All functions of the absent voter precinct board shall be conducted in the place designated as the absent voter precinct."

Section 34. Section 3-9-13 NMSA 1978 (being Laws 1973, Chapter 375, Section 11, as amended) is amended to read:

"3-9-13. VOTING IN PERSON PROHIBITED.--

A. No person who has been issued an absentee ballot shall vote by early ballot or in person at that person's regular precinct polling place on election day.

B. At any time prior to 5:00 p.m. on the Thursday

immediately preceding the date of the election, any person whose absentee ballot application has been accepted and who was mailed an absentee ballot but who has not received the absentee ballot may execute, in the office of the municipal clerk of the municipality where that person is registered to vote, a sworn affidavit stating that the person did not receive or vote his absentee ballot. Upon receipt of the sworn affidavit, the municipal clerk shall issue the voter a replacement absentee ballot.

C. The municipal clerk shall prescribe the form of the affidavit and the manner in which the municipal clerk shall void the first ballot mailed to the applicant."

Section 35. Section 3-9-15 NMSA 1978 (being Laws 1973, Chapter 375, Section 13) is amended to read:

"3-9-15. WATCHERS, CHALLENGERS, AND OBSERVERS FOR ABSENT VOTER PRECINCT.--Watchers, challengers and observers may be appointed to serve on election day for the absent voter precinct in the manner specified for the appointment of watchers, challengers and observers for other precincts used in municipal elections."

Section 36. Section 3-9-16 NMSA 1978 (being Laws 1973, Chapter 375, Section 14, as amended) is amended to read:

"3-9-16. PENALTIES.--

A. Any person who knowingly votes or offers to vote an absentee ballot to which he is not lawfully entitled to vote or offer to vote is guilty of a fourth degree felony.

B. Any municipal official or employee or any other person who furnishes absentee ballots to persons who are not entitled to such ballots under the provisions of the

Municipal Election Code is guilty of a fourth degree felony.

C. Any municipal official or employee, precinct board member or any other person who knowingly destroys or otherwise disposes of an absentee ballot other than in the manner provided by the Municipal Election Code is guilty of a fourth degree felony.

D. Any person who knowingly or willfully makes any false statement in any application for an absentee ballot or in the absentee ballot register or in any certificate required by the Municipal Election Code is guilty of a fourth degree felony.

E. A person who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when the ballot is not the personal ballot of that person or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot from the physical confines of the municipal clerk's office is guilty of a fourth degree felony.

F. A municipal clerk who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when that ballot is not the personal ballot of the municipal clerk, or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot that is not the personal ballot of the municipal clerk from the physical confines of the municipal clerk's office, is guilty of a fourth degree felony."

Section 37. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING.--

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

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

C. The municipal clerk shall publish notice of early voting at least twice, between thirty and forty-five days prior to the election, and shall make reasonable efforts to publicize and inform voters of the time and location for early voting."

Section 38. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING PRECINCT BOARD.--For the purposes of early voting, the governing body shall create a special early voting precinct, cause a precinct board to be appointed to serve on election day consisting of election judges and election clerks as provided in the Municipal Election Code and shall designate a place for the counting and tallying of early votes in the election. The municipal clerk shall administer the oath to the election judges. The early voting election officials shall receive the same compensation as other precinct board members, but in no case shall a precinct board member who also serves as a member of

the early voting precinct board be entitled to extra compensation for serving on the early voting precinct board."

Section 39. A new section of the Municipal Election Code is enacted to read:

"MANNER OF VOTING.--

A. At the time of the adoption of the election resolution the governing body shall determine the manner of casting and recording votes, and if voting machines are to be used, the municipal clerk shall order the voting machines from the county clerk within fifteen days of the adoption of the election resolution, and the county clerk shall supply such voting machines pursuant to Section 1-9-6 NMSA 1978. The county shall provide voting machine technicians, voting machine programming and voting machine transportation. The municipality shall pay the reasonable fee charged by the county for such services and the use of the voting machines, but in no case in an amount that exceeds the actual cost to the county pursuant to Section 1-9-12 NMSA 1978. The ordering, preparation, certification and delivery of voting machines shall be conducted pursuant to the provisions of Section 3-8-14 NMSA 1978 and the Municipal Election Code.

B. Early voting shall be conducted in accordance with the provisions of the Municipal Election Code and this section."

Section 40. A new section of the Municipal Election Code is enacted to read:

"RIGHT TO VOTE EARLY.--

A. Any qualified voter may vote early for all candidates and on all questions appearing on the ballot as

if he were able to cast his ballot in person on election day at his regular polling place.

B. Any federal qualified elector may register and vote early.

C. The provisions of this section shall also apply to a regular or special municipal election held in conjunction with any other political subdivision."

Section 41. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING APPLICATION.--

A. Application by a voter for early voting shall be made only in person by the voter on a form prescribed and furnished by the municipal clerk of the municipality in which the voter is registered to vote. The municipal clerk shall prescribe the form of the early voting application.

B. The voter shall fill out the application to vote early in the office of the municipal clerk. Upon the receipt of a properly completed early voting application, the municipal clerk shall verify that the applicant is a qualified elector of the municipality.

C. The municipal clerk shall reject an early voting application for any of the following reasons:

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

(2) if the applicant has a valid affidavit of registration on file with the county clerk, but is not a resident of the municipality, or district if applicable, of the municipality;

(3) the applicant has been issued an

absentee ballot;

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

(5) the applicant cannot comply with Paragraph (1), (2) or (3) of this subsection pursuant to Subsection B of Section 3-8-40 NMSA 1978.

D. The reverse side of each early voting application shall contain a form to be signed by the person completing the application. The form shall be signed by the applicant and shall contain the following oath: "I will not vote in this election other than by early ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."

E. If the municipal clerk rejects the early voter application pursuant to Subsection C of this section, then the municipal clerk shall refuse to permit the voter to vote and shall mark the application "rejected" and enter "rejected" in the early voting register and file the application in a separate file.

F. If the application for early voting is accepted, the municipal clerk shall:

(1) mark the application "accepted";

(2) enter the required information in the early voting register; and

(3) permit the voter to vote by issuing the voter an early voter ballot if the ballots are to be counted and canvassed by hand; or

(4) issue the voter an early voting marksense ballot if the marksense voting device is being

used in the election; or

(5) permit the voter to cast his vote on the voting machine if a voting machine is being used in the election.

G. The municipal clerk shall notify the county clerk who shall enter "early voter" on the signature line of the signature roster next to the name of the person who has cast an early voting ballot. Names of individuals that have been labeled "early voter" shall appear on a separate list called the "early voter list". This list shall be submitted to the municipal clerk by the county clerk in the same manner as provided in Subsection B of Section 3-8-7 NMSA 1978."

Section 42. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING--USING AN ELECTRONIC VOTING DEVICE.--

A. The municipal clerk shall ensure that each voting machine is located within his office. The area shall be secured by lock and key. Each day during the early voting period the municipal clerk shall, in the presence of one other employee of the municipality, unlock the office where the voting machine is located. At the close of regular office hours, the municipal clerk shall, in the presence of one other municipal employee, lock the office where the voting machine is located. Immediately after unlocking or locking the office where the voting machine is located, the municipal clerk and the employee present shall sign or initial the early voting daily report. The municipal clerk shall prescribe the form of the early voting daily report.

B. It is the duty of the municipal clerk to verify the signature roster and early voter list to ensure that all names of individuals who have voted early have been labeled "early voter" on the signature roster and their names listed on the early voter list. If not, the municipal clerk shall write "early voter" on the signature line of the signature roster next to the name of the person who has voted early. The municipal clerk shall then enter the name and all required information on the early voter list.

C. The act of voting early in the office of the municipal clerk shall be a convenience to the voter and does not make the office of the municipal clerk a polling place subject to the requirements of a polling place in the Municipal Election Code other than is provided in this subsection. During the period of time between the date a person may first vote early in person and the final date for such application and voting in the office of the municipal clerk, it 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."

Section 43. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING REGISTER.--

A. For each election the municipal clerk shall keep an "early voting register", in which he shall enter:

- (1) in numerical sequence, the name and street address of each early voter;
- (2) the date and time of receipt of the application;
- (3) whether the application was accepted or

rejected;

(4) the applicant's precinct and district number, if applicable; and

(5) whether the applicant is a voter, a federal voter or a federal qualified elector.

B. For the purposes of recordkeeping, the early voting register may be combined with the absentee ballot register, provided that the method of balloting shall be labeled either "absentee ballot" or "early voter".

C. The early voting register is a public record open to public inspection in the municipal clerk's office during regular office hours and shall be preserved for two years after the date of the election."

Section 44. A new section of the Municipal Election Code is enacted to read:

"MANNER OF VOTING.--

A. Any person voting an early voting paper ballot pursuant to the provisions of the Municipal Election Code shall mark the ballot in the manner provided in the Municipal Election Code for marking emergency paper ballots, remove any visible number on the ballot, fold the ballot and place it in the locked ballot box.

B. Any person voting on the marksense ballot shall mark the ballot by completing the arrow directly to the right of the candidate's name or the proposed question with the pen or pencil provided by the municipal clerk. After voting the voter shall personally feed the ballot into the voting machine in order to record his vote."

Section 45. A new section of the Municipal Election Code is enacted to read:

"CERTIFICATE VOTING.--

A. No person shall vote in a municipal special or regular election unless that person is a qualified elector, in accordance with the provisions of Subsection K of Section 3-1-2 NMSA 1978, for the precinct or consolidated precinct that encompasses his place of residence as shown on the signature roster.

B. A person shall be permitted to vote even though that person's name cannot be found in the signature roster, provided:

(1) his residence is within the boundaries of the municipality and within the boundaries of the precinct, and district if applicable, in which he offers to vote;

(2) his name is not listed as having been issued an absentee ballot;

(3) he presents a certificate bearing the seal and signature of the county clerk stating that his affidavit of registration is on file at the county clerk's office, that he has not been purged from the voter rolls and that he shall be permitted to vote in the precinct and election specified therein, provided that such authorization shall not be given orally by the county clerk; and

(4) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector, a resident of the municipality, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in the election.

C. Upon compliance with the requirements of Subsection B of this section, the person shall be permitted

to vote."

Section 46. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING BALLOTS--DESTRUCTION OF UNUSED EARLY VOTING BALLOTS BY THE MUNICIPAL CLERK.--After 5:00 p.m. and not later than 8:00 p.m. on the Friday immediately preceding the date of the election, the municipal clerk shall record the numbers of the unused early voting ballots in the early voting register and shall publicly destroy in the municipal clerk's office all such unused ballots. The municipal clerk shall execute a certificate of such destruction that shall include the numbers on the ballots destroyed, and such certificate shall be placed within the early voting register."

Section 47. A new section of the Municipal Election Code is enacted to read:

"DELIVERY OF EARLY BALLOTS TO EARLY VOTING PRECINCT.--After 7:00 a.m. on election day, the municipal clerk shall deliver to the early voting precinct board the voting machines or early voter ballot boxes, the early voting register and the early voter list. All functions of the early voting precinct board shall be conducted in the place designated as the early voter precinct."

Section 48. A new section of the Municipal Election Code is enacted to read:

"COUNTING AND TALLYING EARLY VOTES BY THE EARLY VOTING PRECINCT BOARD.--At the precinct board election school the municipal clerk shall notify the members of the early voting precinct board of the method that will be used in the counting and tallying of ballots. The procedures shall be

such as to ensure the secrecy of the ballot and shall be conducted in the manner provided in the Municipal Election Code."

Section 49. A new section of the Municipal Election Code is enacted to read:

"CANVASS--RECOUNT OR RECHECK--DISPOSITION.--Early voting ballots shall be canvassed, recounted and disposed of in the manner provided by the Municipal Election Code for the canvassing, recounting and disposition of emergency paper ballots. Where voting machines are used to register early voting ballots, such ballots shall be canvassed and rechecked in the manner provided by the Municipal 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 early voting ballots shall not be rechecked, but the early voting ballots shall be recounted in the manner provided by the Municipal Election Code for the recounting of emergency paper ballots."

Section 50. A new section of the Municipal Election Code is enacted to read:

"VOTING IN PERSON PROHIBITED.--No person who has voted early shall cast an absentee ballot or vote in person at that person's regular precinct polling place on election day."

Section 51. A new section of the Municipal Election Code is enacted to read:

"CHALLENGERS, WATCHERS AND OBSERVERS FOR EARLY VOTING PRECINCT.--Watchers, challengers and observers may be appointed in the early voting precinct to serve on election day in the same manner as the appointment of challengers,

watchers, observers and alternate challengers, watchers and observers pursuant to the Municipal Election Code."

Section 52. A new section of the Municipal Election Code is enacted to read:

"PENALTIES.--

A. Any person who knowingly votes or offers to vote early when he is not lawfully entitled to vote or offer to vote is guilty of a fourth degree felony.

B. Any municipal official or employee or any other person who permits persons to vote early who are not entitled to do so under the provisions of the Municipal Election Code is guilty of a fourth degree felony.

C. Any municipal official or employee, precinct board member or any other person who knowingly destroys or otherwise disposes of an early voting ballot other than in the manner provided by the Municipal Election Code is guilty of a fourth degree felony.

D. Any person who knowingly or willfully makes any false statement in any early voting application or in the early ballot register or in any certificate required by the Municipal Election Code is guilty of a fourth degree felony.

E. Any person who knowingly possesses an executed or unexecuted early voting ballot outside the physical confines of the municipal clerk's office when the ballot is not the personal ballot of that person, or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted early voting ballot from the physical confines of the municipal clerk's office, is guilty of a fourth degree felony.

F. A municipal clerk who knowingly possesses an executed or unexecuted early voting ballot outside the physical confines of the municipal clerk's office when that ballot is not the personal ballot of the municipal clerk, or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted early voting ballot that is not the personal ballot of the municipal clerk from the physical confines of the municipal clerk's office, is guilty of a fourth degree felony."

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Section 53. REPEAL.--Sections 3-8-17.1, 3-8-17.2 and 3-9-14 NMSA 1978 (being Laws 1997, Chapter 266, Sections 1 and 2 and Laws 1973, Chapter 375, Section 12, as amended) are repealed.
