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SENATE BILL 707

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Pauline B. Eisenstadt

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

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1 designating for the voter the names of candidates and [~~other~~]
2 questions to be voted on and for the marking, casting or
3 otherwise recording of such votes. [~~and. The term~~] "Ballot"
4 includes early voting ballots, marksense ballots, absentee
5 ballots, ballot [~~labels~~] faces, emergency paper ballots and
6 paper ballots used in lieu of voting machines;

7 (3) "ballot [~~label~~] face" means [~~that portion~~
8 ~~of cardboard, paper or other~~] the material placed on the front
9 of the voting machine containing the names of the candidates,
10 the offices the candidates are seeking and a statement of the
11 proposed questions to be voted upon;

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

14 (5) "county clerk" means the clerk of the
15 county or his designee within which the municipality is
16 located;

17 (6) "election returns" means all certificates
18 of the precinct board, including [~~but not limited to~~] the
19 certificate showing the total number of votes cast for each
20 candidate, if any, and for or against each question, if any,
21 and shall include statements of canvass, signature rosters,
22 registered voter lists, machine printed returns, emergency
23 paper ballots, paper ballots used in lieu of voting machines,
24 absentee ballots, absentee ballot registers and absentee voter
25 lists or absent voter machine printed returns;

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

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

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

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

18 [~~(8)~~] (11) "precinct" means a portion of a
19 county situated entirely in or partly in a municipality
20 [~~which~~] that has been designated by the county as a precinct
21 for election purposes and [~~which~~] that is entitled to a
22 polling place and a precinct board. If a precinct includes
23 territory both inside and outside the boundaries of a
24 municipality, [~~then~~] "precinct", for municipal elections,
25 shall mean only that portion of the precinct lying within the

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1 boundaries of the municipality;

2 [~~(9)~~] (12) "consolidated precinct" means the
3 combination of two or more precincts pursuant to the Municipal
4 Election Code;

5 [~~(10)~~] (13) "precinct board" means the
6 appointed election officials serving a single or consolidated
7 precinct;

8 [~~(11)~~] (14) "recheck" pertains to voting
9 machines and means a verification procedure where the counter
10 compartment of the voting machine is opened and the results of
11 the balloting as shown on the counters of the machine are
12 compared with the results shown on the official returns; and

13 [~~(12)~~] (15) "recount" pertains to emergency
14 paper ballots, paper ballots used in lieu of voting machines,
15 early voting ballots and absentee ballots and means a
16 retabulation and retallying of individual ballots."

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

19 "3-8-7. MUNICIPAL CLERK-- COUNTY CLERK-- ELECTION
20 DUTIES. --

21 A. The municipal clerk shall:

- 22 (1) administer the municipal election;
- 23 (2) with the consent of the governing body,
24 secure the necessary polling places;
- 25 (3) see that all necessary supplies and

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- 1 equipment are present at each polling place prior to the
- 2 opening of the polls on the day of the election;
- 3 (4) certify voting machines;
- 4 (5) conduct an election school for precinct
- 5 board members as required in Section 3-8-21 NMSA 1978;
- 6 (6) keep the office of the municipal clerk
- 7 open on election day for the purpose of receiving ballot
- 8 boxes, election returns and materials until all election
- 9 returns and materials are received; and
- 10 (7) within fifteen days of the holding of any
- 11 municipal election, forward to the county clerk a listing of
- 12 all individuals voting in the municipal election.

13 B. Within fifteen days of the adoption of the

14 election resolution, the municipal clerk shall request in

15 writing from the county clerk the registered voter lists and

16 signature rosters containing only the qualified electors

17 eligible to vote in the municipal election. The county clerk

18 shall provide to the municipal clerk a printed registered

19 voter list and the voter registration information in

20 compatible electronic format containing only the qualified

21 electors eligible to vote in the municipal election twenty-

22 seven days prior to the election. At least seven days prior

23 to every municipal election, the county clerk shall furnish to

24 the municipal clerk the registered voter list and signature

25 roster containing only the qualified electors eligible to vote

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1 in the municipal election. A municipal clerk shall not amend,
2 add or delete any information to or from the registered voter
3 list except as otherwise provided by law. The registered
4 voter list shall constitute the registration list for the
5 municipal election. The registered voter list does not have
6 to be returned to the county clerk. The municipality shall
7 bear the reasonable cost of preparation of the voter lists
8 [~~and~~], signature rosters and voter registration in electronic
9 format but in no case in an amount that exceeds the actual
10 cost to the county."

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

13 "3-8-15. EMERGENCY PAPER BALLOTS-- WHEN USED-- AMOUNT
14 REQUIRED-- SAFEGUARDS. --

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

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

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

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

6 "3-8-18. ELECTION SUPPLIES. --

7 A. If paper ballots are to be used in lieu of
8 voting machines, then the municipal clerk shall order to be
9 printed paper ballots and sample paper ballots no later than
10 5:00 p.m. on the fifty-third day preceding the day of the
11 election. The ballots shall be delivered to the clerk not
12 later than the eighth day preceding the day of the election.

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

- 15 (1) order absentee ballots;
- 16 (2) order [~~printer packs, voting machine~~
17 ~~strips~~] ballot faces, sample voting machine ballots and
18 emergency paper ballots, if voting machines are to be used;
19 and

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

22 C. Absentee ballots, emergency paper ballots,
23 [~~printer packs, voting machine strips~~] early voting materials,
24 ballot faces for the machines and sample voting machine
25 ballots shall be delivered to the municipal clerk not less

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1 than thirty-five days prior to the day of the election. "

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

4 "3-8-19. PRECINCT BOARDS--APPOINTMENTS--COMPENSATION. --

5 A. In order to qualify as a member of [~~the~~] a
6 precinct board, a person shall:

7 (1) be a resident qualified elector of the
8 municipality and a resident of the precinct or consolidated
9 precinct within the jurisdiction of the precinct board.

10 However, if there is a shortage or absence of precinct board
11 members in certain precincts or consolidated precincts, [~~then~~]
12 a person who is a resident qualified elector of the
13 municipality and a nonresident of the precinct or consolidated
14 precinct may be appointed;

15 (2) be able to read and write;

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

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

21 B. No person shall be [~~qualified~~] qualified for
22 appointment or service on a precinct board if that person is
23 a:

24 (1) candidate for any municipal office;

25 (2) spouse, parent, child, brother or sister

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1 of any candidate to be voted for at the election;

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

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

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

9 C. Not less than thirty-five days before the day
10 of the municipal election, the governing body shall appoint a
11 precinct board for each polling place. The precinct board
12 shall consist of no fewer than three [~~and no more than five~~]
13 members. Each board shall have no fewer than three election
14 judges and no fewer than two election clerks. Election judges
15 may also be appointed as election clerks. Not less than two
16 alternates shall be appointed who shall become either election
17 judges or election clerks or both as the need arises. On the
18 thirty-fifth day before the day of the election, the municipal
19 clerk shall post and maintain in the clerk's office until the
20 day of the election the names of the election judges, election
21 clerks and alternates for each polling place. The posting of
22 the names of the election judges, election clerks and
23 alternates for each polling place may be proved by an
24 affidavit signed by the municipal clerk. The municipal clerk
25 shall, by mail, notify each person appointed, request a

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1 written acceptance and keep a record of all notifications and
2 acceptances. The notice shall state the date by which the
3 person must accept the appointment. If any person appointed
4 to a precinct board, or as an alternate, fails to accept an
5 appointment within seven days after the notice is sent, the
6 position shall be deemed vacant and the position shall be
7 filled as provided in this section.

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

13 E. The municipal clerk shall appoint a qualified
14 elector as a precinct board member to fill any vacancy [which]
15 that may occur between the day when the list of precinct board
16 members is posted and the day of the election. If a vacancy
17 occurs on the day of the election, the precinct board members
18 present at the polling place may appoint by a majority vote a
19 qualified elector to fill the vacancy. If the vacancy was
20 filled after the date of the election school, [then] that
21 person need not attend an election school in order to validly
22 serve on the precinct board.

23 F. Members of a precinct board shall be
24 compensated for their services at the rate provided in Section
25 1-2-16 NMSA 1978 for the day of the election. The governing

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1 body may authorize payment to alternates who are required by
2 the precinct board or municipal clerk to stand by on election
3 day at the rate of not more than twenty dollars (\$20.00) for
4 the day of the election.

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

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

9 "3-8-29. REGULAR MUNICIPAL ELECTION--BALLOTS.--

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

19 B. The ballot shall first set forth candidates
20 running for executive office (~~mayor~~), if any; then candidates
21 running for legislative office (councilors, trustees,
22 commissioners), if any; and finally candidates running for
23 judicial office (~~municipal judge~~), if any. For each office to
24 be filled, the ballot shall contain:

25 (1) the office to be filled and its term;

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1 (2) the names of the candidates running for
2 office exactly as shown on the candidate's declaration of
3 candidacy and in the order determined by the drawing by lot;

4 (3) a space for a qualified elector to write
5 in the name of one declared write-in candidate, if any, per
6 position to be filled; and

7 (4) any necessary reference to districts,
8 positions or other similar official designations for office.

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

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

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

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

24 "3-8-31. REGULAR MUNICIPAL ELECTION-- CHALLENGERS--
25 WATCHERS-- OBSERVERS. --

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1 A. Upon petition filed with the municipal clerk by
2 an unopposed candidate or by both candidates for a municipal
3 office, if only two candidates are running for the office, or
4 by a majority of the candidates for a municipal office, if
5 more than two candidates are running for the office, those
6 candidates may:

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

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

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

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

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1 obtain their identification badges from the office of the
2 municipal clerk prior to the opening of the polls on election
3 day.

4 D. A challenger, watcher or alternate shall
5 function only at a polling place that serves the precinct
6 within which such challenger, watcher or alternate resides.
7 No sheriff, deputy sheriff, marshal, deputy marshal, municipal
8 or state police officer, candidate or any person who is a
9 spouse, parent, child, brother or sister of a candidate to be
10 voted for at the election or any municipal clerk, deputy clerk
11 or assistant shall serve as a challenger, watcher or
12 alternate. No person shall serve as a challenger or watcher
13 unless that person is a qualified elector of the municipality.

14 E. Upon presentation of their official
15 identification badges to the precinct board, challengers,
16 watchers and alternates shall be permitted to be present at
17 the polling place from the time the precinct board convenes at
18 the polling place until the completion of the counting and
19 tallying of the ballots after the polls close.

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

1 G. Challengers, watchers and alternates shall not:

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

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

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

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

10 H. If a challenger, watcher or alternate is
11 wearing his official identification badge, it is a petty
12 misdemeanor to:

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

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

17 (3) deny a challenger or alternate challenger
18 the right to challenge voters pursuant to Section 3-8-43 NMSA
19 1978 and inspect the signature rosters; or

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

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

25 (1) inspect the voter registration list;

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

4 (3) examine each voting machine before the
5 polls are opened to compare the number on the metal seal and
6 the numbers on the counters with the numbers on the key
7 envelope, to see that all ballot labels are in their proper
8 places and to see that the voting machine is ready for voting
9 at the opening of the polls;

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

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

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

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

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

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

25 (4) witness the counting and tallying of

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1 ballots.

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

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

14 "3-8-35. SPECIAL ELECTION--GIVING NOTICE. --

15 A. When a special election is called or required
16 by law, an election resolution shall be adopted by the
17 governing body calling for the election, and the election
18 resolution shall be published once each week for four
19 consecutive weeks. The first publication of the election
20 resolution shall be between fifty and sixty days before the
21 day of the election. The election resolution shall be posted
22 in the office of the municipal clerk within twenty-four hours
23 from the date of adoption until the date of the election. For
24 information purposes and coordination, one copy of the
25 election resolution shall be mailed to the secretary of state

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1 and the county clerk of the county in which the municipality
2 is located.

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

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

14 "3-8-38. CONDUCT OF ELECTION--SWEARING IN--DELIVERY OF
15 SUPPLIES--OPENING AND CLOSING OF POLLS--PRECINCT BOARD
16 ATTENDANCE. --

17 A. Not earlier than [~~3:00 p.m.~~] noon on the day
18 before the election and not later than one hour prior to the
19 opening of the polls, the municipal clerk shall swear in the
20 presiding judge and cause the election supplies, voting
21 machine keys, ballot box, ballot box keys and other election
22 materials to be delivered to the presiding judge.

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

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1 C. The presiding judge shall swear in all precinct
2 board members upon their arrival at the polling place.

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

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

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

12 "3-8-40. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO
13 VOTE--CERTIFICATE VOTING--FRAUDULENT AND DOUBLE VOTING. --

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

19 ~~[B. No person shall vote whose name and affidavit~~
20 ~~of registration number appears on the list of voters purged~~
21 ~~from the rolls unless that person has again completed an~~
22 ~~affidavit of registration and his name also appears on the~~
23 ~~signature roster.]~~

24 ~~C.]~~ B. Notwithstanding the provisions of
25 ~~[Subsections]~~ Subsection A ~~[and B]~~ of this section, a person

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

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

6 [~~(2) his name is not on the purged list or~~
7 ~~his name has been incorrectly placed on the purged list;~~

8 ~~(3)]~~ (2) his name is not [~~on the list of~~
9 ~~persons]~~ listed as having been issued an absentee [~~ballots]~~
10 ballot;

11 (3) his name is not listed as having voted
12 during early voting;

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

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

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1 ~~[D.]~~ C. Upon compliance with the requirements of
2 Subsection ~~[E]~~ B of this section, the election judge shall
3 cause the election clerks to:

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

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

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

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

18 ~~[E.]~~ D. After canvass, the municipal clerk shall
19 in writing notify the county clerk of the names of all
20 individuals voting on ~~[triplicate affidavits of registration~~
21 ~~or]~~ certificates.

22 ~~[F.]~~ E. A person who knowingly executes a false
23 statement required by Paragraph (5) of Subsection ~~[E]~~ B of
24 this section is guilty of perjury as provided in the Criminal
25 Code ~~[of this state]~~, and voting on the basis of such falsely

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1 executed statement constitutes fraudulent voting.

2 [G-] F. A person not entitled to vote who
3 fraudulently votes or a person who votes or offers to vote
4 more than once at any election is guilty of a fourth degree
5 felony. "

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

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

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

- 14 (1) the person offering to vote is not
15 registered;
- 16 (2) the person offering to vote is [~~listed on~~
17 ~~the purge list or is~~] listed among those persons in the
18 precinct to whom an absentee ballot was issued or is listed as
19 an early voter;
- 20 (3) the person offering to vote is not a
21 qualified elector;
- 22 (4) the person offering to vote is not listed
23 on the signature roster or voter registration list;
- 24 (5) in the case of an absentee ballot, if the
25 official mailing envelope containing an absentee ballot has

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

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

6 B. When a person has offered to vote and a
7 challenge is interposed and the person's name appears in the
8 signature roster or his name has been entered in the signature
9 roster pursuant to Subsection [D] C of Section 3-8-40 NMSA
10 1978, the election clerk shall write the word "challenged"
11 above the person's signature in the signature roster.

12 (1) If the challenge is unanimously affirmed
13 by the election judges [~~then~~]:

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

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

22 (c) the person shall be allowed to mark
23 and prepare the ballot. He shall return the paper ballot to
24 an election judge who shall announce the person's name in an
25 audible tone and in his presence place the challenged ballot

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1 in an envelope marked "rejected", which shall be sealed and
2 the person's name shall be written on [~~such~~] the envelope; and

3 (d) the envelope containing the
4 rejected ballot shall then be deposited in the ballot box and
5 shall not be counted.

6 (2) If the challenge is not unanimously
7 affirmed by the election judges [~~then~~]:

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

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

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

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

25 (2) the election clerk shall immediately

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1 write the words "required challenge" above the space provided
2 for the person's signature in the signature roster;

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

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

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

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

20 "3-8-47. CONDUCT OF ELECTIONS--DISPOSITION OF SIGNATURE
21 ROSTER--MACHINE-PRINTED RETURNS--BALLOT BOXES--ELECTION RETURN
22 CERTIFICATE--AFFIDAVITS-- [AND] OTHER ELECTION MATERIALS. --

23 A. After all certificates have been executed, the
24 precinct board shall place one copy of the signature roster
25 and one copy of the machine-printed returns in the stamped,

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1 addressed envelope provided for that purpose by the municipal
2 clerk and immediately mail it to the district court.

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

- 8 (1) all ballot box keys;
- 9 (2) one signature roster;
- 10 (3) one voter registration list;
- 11 (4) the election returns certificate;
- 12 (5) one copy of the machine-printed returns;
- 13 (6) a machine cartridge for any electronic
14 voting machine; and
- 15 (7) voting machine permits [~~and~~
- 16 ~~(8) all unused election supplies~~].

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

23 D. After receipt of ballot boxes and election
24 returns and materials but not later than twenty-four hours
25 after the polls close, the municipal clerk shall ascertain

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1 whether the locked ballot box and all the election returns and
2 materials enumerated in Subsection B of this section have been
3 returned to the municipal clerk as provided in Subsection C of
4 this section. If the locked ballot box or all such election
5 returns and materials are not timely returned by each precinct
6 board, [~~then~~] the municipal clerk shall immediately issue a
7 summons requiring the delinquent precinct board to appear and
8 produce the missing ballot box or election returns or
9 materials within twenty-four hours. The summons shall be
10 served by a sheriff or state police officer without cost to
11 the municipality, and the members of the precinct board shall
12 not be paid for their service on election day unless the delay
13 was unavoidable. If delivery pursuant to the summons is not
14 timely made, [~~then~~] the vote in the precinct shall not be
15 canvassed or made a part of the final election results except
16 upon order of the district court after finding that the delay
17 in the delivery of materials was due to forces beyond the
18 control of the precinct board.

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

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

23 "3-8-51. CONDUCT OF ELECTION--EMERGENCY PAPER BALLOTS--
24 PAPER BALLOTS--UNUSED BALLOTS--DESTRUCTION OF UNUSED BALLOTS--
25 COUNTING AND TALLYING.--

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

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

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

18 D. The precinct board shall count and tally the
19 ballots and certify the results of the election on the form
20 provided on the cover of the signature roster by writing
21 opposite the name of each candidate in words and figures the
22 total number of votes cast for the candidate and [~~they~~] shall
23 set forth in the spaces provided therefor in words and figures
24 the total number of votes cast for or against each question
25 submitted. Ballots not marked as required by the Municipal

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1 Election Code shall not be counted.

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

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

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

20 "3-8-53. POST-ELECTION DUTIES--CANVASS OF RETURNS--
21 MAJORITY VOTE FOR QUESTIONS.--

22 A. After the polls are closed and after the return
23 of the ballot box, election returns and other materials by a
24 precinct board and not later than noon on the third day after
25 the election, the municipal clerk shall call to his assistance

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1 to open the returns either a magistrate within the county, so
2 long as the magistrate is not a candidate for an office of the
3 municipality, or the members of the governing body of the
4 municipality at a special meeting. The municipal clerk and
5 the persons called to open the returns are the municipal
6 canvassing board, and the municipal clerk shall be the
7 presiding officer of the municipal canvassing board.

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

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

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

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

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

25 C. The matters to be performed pursuant to

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1 Subsection B of this section shall be completed not later than
2 5:00 p. m. on the third day following the election, and such
3 matters shall be performed solely at the office of the
4 municipal clerk.

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

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

10 "3-8-55. POST-ELECTION DUTIES--CANVASS--DEFECTIVE
11 RETURNS--CORRECTION.--

12 A. The municipal clerk shall immediately [~~issue a~~
13 ~~summons directed to~~] order the precinct board [~~commanding it~~
14 to appear and make the necessary corrections or supply
15 omissions or any missing election returns if it appears:

16 (1) [~~it appears~~] on the face of the election
17 returns that any certificate has not been properly executed;

18 (2) [~~it appears~~] that there is a discrepancy
19 within the election returns;

20 (3) [~~it appears~~] that there is a discrepancy
21 between the number of votes set forth in the certificate for
22 all candidates and the number of electors voting as shown by
23 the election returns;

24 (4) [~~it appears~~] that there is any omission,
25 informality, ambiguity, error or uncertainty on the face of

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1 the returns; or

2 (5) ~~[it appears]~~ that there are missing
3 election returns.

4 B. If any ~~[member or]~~ members of the precinct
5 board fail to appear as required, the municipal clerk shall
6 immediately issue a summons commanding them to appear. The
7 summons shall be served by a sheriff or state police officer
8 as in the manner of civil cases, and for each service a
9 sheriff or state police officer shall be allowed the same
10 mileage as is paid in civil cases.

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

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

16 "3-8-57. POST-ELECTION DUTIES--CANVASS--SEARCH FOR
17 MISSING RETURNS. -- ~~[During canvass, if it is necessary to open
18 a ballot box to ascertain if missing election returns are
19 enclosed therein, then the ballot box shall be opened by the
20 municipal clerk in the presence of the canvassing board.]~~ The
21 municipal clerk may open the ballot box during canvass for the
22 purpose of obtaining ballots cast in the election to be
23 counted and tallied, to search for missing election returns
24 and to remove all unused election supplies from the ballot
25 box. The ballot box shall be opened by the municipal clerk

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1 only in the presence of the canvassing board. "

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

4 "3-8-63. CONTEST OF ELECTIONS--WHO MAY CONTEST--STATUS
5 OF PERSON HOLDING CERTIFICATE--FILING OF COMPLAINT.--

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

11 B. In case of a contest of an election, the person
12 holding the certificate of election shall take possession and
13 discharge the duties of the office until the contest is
14 decided. If a contest of a question occurs, the question
15 shall be considered passed or defeated according to the
16 official certificate of canvass of the election filed by the
17 municipal clerk in the official records of the municipality
18 until the contest is decided.

19 C. Any action to contest an election shall be
20 commenced by the filing of a verified complaint of contest in
21 the district court. Such complaint shall be filed no later
22 than thirty days from issuance of the certificate of election
23 to the successful candidate or thirty days after completion of
24 canvassing for elections in which there are no candidates for
25 municipal office. A copy of the petition shall be served on

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1 the municipal clerk, and the municipality shall be afforded an
2 opportunity to intervene in the contest. The one instituting
3 the action shall be known as the contestant and the one
4 against whom the action is instituted shall be known as the
5 contestee. The rules of civil procedure shall apply to all
6 actions commenced under the provisions of this section."

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

9 "3-8-65. CONTEST OF ELECTIONS--PRESERVATION OF
10 BALLOTS--BALLOTS DEFINED--APPLICATION FOR ORDER--DEPOSIT.--

11 A. Either the contestant or contestee, within the
12 time provided by the Municipal Election Code for the
13 preservation of ballots, [~~may~~] shall give notice by certified
14 mail to the municipal clerk that a contest is pending in a
15 designated court, and it is the duty of the municipal clerk to
16 preserve the ballots of all precincts named in the notice of
17 contest and to notify the county clerk to impound the ballot
18 [~~labels~~] faces and voting machines used in all of the
19 precincts named in the notice of contest until the contest has
20 been finally determined.

21 B. "Ballots", as used in Subsection A of this
22 section, includes signature rosters, registered voter lists,
23 machine-printed returns, voting machine permits, [~~registration~~
24 ~~affidavits~~] paper ballots, early voting ballots, early voting
25 applications, early voting lists, marksense ballots, absentee

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1 ballots, absentee ballot outer envelopes, statements of
2 canvass, absentee ballot applications, absentee ballot
3 registers and absentee voter lists.

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

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

13 "3-8-68. RECOUNT--RECHECK--APPLICATION--COSTS.--

14 A. Whenever any candidate for any office for which
15 the municipal clerk issues a certificate of election believes
16 that any error or fraud has been committed by any precinct
17 board in counting or tallying the paper ballots, early voting
18 ballots used in lieu of voting machines, emergency paper
19 ballots or absentee ballots, in the verification of the votes
20 cast on the voting machines or in the certifying of the
21 results of any election whereby the results of the election in
22 the precinct have not been correctly determined, declared or
23 certified, the candidate, within six days after completion of
24 the canvass by the municipal canvassing board, may have a
25 recount of the paper ballots used in lieu of voting machines,

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1 emergency paper ballots, early voting ballots or absentee
2 ballots or a recheck of the votes shown on the voting machines
3 that were cast in the precinct.

4 B. In the case of any office for which the
5 municipal clerk issues a certificate of election, application
6 for recount or recheck shall be filed with the municipal
7 clerk.

8 C. Any applicant for a recount shall deposit with
9 the municipal clerk fifty dollars (\$50.00) in cash or a
10 sufficient surety bond in an amount equal to fifty dollars
11 (\$50.00) for each precinct or consolidated precinct for which
12 a recount is demanded. Any applicant for a recheck shall
13 deposit with the municipal clerk ten dollars (\$10.00) in cash
14 or a sufficient surety bond in an amount equal to ten dollars
15 (\$10.00) for each voting machine to be rechecked.

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

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

25 F. If no error or fraud appears to be sufficient

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1 to change the winner, the costs and expenses for the recount
2 or recheck shall be paid by the applicant. Costs shall
3 consist of any docket fees, mileage of a sheriff or state
4 police officer in serving summons and fees and mileage of
5 precinct board members, at the same rates allowed witnesses in
6 civil actions. If fraud has been committed by a precinct
7 board, they shall not be entitled to such mileage or fees."

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

10 "3-8-69. RECOUNT--RECHECK--PROCEEDINGS.--

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

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

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1 C. The precinct board, district judge or the
2 district court judge's designee, county clerk and the
3 municipal clerk shall meet on the date, time and places fixed
4 for the recount or recheck, and the ballot boxes or voting
5 machines of the precinct or consolidated precinct involved in
6 the recount or recheck shall be opened. The precinct boards
7 shall recount and retally the paper ballots used in lieu of
8 voting machines or emergency paper ballots or recheck the
9 votes cast on the voting machine, as the case may be, and
10 recount and retally early voting ballots, the absentee ballots
11 for the office in question in the presence of the municipal
12 clerk, the county clerk, district judge or person designated
13 to act for the judge and any other person who may desire to be
14 present.

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

22 E. After completion of the recount or recheck, the
23 precinct board shall replace the emergency paper ballots,
24 paper ballots used in lieu of voting machines, early voting
25 ballots or absentee ballots in the ballot box and lock it, or

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1 the voting machines shall be locked and resealed, and the
2 precinct board shall certify to the municipal clerk the
3 results of the recount or recheck. The district judge or the
4 person designated to act for the judge, the county clerk and
5 the municipal clerk shall also certify that the recount or
6 recheck was made in their presence. "

7 Section 21. Section 3-8-71 NMSA 1978 (being Laws 1985,
8 Chapter 208, Section 79, as amended) is amended to read:

9 "3-8-71. PRESERVATION OF ELECTION INFORMATION. --

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

12 (1) the absentee ballot register [and
13 ballots], application for absentee ballots, absentee voter
14 lists and affidavits of destruction;

15 (2) the early voting register, early voting
16 applications, early voter list and affidavits of destruction;

17 (3) if applicable the combined register for
18 early voting and absentee voting;

19 [~~(2) the~~] (4) signature roster and registered
20 voter list;

21 [~~(3)~~] (5) the machine-printed returns;

22 [~~(4)~~] (6) oaths of office of the precinct
23 board;

24 [~~(5) the~~] (7) declarations of candidacy and
25 withdrawals;

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- 1 [~~(6)~~—election resolution;—
- 2 ~~(7)~~—proof of all publications;—]
- 3 (8) copies of all election material required
- 4 to be published or posted;
- 5 (9) [~~copies~~] a copy of all sample ballots and
- 6 ballot [~~labels~~] faces;
- 7 (10) voting machine permits;
- 8 (11) [~~affidavits of triplicate voter~~
- 9 ~~registration or~~] certificates submitted by voters;
- 10 (12) copies of all affidavits and
- 11 certificates prepared in connection with the election;
- 12 [~~(13)~~—certificates of canvass and amended
- 13 ~~certificates of canvass, if any;—~~
- 14 ~~(14)~~] (13) all results of recounts, rechecks,
- 15 contests and recanvass; and
- 16 [~~(15)~~] (14) all other significant election
- 17 materials.

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

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

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

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

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

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

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

21 D. A person who commits unlawful possession of an
22 absentee ballot is guilty of a fourth degree felony.

23 E. Unlawful possession of an early voting ballot
24 consists of the possession by any person at any time of early
25 voting ballot materials when not authorized by the Municipal

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1 Election Code to be in the possession of such materials, or
2 when such materials were obtained in an unlawful manner. As
3 used in this section, "early voting ballot materials" means an
4 early voting ballot, the early voting ballot register or early
5 voting election returns.

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

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

10 "3-8-75. FALSE VOTING--FALSIFYING ELECTION DOCUMENTS--
11 FALSE SWEARING--PENALTY.--

12 A. False voting consists of:

- 13 (1) voting or offering to vote with the
14 knowledge of not being a qualified elector;
- 15 (2) voting or offering to vote in the name of
16 any other person;
- 17 (3) knowingly voting or offering to vote in
18 any precinct except that in which one is registered;
- 19 (4) voting or offering to vote more than once
20 in the same election;
- 21 (5) inducing, abetting or procuring or
22 attempting to induce, abet or procure a person known not to be
23 a qualified elector to vote; or
- 24 (6) inducing, abetting or procuring or
25 attempting to induce, abet or procure a person who [having]

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1 has voted once in any election to vote or attempt to vote
2 again at the same election.

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

5 C. Falsifying election documents consists of
6 performing any of the following acts willfully and with
7 knowledge and intent to deceive or mislead any voter, precinct
8 board, municipal clerk or other election official:

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

12 (2) printing, causing to be printed,
13 distributing or displaying any official ballot, absentee
14 ballot, early voting ballot, marksense ballot, sample ballot,
15 facsimile diagram, ballot [~~label~~] face or pretended ballot
16 [~~which~~] that includes the name of any person not entitled by
17 law to be on the ballot or omits or defaces the name of any
18 person entitled by law to be on the ballot or otherwise
19 contains false or misleading information or headings;

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

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

5 (5) preparing or submitting any false
6 certificate of election, signature roster, registered voter
7 list, election return or any other election document.

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

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

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

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

18 "3-8-79. CONSPIRACY--GENERAL PENALTY--VIOLATION BY
19 MUNICIPAL CLERK--PENALTY.--

20 A. Conspiracy to violate the Municipal Election
21 Code consists of two or more persons knowingly combining,
22 uniting or agreeing to cause or attempt to cause the omission
23 or commission of any duty or act [~~which~~] that violates the
24 provisions of the Municipal Election Code.

25 B. A person who commits conspiracy to violate the

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1 Municipal Election Code is guilty of a fourth degree felony.

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

6 D. Violation of the Municipal Election Code [by
7 ~~the municipal clerk~~] consists of the willful violation of the
8 Municipal Election Code [~~by any municipal clerk or by any~~
9 ~~deputy or assistant municipal clerk~~] or the willful failure or
10 refusal [~~of any such person~~] to perform any act or duty
11 required by the Municipal Election Code.

12 E. [Any] A member of the municipal governing body,
13 a municipal official or employee, or municipal clerk, deputy
14 or assistant who [~~commits such willful violation of~~] willfully
15 violates the Municipal Election Code is guilty of a fourth
16 degree felony and, in addition, such violation is sufficient
17 cause for removal from office in a proceeding instituted for
18 that purpose as provided by law. "

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

21 "3-8-80. UNIFORM PROCEDURE. -- The provisions of Sections
22 3-8-38 [NMSA 1978] through 3-8-79 NMSA 1978 concerning
23 election day matters, post election duties, election
24 challenges and penalties [~~and~~] shall apply to all municipal
25 elections, except as otherwise specified. "

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

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

5 A. Any voter or any federal voter or federal
6 qualified elector entitled to vote in the municipal election:

7 (1) who cannot be present at his polling
8 place on the day that a regular or special municipal election
9 is held, because of illness, injury, or disability;

10 (2) who will be absent from his municipality
11 of residence because his duties, occupation, business or
12 vacation requires him to be elsewhere;

13 (3) who cannot be present at his polling
14 place because of the tenets of his religion;

15 (4) who is a prisoner in any jail, detention
16 home or penitentiary and has not been convicted of a felony;

17 (5) who is a member of a precinct board in
18 the election;

19 (6) who is serving on a jury; or

20 (7) who is the municipal clerk, a member of
21 the staff of the municipal clerk or a voting machine
22 technician;

23 may vote by absentee ballot for all candidates and on all
24 questions appearing on the ballot at such regular or special
25 election at his polling place, as if he were able to cast his

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1 ballot in person at such polling place.

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

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

7 "3-9-4. ABSENTEE BALLOT APPLICATION-- REJECTION--
8 ACCEPTANCE-- ISSUANCE OF ABSENTEE BALLOT. --

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

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

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

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

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

25 [~~F.~~] F. The municipal clerk shall reject an

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1 absentee ballot application for any of the following reasons:

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

4 (2) the application does not contain a reason
5 for absentee voting that complies with Subsection A of Section
6 3-9-3 NMSA 1978;

7 [~~(1)~~] (3) the application does not set forth
8 the applicant's full name and address;

9 (4) the applicant has voted early;

10 [~~(2)~~] (5) the application is not signed by
11 the applicant; or

12 [~~(3)~~] (6) the applicant:

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

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

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

22 (d) cannot comply with Subparagraph
23 (a), (b) or (c) of this paragraph pursuant to Subsection [~~E~~] B
24 of Section 3-8-40 NMSA 1978.

25 [~~E.~~] G. If the municipal clerk rejects the

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1 absentee ballot application pursuant to Subsection [~~D~~] F of
2 this section, then the municipal clerk shall refuse to issue
3 an absentee ballot and shall mark the application "rejected"
4 and enter "rejected" in the absentee ballot register and file
5 the application in a separate file. The municipal clerk
6 shall, within twenty-four hours of rejection of the
7 application, notify the applicant [~~in writing by certified~~
8 ~~mail, return receipt requested, by telephone or in person~~] of
9 the reasons for rejection of the application. [~~In addition,~~
10 ~~if the application is incomplete, the clerk shall mail~~
11 ~~immediately a new application for absentee ballot.~~
12 ~~Notwithstanding any provisions of this section to the~~
13 ~~contrary, the only method of notification pursuant to~~
14 ~~rejection of an absentee ballot under the provisions of~~
15 ~~Paragraph (3) of Subsection D of this section shall be by~~
16 ~~certified mail, return receipt requested.~~] Upon rejection of
17 the application, the municipal clerk shall determine the
18 method of notification to the voter. Notification shall only
19 be made by courier with return receipt or certified mail,
20 return receipt requested. The person whose application has
21 been rejected shall have ten days from receipt of notice to
22 appeal or show cause why the application should be accepted.
23 In addition, if the application is incomplete, the clerk shall
24 mail immediately a new application for absentee ballot.

25 [F.] H. If the application for absentee ballot is

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1 accepted, the municipal clerk shall:

- 2 (1) mark the application "accepted";
- 3 (2) enter the required information in the
- 4 absentee ballot register; and
- 5 (3) issue to the applicant an absentee
- 6 ballot.

7 ~~[G.]~~ I. The municipal clerk shall ~~[hand]~~ deliver
8 the absentee ballot to the applicant in the office of the
9 municipal clerk if the application for absentee ballot has
10 been accepted and if the application is submitted in person by
11 the applicant or mail an absentee ballot to any qualified
12 elector, federal qualified elector or federal voter whose
13 application for an absentee ballot was received by mail and
14 has been accepted. The municipal clerk shall notify the
15 county clerk who shall write "absentee ballot" on the
16 signature line of the signature roster next to the name of the
17 person who has been sent an absentee ballot. Names of
18 individuals which have been labeled "absentee ballot" shall
19 appear on a separate list called the "absentee voter list".
20 This list shall be submitted to the municipal clerk by the
21 county clerk in the same manner as provided in Subsection B of
22 Section 3-8-7 NMSA 1978.

23 ~~[H.]~~ J. It is the duty of the municipal clerk to
24 verify the signature roster and absentee voter list to ensure
25 that all names of individuals who have been issued absentee

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1 ballots have been labeled "absentee ballot" on the signature
2 roster and their names listed on the absentee voter list. If
3 not, ~~[then]~~ the municipal clerk shall write "absentee ballot"
4 on the signature line of the signature roster next to the name
5 of the person who has been sent an absentee ballot. The
6 municipal clerk shall then enter the name and all required
7 information on the absentee voter list.

8 ~~[I.]~~ K. If the application for an absentee ballot
9 is delivered in person to the municipal clerk during regular
10 hours and days of business and is accepted, the municipal
11 clerk shall ~~[deliver]~~ issue the voter the absentee ballot and
12 it shall be marked by the applicant in a voting booth in the
13 municipal clerk's office, sealed in the proper envelopes and
14 otherwise properly executed and returned to the municipal
15 clerk or the clerk's authorized representative before the
16 applicant leaves the office of the municipal clerk. Absentee
17 ballots may be cast in person beginning on the twenty-seventh
18 day before the election at the municipal clerk's office until
19 5:00 p.m. on the Thursday immediately prior to the date of
20 election.

21 ~~[J.]~~ L. The act of marking the absentee ballot in
22 the office of the municipal clerk shall be a convenience to
23 the voter in the delivery of the absentee ballot and does not
24 make the office of the municipal clerk a polling place subject
25 to the requirements of a polling place in the Municipal

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

9 ~~[K-]~~ M Absentee ballots shall be air mailed to
10 federal qualified electors and federal voters whose
11 applications have been accepted not earlier than [~~thirty-five~~]
12 twenty-seven days prior to the election and not later than
13 5:00 p. m. on the Thursday immediately prior to the date of the
14 election.

15 ~~[L-]~~ N. Absentee ballots shall be mailed to
16 voters whose applications have been approved not earlier than
17 [~~thirty-five~~] twenty-seven days prior to the election and not
18 later than 5:00 p. m. on Thursday immediately prior to the date
19 of the election.

20 ~~[M-]~~ O. No absentee ballot shall be delivered or
21 mailed to any person other than the applicant for such
22 ballot. "

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

25 "3-9-5. ABSENTEE BALLOT REGISTER. --

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

3 (1) in numerical sequence, the name and
4 municipal address of each absentee ballot applicant;

5 (2) the date and time of receipt of the
6 application;

7 (3) whether the application was accepted or
8 rejected;

9 (4) the date of [~~hand~~] delivery to the voter
10 in person in the office of the municipal clerk, or mailing of
11 an absentee ballot to the applicant, the method of delivery
12 and, if mailed, the address to which the ballot was mailed;

13 (5) the applicant's precinct and district
14 number, if applicable;

15 (6) whether the applicant is a voter, a
16 federal voter or a federal qualified elector;

17 (7) affidavits of voters who did not receive
18 absentee ballots; and

19 (8) the date and time the completed ballot
20 was received from the applicant by the municipal clerk.

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

25 C. For the purposes of recordkeeping, the absentee

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1 register may be combined with the early voting register,
2 provided that the method of balloting shall be labeled either
3 "absentee ballot" or "early voter". "

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

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

8 A. The form of the absentee ballot shall be, as
9 nearly as practicable, in the same form as prescribed by the
10 municipal clerk for emergency paper ballots or paper ballots
11 used in lieu of voting machines. However, to reduce weight
12 and bulk for transport of absentee ballots, the size and
13 weight of the paper for envelopes, ballots and instructions
14 shall be reduced as much as is practicable. The ballots shall
15 provide for sequential numbering.

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

19 C. The municipal clerk shall prescribe the form
20 of:

- 21 (1) official inner envelopes for use in
- 22 sealing the completed absentee ballot;
- 23 (2) official mailing envelopes for use in
- 24 returning the official inner envelope to the municipal clerk;
- 25 (3) absentee ballot instructions, describing

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1 proper methods for completion of the ballot and returning it;
2 and

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

5 D. Official transmittal envelopes and official
6 mailing envelopes for transmission of absentee ballot
7 materials to and from the municipal clerk and federal voters
8 and federal qualified electors shall be printed in [~~red~~] blue
9 in the form prescribed by postal regulations and the Federal
10 Voting Assistance Act of 1955. Official transmittal envelopes
11 and official mailing envelopes for transmission of absentee
12 ballot materials to and from the municipal clerk shall be
13 printed in green in substantially similar form. All official
14 inner envelopes shall be printed in green.

15 E. The reverse of each official mailing envelope
16 shall contain a form to be signed by the person completing the
17 absentee ballot. The form shall identify the person and shall
18 contain the following statement: "I will not vote in this
19 election other than by the enclosed ballot. I will not
20 receive or offer any compensation or reward for giving or
21 withholding any vote. ". "

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

24 "3-9-7. MANNER OF VOTING. --

25 A. Any person voting an absentee ballot under the

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1 provisions of the Municipal Election Code shall secretly mark
2 the ballot in the manner provided in the Municipal Election
3 Code for marking emergency paper ballots, remove any visible
4 number on the ballot, place the ballot in the official inner
5 envelope and securely seal the envelope. The person voting
6 shall then place the official inner envelope inside the
7 official mailing envelope and securely seal the envelope. The
8 person voting shall then fill in the form on the reverse of
9 the official mailing envelope.

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

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

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1 then place the official inner envelope inside the official
2 mailing envelope and securely seal the envelope. The voter
3 shall then complete the form on the reverse of the official
4 mailing envelope. "

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

7 "3-9-8. CARE OF ABSENTEE BALLOTS--DESTRUCTION OF UNUSED
8 BALLOTS BY MUNICIPAL CLERK. --

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

19 B. The municipal clerk shall accept completed
20 official outer envelopes received by mail or delivered in
21 person to the municipal clerk's office by the voter signing
22 the official outer envelope until 7:00 p.m. on election day.
23 Any completed outer envelope received after that time and date
24 shall be marked as to the time and date received, shall not be
25 delivered to the precinct board and shall be preserved until

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1 the time for election contests has expired. In the absence of
2 a court order, after the expiration of the time for election
3 contests, the municipal clerk shall destroy all late official
4 mailing envelopes without opening or permitting the contents
5 to be examined, cast, counted or canvassed. Before their
6 destruction, the municipal clerk shall count the numbers of
7 late ballots from voters, federal voters and federal qualified
8 electors and record the number from each category in the
9 absentee ballot register.

10 C. ~~[At]~~ After 5:00 p. m. and not later than 8:00
11 p. m. on the Thursday immediately preceding the date of the
12 election, the municipal clerk shall record the numbers of the
13 unused absentee ballots and shall publicly destroy in the
14 municipal clerk's office all such unused ballots. The
15 municipal clerk shall execute a certificate of such
16 destruction, which shall include the numbers on the ballots
17 destroyed, and such certificate shall be placed within the
18 absentee ballot register.

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

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1 unreceived absentee ballots. "

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

4 "3-9-9. ABSENT VOTER PRECINCT. --For the purposes of
5 absentee voting, the governing body shall create a special
6 absent voter precinct, cause [a] an absent voter precinct
7 board to be appointed consisting of election judges and
8 election clerks as provided in the Municipal Election Code and
9 shall designate a polling place for the counting and tallying
10 of absentee ballots in the election on election day. The
11 municipal clerk shall administer the oath to the election
12 judges. A regular precinct board may be designated to serve
13 as the absent voter precinct board. Members of the absent
14 voter precinct board shall receive the same compensation as
15 other precinct board members, but in no case shall a precinct
16 board member who also serves as a member of the absent voter
17 precinct board be entitled to extra compensation for serving
18 on the absent voter precinct board. "

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

21 "3-9-10. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER
22 PRECINCT. --After 7:00 a.m. on election day, the municipal
23 clerk shall deliver to the absent voter precinct board the
24 absentee ballot register and the absent voter ballots received
25 by the clerk. Prior to 7:00 p.m. on election day, the

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1 municipal clerk shall deliver any ballots received on election
2 day to the absent voter precinct board and the precinct board
3 shall note the receipt of ballots in the absentee ballot
4 register and on the absentee voter list. On delivery of the
5 ballots, the municipal clerk or his designee shall remain in
6 the presence of the absent voter precinct board until the
7 clerk has observed the opening of all official mailing
8 envelopes, the deposit of all ballots in the locked ballot box
9 and the listing of the names on all of the official mailing
10 envelopes in the absentee voter list. All functions of the
11 absent voter precinct board shall be conducted in the place
12 designated as the absent voter precinct. "

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

15 "3-9-13. VOTING IN PERSON PROHIBITED. --

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

19 B. At any time prior to 5:00 p.m. on the Thursday
20 immediately preceding the date of the election, any person
21 whose absentee ballot application has been accepted and who
22 was mailed an absentee ballot but who has not received the
23 absentee ballot may execute, in the office of the municipal
24 clerk of the municipality where that person is registered to
25 vote, a sworn affidavit stating that the person did not

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1 receive or vote his absentee ballot. Upon receipt of the
2 sworn affidavit, the municipal clerk shall issue the voter a
3 replacement absentee ballot.

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

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

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

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

17 "3-9-16. PENALTIES. --

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

21 B. Any municipal official or employee or any other
22 person who furnishes absentee ballots to persons who are not
23 entitled to such ballots under the provisions of the Municipal
24 Election Code is guilty of a fourth degree felony.

25 C. Any municipal official or employee, precinct

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1 board member or any other person who knowingly destroys or
2 otherwise disposes of an absentee ballot other than in the
3 manner provided by [~~this act~~] the Municipal Election Code is
4 guilty of a fourth degree felony.

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

10 E. A [~~municipal clerk or any other~~] person who
11 knowingly possesses an executed or unexecuted absentee ballot
12 outside the physical confines of the municipal clerk's office
13 when [~~not legally entitled to possession thereof~~] the ballot
14 is not the personal ballot of that person or who otherwise
15 knowingly authorizes, aids or abets the unlawful removal of an
16 executed or unexecuted absentee ballot from the physical
17 confines of the municipal clerk's office is guilty of a fourth
18 degree felony.

19 F. A municipal clerk who knowingly possesses an
20 executed or unexecuted absentee ballot outside the physical
21 confines of the municipal clerk, or who otherwise knowingly
22 authorizes, aids or abets the unlawful removal of an executed
23 or unexecuted absentee ballot that is not the personal ballot
24 of the municipal clerk from the physical confines of the
25 municipal clerk's office, is guilty of a fourth degree

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1 felony. "

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

4 "[NEW MATERIAL] EARLY VOTING. --

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

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

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

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

23 "[NEW MATERIAL] EARLY VOTING PRECINCT BOARD. -- For the
24 purposes of early voting, the governing body shall create a
25 special early voting precinct, cause a precinct board to be

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1 appointed to serve on election day consisting of election
2 judges and election clerks as provided in the Municipal
3 Election Code and shall designate a place for the counting and
4 tallying of early votes in the election. The municipal clerk
5 shall administer the oath to the election judges. The early
6 voting election officials shall receive the same compensation
7 as other precinct board members, but in no case shall a
8 precinct board member who also serves as a member of the early
9 voting precinct board be entitled to extra compensation for
10 serving on the early voting precinct board. "

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

13 "[NEW MATERIAL] MANNER OF VOTING. --

14 A. At the time of the adoption of the resolution
15 the governing body shall determine the manner of casting and
16 recording votes, and if voting machines are to be used, the
17 municipal clerk shall order the voting machines from the
18 county clerk within fifteen days of the adoption of the
19 election resolution, and the county clerk shall supply such
20 voting machines pursuant to Section 1-9-6 NMSA 1978. The
21 county shall provide voting machine technicians, voting
22 machine programming and voting machine transportation. The
23 municipality shall pay the reasonable fee charged by the
24 county for such services and the use of the voting machines,
25 but in no case in an amount that exceeds the actual cost to

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1 the county pursuant to Section 1-9-12 NMSA 1978. The
2 ordering, preparation, certification and delivery of voting
3 machines shall be conducted pursuant to the provisions of
4 Section 3-8-14 NMSA 1978 and the Municipal Election Code.

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

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

10 "[NEW MATERIAL] RIGHT TO VOTE EARLY. --

11 A. Any qualified voter may vote early for all
12 candidates and on all questions appearing on the ballot as if
13 he were able to cast his ballot in person on election day at
14 his regular polling place.

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

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

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

22 "[NEW MATERIAL] EARLY VOTING APPLICATION. --

23 A. Application by a voter for early voting shall
24 be made only in person by the voter on a form prescribed and
25 furnished by the municipal clerk of the municipality in which

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1 the voter is registered to vote. The municipal clerk shall
2 prescribe the form of the early voting application.

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

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

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

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

17 (3) the applicant has been issued an absentee
18 ballot;

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

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

25 D. The reverse side of each early voting

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1 application shall contain a form to be signed by the person
2 completing the application. The form shall be signed by the
3 applicant and shall contain the following oath: "I will not
4 vote in this election other than by early ballot. I will not
5 receive or offer any compensation or reward for giving or
6 withholding any vote."

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

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

- 15 (1) mark the application "accepted";
- 16 (2) enter the required information in the
17 early voting register; and
- 18 (3) permit the voter to vote by issuing the
19 voter an early voter ballot if the ballots are to be counted
20 and canvassed by hand; or
- 21 (4) issue the voter an early voting marksense
22 ballot if the marksense voting device is being used in the
23 election; or
- 24 (5) permit the voter to cast his vote on the
25 voting machine if a voting machine is being used in the

underscored material = new
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1 election.

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

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

12 "[NEW MATERIAL] EARLY VOTING-- USING AN ELECTRONIC VOTING
13 DEVICE. --

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

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1 the early voting daily report.

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

11 C. The act of voting early in the office of the
12 municipal clerk shall be a convenience to the voter and does
13 not make the office of the municipal clerk a polling place
14 subject to the requirements of a polling place in the
15 Municipal Election Code other than is provided in this
16 subsection. During the period of time between the date a
17 person may first vote early in person and the final date for
18 such application and voting in the office of the municipal
19 clerk, it is unlawful to solicit votes, display or otherwise
20 make accessible any posters, signs or other forms of campaign
21 literature whatsoever in the clerk's office. "

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

24 "NEW MATERIAL EARLY VOTING REGISTER. --

25 A. For each election the municipal clerk shall

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- 1 keep an "early voting register", in which he shall enter:
2 (1) in numerical sequence, the name and
3 street address of each early voter;
4 (2) the date and time of receipt of the
5 application;
6 (3) whether the application was accepted or
7 rejected;
8 (4) the applicant's precinct and district
9 number, if applicable; and
10 (5) whether the applicant is a voter, a
11 federal voter or a federal qualified elector.

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

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

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

22 "[NEW MATERIAL] MANNER OF VOTING. --

23 A. Any person voting an early voting paper ballot
24 pursuant to the provisions of the Municipal Election Code
25 shall mark the ballot in the manner provided in the Municipal

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1 Election Code for marking emergency paper ballots, remove any
2 visible number on the ballot, fold the ballot and place it in
3 the locked ballot box.

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

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

12 "[NEW MATERIAL] CERTIFICATE VOTING. --

13 A. No person shall vote in a municipal special or
14 regular election unless that person is a qualified elector, in
15 accordance with the provisions of Subsection K of Section
16 3-1-2 NMSA 1978, for the precinct or consolidated precinct
17 that encompasses his place of residence as shown on the
18 signature roster.

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

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

25 (2) his name is not listed as having been

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1 issued an absentee ballot;

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

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

14 C. Upon compliance with the requirements of
15 Subsection B of this section, the person shall be permitted to
16 vote. "

17 Section 46. A new section of the municipal election code
18 is enacted to read:

19 "[NEW MATERIAL] EARLY VOTING BALLOTS--DESTRUCTION OF
20 UNUSED EARLY VOTING BALLOTS BY THE MUNICIPAL CLERK.--After
21 5:00 p. m. and not later than 8:00 p. m. on the Friday
22 immediately preceding the date of the election, the municipal
23 clerk shall record the numbers of the unused early voting
24 ballots in the early voting register and shall publicly
25 destroy in the municipal clerk's office all such unused

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1 ballots. The municipal clerk shall execute a certificate of
2 such destruction that shall include the numbers on the ballots
3 destroyed, and such certificate shall be placed within the
4 early voting register. "

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

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

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

16 "[NEW MATERIAL] COUNTING AND TALLYING EARLY VOTES BY THE
17 EARLY VOTING PRECINCT BOARD. --At the precinct board election
18 school the municipal clerk shall notify the members of the
19 early voting precinct board of the method that will be used in
20 the counting and tallying of ballots. The procedures shall be
21 such as to ensure the secrecy of the ballot and shall be
22 conducted in the manner provided in the Municipal Election
23 Code.

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

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1 "[NEW MATERIAL] CANVASS--RECOUNT OR RECHECK--
2 DISPOSITION.--Early voting ballots shall be canvassed,
3 recounted and disposed of in the manner provided by the
4 Municipal Election Code for the canvassing, recounting and
5 disposition of emergency paper ballots. Where voting machines
6 are used to register early voting ballots, such ballots shall
7 be canvassed and rechecked in the manner provided by the
8 Municipal Election Code for the canvassing and recheck of
9 ballots cast on a voting machine; provided, in the event of a
10 contest, voting machines used to register early voting ballots
11 shall not be rechecked, but the early voting ballots shall be
12 recounted in the manner provided by the Municipal Election
13 Code for the recounting of emergency paper ballots."

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

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

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

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

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

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

6 "[NEW MATERIAL] PENALTIES. --

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

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

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

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

23 E. Any person who knowingly possesses an executed
24 or unexecuted early voting ballot outside the physical
25 confines of the municipal clerk's office when the ballot is

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1 not the personal ballot of that person, or who otherwise
2 knowingly authorizes, aids or abets the unlawful removal of an
3 executed or unexecuted early voting ballot from the physical
4 confines of the municipal clerk's office, is guilty of a
5 fourth degree felony.

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

15 Section 53. REPEAL. -- Sections 3-8-17.1, 3-8-17.2 and 3-
16 9-14 NMSA 1978 (being Laws 1997, Chapter 266, Sections 1 and 2
17 and Laws 1973, chapter 375, Section 12, as amended) are
18 repealed.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 March 9, 1999

7
8 Mr. President:

9
10 Your RULES COMMITTEE, to whom has been referred

11
12 SENATE BILL 707

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16
17
18 1. On page 5, lines 21 and 22, strike "twenty-seven" and
19 insert in lieu thereof "twenty-one".

20
21 2. On page 7, line 15, after "ballots" insert "and early
22 voting materials".

23
24 3. On page 26, line 13, after "electronic" insert
25 "marksense".

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SRC/SB 707a

Page 78

4. On page 35, lines 17 and 18, after "ballots" strike
", early voting ballots".

5. On page 35, line 19, after the first occurrence of
"ballots" insert ", early voting ballots".

6. On page 52, line 11, remove the brackets and line
through "thirty-five".

7. On page 52, line 12, strike "twenty-seven".

8. On page 52, line 17, remove the brackets and line
through "thirty-five" and strike "twenty-seven".

9. On page 56, line 11, after "deliver" insert "their
ballots in person".

10. On page 62, line 21, strike "clerk" and insert in lieu
thereof "clerk's office when that ballot is not the personal
ballot of the municipal clerk".

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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SRC/SB 707a

Page 79

11. On page 64, line 14, after the third occurrence of
"the" insert "election".

Respectfully submitted,

Gloria Howes, Co-Chair

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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SRC/SB 707a

Page 80

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Altamirano, Kysar, Romero

Absent: None

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

March 11, 1999

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 707, as amended

Amendment sponsored by Senator Pauline B. Eisenstadt

1. Strike Senate Rules Committee Amendment 1.

2. On page 5, lines 21 and 22, strike "twenty-seven" and insert in lieu thereof "twenty".

FORTY- FOURTH LEGISLATURE
FIRST SESSION

SF1/SB 707, aa

Page 82

Pauline B. Eisenstadt

Adopted _____ Not Adopted

(Chief Clerk)

(Chief Clerk)

Date _____

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- 82 -

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 15, 1999
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8 Mr. Speaker:
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10 Your VOTERS AND ELECTIONS COMMITTEE, to whom has
11 been referred
12

13 SENATE BILL 707, as amended
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

- 17 1. On page 46, line 6, strike the semi colon.
18
19 2. On page 46, strike lines 7 through 22 in their
20 entirety.
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22 3. On page 48, strike lines 4 through 6 in their entirety.
23
24 4. Renumber succeeding sections accordingly.,
25

and thence referred to the JUDICIARY COMMITTEE.

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HVEC/SB 707

Page 84

Respectfully submitted,

Edward C. Sandoval, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 13 For 0 Against

Yes: 13

Excused: None

Absent: None

J:\99BillsWP\s0707

underscored material = new
[bracketed material] = delete