ELECTION HANDBOOK
of the
STATE OF NEW MEXICO

2019 EDITION

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New Mexico Compilation Commission

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1-1-1. Election Code.

Chapter 1 NMSA 1978 may be cited as the "Election Code".

History: 1953 Comp., § 3-1-1, enacted by Laws 1969, ch. 240, § 1; 1975, ch. 255, § 1.

1-1-1.1. Purpose of [Election] Code.

It is the purpose of the Election Code [Chapter 1 NMSA 1978] to secure the secrecy of the ballot, the purity of elections and guard against the abuse of the elective franchise. It is also the purpose of the Election Code to provide for efficient administration and conduct of elections.

History: 1978 Comp., § 1-1-1.1, enacted by Laws 1979, ch. 74, § 1.

1-1-2. Headings.

Article and section headings do not in any manner affect the scope, meaning or intent of the provisions of the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-1-2, enacted by Laws 1969, ch. 240, § 2.

1-1-2.1. Ballot box key.

As used in the Election Code, "ballot box key" means:

A. a physical key that opens a lock used to secure a ballot box; or

B. the number on a numbered seal affixed to secure a ballot box.

History: Laws 2011, ch. 137, § 3.

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1-1-3. "Shall" and "may".

As used in the Election Code [Chapter 1 NMSA 1978], "shall" is mandatory and "may" is permissive.

History: 1953 Comp., § 3-1-3, enacted by Laws 1969, ch. 240, § 3.

1-1-3.1. Election cycle.

Except as otherwise provided, as used in the Election Code:

A. "election cycle" means the period beginning on January 1 after the last general election and ending on December 31 after the general election;

B. "general election cycle" means the period beginning on the day after the primary election and ending on December 31 after the general election; and

C. "primary election cycle" means the period beginning on January 1 after the last general election and ending on the day of the primary election.

History: Laws 2003, ch. 356, § 1; 2011, ch. 137, § 4; 2019, ch. 262, § 3.

1-1-3.2. Election observer.

As used in the Election Code, "election observer" means a person registered with the United States department of state as an international election observer or a person registered with the New Mexico secretary of state who is an academic engaged in research on elections and the election process.

History: Laws 2011, ch. 137, § 1.

1-1-3.3. Election-related organization.

As used in the Election Code, "election-related organization" means an organization registered with the secretary of state that is involved in election monitoring or voter turnout activities, but does not include a qualified political party in an election in which the political party is represented on the ballot.

History: Laws 2011, ch. 137, § 2; 2019, ch. 212, § 1.

1-1-4. Qualified elector.

A. As used in the Election Code and rules promulgated by the secretary of state, "qualified elector" means any resident of this state who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and includes any qualified resident.

B. As used in all other statutes and rules of New Mexico, unless otherwise defined, "qualified elector" means a "voter" as that term is defined in Section 1-1-5 NMSA 1978.

History: 1953 Comp., § 3-1-4, enacted by Laws 1969, ch. 240, § 4; 1975, ch. 255, § 2; 2011, ch. 137, § 5; 2019, ch. 212, § 2.

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1-1-4.1. Federal qualified elector.

As used in the Election Code, "federal qualified elector" means:

A. a uniformed-service voter; or

B. an overseas voter.

History: Laws 2015, ch. 145, § 1.

1-1-5. Voter.

As used in the Election Code, "voter" means any qualified elector or federal qualified elector who is registered to vote under the provisions of the Election Code.

History: 1953 Comp., § 3-1-5, enacted by Laws 1969, ch. 240, § 5; 2011, ch. 137, § 6; 2015, ch. 145, § 4; 2019, ch. 212, § 3.

1-1-5.1. Early voter.

As used in the Election Code [Chapter 1 NMSA 1978], "early voter" means a voter who votes in person before election day, and not by mail.

History: Laws 2003, ch. 357, § 7.

1-1-5.2. Definition of a vote; machine tabulated; hand-tallied; write-in.

A. For a paper ballot that is machine-tabulated on a vote tabulation system certified for use in this state, a vote shall be counted if the:

(1) voter's selection of a candidate or answer to a ballot question is indicated in the voting response area of the paper ballot; and

(2) ballot is marked in accordance with the instructions for that ballot type.

B. For a paper ballot that is hand-tallied, a vote shall be counted if:

(1) the ballot is marked in accordance with the instructions for that ballot type;

(2) the preferred candidate's name or answer to a ballot question is circled;

(3) there is a distinct marking, such as a cross or check, within the voting response area for the preferred candidate or answer to a ballot question; or

(4) the presiding judge and election judges hand-tallying the ballot unanimously agree that the voter's intent is clearly discernable.

C. For a paper ballot that is machine-tabulated or hand-tallied and that contains a write-in vote, the write-in vote shall be counted if the name is:

(1) the name of a declared write-in candidate for that office and position and is on the proper line provided for a write-in vote for that office and position; and

(2) written as first and last name; first name, middle name or initial and last name; one or two initials and last name; or last name alone if there is no other declared write-in candidate for the office or position that is the same or so similar as to tend to confuse the candidates' identities; provided that:

(a) when the presiding judge and election judges reviewing the write-in vote unanimously agree that the voter's intent is clearly discernable, an abbreviation, misspelling or other minor variation in the form of the name of a declared write-in candidate shall be accepted as a valid vote; and

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(b) as used in this subsection, "write-in" and "written" do not include the imprinting of any name by stamp or similar method or device or the use of a stencil or a preprinted sticker or label.

History: Laws 2003, ch. 356, § 9; 2005, ch. 270, § 58; 2007, ch. 337, § 11; § 1-9-4.2, recompiled as § 1-1-5.2 by Laws 2010, ch. 28, § 21; 2019, ch. 212, § 4.

1-1-5.3. Overseas voter.

As used in the Election Code, "overseas voter" means an individual who is a United States citizen, who is outside the United States and who:

A. is temporarily absent from the individual's residence in this state;

B. before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements;

C. before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements; or

D. was born outside the United States, is not otherwise described in this section and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if:

(1) the last place where a parent or legal guardian of the individual was, or would have been, eligible to vote before leaving the United States is within this state; and

(2) the individual has not previously registered to vote in any other state.

History: Laws 2015, ch. 145, § 2.

1-1-5.4. Uniformed-service voter.

As used in the Election Code, "uniformed-service voter" means an individual who is a United States citizen, whose voting residence is in this state, who otherwise satisfies this state's voter eligibility requirements and who is:

A. a member of the active or reserve components of the army, navy, air force, marine corps or coast guard of the United States who is on active duty and who by reason of that active duty is absent from the state;

B. a member of the merchant marine, the commissioned corps of the public health service, the astronaut program of the national aeronautics and space administration or the commissioned corps of the national oceanic and atmospheric administration of the United States and who by reason of that service is absent from the state;

C. a member on activated status of the national guard or state militia and who by reason of that active duty is absent from the member's county of residence; or

D. a spouse or dependent of a member referred to in Subsection A, B or C of this section and who, by reason of active duty or service of the member, is absent from the state; provided the spouse or dependent is an individual recognized as a spouse or dependent by the entity under which the member is serving.

History: Laws 2015, ch. 145, § 3.

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1-1-5.5. Power of attorney; prohibited use.

A power of attorney or other form of proxy is not valid for use by a person in any procedure or transaction concerning elections, including voter registration, petition signature, voter-registration cancellation, absentee ballot requests or voting another person's ballot.

History: Laws 2015, ch. 145, § 5.

1-1-5.6. Ballot question.

As used in the Election Code, "ballot question" means a question submitted to the voters of the state or a local government on a ballot pursuant to the provisions of the Election Code and does not include a candidate nomination, election contest or nonpartisan judicial retention election.

History: Laws 2019, ch. 212, § 10.

1-1-5.7. County.

As used in the Election Code, "county" means a county in this state, including a combined city and county corporation, incorporated county, urban county or single urban government.

History: Laws 2019, ch. 212, § 11.

1-1-5.8. Municipality.

As used in the Election Code, "municipality" means an incorporated city, town or village, whether incorporated under general act, special act, special charter or territorial charter, but does not mean a combined city and county corporation, an incorporated county or a single urban government.

History: Laws 2019, ch. 212, § 12.

1-1-5.9. Proper filing officer.

As used in the Election Code, "proper filing officer" means, for the purposes of filing:

A. reports required by the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] and the School District Campaign Reporting Act [1-22A-1 through 1-22A-10 NMSA 1978], the secretary of state;

B. declarations of candidacy and candidate qualification documents by any candidate for statewide or federal office, the secretary of state; and

C. declarations of candidacy and candidate qualification documents by all other candidates, the county clerk of the county in which the candidate resides.

History: Laws 2019, ch. 212, § 14.

1-1-5.10. Qualified resident.

As used in the Election Code, "qualified resident" means an individual who is under the age of eighteen and, except for the age requirement, otherwise satisfies the state's voter eligibility requirements as a qualified elector or a federal qualified elector.

History: Laws 2019, ch. 212, § 15.

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1-1-5.11. Special election.

As used in the Election Code, "special election" means an election at which only ballot questions are considered and that is held at a time other than a statewide election.

History: Laws 2019, ch. 212, § 16.

1-1-5.12. Statewide election.

As used in the Election Code, "statewide election" means:

A. a general election;

B. a political party primary;

C. a regular local election; or

D. with respect to the applicable counties and precincts, an election called to fill a vacancy in the office of United States representative.

History: Laws 2019, ch. 212, § 17.

1-1-5.13. United States.

As used in the Election Code, "United States" means the several states and the District of Columbia, but does not mean Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

History: Laws 2019, ch. 212, § 18.

1-1-6. Recheck and recount.

As used in the Election Code [Chapter 1 NMSA 1978]:

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

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

History: 1953 Comp., § 3-1-5.1, enacted by Laws 1977, ch. 222, § 1; 2005, ch. 270, § 8; 2007, ch. 337, § 3; 2009, ch. 150, § 1.

1-1-7. Residence; rules for determining.

For the purpose of determining residence for voting, the place of residence is governed by the following rules:

A. the residence of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return;

B. the place where a person's family resides is presumed to be his place of residence, but a person who takes up or continues his abode with the intention of remaining at a place other than where his family resides is a resident where he abides;

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C. a change of residence is made only by the act of removal joined with the intent to remain in another place. There can be only one residence;

D. a person does not gain or lose residence solely by reason of his presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while residing upon an Indian or military reservation;

E. no member of the armed forces of the United States, his spouse or his dependent is a resident of this state solely by reason of being stationed in this state;

F. a person does not lose his residence if he leaves his home and goes to another country, state or place within this state for temporary purposes only and with the intention of returning;

G. a person does not gain a residence in a place to which he comes for temporary purposes only;

H. a person loses his residence in this state if he votes in another state in an election requiring residence in that state, and has not upon his return regained his residence in this state under the provisions of the constitution of New Mexico;

I. "residence" is computed by not including the day on which the person's residence commences and by including the day of the election;

J. a person does not acquire or lose residence by marriage only.

History: 1953 Comp., § 3-1-6, enacted by Laws 1969, ch. 240, § 6; 1973, ch. 70, § 1.

1-1-7.1. Residence for purpose of candidacy and signing of petitions; rule for determining.

For the purpose of determining the residence of a person desiring to be a candidate for the nomination or election to an office under the provisions of the Election Code [Chapter 1 NMSA 1978] or for the purpose of determining the residence of any signer of a petition required by the Election Code, permanent residence shall be resolved in favor of that place shown on the person's certificate of registration as his permanent residence, provided the person resides on the premises.

History: 1978 Comp., § 1-1-7.1, enacted by Laws 1979, ch. 378, § 1; 1985, ch. 207, § 1; 1993, ch. 314, § 1; 1993, ch. 316, § 1.

1-1-7.2. Petitions; nominations; signatures to be counted.

A. A person who signs a nominating petition shall sign only one petition for the same office unless more than one candidate is to be elected to that office, and in that case, a person may sign not more than the number of nominating petitions equal to the number of candidates to be elected to the office.

B. A person who signs a nominating petition shall indicate the person's registration address. If the person does not have a standard street address, the person may provide the mailing address as shown on the person's certificate of registration.

C. A signature shall be counted on a nominating petition unless there is evidence presented that the petition does not provide the information required by the nominating petition for each person signing or the person signing:

(1) is not a voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate;

(2) has signed more than one petition for the same office, except as provided in Subsection A of this section, and if the person has signed more than one petition for the same office and

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in the same election cycle, none of the challenged signatures from that person shall count toward the total number of signatures required for any candidate for that office;

(3) has signed one petition more than once, in which case only one signature from that person shall count toward the total number of signatures required for that candidate for office;

(4) in a primary election, is not of the same political party as the candidate named in the nominating petition as shown by the signer's certificate of registration; or

(5) is not the person whose name appears on the nominating petition.

D. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code, except that Paragraph (4) of Subsection C of this section shall not apply to petitions filed by unaffiliated candidates or petitions filed by candidates of minor political parties.

History: 1953 Comp., § 3-8-24.2, enacted by Laws 1973, ch. 228, § 5; 1975, ch. 255, § 109; 1975, ch. 295, § 16; 1979, ch. 378, § 7; 1985, ch. 207, § 8; 1993, ch. 314, § 47; 1993, ch. 316, § 47; 1999, ch. 267, § 27; 2011, ch. 137, § 58; 2017, ch. 101, § 10; 1978 Comp., § 1-8-31 recompiled and amended as § 1-1-7.2 by Laws 2019, ch. 212, § 9.

1-1-8. Election returns.

As used in the Election Code [Chapter 1 NMSA 1978], "election returns" means the certificate of the precinct board showing the total number of votes cast for each candidate, or for or against each proposed constitutional amendment or other question, and may include statements of canvass, signature rosters, poll books, tally books, machine printed returns and, in any canvass of returns for county candidates, the original certificates of registration in the possession of the county clerk, together with the copies of certificates of registration in the office of the county clerk.

History: 1953 Comp., § 3-1-7, enacted by Laws 1969, ch. 240, § 7; 1977, ch. 222, § 2; 1993, ch. 314, § 2; 1993, ch. 316, § 2.

1-1-9. Recompiled.

1-1-10. Qualified political party.

As used in the Election Code [Chapter 1 NMSA 1978], "qualified political party" means a political party that has complied with the provisions of Section 1-7-2 NMSA 1978.

History: 1953 Comp., § 3-1-9, enacted by Laws 1969, ch. 240, § 9; 1977, ch. 222, § 3; 1981, ch. 140, § 1; 1989, ch. 392, § 1.

1-1-11. Precinct.

As used in the Election Code, "precinct" means a designated division of a county for election and redistricting purposes.

History: 1953 Comp., § 3-1-10, enacted by Laws 1969, ch. 240, § 10; 2019, ch. 212, § 5.

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1-1-12. Consolidated precinct.

A. As used in the Election Code, "consolidated precinct" means a single precinct or the combination of two or more precincts into one polling place for the purpose of establishing a voter convenience center pursuant to the provisions of Section 1-3-4 NMSA 1978.

B. When consolidated precincts are used to establish a voter convenience center in a statewide election, references to "precincts" in the voting process shall be applicable to consolidated precincts.

History: 1953 Comp., § 3-1-11, enacted by Laws 1969, ch. 240, § 11; 1975, ch. 255, § 4; 2011, ch. 131, § 1; 2011, ch. 137, § 7; 2019, ch. 212, § 6.

1-1-13. Election board.

As used in the Election Code, "election board" means the judges of election in accordance with Article 7, Section 1 of the constitution of New Mexico and the election clerks that are appointed pursuant to Section 1-2-12 NMSA 1978 and serving in a polling place or tallying ballots that have been cast in a statewide or special election.

History: 1953 Comp., § 3-1-12, enacted by Laws 1969, ch. 240, § 12; 2011, ch. 137, § 8; 2019, ch. 212, § 7.

1-1-14. Publication.

A. As used in the Election Code, "publication", unless otherwise provided in the constitution of New Mexico or the Election Code, means publication for the required number of times in a newspaper of general circulation in the county. "Publication in Spanish" means publication for the required number of times in an official Spanish language newspaper as set forth in Section 14-11-13 NMSA 1978 or any other Spanish language newspaper that meets the requirements of Section 14-11-2 NMSA 1978 if such newspaper exists in the county and is of general circulation in the county.

B. In addition to publication as required by Subsection A of this section, any publication required of:

(1) the secretary of state shall also be posted in the office of the secretary of state and on the secretary of state's web site; and

(2) the county clerk shall also be posted in the office of the county clerk and on the county's web site, if the county maintains a web site.

History: 1953 Comp., § 3-1-13, enacted by Laws 1969, ch. 240, § 14; 1975, ch. 255, § 5; 1983, ch. 4, § 1; 2011, ch. 137, § 9.

1-1-15. Posting.

A. As used in the Election Code, "posting" means posting from the date a posting is required until forty-five days after adjournment of the state or county canvassing board or until forty-five days following any recount, contest or other judicial inquiry, whichever is later.

B. A posting as described in Subsection A of this section is satisfied by posting on the website and in a public area in the office of:

(1) the secretary of state, when the secretary of state has the duty to post; or

(2) the county clerk, when the county clerk has the duty to post.

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History: 1953 Comp., § 3-1-14, enacted by Laws 1969, ch. 240, § 15; 2011, ch. 137, § 10; 2019, ch. 212, § 8.

1-1-16. Registration officer.

As used in the Election Code [Chapter 1 NMSA 1978], "registration officer" means the secretary of state, a county clerk or a clerk's authorized deputy, a member of the board of registration or a state employee performing registration duties in accordance with the federal National Voter Registration Act of 1993 or Section 1-4-5.2 NMSA 1978.

History: 1953 Comp., § 3-1-15, enacted by Laws 1969, ch. 240, § 16; 1995, ch. 198, § 1; 2005, ch. 270, § 4.

1-1-16.1. Registration agent.

As used in the Election Code [Chapter 1 NMSA 1978], "registration agent" means a state or federal employee who provides voter registration at a state agency, or a tribal registration agent office, or any other individual who assists another person in completion of a voter registration application.

History: Laws 2005, ch. 270, § 3.

1-1-16.2. New registrant.

As used in the Election Code [Chapter 1 NMSA 1978], "new registrant" means a person who was not registered to vote in the state at the time the person registered to vote.

History: Laws 2005, ch. 270, § 2.

1-1-17. Person authorized to administer oaths.

As used in the Election Code [Chapter 1 NMSA 1978], "person authorized to administer oaths" means any person empowered by the laws of any state, the federal government or of any foreign country to administer oaths.

History: 1953 Comp., § 3-1-16, enacted by Laws 1969, ch. 240, § 17.

1-1-18. Oath includes affirmation.

As used in the Election Code [Chapter 1 NMSA 1978], "oath" includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word "swear" includes affirm.

History: 1953 Comp., § 3-1-17, enacted by Laws 1969, ch. 240, § 18.

1-1-19. Elections covered by code.

A. The Election Code applies to the following:
(1) general elections;

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(2) primary elections;
(3) special elections;
(4) elections to fill vacancies in the office of United States representative;
(5) local elections included in the Local Election Act; and
(6) recall elections of county officers, school board members or applicable municipal officers.

B. To the extent procedures are incorporated or adopted by reference by separate laws governing such elections or to the extent procedures are not specified by such laws, certain provisions of the Election Code shall also apply to special district elections not covered by the Local Election Act [Chapter 1, Article 22 NMSA 1978].

History: 1953 Comp., § 3-1-18, enacted by Laws 1969, ch. 240, § 19; 1975, ch. 255, § 6; 1977, ch. 222, § 4; 1985, ch. 168, § 1; 2018, ch. 79, § 1.

1-1-20. Major fractions.

In any place in the Election Code [Chapter 1 NMSA 1978] requiring counting or computation of numbers, any fraction or decimal greater than one-half of a whole number shall be counted as a whole number.

History: 1978 Comp., § 1-1-20, enacted by Laws 1979, ch. 378, § 2.

1-1-21. County chairman.

In the event that a county chairman is designated a duty under the Election Code [Chapter 1 NMSA 1978] and a political party in a county does not have a county chairman to carry out the designated duty and where there are no other provisions delegating the duty assigned to the county chairman, the state chairman of the political party shall carry out the designated duty.

History: Laws 1995, ch. 124, § 18.

1-1-22. Computation of time; deadlines.

For the purpose of the Election Code, time periods of less than eleven days shall be computed as calendar days; provided, however, that if an actual deadline falls on a weekend or state-recognized holiday, the next business day shall be the deadline, unless the deadline is expressed as a day of the week, in which case that day remains the actual deadline.

History: Laws 2005, ch. 270, § 1; 2015, ch. 145, § 6.

1-1-23. Unique identifier.

As used in the Election Code [Chapter 1 NMSA 1978], "unique identifier" means a randomly generated series of numbers, letters or symbols assigned to a voter, which shall not be the voter's social security number or date of birth.

History: Laws 2005, ch. 270, § 5; 2007, ch. 337, § 4.

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1-1-24. Required voter identification.

As used in the Election Code [Chapter 1 NMSA 1978], "required voter identification" means any of the following forms of identification as chosen by the voter:

A. a physical form of identification, which may be:

(1) an original or copy of a current and valid photo identification with or without an address, which address is not required to match the voter's certificate of registration; or

(2) an original or copy of a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and address of the person, the address of which is not required to match the voter's certificate of registration; or

B. a verbal or written statement by the voter of the voter's name, registration address and year of birth; provided, however, that the statement of the voter's name need not contain the voter's middle initial or suffix.

History: Laws 2005, ch. 270, § 6; 2008, ch. 59, § 1.

1-1-25. Voter information.

As used in the Election Code [Chapter 1 NMSA 1978], "voter information" means a document containing the person's name, address and precinct number that is issued by the county clerk or the secretary of state.

History: Laws 2005, ch. 270, § 7; 2007, ch. 337, § 5.

1-1-26. Petitions; nominations; requirements before signed by voters; invalidated petitions.

A. The following information shall be listed in the appropriate space at the top of a nominating petition before the petition has been signed by a voter:

(1) the candidate's name as it appears on the candidate's certificate of registration;

(2) the address where the candidate resides;

(3) the office sought by the candidate;

(4) if the office sought is a districted office or a division within a judicial district or has been assigned a position number for purposes of the election, the district, division or position number of the office sought;

(5) if the office sought will be on the general election ballot, the party affiliation of the candidate or that the candidate is unaffiliated with any qualified political party; and

(6) if the office sought will be nominated at a political party primary, the party affiliation of voters permitted to sign the petition.

B. With or without a showing of fraud or a reasonable opportunity for fraud, a nominating petition page, including all signatures on the petition page, shall be invalid if any of the information required by Subsection A of this section is not listed on the petition before the petition page is signed by a voter or if any of the required information is subsequently changed in any way.

History: Laws 2019, ch. 212, § 13.

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ARTICLE 2
Election Officers and Boards

Sec.
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1-2-30. Watchers and election observers; penalty.
1-2-31. County canvass observers.
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1-2-1. Secretary of state; chief election officer; rules.

A. The secretary of state is the chief election officer of the state.

B. The secretary of state shall:

(1) obtain and maintain uniformity in the application, operation and interpretation of the Election Code; and

(2) subject to the State Rules Act [Chapter 14, Article 4 NMSA 1978], make rules pursuant to the provisions of, and necessary to carry out the purposes of, the Election Code and shall furnish to the county clerks copies of such rules; provided that no rule is adopted or amended within the sixty-three days before a primary or a general election.

C. No forms or procedures shall be used in any election held pursuant to the Election Code without prior approval of the secretary of state.

History: 1953 Comp., § 3-2-1, enacted by Laws 1969, ch. 240, § 22; 1971, ch. 317, § 1; 1975, ch. 255, § 7; 1979, ch. 74, § 2; 2011, ch. 137, § 12; 2015, ch. 145, § 7; 2017, ch. 101, § 1.

1-2-1.1. Attorney general required to assist secretary of state; district attorneys required to assist secretary of state and county clerks.

A. The attorney general shall, upon request of the secretary of state, provide legal advice, assistance, services and representation as counsel in any action to enforce the provisions of the Election Code.

B. Upon the request of the secretary of state or a county clerk, the attorney general and the several district attorneys of the state shall assign investigators or lawyers to aid the secretary of state and county clerks to ensure the proper conduct of an election.

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C. Each district attorney shall assign a lawyer to be the elections prosecutor for the judicial district or for each county in the judicial district. The district attorney shall communicate and maintain current the name and contact information of the assigned elections prosecutor to the secretary of state and to each county clerk in the judicial district. The assigned elections prosecutor shall receive from the county clerk in the prosecutor's county or judicial district referrals of suspected violations of the Election Code. The assigned elections prosecutor shall each month report in writing to the county clerk and the district attorney the status of each referral until the matter is concluded.

History: 1978 Comp., § 1-2-1.1, enacted by Laws 1979, ch. 74, § 3; 1981, ch. 159, § 1; 2015, ch. 145, § 8; 2018, ch. 79, § 2.

1-2-2. Secretary of state; general duties.

The secretary of state shall:

A. generally supervise all elections by administering the Election Code [Chapter 1 NMSA 1978] in its statewide application;

B. prepare instructions for the conduct of election and registration matters in accordance with the laws of the state;

C. advise county clerks, boards of county commissioners and boards of registration as to the proper methods of performing their duties prescribed by the Election Code;

D. report possible violations of the Election Code of which the secretary of state has knowledge to the district attorney or the attorney general for prosecution;

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

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

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

H. assist the county clerks in the education and training of registration officers.

History: 1953 Comp., § 3-2-2, enacted by Laws 1969, ch. 240, § 23; 1975, ch. 255, § 8; 1995, ch. 198, § 2; 2005, ch. 270, § 10; 2011, ch. 137, § 13.

1-2-2.1. Administrative complaints; procedures.

A. The secretary of state shall adopt rules for an administrative procedure for hearing complaints on violations of the provisions of Title III of the federal Help America Vote Act of 2002, including provisions related to voting system standards, provisional voting procedures, voter registration procedures and operational standards of the statewide voter registration system.

B. A person who determines that there is a violation or that a violation is about to occur pursuant to this section may file a complaint with the secretary of state. Complaints may be consolidated by the secretary.

C. Complaints shall be in writing, signed and sworn by the person filing the complaint and notarized.

D. The hearing shall be on the record if the complainant requests.

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E. If the hearing officer determines that there is a violation, an appropriate remedy shall be provided. If there is no violation, the complaint shall be dismissed and the results of the hearing made available to the public.

F. A final decision shall be made within ninety days of the filing of the complaint unless the complainant consents to extending the deadline. If the deadline is not met, the complaint shall be resolved within sixty days through alternative dispute resolution procedures established pursuant to the Governmental Dispute [Prevention] Resolution Act [Chapter 12, Article 8A NMSA 1978]. Records and materials from the hearing shall be available for use in an alternative dispute resolution procedure.

History: Laws 2003, ch. 356, § 5.

1-2-3. Secretary of state; instructions; forms; certificates.

A. The secretary of state shall prepare and furnish to each county:

(1) sufficient forms, blanks, records, files or other equipment deemed necessary by him for the registration of voters, including suitable instructions concerning their use for each registration officer;

(2) printed forms of additional election certificates; and

(3) instructions to voters which shall set forth in nontechnical language the manner in which voters cast their ballots.

B. All registration or voting notices, forms, instructions, assistance or other information relating to the electoral process shall be printed in both English and Spanish.

C. Where a minority language is historically unwritten, all proclamations, registration or voting notices, instructions, assistance or other information relating to the electoral process shall be made available orally in the respective minority language, through the media when practicable, in public meetings and on election day at the polls.

History: 1953 Comp., § 3-2-3, enacted by Laws 1969, ch. 240, § 24; 1975, ch. 255, § 9; 1977, ch. 124, § 1.

1-2-3.1. Secretary of state; multipurpose registration form.

The secretary of state shall prescribe the form of a multipurpose certificate of registration, which shall be printed in English and Spanish. The certificate of registration form shall be clear and understandable to the average person and shall include brief but sufficient instructions to enable the qualified elector to complete the form. The certificate of registration form shall replace the affidavit of registration.

History: 1978 Comp., § 1-2-3.1, enacted by Laws 1993, ch. 314, § 3 and by Laws 1993, ch. 316, § 3.

1-2-4. Secretary of state; training and instructions to precinct boards; training manual.

A. The secretary of state shall provide:

(1) instructions for the precinct board, which shall include a brief nontechnical explanation of its duties as required by the Election Code [Chapter 1 NMSA 1978]; and

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(2) a single training manual containing standard guidelines for the operations and processes of statewide elections, including pre-election day activities, election-day activities and post-election-day activities. Separate manuals for voting systems may be provided for each county, or if the single training manual is in a looseleaf binder format, sections for the voting systems used in a given county may be inserted in the training manual for that county.

B. When any specific duty is imposed by the instructions issued under the Election Code, the duty shall be deemed to be a requirement of the law.

History: 1953 Comp., § 3-2-4, enacted by Laws 1969, ch. 240, § 25; 1975, ch. 255, § 10; 2005, ch. 270, § 11; 2007, ch. 336, § 2.

1-2-5. Secretary of state; election seminars.

In carrying out his duties under the Election Code [Chapter 1 NMSA 1978], the secretary of state shall, once before each and every statewide election, cause to be organized and conducted at convenient places and times in this state seminars on the administration of the Election Code. The secretary of state shall send written notice of the seminar to each county clerk setting forth the time and place of the seminar. Each county clerk, one of his designated deputies and one voting machine technician shall attend the seminar. Per diem and mileage shall be paid out of the funds appropriated to the secretary of state.

History: 1953 Comp., § 3-2-5, enacted by Laws 1969, ch. 240, § 26; 1975, ch. 255, § 11.

1-2-6. Election board; appointment.

A. The county clerk on or before forty-two days next preceding a statewide election shall appoint the necessary election boards for that election, and before twenty-one days next preceding a special election the county clerk shall appoint the necessary election boards for that election. The appointment of the members of each election board shall be in writing and delivered to the person receiving the appointment.

B. The county clerk shall maintain in a public place in the county clerk's office a list of the members of the election board, the positions of the election board members and the assignments of the election board members. The list shall be made available at least forty days before a statewide election and at least twenty days before a special election and shall be updated when changed until forty-five days after adjournment of the state or county canvassing board or until forty-five days following any recount, contest or other judicial inquiry, whichever is later.

History: 1953 Comp., § 3-2-7, enacted by Laws 1969, ch. 240, § 28; 1971, ch. 317, § 2; 1975, ch. 255, § 12; 1991, ch. 105, § 1; 2019, ch. 212, § 19.

1-2-7. Election board; qualification of members; qualification of presiding judges; qualification of minors.

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

(1) be a voter of the county in which the person is appointed to serve;

(2) be able to read and write;

(3) have the necessary capacity to carry out an election board member's functions with acceptable skill and dispatch; and

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

B. Before serving as a presiding judge of an election board, a person shall receive training in the duties of that position and be certified for the position by the county clerk.

C. No person shall be qualified for appointment or service on an election board:

(1) who is a candidate to be voted for at the election;

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

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

(4) who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.

D. A county clerk may appoint not more than two minors to serve on an election board under the direct supervision of the presiding judge. A minor appointed by the county clerk shall:

(1) meet the qualifications set forth in Subsection A of this section, except the minor need not be eligible to vote;

(2) be sixteen or seventeen years of age at the time of the election in which the minor is serving as a member of an election board;

(3) be a citizen at the time of the election for which the minor will be serving as a member of an election board;

(4) have the approval of the minor's parent or legal guardian, unless the minor is emancipated;

(5) attend at least one school of instruction in accordance with the provisions of Section 1-2-17 NMSA 1978; and

(6) be appointed to an election board in the county in which the minor's parent or legal guardian resides, in accordance with the provisions of Section 1-2-11 NMSA 1978.

E. A minor appointed to an election board shall not serve as the presiding judge or as an election judge.

History: 1953 Comp., § 3-2-8, enacted by Laws 1969, ch. 240, § 29; 1971, ch. 317, § 3; 1975, ch. 255, § 13; 1981, ch. 159, § 2; 2005, ch. 270, § 12; 2010, ch. 90, § 1; 2011, ch. 137, § 14; 2019, ch. 212, § 20.

1-2-8. Repealed.

1-2-9. Election board; standby list.

A. Not less than twenty-one days prior to the date for appointing members of election boards, the county clerk shall publish a notice once in a newspaper of general circulation to the effect that election boards are to be appointed for the specified number of precincts, stating the number of persons composing each board and that applications for the standby list will be accepted at the county clerk's office.

B. The county clerk shall then compile from the individual applicants a standby list of election board members. The persons on the standby list shall have the same qualifications and comply with the same requirements as provided for election board members.

History: 1953 Comp., § 3-2-9.1, enacted by Laws 1975, ch. 255, § 15; 1991, ch. 105, § 3; 2019, ch. 212, § 21.

1-2-10. Repealed.

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1-2-11. Election board; assignment.

Wherever possible, the county clerk shall assign persons appointed as election board members to serve in precincts wherein they reside or in precincts located in the representative district wherein they reside. In the event of a shortage or absence of election board members in certain precincts, the county clerk may, in the best interest of the election process, assign appointed election board members to serve on any election board in the county; provided that such appointed board members shall not change the proportionate representation of each party on the board.

History: 1953 Comp., § 3-2-10.1, enacted by Laws 1977, ch. 222, § 5; 2011, ch. 137, § 15; 2019, ch. 212, § 22.

1-2-12. Election board; positions on each board.

A. Each election board shall consist of:
(1) a presiding judge;
(2) two election judges; and
(3) election clerks who are appointed to assist the presiding judge and election judges.

B. The county clerk shall appoint presiding judges and election judges so that not more than two of the three judges belong to the same political party at the time of their appointment; provided that:

(1) a judge of an election board shall not have changed party registration in the two years next preceding the judge's appointment in such a manner that the judge's prior party registration would make the judge ineligible to serve on the assigned election board; and

(2) a judge of an election board shall not continue to serve on an election board if the judge changes party registration after the date of appointment in such a manner to make the judge ineligible to serve on the assigned election board.

C. The county clerk may appoint teams of presiding judges and election judges for alternate voting locations, absent voter precincts, recounts and special elections; provided that each team meets the requirements of Subsection B of this section.

D. The county clerk may appoint election clerks to the election board as necessary to assist the presiding judge and election judges if the county clerk determines that additional election board members are needed.

E. County clerk employees may be assigned by the county clerk to provide support to an election board or polling location.

History: 1953 Comp., § 3-2-11, enacted by Laws 1969, ch. 240, § 32; 1975, ch. 255, § 17; 1981, ch. 159, § 3; 1985, ch. 160, § 1; 1991, ch. 105, § 4; 1993, ch. 314, § 4; 1993, ch. 316, § 4; 1995, ch. 124, § 2; 2009, ch. 150, § 2; 2011, ch. 137, § 16; 2015, ch. 145, § 9; 2019, ch. 212, § 23.

1-2-13. Repealed.

1-2-14. Election boards; notice of appointment.

A. Immediately after the appointment of the election boards, the county clerk shall:

(1) make and certify a list of the names of the appointees for each polling location and send a copy of the list to the county chair of each political party participating in a partisan election and to the secretary of state; and

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(2) notify each person appointed, request the person's acceptance and keep a record of all notifications and acceptances.

B. If any person appointed to an election board fails to accept the appointment within two weeks after the notice was sent or communicated, the county clerk shall appoint another qualified person for the election board.

History: 1953 Comp., § 3-2-13, enacted by Laws 1969, ch. 240, § 34; 1975, ch. 255, § 18; 1991, ch. 105, § 5; 2011, ch. 137, § 17; 2019, ch. 212, § 24.

1-2-15. Election board; vacancies.

A. If for any cause a member of the election board fails to appear for the assigned duty to which the member was appointed, the remaining board members shall immediately notify the county clerk.

B. In the event of a vacancy in an election board position by reason of death, removal from the county, disqualification, refusal to serve, failure to appear for an assigned duty or excusal by the county clerk for sufficient cause, the county clerk may appoint a qualified person to fill the vacancy.

C. No vacancy shall prevent the remaining board members from proceeding to open the polls or otherwise perform their duties for the election in their assigned location.

History: 1978 Comp., § 1-2-15, enacted by Laws 1991, ch. 105, § 6; 2019, ch. 212, § 25.

1-2-16. Election board; compensation.

A. Members of an election board shall be compensated for their services at the rate of not less than the federal minimum hourly wage rate nor more than two hundred dollars ($200) for an election day.

B. Members of an election board assigned to alternate voting or alternate mobile voting locations or absent voter precincts may be compensated at an hourly rate set by the county clerk.

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

D. For purposes of determining eligibility for membership in the public employees retirement association and pursuant to the provisions of Subsection B of Section 10-11-3 NMSA 1978, election board members are designated as seasonal employees.

History: 1953 Comp., § 3-2-15, enacted by Laws 1969, ch. 240, § 36; 1975, ch. 255, § 19; 1981, ch. 159, § 4; 1987, ch. 226, § 1; 1987, ch. 249, § 2; 1991, ch. 77, § 1; 1999, ch. 236, § 2; 2001, ch. 44, § 1; 2011, ch. 137, § 18; 2012, ch. 26, § 1; 2019, ch. 212, § 26.

1-2-17. Election board; schools of instruction.

A. The county clerk shall cause to be held a public school of instruction for all election board members and others who will be officially concerned with the conduct of an election.

B. The schools of instruction provided for in this section shall be held following an election board member's appointment and before the member performs assigned duties in an election.

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

D. The school of instruction shall be open to any interested person, and the county clerk shall post notice of the school at least four days before the school is to be held. Each member of an election board shall be notified at least seven days prior to commencement of the school.

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E. A person shall not serve as a member of an election board in any election unless that person has attended at least one such school of instruction for the election at which the person is appointed to serve and has been certified by the county clerk with respect to the person's completion of the school of instruction. This subsection shall not apply to filling of vacancies on election day as provided in Subsection B of Section 1-2-15 NMSA 1978.

History: 1953 Comp., § 3-2-16, enacted by Laws 1969, ch. 240, § 37; 1975, ch. 255, § 20; 1977, ch. 222, § 6; 1987, ch. 249, § 3; 1989, ch. 392, § 2; 1991, ch. 105, § 7; 2005, ch. 270, § 13; 2011, ch. 137, § 19; 2019, ch. 212, § 27.

1-2-18. Election board members; identification badges.

At all times on election day while performing their duties, members of the election board shall wear uniform identification badges. Such badges shall be furnished by the county clerk. The secretary of state shall prescribe the form and material of such identification badges, which shall include the identification of the election board member's name, title and political party.

History: 1953 Comp., § 3-2-17, enacted by Laws 1969, ch. 240, § 38; 2019, ch. 212, § 28.

1-2-19. Oral assistance for language minority voters.

A. In those polling places designated by the secretary of state as being subject to the provisions of the 1975 amendments to the federal Voting Rights Act of 1965, oral assistance shall be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise. As used in the Election Code [Chapter 1 NMSA 1978], "language minority" means a person who is an American Indian or of Spanish heritage and "inability to read well enough to exercise the elective franchise" means inability to read the languages in which the ballot is printed or the inability to understand instructions for operating the voting machine.

B. In those precincts where oral assistance is required, the position of election translator is created. The election translator shall be an additional member of the regular precinct board unless oral assistance to language minorities can otherwise be rendered by a member of the regular precinct board. The election translator shall be appointed by the county clerk in the same manner as other precinct board members are appointed, except that the county clerk in appointing American Indian election translators shall seek the advice of the pueblo or tribal officials residing in that county. The election translator shall take the oath required of precinct board members and shall meet the same qualifications as other precinct board members. In precincts where election translators are required, an election translator shall represent each political party as required by law for precinct boards.

C. Each county clerk shall compile and maintain a list of standby election translators to serve in those precincts on election day when the appointed election translator is unavailable for such service.

D. Each county clerk shall provide to the secretary of state no later than thirty days before any election a list of appointed election translators and a list of appointed standby election translators, together with the precinct numbers to which each election translator has been appointed.

History: 1953 Comp., § 3-2-17.1, enacted by Laws 1977, ch. 124, § 2; 1989, ch. 392, § 3.

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1-2-20. Messengers; compensation.

A. The county clerk may appoint messengers to deliver ballot boxes, poll books, keys, election supplies and other materials pertaining to the election. Messengers may also be authorized to collect absentee ballots and removable media storage devices from polling places and deliver them to locations designated by the county clerk.

B. Messengers may be compensated at the same daily or hourly rate as provided for election board members or at a rate established by the county clerk. Messengers may be paid mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] each way over the usually traveled route when the messenger travels by private vehicle. The compensation and mileage shall be paid within thirty days following the date of election.

C. Messengers shall take an oath of office before entering into service as a messenger. Messengers may be appointed to serve solely in that capacity or may be election board members or county employees also appointed to serve as messengers.

History: 1953 Comp., § 3-2-18, enacted by Laws 1969, ch. 240, § 39; 1973, ch. 4, § 1; 1981, ch. 159, § 5; 2007, ch. 337, § 6; 2015, ch. 145, § 10; 2019, ch. 212, § 29.

1-2-21. Challengers; appointment.

A. The county chair of each political party represented on the ballot in a partisan election may appoint in writing challengers for each polling location. If more than one challenger is appointed to a polling location, the challengers shall be listed in ranking order.

B. If any county chair fails to make such appointments or if there is no county chair, the state chair of the political party may in a partisan election appoint in writing one challenger for each polling location in the county.

History: 1953 Comp., § 3-2-19, enacted by Laws 1969, ch. 240, § 40; 1975, ch. 255, § 21; 2011, ch. 137, § 20; 2019, ch. 212, § 30.

1-2-22. Challengers, watchers and election observers; qualifications; restrictions.

Challengers and watchers shall be voters of a precinct located in that county to which they are appointed. No person shall be qualified for appointment or service as a challenger, watcher or election observer:

A. who is a candidate for any office to be voted for at the election;

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

C. who is married to a parent, child, brother or sister of any candidate to be voted for at the election or who is the parent of the spouse of any candidate to be voted for at the election; or

D. who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.

History: 1953 Comp., § 3-2-20, enacted by Laws 1969, ch. 240, § 41; 1975, ch. 255, § 22; 1987, ch. 249, § 4; 2011, ch. 137, § 21.

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1-2-23. Challengers; permitted activities.

A. A challenger, upon presentation of the written appointment to the precinct board, shall be permitted to be present at any time from the time the precinct board convenes at the polling place until the completion of the precinct board's duties after the polls close.

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

(1) view the signature roster or precinct voter list for the purpose of determining whether the challenger desires to interpose a challenge when a signature roster or precinct voter list is used;

(2) view the application to vote form before the voter receives a ballot for the purpose of determining whether the challenger desires to interpose a challenge when an application to vote form is used;

(3) view the signature roster or checklist of voters to determine whether entries are being made in accordance with the Election Code;

(4) view each voting machine before the polls are opened to ensure that the public counter is at zero, that the results tape contains no votes and that there are no voted ballots in the voting machine bins; and

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

History: 1953 Comp., § 3-2-21, enacted by Laws 1969, ch. 240, § 42; 1975, ch. 255, § 23; 2009, ch. 150, § 3; 2011, ch. 137, § 22.

1-2-24. Challengers; identification badges.

At all times while they are present in the polling place, challengers shall wear uniform identification badges designating them as authorized challengers of the political party which they represent. They shall not wear any other form of identification, party or candidate pins. The secretary of state shall prescribe the form and materials of such badges and such badges shall be furnished to the challengers by the presiding judge upon presentation of their written appointments.

History: 1953 Comp., § 3-2-22, enacted by Laws 1969, ch. 240, § 43.

1-2-25. Challengers, watchers, county canvass observers; permitted and prohibited activities.

A. Challengers, watchers and county canvass observers shall:

(1) not be permitted to perform any duty of an election board member;

(2) not handle the ballots, signature rosters, checklist of voters or voting machines or take any part in the counting or tallying of the ballots or the county canvass;

(3) not be allowed to view a voter's full date of birth or any portion of the voter's social security number;

(4) not interfere with the orderly conduct of the election, the counting or tallying of the ballots or the county canvass;

(5) be allowed in the room in which the voting is being conducted at a polling location; provided that at any given time, each political party, candidate or election-related organization may have no more than one person present; and

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(6) be allowed in the room in which the absent voter election board, the recount election board or the election board for a special election conducts its business or, in the case of county canvass observers, in which the county canvass is conducted; provided that each political party, candidate or election-related organization shall have no more than:

(a) two persons present at any given time in counties with more than ten thousand registered voters;

(b) four persons present at any given time in counties with more than fifty thousand registered voters; or

(c) fifteen persons present at any given time in counties with more than one hundred fifty thousand registered voters.

B. Subject to permission granted by the county clerk, additional challengers may be present in the room in which the absent voter election board, the recount election board or the election board for a special election conducts its business in a partisan election; provided that the number of additional challengers allowed pursuant to this subsection is identical for each political party participating in the election.

History: 1953 Comp., § 3-2-23, enacted by Laws 1969, ch. 240, § 44; 1975, ch. 255, § 24; 2011, ch. 137, § 23; 2019, ch. 212, § 31.

1-2-26. Challengers; penalty.

The act of denying a challenger, who has presented a written appointment to the precinct board and who is not interfering with the orderly conduct of the election, the right to be present at the polling place, or denying a challenger the right to challenge voters and view the signature rosters or checklist of voters or denying a challenger the right to witness the precinct board in the conduct of its duties is a petty misdemeanor.

History: 1953 Comp., § 3-2-24, enacted by Laws 1969, ch. 240, § 45; 1975, ch. 255, § 25; 2011, ch. 137, § 24.

1-2-27. Watchers; appointment.

A. An election-related organization may in a statewide or special election appoint watchers in a county if the organization provides a written notice to the secretary of state at least seven days prior to serving as a watcher during early voting, the election date or the ballot qualification period for mailed ballots in a statewide or a special election and specifies the names of the qualified appointees. The secretary of state shall notify the county clerk of the qualified appointees at least five days before the election.

B. Any group of three candidates for elected office in a statewide election may appoint watchers in a county if the candidates provide a written notice to the secretary of state at least seven days prior to serving as a watcher during early voting, the election date or the ballot qualification period for mailed ballots in a statewide or special election and specify the names of the qualified appointees. The secretary of state shall notify the county clerk of the qualified appointees at least five days before the election.

History: 1953 Comp., § 3-2-25, enacted by Laws 1969, ch. 240, § 46; 1975, ch. 255, § 26; 2003, ch. 377, § 1; 2005, ch. 270, § 14; 2011, ch. 137, § 25; 2019, ch. 212, § 32.

1-2-28. Repealed.

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1-2-29. Watchers and election observers; permissible activities.

A. Upon presentation to a precinct board of a written appointment, a watcher or election observer may:

(1) be present at any time from the time the precinct board convenes at the polling place until the completion of the precinct board's duties after the polls close;

(2) be permitted to observe that the election is being conducted in accordance with the Election Code;

(3) view the precinct voter list to ascertain whether a voter has voted, subject to the same prohibitions and restrictions as are placed upon challengers by the Election Code;

(4) view any voting machine being used in the precinct in the same manner that challengers may examine the voting machines; and

(5) make in any polling place and preserve for future reference written memoranda of any action or omission on the part of any member of the precinct board charged with the performance of a duty by the Election Code.

B. A watcher appointed on behalf of candidates may be present only in polling locations within the county of appointment at which ballots are cast for at least one of the candidates making the appointment.

History: 1953 Comp., § 3-2-27, enacted by Laws 1969, ch. 240, § 48; 2003, ch. 377, § 2; 2011, ch. 137, § 26.

1-2-30. Watchers and election observers; penalty.

The act of denying a watcher or an election observer, who has presented a written appointment to the precinct board and who is not interfering with the orderly conduct of the election, the right to be present at the polling place or denying a watcher or election observer the right to witness the precinct board in the conduct of its duties is a petty misdemeanor.

History: 1953 Comp., § 3-2-28, enacted by Laws 1969, ch. 240, § 49; 2011, ch. 137, § 27.

1-2-31. County canvass observers.

A. The county chair of each political party represented on a partisan ballot may appoint in writing county canvass observers. A candidate for elected office and an election-related organization in a statewide or special election may each appoint county canvass observers in a county if the candidate or organization makes a written request to the secretary of state and specifies the names of the qualified appointees. The secretary of state shall immediately notify the county clerk of the qualified appointees.

B. County canvass observers shall be voters of a precinct located in that county to which they are appointed. No person shall be qualified for appointment or service as a county canvass observer who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.

C. A county canvass observer or an election observer, upon presentation of the observer's written appointment, shall be permitted to be present at any time from the time the county canvassing begins until the completion of the canvass.

D. A county canvass observer or election observer is strictly limited to observing and documenting the canvassing process and shall not interrupt the canvassing process.

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E. County canvass observers and election observers shall not interfere with the orderly conduct of the canvass and may be removed by the county clerk if the observer does not comply with the law.

F. As used in this section, "county canvass" means the process in the office of the county clerk of qualifying and verifying paper ballots and counting and tallying votes for each precinct beginning upon the closing of the polls and ending with the certification and announcement of the results by the county canvassing board.

History: Laws 2005, ch. 270, § 15; 2011, ch. 137, § 28; 2019, ch. 212, § 33.

1-2-32. State canvass observers.

A. The state chair of each political party represented on a partisan ballot may appoint in writing state canvass observers. A candidate for elected office in a statewide election and an election-related organization in a statewide or special election may each appoint state canvass observers if the candidate or organization makes a written request to the secretary of state and specifies the names of the qualified appointees.

B. State canvass observers shall be voters of the state. No person shall be qualified for appointment or service as a state canvass observer who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.

C. The state canvass observer or election observer, upon presentation of the observer's written appointment, shall be permitted to be present at any time from the time the state canvassing begins until the completion of the canvass.

D. A state canvass observer or election observer is strictly limited to observing and documenting the canvassing process and shall not interrupt the canvassing process.

E. State canvass observers shall not interfere with the orderly conduct of the canvass and may be removed by the secretary of state if the observer does not comply with the law.

F. As used in this section, "state canvass" means the process in the office of the secretary of state or by such person as the state canvassing board may appoint to examine election returns and certificates issued by the county canvassing boards and ending with the certification and announcement of the results by the state canvassing board.

History: Laws 2011, ch. 137, § 11; 2019, ch. 212, § 34.

ARTICLE 3
Precincts and Polling Places

Sec.
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1-3-2. Precincts; duties of county commissioners.
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1-3-4. Consolidation of precincts; voter convenience centers.
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1-3-19. Election-day polling places; adequate resources.

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1-3-1. Nature of a precinct; maps.

A. Each precinct as nearly as practicable shall be composed of contiguous and compact areas having clearly definable boundaries. All precinct boundaries shall comply with the provisions of the Precinct Boundary Adjustment Act [1-3-10 through 1-3-14 NMSA 1978].

B. A precinct shall be divided or its boundaries adjusted if the precinct has had more than:

(1) seven hundred fifty votes cast by voters of that precinct at a general election, based on the two most recent general elections; or

(2) two thousand five hundred persons residing within the boundaries of the precinct, based on the most recent federal decennial census.

C. A precinct may be combined with another precinct or its boundaries adjusted if the precinct has had less than:

(1) one hundred votes cast by voters of that precinct at a general election, based on the two most recent general elections; or

(2) five hundred persons residing within the boundaries of the precinct, based on the most recent federal decennial census.

D. A precinct shall not be combined with an adjoining precinct as provided in Subsection C of this section if the combination of the two precincts would:

(1) violate the maximum votes cast or population requirements of Subsection B of this section; or

(2) cross any local, state or federal district or districted boundary lines.

E. The secretary of state shall provide and maintain a suitable map showing the current geographical boundaries with designation of each precinct, local government, representative district and senatorial district in the county. The size and form of such maps shall be prescribed by the secretary of state. A word description of the geographical boundaries shall be attached to each map, along with a description of the changes from the previous map of the area. The map, with attached description, is a public record.

History: 1953 Comp., § 3-3-1, enacted by Laws 1969, ch. 240, § 50; 1975, ch. 255, § 27; 1977, ch. 64, § 1; 1984 (1st S.S.), ch. 3, § 1; 1991 (1st S.S.), ch. 6, § 1; 1995, ch. 126, § 1; 2019, ch. 212, § 35.

1-3-2. Precincts; duties of county commissioners.

For the conduct of any statewide election during the period beginning January 1 of the next succeeding even-numbered year until December 31 of the odd-numbered year thereafter, in June or July of each odd-numbered year, the board of county commissioners shall by resolution:

A. designate the polling place of each precinct that shall provide individuals with physical mobility limitations an unobstructed access to at least one voting machine;

B. consolidate any precincts pursuant to Section 1-3-4 NMSA 1978;

C. designate any mail ballot election precincts pursuant to Section 1-6-22.1 NMSA 1978; and

D. create additional polling places in existing precincts pursuant to Section 1-3-7.1 NMSA 1978.

History: 1953 Comp., § 3-3-2, enacted by Laws 1969, ch. 240, § 51; 1975, ch. 255, § 28; 1977, ch. 64, § 2; 1979, ch. 105, § 1; 1984 (1st S.S.), ch. 3, § 2; 1989, ch. 392, § 4; 1991 (1st S.S.), ch. 6, § 2; 1995, ch. 126, § 2; 2009, ch. 251, § 3; 2009, ch. 274, § 2; 2011, ch. 131, § 2; 2018, ch. 79, § 3; 2019, ch. 212, § 36.

1-3-3. Repealed.

1-3-3.1. Repealed.

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1-3-4. Consolidation of precincts; voter convenience centers.

A. The board of county commissioners may permit voters in the county to cast ballots in statewide elections at voter convenience centers through the use of consolidated precincts authorized pursuant to this section.

B. When precincts are consolidated and voter convenience centers are established for statewide elections:

(1) the resolution required by Section 1-3-2 NMSA 1978, in addition to the other matters required by law, shall state therein which precincts have been consolidated and the location of the voter convenience center within that consolidated precinct;

(2) any voter of the county shall be allowed to vote on a regular ballot at any voter convenience center in the county;

(3) each voter convenience center shall be a consolidated precinct composed of no more than ten precincts;

(4) each voter convenience center shall comply with the provisions of Section 1-3-7 NMSA 1978;

(5) each voter convenience center shall have a broadband internet connection and real-time access to the voter registration electronic management system;

(6) the county clerk may maintain any alternate voting locations or mobile alternate voting locations previously used in the same election open for voting on election day as a voter convenience center, in addition to the voter convenience center established within each consolidated precinct; provided that the locations otherwise meet the requirements of a voter convenience center; and

(7) the board of county commissioners may permit certain precincts to be exempted from operating as a voter convenience center or being a part of a consolidated precinct; provided that if the precinct is not designated as a mail ballot election precinct pursuant to Section 1-6-22.1 NMSA 1978 and the polling place for that precinct does not have real-time access to the voter registration electronic management system, voters registered in a precinct as described in this paragraph are permitted to vote at any voter convenience center on election day only by use of a provisional paper ballot, which shall be counted after the county clerk confirms that the voter did not also vote in the same election on any other ballot.

C. Unless the county clerk receives a written waiver from the secretary of state specifying the location and specific provision being waived, each voter convenience center shall:

(1) have ballots available for voters from every precinct authorized to vote at that voter convenience center;

(2) have at least one optical scan tabulator programmed to read every ballot style able to be cast at that voter convenience center;

(3) have at least one voting system available to assist disabled voters to cast and record their votes;

(4) have sufficient spaces for at least five voters to simultaneously and privately mark their ballots, with at least one of those spaces wheelchair-accessible;

(5) have sufficient check-in stations to accommodate voters throughout the day as provided in Section 1-9-5 NMSA 1978;

(6) have a secure area for storage of preprinted ballots or for storage of paper ballot stock and a system designed to print ballots at a polling location;

(7) issue a ballot to voters who have provided the required voter identification after the voter has signed a signature roster or an electronic equivalent approved by the voting system

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certification committee or after the voter has subscribed an application to vote on a form approved by the secretary of state; and

(8) be in a location that is accessible and compliant with the requirements of the federal Americans with Disabilities Act of 1990.

D. As a prerequisite to consolidation, the authorizing resolution must find that consolidation will make voting more convenient and accessible to voters of the consolidated precinct and will not result in delays for voters in the voting process and that the voter convenience center will be centrally located within the consolidated precinct. The board of county commissioners shall give due consideration to input received from any local public body in the county regarding the location of voter convenience centers.

History: 1953 Comp., § 3-3-4, enacted by Laws 1975, ch. 255, § 30; 2011, ch. 131, § 3; 2015, ch. 145, § 11; 2018, ch. 79, § 4; 2019, ch. 212, § 37.

1-3-5. Precincts; powers of county commissioners.

A. The board of county commissioners shall by resolution:

(1) create additional precincts to meet the requirements of Section 1-3-1 NMSA 1978; and

(2) divide, abolish, combine or adjust the boundaries of any precincts as necessary to meet legal and constitutional requirements for redistricting.

B. Any necessary precinct boundary adjustments shall be submitted to the secretary of state no later than the first Monday in December of each odd-numbered year to become effective January 1 next succeeding the approval of the boundary adjustment. No precinct shall be created, divided, abolished or combined or the boundaries adjusted less than four months prior to a statewide election, except by order of the district court.

C. The county clerk shall notify the secretary of state in writing of any proposed changes in precincts or the designation of polling places made by the board of county commissioners and shall furnish the current geographical boundaries, designation and word description of each new polling place and each new or changed precinct.

D. The secretary of state shall review all new or changed precinct maps submitted pursuant to this section for compliance under the Precinct Boundary Adjustment Act [1-3-10 through 1-3-14 NMSA 1978] and Section 1-3-1 NMSA 1978.

E. Precincts shall be designated solely by whole numbers.

History: 1953 Comp., § 3-3-6, enacted by Laws 1969, ch. 240, § 55; 1975, ch. 255, § 31; 2019, ch. 212, § 38.

1-3-6. Precincts; boundaries; protest.

A. Any twenty-five or more voters of a precinct dissatisfied with the boundaries fixed for a precinct or location of the polling place designated by the board of county commissioners for that precinct may, within one hundred eighty days from the date a change to the boundaries of a precinct was approved in the case of a protest to the boundaries of a precinct, or at any time not less than one hundred twenty days prior to any statewide election, petition the district court of that county, setting forth the facts and reasons for their dissatisfaction and requesting that the board of county commissioners be required by mandamus to change the boundaries or polling place as set forth in the petition.

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B. Upon filing of the petition, the court shall fix a time and place for hearing, which time shall not be more than twenty days from the date the petition was filed. Each member of the board of county commissioners and the person whose name appears first on the petition as a signer shall immediately be given notice by the court of the filing of the petition and the date set for hearing.

C. On the date set for the hearing on the petition, the court shall hear the evidence, decide the issues involved and issue its order as the law and facts require.

History: 1953 Comp., § 3-3-7, enacted by Laws 1969, ch. 240, § 56; 1995, ch. 126, § 3; 2019, ch. 212, § 39.

1-3-6.1. Repealed.

1-3-7. Polling places.

A. No less than one polling place shall be provided for each precinct that is not a mail ballot election precinct; provided that in a local election, a precinct that lies partly within and partly without a district may be located in a single polling place and use a single election board.

B. The board of county commissioners shall designate as the polling place or places, as the case may be, in each precinct, other than a mail ballot election precinct, the most convenient and suitable public building or public school building in the precinct that can be obtained.

C. If no public building or public school building is available, the board of county commissioners shall provide some other suitable place, which shall be the most convenient and appropriate place obtainable in the precinct, considering the purpose for which it is to be used pursuant to the Election Code.

D. If, in a precinct that is not a mail ballot election precinct or a consolidated precinct, there is no public building or public school building available in the precinct, and there is no other suitable place obtainable in the precinct, the board of county commissioners may designate as a polling place for the precinct the most convenient and suitable building or public school building nearest to that precinct that can be obtained. No polling place shall be designated outside the boundary of the precinct as provided in this subsection until such designated polling place is approved by written order of the district court of the county in which the precinct is located.

E. Upon application of the board of county commissioners, the governing board of any school district shall permit the use of any school building or a part thereof for registration purposes and the conduct of any election; provided that the building or the part used for the election complies with the standards set out in the federal Voting Accessibility for the Elderly and Handicapped Act. Application for use of a school building or any part thereof for the conduct of a statewide election shall be made by delivering to the superintendent of the school district the resolution adopted pursuant to Section 1-3-2 NMSA 1978.

F. On the day of any statewide election for which application was made pursuant to Subsection E of this section, the board of education of a school district shall provide exclusive use of any school building or the part thereof to be used in the conduct of the election and shall provide sufficient parking for election officials and to permit voters to exercise the elective franchise.

History: 1953 Comp., § 3-3-8, enacted by Laws 1969, ch. 240, § 57; 1971, ch. 316, § 1; 1984 (1st S.S.), ch. 3, § 3; 1987, ch. 249, § 6; 1989, ch. 392, § 5; 1991 (1st S.S.), ch. 6, § 3; 2009, ch. 251, § 4; 2009, ch. 274, § 3; 2011, ch. 131, § 4; 2018, ch. 79, § 5; 2019, ch. 212, § 40.

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1-3-7.1. Additional polling places.

In the interest of the convenience of the voters and providing accessibility to the polling place, the board of county commissioners may create additional polling places within the precinct upon their own action or upon receipt of a petition signed by at least ten percent of the registered voters of the precinct so requesting.

History: 1978 Comp., § 1-3-7.1, enacted by Laws 1984, ch. 76, § 1; 1989, ch. 392, § 6; 1991 (1st S.S.), ch. 6, § 4.

1-3-8. Precinct changes; notice and publication.

Upon the adoption of any resolution, or upon the final action of any district court upon a petition creating, abolishing, dividing or consolidating any precinct, or changing any precinct boundary or changing any designated polling place, the board of county commissioners shall:

A. send a certified copy of the resolution or court order to the secretary of state and to the county chairman of each of the major political parties; and

B. publish once the resolution in a newspaper as provided in the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-3-9, enacted by Laws 1969, ch. 240, § 58; 1975, ch. 255, § 32.

1-3-9. Precincts; exclusions.

As used in Chapter 1, Article 3 NMSA 1978, "precinct" shall not include absent voter precinct.

History: 1953 Comp., § 3-3-10, enacted by Laws 1975, ch. 255, § 33; 1991 (1st S.S.), ch. 6, § 5.

1-3-10. Short title.

Sections 1-3-10 through 1-3-14 NMSA 1978 may be cited as the "Precinct Boundary Adjustment Act".

History: Laws 1983, ch. 223, § 1; 1991 (1st S.S.), ch. 6, § 6.

1-3-11. Purpose.

The purpose of the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] is to comply with the criteria established pursuant to the provisions of Subsection (c) of Section 141 of Title 13 of the United States Code in order to obtain an enumeration of the populations of election precincts by the bureau of the census in the federal decennial census and in order to provide such enumeration data to the New Mexico legislature for purposes of legislative reapportionment.

History: Laws 1983, ch. 223, § 2; 1995, ch. 126, § 4.

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1-3-12. Adjusting precinct boundaries.

A. Before each federal decennial census, every precinct shall comply with the requirements of Section 1-3-1 NMSA 1978, and if necessary its boundary shall be adjusted to coincide with a feature or a boundary that is:

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

(2) a designated census block boundary on the proposed federal PL 94-171 2020 census block maps; or

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

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

(1) all state and federal highways;

(2) all numbered and named county roads that have been certified to the department of transportation;

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

(4) all major railroad lines;

(5) federal, state and county political boundaries, municipal boundaries and school district boundaries;

(6) all streets within urban areas; and

(7) other major terrain features, such as flowing rivers and streams, arroyos, power lines, pipelines, roads, trails and ridgelines and other acceptable census block boundaries.

C. The board of county commissioners, upon receipt of the standard base maps from the secretary of state and upon the recommendation of the county clerk, shall:

(1) adjust all precinct boundaries to coincide with numbered or named street boundaries or suitable visible terrain features shown on the standard base map; provided that the precincts shall be composed of contiguous and compact areas, and state, county, municipal, school district and other special district or political boundary lines shall serve as precinct boundaries whenever possible; and

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

D. The precincts shown upon the standard base maps submitted pursuant to the provisions of this section and as revised and approved by the secretary of state pursuant to the Precinct Boundary Adjustment Act shall become the official precincts of each county for the 2021 redistricting. For the 2022 and subsequent statewide elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978.

E. In the same calendar year in which the state receives the results of a federal decennial census, the state legislature shall redistrict federal representative districts, each chamber of the legislature, public regulation commission districts, public education commission districts and any other state districts requiring redistricting.

F. In the calendar year following the receipt of the results of a federal decennial census, each local public body subject to districting shall create or redraw districts for the local public body. A local public body, when creating or redrawing districts, shall not split a precinct into two or more districts for any elected office unless necessary to comply with federal law or to preserve communities of interest.

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History: 1978 Comp., § 1-3-12, enacted by 1984 (1st S.S.), ch. 3, § 4; 1991 (1st S.S.), ch. 6, § 7; 1995, ch. 126, § 5; 1997, ch. 85, § 1; 2005, ch. 270, § 16; 2009, ch. 222, § 2; 2019, ch. 212, § 41.

1-3-13. Secretary of state powers and duties.

A. Prior to commencement of the federal decennial census, the secretary of state shall review all county precinct maps submitted pursuant to Section 1-3-12 NMSA 1978 for compliance with the provisions of the Precinct Boundary Adjustment Act and Section 1-3-1 NMSA 1978. Those county precinct maps determined not to be in compliance with the precinct boundary criteria set forth in Subsection A of Section 1-13-12 NMSA 1978 or Section 1-3-1 NMSA 1978 shall be rejected and returned to the appropriate county clerk with a written statement setting forth those instances in which the map does not comply. The county clerk and the board of county commissioners shall make the required adjustments within thirty days after receiving notice of noncompliance.

B. Following receipt of the results of a federal decennial census, the secretary of state shall again follow the procedures outlined in Subsection A of this section to allow the counties to make any necessary adjustments. For any county that does not make the required adjustments within thirty days after receiving notice of noncompliance following receipt of the results of a federal decennial census, the secretary of state shall send a second notice of noncompliance, and no later than June 30 of the same year, if any precinct boundary adjustments are necessary to meet the legal requirements of redistricting, pursuant to Sections 1-3-1 and 1-3-12 NMSA 1978, the secretary of state shall adjust the boundaries of the precincts only to the extent necessary to achieve compliance with the requirements of those sections and notify the county of those boundary adjustments.

History: Laws 1983, ch. 223, § 4; 1984 (1st S.S.), ch. 3, § 5; 1991, ch. 40, § 1; 1991, ch. 237, § 1; 1991 (1st S.S.), ch. 6, § 8; 1997, ch. 85, § 2; 2009, ch. 222, § 3; 2019, ch. 212, § 42.

1-3-14. Standard base map required.

All precinct maps prepared by the county clerk as required in the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] shall be on a standard base map as prescribed by the secretary of state in order to achieve as nearly as practicable uniformity of size and scale.

History: Laws 1983, ch. 223, § 5; 1995, ch. 126, § 6.

1-3-15 to 1-3-17. Repealed.

1-3-18. Polling places; building requirements; inspection.

A. The location of each polling place within a building shall be clearly designated by appropriate signs, displayed prominently and clearly. Signs for each polling place shall also be clearly displayed outside the building where polling takes place.

B. Not less than thirty days prior to each election at which a building is intended for use as an alternate voting location, a mobile alternate voting location or an election day polling place, the county clerk or the clerk's designated representative shall physically inspect each such facility to determine its suitability for use as a polling place and its capability of handling heavy voter traffic in the most expeditious manner with a maximum efficiency and minimum discomfort of the voter. The county clerk shall maintain a log of the day and time each facility was physically inspected, whether the inspection was performed by the county clerk, and if the inspection was not performed by the county clerk, the name of the person designated by the county clerk to perform the inspection.

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C. Each polling place shall be furnished and have available equipment necessary to assist voters in reading the ballot.

History: Laws 1989, ch. 199, § 1; 2011, ch. 131, § 5; 2019, ch. 212, § 43.

1-3-19. Election-day polling places; adequate resources.

A. Each election-day polling place in a statewide election that does not contain mail ballot election precincts or precincts consolidated pursuant to Section 1-3-4 NMSA 1978 shall comply with the requirements for polling places and precincts as provided in Subsections B and C of this section, unless the county clerk receives a written waiver from the secretary of state specifying the location and specific provision being waived.

B. Each election-day polling place shall:

(1) have at least one voting system available to assist disabled voters to cast and record their votes; and

(2) be in a location that is accessible and compliant with the requirements of the federal Americans with Disabilities Act of 1990.

C. Each precinct polling place located within a single polling place shall have:

(1) a separate election board and signature roster for the precinct;

(2) at least one optical scan tabulator for the precinct; and

(3) sufficient spaces for at least five voters to simultaneously and privately mark their ballots, with at least one of those spaces wheelchair-accessible, for the precinct.

History: Laws 2013, ch. 189, § 1; 2019, ch. 212, § 44.

ARTICLE 4
Registration of Electors

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1-4-1. Registration required.

No person shall vote at any election unless he is registered as required by the Election Code [Chapter 1 NMSA 1978]. No ballot of any unregistered or otherwise unqualified elector shall be cast, counted or canvassed.

History: 1953 Comp., § 3-4-1, enacted by Laws 1969, ch. 240, § 59.

1-4-1.1. Authorization to verify voter registration information; investigation and reconciliation.

A. The secretary of state may:

(1) provide to the chief election officer of another state or a consortium of chief election officers of other states information that is requested, including social security numbers, dates of birth, driver's licenses and identification card numbers and other information that the secretary of state deems necessary for the chief election officer of that state or for the consortium to maintain a voter registration list, if the secretary of state is satisfied that the information provided pursuant to this paragraph will be used only for the maintenance of that voter registration list; and

(2) request from the chief election officer of another state or a consortium of chief election officers of other states information that the secretary of state deems necessary to maintain the statewide voter registration list.

B. The secretary of state may enter into a written agreement with an agency or political subdivision of this state or with a department of the federal government pursuant to which the state agency, political subdivision or federal department shall provide to the secretary of state information that is in the possession of the state agency, political subdivision or federal department and that the secretary of state deems necessary to maintain the statewide voter registration list.

C. The secretary of state shall enter into a written agreement with the secretary of taxation and revenue to match information in the database of the voter registration electronic management system with information in the database of the motor vehicle division of the taxation and revenue department to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration. Upon the execution of the written agreement, the secretary of taxation and revenue shall enter into an agreement with the federal commissioner of

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social security pursuant to 42 U.S.C. Section 15483 (now 52 U.S.C. Section 21083), for the purpose of verifying applicable information.

D. The secretary of state shall provide to the appropriate county clerk in this state and to no other person necessary information or documentation received by the secretary of state from or through an agency or political subdivision of this state, a federal department, the chief election officer of another state or a consortium of chief election officers of other states that calls into question the information provided on a certificate of registration; that raises questions regarding the status of a person registered to vote in this state; or that suggests that a voter may have voted in two states during the same election. The county clerk shall only disclose information received from the secretary of state pursuant to this subsection to complete an investigation pursuant to this section.

E. The county clerk shall investigate or reconcile the information received from the secretary of state. The secretary of state shall develop and maintain a manual for county clerks that describes best practices in investigating and reconciling information that is derived from comparisons of different databases, including safeguards to ensure that eligible voters are not removed in error from the official list of voters.

History: Laws 2015, ch. 145, § 19; 2019, ch. 212, § 45.

1-4-2. Registration of qualified reisdents; right to vote in primary.

A. Any qualified resident of New Mexico shall be permitted within the provisions of the Election Code to submit a voter registration certificate in paper form, through the online voter registration portal provided by the secretary of state, electronically when conducting an in-person transaction at the motor vehicle division of the taxation and revenue department or as otherwise prescribed by the secretary of state. The certificate shall be processed by the county clerk in the same manner as for a qualified elector, but the qualified resident shall not become a voter nor be considered a voter except as provided by this section.

B. If a qualified resident submits a voter registration certificate in accordance with the provisions of Subsection A of this section and pursuant to the requirements of Section 1-4-8 NMSA 1978, the qualified resident shall:

(1) become a voter upon the qualified resident's eighteenth birthday;

(2) be considered a voter for the purpose of participation in a statewide or special election where the qualified resident will turn eighteen on or before the day of the statewide or special election; or

(3) be considered a voter for the purpose of participation in a political party primary election where the qualified resident will turn eighteen on or before the day of the general election immediately succeeding the primary election.

C. Any resident of New Mexico who may be a qualified elector upon the resident's eighteenth birthday, who obtains a license, permit or identification card from the motor vehicle division of the taxation and revenue department and who has not submitted a voter registration certificate pursuant to Subsection A of this section shall be sent a notification by the secretary of state advising the resident of the requirements and opportunity to register to vote and a uniform resource locator for a web page where the resident may submit a voter registration certificate online. When applicable, a notification shall be sent to a resident described in this subsection within the sixty days following the resident's seventeenth birthday, when the resident obtained a license, permit or identification card from the motor vehicle division prior to the resident's seventeenth birthday and within thirty days prior to the resident's eighteenth birthday.

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History: 1953 Comp., § 3-4-2, enacted by Laws 1969, ch. 240, § 60; 1975, ch. 255, § 34; 2011, ch. 137, § 30; 2016, ch. 28, § 1; 2019, ch. 212, § 46.

1-4-3. Registration declared permanent.

The registration of a qualified elector is permanent for all purposes during the life of such person unless and until his certificate of registration is canceled for any cause specified in the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-4-3, enacted by Laws 1969, ch. 240, § 61; 1993, ch. 314, § 5; 1993, ch. 316, § 5.

1-4-4. Fees and charges prohibited.

No qualified elector shall be charged any fee or required to pay any sum whatsoever by any registration officer for performance of a duty required of him by the Election Code [Chapter 1 NMSA 1978] in connection with registration.

History: 1953 Comp., § 3-4-4, enacted by Laws 1969, ch. 240, § 62.

1-4-5. Method of registration; unlawful use of information; penalty.

A. A qualified elector may apply to a registration officer or agent for registration.

B. The registration officer or agent or qualified elector shall fill out each of the blanks on the certificate of registration by typing or printing in ink. The qualified elector shall be given a receipt that shall contain:

(1) a number traceable to the registration agent or officer;

(2) a statement informing the qualified elector that if the qualified elector does not receive confirmation of the qualified elector's registration within fifteen days of the receipt date, the qualified elector should contact the office of the county clerk in the county where the qualified elector resides; and

(3) a toll-free number for the office of the county clerk and an address for the web site of the secretary of state.

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

(1) by signing the certificate of registration using the qualified elector's given name, middle name or initial and last name; or

(2) if any qualified elector seeking to register is unable to read and write either the English or Spanish language or is unable to read or write because of some physical disability, the certificate of such person shall be filled out by a registration officer or agent and the name of the qualified elector so registering shall be subscribed by the making of the qualified elector's mark.

D. When properly executed by the registration agent or officer or qualified elector, the original of the certificate of registration shall be presented, either in person or by mail by the qualified elector or by the registration agent or officer, to the county clerk of the county in which the qualified elector resides. It is unlawful for the qualified elector's month and day of birth or any portion of the qualified elector's social security number required on the certificate of registration to be copied, conveyed or used by anyone other than the person registering to vote, either before or after it is filed with the county clerk, and by elections administrators in their official capacity.

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

History: 1953 Comp., § 3-4-5, enacted by Laws 1969, ch. 240, § 63; 1973, ch. 41, § 1; 1975, ch. 255, § 35; 1987, ch. 249, § 7; 1993, ch. 314, § 6; 1993, ch. 316, § 6; 2003, ch. 356, § 10; 2005, ch. 270, § 19; 2007, ch. 336, § 3; 2008, ch. 59, § 2; 2011, ch. 137, § 31; 2015, ch. 145, § 13.

1-4-5.1. Method of registration; form.

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

B. A person may request certificate of registration forms from the secretary of state or any county clerk in person, by telephone or by mail for that person or for other persons.

C. A qualified elector who wishes to register to vote shall fill out completely and sign the certificate of registration. The qualified elector may seek the assistance of any person in completing the certificate of registration.

D. A qualified elector who has filed for an order of protection pursuant to the provisions of the Family Violence Protection Act [Chapter 40, Article 13 NMSA 1978] and who presents a copy of that order from a state or tribal court to the registration officer shall be referred to the confidential address program administered by the secretary of state pursuant to the Confidential Substitute Address Act [40-13B-1 through 40-13B-9 NMSA 1978].

E. Completed certificates of registration may be mailed or presented in person by the registrant or any other person to the secretary of state, to the county clerk of the county in which the registrant resides or to any other county clerk in this state.

F. If the registrant wishes to vote in the next election, the completed and signed certificate of registration shall be delivered or mailed and postmarked within the time frame provided in Subsection A of Section 1-4-8 NMSA 1978.

G. Within one business day after receipt of a certificate of registration, the secretary of state shall send the certificate to the county clerk in the county where the qualified elector resides. Within one business day after receipt of a certificate of registration of another county, a county clerk shall send the certificate of registration to the county clerk in the county where the qualified elector resides.

H. Only when the certificate of registration is properly filled out, signed by the qualified elector and accepted for filing by the county clerk as evidenced by the county clerk's signature or stamp and the date of acceptance thereon shall it constitute an official public record of the registration of the qualified elector. A qualified elector complies with a voter registration deadline established in the Election Code when a properly filled-out voter registration certificate has been received by a county clerk or the secretary of state, regardless of the date the certificate is processed.

I. The secretary of state shall prescribe the form of the certificate of registration, which form shall be a postpaid mail-in format and shall be printed in Spanish and English. The certificate of registration form shall be clear and understandable to the average person and shall include brief but sufficient instructions to enable the qualified elector to complete the form without assistance. The form shall also include:

(1) the question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen;

(2) the statement "If you checked 'no', do not complete this form.";

(3) a statement informing the applicant that:

(a) if the form is submitted by mail by the applicant and the applicant is registering for the first time in New Mexico, the applicant must submit with the form a copy of: 1) a photo

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identification issued by a government or educational institution; or 2) a current utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and current address of the applicant; and

(b) if the applicant does not submit the required documentary identification, the applicant will be required to do so when voting in person or absentee; and

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

History: 1978 Comp., § 1-4-5.1, enacted by Laws 1993, ch. 314, § 7 and by Laws 1993, ch. 316, § 7; 1997, ch. 209, § 1; 2003, ch. 356, § 11; 2005, ch. 270, § 20; 2007, ch. 336, § 4; 2015, ch. 145, § 14; 2019, ch. 212, § 47.

1-4-5.2. Agency registration; form.

A. A qualified elector may register to vote at certain state government offices.

B. Pursuant to Section 1-4-47 NMSA 1978, a qualified elector who applies for a driver's license, license renewal or motor vehicle identification card may simultaneously register to vote or file a change of address for voter registration purposes.

C. Pursuant to Section 1-4-48 NMSA 1978, a qualified elector may register to vote in any state agency that provides public assistance or services to persons with disabilities. The secretary of state may designate other state or local public offices with the agreement of those offices.

History: 1978 Comp., § 1-4-5.2, enacted by Laws 1995, ch. 198, § 3.

1-4-5.3. Registration; lack of physical address.

A. If a qualified elector resides in an area lacking a specific physical address, the qualified elector shall be allowed to substitute a mailing address along with a description, such as a map or the latitude and longitude, indicating where the qualified elector resides. The qualified elector shall be assigned to a precinct based on the geographic description of where the qualified elector resides.

B. The secretary of state shall issue rules regarding acceptable forms of non-physical addresses.

History: Laws 2005, ch. 270, § 18; 2007, ch. 336, § 5.

1-4-5.4. Registration; form.

A. The secretary of state shall prescribe the paper form and ensure that the certificate of registration to be used in any county is compatible with the data processing systems. The secretary of state shall also prescribe the form produced by an online or electronic voter registration transaction.

B. The certificate of registration form shall require the following elements of information concerning the applicant for registration: name, gender, residence, municipality, post office, county of former registration, date of birth, political party affiliation, zip code, telephone number at the applicant's option and statement of qualification for voting. The paper form shall contain a space for the qualified elector to provide a driver's license or state identification number issued by the motor vehicle division of the taxation and revenue department or the last four digits of the qualified elector's social security number, while the form resulting from an online or electronic voter registration transaction shall contain the qualified elector's full social security number.

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C. Provision shall be made for the usual signature or mark of the applicant, for the signature of the county clerk and for the dates of such signatures.

D. The certificate form may be multipurpose by providing for an indication of whether the certificate of registration is for a new registration, a change in the existing registration or a cancellation of an existing registration. Provision shall be made on any multipurpose form for entry of any existing registered information for which a change may be requested.

E. The certificate of registration forms shall be serially numbered and shall be furnished promptly and in adequate supply by the secretary of state upon application from the county clerk.

F. The secretary of state shall maintain on the secretary's website a Privacy Act notice in conformance with the federal Privacy Act of 1974.

History: 1953 Comp., § 3-5-24, enacted by Laws 1969, ch. 240, § 125; 1975, ch. 255, § 74; 1987, ch. 249, § 16; 1993, ch. 314, § 39; 1993, ch. 316, § 39; 1995, ch. 166, § 5; 2001, ch. 146, § 8; 1978 Comp., § 1-5-19 recompiled as § 1-4-5.4 by Laws 2011, ch. 137, § 109; 2019, ch. 212, § 48.

1-4-5.5. Requests for voter data, mailing labels or special voter lists.

A. The county clerk or secretary of state shall furnish voter data, mailing labels or special voter lists only upon written request to the county clerk or the secretary of state and after compliance with the requirements of this section; provided, however, all requesters shall be treated equally in regard to the charges and the furnishing of the materials.

B. In furnishing voter data, mailing labels or special voter lists, the county clerk or secretary of state shall not provide data or lists that include voters' social security numbers, codes used to identify agencies where voters have registered, a voter's day and month of birth or voters' telephone numbers if prohibited by voters.

C. Each requester of voter data, mailing labels or special voter lists shall sign an affidavit that the voter data, mailing labels and special voter lists shall be used for governmental or election and election campaign purposes only and shall not be made available or used for unlawful purposes.

D. The secretary of state shall prescribe the form of the affidavit.

E. As used in this section:

(1) "election campaign purposes" means relating in any way to a campaign in an election conducted by a federal, state or local government;

(2) "governmental purposes" means noncommercial purposes relating in any way to the structure, operation or decision-making of a federal, state or local government;

(3) "mailing labels" means prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;

(4) "special voter list" means a prepared list of selected voters arranged in the order in which requested; and

(5) "voter data" means selected information derived from the voter file.

History: 1953 Comp., § 3-5-29, enacted by Laws 1975, ch. 255, § 78; 1995, ch. 166, § 6; 2005, ch. 270, § 35; 1978 Comp., § 1-5-24 recompiled as § 1-4-5.5 by Laws 2011, ch. 137, § 109; 2015, ch. 145, § 15.

1-4-5.6. Unlawful use of voter data, mailing labels or special voter lists; penalties.

A. Unlawful use of voter data, mailing labels or special voter lists consists of the knowing and willful use of such information for purposes prohibited by the Voter Records System Act [Chapter 1, Article 5 NMSA 1978].

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

C. Each and every unlawful use of voter data, mailing labels or special voter lists constitutes a separate offense.

History: 1953 Comp., § 3-5-30, enacted by Laws 1975, ch. 255, § 79; 2001, ch. 146, § 9; 2005, ch. 270, § 36; 1978 Comp., § 1-5-25 recompiled as § 1-4-5.6 by Laws 2011, ch. 137, § 109.

1-4-5.7. Registration at voting location prior to voting.

A. Notwithstanding the provisions in Section 1-4-8 NMSA 1978 providing for the closing of registration prior to an election, a qualified elector seeking to register to vote or update an existing certificate of registration in the state shall be allowed to do so at a voting location immediately before voting in that election after signing an affidavit under oath that the elector has not voted in the election in this state or elsewhere, and as further provided in this section.

B. During a statewide election, a qualified elector may register to vote or update an existing certificate of registration at the county clerk's office during the regular hours and days of business beginning on the twenty-eighth day preceding the election and from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior to the date of the election; provided that if the county clerk establishes an additional alternate voting location near the clerk's office in lieu of voting at the office of the county clerk, a qualified elector may register to vote or update an existing certificate of registration at that location during the regular hours and days of business beginning on the twenty-eighth day preceding the election and during the hours for voting at alternate voting locations commencing on the third Saturday prior to the election through the Saturday immediately prior to the election.

C. During a statewide election, a qualified elector may register to vote or update an existing certificate of registration at an alternate voting location only if the county clerk has assigned a county clerk employee to be the clerk's authorized deputy to serve as a registration officer at the alternate voting location; provided that ninety days before the election, the county clerk shall post the location of each alternate voting location where a qualified elector may register to vote or update an existing certificate of registration immediately before voting.

D. Beginning January 1, 2021 and upon the approval of the voting system certification committee, during a statewide election, a qualified elector may register to vote or update an existing certificate of registration at an election day voting location; provided that the secretary of state shall establish procedures to ensure that a registration officer has an opportunity to review the information of a qualified elector who registers to vote or updates an existing certificate of registration immediately before the qualified elector votes on election day.

E. A voter shall not be allowed to change party affiliation when updating an existing certificate of registration or registering to vote at an early voting site or polling place during a primary election.

F. During a special election, a qualified elector may register to vote or update an existing certificate of registration at the county clerk's office during the regular hours and days of business beginning on the twenty-eighth day preceding the election until the last regular business day the week prior to the date of the election.

G. A qualified elector seeking to register to vote or update an existing certificate of registration immediately before voting shall provide:

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(1) a New Mexico driver's license or New Mexico identification card issued through the motor vehicle division of the taxation and revenue department;

(2) any document that contains an address in the county together with a photo identification card; or

(3) a current valid student photo identification card from a post-secondary educational institution in New Mexico accompanied by a current student fee statement that contains the student's address in the county.

H. If an early voting site or polling place does not have real-time access to the statewide electronic voter file, a voter desiring to update an existing certificate of registration or to register to vote shall be issued a provisional ballot.

I. No later than June 30, 2021 and upon the approval of the voting system certification committee, the secretary of state and the secretary of taxation and revenue shall develop a procedure for importing the list of eligible but unregistered persons with a driver's license or state-issued identification card into the voter registration electronic management system prior to an election to facilitate processing a new voter registration pursuant to this section.

History: Laws 2019, ch. 67, § 1.

1-4-5.8. Automatic voter registration; driver's license and agency registration and updates to registration.

A. In addition to the requirements of Section 1-4-47 NMSA 1978:

(1) a qualified elector registering to vote or updating an existing certificate of registration when conducting an in-person transaction to apply for or renew a driver's license or state-issued identification card shall not be required to provide a second time any information that duplicates information required in the driver's license portion of the transaction;

(2) the address of a voter who provides a different address when conducting an in-person transaction to apply for or renew a driver's license or state-issued identification card shall be updated on the voter's certificate of registration unless the voter declines to do so; and

(3) immediately at the conclusion of each in-person transaction to apply for or renew a driver's license or state-issued identification card, the person shall receive written notification by the motor vehicle division of the taxation and revenue department informing the person if a voter registration transaction was processed, and if so, providing information regarding any voter registration transaction delivered to the county clerk by the motor vehicle division as a result of that application for or renewal of a driver's license or state-issued identification card.

B. In addition to the requirements of Section 1-4-48 NMSA 1978:

(1) the human services department shall develop procedures to be approved by the secretary of state to ensure that each benefit program administered by the department appropriately ensures that qualified electors receiving benefits are offered the opportunity to register to vote or update an existing certificate of registration without duplication of information contained by the department or by the secretary of state. No later than the last day of August of each calendar year, the human services department shall issue an annual report detailing implementation of the requirements of this paragraph. The report shall be sent to the legislative council service, the secretary of state and each county clerk; and

(2) no later than June 30, 2020 and upon the approval of the voting system certification committee, the secretary of state and the secretary of taxation and revenue shall develop a procedure for using the address provided as a taxpayer to update the registration address of a voter who has been identified as having moved from the voter's precinct of residence pursuant to Section 1-4-48 NMSA 1978. The procedure shall include a requirement of notification to the voter at least one hundred

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twenty days before an election of the intent to update the registration address and the ability for a voter to decline to permit the update to take effect.

C. If a person who is not a qualified elector becomes registered to vote pursuant to this section, that registration shall not be valid and the county clerk shall remove the certificate of registration from the register of voters.

History: Laws 2019, ch. 67, § 2.

1-4-6. Repealed.

1-4-7. Registration by temporary absentees.

A qualified elector who is temporarily out of his county of residence or out of New Mexico, may, upon request to the county clerk of his county of residence, obtain the prescribed certificate of registration form. After the certificate of registration has been subscribed, the qualified elector shall return it to the county clerk of his county of residence by mail. Upon receipt of the completed certificate of registration, the county clerk shall ascertain if such certificate of registration is to be filed or rejected in accordance with the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-4-7, enacted by Laws 1969, ch. 240, § 65; 1993, ch. 314, § 8; 1993, ch. 316, § 8.

1-4-8. Duties of county clerk; acceptance of registration; close of registration; late registration.

For qualified electors seeking to register to vote or update an existing voter registration in the state, the following provisions shall apply:

A. to participate in an election, the deadline to register to vote or update an existing voter registration is twenty-eight days prior to that election;

B. the county clerk shall receive certificates of registration at all times during normal working hours, except that the clerk shall not process any certificate of registration subscribed and sworn beginning the first business day after the deadline to register to vote or update an existing voter registration before an election if the residential address on the certificate of registration indicates that the registration is for a:

(1) statewide election, within the county; or

(2) special election, within any precinct in the county in which votes may be cast in the special election;

C. between the deadline to register to vote or update an existing voter registration through the day of the election, the county clerk shall process all:

(1) new voter registrations that meet the requirements of this section;

(2) updates to existing voter registrations in this state that meet the requirements of this section; provided that an update to an existing registration in this state shall not be processed if the voter has requested or been sent a ballot in the election, unless the voter executes an affidavit stating that the voter has not and will not vote the ballot that was issued and the ballot register does not show that a ballot from the voter has been cast in the election; and

(3) pending cancellations of existing voter registrations in this state through the day of the election; provided that a cancellation of an existing voter registration shall not be processed if the voter has requested or been sent a ballot in the election;

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D. certificates of registration and cancellations of existing voter registrations not processed pursuant to Subsection B or C of this section shall be processed beginning thirty-five days after an election, at which time a voter information document shall be mailed to the registrant at the address shown on the certificate of registration; provided that if there is a subsequent election scheduled at which a qualified elector or voter would be eligible to vote if the certificate of registration were processed on an earlier date, the certificate of registration for that qualified elector or voter shall be processed by the county clerk on a day and in a manner to ensure the ability of the qualified elector or voter to vote in the subsequent election;

E. when the deadline to register to vote or update an existing voter registration prior to an election referred to in this section is a Saturday, Sunday or state holiday, registration certificates shall be accepted through the next succeeding business day for the office of the county clerk; and

F. the county clerk shall accept for filing and process any certificate of registration that is subscribed and dated on or before the deadline to register to vote or update an existing voter registration prior to an election and:

(1) received by the county clerk by the end of the last regular business day of the week for the office of the county clerk immediately following the deadline to register to vote or update an existing voter registration prior to an election;

(2) mailed and postmarked on or before the day of the deadline to register to vote or update an existing voter registration prior to any election referred to in this section; or

(3) accepted at a state agency designated pursuant to Section 1-4-5.2 NMSA 1978.

History: 1953 Comp., § 3-4-8, enacted by Laws 1969, ch. 240, § 66; 1971, ch. 317, § 5; 1973, ch. 118, § 1; 1975, ch. 255, § 36; 1985, ch. 207, § 2; 1987, ch. 327, § 2; 1993, ch. 314, § 9; 1993, ch. 316, § 9; 1995, ch. 198, § 4; 2003, ch. 355, § 2; 2005, ch. 270, § 21; 2008, ch. 58, § 1; 2015, ch. 145, § 16; 2017, ch. 101, § 2; 2019, ch. 212, § 49.

1-4-9. Duties of county clerk; registration of language minorities.

The county clerk shall initiate nonpartisan measures to urge and facilitate registration of language minority voters and other voters.

History: 1953 Comp., § 3-4-8.1, enacted by Laws 1977, ch. 124, § 3.

1-4-10. Recompiled.

1-4-11. Duties of county clerk; upon receipt of certificates.

A. Upon receipt of a complete certificate of registration, if the certificate of registration is in proper form, the county clerk shall determine if the qualified elector applying for registration is already registered in the registration records of the county. If the qualified elector is not already registered in the county and if the certificate of registration is received within the time allowed by law for filing certificates of registration in the county clerk's office, the county clerk shall sign or stamp, in the space provided therefor on each copy of the certificate, the qualified elector's name and the date the certificate was accepted for filing in the county registration records. Voter information shall be handed or mailed immediately to the qualified elector and to no other person.

B. If the applicant's certificate of registration is rejected for any reason, the county clerk shall stamp or write the word "rejected" on the new certificate of registration and hand or mail it, if possible, to the applicant with an explanation of why the new certificate of registration was rejected

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and what remedial action, if any, the applicant must take to bring the registration up to date or into compliance with the Election Code.

C. The county clerk shall reject any certificate of registration that does not contain the qualified elector's name, address and date of birth, along with a signature or usual mark. If the qualified elector is a new voter, the county clerk shall reject any certificate of registration that does not contain the qualified elector's driver's license or state identification number issued by the motor vehicle division of the taxation and revenue department, social security number or last four digits of the qualified elector's social security number. The county clerk shall reject any certificate of registration in which the question regarding citizenship is not answered or is answered in the negative.

D. A social security number is required to finish processing a new voter registration in this state. If the certificate of registration does not contain a social security number, the county clerk shall ascertain the qualified elector's social security number from the qualified elector's previous certificate of registration, from the motor vehicle division of the taxation and revenue department or from the secretary of state.

E. If the county clerk rejects a certificate of registration because required information is not provided on the certificate or cannot ascertain the qualified elector's social security number, the county clerk shall indicate this on the qualified elector's certificate of registration and shall make the appropriate notation in the voter file, indicating that the voter may only vote on a provisional ballot. The provisional ballot shall be counted once the required information is provided or the voter's social security number is ascertained.

F. If the qualified elector does not register in person, has not previously voted in an election in New Mexico and does not provide the registration officer with the required documentary identification, the registration officer shall indicate this on the qualified elector's certificate of registration and the county clerk shall note this on the appropriate precinct signature roster.

History: 1953 Comp., § 3-4-9, enacted by Laws 1969, ch. 240, § 67; 1987, ch. 249, § 8; 1993, ch. 314, § 10; 1993, ch. 316, § 10; 1995, ch. 198, § 5; 2003, ch. 356, § 12; 2007, ch. 336, § 6; 2015, ch. 145, § 17; 2019, ch. 212, § 50.

1-4-12. Duties of county clerk; filing of certificates.

A. Certificates of registration, if in proper form, shall be processed and filed by the county clerk as follows:

(1) a voter information document shall be delivered or mailed to the voter; and

(2) the original certificate shall be filed alphabetically by surname and inserted into the county register pursuant to Section 1-5-5 NMSA 1978.

B. The county clerk shall, on Monday of each week, process all certificates of registration that are in proper form and that were received in the county clerk's office up to 5:00 p.m. on the preceding Friday. The county clerk shall not process certificates of registration when the registration books are closed pursuant to Section 1-4-8 NMSA 1978, during the county canvass or during the period of time following the county canvass when voter credit is entered into the voter registration electronic management system, provided such credit is entered for all voters no later than forty-five days following an election.

History: 1953 Comp., § 3-4-10, enacted by Laws 1969, ch. 240, § 68; 1987, ch. 249, § 9; 1993, ch. 314, § 11; 1993, ch. 316, § 11; 1995, ch. 198, § 6; 2003, ch. 356, § 13; 2015, ch. 145, § 18.

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1-4-13. Change of name; correcting error.

A. Any voter who changes his name or discovers an error in his certificate of registration may have the name on his certificate changed or the error corrected by filing an application to change the certificate of registration.

B. The application to change the certificate of registration shall show the name by which the qualified elector previously registered, his change of name or correction of error and a request that the change be shown on his certificate of registration. The application shall be subscribed by the voter. When completed, the application shall be filed with the county clerk and retained for six years in a file established for that purpose.

C. The county clerk shall note the change of name or correction of error on the voter's certificate of registration.

History: 1953 Comp., § 3-4-11, enacted by Laws 1969, ch. 240, § 69; 1975, ch. 255, § 37; 1993, ch. 314, § 12; 1993, ch. 316, § 12.

1-4-14. Repealed.

1-4-15. Registration; change of party affiliation.

A. A voter may change the voter's designated party affiliation by executing a new certificate of registration indicating the change of party affiliation.

B. A voter who has previously declined to designate a party affiliation but who desires to designate a party affiliation shall execute a new certificate of registration indicating the desired party affiliation.

C. A voter who does not designate on the certificate of registration a party affiliation shall be considered to have declined to designate a party affiliation.

History: 1953 Comp., § 3-4-13, enacted by Laws 1969, ch. 240, § 71; 1971, ch. 317, § 6; 1975, ch. 255, § 39; 1993, ch. 314, § 14; 1993, ch. 316, § 14; 1995, ch. 198, § 8; 2011, ch. 137, § 32.

1-4-16. Registration; when party affiliation shall not be made.

A. No designation of party affiliation shall be made or changed on an existing certificate of registration at any time during which registration is closed.

B. Every person appearing as a candidate on the primary or general election ballot shall be a candidate only under the name and party affiliation designation appearing on the person's existing certificate of registration on file in the county clerk's office on the date of the secretary of state's general election proclamation.

History: 1953 Comp., § 3-4-14, enacted by Laws 1969, ch. 240, § 72; 1981, ch. 144, § 1; 1991, ch. 165, § 1; 1993, ch. 314, § 15; 1993, ch. 316, § 15; 2019, ch. 212, § 51.

1-4-17. Registration; change of residence within same county.

A. A voter who has changed his residence within the same county shall complete a certificate of registration to change his registered residence address or file a change of residence notification with the county clerk on a postcard-type form, approved by the secretary of state.

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B. No change of registered residence address shall be made in any period during which registration is closed; however, the county clerk may accept applications for or notifications of such change but shall not process them until the registration period is open.

C. The application for or notification of change of registered residence shall be filed with the county clerk, and the previous registration shall be retained for six years in a file established for that purpose.

History: 1953 Comp., § 3-4-15, enacted by Laws 1969, ch. 240, § 73; 1975, ch. 255, § 40; 1987, ch. 249, § 10; 1991, ch. 105, § 8; 1993, ch. 10, § 1; 1993, ch. 314, § 16; 1993, ch. 316, § 16.

1-4-18. Change of registered residence to another county.

When a voter changes the voter's registered residence address from one county in this state to another county in this state, the voter shall complete a new certificate of registration and file it with the appropriate county clerk.

History: 1953 Comp., § 3-4-16, enacted by Laws 1969, ch. 240, § 74; 1975, ch. 255, § 41; 1993, ch. 314, § 17; 1993, ch. 316, § 17; 2011, ch. 137, § 33.

1-4-18.1. Online voter registration.

A. A person may complete a certificate of registration in person or by mail. In addition, the secretary of state shall, not later than January 1, 2016, allow a voter to submit an update to an existing certificate of registration and, not later than July 1, 2017, allow a qualified elector to submit a new certificate of registration form electronically through a web site authorized by the secretary of state or through any computer system maintained by a state agency for electronic voter registration that is approved by the secretary of state; provided that the person is qualified to register to vote and has a current or expired New Mexico driver's license or state identification card issued by the motor vehicle division of the taxation and revenue department.

B. An online certificate of registration form shall contain all of the information that is required for a paper form. The person shall also be required to provide the person's full New Mexico driver's license number or state identification card number.

C. When a person submits a new certificate of registration or an update to an existing certificate of registration, the person shall mark the box associated with the following statement included as part of the electronic certificate of registration form:

"By clicking the boxes below, I swear or affirm all of the following:

[ ] I am the person whose name and identifying information is provided on this form, and I desire to register to vote in the state of New Mexico; and
[ ] all of the information that I have provided on this form is true and correct as of the date I am submitting this form.".

D. Prior to January 1, 2016, the secretary of state, in conjunction with the county clerks of the state, shall adopt rules establishing a uniform and nondiscriminatory process to match the information contained in the voter registration election management system with the database of the motor vehicle division of the taxation and revenue department or the federal social security administration for electronic certificates of registration updates completed pursuant to this section.

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E. Prior to January 1, 2017, the secretary of state, in conjunction with the county clerks of the state, shall adopt rules establishing a uniform and nondiscriminatory process to match the information contained in the voter registration election management system with the database of the motor vehicle division of the taxation and revenue department or the federal social security administration for all electronic certificates of registration completed pursuant to this section.

F. Electronically submitted certificate of registration application forms shall retain the dates of submission by the qualified elector and of acceptance by the county clerk.

G. For purposes of deadlines contained in the Election Code, the time and date of the submission by the qualified elector shall be considered the time and date when the certificate of registration is received by the county clerk.

H. The secretary of state shall ensure that the web sites used for electronic voter registration are secure and that the confidentiality of all users and the integrity of data submitted are preserved.

History: Laws 2013, ch. 91, § 1; 2015, ch. 145, § 20.

1-4-19. Registration; transfer upon creation or change of precincts; notice to voters.

A. When a new precinct is created or the boundaries of an existing precinct are changed, the board of county commissioners shall notify the county clerk of such action.

B. Upon receipt of the notice, the county clerk shall reflect such change on the voter file and mail to each affected voter a notice of the creation or change of precinct.

History: 1953 Comp., § 3-4-17, enacted by Laws 1969, ch. 240, § 75; 1987, ch. 249, § 11; 1993, ch. 314, § 18; 1993, ch. 316, § 18.

1-4-20. Repealed.

1-4-21. Refusal of registration; appeal.

A qualified elector whose registration has been refused or the county chairman of any major political party who alleges that certain persons are qualified electors but have been refused registration may bring an appeal regarding the refused registration pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 3-4-19, enacted by Laws 1969, ch. 240, § 77; 1995, ch. 124, § 3; 1998, ch. 55, § 2; 1999, ch. 265, § 2.

1-4-22. Cancellation of registration; petition to district court.

A. At any time not less than one hundred twenty days prior to and following a statewide election, the secretary of state may file and present to the district court a verified petition alleging, on information and belief, that certain persons registered, named in the petition, are not qualified electors in the precincts named in the petition. The petition shall contain a brief statement of the facts upon which such allegation is made.

B. Upon filing and presentation of the petition, the court shall by order fix a day for hearing thereon, which date shall be not less than fourteen days nor more than twenty-one days after

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such order. The court shall direct the county clerk to use the address on the certificates of registration to forthwith notify the persons named in the petition whose registration is sought to be canceled of the date and purpose of the hearing and that each person should contact the county clerk no later than the close of business the day before the hearing or be present at the hearing if the person desires to oppose the cancellation.

C. If, after hearing, the court finds that the registration of any of the persons named in the petition should be canceled, it shall by order direct the county clerk to cancel the registrations.

D. Within thirty days following a hearing held pursuant to this section, the secretary of state shall report the results of the hearing to the United States election assistance commission and to the voting section of the civil rights division of the United States department of justice. The report required by this subsection shall be posted on the secretary of state's website for one year following the hearing.

History: 1953 Comp., § 3-4-20, enacted by Laws 1969, ch. 240, § 78; 1975, ch. 255, § 43; 1995, ch. 124, § 4; 2011, ch. 137, § 34; 2019, ch. 212, § 52.

1-4-23. Repealed.

1-4-24. Cancellation of registration; county clerk; grounds.

The county clerk shall cancel certificates of registration for the following reasons:

A. death of the voter;

B. a felony conviction of the voter;

C. at the request of the voter; or

D. at the direction of the board of registration.

History: 1953 Comp., § 3-4-22, enacted by Laws 1969, ch. 240, § 80; 1979, ch. 24, § 2; 1993, ch. 314, § 20; 1993, ch. 316, § 20; 1995, ch. 198, § 10; 2019, ch. 212, § 53.

1-4-25. Cancellation of registration; determination of death.

A. For purposes of cancellation of registration, the death of a voter shall be ascertained by obituary notices or probate records or by comparison of registration records with monthly certified lists of deceased residents filed with the secretary of state.

B. The state registrar of vital statistics shall file monthly with the secretary of state certified lists of deceased residents over the age of eighteen years, sorted by county, regardless of the place of death.

C. The monthly certified list of deceased residents shall show the:

(1) name;

(2) age;

(3) sex;

(4) marital status;

(5) birth place;

(6) birth date;

(7) social security number, if any;

(8) address; and

(9) place and date of death of the deceased resident.

D. The secretary of state shall, upon receipt of the monthly certified list of deceased residents, forward each county's list to the county clerk.

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E. The county clerk shall, upon receipt of the monthly certified list of deceased residents, cancel any deceased resident's certificate of registration.

F. Upon receipt of a notarized document from the president or governor of an Indian nation, tribe or pueblo or from a tribal enrollment clerk indicating that a tribal member is deceased, the county clerk shall cancel the certification of registration of that deceased tribal member.

History: 1953 Comp., § 3-4-23, enacted by Laws 1969, ch. 240, § 81; 1975, ch. 255, § 45; 1993, ch. 314, § 21; 1993, ch. 316, § 21; 2001, ch. 72, § 1; 2009, ch. 39, § 1.

1-4-26. Repealed.

1-4-27. Repealed.

1-4-27.1. Cancellation of registration following conviction; eligibility for voting upon satisfaction of conditions.

A. When a voter has been convicted of a felony in any state or federal court, the voter's registration shall be canceled.

B. A person convicted of a felony who is otherwise a qualified elector is eligible to register to vote when that person:

(1) has been unconditionally discharged from a correctional facility or detention center;

(2) has completed all conditions of parole or supervised probation; or

(3) has had the conviction overturned on appeal.

C. The secretary of state shall each month maintain current in the statewide voter registration electronic management system the eligibility status of persons convicted of felonies to register to vote pursuant to this section.

D. The corrections department, the New Mexico sentencing commission and the administrative office of the courts shall deliver to the secretary of state information and data as needed to carry out the provisions of this section.

E. The secretary of state shall request from the United States attorney for the district of New Mexico, in conformance with 42 U.S.C. Section 1973gg-6(g), information and data as needed to carry out the provisions of this section.

History: Laws 2001, ch. 46, § 1; 2005, ch. 116, § 1; 2007, ch. 337, § 7; 2011, ch. 137, § 35.

1-4-28. Cancellation of registration; change of residence; notice.

A. The secretary of state, county clerks and boards of registration, in compliance with the federal National Voter Registration Act of 1993, shall remove from the official list of eligible voters the names of voters who are ineligible to vote due to change of residence.

B. The secretary of state shall conduct a general program that identifies voters who may no longer reside at their address of registration. This program shall use information supplied by the United States postal service national change of address service. This program may also include, among other practices, identification of voters whose official election-related mail is returned and periodic mailings to voters to verify continued residency at their address of registration, provided such practices are uniform, nondiscriminatory and in compliance with the federal Voting Rights Act of 1965.

C. Between ninety and one hundred twenty days before the next general election, the secretary of state shall send to each voter who it appears has changed address from the voter's precinct

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of registration a notice, sent by forwardable mail, that shall include a postage prepaid and pre-addressed return card. The notice shall state that:

(1) if the voter did not change residency, the voter should return the card no later than twenty-eight days before the next general election;

(2) if the voter does not return the card, the voter may be provided an opportunity to update the voter's registration address before the voter casts a ballot in any election during the period beginning on the date of the notice and ending on the day after the second general election that occurs after the date of the notice;

(3) if the voter does not vote in any election during the period beginning on the date of that notice and ending on the day after the second general election that occurs after the date of the notice, the voter's registration may be canceled; and

(4) if the voter has changed residence within the same county, the voter should complete the place on the return card for the voter to indicate the address of the new residence and a request to have the voter's registration moved to that address in the same county.

D. If the voter returned the card indicating a new address and the address is:

(1) in the same county, the county clerk shall correct the official list of eligible voters in accordance with the change of residence information obtained on the return card; or

(2) in another county, the county clerk shall forward the return card to the appropriate county clerk, who shall process the change of residence as a new registration in the county.

E. No later than the fifteenth day of March following a general election, the board of registration shall review the list of eligible voters. The board of registration shall direct the county clerk to cancel the registration of any voter who has been sent notice in conformance with this section and who:

(1) has failed to respond to the notice sent in conformance with this section and has not voted or appeared to vote in any election during the period beginning on the date of the notice and ending on the day after the second general election that occurs after the date of the notice; or

(2) has confirmed in writing that the voter has changed residence to a place outside the state.

History: 1953 Comp., § 3-4-26, enacted by Laws 1975, ch. 255, § 46; 1979, ch. 48, § 1; 1985, ch. 197, § 1; 1993, ch. 314, § 24; 1993, ch. 316, § 24; 1995, ch. 198, § 11; 2008, ch. 58, § 2; 2011, ch. 137, § 36; 2019, ch. 212, § 54.

1-4-29. Board of registration; county clerk; failure to cancel; duty of the secretary of state.

A. If the board of registration or the county clerk of any county does not cancel registration certificates as required by law, the secretary of state shall investigate the registration records, election returns and other pertinent records of that county and file a petition with the district court for the cancellation of the certificates of those persons as the investigation determines should have been canceled by the board of registration or the county clerk.

B. In such a proceeding, the court shall determine the cost of the investigation, and if it finds that the board of registration or the county clerk did not cancel certificates of registration in the manner provided by law, shall enter judgment against the county for the cost of the investigation.

History: 1953 Comp., § 3-4-27, enacted by Laws 1975, ch. 255, § 47; 1979, ch. 24, § 3; 1993, ch. 314, § 25; 1993, ch. 316, § 25.

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1-4-30. Cancellation of registration; voter's request.

A. The county clerk shall cancel a certificate of registration upon the request of a voter only for the following reasons:

(1) when the voter changes the voter's registered residence address to another county within the state;

(2) when the voter moves to another state; and

(3) upon the written request of the voter.

B. A written request by a voter to cancel the voter's registration shall be in writing and subscribed before a registration officer or a person authorized to administer oaths or on a form prescribed by the secretary of state.

C. The voter's certificate of registration shall be deemed canceled upon receipt by the county clerk of the request when the request is for the reasons specified in Subsection A of this section.

History: 1953 Comp., § 3-4-28, enacted by Laws 1969, ch. 240, § 86; 1975, ch. 255, § 48; 1993, ch. 314, § 26; 1993, ch. 316, § 26; 2011, ch. 137, § 37.

1-4-31. Repealed.

1-4-32. Cancellation of registration; duties of county clerk; retention of records.

A. When a registration is canceled, the county clerk shall remove, endorse and file the original certificate of registration according to procedures prescribed by the secretary of state.

B. Canceled original certificates of registration along with any written application of the voter for cancellation or other pertinent orders or certificates shall be retained for six years and then may be destroyed; provided that such records may be destroyed prior to the expiration of the six-year period with the approval of the state records administrator and upon their being properly microfilmed and stored.

History: 1953 Comp., § 3-4-30, enacted by Laws 1969, ch. 240, § 88; 1975, ch. 255, § 50; 1979, ch. 24, § 5; 1987, ch. 249, § 12; 1993, ch. 314, § 28; 1993, ch. 316, § 28.

1-4-33. Repealed.

1-4-34. Board of registration; board of county commissioners; appointment.

A. The board of county commissioners shall, at its first regular scheduled meeting in June of each odd-numbered year, appoint five voters who shall constitute the board of registration for the county; provided that a class B county as defined in Section 4-44-1 NMSA 1978 shall appoint three voters who shall constitute the board of registration for the county.

B. Members of the board of registration shall not during their service be county employees, elected officials or candidates for public office, and not more than two members of the board of registration shall be members of the same political party at the time of their appointment; provided that:

(1) a member of the board of registration shall not have changed party registration in the two years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the board of registration; and

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(2) a member of the board of registration shall not continue to serve on the board of registration if the member changes party registration after the date of appointment in such a manner to make the member ineligible to serve on the board of registration.

C. In the event that a position on the board of registration becomes vacant for any of the reasons described in Section 10-3-1 NMSA 1978, the board of county commissioners shall appoint a replacement who shall qualify pursuant to Subsection B of this section and serve until the expiration of the original term.

History: 1953 Comp., § 3-4-32, enacted by Laws 1969, ch. 240, § 90; 1975, ch. 255, § 52; 1981, ch. 136, § 1; 1995, ch. 124, § 5; 2019, ch. 212, § 55.

1-4-35. Board of registration; secretary.

The county clerk or the county clerk's authorized deputy shall be secretary to the board of registration.

History: 1953 Comp., § 3-4-33, enacted by Laws 1969, ch. 240, § 91; 2019, ch. 212, § 56.

1-4-36. Board of registration; compensation.

Each member of the board of registration shall be paid per diem and mileage as provided in the Per Diem and Mileage Act [Chapter 10, Article 8 NMSA 1978] for nonsalaried public officers. Such compensation shall be included as an item in the regular county budget.

History: 1953 Comp., § 3-4-34, enacted by Laws 1969, ch. 240, § 92; 1973, ch. 4, § 2; 1975, ch. 255, § 53.

1-4-37. Board of registration; term; qualification.

A. The term of office of members of the board of registration is from July 1 of an odd-numbered year until June 30 of the next succeeding odd-numbered year. Members of the board of registration shall hold office until their successors are appointed and qualified.

B. Members of the board of registration shall qualify by taking and filing in the office of the county clerk the oath required of county officials.

History: 1953 Comp., § 3-4-35, enacted by Laws 1969, ch. 240, § 93; 2019, ch. 212, § 57.

1-4-38. Board of registration; meetings.

A. All meetings of the board of registration shall be open meetings held in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

B. All reports and other records of the board of registration shall be open to public inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

C. A person's month and day of birth, and any part of a person's driver's license number or other identifier assigned by the motor vehicle division of the taxation and revenue department, state or federal tax identification number or social security number shall not be disclosed in any meeting or in any record of the board of registration made available to the public. This subsection

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does not preclude disclosure of a person's unique identifier as defined in Section 1-1-23 NMSA 1978.

D. Members of the board of registration are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], to be paid out of the election funds appropriated to the county clerk from the county general fund.

History: 1953 Comp., § 3-4-36, enacted by Laws 1969, ch. 240, § 94; 1975, ch. 255, § 54; 2019, ch. 212, § 58.

1-4-39 to 1-4-45. Repealed.

1-4-46. Clerical assistance for county clerk.

The board of county commissioners shall provide for necessary clerical assistance to the county clerk to perform work pertaining to registration. Such clerical assistance shall be paid for by order of the board of county commissioners. Such expenditure shall be included as an item in the regular county budget.

History: 1953 Comp., § 3-4-44, enacted by Laws 1969, ch. 240, § 102; 1973, ch. 4, § 3.

1-4-47. Driver's license voter registration.

A. Every person who is a qualified elector and is applying for a driver's license, to renew a driver's license or for an identification card shall, if qualified to register to vote, with the consent of the applicant be simultaneously registered to vote.

B. The secretary of taxation and revenue shall select certain employees of the motor vehicle division of the taxation and revenue department or employees of entities on contract to provide field services to the motor vehicle division to provide assistance to any applicant requesting voter registration assistance.

C. Every motor vehicle division office, field office or contract field office of the division shall display within the offices clearly visible signs stating "voter registration assistance available" and:

(1) personnel in each office shall advise each person who is a qualified elector and an applicant for licensure or renewal or for an identification card that initial voter registration or a change of address for voter registration may be made simultaneously with the motor vehicle application;

(2) voter registration shall be conducted in a manner such that the applicant completes the full certificate of registration electronically; and

(3) the applicant's digital signature shall be affixed to the certificate of registration using an electronic signature in conformance with the Electronic Authentication of Documents Act [Chapter 14, Article 15 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978].

D. A motor vehicle division employee or contractor shall not intentionally influence the prospective registrant in the selection of political party, or independent status, by word or act. A motor vehicle division employee or contractor shall not reveal the existence of or the nature of the voter registration to anyone other than a registration officer.

E. Any voter registration made or accepted at a motor vehicle division office or motor vehicle division field office shall be transmitted to the secretary of state and the appropriate registration officer within seven calendar days.

F. The secretary of state shall work with the motor vehicle division to:

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(1) ensure compliance in the application of the provisions of this section with the federal National Voter Registration Act of 1993;

(2) ensure consistent implementation in the various counties, based on county classification and developing technology; and

(3) develop procedures to ensure that, once voter registration information is transmitted to the appropriate registration officer, the voter's certificate of registration is printed and placed in the county's register of voters.

History: 1978 Comp., § 1-4-47, enacted by Laws 1991, ch. 80, § 4; 1995, ch. 198, § 12; 2013, ch. 184, § 1.

1-4-48. Agency registration.

A. The secretary of state shall adopt and publish in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules for the administration of a state-agency-based voter registration program. The rules shall provide for distribution of voter registration forms, provisions for the acceptance of voter registration forms and procedures for reporting voter registration activity in accordance with the federal National Voter Registration Act of 1993.

B. Voter registration shall be made available at all state agencies providing public assistance or services to people with disabilities. The secretary of state may, with the agreement of those offices, designate other state and local public offices to provide voter registration services.

C. Each state agency participating in the voter registration program shall maintain sufficient records for the secretary of state to comply with federal voter registration reporting requirements and the federal Help America Vote Act of 2002. Any records maintained by a state agency regarding voter registration activities in that agency are confidential and shall not be released as public records.

D. Any voter registration made or accepted at a state agency pursuant to this section shall be transmitted to the appropriate registration officer within ten calendar days.

E. A state agency employee or agency contractor who participates in the voter registration process may not intentionally influence the prospective registrant in the selection of political party, or independent status, by word or act. A state agency employee or agency contractor who participates in the voter registration process may not reveal the existence of or the nature of the voter registration to anyone other than a registration officer.

History: 1978 Comp., § 1-4-48, enacted by Laws 1995, ch. 198, § 13; 2003, ch. 356, § 14.

1-4-49. Third-party registration agents; registration required; procedures; reports; penalty.

A. Registration agents who either register or assist persons to register to vote on behalf of an organization that is not a state or federal agency shall register with the secretary of state, and the organization shall register and provide the secretary of state with:

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

(2) the names, permanent addresses, temporary addresses, if any, and dates of birth of each person registering persons to vote in the state on behalf of the organization; and

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(3) a sworn statement from each registration agent employed by or volunteering for the organization stating that the agent will obey all state laws and rules regarding the registration of voters on a form that gives notice of the criminal penalties for false registration.

B. Organizations employing registration agents or using volunteer registration agents shall deliver or mail a certificate of registration to the secretary of state or county clerk within forty-eight hours of its completion by the person registering to vote or deliver it the next business day if the appropriate office is closed for that forty-eight-hour period.

C. The secretary of state may issue rules to ensure the integrity of the registration process, including rules requiring that organizations account for all state and federal registration forms used by their registration agents.

D. A person who intentionally violates the provisions of this section is guilty of a petty misdemeanor and the person's third-party registration agent status shall be revoked. If the person who violates a provision of this section is an employee of an organization and has decision-making authority involving the organization's voter registration activities or is an officer of the organization, that organization shall be subject to civil penalties as described in Subsection E of this section.

E. If the secretary of state reasonably believes that a person committed a violation of the provisions of this section, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement. The attorney general or district attorney may institute a civil action in district court for a violation of the provisions of this section or to prevent a violation of the provisions of this section. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of two hundred fifty dollars ($250) for each violation, not to exceed five thousand dollars ($5,000).

History: Laws 2005, ch. 270, § 17; 2007, ch. 336, § 7.

1-4-50. Prohibition on release of registration information.

The secretary of state, county clerk or any other registration agent shall not release to the public a voter's social security number or a voter's month and day of birth, and no person shall release to the public or share that information with someone other than a registration officer if the person learned of that information from the voter's certificate of registration.

History: Laws 2007, ch. 337, § 1; 2011, ch. 137, § 38.

ARTICLE 5
Voter Records System

Sec.
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1-5-5. Entry of data into data processing system; county register; maintenance.
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1-5-9. Repealed.
1-5-10. Recompiled.
1-5-11. Recompiled.
1-5-12. Recompiled.
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1-5-14. File maintenance reports; voter file updates.
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Sec.
1-5-23. Unlawful destruction or alteration of data recording media, voter files, file maintenance lists, voter registration system software and instructions or voter lists; penalty.
1-5-24. Recompiled.
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1-5-27. Repealed.
1-5-28. Repealed.
1-5-29. Repealed.
1-5-30. Secretary of state; voter registration electronic management system.
1-5-31. Uniform procedures for counties.

1-5-1. Short title.

Chapter 1, Article 5 NMSA 1978 may be cited as the "Voter Records System Act".

History: 1953 Comp., § 3-5-1, enacted by Laws 1969, ch. 240, § 103; 1975, ch. 255, § 62; 2005, ch. 270, § 23; 2015, ch. 145, § 21.

1-5-2. Definitions.

As used in the Election Code [Chapter 1 NMSA 1978]:

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

B. "county register" means an official file of original certificates of registration of the county or any of its precincts;

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

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

E. "data recording media" means a manual, electronic or other device containing data capable of being read and processed by any means for the eventual preparation of voter lists;

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

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

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

I. "mailing labels" mean prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;

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

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

L. "special voter list" means a prepared list of selected voters arranged in the order in which requested;

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

N. "voter file" means all voter registration information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on data recording media and certified by the county clerk as the source of all information required by the Voter Records System Act; and

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

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History: 1953 Comp., § 3-5-2, enacted by Laws 1969, ch. 240, § 104; 1975, ch. 255, § 63; 1985, ch. 77, § 1; 1987, ch. 249, § 14; 1989, ch. 392, § 7; 1993, ch. 314, § 32; 1993, ch. 316, § 32; 1993, ch. 363, § 1; 1995, ch. 166, § 1; 2001, ch. 146, § 1; 2005, ch. 270, § 24.

1-5-3. Act is mandatory and supplemental to Election Code.

A. The Voter Records System Act is mandatory and supplemental to the provisions of the Election Code [Chapter 1 NMSA 1978]. The provisions of that act shall be implemented in all counties by order of the secretary of state in accordance with the provisions of the federal Help America Vote Act of 2002.

B. The secretary of state shall maintain the official state voter file based on county registers and shall provide access to the file to the county clerks. The secretary of state shall prescribe any rules, forms and instructions necessary to implement procedures required by the Voter Records System Act and federal law. The secretary of state shall maintain a log, which shall be public, containing all transactions regarding requests for current registration lists of state voters. The log shall indicate the requesting party, the date of the request, the date of fulfilling the request, charges made and any other information deemed advisable by the secretary of state. Requests for registration lists in printed or electronic form shall be fulfilled within a period of ten working days.

C. All registration records required by the Election Code shall be maintained for each of the precincts in addition to those records required by the Voter Records System Act and federal law.

History: 1953 Comp., § 3-5-3, enacted by Laws 1969, ch. 240, § 105; 1975, ch. 255, § 64; 1983, ch. 227, § 1; 1984 (1st S.S.), ch. 4, § 1; 1993, ch. 314, § 33; 1993, ch. 316, § 33; 2005, ch. 270, § 25.

1-5-4. County register; establishment.

The board of county commissioners shall direct the county clerk to establish a county register. The county register shall be filed in fire-resistant containers in the county courthouse. The files containing the county register shall be arranged to provide ready and convenient access and shall be kept locked except when being used by authorized persons in accordance with the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-5-4, enacted by Laws 1969, ch. 240, § 106.

1-5-5. Entry of data into data processing system; county register; maintenance.

A. The county clerk, upon receipt of a proper certificate of registration within the period prescribed for registration, shall immediately enter in the proper spaces thereon the precinct of the voter.

B. All information required shall then be entered into the voter file and evidenced by the file maintenance list. A new certificate of registration, or change of information to an existing certificate of registration, shall not be inserted into the county register until the county clerk has had all pertinent information necessary for the preparation of voter files and voter lists transcribed from it to a record appropriate for use for preparation of such lists.

C. After entry of data into the data processing system, the county clerk shall insert each original certificate of registration in its proper order in the county register.

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D. A certificate of registration shall not be removed from the county register pursuant to a cancellation of registration until the county clerk has entered into the voter file all deletions and changes and such deletions and changes are evidenced by the file maintenance list.

History: 1953 Comp., § 3-5-5, enacted by Laws 1969, ch. 240, § 107; 1975, ch. 255, § 65; 1993, ch. 314, § 34; 1993, ch. 316, § 34; 2001, ch. 146, § 2.

1-5-6. Precinct voter lists; signature roster preparation.

The county clerk shall provide for preparation of precinct voter lists and signature rosters generated from the official state voter file for any precincts. The precinct voter lists and signature rosters shall be used at any election for which registration of voters is required in lieu of bound original certificates of registration and poll books.

History: 1953 Comp., § 3-5-6, enacted by Laws 1969, ch. 240, § 108; 1993, ch. 314, § 35; 1993, ch. 316, § 35; 2001, ch. 146, § 3; 2005, ch. 270, § 26.

1-5-7. Recompiled.

1-5-8. Recompiled.

1-5-9. Repealed.

1-5-10. Recompiled.

1-5-11. Recompiled.

1-5-12. Recompiled.

1-5-13. Repealed.

1-5-14. File maintenance reports; voter file updates.

A. At least once a month, the secretary of state shall have made from the state voter file a file maintenance report of additions, deletions and changes, if any, to each of the county registers. The file maintenance report shall indicate whether each entry listed is an addition, deletion or change to the county register.

B. A digital version of the file maintenance report shall be stored by the secretary of state for at least one year.

C. Upon request, the secretary of state shall furnish an updated voter file to the state chair of each of the qualified political parties in the state. Upon request, the county clerk shall provide a file maintenance report or an updated voter file to the county chair of each of the qualified political parties in the county.

D. File maintenance reports and updated voter files shall be provided in a manipulable digital format and shall not include the voter's social security number, codes used to identify the agency where the voter registered, the voter's day and month of birth, the voter's email address, or, if prohibited by the voter, the voter's telephone number.

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History: 1953 Comp., § 3-5-17, enacted by Laws 1969, ch. 240, § 118; 1975, ch. 255, § 70; 1989, ch. 392, § 8; 1995, ch. 124, § 7; 1995, ch. 166, § 4; 2001, ch. 146, § 5; 2005, ch. 270, § 29; 2015, ch. 145, § 22.

1-5-15. Repealed.

1-5-16. Voter file; duplicate voter file; storage; protection.

A. All voter files shall be stored to safeguard them from loss, damage or unauthorized alteration.

B. All duplicate voter files shall be stored in a fireproof safe or vault located at a place remote from, and which is considered a separate damage risk from, the place of storage or use of the voter files from which they were duplicated.

C. No voter file and its duplicate shall be stored or transported in any manner that will subject both to possible loss or damage from common or related perils.

History: 1953 Comp., § 3-5-20, enacted by Laws 1969, ch. 240, § 121; 1975, ch. 255, § 72.

1-5-17. Voter registration system software; instructions; status; protection.

A. Voter registration system software and instructions for its use in controlling the processing of information derived from the voter file shall be verified functionally, identified and approved by the secretary of state.

B. Verified, identified and approved voter registration system software and instructions shall be safeguarded at all times against loss or damage. The designated data processor shall be in charge of these safeguards subject to approval by the secretary of state.

History: 1953 Comp., § 3-5-21, enacted by Laws 1969, ch. 240, § 122; 1975, ch. 255, § 73; 2001, ch. 146, § 6; 2005, ch. 270, § 30.

1-5-18. List and roster preparation; compatible duplicate means.

A. The secretary of state shall provide to the county clerk means for the preparation of voter lists and signature rosters.

B. At least one compatible duplicate means shall be provided for on a standby basis, and it shall be capable of performing the preparation of voter lists and signature rosters with minimum delay in case the original means is unable to perform.

C. The secretary of state shall procure and preserve sufficient duplicate voter registration system software and operating instructions so that in case of disaster the duplicate master record and the duplicate voter registration system software and operating instructions will be all that will be required for another compatible facility to prepare registered voter lists and signature rosters with minimum delay.

History: 1953 Comp., § 3-5-23, enacted by Laws 1969, ch. 240, § 124; 2001, ch. 146, § 7; 2005, ch. 270, § 31.

1-5-19. Recompiled.

1-5-20. Repealed.

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1-5-21. Data processor; custody and protection of voter file; delivery of voter file and program records.

A. The designated data processor shall provide the secretary of state, county clerk or county with data processing services in the implementation and maintenance of the Voter Records System Act and in carrying out such other services as are reasonably related to providing data processing of the voter records system.

B. The designated data processor shall preserve and safeguard voter files and voter registration system software from loss, damage, unauthorized alteration, unauthorized access and unauthorized reproduction and shall ensure their continued use and accessibility while they are in the data processor's custody.

C. No copies of the voter file or information or listings derived therefrom shall be furnished by the data processor to any person other than the secretary of state, the county clerk or their designated agents.

History: 1953 Comp., § 3-5-26, enacted by Laws 1975, ch. 255, § 75; 1989, ch. 392, § 9; 2005, ch. 270, § 32.

1-5-22. Unlawful disposition of voter file; penalty.

A. Unlawful disposition of voter file consists of the willful selling, loaning, providing access to or otherwise surrendering of the voter file, duplicates of the file or a part of the file by a data processor; a data processor's agent or employee; a state or county officer; or a state or county officer's deputy, assistant, employee or agent to anyone not authorized by the Voter Records System Act to have possession of the file.

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

C. Any data processor, officer, deputy, assistant, agent or employee who commits unlawful disposition of a voter file is guilty of a fourth degree felony.

History: 1953 Comp., § 3-5-27, enacted by Laws 1975, ch. 255, § 76; 2005, ch. 270, § 33.

1-5-23. Unlawful destruction or alteration of data recording media, voter files, file maintenance lists, voter registration system software and instructions or voter lists; penalty.

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

B. Any person who commits unlawful destruction or alteration of data recording media, voter files, file maintenance lists, voter registration system software and instructions or voter lists is guilty of a fourth degree felony.

History: 1953 Comp., § 3-5-28, enacted by Laws 1975, ch. 255, § 77; 2005, ch. 270, § 34.

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1-5-24. Recompiled.

1-5-25. Recompiled.

1-5-26. Contractual agreement required with data processor.

The secretary of state shall enter into a written contractual agreement with the data processor notwithstanding the fact that the data processor may be a department of state government.

History: 1953 Comp., § 3-5-31, enacted by Laws 1975, ch. 255, § 80; 2005, ch. 270, § 37.

1-5-27. Repealed.

1-5-28. Repealed.

1-5-29. Repealed.

1-5-30. Secretary of state; voter registration electronic management system.

A. The secretary of state shall develop, implement, establish and supervise a voter registration electronic management system that complies with the federal Help America Vote Act of 2002 to facilitate voter registration and to provide a central database containing voter registration information for New Mexico.

B. The voter registration electronic management system shall:

(1) provide for the establishment and maintenance of a central database for all voter registration information;

(2) permit the offices of all county clerks to add, modify and delete county information from the system to provide for accurate and up-to-date records;

(3) permit the offices of the county clerks and the bureau of elections to have access to the central database for review and search capabilities;

(4) provide security and protection for all information in the central database and monitor the central database to ensure the prevention of unauthorized entry;

(5) provide procedures for the electronic receipt of voter registration application and update information, including digitized and electronic signatures, photographs and other data provided by the motor vehicle division of the taxation and revenue department or the federal social security administration;

(6) permit a proper filing officer to upload declarations of candidacy and candidate qualification documents, as prescribed by the Election Code, and resolutions approving a ballot question within one day of being filed with the proper filing officer;

(7) provide procedures for entering data into the central database; and

(8) provide a centralized system for each county to enter the precinct to which a voter should be assigned for voting purposes.

C. Based on written agreements with the secretary of state, the secretary of state shall provide access to the voter registration electronic management system to municipalities and other local governments based upon statutory responsibilities for administration of elections or to administer procedures related to elections that do not conflict with the provisions of the Election Code. The agreements shall include the scope of access, required initial and continuing training,

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job titles for persons with login credentials and security requirements associated with accessing the voter registration electronic management system.

History: Laws 1989, ch. 298, § 1; 2005, ch. 270, § 38; 2015, ch. 145, § 23; 2019, ch. 212, § 59.

1-5-31. Uniform procedures for counties.

The secretary of state shall:

A. assist county clerks by devising uniform procedures and forms that are compatible with the voter registration electronic management system;

B. provide to each county clerk the computer software necessary for the use and maintenance of the voter registration electronic management system;

C. provide to each county clerk, through an agreement with the motor vehicle division of the taxation and revenue department, access to the division's driver's license database for the purpose of verifying voter registrations, processing absentee ballots and qualifying provisional ballots; and

D. adopt such rules as are necessary to establish and administer the voter registration electronic management system and to regulate the use of the driver's license database by county clerks.

History: Laws 1989, ch. 298, § 2; 2005, ch. 270, § 39; 2015, ch. 145, § 24.

ARTICLE 6
Absentee Voting

Sec.
1-6-1. Absent Voter Act; short title.
1-6-1.1. Definitions.
1-6-2. Repealed.
1-6-3. Right to vote absentee.
1-6-4. Mailed ballot application.
1-6-4.1. Repealed.
1-6-4.2. Repealed.
1-6-4.3. Third party agents collecting applications for mailed ballots.
1-6-5. Processing application; issuance of ballot.
1-6-5.1. Repealed.
1-6-5.2. Repealed.
1-6-5.3. Repealed.
1-6-5.4. Repealed.
1-6-5.5. Repealed.
1-6-5.6. Early voting; alternate voting locations; procedures.
1-6-5.7. Early voting; use of absentee voting procedures; county clerk's office; alternate voting locations.
1-6-5.8. Early voting; Native American early voting locations.
1-6-6. Ballot register.
1-6-7. Repealed.
1-6-8. Mailed ballot envelopes.
1-6-9. Mailed ballots; manner of voting; delivery methods.
1-6-9.1. Repealed.
1-6-9.2. Preparation of electronic voting machines.
1-6-10. Receipt of mailed ballots by clerk.
1-6-10.1. Absentee ballot; delivery to county clerk.
1-6-10.2. Repealed.
1-6-11. Delivery of absentee ballots to absent voter precincts.
1-6-12, 1-6-13. Repealed.
1-6-14. Handling mailed ballots.
1-6-15. Canvass; recount or recheck; disposition.
1-6-16. Mailed ballots; replacement and provisional paper ballots.
1-6-16.1. Absentee ballot; conduct of election; when not timely received; emergency procedure for voting and counting.
1-6-16.2. Additional emergency procedure for voting.
1-6-17. Repealed.
1-6-18. Repealed.
1-6-18.1. Repealed.
1-6-19. Repealed.
1-6-20. Creation of absent voter precinct.
1-6-21. Repealed.
1-6-22. Designation of absent voter precinct polling place.
1-6-22.1. Mail ballot election precinct; absentee voting in lieu of polling place.
1-6-23. Absent voter precinct polling place; hours on election day and subsequent days.
1-6-24. Repealed.
1-6-25. Repealed.

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1-6-1. Absent Voter Act; short title.

Chapter 1, Article 6 NMSA 1978 may be cited as the "Absent Voter Act".

History: 1953 Comp., § 3-6-1, enacted by Laws 1969, ch. 240, § 127; 2018, ch. 79, § 6.

1-6-1.1. Definitions.

As used in the Absent Voter Act:

A. "absentee" means the ability of a voter to receive, fill out and return a ballot at a place and time other than a polling location on the day of the election;

B. "early voting location" means the office of the county clerk, an alternate voting location or a mobile alternate voting location;

C. "mailed ballot" means a ballot that is sent to a voter pursuant to the provisions of the Election Code and does not include a ballot that is provided to a voter in person at an early voting location; and

D. "registered ballot" means a ballot that has been filled out by the voter and whose votes have been recorded and retained by an electronic voting system before the day of the election pursuant to the provisions of the Election Code.

History: 1978 Comp., § 1-6-1.1, enacted by Laws 2019, ch. 212, § 60.

1-6-2. Repealed.

1-6-3. Right to vote absentee.

A voter may vote absentee in all candidate contests and on all ballot questions as if the voter had appeared on the day of the election to vote in person at a polling location.

History: 1953 Comp., § 3-6-3, enacted by Laws 1969, ch. 240, § 129; 1975, ch. 255, § 84; 1977, ch. 269, § 2; 1981, ch. 150, § 1; 1987, ch. 327, § 7; 1989, ch. 392, § 10; 1993, ch. 19, § 1; 1993, ch. 21, § 1; 1999, ch. 267, § 5; 2015, ch. 145, § 42; 2019, ch. 212, § 61.

1-6-4. Mailed ballot application.

A. In a statewide election, application by a voter for a mailed ballot shall be made only on a paper form or its online equivalent. The form shall identify the applicant and contain information to establish the applicant's qualification for issuance of a mailed ballot under the Absent Voter Act; provided that only on the application form for a primary election ballot there shall be a box, space or place provided for designation of the voter's political party affiliation.

B. Each application on a paper form for a mailed ballot shall be signed by the applicant and shall require the applicant's printed name, registration address and year of birth to be supplied by the applicant, which shall constitute the required form of identification. When submitted by the voter, the county clerk shall accept an application for a mailed ballot pursuant to this subsection regardless of whether the application for a mailed ballot is delivered to the county clerk on paper or by electronic means. When submitted by a third party, the county clerk shall not accept an application for a mailed ballot pursuant to this subsection if the application for a mailed ballot is delivered by electronic means.

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C. The secretary of state shall allow a voter to submit an online application for a mailed ballot through a website authorized by the secretary of state; provided that the voter shall have a current or expired New Mexico driver's license or state identification card issued by the motor vehicle division of the taxation and revenue department. An online request for a mailed ballot shall contain all of the information that is required for a paper form. The voter shall also provide the person's full New Mexico driver's license number or state identification card number.

D. When a voter requests a mailed ballot pursuant to this section, the voter shall mark the box associated with the following statement, which shall be included as part of the online mailed ballot request form:

"By clicking the boxes below, I swear or affirm all of the following:

[ ] I am the person whose name and identifying information is provided on this form and I desire to request a mailed ballot to vote in the state of New Mexico; and

[ ] All of the information that I have provided on this form is true and correct as of the date I am submitting this form."

E. Online applications for mailed ballots shall retain the dates of submission by the qualified elector and of acceptance by the county clerk. For purposes of deadlines contained in the Election Code, the time and date of the submission by the voter shall be considered the time and date when the application for a mailed ballot is received by the county clerk.

F. New registrants who registered for the first time in this state by mail and at that time did not provide acceptable documentary identification as required by federal law shall be informed of the need to comply with federal identification requirements when returning the requested ballot. The secretary of state shall issue rules to exempt voters from submitting identification only as required by federal law and shall review and, if necessary, update these rules no later than March 15 of even-numbered years.

G. A person who willfully and with knowledge and intent to deceive or mislead any voter, election board, canvassing board, county clerk or other election official and who falsifies any information on an absentee ballot request form or who affixes a signature or mark other than the person's own on a mailed ballot request form is guilty of a fourth degree felony.

History: 1953 Comp., § 3-6-4, enacted by Laws 1969, ch. 240, § 130; 1977, ch. 269, § 3; 1981, ch. 150, § 2; 1985, ch. 207, § 4; 1987, ch. 327, § 8; 1989, ch. 66, § 1; 1989, ch. 105, § 1; 1989, ch. 392, § 11; 1993, ch. 19, § 2; 1993, ch. 20, § 1; 1993, ch. 21, § 2; 1993, ch. 314, § 42; 1993, ch. 316, § 42; 1997, ch. 201, § 1; 1999, ch. 267, § 6; 2003, ch. 357, § 1; 2005, ch. 270, § 4; 2007, ch. 336, § 8; 2008, ch. 59, § 5; 2011, ch. 137, § 39; 2015, ch. 145, § 43; 2017, ch. 101, § 3; 2019, ch. 212, § 62.

1-6-4.1. Repealed.

1-6-4.2. Repealed.

1-6-4.3. Third party agents collecting applications for mailed ballots.

A. A person or organization that is not part of a government agency and that collects applications for mailed ballots shall submit the applications to the appropriate office for filing within forty-eight hours of their completion or the next business day if the appropriate office is closed for that forty-eight-hour period.

B. A person who collects applications for mailed ballots and fails to submit a voter's completed application is guilty of a petty misdemeanor.

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C. A person who intentionally alters another voter's completed application for a mailed ballot is guilty of a fourth degree felony.

History: Laws 2005, ch. 270, § 41; 2007, ch. 337, § 9; 2019, ch. 212, § 63.

1-6-5. Processing application; issuance of ballot.

A. The county clerk shall mark each completed application for a mailed ballot with the date and time of receipt in the clerk's office and enter the required information in the ballot register. The county clerk shall then determine if the applicant is a voter and if the voter is a uniformed-service voter or an overseas voter. If the applicant is a uniformed-service voter or overseas voter, the application shall be processed pursuant to the Uniform Military and Overseas Voters Act [1-6B-1 through 1-6B-17 NMSA 1978].

B. If the applicant does not have a valid certificate of registration on file in the county, a mailed ballot shall not be issued and the county clerk shall mark the application "rejected", file the application in a separate file from those accepted and notify the applicant in writing with an explanation why the application was rejected.

C. When required by federal law, if the applicant has on file with the county a valid certificate of registration that indicates that the applicant is a voter who is a new registrant in the state and who registered by mail without submitting the required documentary identification, the county clerk shall notify the voter that the voter must submit with the mailed ballot a form of documentary identification from the list in Paragraph (3) of Subsection I of Section 1-4-5.1 NMSA 1978. The county clerk shall note on the ballot register and signature roster that the applicant's mailed ballot must be returned with the required voter identification.

D. If the applicant has on file with the county a valid certificate of registration, the county clerk shall mark the application "accepted" and deliver a mailed ballot to the voter and the required envelopes for use in returning the ballot.

E. Upon the mailing of a mailed ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter.

F. A mailed ballot shall not be delivered by the county clerk to any person other than the applicant for the ballot. Mailed ballots shall be sent to applicants beginning twenty-eight days before the election. For each application for a mailed ballot received twenty-three or more days before the election, the county clerk shall send either the ballot or a notice of rejection to the applicant as soon as practicable; provided that the ballot or a notice of rejection is sent not later than twenty-two days before the election. For each application for a mailed ballot received within twenty-two days of election day, the county clerk shall send either the mailed ballot or a notice of rejection to the applicant within twenty-four hours after receipt of the voter's application for a mailed ballot. A mailed ballot shall be requested not later than the Thursday immediately prior to the date of the election and shall be sent to the voter not later than the Friday immediately prior to the date of the election.

History: 1953 Comp., § 3-6-5, enacted by Laws 1969, ch. 240, § 131; 1971, ch. 317, § 7; 1975, ch. 255, § 87; 1977, ch. 269, § 4; 1979, ch. 378, § 3; 1983, ch. 232, § 1; 1987, ch. 327, § 10; 1989, ch. 392, § 12; 1993, ch. 314, § 43; 1993, ch. 316, § 43; 1999, ch. 267, § 8; 2001, ch. 49, § 1; 2001, ch. 58, § 1; 2003, ch. 355, § 4; 2003, ch. 356, § 19; 2003, ch. 357, § 2; 2005, ch. 270, § 43; 2007, ch. 336, § 9; 2009, ch. 251, § 5; 2011, ch. 137, § 40; 2015, ch. 145, § 44; 2019, ch. 212, § 64.

1-6-5.1. Repealed.

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1-6-5.2. Repealed.

1-6-5.3. Repealed.

1-6-5.4. Repealed.

1-6-5.5. Repealed.

1-6-5.6. Early voting; alternate voting locations; procedures.

The county clerk shall:

A. ensure that voters have adequate access to early voting in the county, taking into consideration population density and travel time to the location of voting;

B. ensure that early voters are not allowed to vote in person on election day;

C. ensure that adequate interpreters are available at alternate voting locations in those precincts having a majority of qualified electors who are part of a recognized language minority; and

D. based on rules adopted by the secretary of state, allow for mobile alternate voting locations that may be set up temporarily in specified precincts of the county during the period when early voting is allowed at alternate voting locations.

History: Laws 2003, ch. 357, § 6; 2005, ch. 270, § 45; 2007, ch. 193, § 1; 2009, ch. 251, § 7; 2011, ch. 137, § 41; 2019, ch. 212, § 65.

1-6-5.7. Early voting; use of absentee voting procedures; county clerk's office; alternate voting locations.

A. Commencing on the twenty-eighth day preceding the election during the regular hours and days of business at the county clerk's office and from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior to the date of the election, early voting shall be conducted in each office of the county clerk; provided that:

(1) when marking a ballot in person at the county clerk's office, the voter shall provide the required voter identification to the county clerk or the clerk's authorized representative. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot. If the voter provides the required voter identification, the voter, after subscribing an application for an absentee ballot, shall be allowed to vote by inserting the ballot into an optical scan tabulator certified for in-person absentee voting at the county clerk's office. The county clerk or the clerk's authorized representative shall make an appropriate designation indicating that the voter has voted. In marking the ballot, the voter may be assisted pursuant to the provisions of Section 1-12-15 NMSA 1978;

(2) the act of marking the ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code; and

(3) if the county clerk establishes an additional alternate voting location near the clerk's office, ballots may be marked in person at that location during the regular hours and days of business beginning on the twenty-eighth day preceding the election and during the hours for voting at alternate voting locations commencing on the third Saturday prior to the election through the Saturday immediately prior to the election. The additional alternate voting location may be operated by the county clerk and the county clerk's staff.

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B. Commencing on the third Saturday prior to a statewide election and ending on the Saturday immediately prior to the date of the election, an early voter may vote in person on a voting system at alternate voting locations that may be established by the county clerk; provided that:

(1) the county clerk shall establish:

(a) in counties with more than ten thousand voters, not fewer than one alternate voting location;

(b) in counties with more than fifty thousand voters, not fewer than four alternate voting locations; and

(c) in counties with more than one hundred fifty thousand voters, not fewer than fifteen alternate voting locations; and

(2) not later than ninety days before each statewide election, the county clerk shall post the location and hours of operation for early voting locations in the county, which shall open no earlier than 7:00 a.m. and shall close no later than 9:00 p.m. Within ninety days of a statewide election, a county clerk may not modify the location or hours of operation of early voting locations except with the written approval of the secretary of state and upon posting the approved changes. Early voting locations shall be open each day of early voting for at least eight consecutive hours. Alternate voting locations may be closed Sundays and Mondays during the early voting period.

C. Each early voting location shall comply with the following provisions, unless the county clerk receives a written waiver from the secretary of state specifying the location and specific provision being waived:

(1) have ballots available for voters from every precinct in the county;

(2) have at least one optical scan tabulator programmed to read every ballot style in the county;

(3) have at least one voting system available to assist disabled voters to cast and record their votes;

(4) have a broadband internet connection;

(5) have sufficient spaces for at least five voters to simultaneously and privately mark their ballots, with at least one of those spaces wheelchair-accessible;

(6) have a secure area for storage of pre-printed ballots or for storage of a paper ballot stock and a system designed to print ballots at a polling location; and

(7) be in a location that is accessible and compliant with the requirements of the federal Americans with Disabilities Act of 1990.

D. When voting at an early voting location, the voter shall provide the required voter identification to the election board, county clerk or the clerk's authorized representative. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot. If the voter provides the required voter identification, the voter shall be allowed to vote after subscribing an application to vote on a form approved by the secretary of state or its electronic equivalent approved by the voting system certification committee. The county clerk or the clerk's authorized representative shall make an appropriate designation on the signature roster or register next to the voter's name indicating that the voter has voted early.

History: Laws 2005, ch. 270, § 40; 2009, ch. 251, § 8; 2011, ch. 137, § 42; 2019, ch. 212, § 66.

1-6-5.8. Early voting; Native American early voting locations.

A county clerk shall provide at least one alternate voting or mobile alternate voting location on Indian nation, tribal or pueblo land when requested by the Indian nation, tribe or pueblo in the county; provided that:

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A. the Indian nation, tribe or pueblo submits a written request to the county clerk no later than the first Monday in November of each odd-numbered year;

B. the alternate voting or mobile alternate voting location may operate for less than the full early voting period, to be decided upon between the Indian nation, tribe or pueblo and the county clerk;

C. any voter of the county shall have access to and be permitted to vote at the alternate voting or mobile alternate voting location;

D. the location of the alternate voting or mobile alternate voting location on Indian nation, tribal or pueblo land conforms to the requirements for alternate voting locations, except as specified in this section;

E. the county clerk provides federally mandated language translators at the alternate voting or mobile alternate voting locations;

F. the Indian nation, tribe or pueblo provides the facility and services for the alternate voting or mobile alternate voting location; and

G. the costs of voting equipment and personnel for the alternate voting or mobile alternate voting locations on Indian nation, tribal or pueblo land pursuant to this section are reimbursed to the county by the secretary of state.

History: Laws 2009, ch. 251, § 2; 2019, ch. 212, § 67.

1-6-6. Ballot register.

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

(1) the name and address of each absentee ballot applicant;

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

(3) whether the application was accepted or rejected;

(4) the date of issue of an absentee ballot at an early voting location or the mailing of an absentee ballot to the applicant;

(5) the applicant's precinct;

(6) whether the applicant is a voter and whether the voter is a uniformed-service voter or an overseas voter;

(7) whether the voter is required to submit documentary identification pursuant to Section 1-6-5 NMSA 1978; and

(8) the date and time the completed mailed ballot was received from the voter by the county clerk or the absent voter registered a ballot early in person in the county clerk's office or at an alternate location.

B. For each special election, the county clerk shall keep a "mailed ballot register", in which the county clerk shall enter:

(1) the name and address of each voter to whom a mailed ballot was sent;

(2) the date of mailing of a mailed ballot to the voter;

(3) the applicant's precinct;

(4) whether the voter is a uniformed-service voter or an overseas voter;

(5) whether the voter is required to submit a documentary identification pursuant to Section 1-6-5 NMSA 1978; and

(6) the date and time the completed mailed ballot was received from the voter by the county clerk.

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C. Each ballot register is a public record open to public inspection in the county clerk's office during regular office hours. The county clerk shall have an updated ballot register available for public inspection Monday through Friday during regular office hours.

D. The county clerk shall deliver to the absent voter election board on election day a complete list of all absentee ballot applicants and early voters with applicable information shown in the absentee ballot register for each applicant and early voter up to 6:00 p.m. on the Saturday preceding a statewide election. The county clerk shall deliver a signature roster containing the same information as the lists to the absent voter election board.

E. Upon request, the county clerk shall transmit to the county chair of each of the political parties participating in a partisan election in the county a complete copy of entries made in the absentee ballot register. Such transmissions shall be made once each week beginning four weeks immediately prior to the election. A final copy shall be transmitted on the Saturday immediately following the election.

F. If the county clerk has available the technology to do so, at the request of a candidate or chair of a political party of the county, the county clerk shall electronically transmit to the candidate or chair via the internet the information, when updated, on the absentee ballot register indicating voters who have requested absentee ballots, returned their absentee ballots or voted early in person.

History: 1953 Comp., § 3-6-6, enacted by Laws 1969, ch. 240, § 132; 1975, ch. 255, § 86; 1977, ch. 269, § 5; 1981, ch. 150, § 3; 1987, ch. 249, § 19; 1999, ch. 267, § 9; 2001, ch. 105, § 1; 2003, ch. 356, § 21; 2003, ch. 357, § 3; 2009, ch. 251, § 9; 2015, ch. 145, § 45; 2019, ch. 212, § 68.

1-6-7. Repealed.

1-6-8. Mailed ballot envelopes.

A. The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of:

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

(2) official mailing envelopes for use in returning the official inner envelope to the county clerk, which shall be postage-paid; provided that only the official mailing envelope for absentee ballots in a political party primary shall contain a designation of party affiliation;

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

(4) official transmittal envelopes for use by the county clerk in sending mailed ballot materials.

B. Official transmittal envelopes and official mailing envelopes for transmission of mailed ballot materials to and from the county clerk and voters shall be printed in black in substantially similar form. All official inner envelopes shall be printed in black.

C. The reverse of each official mailing envelope shall contain a form to be executed by the voter completing the mailed ballot. The form shall identify the voter and shall contain the following statement: "I have not and will not vote any other ballot in this election". The official mailing envelope shall contain a space for the voter to record the voter's name, registration address and year of birth. The envelope shall have a security flap to cover this information.

History: 1953 Comp., § 3-6-8, enacted by Laws 1969, ch. 240, § 134; 1977, ch. 269, § 6; 1983, ch. 232, § 2; 1987, ch. 327, § 11; 1993, ch. 20, § 2; 1997, ch. 201, § 2; 1999, ch. 267, § 11; 2005, ch. 270, § 46; 2008, ch. 59, § 6; 2015, ch. 145, § 46; 2019, ch. 212, § 69.

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1-6-9. Mailed ballots; manner of voting; delivery methods.

A. When voting a mailed ballot, the voter shall secretly mark the mailed ballot in the manner provided in the Election Code for marking paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope, which shall include a statement by the voter under penalty of perjury that the facts stated in the form are true and the voter's name, registration address and year of birth. The voter or another person authorized by law shall then return the official mailing envelope containing the voted ballot to the county clerk of the voter's county of residence. If returned by a person other than the voter, the official mailing envelope shall contain the signature, printed name and relationship to the voter of the person returning the ballot.

B. The official mailing envelope may be returned by mail using the United States postal service. The secretary of state shall implement a free-access tracking system for each voter to be able to see the status of the voter's mailed ballot while en route to the voter as well as when returned to the county clerk.

C. The official mailing envelope may be returned using a commercial delivery service; provided that unless the secretary of state has approved the use of a specific commercial delivery service, the voter shall be responsible for the costs of delivery by means of such service.

D. The official mailing envelope may be returned in person to the office of the county clerk or to an alternate voting location, mobile alternate voting location or election day voting location.

E. The official mailing envelope may be returned by depositing the official mailing envelope in a secured container made available by the county clerk to receive voted mailed ballots for that election; provided that:

(1) the location of the containers and the days and times the containers will be available to receive ballots are posted by the county clerk at least ninety days before a statewide election or forty-two days before a special election;

(2) the location of a secured container is considered a polling place for purposes of electioneering too close to the polling place in violation of Section 1-20-16 NMSA 1978;

(3) all secured containers shall be monitored by video surveillance cameras and the video recorded by that system shall be retained by the county clerk as a record related to voting pursuant to the provisions of Section 1-12-69 NMSA 1978;

(4) signage at the location of a secured container shall inform voters and those dropping off ballots at the location:

(a) that it is a violation of law for any person who is not an immediate family member to collect and deliver a ballot for another person;

(b) that electioneering is prohibited within one hundred feet of the secured container; and

(c) of the dates and approximate time the ballots will be collected; and

(5) at least once a day, the county clerk or a full-time deputy county clerk shall collect the ballots from the secured containers, register the date and time stamp on each official mailing envelope and identify the location of the secured container in the ballot register.

History: 1953 Comp., § 3-6-9, enacted by Laws 1969, ch. 240, § 135; 1977, ch. 269, § 7; 1979, ch. 57, § 1; 1983, ch. 232, § 3; 1987, ch. 327, § 12; 1991, ch. 105, § 12; 1993, ch. 20, § 3; 1999, ch. 267, § 12; 2003, ch. 355, § 6; 2005, ch. 270, § 47; 2008, ch. 59, § 7; 2009, ch. 251, § 10; 2015, ch. 145, § 47; 2019, ch. 212, § 70.

1-6-9.1. Repealed.

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1-6-9.2. Preparation of electronic voting machines.

A. Beginning ten days before an electronic voting machine is issued for absentee voting, the county clerk may begin to prepare, inspect and seal the voting machine in accordance with Section 1-11-6 NMSA 1978.

B. At least one day before an electronic voting machine is used for absentee voting, the county clerk shall certify to the secretary of state and the county chair of each political party represented on the ballot the type and serial number of each voting machine to be used.

History: Laws 1999, ch. 267, § 1; 2011, ch. 137, § 43.

1-6-10. Receipt of mailed ballots by clerk.

A. The county clerk shall mark on each completed official mailing envelope the date and time of receipt in the clerk's office, record this information in the absentee or mailed ballot register and safely keep the official mailing envelope unopened in a locked and number-sealed ballot box until it is delivered to the proper election board, counted in the county canvass or canceled and destroyed in accordance with law.

B. In a statewide election, if the unopened official mailing envelope is received by the county clerk from an election board before the absent voter election board has adjourned, the unopened official mailing envelope shall be logged and transmitted to the absent voter election board to be tallied immediately. If the unopened official mailing envelope is received by the county clerk from an election board after the absent voter election board has adjourned, the unopened official mailing envelope shall be logged and transmitted to be tallied and included in the canvass report of that county for the appropriate precinct.

C. Completed official mailing envelopes shall be accepted until 7:00 p.m. on election day.

D. Any completed official mailing envelope received after that time shall not be qualified or opened but shall be preserved by the county clerk for the applicable retention period provided in Section 1-12-69 NMSA 1978. The county clerk shall report the number of late ballots from voters, uniformed-service voters and overseas voters and report the number from each category to date on the final absentee ballot report and as part of the county canvass report. If additional late ballots are received, the county clerk shall update the number of late ballots from each category to the secretary of state.

History: 1953 Comp., § 3-6-10, enacted by Laws 1969, ch. 240, § 136; 1975, ch. 255, § 88; 1981, ch. 150, § 4; 1983, ch. 232, § 4; 1989, ch. 392, § 13; 1999, ch. 267, § 14; 2005, ch. 270, § 48; 2007, ch. 336, § 10; 2011, ch. 137, § 44; 2015, ch. 145, § 48; 2019, ch. 212, § 71.

1-6-10.1. Absentee ballot; delivery to county clerk.

A. A voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the county clerk in person or by mail; provided that the voter has subscribed the official mailing envelope of the absentee ballot.

B. As used in this section, "immediate family" means the spouse, children, parents or siblings of a voter.

History: Laws 2003, ch. 357, § 5; 2005, ch. 270, § 49; 2019, ch. 212, § 72.

1-6-10.2. Repealed.

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1-6-11. Delivery of absentee ballots to absent voter precincts.

A. Beginning on the Thursday immediately preceding election day, the county clerk may deliver to the special deputy county clerk for delivery to the absent voter precinct board the absentee ballots received prior to the delivery day. The special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk and shall observe the listing of the names on the official mailing envelopes in the signature rosters. The special deputy county clerk shall then obtain a receipt executed by the presiding judge and each election judge and shall return the receipt to the county clerk for filing. The receipts shall specify the number of envelopes received by the special deputy county clerk from the county clerk for the absent voter precinct and the number of envelopes received by the absent voter precinct board from the special deputy county clerk.

B. On election day, the county clerk shall deliver all absentee ballots not yet delivered to the absent voter precinct board but received prior to 7:00 p.m. on election day to the special deputy county clerks for delivery to the absent voter precinct boards. The special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk and shall observe the listing of the names on the official mailing envelope in the signature rosters. The special deputy county clerk shall then obtain a receipt executed by the presiding judge and each election judge and shall return the receipt to the county clerk for filing. The receipts shall specify the number of envelopes received by the special deputy county clerk from the county clerk for each absent voter precinct and the number of envelopes received by the absent voter precinct board from the special deputy county clerk.

C. At 7:00 a.m. on the Thursday prior to election day or on the day the absent voter precinct board begins early processing of absentee ballots, the county clerk shall deliver the electronic voting machines used for absentee voting by mail to the absent voter precinct board. The machines shall not be used to vote on or count additional ballots for that election. A special deputy county clerk shall issue a receipt for each voting machine. Upon delivery of a voting machine, the special deputy shall:

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

(2) verify the public counter number on the machine; and

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

History: 1953 Comp., § 3-6-11, enacted by Laws 1969, ch. 240, § 137; 1971, ch. 317, § 9; 1983, ch. 232, § 5; 1987, ch. 249, § 20; 1999, ch. 267, § 15; 2005, ch. 270, § 50.

1-6-12, 1-6-13. Repealed.

1-6-14. Handling mailed ballots.

A. At any time after mailed ballots have been sent to voters and until the fifth day before the election, the county clerk may convene an election board to meet during the normal business hours of the office of the county clerk to qualify the mailed ballots that are returned. Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

B. If the voter's signature or the required voter identification is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The judge or election clerk shall enter the voter's name in the signature rosters or register and shall write the notation "Rejected--Missing Signature" or "Rejected--Missing Required Voter Identification" in the "Notations" column

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of the register. The presiding judge shall place the official mailing envelope unopened in a container provided for rejected ballots.

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

(1) the official mailing envelope has been opened by someone other than the voter prior to being received by the absent voter election board;

(2) the official mailing envelope does not contain a signature;

(3) the official mailing envelope does not contain the required voter identification; or

(4) the person offering to vote is not a voter as provided in the Election Code.

D. If a challenge is upheld by unanimous vote of the presiding judge and the election judges, the official mailing envelope shall not be opened but shall be placed in a container provided for challenged ballots. If the reason for the challenge is satisfied by the voter before the conclusion of the county canvass or as part of an appeal, the official mailing envelope shall be opened and the vote counted.

E. If the official mailing envelope has been properly subscribed and the voter has not been challenged, the judges or election clerks shall enter the voter's name and residence address as shown on the official mailing envelope and shall make the appropriate notation opposite the voter's name in the "Notations" column of the register.

F. For any election in which fewer than ten thousand mailed ballots were sent to the voters of a county, only between 8:00 a.m. and 10:00 p.m. on the five days preceding the election, and beginning at 7:00 a.m. on election day, under the personal supervision of the presiding election judge, shall the election judges open the official mailing envelope and the official inner envelope and insert the enclosed ballot into an electronic voting machine to be registered and retained until votes are counted and canvassed following the closing of the polls on election night.

G. For any election in which ten thousand or more mailed ballots were sent to the voters of a county, only during the regular business hours of the office of the county clerk during the two weeks preceding the election, between 8:00 a.m. and 10:00 p.m. on the four days preceding the election and beginning at 7:00 a.m. on election day, under the personal supervision of the presiding election judge, shall the election judges open the official mailing envelope and the official inner envelope and insert the enclosed ballot into an electronic voting machine to be registered and retained until votes are counted and canvassed following the closing of the polls on election night.

H. It is unlawful for a person to disclose the results of a count and tally or the registration on a voting machine of mailed ballots prior to the later of the closing of the polls or the deadline for receiving mailed ballots pursuant to Section 1-6-10 NMSA 1978.

I. Mailed ballots shall be counted and tallied, where possible, on an electronic voting machine as provided in the Election Code.

J. If a mailed ballot is rejected for any reason, it shall be handled in the same manner as a disqualified provisional paper ballot in accordance with the Election Code.

History: 1953 Comp., § 3-6-14, enacted by Laws 1971, ch. 317, § 11; 1975, ch. 255, § 90; 1977, ch. 222, § 12; 1977, ch. 269, § 8; 1983, ch. 232, § 6; 1985, ch. 207, § 5; 1987, ch. 249, § 21; 1989, ch. 392, § 14; 1993, ch. 20, § 5; 1999, ch. 267, § 16; 2003, ch. 354, § 1; 2003, ch. 356, § 22; 2005, ch. 270, § 51; 2007, ch. 336, § 11; 2009, ch. 251, § 11; 2011, ch. 137, § 45; 2019, ch. 212, § 73.

1-6-15. Canvass; recount or recheck; disposition.

If voting machines are not used to register absentee ballots, the absentee ballots shall be canvassed, recounted and disposed of in the manner provided by the Election Code [Chapter 1 NMSA 1978] for the canvassing, recounting and disposition of paper ballots. If voting machines are used to

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register absentee ballots, the ballots shall be canvassed and rechecked in the manner provided by the Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register absentee ballots shall not be rechecked but the absentee ballots shall be recounted in the manner provided by the Election Code for the recounting of paper ballots. As used in this section, "voting machines" means electronic voting machines as provided in the Election Code.

History: 1953 Comp., § 3-6-14.1, enacted by Laws 1977, ch. 222, § 13; 1985, ch. 207, § 6; 1999, ch. 267, § 17; 2009, ch. 150, § 5.

1-6-16. Mailed ballots; replacement and provisional paper ballots.

A. A voter who has applied for a mailed ballot or who has been sent a mailed ballot may execute an affidavit stating that the person did not and will not vote the mailed ballot that was issued. Upon receipt of the sworn affidavit, if the ballot register does not show that a ballot from the voter has been cast in that election, the county clerk shall void the mailed ballot that was previously issued to the voter.

B. A voter shall be mailed a replacement ballot to be returned to the county clerk for tabulation by the absent ballot election board if the voter:

(1) communicates with the office of the county clerk and requests a replacement mailed ballot be delivered to the voter; and

(2) has executed the affidavit required by Subsection A of this section and the county clerk has voided the mailed ballot previously issued to the voter.

C. A voter shall be issued a replacement ballot to be filled out and fed by the voter into the electronic vote tabulator if the voter:

(1) appears at the office of the county clerk, an alternate voting location or a mobile alternate voting location:

(a) at any time during the period for early voting if the county clerk has real-time synchronization between the early voting locations and the qualification of mailed ballots; or

(b) during the period for early voting until the time the county clerk begins qualifying mailed ballots if the county clerk does not have real-time synchronization between the early voting locations and the qualification of mailed ballots; and

(2) has executed the affidavit required by Subsection A of this section and the county clerk has voided the mailed ballot previously issued to the voter.

D. If the county clerk does not have real-time synchronization between the early voting locations and the qualification of mailed ballots, a voter shall be issued a provisional paper ballot to be filled out and delivered to the county clerk for tabulation during the county canvass if:

(1) the voter appears at an early voting location after the time the county clerk begins qualifying mailed ballots; and

(2) the voter has executed the affidavit required by Subsection A of this section and the county clerk has voided the mailed ballot previously issued to the voter.

E. A provisional paper ballot issued pursuant to this section shall be qualified and tabulated once the county clerk determines that the voter did not vote any other ballot in the same election and if no challenge is successfully interposed.

F. The secretary of state shall prescribe the form of the affidavit and the manner in which the county clerk shall void the previously requested absentee ballot.

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History: 1953 Comp., § 3-6-15, enacted by Laws 1969, ch. 240, § 141; 1981, ch. 150, § 5; 1989, ch. 368, § 2; 1989, ch. 392, § 15; 1999, ch. 267, § 18; 2011, ch. 137, § 46; 1978 Comp., § 1-6-16, repealed and reenacted by Laws 2019, ch. 212, § 74.

1-6-16.1. Absentee ballot; conduct of election; when not timely received; emergency procedure for voting and counting.

A. A voter who applies for a mailed ballot but has not received or returned the ballot by mail as of the date of the election may go to the voter's assigned polling place or a voter convenience center and, after executing an affidavit stating that the person did not and will not vote the mailed ballot that was issued, shall be permitted to vote on a provisional paper ballot.

B. If the county clerk has real-time synchronization between the election-day polling places and the qualification of ballots received by mail, the voter shall be issued a replacement ballot to be filled out and fed by the voter into the electronic vote tabulator.

History: Laws 1989, ch. 368, § 1; 1991, ch. 105, § 14; 1999, ch. 267, § 19; 2009, ch. 150, § 6; 2019, ch. 212, § 75.

1-6-16.2. Additional emergency procedure for voting.

A. After the close of the period for requesting a mailed ballot, any voter who is unable to go to the polls due to unforeseen illness or disability resulting in the voter's confinement in a hospital, sanatorium, nursing home or residence and who is unable to vote in person may request in writing that a provisional paper ballot be made available to the voter. The written request shall be signed by the voter and a health care provider under penalty of perjury.

B. The provisional paper ballot shall be made available by the county clerk of the county in which the voter resides to any authorized representative of the voter who through the representative has presented the written request to the office of the county clerk.

C. The voter shall mark the provisional paper ballot, place it in an identification envelope, fill out and sign the envelope and return the ballot to the office of the county clerk of the county in which the voter resides no later than the time of closing of the polls on election day. A provisional paper ballot issued pursuant to this section shall be qualified and tabulated once the county clerk determines that the person did not cast any other ballot and if no challenge is successfully interposed.

History: 1978 Comp., § 1-6-16.2, enacted by Laws 1993, ch. 353, § 1; 1999, ch. 267, § 20; 2017, ch. 101, § 4; 2019, ch. 212, § 76.

1-6-17. Repealed.

1-6-18. Repealed.

1-6-18.1. Repealed.

1-6-19. Repealed.

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1-6-20. Creation of absent voter precinct.

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

B. Absent voter precincts shall be identified by the name of the county.

History: 1953 Comp., § 3-6-20, enacted by Laws 1969, ch. 54, § 3; 1971, ch. 317, § 12; 1975, ch. 255, § 92; 1977, ch. 222, § 14; 2005, ch. 270, § 52.

1-6-21. Repealed.

1-6-22. Designation of absent voter precinct polling place.

The board of county commissioners of each county shall designate a polling place in each absent voter precinct at the time the precinct is created.

History: 1953 Comp., § 3-6-21, enacted by Laws 1969, ch. 54, § 4; 1975, ch. 255, § 94; 2005, ch. 270, § 53.

1-6-22.1. Mail ballot election precinct; absentee voting in lieu of polling place.

A. Notwithstanding the provisions of Sections 1-1-11 and 1-1-12 NMSA 1978, not later than the first Monday in November of each odd-numbered year, a board of county commissioners may designate a precinct as a mail ballot election precinct if, upon a written request of the county clerk, it finds that the precinct has fewer than one hundred voters and the nearest polling place for an adjoining precinct is more than twenty miles driving distance from the boundary for the precinct in question.

B. If a precinct is designated a mail ballot election precinct, in addition to the notice required pursuant to Section 1-3-8 NMSA 1978, the county clerk shall notify by mail with delivery confirmation all voters in that precinct at least forty-two days before an election that each voter will be sent an absentee ballot twenty-eight days before the election and that there will be no polling place for the precinct on election day. The county clerk shall include in the notice a card informing the voter that if the voter does not want to receive an absentee ballot for that election, the voter should return the card before the date the county clerk is scheduled to mail out absentee ballots. The notice shall also inform the voter that a voting system equipped for persons with disabilities will be available at all early voting sites before election day and in the office of the county clerk on election day in case the voter prefers to vote in person and not by mail. In addition, the notice shall inform the voter if the county is consolidating precincts on election day and, if so, the ability of the voter to cast a ballot at any consolidated precinct on election day if the voter chooses not to receive an absentee ballot, or to cast a provisional ballot at any consolidated precinct if the voter does not receive an absentee ballot, which will be counted upon confirmation that the voter has not returned the absentee ballot.

C. The county clerk shall mail each voter in the mail ballot election precinct an absentee ballot on the twenty-eighth day before an election, unless the voter has requested otherwise, along with a notice that there will be no polling place in that precinct on election day.

D. The county clerk shall keep a sufficient number of ballots from a mail ballot election precinct such that a voter from that precinct may vote on a replacement or provisional paper ballot

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pursuant to Section 1-6-16 NMSA 1978 or on an emergency paper ballot pursuant to Section 1-6-16.2 NMSA 1978.

History: Laws 2009, ch. 251, § 1; 2009, ch. 274, § 1; 2011, ch. 137, § 47; 2015, ch. 145, § 49; 2017, ch. 101, § 5.

1-6-23. Absent voter precinct polling place; hours on election day and subsequent days.

The county clerk or statutorily appointed supervisor of the election shall determine the hours between 8:00 a.m. and 5:00 p.m. during which the absent voter precinct polling place shall be open for delivery and registering of absentee ballots on the five days preceding election day and the hours during which the absent voter precinct polling place shall be open for the delivery, registering and counting of ballots on election day and subsequent days until all ballots are counted; provided that the absent voter precinct polling place opens at 7:00 a.m. on election day.

History: 1953 Comp., § 3-6-21.1, enacted by Laws 1975, ch. 255, § 95; 1977, ch. 222, § 16; 1983, ch. 232, § 7; 1999, ch. 267, § 23; 2005, ch. 270, § 54; 2007, ch. 336, § 12.

1-6-24. Repealed.

1-6-25. Repealed.

ARTICLE 6A

Absentee-Early Voting Act

(Repealed by Laws 1999, ch. 267, § 36.)

1-6A-1 to 1-6A-12. Repealed.

ARTICLE 6B

Uniform Military and Overseas Voters

Sec.
1-6B-1. Short title.
1-6B-2. Definitions.
1-6B-3. Elections covered; form of ballot and ballot materials; benefits of the Uniform Military and Overseas Voters Act.
1-6B-4. Role of secretary of state; federal Uniformed and Overseas Citizens Absentee Voting Act.
1-6B-5. Methods of registering to vote.
1-6B-6. Methods of applying for military-overseas ballot; timeliness; scope of application for military-overseas ballot.
1-6B-7. Transmission of unvoted military-overseas ballots to federal qualified electors.
1-6B-8. Receipt of voted military-overseas ballots from federal qualified electors.
1-6B-9. Emergency response providers.
1-6B-10. Use of federal write-in absentee ballot; qualification.
1-6B-11. Confirmation of receipt of application and voted ballot.
1-6B-12. Use of voter's electronic-mail address.
1-6B-13. Prohibition of nonsubstantive requirements.
1-6B-14. Absentee ballots; reports.
1-6B-15. Equitable relief.
1-6B-16. Uniformity of application and construction.
1-6B-17. Relation to Electronic Signatures in Global and National Commerce Act.

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1-6B-1. Short title.

Chapter 1, Article 6B NMSA 1978 may be cited as the "Uniform Military and Overseas Voters Act".

History: Laws 2015, ch. 145, § 25; 2018, ch. 79, § 7.

1-6B-2. Definitions.

As used in the Uniform Military and Overseas Voters Act:

A. "federal postcard application" means the application prescribed under the federal Uniformed and Overseas Citizens Absentee Voting Act;

B. "federal write-in absentee ballot" means the ballot approved pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act; and

C. "military-overseas ballot" means a ballot sent to a federal qualified elector by the county clerk or cast in accordance with the provisions of the Uniform Military and Overseas Voters Act.

History: Laws 2015, ch. 145, § 26; 2018, ch. 79, § 8; 2019, ch. 212, § 77.

1-6B-3. Elections covered; form of ballot and ballot materials; benefits of the Uniform Military and Overseas Voters Act.

A. The procedures in the Uniform Military and Overseas Voters Act apply to elections conducted pursuant to the Election Code.

B. A federal qualified elector may vote for all candidates and on all ballot questions as if the voter were able to cast a ballot in person.

C. The form of the military-overseas ballot shall be the same as the ballot provided to all other voters. The form of the military-overseas ballot materials shall be the same as the ballot materials provided to all other voters, except as required by the Uniform Military and Overseas Voters Act.

D. To receive the benefits of the Uniform Military and Overseas Voters Act, a federal qualified elector shall inform the county clerk that the individual is a federal qualified elector. Methods of informing the county clerk include:

(1) the use of a federal postcard application or federal write-in absentee ballot;

(2) the use of an army post office, fleet post office or diplomatic post office address in the correct format as a mailing address on a certificate of registration or as a delivery address on an absentee ballot application;

(3) the use of an overseas address as a mailing address on a certificate of registration or as a delivery address on an absentee ballot application; or

(4) the inclusion on a certificate of registration or an absentee ballot application or other information sufficient to identify the voter as a federal qualified elector.

History: Laws 2015, ch. 145, § 27; 2018, ch. 79, § 9; 2019, ch. 212, § 78.

1-6B-4. Role of secretary of state; federal Uniformed and Overseas Citizens Absentee Voting Act.

A. The secretary of state shall make available to federal qualified electors information regarding voter registration procedures for federal qualified electors and procedures for casting military-overseas ballots.

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B. The secretary of state shall maintain a web page dedicated to federal qualified electors. The dedicated web page shall be accessible from international internet connections and may be segregated from the main website for the office of the secretary of state. The secretary of state shall establish an electronic transmission system through which a federal qualified elector may apply for and receive voter registration materials, military-overseas ballots and other information pursuant to the Uniform Military and Overseas Voters Act. The secretary of state shall ensure that the electronic transmission system is capable of accepting a federal postcard application, any other approved electronic registration application and any other approved electronic military-overseas ballot application sent to a county clerk.

C. Official transmittal envelopes and official mailing envelopes for transmission of mailed ballot materials to and from federal qualified electors shall be in the same form as those used in the jurisdiction where the voter is registered except as modified to comply with the Uniform Military and Overseas Voters Act or federal law. The secretary of state may, to the extent reasonably possible, coordinate with other states to develop standardized materials for voting by mail, including privacy and transmission envelopes and their electronic equivalents, authentication materials and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this state.

D. The secretary of state shall prescribe the form and content of a declaration for use by a federal qualified elector to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a federal qualified elector and timely and proper completion of a military-overseas ballot. The declaration shall be based on the declaration prescribed to accompany a federal write-in absentee ballot, as modified to be consistent with the Uniform Military and Overseas Voters Act. The secretary of state shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

E. The secretary of state shall prescribe to the county clerk the form of and distribute to each county clerk a supply of:

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

(2) official mailing envelopes for use in returning the official inner envelope to the county clerk, which shall be postage-paid within the United States postal system; provided that only the official mailing envelope for mailed ballots in a political party primary shall contain a designation of party affiliation;

(3) mailed ballot instructions describing the proper methods for completion and return of the ballot, including instructions for those federal qualified electors returning a ballot electronically;

(4) official transmittal envelopes for use by the county clerk in mailing ballot materials; and

(5) official holding envelopes for ballots returned electronically by federal qualified electors.

History: Laws 2015, ch. 145, § 28; 2018, ch. 79, § 10; 2019, ch. 212, § 79.

1-6B-5. Methods of registering to vote.

A. A federal qualified elector may register to vote using any of the following methods; provided that the document is received by the county clerk by the deadline for registering to vote as provided in Section 1-4-8 NMSA 1978:

(1) using the procedures provided in Chapter 1, Article 4 NMSA 1978; or

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(2) using a federal postcard application or the application's approved electronic equivalent.

B. A voter's certificate of registration completed pursuant to the Uniform Military and Overseas Voters Act shall remain valid until canceled in accordance with the procedures specified in Chapter 1, Article 4 NMSA 1978.

C. In registering to vote, a federal qualified elector shall use and must be assigned to the voting precinct of the address of:

(1) the residence of the voter, if the voter resides in this state; or

(2) the last place of residence of the voter in this state, or the last place of residence in this state of the parent or legal guardian of the voter if the voter did not reside in this state; provided that if that address is no longer a recognized residential address, the voter shall be assigned an address or other location within that precinct.

History: Laws 2015, ch. 145, § 29; 2019, ch. 212, § 80.

1-6B-6. Methods of applying for military-overseas ballot; timeliness; scope of application for military-overseas ballot.

A. A federal qualified elector who is currently registered to vote in this state may, by the deadline specified in the Absent Voter Act [Chapter 1, Article 6 NMSA 1978] for receipt of mailed ballot applications, apply for a military-overseas ballot by:

(1) using a mailed ballot application pursuant to the Absent Voter Act; or

(2) using the federal postcard application or the application's electronic equivalent.

B. A federal qualified elector who is not currently registered to vote in this state may, by the deadline in the Election Code for registering to vote, simultaneously register to vote and apply for a military-overseas ballot by using a federal postcard application or the application's electronic equivalent.

C. An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an automatic application for a military-overseas ballot for the general election.

D. An application for a military-overseas ballot is effective as an automatic application for a military-overseas ballot for a top-two runoff election necessary to conclude the election for which the application was submitted.

History: Laws 2015, ch. 145, § 30; 2018, ch. 79, § 11; 2019, ch. 212, § 81.

1-6B-7. Transmission of unvoted military-overseas ballots to federal qualified electors.

A. Not later than forty-five days before an election, even if the forty-fifth day before an election falls on a weekend or a holiday, the county clerk shall transmit a ballot and balloting materials to all federal qualified electors who by that date submit a valid military-overseas ballot application.

B. The county clerk shall transmit a ballot and balloting materials as soon as practicable when the ballot application from a federal qualified elector arrives after the forty-fifth day before the election and before absentee ballots are transmitted to other voters pursuant to the Absent Voter Act [Chapter 1, Article 6 NMSA 1978].

C. The county clerk shall transmit a ballot and balloting materials in accordance with the procedures for processing of all other absentee ballot applications for that jurisdiction when the ballot application from a federal qualified elector arrives after the county clerk has begun transmitting ballots and balloting materials to other voters.

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D. A federal qualified elector may request that the ballot and balloting materials be sent by secured electronic transmission available to the county clerk where the ballot and balloting materials are sent directly by the clerk to the federal qualified elector. The clerk shall determine the most reasonable expedited means of delivery for a ballot and balloting materials for a federal qualified elector who does not request secured electronic transmission.

History: Laws 2015, ch. 145, § 31; 2018, ch. 79, § 12; 2019, ch. 212, § 82.

1-6B-8. Receipt of voted military-overseas ballots from federal qualified electors.

A. A military-overseas ballot shall be considered timely if it is received by the county clerk no later than the deadline for receiving mailed ballots in Section 1-6-10 NMSA 1978.

B. A federal qualified elector may transmit, and the county clerk shall accept, a military-overseas ballot by secured electronic transmission available to the county clerk when the military-overseas ballot is sent directly by the voter to that clerk; provided that, when sending a military-overseas ballot as described in this subsection:

(1) the federal qualified elector signs an affidavit waiving the right of secrecy of the federal qualified elector's ballot;

(2) the federal qualified elector transmits the affidavit with the military-overseas ballot; and

(3) the county clerk places the received ballot in a holding envelope provided by the secretary of state for this purpose and delivers the ballot to the appropriate election board.

History: Laws 2015, ch. 145, § 32; 2019, ch. 212, § 83.

1-6B-9. Emergency response providers.

A. An emergency response provider may benefit from the ability to apply for a mailed ballot and to return the marked ballot in the same manner as provided in the Uniform Military and Overseas Voters Act for federal qualified electors; provided that the emergency response provider may not use the federal postcard application or the federal write-in absentee ballot.

B. The county clerk shall transmit to, receive from and process a mailed ballot of an emergency response provider in the same manner as provided in the Uniform Military and Overseas Voters Act for a federal qualified elector.

C. As used in this section, "emergency response provider" means a resident of this state who otherwise satisfies this state's voter eligibility requirements and who, in response to an emergency, is temporarily assigned by a governmental or nongovernmental relief agency or employer to provide support to the victims of the emergency or to rebuild the infrastructure in the affected area and:

(1) the assignment is for a period beginning on or after the thirty-five days immediately prior to an election;

(2) the affected area is outside the individual's county of residence; and

(3) the president of the United States or the governor of a state has declared an emergency in the affected area.

History: Laws 2015, ch. 145, § 33; 2019, ch. 212, § 84.

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1-6B-10. Use of federal write-in absentee ballot; qualification.

A. A federal qualified elector may use a federal write-in absentee ballot to vote for all offices and ballot questions in an election.

B. In completing the federal write-in absentee ballot, the federal qualified elector may designate a candidate by writing in the name of the candidate. In a general election when voting for a specified office, a federal qualified elector may in the alternate complete the federal write-in absentee ballot by writing in the name of a political party, in which case the ballot shall be counted for the candidate of that political party.

C. A qualified federal write-in absentee ballot shall be processed by the canvassing board in the same manner as a provisional ballot. A federal write-in absentee ballot from a federal qualified elector shall not be qualified if the federal qualified elector voted on any other type of ballot. A federal write-in absentee ballot of an overseas voter shall not be qualified if the ballot is submitted from any location in the United States.

History: Laws 2015, ch. 145, § 34; 2019, ch. 212, § 85.

1-6B-11. Confirmation of receipt of application and voted ballot.

The secretary of state, upon the recommendation of the voting system certification committee, shall implement an electronic free-access system by which a federal qualified elector may determine by telephone, electronic mail or internet whether the federal qualified elector's:

A. federal postcard application or other registration or military-overseas ballot application has been received and accepted; and

B. military-overseas ballot has been received and the current status of the ballot.

History: Laws 2015, ch. 145, § 35.

1-6B-12. Use of voter's electronic-mail address.

A. The county clerk shall request an electronic-mail address from each federal qualified elector who registers to vote. An electronic-mail address provided by a federal qualified elector shall not be made available to the public and is exempt from disclosure pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. The electronic-mail address may be used only for official communication with the voter about the voting process, including the secured transmission of military-overseas ballots and ballot materials if the voter has requested secured transmission, and verifying the voter's mailing address and physical location. The request for an electronic-mail address shall describe the purposes for which the electronic-mail address may be used and include a statement that any other use or disclosure of the electronic-mail address is prohibited.

B. If a mailed ballot is transmitted to a federal qualified elector via secured transmission, the county clerk shall note in the ballot register the voter's registration address, that the ballot was delivered to the voter electronically and the date on which it was sent, but shall not disclose the voter's electronic-mail address.

C. A federal qualified elector who provides an electronic-mail address may request that the voter's application for a military-overseas ballot be considered a standing request for secured electronic delivery of a ballot for all elections in the election cycle. The county clerk shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable as an automatic application for a military-overseas ballot.

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History: Laws 2015, ch. 145, § 36; 2019, ch. 212, § 86.

1-6B-13. Prohibition of nonsubstantive requirements.

A. If the intention of the voter is clearly discernable in accordance with the provisions of Section 1-1-5.2 NMSA 1978, an abbreviation, misspelling or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

B. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted pursuant to the Uniform Military and Overseas Voters Act.

C. Notarization is not required for the execution of any document required by the Uniform Military and Overseas Voters Act."

History: Laws 2015, ch. 145, § 37.

1-6B-14. Absentee ballots; reports.

A. Within thirty days following a general election, the county clerk shall report to the secretary of state the number of absentee ballots transmitted in the general election to uniformed-service voters and overseas voters for the election and the number of those ballots returned, rejected or counted.

B. Within ninety days following a general election, the secretary of state shall report to the federal election assistance commission the combined absentee ballot numbers submitted by the counties pursuant to this section.

History: Laws 2015, ch. 145, § 38.

1-6B-15. Equitable relief.

A court of competent jurisdiction of this state may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, the Uniform Military and Overseas Voters Act on application by:

A. a federal qualified elector alleging a grievance under the Uniform Military and Overseas Voters Act; or

B. an election official in this state.

History: Laws 2015, ch. 145, § 39.

1-6B-16. Uniformity of application and construction.

In applying and construing the Uniform Military and Overseas Voters Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2015, ch. 145, § 40.

1-6B-17. Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Military and Overseas Voters Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does

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not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History: Laws 2015, ch. 145, § 41.

ARTICLE 6C

Intimate Partner Violence Survivor Suffrage

Sec.
1-6C-1. Short title.
1-6C-2. Definitions.
1-6C-3. Elections covered; automatic delivery of ballots; form of ballot and ballot materials; confidentiality.
1-6C-4. Voter records; certification; decertification; cancellation.
1-6C-5. Random identifier and verification code.
1-6C-6. Transmission of ballots to voter-participants.
1-6C-7. Receipt of voted ballots from voter-participants.
1-6C-8. Statewide election; state canvass report.
1-6C-9. Judicial proceedings.

1-6C-1. Short title.

Sections 1 through 9 [1-6C-1 through 1-6C-9 NMSA 1978] of this act may be cited as the "Intimate Partner Violence Survivor Suffrage Act".

History: Laws 2019, ch. 226, § 1.

1-6C-2. Definitions.

As used in the Intimate Partner Violence Survivor Suffrage Act:

A. "administrator" means the person appointed by the secretary of state to administer the election component of the confidential substitute address program;

B. "appropriate county clerk" means the county clerk of the county in which the residential address on a voter registration certificate is located and includes the elected official, the county clerk's chief deputy, an appointed election board and employees or agents of the county clerk with duties related to the Intimate Partner Violence Survivor Suffrage Act;

C. "certification" means the procedure provided by the Confidential Substitute Address Act for a person to be certified as a participant in the confidential substitute address program;

D. "confidential substitute address program" means the program administered by the secretary of state pursuant to the Confidential Substitute Address Act;

E. "decertification" means the procedure provided by the Confidential Substitute Address Act for a person to be decertified as a participant in the confidential substitute address program;

F. "delivery address" means the address where a voter-participant receives mail;

G. "election" means a statewide or special election called, conducted and canvassed pursuant to the provisions of the Election Code [Chapter 1 NMSA 1978];

H. "participant" means a person certified to participate in the confidential substitute address program pursuant to the procedures of the Confidential Substitute Address Act; and

I. "voter-participant" means a participant who is also a voter.

History: Laws 2019, ch. 226, § 2.

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1-6C-3. Elections covered; automatic delivery of ballots; form of ballot and ballot materials; confidentiality.

A. The procedures in the Intimate Partner Violence Survivor Suffrage Act apply to all elections and operate notwithstanding other provisions of the Election Code [Chapter 1 NMSA 1978] or state or local laws related to elections to the contrary.

B. Upon a person's certification as a participant, the administrator shall determine whether the participant is a voter. If the participant is not a voter but appears to be a qualified elector, the administrator shall offer the participant the opportunity to register to vote.

C. A voter-participant shall vote exclusively by mailed absentee ballot or mailed ballot. In each election in which a voter-participant is eligible to vote, the administrator shall send a mailed absentee ballot or a mailed ballot to the voter-participant without requiring a request or application to receive a ballot.

D. The form of the ballot for a voter-participant shall be the same as the ballot provided to all other voters. A voter-participant may vote for all candidates and on all questions as if the voter were casting a ballot in person.

E. The form of the ballot materials for voter-participants shall be the same as the ballot materials provided to all other voters, except as required to implement the Intimate Partner Violence Survivor Suffrage Act.

F. With regard to communications related to participants and participant records related to voting:

(1) any communication between the secretary of state and any county clerk related to the Intimate Partner Violence Survivor Suffrage Act shall be maintained as confidential in accordance with the confidentiality provisions of Subsection A of Section 40-13B-8 NMSA 1978 and shall not be disclosed except as provided by that section; and

(2) once a person is decertified, records related to that voter are no longer confidential pursuant to Paragraph (1) of this subsection and may be disclosed in the same manner provided for disclosure of voter information pursuant to the provisions of the Election Code.

History: Laws 2019, ch. 226, § 3.

1-6C-4. Voter records; certification; decertification; cancellation.

Notwithstanding the provisions of the Voter Records System Act [Chapter 1, Article 5 NMSA 1978], the secretary of state shall:

A. maintain within the state voter registration electronic management system a secured module. Voter-participant registration records shall be maintained in the secured module and shall be accessible only as required by staff designated by the secretary of state. Voter-participant registration records shall not appear in the voter file or the county voter list, be accessible by any county user or be viewable by the public;

B. maintain a register of voter-participants, which shall serve as a supplement to the county register for the county in which each voter-participant's voter registration residential address is located. The register maintained by the secretary of state shall be filed in a fire-resistant container;

C. upon the determination that a participant is an existing voter, proceed to transfer all voter registration records related to the voter-participant from the voter file to the secured module and shall notify the appropriate county clerk, who shall immediately transfer the voter-participant's voter registration documents from the county register to the secretary of state. Voter registration records related to a voter-participant shall not be maintained in the county register or by the county clerk;

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D. when a participant executes a new or updated certificate of registration, fulfill the duties of the appropriate county clerk in placing the voter-participant's certificate of registration in the register maintained by the secretary of state and entering the information into the secured module;

E. upon decertification of a person who is a voter:

(1) transfer the person's voter registration information from the secured module into the voter file; and

(2) deliver the certificate of voter registration to the appropriate county clerk for placement in the county register;

F. upon the cancellation of a person's voter registration when the person is also decertified as a participant:

(1) transfer the canceled voter registration information from the secured module into the voter file; and

(2) deliver the certificate of registration and other documents pertaining to the canceled voter registration to the appropriate county clerk for placement in the county register for the retention period; and

G. upon the cancellation of a participant's voter registration when the person remains a participant, perform the duties of the county clerk in the cancellation of registration and retention of records; provided that when the person is decertified, the secretary of state shall:

(1) transfer the canceled voter registration information from the secured module into the voter file; and

(2) if the retention period for voter registration records provided in Section 1-4-32 NMSA 1978 has not expired, deliver the certificate of registration and other documents pertaining to the canceled voter to the appropriate county clerk for placement in the county register for the remainder of the retention period.

History: Laws 2019, ch. 226, § 4.

1-6C-5. Random identifier and verification code.

A. Prior to each election, the administrator shall assign to each voter-participant eligible to vote in that election a random identifier and a verification code for use in that election only.

B. In the mailed absentee ballot or mailed ballot process, the random identifier shall be used in place of the voter-participant's required voter identification and the verification code shall be used in place of the voter-participant's signature.

C. At the same time a ballot is mailed to a voter-participant, the administrator shall separately send the voter-participant the verification code assigned to the voter-participant for that election, along with instructions to place the verification code where a voter normally provides a signature under the privacy flap of a mailed absentee ballot or mailed ballot.

History: Laws 2019, ch. 226, § 5.

1-6C-6. Transmission of ballots to voter-participants.

A. On the thirty-fifth day before an election, on behalf of each voter-participant eligible to vote in that election, the administrator shall request from each appropriate county clerk the ballot to be used by each voter-participant registered to vote in that county.

B. The request shall not reveal the name or address of the voter-participant. In place of a voter-participant's name and address, the administrator shall provide the appropriate county clerk the random identifier and verification code associated with the voter-participant for that

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election. The request made pursuant to this section is a record related to voting subject to the disclosure and retention procedures of Section 1-12-69 NMSA 1978.

C. No later than thirty-two days before the election, the appropriate county clerk shall transmit to the administrator the ballot for each voter-participant registered to vote in that county.

D. Twenty-eight days before the election, the administrator shall mail a ballot and balloting materials to a voter-participant's delivery address, along with a return envelope necessary to return the voted ballot to the appropriate county clerk. The return envelope shall be the same as for all other voters, except that in place of the required voter identification to be written under the privacy flap, the administrator shall provide the random identifier assigned to that voter-participant for that election. The return envelope for the voted ballot shall be postage-paid and the return address shall be the address for the appropriate county clerk.

E. When a participant registers to vote or updates a voter registration after the thirty-fifth day before an election but before the deadline to register to vote or to update an existing registration pursuant to Section 1-4-8 NMSA 1978, the administrator shall:

(1) request from the appropriate county clerk, and the appropriate county clerk shall transmit to the administrator as soon as practicable, a ballot and balloting materials; and

(2) send a voter-participant the ballot and balloting materials within twenty-four hours of receipt from the appropriate county clerk.

F. When an unvoted ballot is transmitted to the administrator on behalf of a voter-participant, the appropriate county clerk shall note in the ballot register the random identifier in place of the voter-participant's name and the address of the confidential substitute address program in place of the voter-participant's address and shall not note the voter-participant's gender or year of birth.

History: Laws 2019, ch. 226, § 6.

1-6C-7. Receipt of voted ballots from voter-participants.

A. A voted ballot shall be returned by the voter-participant to the appropriate county clerk. A voted ballot from a voter-participant shall be considered timely if it is received no later than the deadline for receiving mailed absentee ballots or mailed ballots pursuant to Section 1-6-10 NMSA 1978.

B. When a voted ballot is received from a voter-participant, the appropriate county clerk or election board shall compare the random identifier provided by the voter-participant under the privacy flap to the list of random identifiers provided by the administrator for that election. If the random identifier appears in both places, the appropriate county clerk shall verify that the verification code assigned to that random identifier for that election matches the verification code provided by the voter-participant under the privacy flap in lieu of the voter's signature. If the verification code is on the list provided by the administrator for use in that election and matches the random identifier assigned by the administrator to identify the voter-participant, the ballot shall be qualified and processed in the same manner as mailed absentee ballots or mailed ballots received and qualified in that election.

C. If either the random identifier or the verification code is missing, or if the random identifier and verification code under the privacy flap do not match, the ballot shall not be qualified and shall be disposed of in the same manner as mailed absentee ballots or mailed ballots received in that election and not qualified.

D. Following an election and within the time frames provided in the Election Code [Chapter 1 NMSA 1978], the appropriate county clerk shall provide to the administrator using the random identifier for that election the voter credit information for each voter-participant who voted and the appropriate notations for any voter-participant whose election mail was returned as undeliverable.

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History: Laws 2019, ch. 226, § 7.

1-6C-8. Statewide election; state canvass report.

The secretary of state shall prepare a public report to be included with the state canvass results of each statewide election. The report shall include the total number of statewide:

A. participants;
B. voter-participants who were sent a ballot;
C. voter-participants who returned a ballot; and
D. ballots from voter-participants that were qualified and counted.

History: Laws 2019, ch. 226, § 8.

1-6C-9. Judicial proceedings.

A. In a judicial proceeding related to an election, upon good cause shown and only as is required to complete the judicial proceeding, a judge may permit in-camera inspection of a voter-participant's voter registration information and information related to participation in the confidential substitute address program.

B. The administrator shall be notified and joined as an indispensable party on behalf of the confidential substitute address program in a judicial proceeding related to an election whenever a judge considers permitting in-camera inspection of any information related to a voter-participant and before such determination is made.

C. In a judicial proceeding related to an election in which the secretary of state is a party in the secretary's capacity as the chief election officer of the state and the administrator is joined as an indispensable party on behalf of the confidential substitute address program, the attorney general shall provide separate representation for the secretary of state and for the administrator.

D. Information reviewed in-camera pursuant to this section shall not be admitted into evidence unless the information is the basis for the final judgment by the court.

History: Laws 2019, ch. 226, § 9.

ARTICLE 7
Political Parties

Sec.
1-7-1. Political parties; conditions for use of ballot.
1-7-2. Qualification; removal; requalification.
1-7-3. Rules and regulations; contents.
1-7-4. Rules and regulations; filing; fee.
1-7-5. Rules and regulations; amendment.
1-7-6. Party name and emblem.
1-7-7. Major political party; minor political party.

1-7-1. Political parties; conditions for use of ballot.

All nominations of candidates for public office in New Mexico made by political parties shall be made pursuant to the Election Code [Chapter 1 NMSA 1978]. No political party shall be permitted to have the names of its candidates printed on any election ballot unless and until it has qualified as provided in the Election Code.

History: 1953 Comp., § 3-7-1, enacted by Laws 1969, ch. 240, § 144.

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1-7-2. Qualification; removal; requalification.

A. To qualify as a political party in New Mexico, each political party through its governing body shall adopt rules providing for the organization and government of that party and shall file the rules with the secretary of state. Uniform rules shall be adopted throughout the state by the county organizations of that party, where a county organization exists, and shall be filed with the county clerks. At the same time the rules are filed with the secretary of state, the governing body of the political party shall also file with the secretary of state a petition containing the hand-printed names, signatures, addresses of registration and counties of residence of at least one-half of one percent of the total votes cast for the office of governor at the preceding general election who declare by their signatures on the petition that they are voters of New Mexico and that they desire the party to be a qualified political party in New Mexico. Blank petition forms shall be available at any time from the secretary of state.

B. Each county political party organization may adopt supplementary rules insofar as they do not conflict with the uniform state rules or do not abridge the lawful political rights of any person. Such supplementary rules shall be filed with the county clerk and the secretary of state in the same manner as other rules are filed.

C. A qualified political party shall cease to be qualified for the purposes of the Election Code [Chapter 1 NMSA 1978] if two successive general elections are held without at least one of the party's candidates on the ballot or if the total votes cast for the party's candidates for governor or president of the United States, provided that the party has a candidate seeking election to either of these offices, in a general election do not equal at least one-half of one percent of the total votes cast for the office of governor or president of the United States, as applicable. No later than March 15 of an odd-numbered year, the secretary of state shall send notice of nonqualification to the state chair of any political party that fails to remain qualified. The notice shall be delivered by registered mail to the last known address of the state chair of the political party, and a copy shall be kept in the secretary of state's file of parties qualified in New Mexico.

D. The secretary of state shall then notify all county clerks of the removal and nonqualification of the political party and shall post the notice on the web site maintained by the secretary of state. The secretary of state shall within forty-five days notify by mail all voters registered as members of such party of the removal and nonqualification of the party.

E. To requalify, the party shall again comply with the provisions of the Election Code dealing with filing requirements for political parties.

History: 1953 Comp., § 3-7-2, enacted by Laws 1969, ch. 240, § 145; 1975, ch. 255, § 97; 1979, ch. 378, § 4; 1981, ch. 141, § 1; 1989, ch. 392, § 16; 1990, ch. 39, § 1; 1995, ch. 124, § 8; 2011, ch. 137, § 49.

1-7-3. Rules and regulations; contents.

The secretary of state and the county clerk shall not accept the rules and regulations of any political party for filing unless such rules and regulations provide:

A. a method for nominating candidates for the general election;

B. a method for calling and conducting conventions;

C. a method for selection of delegates to conventions;

D. a method for selection of state central committee members, a state chairman and other party officers, and all other members of governing bodies of the party;

E. a method for filling vacancies in party offices, committees and other governing bodies;

F. the powers and duties of party officers, committees and other governing bodies;

G. for the structure of the state and county party organizations;

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H. that meetings to elect any party officers, including delegates, shall be held at a public place during the week specified by the state party chairman;

I. that notice of such meetings shall be published by the officers of the county party organization in a newspaper of general circulation at least fourteen days prior to the meeting and the notice shall specify the time, date and place for holding the meeting; and

J. a method for amending the party rules and regulations.

History: 1953 Comp., § 3-7-3, enacted by Laws 1969, ch. 240, § 146.

1-7-4. Rules and regulations; filing; fee.

A. Each political party shall file its rules and regulations, along with petitions containing the required number of signatures, if the signature provision is applicable to the party, within thirty days after its organization and no later than twenty-three days after the primary election before any general election in which it is authorized to participate.

B. Within seven days after the filing of the political party's rules and qualifying petitions, the secretary of state shall notify the political party whether the rules and qualifying petitions are in proper order and that the party has qualified. The secretary of state shall notify all county clerks in the state of the qualification of that political party and post notice of qualification on the secretary of state's web site.

C. Political parties filing rules and regulations with the county clerk shall pay the standard filing fee.

History: 1953 Comp., § 3-7-4, enacted by Laws 1969, ch. 240, § 147; 1977, ch. 222, § 17; 1983, ch. 232, § 8; 1995, ch. 124, § 9; 2014, ch. 40, § 1; 2014, ch. 81, § 1.

1-7-5. Rules and regulations; amendment.

Political party rules and regulations filed as required by the Election Code [Chapter 1 NMSA 1978] are subject to amendment only in the manner provided for in such rules and regulations. No amendments shall be made less than one hundred twenty days prior to any general election, nor shall any amendment be effective until thirty days after being filed. Amendments shall be filed in the same manner as original party rules and regulations are filed.

History: 1953 Comp., § 3-7-5, enacted by Laws 1969, ch. 240, § 148; 1975, ch. 255, § 98.

1-7-6. Party name and emblem.

A. The chairman of the state central committee of a qualified political party shall file with the secretary of state a certificate setting forth the name selected for the political party and showing a representation of the emblem by which the party is to be represented.

B. The certified party name and emblem shall thereafter be used to designate the ticket of that political party on all ballots.

C. The secretary of state shall certify the party name and emblem of the party to each county clerk.

D. The state convention of a political party may change the party name and party emblem by adopting in their stead another name and emblem. The new party name and party emblem shall

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be filed in the same manner as was the original party name and party emblem, provided the certificate shall be signed by the presiding officer and the secretary of the state convention adopting the new party name and party emblem.

E. No political party shall adopt any party name or party emblem which is the same as, similar to, or which conceivably can be confused with or mistaken for the party name or party emblem of any other qualified political party in New Mexico.

History: 1953 Comp., § 3-7-6, enacted by Laws 1969, ch. 240, § 149.

1-7-7. Major political party; minor political party.

As used in the Election Code [Chapter 1 NMSA 1978]:

A. "major political party" means any qualified political party, any of whose candidates received as many as five percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be, and whose membership totals not less than one-third of one percent of the statewide registered voter file on the day of the governor's primary election proclamation; and

B. "minor political party" means any qualified political party that is not qualified as a major political party pursuant to Subsection A of this section.

History: 1953 Comp., § 3-1-8, enacted by Laws 1969, ch. 240, § 8; 1975, ch. 255, § 3; 1983, ch. 258, § 1; 1995, ch. 124, § 1; 1978 Comp., § 1-1-9, recompiled and amended as § 1-7-7 by Laws 2011, ch. 137, § 48.

ARTICLE 8

Nominations and Primary Elections

Sec.

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1-8-3. Nomination by minor political party; other methods.
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1-8-65. Minor political party candidates for general or United States representative special elections; nominating petition form.
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1-8-1. Nominating procedures; major political parties; minor political parties.

A. Any major political party in New Mexico, as defined in Section 1-7-7 NMSA 1978, shall nominate its candidates, other than its presidential candidates, by secret ballot at the next succeeding primary election as prescribed in the Primary Election Law [1-8-11 through 1-8-52 NMSA 1978].

B. Any minor political party in New Mexico, as defined in Section 1-7-7 NMSA 1978, shall nominate candidates for public office in the manner prescribed in its party rules and regulations and according to the provisions of the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-8-1, enacted by Laws 1969, ch. 240, § 151; 1975, ch. 255, § 99; 2003, ch. 300, § 1; 2014, ch. 40, § 2; 2014, ch. 81, § 2.

1-8-2. Nomination by minor political party; convention; designated nominees.

A. If the rules of a minor political party require nomination by political convention:

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(1) the chair and secretary of the state political convention shall certify to the secretary of state the names of their party's nominees for United States senator, United States representative, all elective state offices, legislative offices elected from multicounty districts, the public regulation commission, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county; and

(2) the chair and secretary of the county political convention shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or that is composed of only one county.

B. The names certified to the secretary of state shall be filed on the twenty-third day following the primary election in the year of the general election and shall be accompanied by nominating petitions containing the signatures of voters totaling not less than one percent of the total number of votes cast for governor at the last preceding general election at which a governor was elected:

(1) in the state for statewide offices; and

(2) in the district for offices other than statewide offices.

The petition shall contain a statement that the voters signing the petition are residents of the area to be represented by the office for which the person being nominated is a candidate.

C. The names certified to the county clerk shall be filed on the twenty-third day following the primary election in the year of the general election and shall be accompanied by a nominating petition containing the signatures of voters totaling not less than one percent of the total number of votes cast for governor at the last preceding general election at which a governor was elected:

(1) in the county for countywide offices; and

(2) in the district for offices other than countywide offices.

The petition shall contain a statement that the voters signing the petition are residents of the area to be represented by the office for which the person being nominated is a candidate.

D. Except in the case of a political party certified in the year of the election, persons certified as candidates shall be members of that party on the day the secretary of state issues the general election proclamation.

E. When a political party is certified in the year of the general election, and after the day the secretary of state issues the general election proclamation, a person certified as a candidate shall be:

(1) a member of that party not later than the date the political party filed its rules and qualifying petitions pursuant to Sections 1-7-2 and 1-7-4 NMSA 1978; and

(2) a resident in the district of the office for which the person is a candidate on the date of the secretary of state's proclamation for the general election or in the case of a person seeking the office of United States senator or United States representative, a resident within New Mexico on the date of the secretary of state's proclamation for the general election. No person who is a candidate for a party in a primary election may be certified as a candidate for a different party in the general election in the same election cycle.

F. No voter shall sign a petition prescribed by this section for more persons than the number of candidates necessary to fill the office at the next ensuing general election.

History: 1953 Comp., § 3-8-2, enacted by Laws 1969, ch. 240, § 152; 1971, ch. 317, § 14; 1975, ch. 255, § 100; 1977, ch. 222, § 18; 1977, ch. 358, § 1; 1981, ch. 147, § 1; 1983, ch. 258, § 2; 1990, ch. 39, § 2; 1993, ch. 314, § 44; 1993, ch. 316, § 44; 1995, ch. 124, § 10; 1998, ch. 36, § 1; 2007, ch. 336, § 13; 2014, ch. 40, § 3; 2014, ch. 81, § 3; 2019, ch. 212, § 87.

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1-8-3. Nomination by minor political party; other methods.

If the rules and regulations of a minor political party require nomination by a method other than a political convention:

A. the state chairman and the governing board of the state party shall certify to the secretary of state the names of their party's nominees for United States senator, United States representative, all elective state offices, legislative offices elected from multicounty districts, public regulation commission, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county;

B. the county chairman and the governing board of the county party shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or that is composed of only one county; and

C. the names of such nominees shall be filed in the same time and manner prescribed by the Election Code [Chapter 1 NMSA 1978] for convention-designated nominees of minor political parties, and each list of names certified shall be accompanied by the petition containing a list of signatures and addresses of voters as prescribed for convention-designated nominees.

History: 1953 Comp., § 3-8-3, enacted by Laws 1969, ch. 240, § 153; 1975, ch. 255, § 101; 1998, ch. 36, § 2.

1-8-3.1. Nominating petition for candidate of an unqualified state political party; qualification as an independent candidate.

The declaration of candidacy and petition signatures submitted to the proper filing officer by a candidate for nomination as a minor party candidate shall be counted toward the requirements for qualification as an independent candidate for the same office in the same election if the candidate's party files for, but does not obtain status as, a qualified political party in that election cycle. To qualify as an independent candidate, the candidate must meet all requirements for an independent candidate in Section 1-8-45 NMSA 1978 and submit the required number of petition signatures for an independent candidate as prescribed in Section 1-8-51 NMSA 1978. No candidate may circulate petitions for candidacy for more than one political party in an election cycle.

History: Laws 2014, ch. 40, § 6 and Laws 2014, ch. 81, § 6.

1-8-4. Secretary of state; certification of nominees; minor political party.

A. Upon receipt of certificates of nomination of any minor political party and nominating petitions, and no later than 5:00 p.m. on the first Tuesday following the filing date, the proper filing officer shall:

(1) determine whether the method of nomination used by the certifying political party complies with the current rules of that party on file in the secretary of state's office;

(2) determine whether the number of signatures required have been submitted and all the requirements of Sections 1-8-1 through 1-8-3 NMSA 1978 have been complied with; and

(3) if such determinations are answered in the affirmative, mail notice to the certifying party and the candidate no later than 5:00 p.m. on the Tuesday following the filing date that the certificates of nomination and nominating petitions are in proper order and that the candidate, based on those documents, is qualified to have the candidate's name placed on the ballot.

B. If a minor political party candidate is notified by the proper filing officer that the candidate is not qualified to have the candidate's name appear on the ballot, the candidate may

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challenge the decision by filing a petition with the district court within ten days of the notification. The district court shall hear and render a decision on the matter within ten days after the petition is filed. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision no later than sixty-three days prior to the general election.

C. Any voter may file a court action challenging a minor political party candidate's nominating petitions pursuant to the provisions of Section 1-8-35 NMSA 1978.

History: 1953 Comp., § 3-8-4, enacted by Laws 1969, ch. 240, § 154; 1975, ch. 255, § 102; 1981, ch. 147, § 2; 2011, ch. 137, § 50; 2014, ch. 40, § 4; 2014, ch. 81, § 4; 2017, ch. 101, § 6.

1-8-5. Canvassing boards; certification of nominees of parties participating in primary.

Immediately upon completion of their respective canvasses, the state and county canvassing boards shall certify to the county clerk the name of each person who has been nominated by each participating political party in the primary election, and the offices for which they have been nominated. The county clerk shall send a certified list of all persons so nominated to the secretary of state.

History: 1953 Comp., § 3-8-5, enacted by Laws 1969, ch. 240, § 155.

1-8-6. Vacancy on primary ballot.

Regardless of the cause, no vacancy on the primary election ballot occurring after the period for filing a declaration of candidacy or the date of filing with the secretary of state a certificate of designation by state convention, whichever the case may be, shall be filled.

History: 1953 Comp., § 3-8-6, enacted by Laws 1969, ch. 240, § 156; 1975, ch. 295, § 1.

1-8-7. Vacancy on general election ballot; death of candidate or resignation or death of office holder before primary.

A. Vacancies on the general election ballot may be filled as provided in Subsection B of this section if after a primary election there is no nominee of a major political party for a public office to be filled in the general election and if the vacancy was caused by:

(1) the death of a candidate after filing of the declaration of candidacy or after certification as a convention-designated nominee and before the primary election;

(2) the failure of a major political party to nominate a candidate for lieutenant governor; provided that the major political party nominated a candidate for governor; or

(3) the resignation or death of a person holding a public office after the last Friday before the first Tuesday in March, when such office was not included in the general election proclamation and is required by law to be filled at the next succeeding general election after the vacancy is created.

B. The vacancy may be filled subsequent to the primary election by the central committee of the state or county political party, as the case may be, as provided by Subsection A of Section 1-8-8 NMSA 1978.

C. The name of the person to fill the vacancy on the general election ballot shall be filed with the proper filing officer on a form approved by the secretary of state on the twenty-third day after the primary election, along with a declaration of candidacy subscribed and sworn by the selected

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nominee and the required form for candidates pursuant to the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978].

D. When the name of a nominee is filed as provided in this section, the name shall be placed on the general election ballot as the party's candidate for that office.

History: 1953 Comp., § 3-8-7, enacted by Laws 1969, ch. 240, § 157; 1975, ch. 295, § 2; 1979, ch. 378, § 5; 2015, ch. 145, § 50; 2017, ch. 101, § 7; 2019, ch. 212, § 88.

1-8-8. Vacancy on general election ballot; occurring after primary.

A. If after a primary election, but seventy or more days before the general election, a vacancy occurs, for any cause, in the list of the nominees of a qualified political party for any public office to be filled in the general election, or a vacancy occurs because of the resignation or death of a person holding a public office not included in the secretary of state's general election proclamation and which office is required by law to be filled at the next succeeding general election, or a vacancy occurs because a new public office is created and was not included in the secretary of state's general election proclamation but is capable by law of being filled at the next succeeding general election, the vacancy on the general election ballot may be filled by:

(1) the central committee of the state political party filing the name of its nominee for the office with the proper filing officer when the office is a federal office, state office, district office or multicounty legislative district office; and

(2) the central committee of the county political party filing the name of its nominee for the office with the proper filing officer when the office is a magistrate office, county office or legislative district office where the district is entirely within the boundaries of a single county.

B. Appointments made pursuant to Subsection A of this section shall qualify pursuant to Section 1-8-18 NMSA 1978.

C. The county or state central committee members making the appointment pursuant to Subsection A of this section shall be as provided for in the rules of the respective party; provided that, at a minimum, the committee shall include those members residing within the boundaries of the area to be represented by the public office.

D. Appointments to fill vacancies in the list of a party's nominees shall be made and filed with the proper filing officer using a form approved by the secretary of state at least sixty-three days prior to the general election, along with a declaration of candidacy subscribed and sworn by the selected nominee and the required form for candidates pursuant to the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978].

E. When the name of a nominee is filed as provided in this section, the name shall be placed on the general election ballot as the party's candidate for that office.

History: 1953 Comp., § 3-8-8, enacted by Laws 1969, ch. 240, § 158; 1975, ch. 255, § 103; 1979, ch. 378, § 6; 1995, ch. 124, § 11; 2011, ch. 137, § 51; 2015, ch. 145, § 51; 2017, ch. 101, § 8; 2019, ch. 212, § 89.

1-8-9. Repealed.

1-8-10. Repealed.

1-8-11. Primary Election Law; time of holding primary.

A primary election shall be held in each county in this state on the first Tuesday after the first Monday in June of each even-numbered year.

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History: 1953 Comp., § 3-8-10, enacted by Laws 1969, ch. 240, § 160; 2011, ch. 137, § 53.

1-8-12. Primary Election Law; proclamation calling primary and general elections.

A. The secretary of state shall issue a public proclamation calling a general election to be held in each county and precinct of the state on the date prescribed by Article 20, Section 6 of the constitution of New Mexico.

B. The general election proclamation shall also call a primary election for the nomination of general election candidates by each major political party to be held in each county and precinct of the state on the date prescribed by the Primary Election Law [1-8-11 through 1-8-52 NMSA 1978].

C. The proclamation shall be filed by the secretary of state in the office of the secretary of state on the last Monday in January of each even-numbered year.

History: 1953 Comp., § 3-8-11, enacted by Laws 1969, ch. 240, § 161; 1975, ch. 295, § 3; 1983, ch. 232, § 9; 2019, ch. 212, § 90.

1-8-13. Primary Election Law; contents of proclamation.

The general election proclamation calling a primary and general election shall contain:

A. the names of the major political parties participating in the primary election;

B. the offices to be elected at the general election and for which each political party shall nominate candidates; provided that if any law is enacted by the legislature in the year in which the primary election is held and the law does not take effect until after the date to amend the proclamation but prior to the date to fill vacancies pursuant to Section 1-8-7 or 1-8-8 NMSA 1978, the secretary of state shall conform the proclamation to the intent of the law with respect to the offices for which each political party shall nominate candidates;

C. the date on which declarations of candidacy and nominating petitions for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, public education commission, public regulation commission or magistrate shall be filed and the places where they shall be filed in order to have the candidates' names printed on the official ballot of their party at the primary election or in order to have the candidates' names printed on the official ballot at the general election, as applicable;

D. the date on and place at which declarations of candidacy shall be filed for any other office and filing fees paid or, in lieu thereof, a pauper's statement of inability to pay;

E. the final date on and place at which candidates for the office of United States representative and for any statewide office seeking preprimary convention designation by the major parties shall file petitions and declarations of candidacy;

F. the final date on which the major political parties shall hold state preprimary conventions for the designation of candidates;

G. the final date on and place at which certificates of designation of primary election candidates shall be filed by political parties with the secretary of state;

H. the date on which declarations of candidacy for minor party candidates shall be filed and the places where the declarations of candidacy shall be filed in order to have the minor party candidate names printed on the official ballot of the general election;

I. the date on which declarations of candidacy for unaffiliated candidates shall be filed and the places where the declarations of candidacy shall be filed in order to have the unaffiliated candidate names printed on the official ballot of the general election;

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J. the date on which declarations of candidacy for nonpartisan judicial retention shall be filed and the places where the declarations of candidacy shall be filed in order to have the judicial retention names printed on the official ballot of the general election; and

K. the date on which declarations to be a write-in candidate are to be filed and the places where the declarations of candidacy shall be filed in order to have write-in votes counted and canvassed at the political party primary or general election.

History: 1953 Comp., § 3-8-12, enacted by Laws 1969, ch. 240, § 162; 1975, ch. 295, § 4; 1982, ch. 1, § 1; 1985, ch. 2, § 1; 1993, ch. 55, § 1; 1994, ch. 92, § 1; 1995, ch. 124, § 12; 1998, ch. 36, § 3; 1999, ch. 267, § 25; 2019, ch. 212, § 91.

1-8-14. Primary Election Law; proclamation; duties of secretary of state.

Upon the proclamation being filed, the secretary of state shall immediately:

A. publish the proclamation for five consecutive days in at least four daily newspapers of general circulation in the state;

B. post the proclamation and any amended proclamation on the secretary of state's web site; and

C. send an authenticated copy of the proclamation or any amended proclamation to each county clerk along with a copy of the text in an editable electronic format.

History: 1953 Comp., § 3-8-13, enacted by Laws 1969, ch. 240, § 163; 2015, ch. 145, § 52.

1-8-15. Primary Election Law; proclamation; duties of county clerk.

Upon receipt of the authenticated copy of the proclamation, the county clerk shall immediately specify the offices for which each major political party may nominate candidates and have the itemized proclamation published once each week for two consecutive weeks. If there is no newspaper of general circulation in the county, the proclamation shall be printed and posted in six public places in the county. Such publication and posting shall be in Spanish and in English.

History: 1953 Comp., § 3-8-14, enacted by Laws 1969, ch. 240, § 164; 1975, ch. 255, § 105; 1981, ch. 147, § 3.

1-8-16. Primary Election Law; proclamation; amendment.

The governor may amend the proclamation between the time of its issuance and the first Tuesday in March to include a newly created public office that is capable by law of being filled at the next succeeding general election, or any existing office becoming vacant by removal, resignation or death when such vacancy occurs no later than the last Friday before the first Tuesday in March, or to provide for any corrections or omissions.

History: 1953 Comp., § 3-8-15, enacted by Laws 1969, ch. 240, § 165; 1975, ch. 295, § 5; 2011, ch. 137, § 54; 2015, ch. 145, § 53.

1-8-17. Primary Election Law; offices affected; questions prohibited.

A. The Primary Election Law [1-8-10 to 1-8-52 NMSA 1978] applies to major political party nominations for all offices that are to be filled at the general election with the exception of presidential electors.

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B. The Primary Election Law does not apply to the election of persons to fill municipal, school district or special district offices, nor does it apply to special elections to fill vacancies in any office filled at the general election. No bond issue or other question shall be voted upon at any primary election.

History: 1953 Comp., § 3-8-16, enacted by Laws 1969, ch. 240, § 166; 1977, ch. 222, § 19.

1-8-18. Primary Election Law; who may become a candidate.

A. No person shall become a candidate for nomination by a political party or have the person's name printed on the primary election ballot unless the person's record of voter registration shows:

(1) affiliation with that political party on the date of the secretary of state's general election proclamation; and

(2) residence in the district of the office for which the person is a candidate on the date of the secretary of state's general election proclamation or in the case of a person seeking the office of United States senator or United States representative, residence within New Mexico on the date of the secretary of state's general election proclamation.

B. A voter may challenge the candidacy of a person seeking nomination by a political party for the reason that the person does not meet the requirements of Subsection A of this section by filing a petition in the district court within ten days after the last day for filing a declaration of candidacy or a statement of candidacy for convention designation. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith.

History: 1953 Comp., § 3-8-17, enacted by Laws 1969, ch. 240, § 167; 1973, ch. 228, § 1; 1975, ch. 295, § 6; 1977, ch. 87, § 1; 1979, ch. 74, § 4; 1981, ch. 147, § 4; 2019, ch. 212, § 92.

1-8-19. Candidacy in primary of one party bars general election ballot designation of different party or as an unaffiliated candidate.

If a person has been a candidate for the nomination of a major political party in the primary election, he shall not have his name printed on the ballot at the next succeeding general election except under the party name of the party designated on his declaration of candidacy filed for such primary election.

History: 1953 Comp., § 3-8-17.1, enacted by Laws 1975, ch. 255, § 106; 1981, ch. 147, § 5.

1-8-20. Primary Election Law; candidacy for more than one office.

No person shall be a candidate in the primary election for more than one office, except that any person may be a candidate for both the expiring term and the next succeeding term for an office when both terms are to be voted upon at the next succeeding general election.

History: 1953 Comp., § 3-8-18, enacted by Laws 1969, ch. 240, § 168.

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1-8-21. Primary election; methods of placing names on primary ballot.

A. All candidates seeking primary election nomination to a statewide office or the office of United States representative shall file declarations of candidacy with the proper filing officer. Candidates shall file nominating petitions at the time of filing their declarations of candidacy. Candidates who seek, but do not obtain, preprimary convention designation by a major political party may file new declarations of candidacy and nominating petitions pursuant to Section 1-8-33 NMSA 1978.

B. Except as provided in Subsection C of this section, candidates for any other office listed in Section 1-8-13C shall have their names placed on the primary election ballot by filing declarations of candidacy and nominating petitions with the proper filing officer.

C. Candidates for county office shall have their names placed on the primary election ballot by filing declarations of candidacy and paying filing fees or filing the proper paupers' statements at the time of filing declarations of candidacy with the proper filing officer.

History: 1978 Comp., § 1-8-21, enacted by Laws 1996, ch. 20, § 3; 2009, ch. 202, § 1.

1-8-21.1. Designation of candidates by convention.

A. State conventions of major political parties may designate candidates for nomination to statewide office or the office of United States representative.

B. No state convention for designating candidates shall be held later than the second Sunday in March preceding the primary election, and delegates to the convention shall be elected according to state party rules filed in the office of the secretary of state.

C. The state convention shall take only one ballot upon candidates for each office to be filled. Every candidate receiving twenty percent or more of the votes of the duly elected delegates to the convention for the office to be voted upon at the ensuing primary election shall be certified to the secretary of state as a convention-designated nominee for that office by the political party. Certification shall take place no later than 5:00 p.m. on the first Tuesday succeeding the state convention.

D. The certificate of designation submitted to the secretary of state shall state the name of the office for which each person is a candidate, each candidate's name and address and the name of the political party that each candidate represents and certification that the candidate has been a member of that political party for the period of time required by the Election Code.

History: Laws 1993, ch. 55, § 11; 2013, ch. 121, § 1.

1-8-22 to 1-8-24. Repealed.

1-8-25. Repealed.

1-8-26. Primary Election Law; time of filing; documents necessary to qualify for ballot; challenge.

A. Declarations of candidacy by preprimary convention designation for any statewide office or for the office of United States representative shall be filed with the proper filing officer on the first Tuesday in February of each even-numbered year between the hours of 9:00 a.m. and 5:00 p.m.

B. Declarations of candidacy for any other office to be nominated in the primary election shall be filed with the proper filing officer on the second Tuesday of March of each even-numbered year between the hours of 9:00 a.m. and 5:00 p.m.

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C. Certificates of designation shall be submitted to the secretary of state on the first Tuesday following the preprimary convention at which the candidate's designation took place between the hours of 9:00 a.m. and 5:00 p.m.

D. No name shall be placed on the ballot until the person has been notified in writing by the proper filing officer that the certificate of registration on file, the declaration of candidacy and the petition, if required, are in proper order and that the person, based on those documents, is qualified to be a candidate. The proper filing officer shall mail the notice no later than 5:00 p.m. on the Tuesday following the filing date.

E. If a person is notified by the proper filing officer that the person is not qualified to be a candidate, the person may challenge that decision by filing a petition with the district court within ten days of the notification. The district court shall hear and render a decision on the matter within ten days after the petition is filed. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith.

History: 1953 Comp., § 3-8-21, enacted by Laws 1975, ch. 295, § 12; 1983, ch. 232, § 10; 1985, ch. 2, § 4; 1985, ch. 207, § 7; 1987, ch. 327, § 13; 1989, ch. 392, § 17; 1993, ch. 55, § 3; 1993, ch. 314, § 45; 1993, ch. 316, § 45; 1994, ch. 2, § 1; 1994, ch. 92, § 3; 1995, ch. 124, § 14; 1997, ch. 15, § 1; 2009, ch. 202, § 2; 2011, ch. 137, § 56; 2013, ch. 121, § 2; 2014, ch. 40, § 5; 2014, ch. 81, § 5; 2015, ch. 145, § 54; 2019, ch. 212, § 93.

1-8-27. Primary Election Law; declaration of candidacy; manner of filing.

Each declaration of candidacy, by nominating petition or by pre-primary convention designation, shall be delivered for filing in person by the candidate therein named or by a person acting, by virtue of written authorization, solely on the candidate's behalf. The proper filing officer shall not accept for filing more than one declaration of candidacy from any one individual except that candidates who seek but fail to receive pre-primary convention designation shall file a declaration of candidacy by nomination, according to provisions of the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], to have their names placed on the primary election ballot.

History: 1953 Comp., § 3-8-22, enacted by Laws 1969, ch. 240, § 172; 1975, ch. 295, § 13; 1985, ch. 2, § 5; 1993, ch. 55, § 4.

1-8-28. Repealed.

1-8-29. Primary Election Law; declaration of candidacy; form.

In making a declaration of candidacy by nominating petition or by pre-primary convention designation, the candidate shall submit substantially the following form:

"DECLARATION OF CANDIDACY
BY PRE-PRIMARY CONVENTION DESIGNATION
(OR BY NOMINATING PETITION)

I, _____, (candidate's name on certificate of registration) being first duly sworn, say that I reside at _____, as shown by my certificate of registration as a voter of Precinct No. _____ of the county of _____, State of New Mexico;

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I am a member of the _____ party as shown by my certificate of registration and I have not changed such party affiliation subsequent to the secretary of state's general election proclamation calling the primary in which I seek to be a candidate;

I desire to become a candidate for the office of _____ at the primary election to be held on the date set by law for this year, and if the office be that of a member of the legislature or that of a member of the public education commission, that I actually reside at the address designated on my certificate of voter registration;

I will be eligible and legally qualified to hold this office at the beginning of its term;

If a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Primary Election Law; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____
(Declarant)

_____
(Mailing Address)

_____
(Residence Address)

Subscribed and sworn to before me this _____ day of _____, 20 _____.

_____
(Notary Public)
My commission expires:
_____".

History: 1953 Comp., § 3-8-24, enacted by Laws 1973, ch. 228, § 3; 1975, ch. 255, § 107; 1987, ch. 249, § 22; 1989, ch. 392, § 18; 1993, ch. 55, § 5; 1993, ch. 314, § 46; 1993, ch. 316, § 46; 2019, ch. 212, § 94.

1-8-30. Primary Election Law; declaration of candidacy; nominating petition; filing and form.

A. As used in the Primary Election Law, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters, which is signed on behalf of the person wishing to become a candidate for a political office in the primary election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate at the same time shall file a nominating petition, which shall be on the form prescribed by law.

C. The nominating petition shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION

I, the undersigned, a registered voter of New Mexico, and a member of the _____ party, hereby nominate _____, who resides at _____ in the county of _____, New Mexico, for the party nomination for the office of _____, to be voted for at the primary election to be held on _____, and I declare that I am a registered

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voter of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1.	_____	_____	_____	_____
	(usual signature)	(name printed as registered)	(address as registered)	(city or zip code)
2.	_____	_____	_____	_____
	(usual signature)	(name printed as registered)	(address as registered)	(city or zip code).".

D. In October of odd-numbered years, the secretary of state shall post on the secretary of state's web site and shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section and all sheets shall be firmly secured by a staple or other suitable fastening.

History: 1953 Comp., § 3-8-24.1, enacted by Laws 1973, ch. 228, § 4; 1974, ch. 18, § 1; 1975, ch. 255, § 108; 1975, ch. 295, § 15; 1977, ch. 222, § 20; 1985, ch. 206, § 1; 1987, ch. 327, § 14; 1993, ch. 55, § 6; 1994, ch. 92, § 4; 1995, ch. 124, § 15; 1999, ch. 267, § 26; 2001, ch. 234, § 1; 2011, ch. 137, § 57.

1-8-31. Recompiled.

1-8-32. Primary Election Law; nominating petition; offenses; penalty.

A. Any person who knowingly falsifies any information on a nominating petition is guilty of falsifying an election document.

B. It is unlawful for any person to knowingly circulate, present or offer to present for the signature of another person a nominating petition that does not clearly show on the face of the petition the name of the candidate, the address at which the candidate resides, the candidate's county of residence and the office for which the candidate seeks nomination. Any person violating the provisions of this subsection is guilty of a misdemeanor and upon conviction therefor shall be imprisoned in the county jail for a definite term less than one year or to the payment of a fine of not more than one thousand dollars ($1,000), or to both such imprisonment and fine in the discretion of the judge.

History: 1953 Comp., § 3-8-24.3, enacted by Laws 1973, ch. 228, § 6; 1979, ch. 378, § 8.

1-8-33. Primary Election Law; nominating petition; number of signatures required.

A. As used in this section, "total vote" means the sum of all votes cast for all of the party's candidates for governor at the last preceding primary election at which the party's candidate for governor was nominated.

B. Candidates who seek preprimary convention designation shall file nominating petitions at the time of filing declarations of candidacy. Nominating petitions for those candidates shall be

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signed by a number of voters equal to at least two percent of the total vote of the candidate's party in the state or congressional district, or the following number of voters, whichever is greater: for statewide offices, two hundred thirty voters; and for congressional candidates, seventy-seven voters.

C. Nominating petitions for candidates for any other office to be voted on at the primary election for which nominating petitions are required shall be signed by a number of voters equal to at least three percent of the total vote of the candidate's party in the district or division, or the following number of voters, whichever is greater: for metropolitan court and magistrate courts, ten voters; for the public regulation commission, fifty voters; for the public education commission, twenty-five voters; for state representative, ten voters; for state senator, seventeen voters; and for district attorney and district judge, fifteen voters.

D. A candidate who fails to receive the preprimary convention designation that the candidate sought may collect additional signatures to total at least four percent of the total vote of the candidate's party in the state or congressional district, whichever applies to the office the candidate seeks, and file a new declaration of candidacy and nominating petitions for the office for which the candidate failed to receive a preprimary designation. The declaration of candidacy and nominating petitions shall be filed with the secretary of state either ten days following the date of the preprimary convention at which the candidate failed to receive the designation or on the date all declarations of candidacy and nominating petitions are due pursuant to the provisions of the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], whichever is later.

History: 1953 Comp., § 3-8-24.4, enacted by Laws 1973, ch. 228, § 7; 1975, ch. 255, § 110; Laws 1975, ch. 295, § 17; 1979, ch. 378, § 9, 1982, ch. 1, § 2; Laws 1985, ch. 2, § 6; 1985, ch. 206, § 2; 1987, ch. 216, § 1; 1993, ch. 55, § 7; 1994, ch. 92, § 5; 1995, ch. 124, § 16; 1998, ch. 36, § 5; 2007, ch. 337, § 10; 2008, ch. 57, § 1.

1-8-34. Primary Election Law; nominating petition; withdrawals and additions; copies made available.

A. A nominating petition when filed shall not be withdrawn nor added to, nor shall any person be permitted to revoke his signature thereon. A nominating petition shall be complete when filed. The proper filing officer shall not permit additions to or withdrawals from a nominating petition after it is filed nor shall any person be permitted to revoke his signature on a petition after it has been filed.

B. The original nominating petition shall remain in the filing officer's office and copies shall be made available by the filing officer for a nominal cost.

History: 1953 Comp., § 3-8-24.5, enacted by Laws 1973, ch. 228, § 8; 1975, ch. 255, § 111; 1985, ch. 207, § 9.

1-8-35. Primary Election Law; nominating petition; limitation on appeals of validity of nominating petitions.

A. Any voter filing any court action challenging a nominating petition provided for in the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978] shall do so within ten days after the last day for filing the declaration of candidacy with which the nominating petition was filed. Within ten days after the filing of the action, the district court shall hear and render a decision on the matter. The decision shall be appealable only to the supreme court and notice of appeal shall be filed within

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five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

B. For the purposes of an action challenging a nominating petition, each person filing a nominating petition under the Primary Election Law appoints the proper filing officer as his agent to receive service of process. Immediately upon receipt of process served upon the proper filing officer, the officer shall, by certified mail, return receipt requested, mail the process to the person.

History: 1953 Comp., § 3-8-24.6, enacted by Laws 1973, ch. 228, § 9; 1975, ch. 295, § 18; 1985, ch. 2, § 7; 1993, ch. 55, § 8.

1-8-36. Repealed.

1-8-36.1. Primary Election Law; write-in candidates.

A. Write-in candidates are permitted in the primary election only for the offices of United States representative, members of the legislature, district judges, district attorneys, public regulation commission, public education commission, magistrates and any office voted upon by all voters of the state.

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

C. A person desiring to be a write-in candidate for one of the offices listed in Subsection A of this section in the primary election shall file with the proper filing officer a declaration of intent to be a write-in candidate. Such declaration of intent shall be filed between 9:00 a.m. and 5:00 p.m. on the third Tuesday in March.

D. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code, including the obligations to report pursuant to the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978], except that the write-in candidate's name shall not be printed on the ballot.

History: 1978 Comp., § 1-8-36.1, enacted by Laws 1981, ch. 156, § 1; 1993, ch. 314, § 48; 1993, ch. 316, § 48; 1994, ch. 2, § 2; 1998, ch. 36, § 6; 2009, ch. 150, § 7; 2011, ch. 137, § 59; 2019, ch. 212, § 95.

1-8-37 to 1-8-39. Repealed.

1-8-39.1. Declaration of pre-primary designation; certification by secretary of state.

A. Not later than six days after the dates for filing declarations of candidacy by pre-primary convention designation, the secretary of state shall certify to the chairman of each state political party the names of that party's candidates for office of United States representative or for other statewide office who have filed their declarations of candidacy by convention designation and have otherwise complied with the requirements of the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978].

B. No person shall be placed in nomination at the convention unless he has been certified by the secretary of state.

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History: Laws 1993, ch. 55, § 10.

1-8-40. Primary Election Law; declaration of candidacy; false statement.

Any person knowingly making a false statement in his declaration of candidacy by nominating petition or by pre-primary convention designation is guilty of a fourth degree felony.

History: 1953 Comp., § 3-8-25, enacted by Laws 1969, ch. 240, § 175; 1975, ch. 295, § 23; 1985, ch. 2, § 8; 1993, ch. 55, § 9.

1-8-41. Primary Election Law; filing fee.

The filing fee in the primary election for any county office shall be fifty dollars ($50.00), which shall be paid at the time of the filing of the declaration of candidacy for nomination by a political party.

History: 1953 Comp., § 3-8-26, enacted by Laws 1973, ch. 228, § 11; 1974, ch. 25, § 1; 1977, ch. 222, § 22; 2011, ch. 137, § 60.

1-8-42. Primary Election Law; pauper's statement in lieu of filing fee.

In the event any candidate is unable to pay the filing fee prescribed by the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978] he may file a statement with the proper filing officer at the time he files his declaration of candidacy to the effect that he is without financial means to pay such filing fee. The statement shall be sworn and subscribed to on the form prescribed by the secretary of state and furnished to each county clerk and shall be attached by the proper filing officer to the declaration of candidacy.

History: 1953 Comp., § 3-8-26.1, enacted by Laws 1973, ch. 228, § 12.

1-8-43. Repealed.

1-8-44. Primary Election Law; withdrawal of candidates.

A candidate seeking to withdraw from a primary election shall withdraw no later than the first Tuesday in April before that primary election by filing a signed and notarized statement of withdrawal with the proper filing officer.

History: 1953 Comp., § 3-8-32, enacted by Laws 1969, ch. 240, § 182; 1975, ch. 255, § 113; 1979, ch. 378, § 10; 1988, ch. 17, § 5; 1999, ch. 267, § 28; 2007, ch. 274, § 2; 2011, ch. 137, § 61.

1-8-45. Independent candidates for general or United States representative elections; definition.

A. As used in the Election Code, an independent candidate means a person who:

(1) is a candidate for any state or county office to be voted on at a general election:

(a) whose certificate of voter registration shows affiliation with no qualified political party on the date of the secretary of state's general election proclamation and, if applicable, shows

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residence on the date of the secretary of state's proclamation in the district or county of the office for which the person is a candidate; and

(b) who has complied with the nomination procedures set forth in the Election Code for independent candidates;

(2) is a candidate for United States senator or United States representative:

(a) whose certificate of voter registration, if any, shows affiliation with no qualified political party on the date of the secretary of state's general election proclamation;

(b) who will be a resident of New Mexico when elected; and

(c) who has complied with the nomination procedures set forth in the Election Code for independent candidates; or

(3) is a candidate for the office of president or vice president who:

(a)has complied with the nomination procedures set forth in the Election Code for independent candidates; and

(b) was not a major party candidate for the same office on the primary election ballot.

B. No person shall become an independent candidate for any office, and the person's name shall not be printed on the general election ballot, unless the person complies with the requirements of this section.

C. Any voter may challenge the candidacy of any person seeking to become an independent candidate for any office for the reason that the person does not meet the requirements of this section or because the nominating petitions, if required, do not meet the requirements of Section 1-8-31 NMSA 1978 by filing a petition in the district court within ten days after the last day for filing a declaration of candidacy. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith.

History: 1953 Comp., § 3-8-27.1, enacted by Laws 1977, ch. 322, § 1; 1981, ch. 147, § 6; 1993, ch. 314, § 49; 1993, ch. 316, § 49; 2011, ch. 137, § 62; 2019, ch. 212, § 96.

1-8-46. Independent candidates for general or United States representative special elections; right to be placed on ballot.

The name of any independent candidate for an office to be voted on at a general election or United States representative special election shall be placed by the proper filing officer on such ballot.

History: 1953 Comp., § 3-8-27.2, enacted by Laws 1977, ch. 322, § 2.

1-8-47. Independent candidates for general or United States representative special elections; withdrawal of name.

The provisions of the Election Code [Chapter 1 NMSA 1978] pertaining to the withdrawal of candidates from the general election shall apply to the withdrawal of independent candidates.

History: 1953 Comp., § 3-8-27.3, enacted by Laws 1977, ch. 322, § 3.

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1-8-48. Independent candidates for general or United States representative elections; declaration of independent candidacy and nominating petition.

A. Nomination as an independent candidate shall be made by filing a declaration of independent candidacy and a nominating petition with the proper filing officer.

B. In making a declaration of independent candidacy, the candidate for an office other than that of president or vice president shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY

I, _____ (candidate's name), being first duly sworn, say that:

I reside at _____;

I did not designate any current affiliation with a qualified political party on my certificate of registration on or before the date of issuance of the secretary of state's general election proclamation in the year of the general election at which I seek to be a candidate;

I meet the qualifications listed in Section 1-8-45 NMSA 1978 for the office that I seek;

I desire to become a candidate for the office of _____, District_____ at the general election to be held on the date set by law for this year;

if the office I seek be a state or county district office, I actually reside within the district of the office for which I declare my candidacy, and if the office I seek be a countywide office, I actually reside in the county of the office for which I declare my candidacy;

I will be eligible and legally qualified to hold this office at the beginning of its term;

if a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Election Code; and

I make the foregoing affidavit under oath or affirmation knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____

(Declarant)

_____

(Residence Address)

_____

(Mailing Address, if different)

Subscribed and sworn to or affirmed before me this _____ day of _____, _____.
(month) (year)

_____

(Notary Public)

My commission expires:

_____".

C. The secretary of state shall prescribe and furnish the form for the declaration of independent candidacy for the office of president and vice president.

History: 1953 Comp., § 3-8-27.4, enacted by Laws 1977, ch. 322, § 4; 1981, ch. 147, § 7; 1987, ch. 249, § 23; 1993, ch. 314, § 50; 1993, ch. 316, § 50; 1998, ch. 36, § 7; 2011, ch. 137, § 63; 2019, ch. 212, § 97.

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1-8-49. Independent candidates for general elections; candidates for president and vice president.

A. Nomination as an independent candidate for president or vice president shall be made by filing a declaration of independent candidacy with the proper filing officer. The candidate for president shall also at the same time file a nominating petition with the required number of signatures.

B. In making a declaration of independent candidacy for president, the candidate shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY FOR PRESIDENT

I, _____ (candidate's name), being duly sworn, say that I am a citizen of the United States, have been a resident of the United States for at least fourteen years and have attained the age of thirty-five.

I desire to become a candidate for the office of president of the United States at the general election to be held on the date set by law for this year. I will be eligible and legally qualified to hold this office at the beginning of its term.

The name of my vice presidential running mate, whom I selected, is _____. The names and addresses of the required number of presidential electors who intend to vote for me and for my vice presidential running mate in the electoral college are:

(name)	(name)
(residence address)	(residence address)
(mailing address)	(mailing address)
(city)	(city)
(state and zip code)	(state and zip code)
(name)	(name)
(residence address)	(residence address)
(mailing address)	(mailing address)
(city)	(city)
(state and zip code)	(state and zip code)
(name)	
(residence address)	
(mailing address)	

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_____
(city)

_____
(state and zip code)

I submit with this statement a nominating petition in the form and manner prescribed by the Election Code. I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable in accordance with the criminal laws of New Mexico.

_____
(declarant)

_____
(residence address)

_____
(mailing address)

_____
(city)

_____
(state and zip code)

Subscribed and sworn to me this _____ day of _____, _____ (year)

_____
notary public
My commission expires:
_____ ".

C. In making a declaration of independent candidacy for vice president, the candidate shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY FOR VICE PRESIDENT

I, _____ (candidate's name), being duly sworn, say that I am a citizen of the United States, have been a resident of the United States for at least fourteen years and have attained the age of thirty-five.

I have been selected by independent presidential candidate _____ as his vice presidential running mate and desire to be that candidate for vice president. I will be eligible and legally qualified to hold this office at the beginning of its term.

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable in accordance with the criminal laws of New Mexico.

_____
(declarant)

_____
(residence address)

_____
(mailing address)

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_____
(city)

_____
(state and zip code)

Subscribed and sworn to me this _____ day of _____, _____ (year)

_____
(notary public)
My commission expires:
_____ ".

D. The independent presidential electors whom the independent candidate for president is required to name shall be registered voters of New Mexico; they may or may not be affiliated with a political party in New Mexico. United States senators, United States representatives and persons holding federal offices of trust or profit are not eligible to be electors.

E. When independent candidates for president and vice president appear on the general election ballot, a vote for that pair of nominees is a vote for that presidential candidate's electors.

F. If the independent candidates for president and vice president receive the highest number of votes at the general election, the independent presidential candidate's electors shall be the presidential electors of the state of New Mexico. As such, each elector shall be granted a certificate of election by the state canvassing board, and each elector shall be subject to the provisions of Sections 1-15-5 through 1-15-10 NMSA 1978.

History: 1953 Comp., § 3-8-27.5, enacted by Laws 1977, ch. 322, § 5; 1999, ch. 267, § 29.

1-8-50. Independent candidates for general or United States representative special elections; nominating petition form.

A. As used in Sections 1-8-45 through 1-8-52 NMSA 1978, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters that is signed on behalf of the person wishing to become an independent candidate for a political office in a general or United States representative special election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate shall file a nominating petition at the same time, which shall be on forms prescribed by law.

C. The nominating petition for an independent candidate for any office except president of the United States shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY

I, the undersigned, a registered voter of New Mexico, hereby nominate _____, who resides at _____ in the county of _____, New Mexico, as an independent candidate for the office of _____, to be voted for at the general election, or United States representative special election to be held on _____, (month) (day) _____ (year) and I declare that I am a registered voter of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the

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number of candidates necessary to fill the office at the next ensuing general election or at a United States representative special election.

1.	_____	_____	_____	_____
	(usual signature)	(name printed as registered)	(address as registered[)]	(city or zip code)
2.	_____	_____	_____	_____
	(usual signature)	(name printed as registered)	(address as registered[)]	(city or zip code).".

D. The nominating petition for an independent candidate for the office of president of the United States shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of New Mexico, by endorsement hereon, petition that the name of _____ be printed on the general election ballot as an independent candidate for the office of president of the United States, to be voted on at the general election to be held on November _____, _____. I also declare that I am that person whose name appears hereon and that I have not signed, nor will I sign, any nominating petition for any other candidate seeking the office of president of the United States at the next ensuing general election.".

E. In March of even-numbered years, the secretary of state shall post on the secretary of state's web site and shall furnish to each county clerk a sample of the nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate as provided by the Election Code.

F. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section, and all sheets shall be firmly secured by a staple or other suitable fastening.

History: 1953 Comp., § 3-8-27.6, enacted by Laws 1977, ch. 322, § 6; 1999, ch. 267, § 30; 2001, ch. 234, § 2; 2011, ch. 137, § 64.

1-8-51. Independent candidates for general or United States representative elections; nominating petitions; required number of signatures.

A. The basis of percentage for the total number of votes cast in each instance referred to in this section shall be the total vote cast for governor at the last preceding general election at which a governor was elected.

B. Nominating petitions for an independent candidate for president of the United States shall be signed by a number of voters equal to the number of signatures required to form a new political party.

C. Nominating petitions for an independent candidate for United States senator or any other statewide elective office shall be signed by a number of voters equal to at least two percent of the total number of votes cast in the state.

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D. Nominating petitions for an independent candidate for United States representative shall be signed by a number of voters equal to at least two percent of the total number of votes cast in the district.

E. Nominating petitions for an independent candidate for a member of the legislature, public regulation commission, district judge, district attorney, member of the public education commission, magistrate or county office shall be signed by a number of voters equal to at least two percent of the total number of votes cast in the district, division or county, as the case may be.

F. When a vacancy for any office occurs on the general election ballot pursuant to Section 1-8-7 or 1-8-8 NMSA 1978 in which all political parties may name a general election candidate or when a vacancy occurs in the office of United States representative pursuant to Section 1-15-18.1 NMSA 1978, an independent candidate may file a declaration of candidacy on or by the same deadline applicable to the political parties. The nominating petitions for an independent candidate in such circumstances shall be signed by the number of voters provided in this section, unless there are fewer than:

(1) sixty days from the announcement of the vacancy to the last day to file a declaration of candidacy, in which case an independent candidate shall submit nominating petitions signed by a number of voters equal to two-thirds the number of voters otherwise required by this section for an independent candidate; or

(2) thirty days from the announcement of the vacancy to the last day to file a declaration of candidacy, in which case an independent candidate shall submit nominating petitions signed by a number of voters equal to one-third the number of voters otherwise required by this section for an independent candidate.

G. A voter shall not sign a petition for an independent candidate as provided in this section if the voter has signed a petition for another independent candidate for the same office.

History: 1953 Comp., § 3-8-27.7, enacted by Laws 1977, ch. 322, § 7; 1990, ch. 39, § 3; 1991, ch. 105, § 15; 1998, ch. 36, § 8; 2019, ch. 212, § 98.

1-8-52. Independent candidates for general or United States representative special elections; nominating petitions; circulation; date of filing.

A. Declarations of independent candidacy and nominating petitions shall be filed with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the twenty-third day following the primary election of each even-numbered year and between 9:00 a.m. and 5:00 p.m. on the fifty-sixth day preceding any United States representative special election.

B. Declarations of independent candidacy and nominating petitions for the office of president of the United States shall be filed with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the twenty-third day following the primary election.

History: 1953 Comp., § 3-8-27.8, enacted by Laws 1977, ch. 322, § 8; 1981, ch. 147, § 8; 1989, ch. 392, § 19; 2005, ch. 270, § 55; 2011, ch. 137, § 65; 2014, ch. 40, § 8; 2014, ch. 81, § 8.

1-8-52.1. Repealed.

1-8-53. Recompiled.

1-8-54. Recompiled.

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1-8-54.1. Recompiled.

1-8-55. Recompiled.

1-8-56. Recompiled.

1-8-57. Recompiled.

1-8-58. Recompiled.

1-8-59. Recompiled.

1-8-60. Recompiled.

1-8-61. Recompiled.

1-8-62. Repealed.

1-8-63. Recompiled.

1-8-64. Repealed.

1-8-65. Minor political party candidates for general or United States representative special elections; nominating petition form.

A. As used in Sections 1-8-2 through 1-8-4 NMSA 1978, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters that is signed on behalf of the person wishing to become a minor political party candidate for a political office in a general or United States representative special election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate shall file a nominating petition at the same time, which shall be on forms prescribed by law.

C. The nominating petition for a minor political party candidate for any office requiring a nominating petition shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures approximately three-eighths inch apart and shall be in the following form:

"NOMINATING PETITION FOR MINOR POLITICAL
PARTY CANDIDACY (GENERAL ELECTION)

I, the undersigned, a registered voter of New Mexico, hereby nominate _____, who resides at _____ in the county of _____, New Mexico, for the _____ party nomination for the office of _____ to be voted for at the general election or United States representative special election to be held on _____, and I declare that I am a registered voter of the area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election or at a United States representative special election. I understand

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that if the candidate's political party does not qualify as a minor political party, the candidate may run as an unaffiliated independent candidate.

1.	_____ (usual signature)	_____ (name printed as registered)	_____ (address as registered)	_____ (city or zip code)
2.	_____ (usual signature)	_____ (name printed as registered)	_____ (address as registered)	_____ (city or zip code)".

D. In March of even-numbered years, the secretary of state shall post on the secretary of state's web site and shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section.

History: Laws 2014, ch. 40, § 7 and Laws 2014, ch. 81, § 7.

1-8-66. General elections; write-in candidates.

A. A person desiring to be a write-in candidate in a general election shall file with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the twenty-third day after the primary election a declaration of intent to be a write-in candidate.

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

C. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code, including the obligation to report under the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978], except that the candidate shall not be entitled to have the candidate's name printed on the ballot.

D. The secretary of state shall, not more than ten days after the filing date, certify the names of the declared write-in candidates to the county clerks of every county affected by such candidacy.

E. No person shall be a write-in candidate in the general election who was a candidate or who filed a declaration of candidacy in the primary election immediately prior to the general election. A write-in candidate for governor or lieutenant governor in the general election shall have a companion write-in candidate, and they shall be candidates to be elected jointly by the casting by a voter of a single vote applicable to both offices.

History: 1978 Comp., § 1-12-19.1, enacted by Laws 1981, ch. 156, § 2; 1983, ch. 232, § 15; 1991, ch. 105, § 27; 2005, ch. 270, § 69; 2009, ch. 150, § 15; 2011, ch. 137, § 89; 2014, ch. 40, § 9; 2014, ch. 81, § 9; recompiled and amended as § 1-8-66 by Laws 2019, ch. 212, § 112.

ARTICLE 9

Voting Machines

Sec.
1-9-1. Secretary of state; duties; voting system defined.
1-9-2. Repealed.
1-9-3. Repealed.
1-9-4. Repealed.

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Sec.
1-9-4.1. Repealed.
1-9-4.2. Recompiled.
1-9-5. Requirement to use voting systems; sufficient check-in stations and voting booths.
1-9-6. Voting systems; use in other elections.
1-9-7. Voting systems; acquisition.
1-9-7.1. Voting system; use of paper ballot; access for blind or visually impaired voters.
1-9-7.2. Voting systems; testing of previously certified systems.
1-9-7.3. Voting systems records.
1-9-7.4. Voting systems; authority of the secretary of state to recertify and decertify.
1-9-7.5. Voting systems; voting system certification committee; members.
1-9-7.6. Voting systems; storage; custody and maintenance; authority to enforce.
1-9-7.7. Voting systems; technical requirements.
1-9-7.8. Voting systems; operational requirements.
1-9-7.9. Voting systems; memory; removable storage media device; requirements.
1-9-7.10. Voting systems; ballot handling and processing requirements.
1-9-7.11. Voting systems; source code; escrow.
1-9-8. Repealed.
1-9-9. Repealed.
1-9-10. Repealed.
Sec.
1-9-11. Repealed.
1-9-12. Care and custody of removable storage media devices; responsibility for transportation of voting systems; responsibility for security and programming; charge for such transportation or programming.
1-9-13. Voting system technicians.
1-9-14. Voting systems; authority of the secretary of state to test; certification.
1-9-15. Repealed.
1-9-16. Repealed.
1-9-17. Additional voting systems; state board of finance; lease-purchase contract; terms.
1-9-17.1. Voting systems; renegotiation of lease-purchase contract; disposition of voting systems.
1-9-18. Electronic voting systems; method of payment by counties.
1-9-19. Voting system revolving fund.
1-9-20. Systems designed to print ballots at polling locations; ballot preparation requirements.
1-9-21. Systems designed to print ballots at polling locations; security requirements.
1-9-22. Systems designed to print ballots at polling locations; hardware, software and usability requirements.

1-9-1. Secretary of state; duties; voting system defined.

A. The secretary of state shall study, examine and certify all voting systems used in elections for public office in New Mexico. The secretary of state shall maintain a current list of certified voting systems and copies of filed testing and evaluation reports accessible by the public on the secretary of state's web site. Only voting systems certified by the secretary of state and acquired pursuant to a competitive bid process in accordance with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] shall be used in any election for public office in New Mexico.

B. As used in Chapter 1, Article 9 NMSA 1978, "voting system" means a combination of mechanical, electromechanical or electronic equipment, including the software and firmware required to program and control the equipment, that is used to cast and count votes, and also including any type of system that is designed to print or to mark ballots at a polling location; equipment that is not an integral part of a voting system but that can be used as an adjunct to it is considered to be a component of the system.

History: 1953 Comp., § 3-9-2, enacted by Laws 1969, ch. 240, § 184; 1976 (S.S.), ch. 5, § 1; 2001, ch. 233, § 1; 2010, ch. 28, § 10; 2011, ch. 137, § 69.

1-9-2. Repealed.

1-9-3. Repealed.

1-9-4. Repealed.

1-9-4.1. Repealed.

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1-9-4.2. Recompiled.

1-9-5. Requirement to use voting systems; sufficient check-in stations and voting booths.

A. Certified voting systems shall be used in all polling locations in all statewide elections.

B. The secretary of state shall provide to the county clerk of each county at least one optical scan tabulator for use in each polling location in the general and primary elections. At the request of a county clerk, the secretary of state shall provide additional optical scan tabulators for use in a polling place to accommodate the anticipated number of voters in that polling place and to preserve the secrecy of the ballot. The request shall be made no later than the first Monday in August of each odd-numbered year.

C. The secretary of state shall provide to the county clerk of each county a sufficient number of check-in stations for use in each polling location in the primary and general elections when electronic rosters or their equivalents are used. The number of check-in stations at a polling location shall be capable of accommodating the number of voters who appeared to vote in person on election day from the precincts represented in a consolidated precinct in the same election held four years earlier or the number of voters who actually voted in that polling location four years earlier, whichever is greater; provided that no polling location shall be provided fewer than two check-in stations. No later than the last Tuesday in June of each odd-numbered year, the secretary of state shall determine how many voters a check-in station can accommodate in a day and develop a formula so that a check-in station is in use no more than seventy-five percent of the time. No later than the first Monday in August of the odd-numbered year, the county clerk in each county shall provide to the secretary of state the number of check-in stations required per polling location based on the formula provided by the secretary of state. Nothing in this section prohibits the board of county commissioners from acquiring additional check-in stations for use in an election, in addition to those provided by the secretary of state.

D. The county clerk shall ensure that an adequate number of voting booths are provided to ensure that voters in each polling location may cast their ballots in secret.

History: 1953 Comp., § 3-9-6, enacted by Laws 1969, ch. 240, § 188; 1971, ch. 317, § 15; 1975, ch. 255, § 115; 1989, ch. 392, § 20; 1991, ch. 106, § 2; 1993, ch. 14, § 1; 2001, ch. 233, § 3; 2006, ch. 43, § 1; 2010, ch. 28, § 11; 2015, ch. 145, § 55.

1-9-6. Voting systems; use in other elections.

A. The county clerk may provide for the use of voting systems in other elections or for educational purposes; provided, however, that the county clerk shall make available:

(1) to the school district for use in the school district election, a sufficient number of voting systems necessary to conduct the election in those polling places located within that county; and

(2) to a municipality located in the county, a sufficient number of voting systems to conduct the municipal election.

B. The county clerk shall schedule the use of the voting systems.

History: 1953 Comp., § 3-9-7, enacted by Laws 1975, ch. 255, § 116; 1991, ch. 106, § 3; 2001, ch. 233, § 4.

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1-9-7. Voting systems; acquisition.

A. The secretary of state shall provide to the county clerk of each county a sufficient number of voting systems as required by the Election Code for the conduct of primary and general elections.

B. When authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting systems. No less than ninety days prior to each primary and general election, the board of county commissioners of each county may make application to the state board of finance for any additional voting systems to be acquired by a county in excess of the number of voting systems required by the Election Code for the conduct of primary and general elections.

C. The additional voting systems shall be of a type certified by the secretary of state. They shall be purchased by the state board of finance. Unless paid in full by the county at the time of purchase, the cost of the voting systems, including all transportation costs, shall be paid out of the voting system revolving fund. The state board of finance shall cause to be delivered to each county clerk the additional voting systems.

D. Except for intercounty acquisitions of equipment approved by the secretary of state, a previously owned voting system shall have a warranty equal to the warranty required of a new voting system.

History: 1953 Comp., § 3-9-8, enacted by Laws 1969, ch. 240, § 190; 1972, ch. 28, § 2; 1976 (S.S.), ch. 5, § 5; 1989, ch. 141, § 1; 1991, ch. 106, § 4; 2001, ch. 233, § 5; 2010, ch. 28, § 12; 2015, ch. 145, § 56.

1-9-7.1. Voting system; use of paper ballot; access for blind or visually impaired voters.

A. All voting systems used in elections covered by the Election Code shall use a paper ballot on which the voter physically or electronically marks the voter's choices on the ballot itself.

B. The secretary of state shall purchase the paper ballots for all counties to use for primary and general elections. If a system designed to print ballots at a polling location is certified and the voting system certification committee finds that its use in a polling place would result in cost savings, the secretary of state shall acquire such systems and paper ballot stock in lieu of fully preprinted paper ballots for those polling places where cost savings would be realized.

C. The paper ballot shall be used in a recount proceeding, and in case of a discrepancy, the paper ballot shall be considered the true and correct record of the voter's choices.

D. The secretary of state shall establish by rule procedures to enable blind or visually impaired voters to independently mark a paper ballot using nonvisual access or low vision access technology, whether voting in a polling place or by absentee ballot.

History: Laws 2005, ch. 270, § 56; 2006, ch. 43, § 2; 2010, ch. 28, § 13; 2017, ch. 101, § 11.

1-9-7.2. Voting systems; testing of previously certified systems.

The secretary of state may voluntarily test and certify voting systems without an application by the manufacturer if the system has been previously certified by the United States election assistance commission. Tests and inspections conducted pursuant to this section shall follow the procedures in Section 1-9-14 NMSA 1978; provided, however, if the manufacturer has not applied for certification of that voting system, the manufacturer shall not be required to pay for the costs of testing and certification.

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History: Laws 2005, ch. 270, § 57; 2010, ch. 28, § 14; 2017, ch. 101, § 12.

1-9-7.3. Voting systems records.

For each certified voting system purchased in 2006 and after, including any separate component, the secretary of state shall maintain records of the voting system and any component, including:

A. a description of each voting system and any of its components;
B. its serial number or other identification number;
C. the name of the vendor, the titleholder and the acquisition date;
D. its cost;
E. the percentage of federal participation covering the cost of acquisition;
F. its location, use and condition; and
G. its ultimate disposition, including the date of disposal and sale price.

History: Laws 2010, ch. 28, § 1.

1-9-7.4. Voting systems; authority of the secretary of state to recertify and decertify.

A. Each voting system certified for use in the state shall be reviewed for recertification by the secretary of state during the year following a presidential election. Tests and inspections conducted pursuant to this section shall begin no later than June 1 and shall follow the procedures in Section 1-9-14 NMSA 1978.

B. If at any time the secretary of state becomes aware that a voting system certified for use in this state does not comply with all requirements in the Election Code [Chapter 1 NMSA 1978] or meet federal election standards, the secretary of state shall undertake an investigation to determine if the voting system should continue to be certified for use in the state. Tests and inspections conducted pursuant to this section shall commence upon the order of the secretary of state and shall follow the procedures in Section 1-9-14 NMSA 1978. A voting system that does not comply with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission shall be decertified for use in this state.

History: Laws 2010, ch. 28, § 2.

1-9-7.5. Voting systems; voting system certification committee; members.

A. The "voting system certification committee" is created. The committee shall review written test reports and the findings of the secretary of state on the certification, recertification and decertification of voting systems for use in elections in the state.

B. The voting system certification committee shall be composed of:

(1) the secretary of information technology or the secretary's designee from within the department of information technology; and

(2) four additional members as follows:

(a) one member appointed by the president pro tempore of the senate;
(b) one member appointed by the minority floor leader of the senate;
(c) one member appointed by the speaker of the house of representatives; and
(d) one member appointed by the minority floor leader of the house of representatives.

C. The four additional members appointed pursuant to Paragraph (2) of Subsection B of this section shall be county clerks or their chief deputies or other persons knowledgeable of elections in this

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state. Members shall be appointed for terms of two years beginning on May 1 of each even-numbered year. Vacancies shall be filled by the original appointing authority.

D. The members of the committee shall select a committee member to serve as chair of the committee. No person who is currently or has been within the previous twelve months an employee or contractor of a voting machine vendor or the office of the secretary of state may serve as a member of the committee. Members of the committee are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [Chapter 10, Article 8 NMSA 1978], to be paid out of the funds appropriated to the secretary of state.

E. All meetings of the voting system certification committee shall be open meetings held in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. All reports and other records that are used, created, received, maintained or held by or on behalf of the voting system certification committee shall be open to public inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

History: Laws 2010, ch. 28, § 3; 2011, ch. 137, § 70.

1-9-7.6. Voting systems; storage; custody and maintenance; authority to enforce.

A. The secretary of state shall prescribe by rule promulgated pursuant to the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978] specifications for the proper storage of voting systems.

B. Voting systems shall be held in the custody of the county that uses the voting systems. All voting systems shall be properly stored pursuant to specifications promulgated by the secretary of state. The board of county commissioners shall be responsible for the costs of properly storing voting systems in custody of the county.

C. The secretary of state may pay from the voting system revolving fund the costs of all hardware, software, firmware, maintenance and support for voting systems, whether state- or county-owned, certified for use in state elections.

D. If the secretary of state becomes aware that state- or county-owned voting systems in the custody of a county are not being stored pursuant to specifications promulgated by the secretary of state, the secretary of state may take action as is deemed appropriate to protect the voting equipment. Such action may include requesting a court to order the county to implement the specifications promulgated by the secretary of state or the secretary of state taking immediate physical control of the voting systems until the county has complied with the storage specifications.

History: Laws 2010, ch. 28, § 4.

1-9-7.7. Voting systems; technical requirements.

Voting systems certified for use in state elections shall:

A. have a unique embedded internal serial number for audit purposes;

B. be supplied with a dust- and moisture-proof cover for transportation and storage purposes;

C. if the net weight of the system, or aggregate of voting device parts, is over twenty pounds, have self-contained wheels so that the system can be easily rolled by one person on rough pavement and can roll through a standard thirty-inch door frame;

D. be a stand-alone, non-networked election system such that all pre-election, election day and post-election events and activities can be recorded and retained in each device;

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E. employ scalable technology allowing easy enhancements that meet United States election assistance commission standards and state law;

F. have ancillary equipment, such as printers, power sources, microprocessors and switch and indicator matrices, that is installed internally or is modular and transportable;

G. display publicly the number of ballots processed;

H. be able to print:

(1) an alphanumeric printout of the contests, candidates and vote totals when the polls are opened so that the poll workers can verify that the counters for each candidate are on zero;

(2) an alphanumeric printout of the contests, candidates and vote totals at the close of the polls, which printouts shall contain the system serial number and public counter total; and

(3) as many copies of the alphanumeric printouts as necessary to satisfy state law; and

I. include a feature to allow reports to be sent to an electronic data file.

History: Laws 2010, ch. 28, § 5.

1-9-7.8. Voting systems; operational requirements.

Voting systems certified for use in state elections shall:

A. have internal application software that is specifically designed and engineered for the election application;

B. include comprehensive diagnostics designed to ensure that failures do not go undetected;

C. have a real-time clock capable of recording and documenting the total time polls are opened; and

D. have a self-contained, internal backup battery that powers all components of the system that are powered by alternating current power; and, in the event of a power outage in the polling place:

(1) the self-contained, internal backup battery power shall engage with no disruption of operation for at least two hours and with no loss of data; and

(2) the system shall maintain all vote totals, public counter totals and the internal clock time in the event that the main power and battery backup power fail.

History: Laws 2010, ch. 28, § 6.

1-9-7.9. Voting systems; memory; removable storage media device; requirements.

Voting systems certified for use in state elections shall:

A. be programmable with removable storage media devices;

B. contain ballot control information, summary vote totals, maintenance logs and operator logs on the removable storage media device;

C. ensure that the votes stored on the removable storage media device accurately represent the actual votes cast;

D. be designed so that no executable code can be launched from random access memory;

E. have any operating system software stored in nonvolatile memory, which shall include internal quality checks such as parity or error detection and correction codes, and which software shall include comprehensive diagnostics to ensure that failures do not go undetected;

F. allow for pre-election testing of the ballot control logic and accuracy, with results stored in the memory that is used on election day, and shall be capable of printing a zero-results printout prior to these tests and a results printout after the test;

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G. have internal audit trail capability such that all pre-election, election day and post-election events shall be stored, recorded and recovered in an easy-to-read printed form and be retained within memory that does not require external power for memory retention;

H. possess the capability of remote transmission of election results to a central location only by reading the removable storage media devices once they have been removed from the tabulation device after the poll closing sequence has been completed; and

I. prevent data from being altered or destroyed by report generation or by the transmission of results.

History: Laws 2010, ch. 28, § 7.

1-9-7.10. Voting systems; ballot handling and processing requirements.

Voting systems certified for use in state elections shall:

A. accept a ballot that is a minimum of six inches wide and a maximum of twenty-four inches long, in dual columns and printed on both sides;

B. accept a ballot in any orientation when inserted by a voter;

C. have the capability to reject a ballot on which a voter has made more than the allowable number of selections in any contest;

D. be designed to accommodate the maximum number of ballot styles or ballot variations encountered in the largest New Mexico election jurisdiction; and

E. be able to read a single ballot with at least four hundred twenty voting positions.

History: Laws 2010, ch. 28, § 8.

1-9-7.11. Voting systems; source code; escrow.

As a condition of initial certification and continued certification, the source code that operates a voting system shall be placed in escrow and be accessible to the state of New Mexico in the event the manufacturer ceases to do business or ceases to support the voting system.

History: Laws 2010, ch. 28, § 9.

1-9-8. Repealed.

1-9-9. Repealed.

1-9-10. Repealed.

1-9-11. Repealed.

1-9-12. Care and custody of removable storage media devices; responsibility for transportation of voting systems; responsibility for security and programming; charge for such transportation or programming.

A. The county clerk shall be responsible for transporting all voting systems to and from polling places.

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B. The county clerk shall have care and custody of and be responsible for the removable storage media devices for all voting systems in the custody of the county and shall be responsible for the programming of the systems.

C. When voting systems are used in any election, the county clerk shall assure the security of the removable storage media devices at all times during the period the voting systems are being programmed and until the votes recorded on the removable storage media devices are cleared pursuant to Section 1-13-21 NMSA 1978. The county clerk may give written authorization in advance to program the removable storage media devices outside of the county seat, and a copy of the authorization with the programmer named therein shall be kept on file in the county clerk's office subject to public inspection.

D. Failure of the county clerk to assure the security of voting system removable storage media devices in the county clerk's custody shall constitute a neglect to discharge the duties of the clerk's office.

E. A reasonable fee may be charged by the county for the transportation and programming of the voting systems when used pursuant to Section 1-9-6 NMSA 1978, but in no case shall such fee exceed the actual cost to the county.

History: 1953 Comp., § 3-9-13, enacted by Laws 1975, ch. 255, § 120; 1979, ch. 303, § 1; 1991, ch. 106, § 5; 2001, ch. 233, § 7; 2010, ch. 28, § 15.

1-9-13. Voting system technicians.

A. Voting system technicians shall be trained and certified by the secretary of state as to their adequacy of training and expertise on voting systems certified for use in the state.

B. The secretary of state shall train and recertify voting system technicians prior to each primary election.

C. For purposes of this section, "voting system technician" means any person who is trained and certified to program, inspect, properly store and troubleshoot voting systems.

D. The secretary of state shall adopt rules regulating the scope of training provided to voting system technicians to ensure that voting system warranties are not invalidated and that equipment owned by the state is protected.

History: 1953 Comp., § 3-9-14, enacted by Laws 1975, ch. 255, § 121; 1977, ch. 222, § 23; 1985, ch. 207, § 13; 1987, ch. 249, § 24; 1991, ch. 106, § 6; 2001, ch. 233, § 8; 2010, ch. 28, § 16.

1-9-14. Voting systems; authority of the secretary of state to test; certification.

A. The secretary of state shall provide for the testing and evaluation of voting systems designed for the purpose of recording and tabulating votes within polling places in New Mexico. All voting systems certified for use in the state shall be tested by an independent authority and shall comply with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission.

B. Any person who has a voting system that is designed for the purpose of recording and tabulating votes within a polling place may apply on or before June 1 of any odd-numbered year to the secretary of state to have the equipment examined and tested for certification. At the time application is made for initial certification, the applicant shall pay for testing each system in an amount that reflects the actual cost of such test. Upon receipt of the application, the secretary of state shall examine and study the voting system to ensure that it complies with all requirements in

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the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission. As part of the examination, the secretary of state shall require the system to be independently inspected by persons or testing laboratories technically qualified to evaluate and test the operation and component parts of voting systems and shall require a written report on the results of such testing. The secretary of state may authorize field testing of the equipment in one or more polling places in any state or local government election; provided that such field tests shall be conducted at no cost to the state or any local government.

C. Upon completion of all tests and examination of all written test reports, the secretary of state shall make a written report of the result of the findings and shall file that report, together with the written test reports, in the office of the secretary of state and post them on the secretary of state's website. The secretary of state shall accept public comment during the twenty-one days following the filing of the written report.

D. Following the period of public comment, the secretary of state shall submit the filed reports and any public comments for consideration by the voting system certification committee. The voting system certification committee shall make recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code.

E. The voting system certification committee shall recommend that a voting system be certified for use in the state only if it complies with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission.

F. If the voting system certification committee report finds that the voting system does not comply with all requirements in the Election Code or does not meet federal election standards, the secretary of state shall allow thirty days for an appeal of the findings to be filed or for the deficiencies to be corrected, following which the secretary of state shall report back to the voting system certification committee with a written final report.

G. The voting system certification committee shall reconvene to consider the final report of the secretary of state and shall make final recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code.

H. If the voting system certification committee recommends that the voting system is suitable for use in elections in New Mexico, within thirty days of receiving the recommendation, the secretary of state shall certify or recertify the equipment for use in elections in this state.

I. If the voting system certification committee does not recommend that the voting system for recording and tabulating votes is suitable for use in elections in New Mexico, within thirty days of receiving the recommendation, the secretary of state shall deny the application or decertify the equipment for use in elections in this state.

History: Laws 1983, ch. 226, § 1; 1989, ch. 297, § 1; 1991, ch. 106, § 7; 2001, ch. 233, § 9; 2010, ch. 28, § 17; 2017, ch. 101, § 13.

1-9-15. Repealed.

1-9-16. Repealed.

1-9-17. Additional voting systems; state board of finance; lease-purchase contract; terms.

A. The state board of finance shall execute a lease-purchase contract with the county for purchase of additional voting systems and the necessary support equipment upon receipt of the application of the board of county commissioners pursuant to Section 1-9-7 NMSA 1978.

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B. The lease-purchase contract shall include, but not be limited to, the following terms:

(1) the county agrees to purchase from the state board of finance the specified number of voting systems and the necessary support equipment;

(2) the county will pay for the cost of the systems and support equipment, including reimbursement for costs of transportation;

(3) the term of the lease-purchase contract shall not exceed ten years;

(4) the care, custody and proper storage of the systems and support equipment pursuant to specifications issued by the secretary of state is the responsibility of the county clerk; and

(5) upon good cause shown, the terms of the lease-purchase contract may, at any time, be renegotiated.

History: 1978 Comp., § 1-9-17, enacted by Laws 1985, ch. 207, § 16; 1991, ch. 106, § 10; 2001, ch. 233, § 12; 2010, ch. 28, § 18.

1-9-17.1. Voting systems; renegotiation of lease-purchase contract; disposition of voting systems.

A. A lease-purchase contract for a voting system entered into between the state board of finance and a county pursuant to Section 1-9-17 NMSA 1978, after a renegotiation pursuant to Paragraph (5) of Subsection B of that section, may include provisions providing that, upon the return of physical control of the voting systems to the state board of finance, the contract shall be terminated and no additional payments from the county shall be due. The state board of finance may dispose of voting systems returned pursuant to this subsection in any manner that is consistent with the interests of the state.

B. Upon application by the board of county commissioners, the secretary of state shall dispose of voting systems and support equipment purchased after January 1, 2007 by the board of county commissioners. The application shall include a provision for the transfer of ownership in the voting systems to the state without fee or compensation to the county.

History: 1978 Comp. § 1-9-17.1, as enacted by Laws 2009, ch. 173, § 1; 2010, ch. 28, § 19.

1-9-18. Electronic voting systems; method of payment by counties.

A. The department of finance and administration and the board of county commissioners shall budget annually for as many years as may be necessary from county funds in each county acquiring electronic voting systems and support equipment an amount sufficient to enable the county to pay to the state board of finance installment payments required to be paid under the terms of the lease-purchase contract.

B. The board of county commissioners of each county having a lease-purchase contract with the state board of finance shall pay such payments, at the times and in the amounts as provided by the terms of the lease-purchase contract. The state board of finance shall deposit the payments into the severance tax bonding fund if the electronic voting systems and support equipment were originally purchased with severance tax bond proceeds. The state board of finance shall deposit the payments into the electronic voting system revolving fund if the electronic voting systems were originally purchased with money from the electronic voting system revolving fund.

History: 1978 Comp., § 1-9-18, enacted by Laws 1985, ch. 207, § 17; 2001, ch. 233, § 13.

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1-9-19. Voting system revolving fund.

A. The "voting system revolving fund" is created. The voting system revolving fund may be used:

(1) by the secretary of state to pay for hardware, software, firmware, maintenance and support for voting systems, whether state- or county-owned, certified for use in state elections; and

(2) by the counties to finance, by contract, the purchase of voting systems and necessary support equipment under the conditions stated in Section 1-9-17 NMSA 1978; provided that no expenditure shall be made pursuant to this paragraph if it would result in a fund balance of less than one million dollars ($1,000,000).

B. The voting system revolving fund may be expended upon vouchers signed by the secretary of finance and administration.

C. If at the end of a fiscal year the voting system revolving fund exceeds six million five hundred thousand dollars ($6,500,000), the amount in excess of six million five hundred thousand dollars ($6,500,000) shall revert to the general fund.

History: 1978 Comp., § 1-9-19, enacted by Laws 1985, ch. 207, § 18; 2001, ch. 233, § 14; 2003, ch. 356, § 27; 2010, ch. 28, § 20.

1-9-20. Systems designed to print ballots at polling locations; ballot preparation requirements.

Systems designed to print ballots at polling locations shall provide the general capabilities for ballot preparation and shall be capable of:

A. enabling the automatic formatting of ballots in accordance with the requirements of the Election Code, as amended from time to time, for offices, candidates and questions qualified to be placed on the ballot for each political subdivision and election district;

B. supporting the maximum number of potentially active voting positions;

C. generating ballots for a primary election that segregate the choices in partisan contests by party affiliation;

D. generating ballots that contain identifying codes or marks uniquely associated with each format;

E. ensuring that voting response fields properly align with the specific candidate names or questions printed on the ballot;

F. generating ballots that can be tabulated by all certified voting systems in the state;

G. generating a ballot for an individual voter based on voter registration data provided by state or county;

H. functionality in absentee, early and election day voting environments;

I. providing absentee ballot tracking ability;

J. uniform allocation of space and fonts used for each office, candidate and question such that the voter perceives no active voting position to be preferred to any other;

K. rendering the ballot in any of the written languages required by the federal Voting Rights Act of 1965, as amended;

L. conformity with optical scan vote tabulator vendor specifications for type of paper stock, weight, size and shape; size and location of voting positions used to record votes; folding; bleed-through; and ink for printing; and

M. interfacing with the statewide voter file for the exchange of data.

History: Laws 2011, ch. 137, § 66.

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1-9-21. Systems designed to print ballots at polling locations; security requirements.

Systems designed to print ballots at polling locations shall provide the security capabilities for ballot preparation and shall be capable of:

A. providing a full audit trail of individual voter activity;

B. providing full ballot production audit logs for all activity, including absentee voting by mail, in-person absentee voting, early voting, provisional voting and spoiling ballots;

C. creation and preservation of an audit trail of every ballot issued, including during a period of interrupted communication in the event of loss of network connectivity;

D. suitable security passwords at user, administrator and management levels;

E. preventing the modification of ballot formatting by polling place users; and

F. retaining full functionality and capability of printing ballots during a period of interrupted communication in the event of loss of network connectivity.

History: Laws 2011, ch. 137, § 67.

1-9-22. Systems designed to print ballots at polling locations; hardware, software and usability requirements.

Systems designed to print ballots at polling locations shall:

A. provide hardware requirements that:

(1) shall be networkable and scalable for multi-user environments;

(2) function without degradation in capabilities after transit to and from the place of use;

(3) function without degradation in capabilities after storage between elections;

(4) function in the natural environment, including variations in temperature, humidity and atmospheric pressure;

(5) function in an induced environment, including proper and improper operation and handling of the system and its components during the election process;

(6) contain prominent instructions as to any special requirements;

(7) have no restrictions on space allowed for installation, except that the arrangement of the system shall not impede the performance of duties by election workers, the orderly flow of voters through the polling place or the ability of voters to vote in private; and

(8) operate with the electrical supply ordinarily found in polling place, nominal one hundred twenty volts alternating current, sixty hertz, single phase;

B. provide software requirements that shall:

(1) be capable of exporting voter data and voter activity status data to state and county voter registration systems;

(2) be capable of generating all required absentee and early voting signature rosters in a state-approved format;

(3) generate daily and to-date activity reports based on user-defined criteria; and

(4) have both single transaction and batch transaction absentee production capability; and

C. be capable of being operated by computer users familiar with a graphical user interface.

History: 2011, ch. 137, § 68.

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ARTICLE 10
Ballots and Ballot Labels

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1-10-1. Ballot.

As used in the Election Code [Chapter 1 NMSA 1978]:

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

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

History: 1953 Comp., § 3-10-11.1, enacted by Laws 1977, ch. 222, § 24; 1985, ch. 207, § 19; 2003, ch. 356, § 28; 2009, ch. 150, § 8.

1-10-2. Ballots; duty to provide.

The county clerk shall prepare and supply the ballots used in elections conducted under the Election Code [Chapter 1 NMSA 1978]. The secretary of state may assist in preparing and supplying ballots. Ballots other than those prepared by the county clerk or secretary of state shall not be used.

History: 1953 Comp., § 3-10-11.2, enacted by Laws 1977, ch. 222, § 25; 2007, ch. 337, § 12.

1-10-2.1. Repealed.

1-10-3. Ballots; uniformity.

A. Ballots shall be uniform throughout the state and compatible with the type of voting machine used in the county.

B. The secretary of state shall determine in each election, where applicable, the position of the parties, constitutional amendments, questions and the names of nominees to be voted on by the voters of the entire state.

History: 1953 Comp., § 3-10-11.3, enacted by Laws 1977, ch. 222, § 26; 1985, ch. 207, § 20.

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1-10-4. Ballots; preparation.

A. In a primary election, not less than sixty days before the election, each county clerk shall group each candidate who has been qualified by a proper filing officer and a space for any offices with a declared write-in candidate, separated by political party and certify in writing a separate ballot for each precinct in the county for each major political party to be voted on at the primary election.

B. In a general election, not less than sixty days before the election, each county clerk shall certify in writing the ballot for each precinct in the county containing the name of each candidate that has been certified as the nominee of a qualified political party, each unaffiliated candidate who has been qualified by a proper filing officer, a space for any offices with a declared write-in candidate and any ballot questions to be voted on at the general election.

C. In a regular local election, not less than sixty days before the election, each county clerk shall certify in writing the ballot for each precinct in the county containing the name of each candidate who has been qualified by a proper filing officer, a space for any offices with a declared write-in candidate and any ballot questions to be voted on at the regular local election.

D. In a special local election, not less than sixty days before the election, each county clerk shall certify in writing the ballot for each precinct in the county containing any ballot questions to be voted on at the special election.

E. In a special state election, not less than sixty days before the election, the secretary of state shall certify in writing the ballot containing any ballot questions to be voted on at the special state election.

F. In an election to fill a vacancy in the office of United States representative and except as provided in Subsection G of this section, not less than fifty-three days before the election, the secretary of state shall certify in writing the ballot containing the name of each candidate that has been certified as the nominee of a qualified political party, each unaffiliated candidate who has been qualified and a space for any declared write-in candidate to be voted on at the election to fill a vacancy in the office of United States representative.

G. In an election to fill a vacancy in the office of United States representative in extraordinary circumstances pursuant to 2 U.S.C. Section 8(b), not more than seventeen days after the announcement of a vacancy in the office of United States representative, the secretary of state shall certify in writing the ballot containing the name of each candidate that has been certified as the nominee of a qualified political party, each unaffiliated candidate who has been qualified and a space for any declared write-in candidate to be voted on at the election to fill a vacancy in the office of United States representative.

H. On the date specified for each election in this section, each ballot certified pursuant to this section shall be sent to the ballot printer or other person preparing the ballot for use by voters and sent to the secretary of state to keep on file for twelve months, after which the certified ballot shall be transferred to be a permanent record at the state records center. Upon request of the county chair of a political party participating in a partisan election, the county clerk shall furnish proof sheets or a copy of the proof sheets of the certified ballot as soon as they become available.

History: 1953 Comp., § 3-10-11.4, enacted by Laws 1977, ch. 222, § 27; 1979, ch. 378, § 11; 1981, ch. 143, § 1; 1985, ch. 207, § 21; 2011, ch. 137, § 71; 2017, ch. 101, § 14; 2019, ch. 212, § 99.

1-10-5. Ballots; printing.

The county clerk shall have access to sufficient ballots to send to federal qualified electors no later than the last business day before the forty-fifth day prior to an election. All other pre-printed ballots

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shall be in the possession of the county clerk at least forty days before the election. When a county is using a system that is designed to print ballots at a polling location, the system shall be programmed and capable of operation at least forty days before the election.

History: 1953 Comp., § 3-10-11.5, enacted by Laws 1977, ch. 222, § 28; 2009, ch. 150, § 9; 2011, ch. 137, § 72; 2015, ch. 145, § 57; 2019, ch. 212, § 100.

1-10-6. Ballots; name to be printed; similar names; names not to be printed.

A. In the preparation of ballots for a statewide election, the candidate's name shall be printed on the ballot as it appears on the candidate's certificate of registration that is on file in the county clerk's office on the day the secretary of state issues the proclamation for that election; provided that:

(1) the last name printed on the ballot shall match the candidate's legal last name;

(2) academic, honorific and elected titles shall not be printed;

(3) periods after initials shall not be printed;

(4) punctuation common to names, other than a period, shall be printed as it appears on the candidate's certificate of registration; and

(5) only letters and punctuation used in roman typefaces shall be printed.

B. If it appears that the names of two or more candidates for any office to be voted on at the election are the same or are so similar as to tend to confuse the voter as to the candidates' identities, the occupation and, if further differentiation is necessary, the year of birth, of each such candidate shall be printed immediately under the candidate's name on the ballot.

C. A candidate's name shall not be printed on the ballot if at least seventy days before a general election, sixty-three days before a primary election or regular local election or seven days after the filing day for declarations of candidacy for any other election:

(1) the candidate files with the proper filing officer a signed and notarized statement of withdrawal as a candidate in that election;

(2) a judicial determination is made that the candidate does not qualify to be a candidate for the office sought;

(3) the voter registration of the candidate is updated by the candidate in such manner that the candidate does not qualify to be a candidate for the office sought; or

(4) the voter registration of the candidate is canceled for any reason provided in Chapter 1, Article 4 NMSA 1978.

History: 1953 Comp., § 3-10-11.6, enacted by Laws 1977, ch. 222, § 29; 1979, ch. 378, § 12; 1981, ch. 143, § 2; 1993, ch. 314, § 52; 1993, ch. 316, § 52; 2019, ch. 212, § 101.

1-10-7. Ballots; name shall appear but once; exceptions.

A. In a primary or general election, no candidate's name shall appear more than once on the ballot, except in the case of a candidate who is also a candidate for president or vice president of the United States.

B. In a regular local election, a candidate's name:

(1) shall not appear more than once to be elected to any position with the same local government; and

(2) may appear more than once to be elected to any position with different local governments.

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History: 1953 Comp., § 3-10-11.7, enacted by Laws 1977, ch. 222, § 30; 1979, ch. 378, § 13; 1981, ch. 143, § 3; 2019, ch. 212, § 102.

1-10-7.1. Repealed.

1-10-8. Ballots; order of offices and ballot questions.

A. In the year in which the president of the United States is elected, the ballot in a primary election and general election shall contain, when applicable, partisan offices to be voted on in the following order:

(1) in a presidential primary, president;
(2) in a general election, president and vice president as a ticket;
(3) United States senator;
(4) United States representative;
(5) state senator;
(6) state representative;
(7) supreme court;
(8) court of appeals;
(9) public regulation commission districts with odd-numbered designations;
(10) public education commission districts with odd-numbered designations;
(11) district court;
(12) metropolitan court;
(13) county clerk;
(14) county treasurer; and
(15) county commission districts and positions with odd-numbered designations.

B. In the year in which the governor is elected, the ballot in a primary election and general election shall contain, when applicable, partisan offices to be voted on in the following order:

(1) United States senator;
(2) United States representative;
(3) in a major political party primary, governor;
(4) in a major political party primary, lieutenant governor;
(5) in a general election, governor and lieutenant governor as a ticket;
(6) secretary of state;
(7) attorney general;
(8) state auditor;
(9) state treasurer;
(10) commissioner of public lands;
(11) state representative;
(12) supreme court;
(13) court of appeals;
(14) public regulation commission districts with even-numbered designations;
(15) public education commission districts with even-numbered designations;
(16) district court;
(17) district attorney;
(18) metropolitan court;
(19) magistrate court;
(20) county sheriff;
(21) county assessor;

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(22) county commission districts and positions with even-numbered designations; and

(23) probate judge.

C. The ballot in a regular local election shall contain, when applicable, nonpartisan offices to be voted on in the following order:

(1) municipal, with elective executive officers listed first, governing board members listed second and judicial officers listed third;

(2) board of education of a school district;

(3) community college, branch community college, technical and vocational institute district or learning center district; and

(4) special districts listed in order by voting population of each special district, with the most populous listed first and the least populous listed last.

D. The ballot in a statewide election shall contain, when applicable, nonpartisan judicial retention and in a statewide or special election, when applicable, ballot questions to be voted on in the following order, unless a different order is prescribed by the secretary of state:

(1) judicial retention;

(2) proposed state constitutional amendments;

(3) other state ballot questions;

(4) county ballot questions; and

(5) local government ballot questions listed in the same order as the list of local governments in Subsection C of this section.

E. When multiple positions for the same nonjudicial office are listed on the same ballot and each position is to be elected individually:

(1) offices designated by district number shall appear on the ballot in ascending numerical order of the districts;

(2) offices not designated by district number shall appear on the ballot in ascending numerical order of the position; provided that the secretary of state shall numerically designate the positions on the ballot as "position one", "position two" and such additional consecutively numbered positions as are necessary, and only one member shall be elected for each position; and

(3) whenever two or more positions for the same office are to be elected to represent the same area with terms of different lengths of time, the secretary of state shall first group the offices with the shorter length of time and shall designate each position with "for a term expiring _____", specifying the date the term expires.

F. When multiple positions for the same judicial office are listed on the same ballot and each position is to be elected or voted on individually:

(1) district, metropolitan and magistrate court positions, either for partisan election or for nonpartisan judicial retention, shall appear on the ballot in ascending numerical order of the division number assigned to each position;

(2) supreme court and court of appeals for partisan election shall appear on the ballot in ascending numerical order of the position number designated by the secretary of state for that election, based on the date of the vacancy causing the position to be listed on the ballot; provided that if multiple vacancies occurred on the same day, the positions shall appear on the ballot based on the order of seniority of the justice or judge who vacated the position, with the highest seniority listed first; and

(3) supreme court and court of appeals for nonpartisan judicial retention shall appear on the ballot in ascending numerical order of the position number designated by the secretary of state for that election, based on the seniority of the justice or judge seeking retention, with the highest seniority listed first.

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History: 1953 Comp., § 3-10-11.8, enacted by Laws 1977, ch. 222, § 31; 1991, ch. 105, § 17; 2011, ch. 56, § 1; 2015, ch. 145, § 58; 1978 Comp., § 1-10-8, repealed and reenacted by Laws 2019, ch. 212, § 103.

1-10-8.1. Ballots; order of candidate names; party position on ballot.

A. Except as provided in this section, the order of candidates for the same office in a statewide election shall be determined using a randomization method provided by rule based on candidate name or determined by lot.

B. In a general election, the order of candidates for the same office shall be determined using a randomization method provided by rule based on political party or candidate name or determined by lot.

C. Candidates designated and certified by state convention pursuant to Section 1-8-21.1 NMSA 1978 shall be placed on the respective political party primary ballot before other candidates for the same office in descending order of the vote received at the applicable state convention; provided that the order of names on the respective political party primary ballot of two or more candidates receiving an equal number of votes for designation by convention for the same office shall be determined using a randomization method provided by rule based on candidate name or determined by lot.

History: Laws 1981, ch. 166, § 1; 1985, ch. 207, § 22; 1991, ch. 105, § 18; 2009, ch. 150, § 13; 2019, ch. 212, § 104.

1-10-9. Ballots; errors and omissions.

A. If an error or omission has occurred in the printed ballot, the district court, upon petition of any voter, may order the county clerk to forthwith correct the error or supply the omission, or immediately show cause why the error should not be corrected or the omission should not be supplied.

B. If any error occurs in the printing on the ballot of the name of any candidate or in the designation of the office for which he is nominated, the ballot shall nevertheless be counted for such candidate for the office for which he was nominated as shown by the certificate of nomination.

History: 1953 Comp., § 3-10-13, enacted by Laws 1969, ch. 240, § 208.

1-10-10. Ballots; sample.

A. The county clerk shall make available in both English and Spanish a number of sample ballots in a quantity and in a printed or electronic format as prescribed by the secretary of state.

B. The sample ballots shall be the same in all respects as the official ballots, except that, if printed, they shall be printed on colored paper and shall not contain the facsimile signature of the county clerk or any endorsement on the back thereof. Each sample ballot shall be marked in large black capital letters, "SAMPLE BALLOT".

C. Printed sample ballots shall be made available in reasonable quantities to all interested persons at the county clerk's office, in each polling place and on the county's web site, if the county maintains a web site.

History: 1953 Comp., § 3-10-14, enacted by Laws 1969, ch. 240, § 209; 1971, ch. 317, § 18; 1977, ch. 124, § 4; 1985, ch. 207, § 23; 2015, ch. 145, § 59.

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1-10-11. Sample ballots; penalty.

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

History: 1953 Comp., § 3-10-15, enacted by Laws 1969, ch. 240, § 210; 1977, ch. 124, § 5; 1981, ch. 143, § 4; 2009, ch. 150, § 14.

1-10-12. Paper ballots; general requirements.

Paper ballots shall:

A. be numbered consecutively;

B. be uniform in size;

C. be printed on good quality white paper;

D. be printed in plain black type;

E. have the precinct numbers printed on each paper ballot; and

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

History: 1953 Comp., § 3-12-78, enacted by Laws 1977, ch. 222, § 47; 1987, ch. 249, § 39; 1991, ch. 105, § 34; § 1-12-44 NMSA 1978, recompiled and amended as § 1-10-12 NMSA 1978 by Laws 2009, ch. 150, § 10.

1-10-13. Ballots; write-in candidates.

When a write-in candidate has been qualified by the proper filing officer pursuant to the Election Code:

A. a space for entering the name of the write-in candidate shall be clearly designated by the use of the heading "Declared Write-in Candidate" after the listing of other candidates for that office; and

B. the write-in candidate's name shall not be pre-printed on the ballot, nor displayed or otherwise provided in any polling place by any election official or member of an election board.

History: 1953 Comp., § 3-12-81, enacted by Laws 1977, ch. 222, § 50; § 1-12-47 NMSA 1978, recompiled and amended as § 1-10-13 NMSA 1978 by Laws 2009, ch. 150, § 11; 2019, ch. 212, § 105.

1-10-14. Paper ballots; election supplies.

The secretary of state shall provide for the procurement of paper ballot election supplies.

History: 1953 Comp., § 3-12-83, enacted by Laws 1977, ch. 222, § 52; § 1-12-49 NMSA 1978, recompiled and amended as § 1-10-14 NMSA 1978 by Laws 2009, ch. 150, § 12.

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ARTICLE 10A
Ballot Positioning

(Repealed by Laws 1994, ch. 3, § 2.)

1-10A-1 to 1-10A-3. Repealed.

ARTICLE 11
Notices, Preparation for Elections and Election Supplies

Sec.
1-11-1. Notice of election.
1-11-2. Notice of election; contents.
1-11-3. Notice of election; publication; posting.
1-11-4. Notice of election; errors and omissions.
1-11-5. Voting device; preparation; certification.
1-11-6. Voting machines; manner of preparing.
1-11-6.1. Electronic voting machines; testing.
1-11-7. Voting machine; certificate of preparation.
1-11-8. Voting machines; notice of sealing.
1-11-9. Repealed.
1-11-10. Voting machines; objections to use.
1-11-11. Election supplies; voting machines; delivery.
1-11-12. Repealed.
1-11-12.1. Repealed.
1-11-13. Index of voters.
1-11-14. Tally sheets and statements of canvass; preparation.
1-11-15. Signature rosters; checklist of registered voters; tally sheets; form.
1-11-16. Signature roster certificates; checklist of registered voter's certificates; precinct board member's oath.
1-11-17. Repealed.
1-11-18. Election supplies.
1-11-19. Costs of elections; local election assessment; election fund established.

1-11-1. Notice of election.

The county clerk shall, at least twenty-one days prior to a statewide election, give notice of the election.

History: 1953 Comp., § 3-11-1, enacted by Laws 1969, ch. 240, § 211; 2019, ch. 212, § 106.

1-11-2. Notice of election; contents.

The notice of election shall, as applicable:

A. give notice of the election;

B. set forth the purpose of the election;

C. list the ballot question or questions to be voted on by voters of any precinct of the county other than those questions that have been published by the secretary of state;

D. list the final day and time when absentee or mailed ballots will be accepted by the county clerk; and

E. for a statewide election:

(1) list the offices to be filled by voters of any precinct of the county;

(2) list all qualified candidates for those offices whose names shall appear on the ballot and, except in the case of a regular local election, list their party affiliation;

(3) list all qualified candidates for nonpartisan judicial retention;

(4) list all qualified declared write-in candidates for each of the offices to be filled; and

(5) give the address or location and the hours of operation where the election is to be held at:

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(a) the office of the county clerk;
(b) each alternate voting location and mobile alternate voting location; and
(c) each election day polling place.

History: 1953 Comp., § 3-11-2, enacted by Laws 1969, ch. 240, § 212; 1991, ch. 105, § 19; 2011, ch. 137, § 73; 2019, ch. 212, § 107.

1-11-3. Notice of election; publication; posting.

A. The notice of election shall be published at least once, not more than twenty-one nor less than seven days before election day.

B. The notice of election shall be published in a legal newspaper as provided in Section 14-11-2 NMSA 1978.

C. If no legal newspaper is published in the county, the notice of election shall be published in a legal newspaper of general circulation in the county.

D. The county clerk shall post the notice of election beginning no later than twenty days before the election. The county clerk shall also place on the county website the proclamation for the election or provide a link to the proclamation posted on the secretary of state's website.

E. The notice of election shall be printed in English and Spanish.

F. The notice of election shall be broadcast on a radio station in the appropriate Native American languages in those counties affected by the federal Voting Rights Act of 1965, as amended.

History: 1953 Comp., § 3-11-3, enacted by Laws 1969, ch. 240, § 213; 1977, ch. 124, § 6; 1991, ch. 105, § 20; 2019, ch. 212, § 108.

1-11-4. Notice of election; errors and omissions.

A. The county clerk may amend the notice of election between the time of its issuance and the day of election to provide for any corrections or to supply any omissions.

B. Upon petition of any voter that an error or omission has occurred in the notice of election, the district court may forthwith order the county clerk to correct the error or to supply the omission or immediately show cause why the error should not be corrected or the omission should not be supplied.

History: 1953 Comp., § 3-11-4, enacted by Laws 1969, ch. 240, § 214; 2019, ch. 212, § 109.

1-11-5. Voting device; preparation; certification.

Forty-two days before the election, the county clerk may begin to prepare, inspect, certify and seal electronic voting machines that are to be used in the election, and such preparation, inspection, certification and sealing shall continue until all machines are prepared, inspected, certified and sealed.

History: 1953 Comp., § 3-11-6, enacted by Laws 1969, ch. 240, § 215; 1981, ch. 137, § 1; 1985, ch. 207, § 24; 2011, ch. 137, § 74.

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1-11-6. Voting machines; manner of preparing.

When preparing, inspecting and sealing voting machines, the county clerk shall:

A. certify to the secretary of state and the county chair of each political party participating in the election the type and serial number of each voting machine intended to be used in each polling location, by precinct number, where applicable;

B. prepare, in the presence of those persons entitled to be present, the electronic voting machines for the election as follows:

(1) all public, candidate and question counters shall be set at zero;

(2) each such counter shall be tested for accuracy by casting votes upon it until it correctly registers each vote cast;

(3) each such counter shall be reset at zero and the voting machine shall be immediately sealed with a numbered metal seal so as to prevent operation of the machine or its registering counters without breaking the seal; and

(4) on the certificate for that voting machine there shall be recorded:

(a) the number on the seal; and

(b) the reading shown on the protective counter; and

C. seal and retain the logic and accuracy test printout, known as the internal audit trail, until it may be disposed of pursuant to Section 1-12-69 NMSA 1978.

History: 1953 Comp., § 3-11-7, enacted by Laws 1969, ch. 240, § 216; 1985, ch. 207, § 25; 1989, ch. 392, § 21; 2011, ch. 137, § 75.

1-11-6.1. Electronic voting machines; testing.

All programming of vote tabulating machines shall be tested under the supervision of the county clerk. The machines shall be programmed so that votes will be counted in accordance with the specifications for electronic voting machines.

History: 1978 Comp., § 1-11-6.1, enacted by Laws 1985, ch. 207, § 26; 1991, ch. 105, § 21; 2011, ch. 137, § 76.

1-11-7. Voting machine; certificate of preparation.

Immediately after each electronic voting machine has been prepared for the election, the county clerk shall prepare a written certificate, which shall be filed in the county clerk's office. A copy of the certificate shall be posted on the voting machine, and one copy shall be forwarded to the secretary of state. The certificate shall show the serial number for the voting machine, whether or not the machine has all of its public counters set at zero and whether or not the machine has been tested by voting on each public counter to prove the counter is in perfect condition. The certificate shall also show the number of the seal that has sealed the machine and the number registered on the public counter.

History: 1953 Comp., § 3-11-8, enacted by Laws 1969, ch. 240, § 217; 1981, ch. 137, § 2; 1985, ch. 207, § 27; 2011, ch. 137, § 77.

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1-11-8. Voting machines; notice of sealing.

A. At least three days before preparing any type of voting machine for an election, the county clerk shall send notice to the county chair of each political party having a candidate on the ballot in the election. The notice shall state the times when and places where the voting machines will be prepared.

B. Party and organization representatives, election observers and candidates may be present at the preparation, inspection and sealing of the voting machines to ensure compliance with the Election Code.

History: 1953 Comp., § 3-11-9, enacted by Laws 1969, ch. 240, § 218; 1985, ch. 207, § 28; 2011, ch. 137, § 78.

1-11-9. Repealed.

1-11-10. Voting machines; objections to use.

Unless an objection to the use of a particular voting machine is filed in the district court within two days after it is prepared, inspected and sealed, the voting machine when certified to be correct by the county clerk shall be conclusively presumed to be properly prepared for the election. Any objection so filed shall specify the number of the voting machine objected to and the reason for the objection.

History: 1953 Comp., § 3-11-11, enacted by Laws 1969, ch. 240, § 220.

1-11-11. Election supplies; voting machines; delivery.

A. Voting machines shall be delivered to the assigned precinct polling place at least three days before the polls are required to be opened. The election supplies and the keys of voting machines shall be delivered to the presiding judge at least one hour before the polls are required to be opened.

B. The county clerk of any county shall certify to the secretary of state on forms provided by the secretary of state, that he has inspected each voting machine after delivery but before the date of the election and has found each machine to have been correctly labeled, that there has been no obvious external damage in delivery and that each machine has been delivered to the proper polling place in each precinct.

History: 1953 Comp., § 3-11-12, enacted by Laws 1969, ch. 240, § 221; 1977, ch. 222, § 32; 1989, ch. 392, § 22.

1-11-12. Repealed.

1-11-12.1. Repealed.

1-11-13. Index of voters.

Upon the written request of a qualified political party, a candidate, an election-related organization or an election observer, the secretary of state shall send to the requester an index of all voters

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and their addresses, their party affiliation, their precinct, their voter history, their unique identifier and their early or absentee voting status in any election currently underway. Each index shall be certified by the secretary of state as being an accurate listing of all voters in each requested county. The written request shall specify whether the information is to be received electronically or on paper, the electronic or physical delivery address, the time period during which the information is to be received, the frequency of receiving the information and the method of payment.

History: 1953 Comp., § 3-11-14, enacted by Laws 1969, ch. 240, § 223; 2011, ch. 137, § 79.

1-11-14. Tally sheets and statements of canvass; preparation.

Prior to election day, the secretary of state shall cause to be printed in the tally sheets and statements of canvass, in the proper places and under the proper designations, the names of all candidates appearing on the official ballot. The secretary shall approve a county's use of computer-based tally sheets upon recommendation of the voting system certification committee if the county submits the software program to be used for tallying to the secretary of state at least ninety days prior to the election and the voting system certification committee determines that the program is acceptable for the proposed use.

History: 1953 Comp., § 3-11-15, enacted by Laws 1969, ch. 240, § 224; 1981, ch. 137, § 3; 2003, ch. 226, § 1; 2011, ch. 137, § 80.

1-11-15. Signature rosters; checklist of registered voters; tally sheets; form.

Signature rosters, checklists of registered voters and tally sheets shall be in the form prescribed by the secretary of state.

History: 1953 Comp., § 3-11-17, enacted by Laws 1969, ch. 240, § 226; 1977, ch. 222, § 33; 1981, ch. 137, § 4; 1985, ch. 207, § 31; 1991, ch. 105, § 23.

1-11-16. Signature roster certificates; checklist of registered voter's certificates; precinct board member's oath.

The secretary of state shall prescribe the form of the signature roster certificates, checklist of registered voter's certificates and the precinct board member's oath.

History: 1953 Comp., § 3-11-19, enacted by Laws 1969, ch. 240, § 228; 1971, ch. 317, § 19; 1981, ch. 137, § 5; 1985, ch. 207, § 32; 1991, ch. 105, § 24.

1-11-17. Repealed.

1-11-18. Election supplies.

The secretary of state shall prescribe the types and number of election supplies to be used in the precincts.

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History: 1953 Comp., § 3-11-27.1, enacted by Laws 1977, ch. 222, § 34.

1-11-19. Costs of elections; local election assessment; election fund established.

A. There is created in the state treasury the "election fund" solely for the purposes of:

(1) paying the costs of conducting and administering statewide elections required by the Election Code;

(2) reimbursing the counties for the costs of conducting and administering statewide elections required by the Election Code;

(3) paying the administrative costs of the office of the secretary of state for administering elections required by the Election Code and for administering the election fund; and

(4) carrying out all other specified provisions of the Election Code not already covered by another fund administered by the secretary of state.

B. The state treasurer shall invest the election fund as other state funds are invested, and all income derived from the fund shall be credited directly to the fund. Remaining balances at the end of a fiscal year shall remain in the fund and not revert to the general fund. Money in the fund is appropriated to the office of the secretary of state for the purposes authorized in Subsection A of this section. Money in the fund shall only be expended on warrants of the department of finance and administration pursuant to vouchers signed by the secretary of state or the secretary's designee.

C. Money received from the following sources shall be deposited directly into the election fund:

(1) money appropriated to the fund by the legislature;

(2) reimbursements from the state or a local government for elections costs; and

(3) grants received by the secretary of state.

D. In the event that current year balances in the election fund do not cover the costs of elections, the secretary of state may apply to the state board of finance for an emergency grant to cover those costs pursuant to Section 6-1-2 NMSA 1978.

History: Laws 2018, ch. 79, § 33; 1978 Comp., § 1-22-20, recompiled and amended as § 1-11-19 by Laws 2019, ch. 212, § 110.

ARTICLE 12
Conduct of Elections

Sec.
1-12-1. Conduct of election; opening and closing of polls.
1-12-2. Conduct of election; precinct board attendance.
1-12-2.1. Precinct board work shift option.
1-12-3. Conduct of election; precinct board duties.
1-12-4. Conduct of election; maintenance of order.
1-12-4.1. Conduct of elections; suspension of certain voter identification requirements.
1-12-5. Conduct of election; state police; other peace officers.
1-12-6. Conduct of election; memoranda of actions or omissions.
1-12-7. Conduct of election; persons not permitted to vote.
1-12-7.1. Voter lists; signature rosters; checklist of voters; use during election.
1-12-7.2. Voter whose name is not on list or roster.
1-12-7.3. Signature rosters and checklists of voters; contents.
1-12-7.4. Signature roster; checklist of voters; voter list; number; distribution.
1-12-8. Conduct of election; provisional voting.
1-12-8.1. Conduct of election; use of voter's receipt of certificate of registration; procedures.
1-12-8.2. Conduct of election; election day delivery of absentee ballot by voter; procedures.
1-12-9. Recompiled.
1-12-9.1. Recompiled.
1-12-10. Conduct of election; voter's name, address and signature.
1-12-10.1. Conduct of elections; voting information.
1-12-11. Repealed.
1-12-12. Conduct of election; eligibility for assistance.

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Sec.
1-12-13. Conduct of election; aid or assistance to voter in marking ballot.
1-12-14. Repealed.
1-12-15. Conduct of election; persons who may assist voter.
1-12-16. Conduct of election; type of assistance.
1-12-17. Repealed.
1-12-18. Conduct of election; disclosure of vote.
1-12-19. Repealed.
1-12-19.1. Recompiled.
1-12-20. Conduct of election; interposing challenges.
1-12-21. Conduct of election; challenges; entries.
1-12-22. Conduct of election; challenges; disposition.
1-12-23. Conduct of election; voting machines; instructions.
1-12-24. Repealed.
1-12-25. Repealed.
1-12-25.1. Procedures for voting on electronic vote tabulator systems.
1-12-25.2. Conduct of election; provisional voting; information to voter; status of voter's ballot.
1-12-25.3. Provisional paper ballots; required information.
1-12-25.4. Provisional paper ballots; disposition.
1-12-26. Conduct of election; closing polls.
1-12-27. Conduct of election; arrival of voter after closing time.
1-12-27.1. Conduct of election; provisional paper ballots; use when polling hours extended; disposition.
1-12-28. Conduct of election; election certificate.
1-12-29. Conduct of election; counting and tallying; who may be present.
1-12-29.1. Qualifying provisional, absentee and other paper ballots.
1-12-30. Conduct of election; disposition of signature roster, checklist of registered voters and machine-printed return reporting unofficial returns.
1-12-30.1. Voter lists; signature rosters; disposition after the polls close.
1-12-31. Conduct of election; disposition of ballot boxes and other election materials.
1-12-32. Conduct of election; return of ballot boxes and election materials.
1-12-33. Conduct of election; office of county clerk to remain open.
1-12-34. Conduct of election; copies of election return certificates.

Sec.
1-12-35. Repealed.
1-12-36. Repealed.
1-12-37. Conduct of election; voting machines; verification of returns.
1-12-37.1. Repealed.
1-12-38. Voting machines; printomatic voting machine; admittance of watchers and candidates; proclamation of results.
1-12-39. Conduct of election; voting machine; completion of locking procedures.
1-12-40. Repealed.
1-12-41. Repealed.
1-12-42. Conduct of election; employees; time to vote.
1-12-43. Emergency situations.
1-12-44. Recompiled.
1-12-45. Repealed.
1-12-45.1. Repealed.
1-12-46. Repealed.
1-12-47. Recompiled.
1-12-48. Repealed.
1-12-49. Recompiled.
1-12-50. Repealed.
1-12-51. Paper ballots; unauthorized receipt or delivery of paper ballot.
1-12-52. Repealed.
1-12-53. Repealed.
1-12-54. Repealed.
1-12-55. Paper ballots; marking.
1-12-56. Repealed.
1-12-57. Paper ballots; procedure after marking.
1-12-58. Recompiled.
1-12-59. Viewing marked paper ballot.
1-12-60. Repealed.
1-12-61. Removal of paper ballots from polling place.
1-12-62. Paper ballots; spoiled or defaced.
1-12-63. Election judges; unused paper ballots.
1-12-64. Repealed.
1-12-65. Emergency situations; paper ballots; counting and tallying procedures.
1-12-66. Paper ballots; signature rosters, checklist of voters and tally sheets; disposition.
1-12-67. Paper ballots to be placed in ballot box.
1-12-68. Paper ballots; county canvass; when recount is required.
1-12-69. Disposition of paper ballots.
1-12-70. Reporting of vote totals by precinct; voting data maintained by precinct.
1-12-71. Repealed.

1-12-1. Conduct of election; opening and closing of polls.

Polls shall be opened at 7:00 a.m. on the date required by law for the election and shall be closed at 7:00 p.m. on the same day.

History: 1953 Comp., § 3-12-1, enacted by Laws 1969, ch. 240, § 237; 1985, ch. 205, § 1; 1987, ch. 226, § 2.

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1-12-2. Conduct of election; precinct board attendance.

Precinct board members, excepting those members scheduled to work only the second shift, shall present themselves at the polling place not later than 6:00 a.m. on the date required by law for the election.

History: 1953 Comp., § 3-12-2, enacted by laws 1969, ch. 240, § 238; 1977, ch. 222, § 35; 1985, ch. 205, § 2; 1999, ch. 236, § 3.

1-12-2.1. Precinct board work shift option.

A. The county clerk may choose to schedule precinct board members into two work shifts on election day and also may determine the length of each shift for each precinct board member so long as the first shift begins at least one hour before the polls open.

B. If the county clerk chooses to schedule precinct board members in shifts, the presiding judge on each precinct board shall be scheduled to work both shifts that day.

C. The county clerk shall notify the secretary of state of all precincts that will be following a two-shift schedule when the county clerk submits the list of precinct board appointments in accordance with Section 1-2-14 NMSA 1978.

History: Laws 1999, ch. 236, § 1; 2011, ch. 137, § 81.

1-12-3. Conduct of election; precinct board duties.

The secretary of state shall prescribe the duties of the precinct board, including duties that, during the conduct of the election, the presiding judge may reassign between judges and election clerks. Copies of such duties shall be furnished to each county clerk, and the clerk shall distribute them to each precinct.

History: 1953 Comp., § 3-12-3.1, enacted by Laws 1977, ch. 222, § 36; 2011, ch. 137, § 82.

1-12-4. Conduct of election; maintenance of order.

A. The presiding judge and the election judges shall maintain order within the polling place.

B. Crowding or confusion shall not be permitted in the polling place.

C. Admittance of voters to the polling place shall be controlled and limited to prevent crowding or rushing the precinct board in the performance of its duties.

D. The presiding judge or any election judge may call upon any peace officer to assist in the maintenance of order in the polling place. When so requested, the peace officer shall render assistance.

E. The presiding judge or any election judge may designate any peace officer to assist in the conduct of the election by standing outside the polling place entrance and controlling the admission of voters to the polling place.

History: 1953 Comp., § 3-12-7, enacted by Laws 1969, ch. 240, § 243; 1981, ch. 149, § 1.

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1-12-4.1. Conduct of elections; suspension of certain voter identification requirements.

If on election day the amount of time voters must spend in line before being able to vote in the precinct exceeds forty-five minutes, the presiding judge of the precinct shall suspend all physical forms of voter identification requirements other than those mandated by federal law; provided, however, that at the request of two or more precinct board members of different political parties, a voter shall still present the required physical form of identification, and in the case of a voter who does not provide the required name, birth year and unique identifier, the voter shall still be required to present the required physical form of identification.

History: Laws 2005, ch. 270, § 59.

1-12-5. Conduct of election; state police; other peace officers.

A. Any member of the state police or other peace officer may enter a polling place upon request for the purpose of observing the conduct of the election.

B. No member of the state police or other peace officer shall interfere in any way with a member of the precinct board, a voter or the conduct of the election, except to assist in maintaining order and orderly control of access when requested by the presiding judge or an election judge.

C. Any member of the state police or other peace officer violating Subsection B of this section is guilty of a petty misdemeanor and in addition to any other penalty provided by law shall be subject to dismissal and is ineligible for reinstatement.

History: 1953 Comp., § 3-12-8, enacted by Laws 1969, ch. 240, § 244; 1981, ch. 149, § 2.

1-12-6. Conduct of election; memoranda of actions or omissions.

Any member of the precinct board may in the polling place make written memoranda and preserve them for future reference. The memoranda may concern any action or omission on the part of any person charged with a duty under the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-12-9, enacted by Laws 1969, ch. 240, § 245.

1-12-7. Conduct of election; persons not permitted to vote.

A. A person shall not vote in a primary, general or statewide special election unless he is a voter of the county in which he offers to vote. A valid original certificate of registration in the county register is prima facie evidence of being a voter in the precinct.

B. A person whose major party affiliation is not designated on his original certificate of registration shall not vote in a primary election.

C. A person at a primary election shall not be permitted to vote for the candidate of any party other than the party designated on his current certificate of registration.

History: 1953 Comp., § 3-12-10, enacted by Laws 1969, ch. 240, § 246; 1987, ch. 249, § 25; 1991, ch. 105, § 25; 1993, ch. 314, § 54; 1993, ch. 316, § 54; 1999, ch. 267, § 31; 2003, ch. 356, § 29.

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1-12-7.1. Voter lists; signature rosters; checklist of voters; use during election.

A. At each election day polling location, other than a consolidated precinct where any voter in the county may vote, the precinct board shall post securely at or near the entrance of the polling place one copy of an alphabetical list of voters and a map of the precincts represented in that polling place for use of the voters prior to voting. The posted copy shall not contain a listing of voter addresses, years, months or days of birth or social security numbers.

B. At each polling location where physical rosters are used, the presiding judge of the precinct board shall assign one judge or election clerk of the board to be in charge of one copy of the checklist of voters, which shall be used to confirm the registration and voting of each person offering to vote.

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

D. The judge or election clerk assigned to confirm registration shall determine that each person offering to vote is registered and, in the case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed and the voter provides the required voter identification, the judge or election clerk shall announce to the judges or election clerks the list number and the name of the voter as shown on the checklist of voters. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional paper ballot and shall provide the required voter identification to the county clerk's office before 5:00 p.m. on the second day following the election, or to the precinct board before the polls close, or the voter's provisional ballot shall not be qualified. If the required voter identification is provided, the voter's provisional paper ballot shall be qualified and the voter shall not vote on any other type of ballot.

E. The judge or election clerk shall locate the name on the signature roster and shall require the voter to sign the voter's usual signature or, if unable to write, to make the voter's mark opposite the voter's printed name. If the voter makes the voter's mark, it shall be witnessed by one of the judges or election clerks of the precinct board.

F. If the signature roster indicates that the voter is required to present a physical form of identification before voting, the judge or election clerk shall ask the voter for the required physical form of identification. If the voter does not provide the required identification, the voter shall be allowed to vote on a provisional paper ballot; provided, however, that if the voter brings the required physical form of identification to the polling place after casting a provisional paper ballot, that ballot shall be qualified.

G. The judge or election clerk shall follow the procedures provided for in Sections 1-12-7.2 and 1-12-8 NMSA 1978 if a person whose name does not appear on the signature roster requests to vote or a person is required to vote on a provisional paper ballot.

H. A voter shall not be permitted to vote until the voter has properly signed the voter's usual signature or made the voter's mark in the signature roster.

History: 1953 Comp., § 3-5-11, enacted by Laws 1969, ch. 240, § 112; 1975, ch. 255, § 68; 1977, ch. 222, § 10; 1987, ch. 327, § 4; 1995, ch. 166, § 3; 2003, ch. 356, § 15; 1978 Comp., § 1-5-10, recompiled as § 1-12-7.1 by Laws 2005, ch. 270, § 63; 2008, ch. 59, § 8; 2011, ch. 137, § 83; 2015, ch. 145, § 60.

1-12-7.2. Voter whose name is not on list or roster.

A. A voter whose name does not appear on the voter list and signature roster for the precinct in which the voter offers to vote shall be permitted to vote in the precinct pursuant to the federal National Voter Registration Act of 1993 and Section 1-12-8 NMSA 1978.

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B. The judges or election clerks in charge of the signature rosters shall add the voter's name and address in ink to the signature roster on the line immediately following the last entered voter's name and, the voter shall be allowed to sign an affidavit of eligibility and cast a provisional paper ballot, provided the voter has first signed or marked both the signature roster and checklist of registered voters.

C. The provisional paper ballot tracking number for the voter shall be entered on the affidavit of eligibility, the signature roster and the checklist of registered voters.

D. In a primary election, a voter shall not be permitted to vote for a candidate of a party different from the party designation shown on the voter's certificate of registration. Upon making that determination, the county clerk shall transmit the ballot to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.

History: 1953 Comp., § 3-5-13, enacted by Laws 1969, ch. 240, § 114; 1975, ch. 255, § 69; 1993, ch. 314, § 37; 1993, ch. 316, § 37; 2001, ch. 146, § 4; 2003, ch. 356, § 16; recompiled as 1-12-7.2 NMSA 1978 by Laws 2005, ch. 270, § 78; 2011, ch. 137, § 84.

1-12-7.3. Signature rosters and checklists of voters; contents.

A. The signature roster and checklist of voters for any precinct shall contain for each voter, as shown in the county register, the voter's:

(1) name;
(2) gender;
(3) place of residence;
(4) year of birth;
(5) party affiliation, if any; and
(6) precinct of residence.

B. In addition, the names on each signature roster and checklist of voters shall be numbered consecutively beginning with the number "1".

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

History: 1953 Comp., § 3-5-7, enacted by Laws 1969, ch. 240, § 109; 1975, ch. 255, § 66; 1985, ch. 77, § 2; 1993, ch. 363, § 2; 2005, ch. 270, § 27; 2008, ch. 59, § 3; 1978 Comp., § 1-5-7 recompiled as § 1-12-7.3 by Laws 2011, ch. 137, § 109.

1-12-7.4. Signature roster; checklist of voters; voter list; number; distribution.

A. The county clerk shall prepare and certify the accuracy of one signature roster and one checklist of voters for each precinct. The county clerk shall deliver such roster and checklist to each precinct board. The voter shall sign the signature roster before receiving a ballot. The precinct board member shall mark the checklist of voters to verify the voters on the list who have voted.

B. The county clerk shall prepare an alphabetical listing of voters in each precinct, which will be delivered to each precinct board and posted inside the polling place for public use.

C. After the polls have closed, the presiding judge shall deliver the signed signature roster to the county clerk and mail the checklist of voters to the secretary of state.

History: 1953 Comp., § 3-5-8, enacted by Laws 1969, ch. 240, § 110; 1975, ch. 255, § 67; 1977, ch. 222, § 9; 1987, ch. 249, § 15; 1987, ch. 327, § 3; 1993, ch. 314, § 36; 1993, ch. 316, § 36; 1995, ch. 166, § 2; 2005, ch. 270, § 28; 2007, ch. 337, § 8; 2008, ch. 59, § 4; 1978 Comp., § 1-5-8 recompiled as § 1-12-7.4 by Laws 2011, ch. 137, § 109.

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1-12-8. Conduct of election; provisional voting.

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

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

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

(3) the person executes a statement swearing or affirming to the best of the person's knowledge that the person is a qualified elector, is currently registered and eligible to vote in that county and has not cast a ballot or voted in that election.

B. A voter shall vote on a provisional paper ballot if the voter:

(1) has not previously voted in a general election in New Mexico or has been purged from the voter list;

(2) registered to vote by mail;

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

(4) does not present to the election judge a physical form of the required voter identification.

C. A voter shall vote on a provisional paper ballot in accordance with the provisions of Section 1-12-7.1 NMSA 1978 if the voter does not provide the required voter identification to the election judge.

D. A judge or election clerk shall have the voter sign the signature roster and issue the voter a provisional paper ballot, an outer envelope and an official inner envelope. The voter shall vote on the provisional paper ballot in secrecy and, when done, place the ballot in the official inner envelope and place the official inner envelope in the outer envelope and return it to the judge or election clerk. The judge or election clerk shall ensure that the required information is completed on the outer envelope, have the voter sign it in the appropriate place and place it in an envelope designated for provisional paper ballots.

E. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code [Chapter 30 NMSA 1978], and voting on the basis of such falsely executed statement constitutes fraudulent voting.

History: 1953 Comp., § 3-12-11, enacted by Laws 1969, ch. 240, § 247; 1971, ch. 317, § 20; 1977, ch. 222, § 37; 1979, ch. 24, § 10; 1987, ch. 249, § 26; 1993, ch. 314, § 55; 1993, ch. 316, § 55; 1995, ch. 198, § 14; 2003, ch. 356, § 30; 2005, ch. 270, § 64; 2011, ch. 137, § 85.

1-12-8.1. Conduct of election; use of voter's receipt of certificate of registration; procedures.

If a voter whose name is not in the signature roster presents the voter's receipt of the voter's certificate of registration, the voter shall be allowed to vote on a provisional paper ballot in the proper precinct in accordance with the provisions of Section 1-12-7.1 NMSA 1978. The judge or election clerk shall inform the voter that the voter will be notified by the county clerk to provide a copy of the receipt of the certificate of registration to the county clerk if the original certificate is not located. A note shall be entered on the signature roster indicating that the voter's certificate of registration should be checked by the county clerk. For the purposes of investigation or prosecution, the county clerk shall provide the district attorney and the secretary of state with the person's

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name and address and the corresponding receipt number of the person's certificate of registration for each person whose certificate of registration is not located.

History: Laws 2005, ch. 270, § 62; 2007, ch. 336, § 15; 2011, ch. 137, § 86.

1-12-8.2. Conduct of election; election day delivery of absentee ballot by voter; procedures.

A. A voter who requested and received an absentee ballot shall be allowed to deliver the official mailing envelope containing the voter's absentee ballot on election day to any polling location in the county in which the voter is registered if the voter presents the official mailing envelope to the presiding judge before the polls close on election day.

B. The judge shall note that the voter delivered the absentee ballot in person on election day. The official mailing envelope shall not be opened but shall be placed in an envelope provided for delivery to the county clerk. The precinct board shall deliver the unopened official mailing envelopes to the county clerk before midnight on election day.

C. If the unopened official mailing envelope is received by the county clerk from a precinct board before the absent voter precinct board has adjourned, it shall be logged and transmitted to the absent voter precinct board to be tallied immediately. If the unopened mailing envelope is received by the county clerk from a precinct board after the absent voter precinct board has adjourned, it shall be logged and transmitted to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.

History: Laws 2005, ch. 270, § 60; 2007, ch. 336, § 16; 2011, ch. 137, § 87.

1-12-9. Recompiled.

1-12-9.1. Recompiled.

1-12-10. Conduct of election; voter's name, address and signature.

A. A voter at the polls shall announce the voter's name and address in an audible tone of voice. When a judge or election clerk finds the voter's name in the signature roster, the judge or election clerk shall in like manner repeat the name of the voter. The judge or election clerk shall then ask the voter to provide the required voter identification. The voter shall then sign the voter's name or make the voter's mark on the signature line in the copy of the signature roster to be returned to the county clerk. Upon the voter's name or mark being written in the signature roster, a challenge may be interposed as provided in the Election Code [Chapter 1 NMSA 1978].

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

History: 1953 Comp., § 3-12-13, enacted by Laws 1969, ch. 240, § 249; 1987, ch. 249, § 27; 1991, ch. 105, § 26; 2005, ch. 270, § 65; 2011, ch. 137, § 88.

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1-12-10.1. Conduct of elections; voting information.

A. The secretary of state shall provide voting information, which the county clerks shall display, in accordance with the federal Help America Vote Act of 2002, in each polling place and in each county clerk's office and at any location where voting is taking place.

B. The county clerk shall ensure that in each polling place there is posted the phone numbers of the county clerk and the secretary of state.

History: Laws 2003, ch. 356, § 2; 2005, ch. 270, § 66; 2015, ch. 145, § 61.

1-12-11. Repealed.

1-12-12. Conduct of election; eligibility for assistance.

A voter may request assistance in voting only if the voter:

A. is blind;

B. is physically disabled;

C. is unable to read or write;

D. is a member of a language minority who has an inability to read well enough to exercise the elective franchise; or

E. requires assistance in operating the voting system provided for voting access for people with disabilities.

History: 1953 Comp., § 3-12-29, enacted by Laws 1969, ch. 240, § 265; 1977, ch. 124, § 8; 2005, ch. 270, § 67; 2019, ch. 212, § 111.

1-12-13. Conduct of election; aid or assistance to voter in marking ballot.

A. When a voter who is eligible for assistance pursuant to Section 1-12-12 NMSA 1978 requires assistance in marking a ballot or using the voting system, the voter shall announce this fact before receiving the ballot or using the voting system.

B. The voter's request for assistance shall be noted by the voter's name in the signature roster and initialed by the presiding judge.

C. After noting the request for assistance in the signature roster, the voter shall be permitted assistance in marking the ballot or using the voting system as provided in Section 1-12-15 NMSA 1978.

D. Any person who swears falsely in order to secure assistance is guilty of a misdemeanor.

History: 1953 Comp., § 3-12-30, enacted by Laws 1969, ch. 240, § 266; 1987, ch. 249, § 28; 1989, ch. 259, § 1; 2007, ch. 337, § 13; 2015, ch. 145, § 62.

1-12-14. Repealed.

1-12-15. Conduct of election; persons who may assist voter.

A. In any election, if a voter who has requested assistance in marking the ballot is blind, has a physical disability, has an inability to read or write or is a member of a language minority who has requested assistance pursuant to Subsection D of Section 1-12-12 NMSA 1978, the voter may be accompanied into the voting booth only by a person of the voter's own choice other than the voter's

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employer or an agent of that employer, an officer or agent of the voter's union or a candidate whose name appears on the ballot in this election.

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

C. A person who provides assistance to a voter when the person knows the voter does not require assistance pursuant to Section 1-12-12 NMSA 1978 is guilty of a misdemeanor.

History: 1953 Comp., § 3-12-31, enacted by Laws 1969, ch. 240, § 267; 1977, ch. 124, § 10; 1979, ch. 139, § 1; 1981, ch. 149, § 3; 1983, ch. 232, § 14; 1987, ch. 249, § 29; 1989, ch. 259, § 2; 2005, ch. 270, § 68; 2015, ch. 145, § 63.

1-12-16. Conduct of election; type of assistance.

Persons providing assistance to a voter may assist the voter in reading and marking the ballot or using the voting system.

History: 1953 Comp., § 3-12-32, enacted by Laws 1969, ch. 240, § 268; 2007, ch. 337, § 14.

1-12-17. Repealed.

1-12-18. Conduct of election; disclosure of vote.

An election official, a member of the precinct board, a watcher or a challenger shall not disclose the name of any candidate for whom any voter has voted.

History: 1953 Comp., § 3-12-34, enacted by Laws 1969, ch. 240, § 270; 2009, ch. 251, § 12.

1-12-19. Repealed.

1-12-19.1. Recompiled.

1-12-20. Conduct of election; interposing challenges.

A challenge may be interposed by a member of the precinct board or by a party challenger for the following reasons:

A. the person offering to vote is not registered to vote;

B. the person offering to vote is listed among those persons to whom an absentee ballot was mailed;

C. the person offering to vote has already cast a ballot in that election;

D. the person offering to vote is improperly registered because the person is not a qualified elector; or

E. in the case of a primary election, the person desiring to vote is not affiliated with a political party represented on the ballot.

History: 1953 Comp., § 3-12-37, enacted by Laws 1969, ch. 240, § 273; 1987, ch. 249, § 31; 2011, ch. 137, § 90.

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1-12-21. Conduct of election; challenges; entries.

When a challenge is interposed, the judges or election clerks shall enter the word "CHALLENGED" under the notation headings in the signature rosters, along with the reason for the challenge, the time the challenge was made and the name and title of the person interposing the challenge.

History: 1953 Comp., § 3-12-38, enacted by Laws 1969, ch. 240, § 274; 1987, ch. 249, § 32; 2011, ch. 137, § 91.

1-12-22. Conduct of election; challenges; disposition.

Challenges shall be handled as follows:

A. if the challenge is unanimously affirmed by the presiding judge and the two election judges, the person shall be furnished a provisional paper ballot. The election clerks shall enter such voter's name in the checklist of registered voters, and the voter shall sign the voter's name in the signature roster. The word "Affirmed" shall be written opposite such voter's name under the challenge notation in the signature roster and checklist of registered voters, together with the number of the ballot so furnished; or

B. if the challenge is not unanimously affirmed by the presiding judge and the two election judges, the voter shall be allowed to vote, and the election clerks shall enter the words "Not Affirmed" under the challenge notation after the voter's name in the signature roster and the checklist of registered voters.

History: 1953 Comp., § 3-12-39, enacted by Laws 1969, ch. 240, § 275; 1987, ch. 249, § 33; 1991, ch. 105, § 28; 2011, ch. 137, § 92.

1-12-23. Conduct of election; voting machines; instructions.

Before each voter receives a ballot, a member of the precinct board shall, so far as possible, instruct the voter on the voting process and call the voter's attention to the posted sample ballot. If any voter asks for further information before completing the voting process, the judges or election clerks shall provide appropriate information and assist the voter with the voting process.

History: 1953 Comp., § 3-12-41, enacted by Laws 1969, ch. 240, § 277; 1981, ch. 149, § 4; 2011, ch. 137, § 93.

1-12-24. Repealed.

1-12-25. Repealed.

1-12-25.1. Procedures for voting on electronic vote tabulator systems.

A voter using an electronic vote tabulator system to vote shall:

A. receive a ballot issued by the precinct board;

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B. take the ballot to a voting booth and, with the writing utensil provided, mark it in accordance with the instructions for that ballot type; and

C. feed the ballot into the electronic vote tabulator to record the vote.

History: 1978 Comp., § 1-12-25.1, enacted by Laws 1991, ch. 105, § 30; 2009, ch. 150, § 16.

1-12-25.2. Conduct of election; provisional voting; information to voter; status of voter's ballot.

A. If a voter is required to vote on a provisional paper ballot, the presiding judge or election judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted.

B. The secretary of state shall provide a free access system, such as a toll-free telephone number or internet website, that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted and, if the vote was not counted, the reason it was not counted and how to appeal the decision pursuant to rules issued by the secretary of state. Access to information about an individual voter's provisional paper ballot through the free access system is restricted to the voter who cast the ballot.

C. Beginning with the closing of the polls on election day through the tenth day following the election, the county clerk shall notify by mail each person whose provisional paper ballot was not counted of the reason the ballot was not counted. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal to the county clerk a decision to reject the voter's ballot.

History: Laws 2003, ch. 356, § 3; 2005, ch. 270, § 70; 2007, ch. 336, § 17; 2011, ch. 137, § 94; 2017, ch. 101, § 15.

1-12-25.3. Provisional paper ballots; required information.

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

(1) the name and signature of the voter;

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

(3) the voter's date of birth;

(4) the reason for using the ballot;

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

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

B. A provisional paper ballot shall not be rejected for lack of the information required by this section and shall be qualified as long as the voter provides a valid signature and sufficient information for the clerk to determine the voter is a qualified elector.

History: Laws 2003, ch. 356, § 6; 2005, ch. 270, § 71; 2008, ch. 59, § 9.

1-12-25.4. Provisional paper ballots; disposition.

A. Upon closing of the polls, provisional paper ballots shall be delivered to the county clerk, who shall determine if the ballots will be counted prior to certification of the election.

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B. A provisional paper ballot shall not be counted if the registered voter did not sign either the signature roster or the ballot's envelope.

C. If there is no record of the voter ever having been registered in the county, the voter shall be offered the opportunity to register, the provisional paper ballot shall not be counted and the voter registration certificate shall be processed following the canvass of the election.

D. If the voter was registered in the county, the registration was later canceled and the county clerk determines that the cancellation was in error, or that the voter continues to reside in the same precinct, or that the voter's name should not have been placed on the list of voters whose registrations were to be canceled, the voter's registration shall be immediately restored and the provisional paper ballot counted.

E. If the county clerk determines that the cancellation was not in error, the voter shall be offered the opportunity to register at the voter's correct address, and the provisional paper ballot shall not be counted.

F. If the voter is a registered voter in the county but has voted on a provisional paper ballot other than the ballot of the voter's correct precinct, the county canvassing board shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted.

G. If the county clerk finds that the voter who voted on a provisional paper ballot at the polls has also voted an absentee ballot in that election, the provisional paper ballot shall not be counted.

H. The county clerk shall maintain a provisional ballot register that shall be in the same form and made available in the same manner as the absentee ballot register and the mailed ballot register. The county clerk shall prepare a tally displaying the number of provisional paper ballots received, the number found valid and counted, the number rejected and not counted and the reason for not counting the ballots as part of the canvassing process and forward it to the secretary of state immediately upon certification of the election.

I. The secretary of state shall issue rules to ensure securing the secrecy of the provisional paper ballots, especially during canvassing, reviewing or recounting, and protecting against fraud in the voting process.

History: Laws 2003, ch. 356, § 7; 2005, ch. 270, § 72; 2015, ch. 145, § 64; 2019, ch. 212, § 113.

1-12-26. Conduct of election; closing polls.

When the polls are closed, the precinct board shall proclaim that fact aloud at the place of election. After the proclamation no voter shall cast a vote. However, if at the hour of closing there are other voters in the polling place, or in line at the door, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote. In the instructions to the precinct board the secretary of state shall specify procedures whereby the precinct board shall determine the identity of the last person in line at the time the polls closed.

History: 1953 Comp., § 3-12-45, enacted by Laws 1969, ch. 240, § 281; 1977, ch. 222, § 39.

1-12-27. Conduct of election; arrival of voter after closing time.

Any person who arrives at the polling place after the time provided for closing the polls is not entitled to vote, even though the polls are open when he arrives.

History: 1953 Comp., § 3-12-46, enacted by Laws 1969, ch. 240, § 282.

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1-12-27.1. Conduct of election; provisional paper ballots; use when polling hours extended; disposition.

A. If polling hours are extended by court order or any other order pursuant to a state law in effect at least ten days before the date of that election, during the extended hours, a voter shall vote only on a provisional paper ballot.

B. A provisional paper ballot cast pursuant to this section shall be separated and held apart from provisional paper ballots cast by those not affected by the order. The ballot shall be counted if:

(1) there is no legal challenge to the order extending polling hours within ten days of the election; or

(2) a legal challenge to the order extending polling hours is not sustained.

History: Laws 2003, ch. 356, § 4.

1-12-28. Conduct of election; election certificate.

Immediately upon the closing of the polls, the precinct board shall complete and sign a certificate which shall state: "We certify the ..... election complete with the voting of voting machine number ..... by voter number ..... on the signature roster."

History: 1953 Comp., § 3-12-47, enacted by Laws 1969, ch. 240, § 283; 1981, ch. 149, § 5; 1987, ch. 249, § 35.

1-12-29. Conduct of election; counting and tallying; who may be present.

Only the members of the precinct board, candidates or their representatives, representatives of the news media and lawfully appointed challengers and watchers may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots, signature rosters or tally sheets or take part in the counting and tallying.

History: 1953 Comp., § 3-12-51, enacted by Laws 1969, ch. 240, § 287; 1987, ch. 249, § 36.

1-12-29.1. Qualifying provisional, absentee and other paper ballots.

A. The secretary of state shall issue rules to create a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted.

B. When qualifying provisional, absentee and other paper ballots, middle initials, suffixes and addresses shall not be dispositive as to whether that person's ballot is qualified and counted in the vote totals, provided that the county clerk can otherwise verify the person is a voter based on the information provided on the outer envelope of the paper ballot or affidavit.

History: Laws 2005, ch. 270, § 61.

1-12-30. Conduct of election; disposition of signature roster, checklist of registered voters and machine-printed return reporting unofficial returns.

A. After all certificates have been executed, the presiding judge and the two election judges shall place the checklist of registered voters voting and one copy of the machine-printed returns

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in the stamped, addressed envelope provided for that purpose and immediately mail it to the secretary of state.

B. The signature roster, the machine-printed returns and the removable media storage device shall be returned to the county clerk. The signature roster, the machine-printed returns and the removable media storage device shall not be placed in the ballot box.

C. Signature rosters and machine-printed returns in the custody of the county clerk may be destroyed only pursuant to Section 1-12-69 NMSA 1978.

D. The county clerk shall report the unofficial total returns for the county to the secretary of state within ten hours after the polls close.

History: 1953 Comp., § 3-12-53, enacted by Laws 1969, ch. 240, § 289; 1977, ch. 222, § 40; 1987, ch. 327, § 15; 1991, ch. 105, § 31; 2011, ch. 137, § 95.

1-12-30.1. Voter lists; signature rosters; disposition after the polls close.

A. After the polls are closed, the signature roster shall be properly certified by the precinct board and returned to the county clerk with the election returns destined for the county clerk. The precinct voter list marked for the secretary of state shall be returned to the secretary of state with the election returns destined for the secretary of state.

B. The signed and certified signature rosters used in any election shall be considered a part of the election returns and treated accordingly. They shall be preserved and finally disposed of in the same manner as provided in the Election Code [Chapter 1 NMSA 1978] and 42 U.S.C. 1974.

C. Whoever willfully destroys, defaces, alters without authorization or improperly disposes of signature rosters used in an election is guilty of a fourth degree felony.

History: 1953 Comp., § 3-5-12, enacted by Laws 1969, ch. 240, § 113; 1987, ch. 327, § 5; amended and recompiled as 1-12-30.1 NMSA 1978 by Laws 2005, ch. 270, § 73.

1-12-31. Conduct of election; disposition of ballot boxes and other election materials.

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

(1) the number on the numbered seal affixed to secure the ballot box or one ballot box key in an envelope addressed to the county clerk;

(2) one signature roster;

(3) one certificate of returns for the polling place;

(4) the envelope containing any provisional paper ballots cast at the polling place;

(5) the envelope containing any absentee or mailed ballots delivered to the polling place by the voter or an immediate family member of the voter;

(6) the envelope containing paper ballots that were not tabulated by the electronic vote tabulator;

(7) the envelope containing machine-tabulated paper ballots with write-in votes; and

(8) all unused election supplies not destroyed pursuant to the Election Code.

B. The removable media storage device shall not be placed in the ballot box and shall be returned immediately to the county clerk either by messenger or along with the locked ballot box.

C. The election judge of the party different from that of the presiding judge shall place the number on the numbered seal affixed to secure the ballot box or the other ballot box key in the envelope addressed to the district court and immediately mail it to the district court.

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History: 1953 Comp., § 3-12-55, enacted by Laws 1969, ch. 240, § 291; 1977, ch. 222, § 41; 1987, ch. 249, § 37; 1987, ch. 327, § 16; 1991, ch. 105, § 32; 2009, ch. 150, § 17; 2011, ch. 137, § 96; 2015, ch. 145, § 65; 2019, ch. 212, § 114.

1-12-32. Conduct of election; return of ballot boxes and election materials.

A. Unless the ballot box, election returns and materials are delivered to the county clerk within twenty-four hours after the polls are closed, the vote in the precinct shall not be canvassed or made a part of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

B. In precincts not more than thirty-five miles distant from the county clerk's office, the delivery of the ballot box and election returns and materials shall be made by the presiding judge in person.

C. In precincts more than thirty-five miles distant from the county clerk's office, the delivery of the ballot box, election returns and materials may be made by special messenger selected by the presiding judge and the election judges.

History: 1953 Comp., § 3-12-56, enacted by Laws 1969, ch. 240, § 292; 1987, ch. 249, § 38.

1-12-33. Conduct of election; office of county clerk to remain open.

The county clerk or some duly authorized deputy or assistant shall keep the office of the county clerk continuously open for twenty-four hours next after the closing of the polls for any primary, general or statewide special election. The office shall be kept open for the purpose of receiving the ballot boxes, election returns and materials. If all such items have been received from each precinct in the county before the expiration of the twenty-four hour period, the office of the county clerk may be closed except during regular office hours.

History: 1953 Comp., § 3-12-57, enacted by Laws 1969, ch. 240, § 293.

1-12-34. Conduct of election; copies of election return certificates.

Upon completion of the certificate of returns, the presiding judge shall deliver all returns to the county clerk on election night with the exception of the one legible copy from each voting machine posted on the outside of the entrance door to the polling place.

History: 1953 Comp., § 3-12-58, enacted by Laws 1969, ch. 240, § 294; 1991, ch. 105, § 33.

1-12-35. Repealed.

1-12-36. Repealed.

1-12-37. Conduct of election; voting machines; verification of returns.

Two election officials of different parties shall verify that the counter settings registered on the machine-printed returns are legible. The machine-printed returns shall show the number of votes cast for each candidate and the number of votes cast for and against any constitutional

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amendment or other question submitted, and the return shall be signed by each member of the precinct board and two watchers of opposing interest, if there be such.

History: 1953 Comp., § 3-12-61.1, enacted by Laws 1973, ch. 358, § 2; 1977, ch. 222, § 43; 1981, ch. 149, § 7; 2011, ch. 137, § 97.

1-12-37.1. Repealed.

1-12-38. Voting machines; printomatic voting machine; admittance of watchers and candidates; proclamation of results.

During the reading of the results of the votes cast, any candidate or watcher who desires to be present shall be admitted to the polling place. The proclamation of the result of the votes cast shall be distinctly announced by the presiding judge, who shall read the name of each candidate and the vote registered on the printed returns. The presiding judge shall also read the vote cast for and against each constitutional amendment or other question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the result so proclaimed with the printed returns, and any necessary corrections shall then and there be made by the precinct board.

History: 1953 Comp., § 3-12-62.1, enacted by Laws 1973, ch. 358, § 3.

1-12-39. Conduct of election; voting machine; completion of locking procedures.

Before adjourning, the precinct board shall complete the locking procedures on the voting machine.

History: 1953 Comp., § 3-12-63, enacted by Laws 1969, ch. 240, § 299.

1-12-40. Repealed.

1-12-41. Repealed.

1-12-42. Conduct of election; employees; time to vote.

A. On election day a voter may absent himself from employment in which he is engaged for two hours for the purpose of voting between the time of opening and the time of closing the polls. The voter shall not be liable to any penalty for such absence; however, the employer may specify the hours during this period in which the voter may be absent.

B. The provisions of Subsection A of this section do not apply to an employee whose work day begins more than two hours subsequent to the time of opening the polls, or ends more than three hours prior to the time of closing the polls.

C. The provisions of Subsection A of this section apply to elections of Indian nations, tribes or pueblos for a voter who is enrolled as a member of the Indian nation, tribe or pueblo and is qualified to vote in the election.

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D. A person who refuses the right granted in this section to an employee is guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100).

History: 1953 Comp., § 3-12-66, enacted by Laws 1969, ch. 240, § 302; 2001, ch. 106, § 1.

1-12-43. Emergency situations.

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

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

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

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

History: 1953 Comp., § 3-12-77, enacted by Laws 1977, ch. 222, § 46; 2009, ch. 150, § 19; 2011, ch. 137, § 98.

1-12-44. Recompiled.

1-12-45. Repealed.

1-12-45.1. Repealed.

1-12-46. Repealed.

1-12-47. Recompiled.

1-12-48. Repealed.

1-12-49. Recompiled.

1-12-50. Repealed.

1-12-51. Paper ballots; unauthorized receipt or delivery of paper ballot.

Except for absentee ballots and unless otherwise provided by law, a voter shall not receive a paper ballot from any person other than from a member of the precinct board or at an alternate voting location. No person other than a member of the precinct board or officer authorized by law shall deliver a paper ballot to any voter.

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History: 1953 Comp., § 3-12-85, enacted by Laws 1977, ch. 222, § 54; 2009, ch. 150, § 20; 2011, ch. 137, § 99.

1-12-52. Repealed.

1-12-53. Repealed.

1-12-54. Repealed.

1-12-55. Paper ballots; marking.

All marks on the paper ballot shall be made only with the recommended or provided marking device.

History: 1953 Comp., § 3-12-89, enacted by Laws 1977, ch. 222, § 58; 1979, ch. 57, § 5; 2009, ch. 150, § 21.

1-12-56. Repealed.

1-12-57. Paper ballots; procedure after marking.

After marking and preparing a paper ballot in a polling place, the voter:

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

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

History: 1953 Comp., § 3-12-91, enacted by Laws 1977, ch. 222, § 60; 2009, ch. 150, § 22; 2019, ch. 212, § 115.

1-12-58. Recompiled.

1-12-59. Viewing marked paper ballot.

A. A voter may, on the voter's own initiative and using whatever form of communication or media chosen by the voter, voluntarily communicate any information regarding:

(1) the name of any candidate in a candidate contest for whom the voter voted or for whom the voter abstained from voting;

(2) the affirmative or negative vote cast by the voter on a ballot question or nonpartisan judicial retention election; or

(3) any other information regarding the manner in which a voter marked a paper ballot in an election.

B. No person shall solicit a voter to show the voter's marked paper ballot or coerce a voter to reveal any of the information listed in Subsection A of this section.

C. No person shall disclose without the consent of the voter any of the information listed in Subsection A of this section.

D. A violation of Subsection B or C of this section may constitute the crime of offering a bribe, coercion of employees, coercion of voters, intimidation or conspiracy to violate the Election Code.

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History: 1953 Comp., § 3-12-93, enacted by Laws 1977, ch. 222, § 62; 2009, ch. 150, § 24; 2019, ch. 212, § 116.

1-12-60. Repealed.

1-12-61. Removal of paper ballots from polling place.

No person shall remove any paper ballot from any polling place unless authorized by law.

History: 1953 Comp., § 3-12-95, enacted by Laws 1977, ch. 222, § 64; 2009, ch. 150, § 25.

1-12-62. Paper ballots; spoiled or defaced.

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

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

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

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

History: 1953 Comp., § 3-12-96, enacted by Laws 1977, ch. 222, § 65; 1987, ch. 249, § 40; 1991, ch. 105, § 36; 2009, ch. 150, § 26.

1-12-63. Election judges; unused paper ballots.

Immediately upon the time of the closing of the polls, the election judges and presiding judge, in the presence of those lawfully permitted to be present, shall publicly destroy all unused paper ballots.

History: 1953 Comp., § 3-12-97, enacted by Laws 1977, ch. 222, § 66; 2009, ch. 150, § 27.

1-12-64. Repealed.

1-12-65. Emergency situations; paper ballots; counting and tallying procedures.

A. The presiding judge and the election judges, assisted by the election clerks, shall count the number of paper ballots that were not tabulated by the electronic vote tabulator, write the number of such ballots on each copy of the certificate of returns for that polling place and place the paper ballots that were not tabulated by the electronic vote tabulator in an envelope provided for that purpose. The envelope shall not be locked in the ballot box but shall instead be transmitted directly to the county clerk for machine-tabulation or hand-tallying of the ballots.

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B. The presiding judge and the election judges, assisted by the election clerks, shall count the number of machine-tabulated paper ballots with write-in votes, write the number of such ballots on each copy of the certificate of returns for that polling place and place those paper ballots with write-in votes in an envelope provided for that purpose. The envelope shall not be locked in the ballot box but shall instead be transmitted directly to the county clerk for manual counting of the write-in votes.

C. The tallying of paper ballots that were not tabulated by the electronic vote tabulator at the polling place and the counting of ballots with write-in votes shall be in accordance with procedures prescribed by the secretary of state.

History: 1953 Comp., § 3-12-99, enacted by Laws 1977, ch. 222, § 68; 1991, ch. 105, § 37; 2009, ch. 150, § 28; 2019, ch. 212, § 117.

1-12-66. Paper ballots; signature rosters, checklist of voters and tally sheets; disposition.

A. After all certificates have been executed, the presiding judge and the two election judges shall place the checklist of voters and one copy of the certificate of returns in that polling place in the stamped, addressed envelope provided for that purpose and an election judge shall immediately mail it to the secretary of state.

B. The signature roster and the original certificate of returns in that polling place shall be returned to the county clerk. The signature roster and the certificate of returns shall not be placed in the ballot box.

C. Signature rosters, checklists of registered voters, certificates of returns and tally sheets in the custody of the county clerk and the secretary of state may be destroyed only pursuant to Section 1-12-69 NMSA 1978.

History: 1953 Comp., § 3-12-100, enacted by Laws 1977, ch. 222, § 69; 1987, ch. 249, § 41; 1991, ch. 105, § 38; 2009, ch. 150, § 29; 2011, ch. 137, § 100; 2019, ch. 212, § 118.

1-12-67. Paper ballots to be placed in ballot box.

After all certificates have been executed, the election board shall place the bundles of tabulated paper ballots in the ballot box and the ballot box shall be closed and locked.

History: 1953 Comp., § 3-12-101, enacted by Laws 1977, ch. 222, § 70; 1987, ch. 249, § 42; 2009, ch. 150, § 30; 2019, ch. 212, § 119.

1-12-68. Paper ballots; county canvass; when recount is required.

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

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

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

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

E. The precinct board shall then recount the paper ballots and make a new tally sheet certificate in duplicate to conform to the facts.

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

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

History: 1953 Comp., § 3-12-102, enacted by Laws 1977, ch. 222, § 71; 1987, ch. 249, § 43; 2009, ch. 150, § 31.

1-12-69. Disposition of paper ballots.

A. Paper ballots marked by voters and all records related to voting in any election in which a federal candidate appears on the ballot shall be retained and preserved for a period of twenty-two months from the date of the election.

B. Paper ballots marked by voters and all records related to voting in any election in which no federal candidate appears on the ballot shall be retained and preserved for forty-five days after adjournment of the state or county canvassing board, whichever is later.

C. In precincts where a recount or judicial inquiry or inspection of contents is sought, the county clerk shall hold ballots marked by voters and records related to voting in those precincts intact until forty-five days following the recount, judicial inquiry or inspection of contents is completed, whichever is later.

D. Paper ballots marked by voters and records related to voting in any election shall only be destroyed using a destruction method approved by the state records administrator for destruction of public records.

E. The state records administrator is authorized to receive for storage and destruction paper ballots marked by voters and records related to voting in any election in which a federal candidate appears on the ballot. At least three days prior to sending the ballots and records to the state records administrator, the county clerk shall notify the county chair of each political party that participated in the election. The chairs or their designees may inspect the boxes prior to their sealing for delivery.

F. At least three days prior to the destruction by the county clerk of paper ballots marked by voters and records related to voting, the county clerk shall notify the county chair of each political party participating in the election of the time, place and date thereof. The chair of each political party may be present or may have the chair's accredited representative present.

G. Paper ballots marked by voters, their digitized equivalents and records related to voting are exempt from the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] until forty-five days following any recount, contest or other judicial inquiry or until forty-five days after adjournment of the state or county canvassing board, whichever is later. Any inspection of paper ballots marked by voters, their digitized equivalents or records related to voting shall be conducted in such a manner as to secure the secrecy of the ballot.

History: 1953 Comp., § 3-12-103, enacted by Laws 1977, ch. 222, § 72; 1981, ch. 149, § 9; 2008, ch. 58, § 3; 2015, ch. 145, § 66.

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1-12-70. Reporting of vote totals by precinct; voting data maintained by precinct.

A. The county clerk shall report to the secretary of state the vote totals in each precinct on election night.

B. The county clerk shall maintain voting data by precinct that includes the number of voters who voted early in-person, absentee by mail and on election day and the number of voters who voted using each type of voting system. The county clerk shall report this data to the secretary of state within sixty days following the election, and to no other person. The secretary of state shall then combine the data within a precinct to the extent necessary to protect the secrecy of each voter's ballot in accordance with rules issued by the secretary of state before the data as processed becomes a public record.

History: Laws 2007, ch. 336, § 1.

1-12-71. Repealed.

ARTICLE 13
Post-Election Duties

Sec.
1-13-1. Post-election duties; county canvassing board.
1-13-2. Post-election duties; missing returns.
1-13-3. Repealed.
1-13-4. Post-election duties; county canvass; method.
1-13-5. Post-election duties; county canvass; defective returns; correction.
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1-13-7. Post-election duties; county canvass; when recheck is required.
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1-13-24. Post-election duties; unopposed write-in candidates.

1-13-1. Post-election duties; county canvassing board.

A. The board of county commissioners is ex officio the county canvassing board in each county.

B. The board of county commissioners may designate the board of registration to serve as the county canvassing board for the county. The designation shall be made in the polling place resolution adopted pursuant to Section 1-3-2 NMSA 1978 and is valid for all statewide and special elections conducted within the county until the expiration of the resolution.

History: 1953 Comp., § 3-13-1, enacted by Laws 1969, ch. 240, § 303; 2019, ch. 212, § 120.

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1-13-2. Post-election duties; missing returns.

A. If at the time the county canvassing board meets it appears that a precinct board has not delivered the election returns to the county clerk, the county canvassing board shall immediately issue a summons to bring before it the delinquent precinct board together with the missing election returns. The summons shall be served by the sheriff, without cost to the county, and the members of the precinct board shall not be paid for their service on election day.

B. If within ten days after the date of the election the secretary of state has not received the election returns of any precinct, the secretary of state may send a special messenger to the county and precinct to secure and convey the missing returns to the secretary of state.

History: 1953 Comp., § 3-13-2, enacted by Laws 1969, ch. 240, § 304; 1977, ch. 222, § 73.

1-13-3. Repealed.

1-13-4. Post-election duties; county canvass; method.

The county clerk shall:

A. prepare the report of the canvass of the election returns by carefully examining the returns of each precinct to ascertain if they contain the properly executed certificates required by the Election Code and to ascertain whether any discrepancy, omission or error appears on the face of the election returns; and

B. present the report of the canvass to the county canvassing board for the board's consideration and approval.

History: 1953 Comp., § 3-13-4, enacted by Laws 1969, ch. 240, § 306; 1977, ch. 222, § 74; 2019, ch. 212, § 121.

1-13-5. Post-election duties; county canvass; defective returns; correction.

A. The county canvassing board shall immediately issue a summons directed to the precinct board, commanding them to forthwith appear and make the necessary corrections or supply omissions if:

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

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

(3) it appears that there is a discrepancy between the number of votes set forth in the certificate for any candidate and the number of electors voting as shown by the election returns; or

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

B. The summons shall be served by the sheriff as in the manner of civil cases, and for each service the sheriff shall be allowed the same mileage as is paid in civil cases. The mileage shall be paid by each member of the precinct board served.

C. After issuing the necessary summonses, the county canvassing board shall proceed with the canvass of all correct election returns.

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History: 1953 Comp., § 3-13-5, enacted by Laws 1969, ch. 240, § 307; 1977, ch. 222, § 75.

1-13-6. Post-election duties; county canvass; defective returns; notification of secretary of state.

If the county canvassing board discovers any defective returns and issues a summons for the precinct board, it shall immediately notify the secretary of state both orally and in writing that the returns from the specified precinct are defective. The secretary of state shall immediately transmit to the county canvassing board the defective returns from the precinct specified, after first making a photocopy of each of the covers and pages of the returns. The photocopy shall be kept on file for inspection as are the original returns.

History: 1953 Comp., § 3-13-6, enacted by Laws 1969, ch. 240, § 308.

1-13-7. Post-election duties; county canvass; when recheck is required.

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

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

C. The county clerk shall immediately notify the county chairmen of the political parties who participated in the election of the time and place of the recheck.

D. At the time and place set by the district court the recheck shall be conducted as provided in Section 1-13-9 NMSA 1978.

E. After the recheck, the election returns shall be corrected in duplicate to conform to the facts.

F. After being properly corrected, the election returns shall be disposed of as in the first instance: one each to the county clerk and one each to the secretary of state.

History: 1953 Comp., § 3-13-7.1, enacted by Laws 1977, ch. 222, § 76.

1-13-8. Post-election duties; county canvass; search for missing returns.

If it is necessary to open a ballot box on election night to ascertain if missing election returns are enclosed in the ballot box, the ballot box shall be opened by the county clerk and the district judge, or someone designated by the district judge. In the presence of the district judge or the designated representative of the district judge, the county clerk may remove the missing returns necessary to canvass the election. When such omission or negligence of the precinct board causes an additional expense to be incurred, no compensation shall be paid to the precinct board for its services on election day.

History: 1953 Comp., § 3-13-8, enacted by Laws 1969, ch. 240, § 310; 1977, ch. 222, § 77; 2011, ch. 137, § 101.

1-13-9. Post-election duties; county canvass; voting machine recheck.

A. During the official canvass of an election, the county canvassing board, upon written request of any candidate in the election or upon receipt of a written petition of twenty-five voters of the

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county, shall make, in the presence of the district judge, a recheck and comparison of the results shown on the official returns being canvassed with the results appearing on the alphanumeric printout of the contest, candidates and vote totals of each voting machine used in the election.

B. The necessary corrections, if any, shall be made on the returns, and the results of the election, as shown by the recheck and comparison, shall be declared.

History: 1953 Comp., § 3-13-10, enacted by Laws 1969, ch. 240, § 312; 1977, ch. 222, § 78; 2015, ch. 145, § 68.

1-13-10. Post-election duties; voting machine recheck; cost.

A. Before any recheck and comparison of returns and voting machines is made pursuant to Section 1-13-10 NMSA 1978, the candidate making the request, or the petitioners, shall deposit a sum of money or a surety bond made in favor of the county to defray the cost of the recheck. The deposit or the surety bond shall be in the amount of ten dollars ($10.00) for each machine to be rechecked.

B. If the recheck alters the winner of the election, the deposit or surety bond shall be returned and the cost of the recheck shall be paid by the county. If the recheck does not alter the winner of the election, the deposit or surety bond shall be forfeited and the money from the deposit or bond shall be placed in the county general fund.

History: 1953 Comp., § 3-13-11, enacted by Laws 1969, ch. 240, § 313; 1973, ch. 4, § 6.

1-13-11. Post-election duties; tie vote.

In the event of a tie vote between any candidates in the election for the same office, the determination as to which of the candidates shall be declared to have been nominated or elected shall be decided by lot. The method of determining by lot shall be agreed upon by a majority of a committee consisting of the tied candidates, the county chairmen of the political parties that participated in the election and the district judge. The county canvassing board shall issue the certificate of nomination or election to the candidate chosen by lot.

History: 1953 Comp., § 3-13-12, enacted by Laws 1969, ch. 240, § 314.

1-13-12. Post-election duties; mandamus to compel canvass.

The district court, upon petition of any voter, may issue a writ of mandamus to the county canvassing board to compel it to approve the report of the county canvass and certify the election returns.

History: 1953 Comp., § 3-13-13, enacted by Laws 1969, ch. 240, § 315; 2019, ch. 212, § 122.

1-13-13. Post-election duties; county canvassing board; certifying results.

A. The county canvassing board shall meet to approve the report of the canvass of the returns and declare the results no sooner than six days and no later than ten days from the date of the

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election. A county canvassing board in a county with more than one hundred fifty thousand voters shall meet to approve the report of the canvass of the returns and declare the results no sooner than six days and no later than thirteen days from the date of the election.

B. The county canvassing board, immediately upon approval of the report of the canvass of the returns of an election, shall issue a certificate of canvass of the results of the election and send one copy of the certified results to:

(1) the county clerk;

(2) each local governing body with a candidate or ballot question receiving votes from any precinct in the county;

(3) the secretary of state;

(4) the state records center;

(5) the state canvassing board, in the case of a statewide election or a special state election and the results are for candidates or ballot questions voted on by the voters of more than one county; and

(6) in the case of a municipality whose laws provide for a top-two runoff, the municipality and the county clerk, if the results indicate the need for a top-two runoff election.

C. On the thirty-first day after any primary or general election, the secretary of state shall issue to those candidates entitled by law election certificates, or certificate of nomination in the case of the primary election, to all county officers, magistrates and to members of the legislature elected from districts wholly within the county. In addition, the county canvassing board, immediately after completion of the canvass, shall declare the results of the election and of all ballot questions affecting only precincts within the county.

History: 1953 Comp., § 3-13-14, enacted by Laws 1969, ch. 240, § 316; 1979, ch. 378, § 15; 2015, ch. 145, § 69; 2019, ch. 212, § 123.

1-13-14. Post-election duties; opening the ballot box.

Once the ballot box has been locked by the precinct board after its first count and tally, no person shall open the ballot box or remove its contents except by court order or as otherwise provided by the Election Code.

History: 1953 Comp., § 3-13-15, enacted by Laws 1969, ch. 240, § 317; 2015, ch. 145, § 70.

1-13-15. Post-election duties; statewide election; state canvass.

A. The state canvassing board shall meet in the state capitol on the third Tuesday after each statewide election and proceed to approve the report of the canvass and declare the results of the election or nomination of each candidate voted upon by the entire state and by the voters of more than one county.

B. The state canvassing board shall also meet in the state capitol on the third Tuesday after each statewide election or special state election to approve the report of the canvass and declare the result of the vote on any constitutional amendment or any ballot question voted upon by the voters of more than one county.

C. Upon the completion of the state canvass, the secretary of state shall notify each county clerk of that fact.

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History: 1953 Comp., § 3-13-16, enacted by Laws 1969, ch. 240, § 318; 1977, ch. 222, § 79; 2019, ch. 212, § 124.

1-13-16. Post-election duties; secretary of state duties.

A. The report of the state canvass shall be made from the election returns transmitted directly to the secretary of state from each of the election boards and, in the case of candidates voted upon by a district composed of two or more counties, from the certificates transmitted by the county canvassing boards. The secretary of state shall prepare the report of the state canvass; provided that the state canvassing board may designate a person or persons to compare the totals appearing on the election returns, statements of canvass and certificates and to certify the results of their findings to the state canvassing board.

B. Upon approval of the report of the state canvass, but not sooner than the thirty-first day after any primary or general election, the secretary of state shall issue to those candidates entitled by law the appropriate certificate of election or, in the case of a primary election, a certificate of nomination.

C. Upon receipt of the reports of the county canvass of a local election from each county, the secretary of state shall:

(1) not sooner than the twenty-fourth day after a regular local election, issue to those candidates entitled by law the appropriate certificate of election;

(2) not sooner than the seventh day following a top-two runoff election and no later than the last business day before the first day of the new term of office, issue to those candidates entitled by law the appropriate certificate of election; and

(3) no later than the seventeenth day following a special local election in which votes were cast by the voters of more than one county, declare the result of the vote on any ballot question and issue a certificate of canvass of the results of the special election.

History: 1953 Comp., § 3-13-17, enacted by Laws 1969, ch. 240, § 319; 1977, ch. 222, § 80; 1979, ch. 378, § 16; 2019, ch. 212, § 125.

1-13-17. Post-election duties; nature of documents.

The returns and certificates sent to the secretary of state are public documents, subject to inspection during customary office hours by candidates and by the chairman of the state central committee of each political party or his accredited representative, and may be copied upon request of a candidate or state chairman.

History: 1953 Comp., § 3-13-18, enacted by Laws 1969, ch. 240, § 320.

1-13-18. Post-election duties; state canvass; corrections.

The state canvassing board shall carefully examine all election returns and certificates issued by the county canvassing boards. If any discrepancy, omission or error appears on their face, the state canvassing board shall immediately forward such returns or certificate to the district court in which the precinct or county canvassing board is situated. The district judge upon receipt of such returns or certificate shall issue a summons to the responsible precinct board or county canvassing board, directing them to appear forthwith before him to complete or correct such returns or certificate.

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History: 1953 Comp., § 3-13-19, enacted by Laws 1969, ch. 240, § 321.

1-13-19. Post-election duties; proceedings for contempt.

Failure of any person to obey any summons required to be issued by, or issued pursuant to, the Election Code [Chapter 1 NMSA 1978] is contempt and is punishable as provided by law.

History: 1953 Comp., § 3-13-20, enacted by Laws 1969, ch. 240, § 322.

1-13-20. Post-election duties; expense of corrections.

The expense of any proceeding to complete or correct any returns or certificate shall be paid from the county general fund upon voucher signed by the county clerk.

History: 1953 Comp., § 3-13-21, enacted by Laws 1969, ch. 240, § 323; 1973, ch. 4, § 7.

1-13-21. Clearing voting systems; transferring ballots.

A. The county clerk shall not clear the votes recorded on the removable storage media devices until at least forty-five days after adjournment of the county or state canvassing board, whichever is later.

B. The county clerk shall not clear and shall keep locked those removable media storage devices from voting systems used to tabulate votes for precincts where a recount, judicial inquiry or inspection is sought, subject to order of the district court or other authority having jurisdiction of the contest or inspection.

C. Beginning forty-five days after the adjournment of the state or county canvassing board, whichever is later, or forty-five days after completion of a recount or judicial inquiry, the county clerk may transfer ballots from the locked ballot boxes for disposition pursuant to Section 1-12-69 NMSA 1978.

History: 1953 Comp., § 3-13-22.1, enacted by Laws 1971, ch. 317, § 21; 1981, ch. 153, § 1; 2007, ch. 337, § 15; 2011, ch. 137, § 102; 2015, ch. 145, § 71; 2019, ch. 212, § 126.

1-13-22. Post-election duties; responsibility for voting machines.

After the election, the county clerk shall have custody of the voting machines. The county clerk shall furnish all necessary protection to see that the transported and stored voting machines are not tampered with or damaged. The county clerk shall take the proper action to see that the voting machines are not tampered with or damaged during the time the machines are at the polling places.

History: 1953 Comp., § 3-13-23, enacted by Laws 1969, ch. 240, § 325; 1971, ch. 317, § 22; 1977, ch. 222, § 81; 1991, ch. 106, § 11.

1-13-23. Post-election duties; records.

A. The returns and certificates of the result of the county canvass are public documents, subject to inspection and retention as provided by Section 1-12-69 NMSA 1978. The certificate of results of the canvass of the election shall, forty-five days after the election or recount after any contest has been settled by the court, be preserved as a permanent record in the state records center. A copy of

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the certificate of results of the canvass of the election shall be preserved as a permanent record in the office of the county clerk in a separate book maintained for recording the results of elections.

B. The returns and certificates of the result of the state canvass are public documents, subject to inspection and retention as provided by Section 1-12-69 NMSA 1978. The certificate of results of the canvass of the election shall, forty-five days after the election or recount after any contest has been settled by the court, be preserved as a permanent record in the state records center. A copy of the certificate of results of the canvass of the election shall be preserved as a permanent record in the office of the secretary of state in a separate book maintained for recording the results of elections.

History: 1978 Comp., § 1-22-17, enacted by Laws 1985, ch. 168, § 19; 1987, ch. 249, § 50; repealed and reenacted by Laws 2018, ch. 79, § 30; recompiled and amended as § 1-13-23 by Laws 2019, ch. 212, § 127.

1-13-24. Post-election duties; unopposed write-in candidates.

A. In a general election, the proper canvassing board shall not certify the election of an unopposed write-in candidate unless the candidate receives at least the number of write-in votes equal to two percent of the total vote in the state, district or county in which the candidate seeks election that were cast for governor in the last preceding general election in which a governor was elected.

B. In a regular local election, the secretary of state shall not issue a certificate of election to an unopposed write-in candidate unless the candidate receives either one hundred votes or the number of write-in votes equal to at least ten percent of the total number of ballots on which the office appears that are cast in the regular local election.

C. In a primary election, the proper canvassing board shall not certify the nomination of an unopposed write-in candidate unless the candidate receives at least the number of write-in votes in the primary election as the write-in candidate would need for signatures on a nominating petition pursuant to the requirements set out in Section 1-8-33 NMSA 1978.

D. In an election to fill a vacancy in the office of United States representative, the state canvassing board shall not certify the election of an unopposed write-in candidate unless the candidate receives at least the number of write-in votes equal to two percent of the total vote in the congressional district in which the candidate seeks election that were cast for governor in the last preceding general election in which a governor was elected.

History: Laws 2019, ch. 212, § 128.

ARTICLE 14
Contests and Recounts

Sec.
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Sec.
1-14-20. Recounts; rechecks; appointment of a special master.
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1-14-1. Contest of elections; who may contest.

Any unsuccessful candidate for nomination or election to any public office may contest the election of the candidate to whom a certificate of nomination or a certificate of election has been issued.

History: 1953 Comp., § 3-14-1, enacted by Laws 1969, ch. 240, § 326.

1-14-2. Contest of elections; status of person holding certificate.

In case of a contest of an election, the person holding the certificate of election shall take possession and discharge the duties of the office until the contest is decided.

History: 1953 Comp., § 3-14-2, enacted by Laws 1969, ch. 240, § 327.

1-14-3. Contest of election; filing of complaint.

Any action to contest an election shall be commenced by filing a verified complaint of contest in the district court of the county where either of the parties resides. Such complaint shall be filed no later than thirty days from issuance of the certificate of nomination or issuance of the certificate of election to the successful candidate. The party instituting the action shall be known as the contestant, and the party against whom the action is instituted shall be known as the contestee. The Rules of Civil Procedure apply to all actions commenced under the provisions of this section.

History: 1953 Comp., § 3-14-3, enacted by Laws 1969, ch. 240, § 328; 1971, ch. 210, § 1.

1-14-4. Contest of election; judgment; effect; costs.

Judgment shall be rendered in favor of the party for whom a majority of the legal votes shall be proven to have been cast, and shall be to the effect that he is entitled to the office in controversy with all the privileges, powers and emoluments belonging thereto and for his costs. If the contestant prevails he shall have judgment placing him in possession of the contested office and for the emoluments thereof from the beginning of the term for which he was elected and for his costs.

History: 1953 Comp., § 3-14-12, enacted by Laws 1969, ch. 240, § 337.

1-14-5. Contest of election; appeal.

An appeal shall lie from any judgment or decree entered in the contest proceeding to the supreme court of New Mexico within the time and in the manner provided by law for civil appeals from the district court.

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History: 1953 Comp., § 3-14-13, enacted by Laws 1969, ch. 240, § 338.

1-14-6. Contest of election; preservation of ballots.

Either the contestant or contestee, within the time provided by the Election Code for the preservation of ballots, may give written notice with delivery confirmation to the county clerk of those counties wherein the contestant or contestee wishes the ballots preserved that a contest is pending in a designated court, and thereupon it is the duty of the county clerk to preserve the ballots of all precincts named in the notice of contest and answer until the contest has been finally determined.

History: 1953 Comp., § 3-14-14, enacted by Laws 1969, ch. 240, § 339; 2015, ch. 145, § 72.

1-14-7. Contest of election; disqualification of trial judge.

Any election contest shall be an action or proceeding within the meaning of Section 38-3-9 NMSA 1978. Any affidavit of disqualification shall be filed on or before the date when the answer is required to be filed to the notice of contest.

History: 1953 Comp., § 3-14-15, enacted by Laws 1969, ch. 240, § 340.

1-14-8. Impounding ballots; ballots defined.

As used in Sections 1-14-9 through 1-14-12 NMSA 1978, "ballots" includes tally sheets, registration certificates, paper ballots, absentee ballots, statements of canvass, absentee ballot applications and absentee ballot registers, but does not include voting machines.

History: 1953 Comp., § 3-14-16, enacted by Laws 1971, ch. 249, § 1; 1987, ch. 249, § 44; 1987, ch. 327, § 17; 1991, ch. 105, § 39; 1993, ch. 314, § 57; 1993, ch. 316, § 57.

1-14-9. Impounding ballots; application for court order; deposit required.

Any candidate in an election may petition the district court for an order impounding ballots in one or more precincts within which he is a candidate. The action shall be brought in the district court for the county in which the precincts are located. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along with a cash deposit of twenty-five dollars ($25.00) per precinct, the court shall issue an order of impoundment.

History: 1953 Comp., § 3-14-16.1, enacted by Laws 1971, ch. 249, § 2.

1-14-10. Order of impoundment; contents.

The court order of impoundment shall specify the items of ballots to be impounded and shall direct the state police to:

A. take immediate physical custody of any items ordered impounded and not in use in the precinct in the conduct of the election;

B. take legal custody of items ordered impounded and being used in the conduct of the election by assigning an officer to be physically present in the precinct polling place until the polling place

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is closed and the results in the precinct have been tallied and certified as required by the Election Code [Chapter 1 NMSA 1978];

C. take physical custody of items ordered impounded and being used in the conduct of the election as soon as the polling place is closed and the results in the precinct have been tallied and certified as required by the Election Code; and

D. deliver all items ordered impounded and taken into physical custody to the district court clerk of the court entering the order for safekeeping subject to further orders of the court.

History: 1953 Comp., § 3-14-16.2, enacted by Laws 1971, ch. 249, § 3.

1-14-11. Impoundment; subsequent orders; access; termination of order.

A. The party petitioning the court for the original order of impoundment may by motion to the court request an order allowing the party or his attorney access to and inspection of any items impounded. The court shall enter its order allowing access and inspection under conditions set by the court that will assure adequate safeguarding of the impounded items. The order shall, if requested by the petitioner, allow for the copying or reproduction of any items by and at the expense of the petitioner.

B. Ten days from the date of the original order of impoundment or, if an order granting access and inspection has been entered, ten days after that order, the order of impoundment shall automatically terminate unless the court extends the time for good cause shown. The court shall in all cases order the impoundment of ballots terminated no later than thirty days after the entry of the original order of impoundment.

C. Upon the termination of an impoundment of ballots the items impounded shall be delivered by the district court clerk to the person that would have been entitled to the possession of the items under the Election Code [Chapter 1 NMSA 1978] if there had been no impoundment.

History: 1953 Comp., § 3-14-16.3, enacted by Laws 1971, ch. 249, § 4.

1-14-12. Disposition of deposit in impoundment proceedings.

If the petitioner shall successfully prosecute an election content [contest] or recount proceeding that results in a change in his favor the court shall refund to him the deposit required under Section 1-14-9 NMSA 1978 less any amount expended for guarding and preserving the impounded ballots. In all other cases there shall be no refund. Any amounts not refunded shall be transmitted to the state treasurer for credit to the state general fund.

History: 1953 Comp., § 3-14-16.4, enacted by Laws 1971, ch. 249, § 5.

1-14-13. Post-election duties; proof that no corruption occurred; rejection of ballots.

A. In any election contest a prima facie showing that the precinct board of any precinct has failed to substantially comply with the provisions of the Election Code [Chapter 1 NMSA 1978] that protect the secrecy and sanctity of the ballot and prescribe duties of the precinct board during the conduct of election, shall cast upon the candidates of the political party having majority representation on the precinct board the burden of proving that no fraud, intimidation, coercion

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or undue influence was exerted by such members of the precinct board, and that the secrecy and purity of the ballot was safeguarded and no intentional evasion of the substantial requirements of the law was made.

B. Upon failure to make such a showing upon which the court shall so find, the votes of that entire precinct shall be rejected; provided, that no such rejection shall be made where it appears to the court that the members of the precinct board ignored the requirements of the Election Code with the probable interest of procuring the rejection of the entire vote in the precinct.

History: 1953 Comp., § 3-14-17, enacted by Laws 1969, ch. 240, § 342.

1-14-13.1. Repealed.

1-14-13.2. Post-election duties; voting system check.

A. At least ninety days prior to each general election, the secretary of state shall contract with an auditor qualified by the state auditor to audit state agencies to oversee a check on the accuracy of precinct electronic vote tabulators, alternate voting location electronic vote tabulators and absent voter precinct electronic vote tabulators. The voting system check shall be conducted for all federal offices, for governor and for the statewide elective office, other than the office of the governor, for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico. The voting system check is waived for any office for which a recount is conducted.

B. For each selected office, the auditor shall publicly select a random sample of precincts from a pool of all precincts in the state no later than twelve days after the election. The random sample shall be chosen in a process that will ensure, with at least ninety percent probability for the selected offices, that faulty tabulators would be detected if they would change the outcome of the election for a selected office. The auditor shall select precincts starting with the statewide office with the largest winning margin and ending with the precincts for the statewide office with the smallest winning margin and then, in the same manner, select precincts from each congressional district. The size of the random sample for each office shall be determined as provided in Table 1 of this subsection. When a precinct is selected for one office, it shall be used in lieu of selecting a different precinct when selecting precincts for another office in the same congressional district, or for any statewide office. If the winning margin in none of the offices for which a voting system check is required is less than fifteen percent, a voting system check for that general election shall not be required.

Table 1

Winning margin between top two candidates for the office according to the county canvasses	Number of precincts in the state to be tested for that office
Percent	
greater than 15	no precincts for that office
greater than 14 but less than or equal to 15	4

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greater than 13 but less than or equal to 14	4
greater than 12 but less than or equal to 13	5
greater than 11 but less than or equal to 12	5
greater than 10 but less than or equal to 11	6
greater than 9.0 but less than or equal to 10	6
greater than 8.0 but less than or equal to 9.0	7
greater than 7.0 but less than or equal to 8.0	9
greater than 6.0 but less than or equal to 7.0	10
greater than 5.5 but less than or equal to 6.0	11
greater than 5.0 but less than or equal to 5.5	13
greater than 4.5 but less than or equal to 5.0	14
greater than 4.0 but less than or equal to 4.5	16
greater than 3.5 but less than or equal to 4.0	18
greater than 3.0 but less than or equal to 3.5	22
greater than 2.5 but less than or equal to 3.0	26
greater than 2.0 but less than or equal to 2.5	32
greater than 1.8 but less than or equal to 2.0	37

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greater than 1.6 but less than or equal to 1.8	42
greater than 1.4 but less than or equal to 1.6	47
greater than 1.2 but less than or equal to 1.4	54
greater than 1.1 but less than or equal to 1.2	59
greater than 1.0 but less than or equal to 1.1	65
greater than 0.9 but less than or equal to 1.0	73
greater than 0.8 but less than or equal to 0.9	82
greater than 0.7 but less than or equal to 0.8	93
greater than 0.6 but less than or equal to 0.7	109
greater than 0.5 but less than or equal to 0.6	130
0.5 or less	165.

C. The auditor shall notify the appropriate county clerks of the precincts that are to be included in the voting system check upon their selection. The auditor shall direct the appropriate county clerks to open the locked ballot boxes, remove ballots from the selected precincts and compare the original machine count precinct vote totals, including early absentee and absentee by mail machine count vote totals, for candidates for offices subject to the voting system check from the selected precincts for each office with the respective vote totals of a hand recount of the paper ballots from those precincts. The county clerks shall report their results to the auditor within ten days of the notice to conduct the voting system check unless a county clerk is aware of a recount in any office that includes one or more precincts in the county, in which case the county clerk shall report the results of the post-election audit to the auditor within ten days following the conclusion of the recount.

D. Based on the results of the voting system check and any other auditing results, the auditor shall determine the error rate in the sample for each office. If the winning margin decreases and the error rate based on the difference between the vote totals of hand recounts of the paper ballots and the original precinct vote totals exceeds ninety percent of the winning margin for an office, another sample equal in size to the original sample shall be selected and the original precinct vote totals compared to the vote totals of hand recounts. The error rate based on the first and second sample

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shall be reported, and if it exceeds ninety percent of the winning margin for the office, the state canvassing board shall order that a full hand recount of the ballots for that office be conducted.

E. The auditor shall report the results of the voting system check to the secretary of state upon completion of the voting system check and release the results to the public.

F. Persons designated as county canvass observers may observe the hand recount described in Subsection C of this section. Observers shall comply with the procedures governing county canvass observers as provided in Section 1-2-31 NMSA 1978.

G. If a recount for an office selected for a voting system check is conducted pursuant to the provisions of Chapter 1, Article 14 NMSA 1978, the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

H. All costs of a voting system check or required hand recount shall be paid in the same manner as automatic recounts.

History: Laws 2009, ch. 233, § 1; 2015, ch. 145, § 73.

1-14-13.3. General election audit.

The secretary of state shall issue rules for the conduct and procedures of the post-election voting system check, set minimum qualifications for auditors eligible for selection to conduct post-election evaluations of the accuracy of voting systems and approve the contract terms for auditors. The state auditor shall review the rules, qualification standards and contract terms to ensure they meet audit standards.

History: Laws 2009, ch. 233, § 2.

1-14-14. Recounts; rechecks; application.

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

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

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

History: 1953 Comp., § 3-14-18, enacted by Laws 1969, ch. 240, § 343; 1977, ch. 222, § 82; 2009, ch. 150, § 32; 2018, ch. 79, § 14.

1-14-15. Recounts; rechecks; cost of proceedings.

A. An applicant for a recount shall deposit with the proper canvassing board or, in the case of an office for which the state canvassing board issues a certificate of nomination or election, with the secretary of state sufficient cash, or a sufficient surety bond, to cover the cost of a recount for each precinct for which a recount is demanded. An applicant for a recheck shall deposit with the

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proper canvassing board or, in the case of an office for which the state canvassing board issues a certificate of nomination or election, with the secretary of state sufficient cash, or a sufficient surety bond, to cover the cost of the recheck for each voting machine to be rechecked. The state canvassing board shall determine the estimated actual cost of a recount per precinct and a recheck per voting machine no later than March 15 of even-numbered years. The secretary of state shall post the recount and recheck cost determinations on the secretary of state's web site when the state canvassing board issues its cost determinations.

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

C. If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the state upon warrant issued by the secretary of finance and administration supported by a voucher of the secretary of state, or shall be paid by the county upon warrant of the county clerk from the general fund of the county, as the case may be.

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

History: 1953 Comp., § 3-14-19, enacted by Laws 1978, ch. 48, § 1; 2001, ch. 109, § 1; 2005, ch. 270, § 77; 2007, ch. 336, § 18.

1-14-16. Recount or recheck proceedings.

A. Immediately after filing of the application for recount or recheck, or notice of an automatic recount, the appropriate canvassing board shall issue an order to the county clerk of each county where a precinct specified in the application or notice is located commanding the county clerk to convene a recount precinct board at the county seat on a day specified in the order, which date shall not be more than ten days after the filing of the application for a recount or recheck or notice of an automatic recount.

B. Upon receipt of the order, the county clerk shall appoint a recount precinct board pursuant to the provisions of Section 1-2-12 NMSA 1978 and shall send notices of the names of the recount precinct board members and the date fixed for the recount or recheck to the district judge for the county and the county chair of each of the political parties that participated in the election for the office in question. The county clerk shall keep a log of how each person was notified and confirmation that the notice was received. Presiding judges and election judges on the recount precinct board shall be appointed from among those persons who served as precinct board members in the most recent election.

C. The recount precinct board, district judge and county clerk shall meet on the date fixed for the recount or recheck, and the ballot boxes and ballot containers or voting machines of the precincts involved in the recount or recheck shall be opened. The recount precinct board shall recount and retally the ballots, or recheck the votes cast on the voting machines, as the case may be, for the office in question in the presence of the county clerk, district judge and any other person who may desire to be present.

D. After completion of the recount or recheck, the recount precinct board shall replace the ballots in the ballot boxes and ballot containers and lock them, or the voting machines shall be locked

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and resealed, and the precinct board shall certify to the proper canvassing board the results of the recount or recheck. The district judge and the county clerk shall also certify that the recount or recheck was made in their presence.

History: 1953 Comp., § 3-14-20, enacted by Laws 1969, ch. 240, § 345; 1977, ch. 222, § 84; 1978 Comp., § 1-14-16, repealed and reenacted by Laws 2008, ch. 41, § 3; 2015, ch. 145, § 74.

1-14-17. Repealed.

1-14-18. Recount; recheck; recanvass by canvassing boards.

A. Immediately upon receipt of the certificate of recount or recheck from all the recount precinct boards making a recount or recheck, the proper canvassing board shall meet and recanvass the returns for the office in question.

B. In making the recanvass, the proper canvassing board shall be bound by the certificates of recount or recheck from the recount precinct boards instead of the original returns from the precinct boards.

C. After the recanvass, if it appears that fraud or error has been committed sufficient to change the winner of the election, then the proper canvassing board shall revoke the certificate of nomination or election already issued to any person for that office and shall issue a certificate of nomination or election in favor of the person receiving a plurality of the votes cast at the election as shown by the recount or recheck, and such certificate shall supersede all others and entitle the holder to the same rights and privileges as if such certificate had been originally issued by the canvassing board.

History: 1953 Comp., § 3-14-22, enacted by Laws 1969, ch. 240, § 347; 1977, ch. 222, § 86; 2008, ch. 41, § 4; 2015, ch. 145, § 75.

1-14-19. Recount; recheck; candidate for district judge.

If a recount or recheck is demanded on the election of a district judge and the judge of the district was a candidate for partisan office at the election, the chief justice of the supreme court shall designate a district judge who shall act in such proceedings.

History: 1953 Comp., § 3-14-23, enacted by Laws 1969, ch. 240, § 348; 1977, ch. 222, § 87; 2015, ch. 145, § 76.

1-14-20. Recounts; rechecks; appointment of a special master.

If the judge of the district court for the county, or any judge designated in his place, cannot be present at any recount or recheck on the day set, he shall appoint a member of the bar to act for him.

History: 1953 Comp., § 3-14-24, enacted by Laws 1969, ch. 240, § 349; 1977, ch. 222, § 88.

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1-14-21. Recounts; rechecks; mandamus.

If the state canvassing board, the county canvassing board, secretary of state, county clerk or any member of a precinct board fails or refuses to do or perform any of the acts required of them pertaining to recounts or rechecks, the applicant for recount or recheck may apply to any district court, the court of appeals or the supreme court of New Mexico for writ of mandamus to compel the performance of the required act and such court shall entertain such application.

History: 1953 Comp., § 3-14-25, enacted by Laws 1969, ch. 240, § 350; 1977, ch. 222, § 89.

1-14-22. Contests and recounts; provisional, absentee and other paper ballots; use of ballot images.

A. The secretary of state shall issue rules governing and allowing procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in the case of a contest or recount of election results. All rejected provisional paper ballot envelopes shall be included in any contest or recount of election results, and a review of the qualification of provisional ballot envelopes shall occur in a recount.

B. Upon petition by the secretary of state or a county clerk, the district court may permit a review of ballot images in place of paper ballots whenever there are defective or missing returns in an election and when the voting system technology captures an image of each ballot in an election.

History: Laws 2005, ch. 270, § 76; 2007, ch. 336, § 19; 2019, ch. 212, § 129.

1-14-23. Recount procedures.

A. To ensure the accuracy of electronic vote tabulating systems, in a recount, the votes from a random selection of ballots shall be tallied by hand, and the votes from the same ballots shall be tabulated by the electronic vote tabulating systems to be used in the recount. For statewide and federal office, the number of ballots to be tallied and tabulated shall be equal to the greater of one hundred, or two percent, of the ballots cast in each county. For all other offices, the number of ballots to be tallied and tabulated shall be equal to the greater of one hundred, or five percent, of the ballots cast for the office, distributed by county where applicable. If more than one electronic vote tabulating system is to be used in a county, the ballots to be recounted shall be divided among the electronic vote tabulating systems to be used, and the above process shall be performed on each electronic vote tabulating system based on the number of votes to be recounted on each individual electronic vote tabulating system.

B. If the results of the hand tally and the electronic vote tabulating system tabulation do not differ, the remaining ballots shall be recounted using that electronic vote tabulating system. If the results of the hand tally and the electronic vote tabulating system differ, the electronic vote tabulating system shall not be used in the recount and the remaining ballots shall be recounted by hand or on a different electronic vote tabulating system in which the results did not differ.

C. When using an electronic vote tabulating system for a recount, a county clerk may permit a visual inspection of the ballots prior to tabulation by the optical scan tabulating system for the purpose of permitting a representative of a candidate to identify individual ballots to be selected for hand tally by the precinct board.

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History: Laws 2007, ch. 337, § 2; 2015, ch. 145, § 77.

1-14-24. Automatic recounts; elections for state and federal offices; procedures.

A. An automatic recount of the vote is required when the canvass of returns indicates that the margin between the two candidates receiving the greatest number of votes for an office, the margin between those supporting and those opposing a ballot question or the margin affecting the outcome of a nonpartisan judicial retention election is less than:

(1) one-fourth percent of the total votes cast in that election:

(a) for that office in the case of a federal or statewide office;

(b) on a ballot question in the case of a state ballot question; or

(c) on a nonpartisan judicial retention election in the case of the supreme court or the court of appeals;

(2) one-half percent of the total votes cast in that election:

(a) for that office in the case of a public regulation commissioner, public education commissioner, district attorney or any office elected countywide in a county with more than one hundred fifty thousand registered voters;

(b) on a ballot question in the case of a local ballot question; or

(c) on a nonpartisan judicial retention election in the case of a district court or the metropolitan court; or

(3) one percent of the total votes cast in that election for that office in the case of any other office.

B. For an office for which ballots were cast in more than one county, the secretary of state shall file notice with the state canvassing board upon the completion of the state canvass that an automatic recount is required, and the state canvassing board shall order a recount of the ballots for the specified office. For an office in which ballots were cast solely within one county, the secretary of state shall file notice with the state canvassing board within seven days after receiving notice from the county clerk following the completion of the county canvass that an automatic recount is required, and the state canvassing board shall order a recount of the ballots for the specified office.

C. Automatic recounts shall be conducted pursuant to the recount procedures established in Sections 1-14-16 and 1-14-18 through 1-14-23 NMSA 1978.

History: Laws 2008, ch. 41, § 1; 2015, ch. 145, § 78; 2019, ch. 212, § 130.

1-14-25. Automatic recounts; expenses.

The secretary of state shall reimburse the counties for the costs of conducting an automatic recount with money appropriated to the secretary. In the event that current year appropriations to the secretary of state do not cover the cost of an automatic recount, the secretary may apply to the state board of finance for an emergency grant to cover those costs pursuant to Section 6-1-2 NMSA 1978.

History: Laws 2008, ch. 41, § 2.

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ARTICLE 15

Presidential Electors, Senators, Congressmen and Expiring Terms

Sec.
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1-15-21. Expiring term and next succeeding term; nomination.
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1-15-1. Presidential electors; notification of state chairmen.

On or before June 1 of each year in which the president and vice president of the United States are to be elected, the secretary of state shall send written notice to the state chairman of each qualified political party in New Mexico setting forth the method and requirements for nominating and electing presidential electors in this state at the general election.

History: 1953 Comp., § 3-15-1, enacted by Laws 1969, ch. 240, § 351.

1-15-2. Presidential electors; primary election.

Presidential electors shall not be nominated at the primary election.

History: 1953 Comp., § 3-15-2, enacted by Laws 1969, ch. 240, § 352.

1-15-3. Presidential electors; nomination.

A. Any qualified political party in New Mexico desiring to have candidates for president and vice president on the general election ballot in a presidential election year shall, at a state party convention held in the year of such election, choose from the voters of the party the number of presidential electors required by law and no more.

B. The presidential electors shall be nominated by the state convention according to the rules of that party on file with the secretary of state.

C. Upon the nomination of presidential electors, the chair and secretary of the convention shall certify the names and addresses of the nominees not less than sixty-three days prior to the election to the secretary of state. The secretary of state shall record the nominees' names in the secretary's office as the presidential elector nominees of that party.

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History: 1953 Comp., § 3-15-3, enacted by Laws 1969, ch. 240, § 353; 1977, ch. 222, § 90; 1981, ch. 145, § 1; 2017, ch. 101, § 16.

1-15-4. Presidential electors; election.

A. The names of the presidential elector nominees shall not be placed upon the general election ballot; instead, the secretary of state shall certify to the county clerks the names of persons nominated by each qualified political party for the offices of president and vice president of the United States.

B. The names of the nominees for president and vice president for each qualified political party shall be printed together in pairs upon the general election ballot. A vote for any pair of nominees shall be a vote for the presidential electors of the political party by which the nominees were named.

C. Except as provided in Subsection D of this section, presidential elector nominees of the party whose nominees for president and vice president receive the highest number of votes at the general election shall be the elected presidential electors for this state, and each shall be granted a certificate of election by the state canvassing board.

D. If the Agreement Among the States to Elect the President by National Popular Vote is in effect in accordance with Article III, Subsection I of that compact, the state canvassing board shall grant a certificate of election to the presidential elector nominees of the party whose nominees for president and vice president receive the largest national popular vote total in the general election.

History: 1953 Comp., § 3-15-4, enacted by Laws 1969, ch. 240, § 354; 2019, ch. 199, § 2.

1-15-4.1. Compact enacted and entered into.

The "Agreement Among the States to Elect the President by National Popular Vote" is enacted into law and entered into on behalf of New Mexico with any and all other states legally joining therein in a form substantially as follows:

"AGREEMENT AMONG THE STATES TO ELECT
THE PRESIDENT BY NATIONAL POPULAR VOTE

ARTICLE I

Membership

Any state of the United States and the District of Columbia may become a member of this agreement by enacting this agreement.

ARTICLE II

Right of the People in Member States to Vote for President and Vice President

Each member state shall conduct a statewide popular election for president and vice president of the United States.

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ARTICLE III

Manner of Appointing Presidential Electors in Member States

A. Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each state of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a "national popular vote total" for each presidential slate.

B. The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the "national popular vote winner".

C. The presidential elector certifying official of each member state shall certify the appointment in that official's own state of the elector slate nominated in that state in association with the national popular vote winner.

D. At least six days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate and shall communicate an official statement of such determination within twenty-four hours to the chief election official of each other member state.

E. The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state's final determination conclusive as to the counting of electoral votes by congress.

F. In event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official's own state.

G. If, for any reason, the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state's number of electoral votes, the presidential candidate on the presidential slate that has been designated as the national popular vote winner shall have the power to nominate the presidential electors for that state and that state's presidential elector certifying official shall certify the appointment of such nominees.

H. The chief election official of each member state shall immediately release to the public all vote counts or statements of votes as they are determined or obtained.

I. This article shall govern the appointment of presidential electors in each member state in any year in which this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.

ARTICLE IV

Other Provisions

A. This agreement shall take effect when states cumulatively possessing a majority of the electoral votes have enacted this agreement in substantially the same form and the enactments by such states have taken effect in each state.

B. Any member state may withdraw from this agreement, except that a withdrawal occurring six months or less before the end of a president's term shall not become effective until a president or vice president shall have been qualified to serve the next term.

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C. The chief executive of each member state shall promptly notify the chief executive of all other states of when this agreement has been enacted and has taken effect in that official's state, when the state has withdrawn from this agreement and when this agreement takes effect generally.

D. This agreement shall terminate if the electoral college is abolished.

E. If any provision of this agreement is held invalid, the remaining provisions shall not be affected.

ARTICLE V

Definitions

For purposes of this agreement:

A. "chief executive" shall mean the governor of a state of the United States or the mayor of the District of Columbia;

B. "elector slate" shall mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate;

C. "chief election official" shall mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate;

D. "presidential elector" shall mean an elector for president and vice president of the United States;

E. "presidential elector certifying official" shall mean the state official or body that is authorized to certify the appointment of the state's presidential electors;

F. "presidential slate" shall mean a slate of two persons, the first of whom has been nominated as a candidate for president of the United States and the second of whom has been nominated as a candidate for vice president of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state;

G. "state" shall mean a state of the United States and the District of Columbia; and

H. "statewide popular election" shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis."

History: Laws 2019, ch. 199, § 1.

Compiler's notes. — Laws 2019, ch. 199, § 1 was not enacted as part of the Election Code, but was compiled there for the convenience of the user.

1-15-5. Presidential electors; duties.

Presidential electors for the state shall perform the duties of the presidential electors required by law and the constitution of the United States.

History: 1953 Comp., § 3-15-5, enacted by Laws 1969, ch. 240, § 355.

1-15-6. Presidential electors; organization.

A. Presidential electors of the state shall meet at 11:00 a.m. in the office of the secretary of state on the day fixed by the laws of the United States for presidential electors to cast their ballots for president and vice president of the United States.

B. At such meeting the presidential electors shall organize by choosing a presiding officer and a secretary.

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C. If the full number of electors required by law are not present at such meeting for any reason, those presidential electors present shall, from a list of names nominated by the state chairman of that party, forthwith choose electors from the voters of that state party.

D. The secretary of state shall provide such clerical assistance as needed by the presidential electors in performing their duties.

History: 1953 Comp., § 3-15-6, enacted by Laws 1969, ch. 240, § 356; 1977, ch. 222, § 91.

1-15-7. Presidential electors; when governor fills vacancy.

In the case of the death or absence of any presidential elector or failure to complete the number of presidential electors by noon of the day fixed by the laws of the United States for presidential electors to cast their ballots, the governor shall fill any vacancy by appointment. In filling the vacancy the governor shall appoint a voter of the state from a list of names nominated by the state chairman of the same political party represented by the presidential elector whose death or absence caused the vacancy.

History: 1953 Comp., § 3-15-7, enacted by Laws 1969, ch. 240, § 357.

1-15-8. Presidential electors; electoral college casting ballots; certification of results.

The presidential electors of the state shall meet at noon in the office of the secretary of state on the day fixed by the laws of the United States for presidential electors to cast their ballots for president and vice president and shall proceed to vote by ballot for president and vice president of the United States and to certify the results of such election in accordance with the constitution and laws of the United States. The presidential elector chosen as secretary shall keep a journal of the proceedings and deposit the journal in the office of the secretary of state, where it shall be kept on file.

History: 1953 Comp., § 3-15-8, enacted by Laws 1969, ch. 240, § 358; 1977, ch. 222, § 92.

1-15-9. Presidential electors; penalty.

A. All presidential electors shall cast their ballots in the electoral college for the candidates of the political party which nominated them as presidential electors.

B. Any presidential elector who casts his ballot in violation of the provisions contained in Subsection A of this section is guilty of a fourth degree felony.

History: 1953 Comp., § 3-15-9, enacted by Laws 1969, ch. 240, § 359.

1-15-10. Presidential electors; per diem and mileage.

Each presidential elector shall be paid per diem for each day's attendance and mileage from his residence to the state capitol and return to his place of residence one time, as provided for state officers in the Per Diem and Mileage Act [Chapter 10, Article 8 NMSA 1978], and he shall receive no other compensation. Per diem and mileage shall be paid by the state treasurer on warrants drawn

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by the secretary of finance and administration in accordance with vouchers approved by the presiding officer of the presidential electors.

History: 1953 Comp., § 3-15-10, enacted by Laws 1969, ch. 240, § 360; 1977, ch. 247, § 12.

1-15-11. United States senator; nomination.

Candidates for the office of United States senator shall be nominated during the year of the general election next preceding the expiration of the term of office of the United States senator whose successor is to be nominated and elected. Nominations shall be in the manner prescribed by the Election Code [Chapter 1 NMSA 1978] for state officers.

History: 1953 Comp., § 3-15-11, enacted by Laws 1969, ch. 240, § 361.

1-15-12. United States senator; election.

The United States senator shall be elected at the general election next succeeding nomination for that office.

History: 1953 Comp., § 3-15-12, enacted by Laws 1969, ch. 240, § 362.

1-15-13. United States senator; canvass of vote.

The vote for the office of United States senator shall be cast, counted, returned and canvassed in the same manner as the vote is cast, counted, returned and canvassed for state officers. Upon completion of the canvass, the state canvassing board shall immediately transmit the results of such election of United States senator to the president of the United States senate.

History: 1953 Comp., § 3-15-13, enacted by Laws 1969, ch. 240, § 363.

1-15-14. United States senator; vacancy.

A. Immediately upon there being a vacancy in the office of United States senator, the governor shall make a temporary appointment to fill the vacancy until such time as an election is held to fill the vacancy for the unexpired term.

B. The election to fill the vacancy for the unexpired term shall be held at the next general election occurring not less than thirty days subsequent to the happening of such vacancy.

C. If the vacancy occurs within thirty days next preceding a general election, the person appointed by the governor to fill the vacancy shall hold office until the next general election occurring more than thirty days subsequent to the happening of the vacancy unless the term of office of such senator shall sooner expire.

D. Candidates to fill a vacancy in the office of United States senator for an unexpired term shall be nominated and elected in the same manner as candidates are nominated and elected for the full term.

History: 1953 Comp., § 3-15-14, enacted by Laws 1969, ch. 240, § 364.

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1-15-15. Unconstitutional.

1-15-15.1. Unconstitutional.

1-15-15.2. [United States representative; congressional districts.]

Congressional District One is composed of Bernalillo county precincts 2 through 79, 81 through 83, 86 through 92, 94 through 99, 101 through 114, 116, 119 through 125, 131 through 144, 150 through 154, 161 through 166, 170, 171, 180 through 187, 191 through 197, 211, 212, 214 through 217, 221, 223 through 226, 241 through 246, 251 through 258, 271 through 275, 278, 281 through 287, 289 through 308, 311 through 318, 321 through 324, 326 through 333, 341 through 347, 351 through 358, 371 through 375, 381 through 387, 400 through 456, 461 through 466, 471 through 478, 480 through 500, 502 through 573 and 601 through 603; Sandoval county precincts 1 through 5, 28, 29, 38, 52, 55 through 57, 64, 74 and 76; Santa Fe county precincts 15, 73 and 84; Torrance county; and Valencia county precincts 6, 16, 22, 28 and Census tabulation block 3506119703031019 in Valencia county precinct 36.

Congressional District Two is composed of Bernalillo county precinct 93; Catron county; Chaves county; Cibola county; De Baca county; Doña Ana county; Eddy county; Grant county; Guadalupe county; Hidalgo county; Lea county; Lincoln county; Luna county; McKinley county precincts 26, 27, 29 and 30; Otero county; Roosevelt county precincts 3 through 6, 10, 11, 19 and all of Roosevelt county precinct 2 except for Census tabulation block 350410002001111; Sierra county; Socorro county; and Valencia county precincts 1 through 5, 7 through 15, 17 through 21, 23 through 27, 29 through 35, 37 through 41 and all of Valencia county precinct 36 except for Census tabulation block 350611973031019.

Congressional District Three is composed of Bernalillo county precincts 1, 80, 84, 85, 115, 117, 118 and 127 through 129; Colfax county; Curry county; Harding county; Los Alamos county; McKinley county precincts 1 through 25, 28, 31 through 50 and 52 through 59; Mora county; Quay county; Rio Arriba county; Roosevelt county precincts 1, 7 through 9, 12, 13, 15, 17, 18, 21 and Census tabulation block 350410002001111 in Roosevelt county precinct 2; San Juan county; San Miguel county; Sandoval county precincts 6 through 27, 30 through 37, 39 through 51, 53, 54, 58 through 63, 65 through 73, 75 and 78 through 86; Santa Fe county precincts 1 through 14, 16 through 72, 74 through 83 and 85 through 88; Taos county; and Union county.

1-15-16. Unconstitutional.

1-15-16.1. Precincts.

A. Precinct designations and boundaries used in the 1991 congressional redistricting are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] and revised and approved pursuant to that act by the secretary of state as of August 16, 1991.

B. The boards of county commissioners shall not create any precinct that lies in more than one congressional district, nor shall the boards of county commissioners divide any precinct so that the divided parts of the precinct are situated in two or more congressional districts. Votes cast in any general, primary or other statewide election from precincts created or divided in violation of this subsection shall be invalid and shall not be counted or canvassed.

History: Laws 1991 (1st S.S.), ch. 7, § 2.

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1-15-17. United States representative; nomination and election.

One representative in congress shall be nominated and elected from each congressional district for voting purposes. Ballots for representatives in congress shall designate the office as congressional district number one, congressional district number two and congressional district number three. Only voters of each district shall be eligible to vote for the respective candidates of the district.

History: 1953 Comp., § 3-15-17, enacted by Laws 1969, ch. 240, § 367; 1982 (2nd S.S.), ch. 4, § 3.

1-15-17.1. Repealed.

1-15-18. Repealed.

1-15-18.1. United States representative; vacancy.

A. Within ten days after a vacancy occurs in the office of United States representative, the secretary of state shall, by proclamation, call an election to be held not less than seventy-seven nor more than ninety-one days after the date of the vacancy for the purpose of filling the vacancy, except as provided in Subsections H and I of this section.

B. The proclamation shall forthwith be filed by the secretary of state in the office of the secretary of state. The proclamation shall specify the:

(1) date on which the election will be held;

(2) purpose for which the election is called;

(3) date on which declarations of candidacy are to be filed;

(4) date on which declarations of intent to be a write-in candidate are to be filed; and

(5) date certificates of registration are to be subscribed and sworn to participate in the election as required by law.

C. After the proclamation is issued pursuant to Subsection B of this section, the secretary of state shall within five days certify the proclamation to each county clerk with precincts located in the United States representative district in which the vacancy exists. Beginning not less than sixty-three days before the date of the election, the secretary of state shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation.

D. Upon the issuance of the proclamation, each qualified political party may nominate in the manner provided by the rules of that party a candidate to fill the vacancy in the office of United States representative; provided that such nomination is certified to the secretary of state by the state chair of that party no later than 5:00 p.m. on the fifty-sixth day preceding the date of the election.

E. Declarations of unaffiliated candidacy to fill the vacancy in the office of United States representative and nominating petitions pertaining thereto shall be filed with the secretary of state no later than 5:00 p.m. on the fifty-sixth day preceding the date of the election.

F. Declarations of intent to be a write-in candidate to fill a vacancy in the office of United States representative shall be filed with the secretary of state no later than 5:00 p.m. on the fifty-sixth day preceding the date of the election.

G. Elections called for the purpose of filling a vacancy in the office of United States representative shall be conducted in accordance with the provisions of the Election Code for general elections; provided, however, if there is a conflict between this section and other provisions of the Election Code, the provisions of this section shall control. The secretary of state shall, only when necessary,

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adjust the day provided in the Uniform Military and Overseas Voters Act [1-6B-1 through 1-6B-17 NMSA 1978] to send ballots to federal qualified electors in an election to fill a vacancy in the office of United States representative. The adjusted day shall be immediately posted on the website of the secretary of state and reported to the federal voting assistance program.

H. If a vacancy occurs in the office of United States representative beginning one hundred sixty days and no less than sixty-three days before a statewide election, the vacancy shall be filled at the next statewide election; provided that when filling a vacancy:

(1) at a general election, candidates seeking the office of United States representative in that general election for the next succeeding term shall be deemed to be candidates for the unexpired term as well, and the candidate elected shall take office upon the certification of the election results; or

(2) at a political party primary or a regular local election, each ballot shall contain the election to fill the vacancy in the office of United States representative listed before the contests in the political party primary or regular local election, and ballots containing only the election of the vacancy in the office of United States representative shall be available to voters who do not otherwise qualify to vote in the political party primary or that regular local election.

I. If a vacancy occurs in the office of United States representative in extraordinary circumstances when there are more than one hundred vacancies in the United States house of representatives and there are more than seventy-five days before a regularly scheduled election, then pursuant to 2 U.S.C. Section 8(b):

(1) the governor shall immediately issue a writ of election, upon which the secretary of state shall, by proclamation, call an election to be held not more than forty-nine days after the vacancy is announced and file the proclamation along with the writ in the office of the secretary of state;

(2) the secretary of state shall immediately certify the proclamation to each county clerk with precincts located in the United States representative district in which the vacancy exists, and beginning not less than thirty-five days before the date of the election, the secretary of state shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation;

(3) each qualified political party may nominate in the manner provided by the rules of that party a candidate to fill the vacancy in the office of United States representative; provided that such nomination is certified to the secretary of state by the state chair of that party no later than 5:00 p.m. on the tenth business day following announcement of the vacancy;

(4) declarations of independent candidacy to fill the vacancy in the office of United States representative and nominating petitions pertaining thereto shall be filed with the secretary of state no later than 5:00 p.m. on the tenth business day following announcement of the vacancy; and

(5) declarations of intent to be a write-in candidate to fill the vacancy in the office of United States representative shall be filed with the secretary of state no later than 5:00 p.m. on the tenth business day following announcement of the vacancy.

J. The state shall pay all costs of an election to fill a vacancy in the office of United States representative when the election is not held on the same ballot as a statewide election.

History: 1978 Comp., § 1-15-18.1, enacted by Laws 1983, ch. 232, § 16; 2008, ch. 58, § 4; 2019, ch. 212, § 131.

1-15-19. Expiring and succeeding terms.

"Expiring term" means a term of office which expires not later than three months after the general election at which it is filled.

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History: 1953 Comp., § 3-15-19, enacted by Laws 1969, ch. 240, § 369.

1-15-20. Expiring term and next succeeding term in same election.

A. In all instances where the expiring term of the office of United States senator or representative and the term next succeeding the expiring term are to be voted upon at the same general election, the same individual may be a candidate for both the expiring term and next succeeding term, whether at a primary election, nominating convention or general election.

B. In those instances where a person is initially elected for a next succeeding term of the office of United States senator or representative at a general election and there becomes a vacancy in the expiring term of that office at any time beginning seventy days before the general election through the first day of the next succeeding term, the person initially elected for the next succeeding term and in possession of the certificate of election from the general election shall be declared elected for the remainder of the expiring term.

History: 1953 Comp., § 3-15-20, enacted by Laws 1969, ch. 240, § 370; 2019, ch. 212, § 132.

1-15-21. Expiring term and next succeeding term; nomination.

A. If any political party convention nominates any individual to be placed on the general election ballot for the term next succeeding the expiring term, then such person nominated by the party convention shall be deemed to also be designated by the convention for the expiring term. No candidate may be designated by the convention for the expiring term only.

B. Any candidate whose name is placed on the direct primary ballot in the primary election for the term next succeeding the expiring term shall be conclusively presumed to have declared as a candidate for both the expiring term and the succeeding term.

History: 1953 Comp., § 3-15-21, enacted by Laws 1969, ch. 240, § 371.

1-15-22. Expiring term and next succeeding term; filing fee.

Notwithstanding any of the provisions of the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], a candidate for both the expiring term and the next succeeding term of the same office shall pay only the fee required of a candidate for the office for one full term of such office.

History: 1953 Comp., § 3-15-22, enacted by Laws 1969, ch. 240, § 372.

1-15-23. Expiring term and succeeding term.

If the same individual is a candidate at a general election for both the expiring term and the succeeding term, his name shall appear but once on the ballot, and the name of the office, followed by the words, "full and expiring terms".

History: 1953 Comp., § 3-15-23, enacted by Laws 1969, ch. 240, § 373; 1999, ch. 267, § 32.

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ARTICLE 15A
Presidential Primary

Sec.
1-15A-1. Short title.
1-15A-2. Presidential primary; date of election.
1-15A-3. Selection of national convention delegates by major political parties; use of alternate selection procedures; certification.
1-15A-4. Conduct of election.
1-15A-5. Nomination by committee.
1-15A-6. Nomination by petition.
1-15A-7. Notification to candidates.
1-15A-8. Voting in presidential primary; ballot position.
1-15A-9. National convention.
1-15A-10. Delegate pledge.
1-15A-11. Penalty.

1-15A-1. Short title.

This act [Chapter 1, Article 15A NMSA 1978] may be cited as the "Presidential Primary Act".

History: 1953 Comp., § 3-8-33, enacted by Laws 1977, ch. 230, § 1; 1978 Comp., § 1-8-53 recompiled as § 1-15A-1 by Laws 2011, ch. 137, § 109.

1-15A-2. Presidential primary; date of election.

In the year in which the president and vice president of the United States are to be elected, the registered voters of this state shall be given an opportunity to express their preference for the person to be the presidential candidate of their party in either a presidential primary election or in accordance with the selection procedure for presidential candidates of each voter's party. The presidential primary election shall be held on the same date as the primary election is held in this state.

History: 1953 Comp., § 3-8-34, enacted by Laws 1977, ch. 230, § 2; 2003, ch. 300, § 2; 1978 Comp., § 1-8-54 recompiled as § 1-15A-2 by Laws 2011, ch. 137, § 109.

1-15A-3. Selection of national convention delegates by major political parties; use of alternate selection procedures; certification.

A. If a major political party chooses not to participate in the presidential primary, it shall:

(1) notify the secretary of state at least thirty days before the governor is required to issue the proclamation of the primary election; and

(2) allow anyone who would otherwise be qualified to vote in that party's primary to participate in the party's selection procedure.

B. The state chair of a major political party that does not participate in the presidential primary shall certify to the secretary of state the names of the state party's delegates to the party's national convention, and those delegates shall file a declaration of acceptance in accordance with Section 1-15A-10 NMSA 1978.

History: Laws 2003, ch. 300, § 3; 1978 Comp., § 1-8-54.1 recompiled as § 1-15A-3 by Laws 2011, ch. 137, § 109; 2016, ch. 28, § 2.

1-15A-4. Conduct of election.

The presidential primary election shall be conducted and canvassed along with and in the manner provided by law for the conduct and canvassing of the primary election.

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History: 1953 Comp., § 3-8-35, enacted by Laws 1977, ch. 230, § 3; 1978 Comp., § 1-8-55 recompiled as § 1-15A-4 by Laws 2011, ch. 137, § 109.

1-15A-5. Nomination by committee.

There shall be convened in Santa Fe a committee consisting of the chief justice of the supreme court, as chairman, the speaker of the house of representatives and the minority floor leader of the house of representatives, the president pro tempore of the senate, the minority floor leader of the senate and the state chairmen of those major political parties participating in the presidential primary. The committee shall nominate as presidential primary candidates, and certify to the secretary of state, not later than February 15 before the presidential primary election, the names of all those generally advocated and nationally recognized or supported by any major political party in the state as candidates of the major political parties participating in the presidential primary for the office of president of the United States.

History: 1953 Comp., § 3-8-36, enacted by Laws 1977, ch. 230, § 4; 1980, ch. 13, § 1; 1980, ch. 43, § 1; 1995, ch. 124, § 17; 1978 Comp., § 1-8-56 recompiled as § 1-15A-5 by Laws 2011, ch. 137, § 109.

1-15A-6. Nomination by petition.

No later than 5:00 p.m. on the thirtieth day following the nominations by committee, any person seeking the endorsement by the national political party for the office of president of the United States, or any group organized in this state on behalf of, and with the consent of, such person, may submit to the secretary of state a petition on a form prescribed and furnished by the secretary of state to have such candidate's name printed on the presidential primary ballot. The petition shall be signed by a number of registered voters in each of the congressional districts equal to not less than two percent of the total number of votes for president cast in each district at the last preceding presidential election. Each signer of such petition shall sign but one such petition. In verifying the petition, the secretary of state shall count each signature unless it is determined that the person signing is not a registered voter of this state, has signed more than one petition or is not the person whose name appears on the nominating petition.

History: 1953 Comp., § 3-8-37, enacted by Laws 1977, ch. 230, § 5; 1978 Comp., § 1-8-57 recompiled as § 1-15A-6 by Laws 2011, ch. 137, § 109.

1-15A-7. Notification to candidates.

The secretary of state shall contact each person who has been nominated by the committee or by petition and notify the person in writing by certified mail, with return receipt requested, that the person's name will be printed as a candidate on the New Mexico presidential primary ballot unless the person requests in writing otherwise at least sixty-three days prior to the election.

History: 1953 Comp., § 3-8-38, enacted by Laws 1977, ch. 230, § 6; 1980, ch. 13, § 2; 1980, ch. 43, § 2; 1978 Comp., § 1-8-58 recompiled as § 1-15A-7 by Laws 2011, ch. 137, § 109; 2017, ch. 101, § 17.

1-15A-8. Voting in presidential primary; ballot position.

A. All candidates in the presidential primary shall appear with the candidates for other offices of their respective parties at an appropriate place on the ballot. Candidates who are nominated

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by committee and by petition shall be placed first as a group on the presidential primary ballot with each candidate's respective position in that group determined by the provisions of the Ballot Positioning Act [repealed]. The ballot position for the uncommitted category shall be placed last on the presidential primary ballot.

B. The voter shall be able to cast his ballot for one of the presidential candidates of his party or for an uncommitted delegation. A vote of the latter kind shall express the preference for an uncommitted delegation from New Mexico to the national convention of that voter's party.

History: 1953 Comp., § 3-8-39, enacted by Laws 1977, ch. 230, § 7; 1980, ch. 13, § 3; 1980, ch. 43, § 3; 1988, ch. 17, § 6; 1978 Comp., § 1-8-59 recompiled as § 1-15A-8 by Laws 2011, ch. 137, § 109.

1-15A-9. National convention.

A. Upon the completion of the state canvass of the results of the presidential primary, the secretary of state shall forthwith certify to the state chairman of each political party participating in the primary and to the credentials committee of the national convention of each such political party the following:

(1) the names of all candidates and uncommitted category; and

(2) the total vote and the percentage of the total vote of such candidates or uncommitted category received.

B. Each political party shall select as many delegates and alternates to the national party convention in the manner prescribed by the rules of that party and as are allotted to it by the national committee of that party.

C. The vote of the delegates or their alternates to the national convention from each such political party from New Mexico shall be cast on the first presidential nomination ballot of the national convention by the chairman of the delegation. The manner of casting the vote of each party delegation shall be as follows:

(1) each candidate and the uncommitted category shall be entitled to a share of the total vote allotted to the delegation that is equal to the proportion that the vote he received in the presidential primary bears to the total combined vote received by all qualified candidates; provided that no candidate shall be excluded who has received at least fifteen percent of the total vote cast for candidates for president of that party, and no candidate shall be excluded in violation of any political party rule; and

(2) the method used to compute the total votes allowed to a candidate or the uncommitted category shall be determined by the party rules on file in the office of the secretary of state.

D. The provisions of this section with regard to the manner of voting by the New Mexico delegations at the national party conventions apply only to the first nominating ballot cast at such conventions. Such delegations may be released prior to the first ballot from voting in the manner provided by this section upon death of the candidate or upon his written unconditional release of such votes allotted to him. Any votes so released shall be cast in the manner of votes allotted to the uncommitted category.

History: 1953 Comp., § 3-8-40, enacted by Laws 1977, ch. 230, § 8; 1980, ch. 13, § 4; 1980, ch. 43, § 4; 1981, ch. 147, § 9; 1978 Comp., § 1-8-60 recompiled as § 1-15A-9 by Laws 2011, ch. 137, § 109.

1-15A-10. Delegate pledge.

A. No person selected as a delegate or alternate shall qualify to attend the national convention of his political party unless he files with the state chairman of his political party at least fifteen days prior to the convening of the applicable national party convention a written

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declaration of acceptance, signed by himself, in the form herein prescribed and the state chairman deposits this declaration of acceptance in the office of the secretary of state no later than ten days before convening of the applicable national convention.

B. The declaration of acceptance shall be in the form of an affidavit and shall contain the following information:

(1) the name, residence and post office address of the delegate or alternate delegate;

(2) a statement that he is a registered voter in New Mexico affiliated with the political party for which he is a delegate or alternate and that he was a registered voter and affiliated with that party on the day of the governor's primary election proclamation in the year in which he is a delegate to the national convention;

(3) a statement that he accepts his selection as a delegate or alternate to the national convention; and

(4) if delegates are pledged to specific candidates for the office of president, a pledge in the following form:

"As a delegate to the 20 _____ national convention of _____ party, I pledge myself to vote on the first ballot for the nomination of president by the _____ party as required by Section 1-8-60 NMSA 1978.".

C. Any delegate representing the uncommitted category may vote for any candidate at the national convention or remain uncommitted.

History: 1953 Comp., § 3-8-41, enacted by Laws 1977, ch. 230, § 9; 1980, ch. 13, § 5; 1980, ch. 43, § 5; 2003, ch. 300, § 4; 1978 Comp., § 1-8-61 recompiled as § 1-15A-10 by Laws 2011, ch. 137, § 109.

1-15A-11. Penalty.

It is unlawful for any alternate or delegate to fail to vote at the national party convention in accordance with the delegate pledge he signed as required by the Presidential Primary Act. Any alternate or delegate violating any of the provisions of the Presidential Primary Act is guilty of a petty misdemeanor.

History: 1953 Comp., § 3-8-43, enacted by Laws 1977, ch. 230, § 11; 1978 Comp., § 1-8-63 recompiled as § 1-15A-11 by Laws 2011, ch. 137, § 109.

ARTICLE 16
Ballot Questions

Sec.
1-16-1. Ballot questions; application of Election Code.
1-16-2. Ballot questions; state ballot questions; local government ballot questions.
1-16-3. Ballot questions; certification.
1-16-4. Ballot questions; state constitutional amendments; publication.
1-16-5. Repealed.
1-16-6. Repealed.
1-16-7. Ballot questions; form.
1-16-8. Ballot questions; prohibition on nonbinding or advisory questions.
1-16-9. Ballot questions; single ballot; space on ballot.
1-16-10. Repealed.
1-16-11. Repealed.
1-16-12. Repealed.
1-16-13. Repealed.

1-16-1. Ballot questions; application of Election Code.

At all elections at which any ballot question is submitted to the voters, the election shall be called, conducted and canvassed in accordance with the Election Code.

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History: 1953 Comp., § 3-16-1, enacted by Laws 1969, ch. 240, § 374; 2019, ch. 212, § 133.

1-16-2. Ballot questions; state ballot questions; local government ballot questions.

A. A state ballot question includes any:

(1) proposed amendment to the constitution of New Mexico, as provided in a joint resolution passed by the legislature;

(2) tax authorization for general obligation bonds or mill levy, as provided by law;

(3) referendum, as provided in Article 4, Section 1 of the constitution of New Mexico; and

(4) other questions, as provided by statute or the constitution of New Mexico.

B. A local government ballot question includes any:

(1) tax authorization for bond sales, mill levy or gross receipts tax, as required by law;

(2) recall of county, school board or certain municipal officers, as provided by law or by municipal home rule charter;

(3) petition for the creation of a special district or consideration of a statutory local option, as provided by law;

(4) referendum on local governing body taxation authority, as provided by law;

(5) referendum on local government ordinances, as provided by the charter of a home rule municipality, by an incorporated or urban county or by law;

(6) change in the laws of a home rule municipality, as provided by the municipal charter or by law;

(7) changes in the charter of an incorporated or urban county, as provided by the charter of the incorporated or urban county or by law; and

(8) other questions, as provided by state statute or the constitution of New Mexico.

History: 1953 Comp., § 3-16-2, enacted by Laws 1969, ch. 240, § 375; 2019, ch. 212, § 134.

1-16-3. Ballot questions; certification.

A. Whenever a state ballot question is to be submitted to the voters of the entire state on a general election or regular local election ballot, not less than seventy days before the election, the secretary of state shall certify the state ballot question to the county clerk of each county.

B. Whenever a local government ballot question is to be submitted to the voters of a local government on a general election or regular local election ballot, not less than seventy days before the election at which the ballot question is proposed to be submitted to the voters, the local government shall file a resolution proposing the ballot question with the county clerk of each county containing any precinct in which votes may be cast for or against the local government ballot question. Not less than sixty-seven days before the election, each county clerk shall certify the local government ballot question to the secretary of state.

C. Whenever a state or local government ballot question is to be submitted to the voters in a special election, the proclamation calling the election shall be filed with or certified to the county clerk of each county containing any precinct in which votes may be cast pursuant to the provisions of the Special Election Act [Chapter 1, Article 24 NMSA 1978].

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History: 1953 Comp., § 3-16-3, enacted by Laws 1969, ch. 240, § 376; 1977, ch. 222, § 93; 1981, ch. 146, § 1; 2017, ch. 101, § 18; 2019, ch. 212, § 135.

1-16-4. Ballot questions; state constitutional amendments; publication.

A. The secretary of state shall cause a proposed constitutional amendment to be published as provided in Article 19, Section 1 of the constitution of New Mexico.

B. The secretary of state shall post a proposed constitutional amendment beginning no later than seventy days prior to the election at which the amendment is to be submitted to the voters of the state for their approval or rejection.

C. Each county clerk shall post a proposed constitutional amendment beginning no later than sixty-seven days prior to the election at which the amendment is to be submitted to the voters of the state for their approval or rejection.

History: 1953 Comp., § 3-16-4, enacted by Laws 1969, ch. 240, § 377; 2019, ch. 212, § 136.

1-16-5. Repealed.

1-16-6. Repealed.

1-16-7. Ballot questions; form.

A. The secretary of state shall by rule prescribe uniform guidelines for a state or local ballot question to appear on the ballot.

B. For a proposed constitutional amendment, the form of the ballot question shall include the full title of the joint resolution proposing the constitutional amendment and the constitutional amendment number assigned to the joint resolution by the secretary of state.

History: 1953 Comp., § 3-16-6.1, enacted by Laws 1977, ch. 222, § 96; 1981, ch. 146, § 3; 2019, ch. 212, § 137.

1-16-8. Ballot questions; prohibition on nonbinding or advisory questions.

In no case shall a nonbinding or merely advisory question be placed on the ballot for any election held pursuant to the Election Code.

History: 1953 Comp., § 3-16-7, enacted by Laws 1969, ch. 240, § 380; 1977, ch. 222, § 97; 2018, ch. 79, § 15; 2019, ch. 212, § 138.

1-16-9. Ballot questions; single ballot; space on ballot.

A. Ballot questions submitted to the voters at any election shall be printed on one ballot only.

B. State ballot questions certified by the secretary of state shall be printed on the ballot as provided in the Election Code.

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C. Local government ballot questions authorized by law shall be printed on the ballot of each county containing any precinct in which votes may be cast for or against the local government ballot question.

D. If, after printing any offices required to be elected and the state ballot questions certified by the secretary of state, there is insufficient space on a single-page ballot using both sides of the page to accommodate the various ballot questions submitted by local governments:

(1) priority for printing local government ballot questions shall be in the order the approved ballot questions were filed with the county clerk; provided that for multicounty jurisdictions, exclusion from one county's ballot excludes that local government ballot question from the ballot in all applicable counties;

(2) a local government ballot question that, based on the order received by the county clerk, would require the ballot to be on more than one page shall be included on the ballot only if the local government submitting the ballot question pays the additional costs of any subsequent ballot page; provided that if more than one local government submits ballot questions that would require the ballot to be on more than one page, those local governments shall share the additional costs of any subsequent ballot page;

(3) a single ballot that is printed on more than one page may permit voters to cast on the first page a vote for or against any local government ballot question printed on a subsequent ballot page; and

(4) regardless of the order in which local government ballot questions are filed with the county clerk, the ballot questions shall be printed on the ballot in the order provided in Section 1-10-8 NMSA 1978.

History: 1953 Comp., § 3-16-8, enacted by Laws 1969, ch. 240, § 381; 1977, ch. 222, § 98; 2003, ch. 356, § 33; 2007, ch. 337, § 18; 2019, ch. 212, § 139.

1-16-10. Repealed.

1-16-11. Repealed.

1-16-12. Repealed.

1-16-13. Repealed.

ARTICLE 17

Referendum Petitions

Sec.
1-17-1. Referendum petitions; who may sign.
1-17-2. Referendum petitions; form.
1-17-3. Referendum petitions; solicitor of signatures; duty.
1-17-4. Referendum petitions; penalty.
1-17-5. Referendum petitions; requirements as to contents.
1-17-6. Referendum petitions; form of certificate.
1-17-7. Referendum petitions; false certification; penalty.
1-17-8. Referendum petitions; approval before circulation.
1-17-9. Referendum petitions; number; popular name.
1-17-10. Referendum petitions; sufficiency or insufficiency.
1-17-11. Referendum petitions; sufficiency of petition; burden of proof.
1-17-12. Referendum petitions; determination of insufficiency; duty of secretary of state.
1-17-13. Referendum petitions; writ of mandamus.
1-17-14. Referendum petitions; notice of election.

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1-17-1. Referendum petitions; who may sign.

Any person who is a qualified elector of New Mexico and who disapproves any law not excepted by the constitution of New Mexico may sign a referendum petition in his own proper handwriting, and not otherwise, to order a referendum vote upon a law enacted at the last preceding session of the legislature.

History: 1953 Comp., § 3-17-1, enacted by Laws 1969, ch. 240, § 386.

1-17-2. Referendum petitions; form.

The petition and order for referendum shall be in the following form:

"PETITION FOR REFERENDUM

To the Honorable .....
(Name of secretary of state)

We, the undersigned, qualified electors of ..... county, New Mexico, who disapprove Laws 19. . . . , Chapter. . . . , of New Mexico, approved ..... day of ....., 19 . . . , entitled 'An Act .....,' respectfully request by this our petition that it be referred to the people of New Mexico, to the end that the same may be approved or rejected by vote of the qualified electors of the state at the next regular general election to be held on the ..... day of ....., 19 ..; and each of us for himself says: I am a qualified elector of ..... county, New Mexico, and my residence, post-office address and voting precinct are correctly written after my name.

NAME RESIDENCE POST-OFFICE VOTING PRECINCT."

History: 1953 Comp., § 3-17-2, enacted by Laws 1969, ch. 240, § 387.

1-17-3. Referendum petitions; solicitor of signatures; duty.

Every person who solicits signatures to any petition for referendum shall present a full and correct copy of the law on which the referendum is sought to the person whose signature is solicited.

History: 1953 Comp., § 3-17-3, enacted by Laws 1969, ch. 240, § 388.

1-17-4. Referendum petitions; penalty.

It is a fourth degree felony for any person, on a petition for referendum, to:

A. sign any name other than his own, except to write thereon the name of a person who cannot write and who signs his name with his mark;

B. sign his name more than once on a petition on the same law;

C. sign his name when he is not a qualified elector in the county specified in the petition; or

D. knowingly misrepresent the purpose and effect of the petition or law thereby affected, for the purpose of causing anyone to sign the petition in reliance upon such misrepresentation.

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History: 1953 Comp., § 3-17-4, enacted by Laws 1969, ch. 240, § 389.

1-17-5. Referendum petitions; requirements as to contents.

A. Each page of a referendum petition upon which signatures of petitioners are to be solicited shall be an exact copy of all other pages of the referendum petition, except as to the county name and actual signatures.

B. Each page of any referendum petition to be filed shall have attached thereto the certificate of the person who circulated such petition.

C. No page of a referendum petition shall contain signatures of petitioners from more than one county. When a complete set of pages is delivered to the secretary of state as a completed petition, the sponsors shall also deliver a certified list of the registered voters of the county in which the particular pages were circulated and signed.

D. When a sufficient number of pages of a referendum petition are signed by the required number of qualified electors and are filed and duly certified by the secretary of state, they shall be treated and considered as one petition.

E. Each referendum petition shall be headed in boldface type, over the signature of the attorney general, with necessary instructions to the person who solicits signatures for the petition and to the signers of the petition, informing them of the privileges granted by the constitution and penalties imposed for violations of the law pertaining to referendum petitions.

History: 1953 Comp., § 3-17-5, enacted by Laws 1969, ch. 240, § 390.

1-17-6. Referendum petitions; form of certificate.

The back of each page of every referendum petition containing the signatures shall bear the following certificate executed by the person who circulated that page of the referendum petition:

"STATE OF NEW MEXICO
COUNTY OF .....

I, ..., do hereby certify that the signatures appearing on the front hereof were signed in my presence; that to the best of my knowledge and belief each such signature is genuine; and that the person so signing is a qualified elector in the county named on this page.

.....
(signature of person soliciting signatures for petition)

.....
(post-office)".

History: 1953 Comp., § 3-17-6, enacted by Laws 1969, ch. 240, § 391.

1-17-7. Referendum petitions; false certification; penalty.

Falsely certifying to the statements contained in the certificate required of persons soliciting signatures on a referendum petition is a fourth degree felony.

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History: 1953 Comp., § 3-17-7, enacted by Laws 1969, ch. 240, § 392.

1-17-8. Referendum petitions; approval before circulation.

A. Before any referendum petition is circulated for signatures, the sponsors shall submit the original draft thereof to the secretary of state to determine whether or not it meets the requirements of law for referendum petitions. At the same time the original draft is submitted to the secretary of state, the sponsors shall also submit a suggested popular name for the law which is the object of the petition.

B. Within ten days after submission of the original draft and suggested popular name, the secretary of state shall:

(1) approve and certify the original draft of the petition, and approve and certify the suggested popular name or a more suitable and correct popular name; or

(2) disapprove the original draft and specify each deficiency not in compliance with the law.

History: 1953 Comp., § 3-17-8, enacted by Laws 1969, ch. 240, § 393.

1-17-9. Referendum petitions; number; popular name.

The secretary of state shall fix and declare the number of the referendum petition and the popular name of the law to which it refers and by which it shall be designated on the ballot.

History: 1953 Comp., § 3-17-9, enacted by Laws 1969, ch. 240, § 394.

1-17-10. Referendum petitions; sufficiency or insufficiency.

The secretary of state shall ascertain and declare the sufficiency or insufficiency of each complete referendum petition within fifteen days after it is filed in his office.

History: 1953 Comp., § 3-17-10, enacted by Laws 1969, ch. 240, § 395.

1-17-11. Referendum petitions; sufficiency of petition; burden of proof.

A. In considering the sufficiency of a referendum petition the burden of proving that all signatures appearing on the page are genuine and that the signers are qualified electors of the county named on the page and are in all respects entitled to sign the petition shall be upon the sponsors of the petition, if it is apparent beyond a reasonable doubt to the secretary of state that twenty percent or more of the signatures on any one page thereof are fictitious, forged or otherwise clouded, or that the challenged petitioners were ineligible to sign the petition, which fact was known or could have been ascertained by the exercise of reasonable diligence on the part of the person soliciting the signatures on that page.

B. If the sponsors of the referendum petition refuse or fail to assume and meet such burden, the secretary of state shall reject the entire page and shall not count as petitioners any of the names appearing thereon.

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History: 1953 Comp., § 3-17-11, enacted by Laws 1969, ch. 240, § 396.

1-17-12. Referendum petitions; determination of insufficiency; duty of secretary of state.

A. If the complete referendum petition filed with the secretary of state is found to be insufficient, the secretary of state shall forthwith notify the sponsors in writing, through their designated agent, and shall set forth his reasons for so finding.

B. After delivery of such notice of insufficiency, the sponsors shall have thirty days in which:

(1) to solicit and obtain additional signatures;

(2) to submit proof to show that a rejected signature is valid and should be counted; or

(3) to make the petition more definite and certain.

C. Any amendment and correction to the referendum petition shall not materially change the purpose and effect of the petition, and no change shall be made in petition except to correct apparent typographical errors and omissions.

D. If no action is taken as prescribed in Subsection B of this section within the time limit prescribed, the petition for purposes of referral to the people at the general election is void.

History: 1953 Comp., § 3-17-12, enacted by Laws 1969, ch. 240, § 397.

1-17-13. Referendum petitions; writ of mandamus.

A. If the secretary of state fails or refuses to examine and certify the sufficiency or insufficiency of any referendum petition within the time prescribed, any twenty-five qualified electors who feel aggrieved thereby may within fifteen days thereafter apply to the supreme court for a writ of mandamus.

B. If the court decides that such petition is legally sufficient, it shall order the secretary of state to file and certify the sufficiency thereof as of the date upon which it was first offered for filing. A certified copy of the court's finding and order shall be attached to such petition.

C. On a proper showing that the referendum petition is not legally sufficient, the court may enjoin the secretary of state from certifying its sufficiency.

History: 1953 Comp., § 3-17-13, enacted by Laws 1969, ch. 240, § 398.

1-17-14. Referendum petitions; notice of election.

Before the general election at which any law subject to referendum petition is to be voted upon by the people, the secretary of state shall give notice by publication and posting in the manner required by law for the publication and posting of notice of election on proposed constitutional amendments. The notice shall contain the number of the petition, the ballot title, the certified popular name of the law to which the petition refers and a complete text of the law to which the petition refers.

History: 1953 Comp., § 3-17-14, enacted by Laws 1969, ch. 240, § 399.

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ARTICLE 18
Federal Constitutional Amendments

Sec.
1-18-1. Federal constitutional amendments; ratification convention; proclamation.
1-18-2. Federal constitutional amendments; contents of proclamation.
1-18-3. Federal constitutional amendments; ratification convention; composition.
1-18-4. Federal constitutional amendments; per diem and mileage of delegates.
1-18-5. Federal constitutional amendments; certification of proceedings.

1-18-1. Federal constitutional amendments; ratification convention; proclamation.

Within ten days after receipt of official notification of an action of congress proposing to conventions in the several states an amendment to the constitution of the United States, the governor shall, by proclamation, call a convention for the purpose of ratifying or rejecting the proposed amendment.

History: 1953 Comp., § 3-18-1, enacted by Laws 1969, ch. 240, § 400.

1-18-2. Federal constitutional amendments; contents of proclamation.

The proclamation shall specify the time and place of holding the convention and shall set forth the proposed amendment to the constitution of the United States.

History: 1953 Comp., § 3-18-2, enacted by Laws 1969, ch. 240, § 401.

1-18-3. Federal constitutional amendments; ratification convention; composition.

The ratification convention shall be composed of each member of the state legislature. The convention shall meet in the chamber of the house of representatives and, where applicable, the rules of the house of representatives shall govern the proceedings of the convention. The lieutenant governor shall be the president of the convention and shall be the presiding officer. He shall be assisted in his duties by the speaker of the house of representatives and the president pro tempore of the senate.

History: 1953 Comp., § 3-18-3, enacted by Laws 1969, ch. 240, § 402.

1-18-4. Federal constitutional amendments; per diem and mileage of delegates.

Delegates to the ratification convention shall be paid per diem and mileage at the same rate as provided for members of the legislature; provided that such per diem shall not be paid for any period of time exceeding three calendar days.

History: 1953 Comp., § 3-18-4, enacted by Laws 1969, ch. 240, § 403; 1977, ch. 222, § 100.

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1-18-5. Federal constitutional amendments; certification of proceedings.

The proceedings of the ratification convention shall be certified to in the manner and form prescribed by existing law in respect to state action on proposed amendments to the constitution of the United States.

History: 1953 Comp., § 3-18-5, enacted by Laws 1969, ch. 240, § 404.

ARTICLE 19
Campaign Practices

Sec.
1-19-1. Campaign practices; primary election; expenditure of party money.
1-19-2 to 1-19-15. Repealed.
1-19-16. Repealed.
1-19-17. Repealed.
1-19-18 to 1-19-24. Repealed.
1-19-25. Short title.
1-19-26. Definitions.
1-19-26.1. Political committees; registration; disclosures.
1-19-26.2. Rules and regulations.
1-19-26.3. Campaign committee and political committee expenditures; disclosure; telephone calls; records.
1-19-26.4. Disclaimers in advertisements.
1-19-27. Reports required; electronic reporting system; campaign reporting system fund.
1-19-27.1, 1-19-27.2. Repealed.
1-19-27.3. Independent expenditures; reporting requirements.
1-19-28. Furnishing report forms; political committees; candidates.
1-19-29. Time and place of filing reports.
1-19-29.1. Campaign funds; limitation on use.
1-19-30. Repealed.
1-19-31. Contents of report.
1-19-32. Inspection of public records.
1-19-32. Inspection of public records. (Effective January 1, 2020.)
1-19-32.1. Reports examination; forwarding of reports.
1-19-33. Repealed.
1-19-34. Candidates; political or campaign committees; treasurer; bank account; anonymous contributions; contributions from special events; credit and debit card contributions.
1-19-34.1. Legislative session fundraising prohibition.
1-19-34.1. Legislative session fundraising prohibition. (Effective January 1, 2020.)
1-19-34.2. Regulated industry solicitations prohibited.
1-19-34.3. Contributions in one name given for another prohibited; concealing source of contributions used for independent expenditures.
1-19-34.4. Education and voluntary compliance; investigations; binding arbitration; referrals for enforcement.
1-19-34.5. Presumptions; civil action.
1-19-34.6. Civil penalties.
1-19-34.7. Contribution limitations; candidates; political committees.
1-19-34.8. State ethics commission; jurisdiction. (Effective January 1, 2020.)
1-19-35. Reports and statements; late filing penalty; failure to file.
1-19-36. Penalties.
1-19-37. Applicability.

1-19-1. Campaign practices; primary election; expenditure of party money.

A. No contribution of money, or the equivalent thereof, made directly or indirectly to any political party, to any political party committee, to members of any political party committee or to any person representing or acting on behalf of a political party, and no money in the treasury of any political party or political party committee shall be expended directly or indirectly in the aid of the nomination at a primary election of any one or more persons as against any one or more other persons of the same political party running in such primary election.

B. Any person who expends money, or is responsible for the expenditure of money, in violation of this section is guilty of a petty misdemeanor.

History: 1953 Comp., § 3-19-1, enacted by Laws 1969, ch. 240, § 405.

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1-19-2 to 1-19-15. Repealed.

1-19-16. Repealed.

1-19-17. Repealed.

1-19-18 to 1-19-24. Repealed.

1-19-25. Short title.

Sections 1-19-25 through 1-19-36 NMSA 1978 may be cited as the "Campaign Reporting Act".

History: 1978 Comp., § 1-19-25, enacted by Laws 1979, ch. 360, § 1.

1-19-26. Definitions.

As used in the Campaign Reporting Act:

A. "advertisement" means a communication referring to a candidate or ballot question that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including recorded phone messages, or by printed materials, including mailers, handbills, signs and billboards, but "advertisement" does not include:

(1) a communication by a membership organization or corporation to its current members, stockholders or executive or administrative personnel;

(2) a communication appearing in a news story or editorial distributed through a print, broadcast, satellite, cable or electronic medium;

(3) a candidate debate or forum or a communication announcing a candidate debate or forum paid for on behalf of the debate or forum sponsor; provided that two or more candidates for the same position have been invited to participate or, in the case of an uncontested election, that the single candidate for the position has been invited to participate;

(4) nonpartisan voter guides allowed by the federal Internal Revenue Code of 1986, as amended, for Section 501(c)(3) organizations; or

(5) statements made to a court or administrative board in the course of a formal judicial or administrative proceeding;

B. "anonymous contribution" means a contribution the contributor of which is unknown to the candidate or the candidate's agent or the political committee or its agent who accepts the contribution;

C. "ballot question" means a constitutional amendment or other question submitted to the voters in an election;

D. "bank account" means an account in a financial institution regulated by the United States or a state of the United States;

E. "campaign committee" means an association of two or more persons authorized by a candidate to act on the candidate's behalf for the purpose of electing the candidate to office; provided that a candidate shall not authorize more than one campaign committee;

F. "campaign expenditure" means an expenditure that is made by a campaign committee or by a candidate in support of the candidate's campaign in an election;

G. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act, including a public official, who has filed a declaration of candidacy and has not subsequently filed a statement of withdrawal or:

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(1) for a nonstatewide office, has received contributions or made expenditures of more than one thousand dollars ($1,000) or authorized another person or campaign committee to receive contributions or make expenditures of more than one thousand dollars ($1,000) for the purpose of seeking election to the office; or

(2) for a statewide office, has received contributions or made expenditures of more than three thousand dollars ($3,000) or authorized another person or campaign committee to receive contributions or make expenditures of more than three thousand dollars ($3,000) for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of the election;

H. "contribution":

(1) means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign;

(2) includes a coordinated expenditure;

(3) does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee; and

(4) does not include the value of the incidental use of the candidate's personal property, home or business office for campaign purposes;

I. "coordinated expenditure" means an expenditure that is made:

(1) by a person other than a candidate or campaign committee;

(2) at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, campaign committee or political party or any agent or representative of a candidate, campaign committee or political party; and

(3) for the purpose of:

(a) supporting or opposing the nomination or election of a candidate; or

(b) paying for an advertisement that refers to a clearly identified candidate and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election in which the candidate is on the ballot;

J. "deliver" or "delivery" means to deliver by certified or registered mail, telecopier, electronic transmission or facsimile or by personal service;

K. "election" means any primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes federal, municipal, school board and special district elections;

L. "election year" means an even-numbered year in which an election covered by the Campaign Reporting Act is held;

M. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign or pre-primary convention;

N. "independent expenditure" means an expenditure that is:

(1) made by a person other than a candidate or campaign committee;

(2) not a coordinated expenditure as defined in the Campaign Reporting Act; and

(3) made to pay for an advertisement that:

(a) expressly advocates the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot question;

(b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot question; or

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(c) refers to a clearly identified candidate or ballot question and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election at which the candidate or ballot question is on the ballot;

O. "legislative caucus committee" means a political committee established by the members of a political party in a chamber of the legislature;

P. "person" means an individual or entity;

Q. "political committee" means:

(1) a political party;

(2) a legislative caucus committee;

(3) an association that consists of two or more persons whose primary purpose is to make contributions to candidates, campaign committees or political committees or make coordinated expenditures or any combination thereof; or

(4) an association that consists of two or more persons whose primary purpose is to make independent expenditures and that has received more than five thousand dollars ($5,000) in contributions or made independent expenditures of more than five thousand dollars ($5,000) in the election cycle;

R. "political party" means an association that has qualified as a political party pursuant to the provisions of Section 1-7-2 NMSA 1978;

S. "political purpose" means for the purpose of supporting or opposing a ballot question or the nomination or election of a candidate;

T. "prescribed form" means a form or electronic format prepared and prescribed by the secretary of state;

U. "public official" means a person elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act; and

V. "reporting individual" means a public official, candidate or treasurer of a campaign committee or a treasurer of a political committee.

History: 1978 Comp., § 1-19-26, enacted by Laws 1979, ch. 360, § 2; 1981, ch. 331, § 1; 1985, ch. 2, § 10; 1993, ch. 46, § 1; 1993, ch. 55, § 12; 1993, ch. 314, § 58; 1995, ch. 153, § 1; 1997, ch. 112, § 2; 2003, ch. 66, § 1; 2009, ch. 67, § 1; 2009, ch. 68, § 2; 2019, ch. 262, § 4.

1-19-26.1. Political committees; registration; disclosures.

A. It is unlawful for a political committee to continue to receive or make any contribution or expenditure for a political purpose if the committee fails to meet the requirements of Subsections B and C of this section.

B. A political committee shall appoint and maintain a treasurer, file a statement of organization with the secretary of state and pay a filing fee of fifty dollars ($50.00).

C. A statement of organization required by Subsection B of this section shall be made under oath on a prescribed form showing:

(1) the full name of the committee, which shall fairly and accurately reflect the identity of the committee, including any sponsoring organization, and its address;

(2) a statement of the purpose for which the committee was organized;

(3) the names and addresses of the officers of the committee; and

(4) an identification of any bank account used by the committee to receive or make contributions or make expenditures.

D. Any changes to the information provided in the statement of organization shall be reported to the secretary of state within ten days.

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E. The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission if the political committee reports on federal reporting forms filed with the federal election commission all expenditures for and contributions made to reporting individuals in New Mexico and files with the secretary of state, according to the schedule required for the filing of forms with the federal election commission, a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico.

History: 1978 Comp., § 1-19-26.1, enacted by Laws 1993, ch. 46, § 2; 1995, ch. 153, § 2; 2002, ch. 89, § 2; 2019, ch. 262, § 5.

1-19-26.2. Rules and regulations.

The secretary of state may adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. In adopting and promulgating these rules and regulations, the secretary of state shall comply with the provisions of the Administrative Procedures Act [Chapter 12, Article 8 NMSA 1978]. In addition to any other notification required pursuant to the provisions of Paragraph (2) of Subsection A of Section 12-8-4 NMSA 1978, the secretary of state shall notify all qualified political parties in the state and the New Mexico legislative council prior to adopting, amending or repealing any rule or regulation.

History: Laws 1997, ch. 112, § 1.

1-19-26.3. Campaign committee and political committee expenditures; disclosure; telephone calls; records.

A. A campaign committee or political committee that is required to register pursuant to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] shall not expend campaign or political committee funds to directly or indirectly pay for a telephone call without disclosing to the recipient the name of the organization that authorized or paid for the call if the call:

(1) is one of five hundred or more calls that are similar in nature made during an election cycle by an individual or individuals, or by electronic means; and

(2) advocates support for, or opposition to, a candidate for public office or ballot measure.

B. The campaign committee or political committee that pays for a call referred to in Subsection A of this section shall be disclosed in the call unless the organization that authorized the call and in whose name it is placed has filing obligations pursuant to the Campaign Reporting Act and the name announced in the call is either:

(1) the full name by which the organization or individual is identified in any statement or report required to be filed pursuant to the Campaign Reporting Act; or

(2) the name by which the organization or individual is commonly known.

C. A campaign committee or political committee that pays directly or indirectly for telephone calls as described in Subsection A of this section shall maintain a record of the script of the calls for at least ninety days following election day. If any of the calls qualifying pursuant to Subsection A of this section are recorded messages, a copy of the recording shall also be maintained for that period.

D. A campaign committee or political committee may not contract with a phone bank vendor that does not disclose the information required to be disclosed by Subsection A or B of this section.

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History: Laws 2002, ch. 89, § 1.

1-19-26.4. Disclaimers in advertisements.

A. A person who makes a campaign expenditure, a coordinated expenditure or an independent expenditure for an advertisement in an amount that exceeds one thousand dollars ($1,000), or in an amount that, when added to the aggregate amount of the campaign expenditures, coordinated expenditures and independent expenditures for advertisements made by the same person during the election cycle, exceeds one thousand dollars ($1,000), shall ensure that the advertisement contains the name of the candidate, committee or other person who authorized and paid for the advertisement.

B. The requirements of Subsection A of this section do not apply to the following:

(1) bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed; or

(2) skywriting, water towers, wearing apparel or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable.

C. The disclaimer statements required by Subsection A of this section shall be set forth legibly on any advertisement that is disseminated or displayed by visual media. If the advertisement is transmitted by audio media, the statement shall be clearly spoken during the advertisement. If the advertisement is transmitted by audiovisual media, the statement shall be both written legibly and spoken clearly during the advertisement.

History: Laws 2019, ch. 262, § 2.

1-19-27. Reports required; electronic reporting system; campaign reporting system fund.

A. All reporting individuals shall file with the secretary of state reports of expenditures and contributions and statements of no activity when required by the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] in an electronic format prescribed by the secretary of state.

B. The secretary of state shall develop or contract for services to develop an electronic reporting system for reporting individuals to register with the secretary of state and file all reports of expenditures and contributions and statements of no activity as required by the Campaign Reporting Act. The electronic reporting system shall:

(1) enable a person to register and file reports online by electronically submitting the relevant data to the secretary of state's website;

(2) for the submission of data, use unique identifiers and master drop-down lists of candidates, political committees, lobbyists and, to the extent reasonably possible, master lists of contributors, occupations, expenditure types and contribution types;

(3) provide the data in open, structured formats for easy search and download to allow for public inspection of all report data from the secretary of state's website;

(4) provide for cross-checking and compliance features;

(5) provide for online registration and fee payment for political committees and lobbyists;

(6) integrate, to the extent possible, with the reporting required by the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];

(7) to the extent possible, provide for a mechanism to directly upload the required data from other third-party tools; and

(8) provide for encrypted transmissions.

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C. Registration fees collected by the secretary of state from lobbyists and political committees shall be deposited in the "campaign reporting system fund", which is hereby created in the state treasury. Money in the fund is appropriated to the secretary of state for the purposes of paying for upgrades, maintenance and operation of the electronic reporting system. Money remaining in the fund at the end of a fiscal year shall not revert to the general fund.

History: 1978 Comp., § 1-19-27, enacted by Laws 1979, ch. 360, § 3; 1981, ch. 331, § 2; 1993, ch. 46, § 3; 1995, ch. 153, § 3; 2003, ch. 66, § 2; 2009, ch. 67, § 2; 2016, ch. 13, § 1.

1-19-27.1, 1-19-27.2. Repealed.

1-19-27.3. Independent expenditures; reporting requirements.

A. A person who makes an independent expenditure not otherwise required to be reported under the Campaign Reporting Act shall file a report with the secretary of state within:

(1) three days of making the expenditure if the expenditure, by itself or aggregated with all independent expenditures made by the same person during the election cycle, exceeds one thousand dollars ($1,000) in a nonstatewide election or three thousand dollars ($3,000) in a statewide election; or

(2) twenty-four hours of making the expenditure if the expenditure is in an amount of three thousand dollars ($3,000) or more and is made within seven days before a nonstatewide or statewide election.

B. The report required by Subsection A of this section shall state:

(1) the name and address of the person who made the independent expenditure;

(2) the name and address of the person to whom the independent expenditure was made and the amount, date and purpose of the independent expenditure. If no reasonable estimate of the monetary value of a particular expenditure is practicable, it is sufficient to report instead a description of the services, property or rights furnished through the expenditure; and

(3) the source of the contributions used to make the independent expenditure as provided in Subsections C and D of this section.

C. A person who makes independent expenditures required to be reported under this section in an amount totaling three thousand dollars ($3,000) or less in a nonstatewide election or nine thousand dollars ($9,000) or less in a statewide election shall report the name and address of each person who has made contributions of more than a total of two hundred dollars ($200) in the election cycle that were earmarked or made in response to a solicitation to fund independent expenditures and shall report the amount of each such contribution made by that person.

D. A person who makes independent expenditures required to be reported under this section in an amount totaling more than three thousand dollars ($3,000) in a nonstatewide election or nine thousand dollars ($9,000) in a statewide election, in addition to reporting the information specified in Subsection C of this section, shall either:

(1) if the expenditures were made exclusively from a segregated bank account consisting only of funds contributed to the account by individuals to be used for making independent expenditures, report the name and address of, and amount of each contribution made by, each contributor who contributed more than two hundred dollars ($200) to that account in the election cycle; or

(2) if the expenditures were made in whole or part from funds other than those described in Paragraph (1) of this subsection, report the name and address of, and amount of each contribution made by, each contributor who contributed more than a total of five thousand dollars ($5,000) during the election cycle to the person making the expenditures; provided, however, that a contribution is exempt from reporting pursuant to this paragraph if the contributor requested in writing

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that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee.

E. If a person who has made a report required by this section is required to make subsequent reports during the election cycle, the information concerning contributions in the subsequent reports shall cover only contributions not previously reported.

History: Laws 2019, ch. 262, § 1.

1-19-28. Furnishing report forms; political committees; candidates.

A. The secretary of state annually shall furnish to all reporting individuals the prescribed forms for the reporting of expenditures and contributions, supplemental reports and a statement of no activity and the specific dates the reports and statement are due.

B. In addition to the provisions of Subsection A of this section, at the time of filing a declaration of candidacy or a nominating petition, the secretary of state shall give the candidate the prescribed reporting forms and the schedule of specific dates for filing the required reports or a statement of no activity. The prescribed forms shall also be made available to all reporting individuals at the office of the secretary of state and in each county at the office of the county clerk.

History: 1978 Comp., § 1-19-28, enacted by Laws 1979, ch. 360, § 4; 1981, ch. 331, § 5; 1985, ch. 2, § 11; 1993, ch. 46, § 4; 1993, ch. 55, § 13; 1993, ch. 314, § 59; 1995, ch. 153, § 4; 2009, ch. 67, § 3; 2019, ch. 262, § 6.

1-19-29. Time and place of filing reports.

A. Except as otherwise provided in this section, all reporting individuals shall file with the secretary of state no later than the second Monday in April and October a report of all expenditures made and contributions received on or before the first Monday in those months and not previously reported. The report shall be filed biannually until the provisions specified in Subsection F, G or H of this section have been satisfied.

B. In an election year, instead of the biannual reports provided for in Subsection A of this section, all reporting individuals, except for public officials who are not candidates in an election that year, shall file reports of all expenditures made and contributions received or, if applicable, statements of no activity, according to the following schedule:

(1) no later than the second Monday in April, a report of all expenditures made and contributions received on or before the first Monday in April and not previously reported;

(2) no later than the second Monday in May, a report of all expenditures made and contributions received on or before the first Monday in May and not previously reported;

(3) no later than the second Monday in September, a report of all expenditures made and contributions received on or before the first Monday in September and not previously reported;

(4) no later than the second Monday in October, a report of all expenditures made and contributions received on or before the first Monday in October and not previously reported; provided that if the second Monday of October is a state holiday, the report shall be made on the following day;

(5) no later than the Thursday before a primary, general or statewide special election, a report of all expenditures made and contributions received by 5:00 p.m. on the Tuesday before the election and not previously reported. Any contribution or pledge to contribute that is received after 5:00 p.m. on the Tuesday before the election and that is for more than one thousand dollars ($1,000) in a nonstatewide election, or more than three thousand dollars ($3,000) in a statewide election, shall be reported to the secretary of state either in a supplemental report on a prescribed

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form within twenty-four hours of receipt or in the report to be filed no later than the Thursday before a primary, general or statewide special election, except that any such contribution or pledge to contribute that is received after 5:00 p.m. on the Friday before the election may be reported by 12:00 noon on the Monday before the election;

(6) no later than the thirtieth day after a primary election, a report by all reporting individuals, except those individuals that become candidates after the primary election, of all expenditures made and contributions received on or before the twenty-fifth day after the primary election and not previously reported;

(7) no later than the thirtieth day after a statewide special election, a report of all expenditures made and contributions received on or before the twenty-fifth day after the statewide special election and not previously reported; and

(8) no later than January 7 after a general election, a report of all expenditures made and contributions received on or before December 31 after the general election and not previously reported.

C. If a candidate, political committee, campaign committee or public official has not received any contributions and has not made any expenditures since the candidate's, committee's or official's last report was filed with the proper filing officer, the candidate, committee or official shall only be required to file a statement of no activity, which shall not be required to be notarized, in lieu of a full report when that report would otherwise be due and shall not be required to file a full report until the next required filing date occurring after an expenditure is made or a contribution is received.

D. In an election year, a public official who is not a candidate shall file biannual reports of expenditures made and contributions received or statements of no activity in accordance with the schedule provided for in Subsection A of this section.

E. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.

F. Except for candidates, campaign committees and public officials who file a statement of no activity, each candidate, campaign committee or public official shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section, regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required until the reporting individual delivers a report to the secretary of state stating that:

(1) there are no outstanding campaign debts;

(2) all money has been expended in accordance with the provisions of Section 1-19-29.1 NMSA 1978; and

(3) the bank accounts have been closed.

G. If, during a nonelection year, a political committee has not received any contributions or made any coordinated or independent expenditures since it filed its last report pursuant to this section, it need not file any report under this section until the next reporting period, if any, in which it receives contributions or makes expenditures. A political committee that has not received any contributions or made any coordinated or independent expenditures for a continuous period of at least one year may cancel its registration as a political committee by submitting an appropriate request in writing to the secretary of state. The committee shall retain the obligation to submit a new registration pursuant to Section 1-19-26.1 NMSA 1978 in the event that its future activities meet the requisites for registration under that section.

H. A reporting individual who is a candidate within the meaning of the Campaign Reporting Act because of the amount of contributions the candidate receives or expenditures the candidate makes and who does not ultimately file a declaration of candidacy or a nominating petition with

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the secretary of state and does not file a statement of no activity shall file biannual reports in accordance with Subsection A of this section.

I. Reports required by this section shall be subscribed and sworn to by the candidate or the treasurer of the political committee or, in the case of candidates for judicial office, by the treasurer of the candidate's campaign committee. A report filed electronically shall be electronically authenticated by the candidate or the treasurer of the committee using an electronic signature in conformance with the Electronic Authentication of Documents Act [14-15-1 through 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978]. For the purposes of the Campaign Reporting Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the candidate or the treasurer of the committee who was required to file the report.

J. Reports required by this section shall be filed electronically by all reporting individuals.

K. Reporting individuals may apply to the secretary of state for exemption from electronic filing in case of hardship, which shall be defined by the secretary of state.

History: 1978 Comp., § 1-19-29, enacted by Laws 1993, ch. 46, § 5; 1995, ch. 153, § 5; 1997, ch. 12, § 1; 1997, ch. 112, § 3; 2003, ch. 66, § 3; 2007, ch. 202, § 1; 2009, ch. 67, § 4; 2019, ch. 262, § 7.

1-19-29.1. Campaign funds; limitation on use.

A. It is unlawful for a candidate or the candidate's agent to make an expenditure of contributions received, except for the following purposes or as otherwise provided in this section:

(1) expenditures of the campaign;

(2) expenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses;

(3) donations to the state general fund;

(4) donations to an organization to which a federal income tax deduction would be permitted under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended;

(5) expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office covered by the Campaign Reporting Act;

(6) donations to a political committee or to another candidate seeking election to public office; or

(7) disbursements to return unused funds pro rata to the contributors if no campaign debt exists.

B. A judge subject to a nonpartisan retention election or a candidate for judicial office shall solicit or accept campaign funds and return unused funds in accordance with the provisions of the Code of Judicial Conduct.

C. No contributions solicited for or received in a federal election campaign may be used in a state election campaign.

History: 1978 Comp., § 1-19-29.1, enacted by Laws 1993, ch. 46, § 6; 1995, ch. 153, § 6; 2009, ch. 68, § 3.

1-19-30. Repealed.

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1-19-31. Contents of report.

Each required report of expenditures and contributions shall be typed or printed legibly, or on a computer disc or format approved by the secretary of state, and shall include:

A. the name and address of the person or entity to whom an expenditure was made or from whom a contribution was received, except as provided for anonymous contributions or contributions received from special events as provided in Section 1-19-34 NMSA 1978; provided that for contributors, the name of the entity or the first and last names of any individual shall be the full name of the entity or individual, and initials only shall not constitute a full name unless that is the complete legal name;

B. the occupation, name and type of business, as applicable, of any individual or entity making contributions of two hundred dollars ($200) or more in the aggregate per election;

C. the amount of the expenditure or contribution or value thereof;

D. the purpose of the expenditure;

E. the date that the expenditure was made or the contribution was received;

F. the opening and closing cash balance for the bank accounts maintained by the reporting individual during the reporting period and the name of the financial institution for each account; and

G. the amount of each unpaid debt and the identity of the person to whom the debt is owed.

History: 1978 Comp., § 1-19-31, enacted by Laws 1979, ch. 360, § 7; 1981, ch. 331, § 8; 1993, ch. 46, § 7; 1994, ch. 86, § 1; 1995, ch. 153, § 7; 2007, ch. 202, § 2; 2019, ch. 262, § 8.

1-19-32. Inspection of public records.

A. Each of the following documents is a public record open to public inspection during regular office hours in the office in which the document was filed or from which the document was issued:

(1) a statement of exception;

(2) a report of expenditures and contributions;

(3) an advisory opinion issued by the secretary of state;

(4) a document specified as a public record in the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]; and

(5) an arbitration decision issued by an arbitration panel and filed with the secretary of state.

B. Each public record described in Subsection A of this section shall be retained by the state for five years and may be destroyed five years after the date of filing unless a legal action or prosecution is pending that requires the preservation of the public record.

C. The secretary of state shall provide for electronic access to reports of expenditures and contributions and statements of exception submitted electronically by reporting individuals. Electronic access shall include access via the internet and shall be in an easily searchable format.

History: 1978 Comp., § 1-19-32, enacted by Laws 1979, ch. 360, § 8; 1993, ch. 46, § 8; 1995, ch. 153, § 8; 2003, ch. 66, § 4.

1-19-32. Inspection of public records. (Effective January 1, 2020.)

A. Each of the following documents is a public record open to public inspection during regular office hours in the office in which the document was filed or from which the document was issued:

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(1) a statement of no activity;

(2) a report of expenditures and contributions;

(3) an advisory opinion issued by the state ethics commission; except for the name of the person who requested the opinion;

(4) a document specified as a public record in the Campaign Reporting Act; and

(5) an arbitration decision issued by an arbitration panel and filed with the secretary of state or state ethics commission.

B. Each public record described in Subsection A of this section shall be retained by the state for five years and may be destroyed five years after the date of filing unless a legal action or prosecution is pending that requires the preservation of the public record.

C. The secretary of state shall provide for electronic access to reports of expenditures and contributions and statements of no activity submitted electronically by reporting individuals. Electronic access shall include access via the internet and shall be in an easily searchable format.

History: 1978 Comp., § 1-19-32, enacted by Laws 1979, ch. 360, § 8; 1993, ch. 46, § 8; 1995, ch. 153, § 8; 2003, ch. 66, § 4; 2019, ch. 86, § 17.

1-19-32.1. Reports examination; forwarding of reports.

A. The secretary of state shall conduct a thorough examination of at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the April reports are filed in a nonelection year, to determine compliance with the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. The examination may include an investigation of any discrepancies, including a cross-reference to reports filed by any other reporting individual. A reporting individual shall be notified in writing if a discrepancy is found in the report filed and shall be permitted to file a written explanation for the discrepancy within ten working days of the date of the notice. The notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply to examinations conducted under this section.

B. After the date stated in the notice of final action for submission of a written explanation, the secretary of state shall prepare an annual report of any unresolved discrepancies found after examination of the random sample provided for in Subsection A of this section. A copy of this report shall be transmitted to the attorney general for enforcement pursuant to the provisions of Section 1-19-36 NMSA 1978. This report is a public record open to public inspection and subject to the retention and destruction provisions set forth in Section 1-19-32 NMSA 1978.

History: 1978 Comp., § 1-19-32.1, enacted by Laws 1981, ch. 331, § 9; 1993, ch. 46, § 9; 1994, ch. 86, § 2; 1995, ch. 153, § 9; 2009, ch. 67, § 5.

1-19-33. Repealed.

1-19-34. Candidates; political or campaign committees; treasurer; bank account; anonymous contributions; contributions from special events; credit and debit card contributions.

A. A political or campaign committee or a candidate shall ensure that:

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(1) a treasurer has been appointed and is constantly maintained; provided, however, that when a duly appointed treasurer is unable for any reason to continue as treasurer, the candidate or committee shall appoint a successor and notify the secretary of state within ten days; and provided further that a candidate may serve as the candidate's own treasurer;

(2) all disbursements of money and receipts of contributions are authorized by and through the candidate or treasurer;

(3) a bank account has been established and all receipts of money contributions are deposited in and all expenditures of money are disbursed from one or more bank accounts maintained by the treasurer in the name of the candidate or committee; provided that nothing in this section shall prohibit investments from a bank account to earn interest as long as the investments and earnings are fully reported. All disbursements except for disbursements made from a petty cash fund of one hundred dollars ($100) or less shall be made in a form such that the date, amount and payee of the transaction are automatically recorded or by check made payable to the person or entity receiving the disbursement and not to "cash" or "bearer"; and

(4) the treasurer upon disbursing or receiving money or other things of value immediately enters and thereafter keeps a proper record preserved by the treasurer, including a full, true and itemized statement and account of each sum disbursed or received, the date of such disbursal or receipt, to whom disbursed or from whom received and the object or purpose for which it was disbursed or received.

B. No anonymous contributions shall be accepted for more than one hundred dollars ($100). The aggregate amount of anonymous contributions received by a reporting individual during a primary or general election or a statewide special election shall not exceed two thousand dollars ($2,000) for statewide races and five hundred dollars ($500) for all other races.

C. Cash contributions received at special events that are unidentifiable as to specific contributor but identifiable as to the special event are not subject to the anonymous contribution limits provided for in this section so long as no single special event raises, after expenses, more than one thousand dollars ($1,000) in such cash contributions. For those contributions, due diligence and best efforts shall be made to disclose on a special prescribed form the sponsor, date, place, total amount received, expenses incurred, estimated number of persons in attendance and other identifiable factors that describe the special event. For purposes of this subsection, "special event" includes an event such as a barbecue or similar fundraiser where tickets costing twenty-five dollars ($25.00) or less are sold or an event such as a coffee, tea or similar reception; provided that no candidate shall accept contributions of more than twenty-five dollars ($25.00) in cash at a special event from any one contributor.

D. Any contributions received pursuant to this section in excess of the limits established in Subsections B and C of this section shall be donated to the state general fund or an organization to which a federal income tax deduction would be available under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the federal Internal Revenue Code of 1986, as amended.

E. A candidate or political committee shall not accept a contribution made by a credit card or a debit card via the internet or where the card is not physically present unless, at the time the contribution is made, the contributor provides the card security code assigned to and printed or imprinted on the card and the billing address associated with the card.

History: 1978 Comp., § 1-19-34, enacted by Laws 1979, ch. 360, § 10; 1981, ch. 331, § 10; 1993, ch. 46, § 11; 1995, ch. 153, § 11; 2013, ch. 53, § 1; 2018, ch. 29, § 1; 2019, ch. 262, § 9.

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1-19-34.1. Legislative session fundraising prohibition.

A. It is unlawful during the prohibited period for a state legislator or a candidate for state legislator, or any agent on behalf of either, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on adjournment of the regular or special session.

B. It is unlawful during the prohibited period for the governor, or any agent on his behalf, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on the twentieth day following the adjournment of the regular or special session.

History: 1978 Comp., § 1-19-34.1, enacted by Laws 1993, ch. 46, § 12; 1995, ch. 153, § 12.

1-19-34.1. Legislative session fundraising prohibition. (Effective January 1, 2020.)

A. It is unlawful during the prohibited period for a state legislator, the attorney general, the secretary of state, the state treasurer, the commissioner of public lands or the state auditor or a candidate for state legislator, attorney general, secretary of state, state treasurer, commissioner of public lands or state auditor, or any agent on behalf of the attorney general, the secretary of state, the state treasurer, the commissioner of public lands or the state auditor or a candidate for attorney general, the secretary of state, state treasurer, commissioner of public lands or state auditor, to knowingly solicit a contribution governed by the Campaign Reporting Act. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on adjournment of the regular or special session.

B. It is unlawful during the prohibited period for the governor or the lieutenant governor, or any agent on the governor's or the lieutenant governor's behalf, to knowingly solicit a contribution governed by the Campaign Reporting Act. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on the twentieth day following the adjournment of the regular or special session.

History: 1978 Comp., § 1-19-34.1, enacted by Laws 1993, ch. 46, § 12; 1995, ch. 153, § 12; 2019, ch. 86, § 18.

1-19-34.2. Regulated industry solicitations prohibited.

It is unlawful for an elected state official, public officer or employee who works for a regulatory office or a candidate who seeks election to a regulatory office or anyone authorized by a candidate to solicit funds on his behalf to knowingly solicit a contribution from an entity or its officers or employees or a person that is directly regulated by the office. For purposes of this section, an entity or person is directly regulated by an office when the entity's or person's charges for services offered to the public are set or directly subject to approval by the regulatory office or when a license to do business in the state is determined by the regulatory office.

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History: 1978 Comp., § 1-19-34.2, enacted by Laws 1993, ch. 46, § 13; 1995, ch. 153, § 13.

1-19-34.3. Contributions in one name given for another prohibited; concealing source of contributions used for independent expenditures.

A. It is unlawful for a person to make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person.

B. No person shall make contributions or expenditures with an intent to conceal the names of persons who are the true source of funds used to make independent expenditures or the true recipients of the expenditures.

History: 1978 Comp., § 1-19-34.3, enacted by Laws 1993, ch. 46, § 14; 1994, ch. 84, § 1; 1995, ch. 153, § 14; 2009, ch. 68, § 4; 2019, ch. 262, § 10.

1-19-34.4. Education and voluntary compliance; investigations; binding arbitration; referrals for enforcement.

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] of those duties. This includes advising all known reporting individuals at least annually of that act's deadlines for submitting required reports and statements of exception. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested in writing to do so, on matters concerning that act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may initiate investigations to determine whether any provision of the Campaign Reporting Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state any time prior to ninety days after an election, except that no complaints from the public may be filed within eight days prior to an election. The secretary of state shall adopt procedures for issuing advisory opinions and processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Campaign Reporting Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the reporting individual that he has ten working days from the date of the letter to correct the matter and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the fine imposed, the secretary of state may by a written notice of final action partially or fully waive any fine imposed for any late, incomplete or false report or statement of exception. A written notice of final action shall be sent by certified mail.

D. Upon receipt of the notice of final action, the person against whom the penalty has been imposed may protest the secretary of state's determination, including an advisory opinion, by submitting on a prescribed form a written request for binding arbitration to the secretary of state within ten working days of the date of the notice of final action. Any fine imposed shall be due and payable within ten working days of the date of notice of final action. No additional fine shall accrue pending the issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working

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days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Campaign Reporting Act, Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] or Financial Disclosure Act [10-16A-1 through 10-16A-8 NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator shall conduct the hearing within thirty days of the request for arbitration. The arbitrator may impose any penalty the secretary of state is authorized to impose. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [Chapter 44, Article 7A NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

G. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or for criminal enforcement.

History: 1978 Comp., § 1-19-34.4, enacted by Laws 1993, ch. 46, § 15; 1995, ch. 153, § 15; 1997, ch. 112, § 4.

1-19-34.5. Presumptions; civil action.

A. For purposes of a civil action, it shall be presumed that a public official or a candidate for public office subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] has authorized and approved each solicitation for campaign contributions made by his campaign committee or a person authorized by the candidate to solicit campaign contributions on his behalf.

B. For purposes of a civil action, it shall be presumed that a candidate who seeks election to a regulatory office, as described in Section 1-19-34.2 NMSA 1978, has advised his campaign committee and all persons authorized by the candidate to solicit campaign contributions on his behalf that it is unlawful to solicit contributions from an entity or its officers or employees or a person that is directly regulated by the office the candidate seeks.

History: Laws 1995, ch. 153, § 18.

1-19-34.6. Civil penalties.

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Campaign Reporting Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. With or without a referral from the secretary of state, the attorney general or district attorney may institute a civil action in district court for any violation of the Campaign Reporting Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of up to one thousand dollars ($1,000) for each violation not to exceed a total of twenty thousand dollars ($20,000), and forfeiture

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of any contribution received as a result of an unlawful solicitation or unlawful contribution. Each unlawful solicitation and each unlawful contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act.

C. With or without a referral from the secretary of state, the attorney general or district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Campaign Reporting Act other than that specified in Subsection B of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of up to one thousand dollars ($1,000) for each violation not to exceed a total of twenty thousand dollars ($20,000).

History: Laws 1995, ch. 153, § 19; 2019, ch. 262, § 11.

1-19-34.7. Contribution limitations; candidates; political committees.

A. Except as provided in Subsections H through J of this section:

(1) a person, including a political committee, shall not make a contribution to a candidate, including the candidate's campaign committee, or to a political committee in an amount that will cause that person's total contributions to the candidate or political committee to exceed five thousand dollars ($5,000) during a primary election cycle or five thousand dollars ($5,000) during a general election cycle; provided that a person may make a contribution attributable to the general election cycle during the primary election cycle even though the person has contributed the maximum amount allowed for the primary election cycle:

(a) if that contribution is not used to pay for any expenditure related to the primary election; and

(b) if the candidate is not on the general election ballot, all contributions made to the candidate for the general election are returned to the persons who made the contributions or deposited in the public election fund; and

(2) a primary election candidate who does not become a candidate on the general election ballot shall remain subject to the contribution limits of the primary election cycle and shall not accept a contribution from a person who has contributed the maximum allowable amount during the primary election cycle to pay for primary election expenditures of the campaign.

B. A person, including a political committee, shall not make a contribution to a candidate committee authorized for the purpose of electing a candidate for governor in an amount that will cause that person's total contributions to the committee to exceed two times the limit imposed pursuant to Subsection A of this section.

C. Except as provided in Subsection K of this section, a person, including a political committee, shall not make a contribution to a political party or legislative caucus committee in an amount that will cause that person's total contributions to the political party or legislative caucus committee to exceed five times the limit imposed pursuant to Subsection A of this section.

D. All contributions made by a person to a candidate, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person to a candidate, shall be treated as contributions from the person to that candidate.

E. A person, including a political committee, shall not knowingly accept or solicit a contribution, directly or indirectly, including a contribution earmarked or otherwise directed or coordinated through another person, including a political committee, that violates the contribution limits provided for in this section.

F. On January 1 after each general election, the contribution amounts provided in Subsection A of this section shall be increased by the percentage of the preceding two calendar years'

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increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor. The amount of the increase shall be rounded to the nearest multiple of one hundred dollars ($100). The secretary of state shall publish by October 1 before each general election the adjusted contribution limits that shall take effect the January 1 following general election.

G. All contributions in excess of the limits imposed by the provisions of this section shall be deposited in the public election fund upon a finding by the secretary of state that the contribution limits have been exceeded.

H. The limitation on contributions to a candidate provided for in Subsection A of this section shall not apply to a candidate's own contribution from the candidate's personal funds to the candidate's own campaign.

I. The limitations on contributions to political committees provided for in Subsection A of this section shall not apply to a political committee that makes only independent expenditures or to a contribution to a political committee that is deposited in a segregated bank account that may only be used to make independent expenditures.

J. The limitations on contributions to candidates or campaign committees provided for in Subsection A of this section shall not apply to the value of in-kind contributions from a political party or legislative caucus committee to a candidate nominated by that party in a general election cycle.

K. The limitations on contributions to political parties or legislative caucus committees provided for in Subsection C of this section shall not apply to contributions from a campaign committee authorized for the purpose of electing a candidate from that party in a primary or general election cycle. For purposes of this subsection, "campaign committee" includes a candidate committee regulated by the federal election commission.

L. The members of a political party in a chamber of the legislature shall not maintain more than one legislative caucus committee in each chamber.

History: Laws 2009, ch. 68, § 1; 2019, ch. 262, § 12.

1-19-34.8. State ethics commission; jurisdiction. (Effective January 1, 2020.)

A. On and after January 1, 2020:

(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Campaign Reporting Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as formalized through an agreement. The secretary of state shall forward complaints it receives alleging violations of the Campaign Reporting Act to the state ethics commission in accordance with the agreement.

B. The state ethics commission and the secretary of state shall make recommendations to the first session of the fifty-fifth legislature on any changes to the Campaign Reporting Act necessary for the efficient administration and enforcement of the provisions of that act.

History: Laws 2019, ch. 86, § 19.

1-19-35. Reports and statements; late filing penalty; failure to file.

A. Except for the report required to be filed and delivered the Thursday prior to the election and any supplemental report, as required in Paragraph (5) of Subsection B of Section 1-19-29 NMSA

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1978, that is due prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978, if a statement of no activity or a report of expenditures and contributions contains false or incomplete information or is filed after any deadline imposed by the Campaign Reporting Act, the responsible reporting individual or political committee, in addition to any other penalties or remedies prescribed by the Election Code, shall be liable for and shall pay to the secretary of state fifty dollars ($50.00) per day for each regular working day after the time required by the Campaign Reporting Act for the filing of statements of no activity or reports of expenditures and contributions until the complete or true statement or report is filed, up to a maximum of five thousand dollars ($5,000).

B. If any reporting individual files a false, intentionally incomplete or late report of expenditures and contributions due on the Thursday prior to the election, the reporting individual or political committee shall be liable and pay to the secretary of state five hundred dollars ($500) for the first working day and fifty dollars ($50.00) for each subsequent working day after the time required for the filing of the report until the true and complete report is filed, up to a maximum of five thousand dollars ($5,000).

C. If a reporting individual fails to file or files a late supplemental report of expenditures and contributions as required in Paragraph (5) of Subsection B of Section 1-19-29 NMSA 1978, the reporting individual or political committee shall be liable for and pay to the secretary of state a penalty equal to the amount of each contribution received or pledged after the Tuesday before the election that was not timely filed.

D. All sums collected for the penalty shall be deposited in the state general fund. A report or statement of no activity shall be deemed timely filed only if it is received by the secretary of state by the date and time prescribed by law.

E. Any candidate who fails or refuses to file a report of expenditures and contributions or statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not, in addition to any other penalties provided by law:

(1) have the candidate's name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or

(2) be issued a certificate of nomination or election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of the Campaign Reporting Act and pays all penalties owed.

F. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions or a statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not be, in addition to any other penalties provided by law, permitted to file a declaration of candidacy or nominating petition for any future election until the candidate satisfies all reporting requirements of that act and pays all penalties owed.

History: 1978 Comp., § 1-19-35, enacted by Laws 1979, ch. 360, § 11; 1981, ch. 331, § 11; 1993, ch. 46, § 16; 1994, ch. 86, § 3; 1995, ch. 153, § 16; 1997, ch. 12, § 2; 1997, ch. 112, § 5; 2009, ch. 67, § 6; 2019, ch. 262, § 13.

1-19-36. Penalties.

A. Any person who knowingly and willfully violates any provision of the Campaign Reporting Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year or both.

B. The Campaign Reporting Act may be enforced by the attorney general or the district attorney in the county where the candidate resides, where a political committee has its principal place of business or where the violation occurred.

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History: 1978 Comp., § 1-19-36, enacted by Laws 1979, ch. 360, § 12; 1993, ch. 46, § 17; 1995, ch. 153, § 17; 2019, ch. 262, § 14.

1-19-37. Applicability.

The provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] do not apply to any candidate subject to the provisions of the federal law pertaining to campaign practices and finance.

History: Laws 1979, ch. 360, § 14.

ARTICLE 19A
Voter Action

Sec.
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1-19A-1. Short title.

Chapter 1, Article 19A NMSA 1978 may be cited as the "Voter Action Act".

History: Laws 2003, ch. 14, § 1; 2019, ch. 175, § 1.

1-19A-2. Definitions.

As used in the Voter Action Act:

A. "applicant candidate" means a candidate who is running for a covered office and who is seeking to be a certified candidate in a primary or general election;

B. "certified candidate" means a candidate running for a covered office who chooses to obtain financing pursuant to the Voter Action Act and is certified as a Voter Action Act candidate;

C. "contested" means there are more candidates for a position than the number to be elected to that position;

D. "contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for the purpose of supporting or opposing the nomination for election or election of a candidate for public office, including payment of a debt incurred in an election campaign and also including a coordinated expenditure, but "contribution" does not include:

(1) a qualifying contribution;

(2) the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate; or

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(3) the value of the incidental use of the candidate's personal property, home or business office for campaign purposes;

E. "coordinated expenditure" means an expenditure that is made:

(1) by a person other than a candidate or campaign committee;

(2) at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, campaign committee or political party or any agent or representative of such a candidate, campaign committee or political party; and

(3) for the purpose of:

(a) supporting or opposing the nomination or election of a candidate; or

(b) paying for an advertisement that refers to a clearly identified candidate and that is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election in which the candidate is on the ballot;

F. "covered office" means any office of the judicial department subject to statewide elections and the office of public regulation commissioner;

G. "expenditure" means a payment, transfer or distribution of, or a promise to pay, transfer or distribute, any money or other thing of value for the purpose of supporting or opposing the nomination or election of a candidate;

H. "fund" means the public election fund;

I. "qualifying contribution" means a donation of five dollars ($5.00) in the form of cash, a check, a money order or an electronic form of payment, as prescribed by the secretary, and payable to the fund in support of an applicant candidate that is:

(1) made by a voter who is eligible to vote for the covered office that the applicant candidate is seeking;

(2) made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the applicant candidate; and

(3) acknowledged by a receipt that identifies the contributor's name and residential address on forms provided by the bureau of elections and that is signed by the contributor, one copy of which is attached to the list of contributors and sent to the bureau of elections;

J. "qualifying period" means:

(1) for candidates who are seeking public financing for a primary election or for both a primary and a general election, the period beginning October 1 immediately preceding the election year and ending at 5:00 p.m. on the third Tuesday of March of the election year; and

(2) for candidates who are seeking public financing only for a general election, the period beginning January 1 of the election year and ending that year at 5:00 p.m. on the twenty-third day following the primary election for the office for which the candidate is running; and

K. "secretary" means the secretary of state or the office of the secretary of state.

History: Laws 2003, ch. 14, § 2; 2007 (1st S.S.), ch. 2, § 1; 2019, ch. 175, § 2.

1-19A-3. Terms of participation; declaration of intent.

A. A person choosing to obtain financing pursuant to the Voter Action Act shall first file with the secretary a declaration of intent to participate in that act as an applicant candidate for a stated covered office. The declaration of intent shall be filed with the secretary prior to or during the qualifying period according to forms and procedures developed by the secretary.

B. To become an applicant candidate and participate in the Voter Action Act, a person shall submit a declaration of intent prior to collecting any qualifying contributions or other contributions

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and make explicit in the declaration that the candidate has complied with and will continue to comply with that act's contribution and expenditure limits and all other requirements set forth in that act and rules issued by the secretary.

C. Except as provided in Subsection D of this section, a person shall not be eligible to become an applicant candidate if the person has accepted contributions totaling more than one hundred dollars ($100) from any one contributor during the election cycle in which the person is running for office.

D. A person who has accepted contributions of more than one hundred dollars ($100) from any one contributor during the election cycle in which the person decides to run for a covered office is still eligible to become an applicant candidate if:

(1) the contributions were for a candidacy for an office other than a covered office and no money was raised for or expended on any campaign-related activity for a covered office during the time those contributions were made;

(2) the person does not solicit or accept contributions for a candidacy for an office other than a covered office or for the purpose of supporting or opposing a ballot measure or another candidate after the person declares candidacy for a covered office or becomes an applicant candidate;

(3) the person places all campaign account money that was collected before the person became an applicant candidate in a segregated bank account and does not transfer any money into or out of that account for the duration of the person's campaign for a covered office; and

(4) the person agrees that, if elected to the covered office, the person will transfer all money in the campaign account to the fund.

History: Laws 2003, ch. 14, § 3; 2019, ch. 175, § 3.

1-19A-4. Qualifying contributions.

A. Applicant candidates shall obtain qualifying contributions as follows:

(1) for all statewide judicial elective offices, the number of qualifying contributions equal to one-tenth of one percent of the number of voters in the state; and

(2) for the office of public regulation commissioner, the number of qualifying contributions equal to one-tenth of one percent of the number of voters in the district of the office for which the candidate is running.

B. Applicant candidates may accept qualifying contributions from persons who become registered within the statutory time frame that would enable that person to vote in the primary election.

C. Voters registered as independent are not excluded from making qualifying contributions but shall be registered within the statutory time frame as independent.

D. No payment, gift or anything of value shall be given in exchange for a qualifying contribution.

History: Laws 2003, ch. 14, § 4; 2007 (1st S.S.), ch. 2, § 2.

1-19A-4.1. Allowable contributions.

A. An applicant candidate may collect contributions during the sixty days immediately preceding the qualifying period and throughout the qualifying period from qualified electors registered to vote in the state. An applicant candidate shall not accept contributions from any other source.

B. A certified candidate may collect contributions from qualified electors registered to vote in the state. A certified candidate shall not accept contributions from any other source, except as allowed pursuant to Section 1-19A-8 NMSA 1978.

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C. Total contributions from a qualified elector to a candidate shall not exceed one hundred dollars ($100) per election cycle.

History: Laws 2019, ch. 175, § 8.

1-19A-5. Repealed.

1-19A-6. Certification.

A. Upon receipt of a final submittal of qualifying contributions by an applicant candidate, the secretary shall determine from the applicant candidate's statement whether the applicant candidate has:

(1) signed and filed a declaration of intent to obtain financing pursuant to the Voter Action Act in accordance with the requirements of that act;

(2) collected and submitted the appropriate number of qualifying contributions after filing a declaration of intent;

(3) met the qualifications to be a candidate pursuant to other applicable state election law;

(4) complied with contribution and expenditure restrictions; and

(5) otherwise met the requirements for obtaining financing pursuant to the Voter Action Act.

B. The secretary shall certify applicant candidates complying with the requirements of this section as certified candidates as soon as possible and no later than ten days after final submittal of qualifying contributions and certification as a candidate pursuant to other applicable state election law.

C. A certified candidate shall comply with all requirements of the Voter Action Act after certification and throughout the primary election and general election cycles. A certified candidate who accepts public campaign finance funds for the primary election shall comply with all the requirements of the Voter Action Act for the remainder of the election cycle in question, even if the certified candidate decides not to accept such funds for the general election.

History: Laws 2003, ch. 14, § 6; 2019, ch. 175, § 4.

1-19A-7. Guidelines and restrictions for contributions to and expenditures of certified candidates.

A. All money distributed to a certified candidate shall be used only for that candidate's campaign-related purposes in the election in which the money was distributed.

B. Money from the fund received by a candidate shall not be used for:

(1) the candidate's personal living expenses or compensation to the candidate or the candidate's spouse, children or stepchildren;

(2) a contribution to another campaign of the candidate or a payment to retire debt from another such campaign;

(3) a contribution to the campaign of another candidate or to a political party or political committee or to a campaign supporting or opposing a ballot proposition;

(4) an expenditure supporting the election of another candidate or the passage or defeat of a ballot proposition or the defeat of any candidate other than an opponent of the certified candidate; provided that a certified candidate may purchase joint advertisements or services with other certified candidates;

(5) payment of a fine levied by a court or the secretary; or

(6) a gift or transfer for which compensating value is not received.

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C. A certified candidate shall return to the fund any amount that is unspent or unencumbered at the time that person ceases to be a candidate before a primary or general election for which the fund money was distributed.

D. A certified candidate shall limit total campaign expenditures to the amount of money distributed to that candidate from the fund, money received from a political party pursuant to Section 1-19A-8 NMSA 1978 and contributions collected pursuant to Section 8 of this 2019 act. A certified candidate shall not accept contributions from any other source except the certified candidate's political party, as specified in Section 1-19A-8 NMSA 1978 and contributions collected pursuant to Section 8 of this 2019 act.

E. A certified candidate who does not remain a candidate in the general election shall, within thirty days after the primary election, transfer to the secretary for deposit in the fund any amount received from the fund, from a political party pursuant to Section 1-19A-8 NMSA 1978 or from private contributors pursuant to Section 8 of this 2019 act that remains unspent or unencumbered by the date of the primary election.

F. A certified candidate shall, within thirty days after the general election, transfer to the secretary for deposit in the fund any amount received from the fund, from a political party pursuant to Section 1-19A-8 NMSA 1978 or from private contributors pursuant to Section 8 of this 2019 act that remains unspent or unencumbered by the date of the general election.

G. If a certified candidate ceases to be a certified candidate for any reason, the previously certified candidate or candidate's campaign committee shall, within thirty days thereafter, transfer to the secretary for deposit in the fund any amount received from the fund, from a political party pursuant to Section 1-19A-8 NMSA 1978 or from private contributors pursuant to Section 8 of this 2019 act that remains unspent or unencumbered by the date the candidate ceases to be a certified candidate.

History: Laws 2003, ch. 14, § 7; 2007 (1st S.S.), ch. 2, § 4; 2019, ch. 175, § 5.

1-19A-8. Political party expenditures; contributions to certified candidates.

A. A certified candidate may accept monetary or in-kind contributions from a political party; provided that the aggregate amount of such contributions from all political party committees combined does not exceed the equivalent of ten percent of the value of that candidate's aggregate public financing per election cycle.

B. All in-kind contributions from a political party distributed to certified candidates shall be used for campaign-related purposes.

C. Nothing in this section shall prevent political party funds from being used for general operating expenses of the party; conventions; nominating and endorsing candidates; identifying, researching and developing the party's position on issues; party platform activities; noncandidate-specific voter registration; noncandidate-specific get-out-the-vote drives; travel expenses for noncandidate party leaders and staff; and other noncandidate-specific party building activities.

History: Laws 2003, ch. 14, § 8.

1-19A-9. Candidate reporting requirements.

A. The secretary shall publish guidelines outlining permissible campaign-related expenditures and penalties for violations of the Voter Action Act by September 1, 2019.

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B. Applicant candidates shall file a report listing contributions and expenditures with their application for certification.

C. Applicant candidates shall file qualifying contributions with the secretary during the qualifying period according to procedures developed by the secretary. In developing these procedures, the secretary shall use existing campaign reporting procedures and deadlines whenever practical.

D. Certified candidates shall report all contributions and expenditures according to the campaign reporting schedule specified in the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978].

History: Laws 2003, ch. 14, § 9; 2019, ch. 175, § 6.

1-19A-10. Public election fund; creation; use.

A. There is created in the state treasury the "public election fund" solely for the purposes of:

(1) financing the election campaigns of certified candidates for covered offices;

(2) paying administrative and enforcement costs of the Voter Action Act; and

(3) carrying out all other specified provisions of the Voter Action Act.

B. The state treasurer shall invest the funds as other state funds are invested, and all income derived from the fund shall be credited directly to the fund. Remaining balances at the end of a fiscal year shall remain in the fund and not revert to the general fund.

C. Money received from the following sources shall be deposited directly into the fund:

(1) qualifying contributions that have been submitted to the secretary;

(2) any recurring balance of unspent fund money distributed to a certified candidate who does not remain a candidate through the primary or general election period for which the money was distributed;

(3) money that remains unspent or unencumbered by a certified candidate following the date of the primary election;

(4) money that remains unspent or unencumbered by a certified candidate following the date of the general election;

(5) unspent contributions to a candidate;

(6) money distributed to the fund from funds received pursuant to the Uniform Unclaimed Property Act (1995); and

(7) money appropriated by the legislature or as otherwise provided by law.

D. A subaccount shall be established in the fund, and money in the subaccount shall only be used to pay the costs of carrying out the provisions of the Voter Action Act related to public regulation commission elections.

E. Two hundred thousand dollars ($200,000) per year shall be collected and deposited in the subaccount for public regulation commission elections as follows:

(1) one hundred thousand dollars ($100,000) from inspection and supervision fees collected pursuant to Section 62-8-8 NMSA 1978; and

(2) one hundred thousand dollars ($100,000) from utility and carrier inspection fees collected pursuant to Section 63-7-20 NMSA 1978.

History: Laws 2003, ch. 14, § 10; 2007 (1st S.S.), ch. 2, § 5; 2014, ch. 2, § 1; 2019, ch. 175, § 7.

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1-19A-11. Determination of fund amount.

A. By January 1, 2007, and every two years thereafter, the secretary shall prepare and provide to the legislature a report documenting, evaluating and making recommendations relating to the administration, implementation and enforcement of the Voter Action Act.

B. In the report, the secretary shall set out the revenues received to date, the expected costs to the fund for the next election cycle and the amount of the annual appropriation from the legislature that will be required to meet this need.

History: Laws 2003, ch. 14, § 11.

1-19A-12. Timing of fund distribution.

A. Beginning with the election cycle that ends with the general election in 2006, the secretary shall distribute money from the fund to certified candidates.

B. For a primary election certified candidate, the secretary shall distribute the amount due to that certified candidate for that covered office within one week of certification.

C. For a candidate certified for the general election, the secretary shall distribute the amount due to that certified candidate for that covered office within one week after the primary election or, for a minor party or independent candidate, within one week after certification of the candidate.

History: Laws 2003, ch. 14, § 12.

1-19A-13. Amount of fund distribution.

A. By September 1 of each odd-numbered year, the secretary shall determine the amount of money to be distributed to each certified candidate for the election cycle ending with the next general election, based on the type of election and the provisions of Subsections B through G of this section.

B. For contested primary elections, the amount of money to be distributed to a certified candidate is equal to the following:

(1) for the office of public regulation commissioner, twenty-five cents ($.25) for each voter of the candidate's party in the district of the office for which the candidate is running; and

(2) for the office of justice of the supreme court and judge of the court of appeals, fifteen cents ($.15) for each voter of the candidate's party in the state.

C. For uncontested primary elections in which another candidate has filed a declaration of candidacy for nomination in another party's primary for the same office and that candidate's primary is contested, the amount of money to be distributed to a certified candidate is equal to twenty percent of the amount specified in Subsection B of this section.

D. For uncontested primary elections in which another candidate has filed a declaration of candidacy for nomination in another party's primary for the same office, but no primary for the office is contested, the amount of money to be distributed to a certified candidate is equal to the average of the amount each candidate would receive pursuant to Subsection B of this section.

E. For contested general elections, the amount of money to be distributed to a certified candidate is equal to the following:

(1) for the office of public regulation commissioner, twenty-five cents ($.25) for each voter in the district of the office for which the candidate is running; and

(2) for the office of justice of the supreme court and judge of the court of appeals, fifteen cents ($.15) for each voter in the state.

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F. If a general election race that is initially uncontested later becomes contested because of the qualification of a candidate for that race, an amount of money shall be distributed to the certified candidate to make that candidate's distribution amount equal to the amount distributed pursuant to Subsection E of this section.

G. Once the certification for candidates for the primary election has been completed, the secretary shall calculate the total amount of money to be distributed in the primary election cycle, based on the number of certified candidates and the allocations specified in this section. The secretary shall also prepare an estimate of the total amount of money that might be distributed in the general election cycle. If the total amount to be distributed in the primary election cycle and the estimated total amount to be distributed in the general election cycle taken together exceed the amount expected to be available in the fund, the secretary shall allocate the amount available between the primary and general election cycles. This allocation shall be based on the ratio of the two total amounts.

H. If the allocation specified in Subsection G of this section is greater than the total amount available for distribution, then the amounts to be distributed to individual candidates, specified in Subsections B through F of this section, shall each be reduced by the same percentage as the reduction by which the total amount needed has been reduced relative to the total amount available.

I. At least every two years after January 1, 2007, the secretary shall evaluate and modify as necessary the dollar values originally determined by Subsections B through F of this section and shall increase the amounts by the percentage of the preceding two calendar years' increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor.

J. No money shall be distributed to candidates in judicial retention elections, and except as provided in Subsections C, D and F of this section, no money shall be distributed to a candidate in an uncontested election.

History: Laws 2003, ch. 14, § 13; 2007 (1st S.S.), ch. 2, § 6; 2019, ch. 175, § 9.

1-19A-14. Repealed.

1-19A-15. Administration; secretary of state; duties.

A. The secretary shall adopt rules to ensure effective administration of the Voter Action Act.

B. The rules shall include procedures for:

(1) qualifications, certification and disbursement of revenues and return of unspent fund revenues;

(2) obtaining qualifying contributions;

(3) certification of candidates;

(4) collection of revenues; and

(5) return of fund disbursements and other money to the fund.

History: Laws 2003, ch. 14, § 15.

1-19A-15.1. State ethics commission; jurisdiction. (Effective January 1, 2020.)

A. On and after January 1, 2020:

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(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Voter Action Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as formalized through an agreement. The secretary of state shall forward complaints it receives alleging violations of the Voter Action Act to the state ethics commission in accordance with the agreement.

B. The state ethics commission and the secretary of state shall make recommendations to the first session of the fifty-fifth legislature on any changes to the Voter Action Act necessary for the efficient administration and enforcement of the provisions of that act.

History: Laws 2019, ch. 86, § 20.

1-19A-16. Appeals.

The procedure for challenging a certification decision by the secretary is as follows:

A. a person aggrieved by a certification decision or a decision regarding the distribution of matching funds may appeal to the secretary within three days of the decision. The appeal shall be in writing and shall set forth the reasons for appeal;

B. within five days after an appeal is properly made, and after due notice is given to the parties in dispute, the secretary shall hold a hearing whereby:

(1) the appellant has the burden of providing evidence to demonstrate that the secretary's decision was improper; and

(2) the secretary shall rule on the appeal within three days after the completion of the hearing;

C. the parties in dispute may appeal the decision of the secretary by commencing an action in district court; and

D. certified candidates whose certification is revoked on appeal shall return to the secretary any unspent money distributed from the fund. If the secretary or court finds that an appeal was made frivolously or to result in delay or hardship, the secretary or court may sanction the moving party by requiring the party to pay costs of the administrative hearing, the court hearing and the opposing parties.

History: Laws 2003, ch. 14, § 16.

1-19A-17. Penalties.

A. In addition to other penalties that may be applicable, a person who violates a provision of the Voter Action Act is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation. In addition to a fine, a certified candidate found in violation of that act may be required to return to the fund all amounts distributed to the candidate from the fund. If the secretary makes a determination that a violation of that act has occurred, the secretary shall impose a fine and transmit the finding to the attorney general for criminal prosecution pursuant to Subsection B of this section. In determining whether a certified candidate is in violation of the expenditure limits of that act, the secretary may consider as a mitigating factor any circumstances out of the candidate's control.

B. A person who willfully or knowingly violates the provisions of the Voter Action Act or knowingly makes a false statement in a report required by that act is guilty of a fourth degree felony and, if the person is a certified candidate, shall return to the fund all money distributed to that candidate.

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History: Laws 2003, ch. 14, § 17; 2019, ch. 175, § 10.

ARTICLE 20
Offenses and Penalties

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1-20-13.1. Coercion of voters.
1-20-14. Intimidation.
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1-20-16. Electioneering too close to the polling place.
1-20-17. Obstructing the polling place.
1-20-18. Permitting a prisoner to vote.
1-20-19. Offenses by messengers.
1-20-19.1. Unlawful release of election results.
1-20-20. Disturbing the polling place.
1-20-21. Unlawful possession of alcoholic liquors.
1-20-22. Violation of Election Code; general penalty.
1-20-23. Violation of code by officers.

1-20-1. Effect of article.

The penalties imposed by Sections 1-20-3 through 1-20-23 NMSA 1978 do not apply to offenses for which penalties are otherwise provided in the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-20-1, enacted by Laws 1969, ch. 240, § 427.

1-20-2. Scope of penalty provision.

A. Unless otherwise provided in the law governing elections of a political subdivision, Sections 1-20-4 through 1-20-22 NMSA 1978 describing offenses and imposing penalties shall apply to all elections conducted in the state.

B. "Election Code" as used in Sections 1-20-4 through 1-20-22 NMSA 1978 includes laws governing the elections of municipalities, school districts or bond elections held pursuant to the Bond Election Act [6-15-23 to 6-15-28 NMSA 1978].

History: 1953 Comp., § 3-20-1.1, enacted by Laws 1975, ch. 255, § 123.

1-20-3. Registration offenses.

Registration offenses consist of performing any of the following acts willfully and with knowledge and intent to deceive any registration officer or to subvert the registration requirements of the law or rights of any qualified elector:

A. signing or offering to sign a certificate of registration when not a qualified elector;

B. falsifying any information on the certificate of registration;

C. soliciting, procuring, aiding, abetting, inducing or attempting to solicit, procure, aid, abet or induce any person to register or attempt to register with the name of any other person, whether real, deceased or fictitious; or

D. destroying the certificate of registration of any qualified elector, or removing such certificate from its proper binder or file, except as provided in the Election Code [Chapter 1 NMSA 1978].

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Whoever commits a registration offense is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-2, enacted by Laws 1969, ch. 240, § 428; 1985, ch. 207, § 34; 1993, ch. 314, § 60; 1993, ch. 316, § 58.

1-20-4. Unlawful opening of ballot box.

Unlawful opening of a ballot box consists of opening any ballot box or inspecting or removing the contents thereof without lawful authority, or conspiring with others to have the same done.

Whoever commits unlawful opening of a ballot box is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-3, enacted by Laws 1969, ch. 240, § 429.

1-20-5. Unlawful opening of a voting machine.

Unlawful opening of a voting machine consists of, without lawful authority, opening, unlocking, inspecting, tampering, resetting or adjusting a voting machine owned by any county, or conspiring with others to have the same done.

Whoever commits unlawful opening of a voting machine is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-4, enacted by Laws 1969, ch. 240, § 430.

1-20-6. Unlawful possession of keys.

Unlawful possession of keys consists of the possession at any time of any key to a voting machine or ballot box, or possession of an imitation or duplicate thereof, or making or causing to be made any imitation or duplicate thereof, unless authorized by the Election Code [Chapter 1 NMSA 1978].

Whoever commits unlawful possession of keys is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-5, enacted by Laws 1969, ch. 240, § 431.

1-20-7. Unlawful possession of absentee ballot.

Unlawful possession of absentee ballot consists of the possession at any time of absentee ballot materials when not authorized by the Election Code [Chapter 1 NMSA 1978] to be in possession of such materials, or when such materials were obtained in an unlawful manner. As used in this section, "absentee ballot materials" means an absentee ballot, absentee ballot envelopes, the absentee ballot register or an absentee ballot return.

Whoever commits unlawful possession of absentee ballot is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-5.1, enacted by Laws 1971, ch. 111, § 1; 1979, ch. 378, § 17.

1-20-8. False voting.

False voting consists of:

A. voting or offering to vote with the knowledge of not being a qualified elector;

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B. voting or offering to vote in the name of any other person;

C. voting or offering to vote more than once in the same election;

D. falsifying any information on an absentee ballot official mailing envelope or affixing a signature or mark other than one's own on an absentee ballot official mailing envelope;

E. inducing, abetting or procuring or attempting to induce, abet or procure a person known to not be a qualified elector to vote; or

F. inducing, abetting or procuring or attempting to induce, abet or procure a person who, having voted once in any election, to vote or attempt to vote again at the same election.

Whoever commits false voting is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-6, enacted by Laws 1969, ch. 240, § 432; 2011, ch. 137, § 103.

1-20-8.1. Conduct of election; fraudulent and double voting.

Every person not entitled to vote who fraudulently votes, and every person who votes or offers to vote more than once at any one election, is guilty of a fourth degree felony.

History: 1953 Comp., § 3-12-12, enacted by Laws 1969, ch. 240, § 248; 1978 Comp., § 1-12-9 recompiled as § 1-20-8.1 by Laws 2011, ch. 137, § 109.

1-20-8.2. Paper ballots; delivery of two or more ballots.

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

History: 1953 Comp., § 3-12-92, enacted by Laws 1977, ch. 222, § 61; 2009, ch. 150, § 23; 1978 Comp., § 1-12-58 recompiled as § 1-20-8.2 by Laws 2011, ch. 137, § 109.

1-20-9. Falsifying election documents.

Falsifying election documents consists of performing any of the following acts willfully and with knowledge and intent to deceive or mislead any voter, precinct board, canvassing board or other election official:

A. printing, causing to be printed, distributing or displaying false or misleading instructions pertaining to voting or the conduct of the election;

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

C. defacing, altering, forging, making false entries in or changing in any way a certificate of nomination, registration record or election return required by or prepared and issued pursuant to the Election Code [Chapter 1 NMSA 1978];

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

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

F. knowingly falsifying any information on a nominating petition.

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

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History: 1953 Comp., § 3-20-7, enacted by Laws 1969, ch. 240, § 433; 1983, ch. 61, § 1; 2009, ch. 150, § 34.

1-20-10. False swearing.

False swearing consists of taking any oath required by the Election Code [Chapter 1 NMSA 1978] with the knowledge that the thing or matter sworn to is not a true and correct statement.

Whoever falsely swears is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-8, enacted by Laws 1969, ch. 240, § 434.

1-20-11. Offering a bribe.

Offering a bribe consits [consists] of wilfully [willfully] advancing, paying, or causing to be paid, or promising, directly or indirectly, any money or other valuable consideration, office or employment, to any person for the following purposes connected with or incidental to any election:

A. to induce such person, if a voter, to vote or refrain from voting for or against any candidate, proposition, question or constitutional amendment;

B. to induce such person, if a precinct board member or other election official, to mark, alter, suppress or otherwise change any ballot that has been cast, any election return, or any certificate of election; or

C. to induce such person to use such payment or promise to bribe others for the purposes specified in this section.

Whoever offers a bribe is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-9, enacted by Laws 1969, ch. 240, § 435.

1-20-12. Accepting a bribe.

Accepting a bribe consists of knowingly accepting any payment or promise of payment, directly or indirectly, of money, valuable consideration, office or employment for the unlawful purposes specified in Section 1-20-11 NMSA 1978.

Whoever accepts a bribe is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-10, enacted by Laws 1969, ch. 240, § 436.

1-20-13. Coercion of employees.

Coercion of employees consists of any officer or agent of any corporation, company or association, or any person having under his control or in his employment persons entitled to vote at any election, directly or indirectly discharging or threatening to discharge such employee because of the employee's political opinions or belief or because of such employee's intention to vote or refrain from voting for any candidate, party, proposition, question or constitutional amendment.

Whoever commits coercion of employees is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-11, enacted by Laws 1969, ch. 240, § 437.

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1-20-13.1. Coercion of voters.

Coercion of voters consists of compelling any voter at any election to vote for or to refrain from voting for any candidate, party, proposition, question or constitutional amendment either against the voter's will or in the absence of the voter's ability to understand the purpose and effect of his vote. Whoever commits coercion of voters is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1995, ch. 198, § 15; 1978 Comp., § 1-12-9.1 recompiled as § 1-20-13.1 by Laws 2011, ch. 137, § 109.

1-20-14. Intimidation.

Intimidation consists of inducing or attempting to induce fear in any member of a precinct board, voter, challenger or watcher by use of or threatened use of force, violence, infliction of damage, harm or loss or any form of economic retaliation, upon any voter, precinct board member, challenger or watcher for the purpose of impeding or preventing the free exercise of the elective franchise or the impartial administration of the election or Election Code [Chapter 1 NMSA 1978].

Whoever commits intimidation is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-12, enacted by Laws 1969, ch. 240, § 438.

1-20-15. Conspiracy to violate Election Code.

Conspiracy to violate the Election Code [Chapter 1 NMSA 1978] consists of knowingly combining, uniting or agreeing with any other person to omit any duty or commit any act, the omission of which duty, or combination of such act, would by the provisions of the Election Code constitute a fourth degree felony.

Whoever commits conspiracy to violate the Election Code is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-13, enacted by Laws 1969, ch. 240, § 439.

1-20-16. Electioneering too close to the polling place.

A. Electioneering too close to the polling place consists of any form of campaigning within:

(1) one hundred feet of the building in which the polling place is located on election day when voting at a school, church or private residence; and

(2) one hundred feet of the door through which voters may enter to vote at the office of the county clerk, an alternate voting location, a mobile voting site or any location used as a polling place on election day that is not a school, church or private residence.

B. Electioneering includes the display or distribution of signs or campaign literature, campaign buttons, t-shirts, hats, pins or other such items and includes the verbal or electronic solicitation of votes for a candidate or question.

C. Whoever commits electioneering too close to the polling place is guilty of a petty misdemeanor.

History: 1953 Comp., § 3-20-14, enacted by Laws 1969, ch. 240, § 440; 2011, ch. 137, § 104.

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1-20-17. Obstructing the polling place.

A. Obstructing the polling place consists of:

(1) any person other than a voter offering to vote, a member of the precinct board, a lawfully appointed challenger or watcher, an election observer, an election official having business in the polling place or a person authorized by the Election Code [Chapter 1 NMSA 1978] to give assistance to a voter who, during the conduct of the election, approaches nearer than fifty feet from the door through which voters may enter to vote at the office of the county clerk, an alternate voting location, a mobile voting site or any location used as a polling place; or

(2) any person who willfully blocks the entrance to a polling place so as to prevent free ingress and egress.

B. A person conducting lawful, non-election-related business nearer than fifty feet from the door through which voters may enter to vote is not guilty of obstructing a polling place, provided the person does not willfully block the entrance to the polling place.

C. Whoever obstructs the polling place is guilty of a petty misdemeanor.

History: 1953 Comp., § 3-20-15, enacted by Laws 1969, ch. 240, § 441; 2011, ch. 137, § 105.

1-20-18. Permitting a prisoner to vote.

A. Permitting a prisoner to vote consists of a warden of a penitentiary, a sheriff or jailer or any other person having custody of a convict or prisoner taking him or permitting him to be taken to a polling place for the purposes of voting in any election.

Whoever permits a prisoner to vote is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. This section does not prohibit permitting a prisoner convicted of a misdemeanor from voting by absentee ballot pursuant to the provisions of the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978].

History: 1953 Comp., § 3-20-16, enacted by Laws 1969, ch. 240, § 442; 1975, ch. 255, § 124; 2001, ch. 46, § 3.

1-20-19. Offenses by messengers.

Offense by messenger consists of the wilful [willful] delay or failure of any official messenger to convey or deliver election supplies to the precinct board, or the wilful [willful] delay or failure of any official messenger to convey or deliver the ballot box, key, election returns or other supplies to the county clerk.

Any messenger committing such offense is guilty of a petty misdemeanor.

History: 1953 Comp., § 3-20-17, enacted by Laws 1969, ch. 240, § 443.

1-20-19.1. Unlawful release of election results.

A. Unlawful release of election results consists of the county clerk or a duly authorized deputy or assistant releasing election results prior to the closing of the polls on election day.

B. Whoever commits unlawful release of election results is guilty of a misdemeanor, pursuant to Section 31-19-1, NMSA 1978.

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History: Laws 1999, ch. 102, § 1.

1-20-20. Disturbing the polling place.

Disturbing the polling place consists of creating any disorder or disruption at the polling place on election day, or consists of interfering with in any manner the conduct of the election or with a member of the precinct board, voter, challenger or watcher, in the performance of his duties.

Whoever disturbs the polling place is guilty of a petty misdemeanor.

History: 1953 Comp., § 3-20-18, enacted by Laws 1969, ch. 240, § 444.

1-20-21. Unlawful possession of alcoholic liquors.

Unlawful possession of alcoholic liquors consists of the use or possession of any alcoholic liquor by any member of the precinct board while performing his official duties on election day. Unlawful possession also consists of the use, possession or carrying of alcoholic liquor within two hundred feet of the polling place during any election.

Whoever commits unlawful possession of alcoholic liquors is guilty of a petty misdemeanor.

History: 1953 Comp., § 3-20-19, enacted by Laws 1969, ch. 240, § 445.

1-20-22. Violation of Election Code; general penalty.

If the Election Code [Chapter 1 NMSA 1978] does not impose a specific penalty for the violation of a provision prohibiting a specific act, whoever knowingly commits such violation is guilty of a petty misdemeanor.

History: 1953 Comp., § 3-20-20, enacted by Laws 1969, ch. 240, § 446.

1-20-23. Violation of code by officers.

Violation of the Election Code [Chapter 1 NMSA 1978] by officers consists of the wilful [willful] violation of the Election Code by any state or county officer or by any deputy or assistant thereto, or the wilful [willful] failure or refusal of any such person to perform any act or duty required of him by the Election Code.

Any officer, deputy or assistant who commits such wilful [willful] violation of the Election Code is guilty of a fourth degree felony and, in addition, violation is sufficient cause for removal from office in a proceeding instituted for that purpose as provided by law.

History: 1953 Comp., § 3-20-21, enacted by Laws 1969, ch. 240, § 447.

ARTICLE 21

Federal Voting Rights Compliance

Sec.
1-21-1. Short title.
1-21-2. Definitions.
1-21-3. Eligibility of new resident and former resident to vote.

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Sec.
1-21-4. Application for presidential ballot.
1-21-5. Processing application; issuance of ballot; casting of ballot.
1-21-6. New resident; former resident; presidential ballot register.
1-21-7. Form of presidential ballot.
1-21-8. Presidential ballot envelopes.
1-21-9. Manner of voting of new residents and former residents.
1-21-10. Delivery of presidential ballots to absent voter precincts.
1-21-11. Handling presidential ballots by absent voter precinct board.
1-21-12. Cancellation of presidential ballot at death.
1-21-13. Application of election laws.
1-21-14. Penalty.

1-21-1. Short title.

This act [Chapter 1, Article 21 NMSA 1978] may be cited as the "Federal Voting Rights Compliance Act".

History: 1953 Comp., § 3-21-1, enacted by Laws 1971, ch. 322, § 1.

1-21-2. Definitions.

As used in the Federal Voting Rights Compliance Act:

A. "state" includes the District of Columbia;

B. "new resident" means any citizen of the United States not qualified to vote in New Mexico by reason of his period of residence in this state who, immediately prior to his removal to New Mexico, was a citizen of another state and who has been a resident of this state for not less than thirty days immediately prior to a presidential election and who will be eighteen years of age or over on the day of such election;

C. "former resident" means any citizen of the United States not qualified to vote in another state by reason of his period of residence in such state who, immediately prior to his removal to such state, was a citizen of New Mexico who, had he remained in New Mexico, would have qualified to vote in a presidential election and who has been a resident of such other state for less than thirty days immediately prior to a presidential election;

D. "federal election" means any general election, primary election or special election to fill a vacancy in the office of representative in congress;

E. "federal officers" means presidential electors, vice presidential electors, president, vice president, United States senator and United States representative in congress;

F. "federal ballot" means a ballot containing only the names of federal officers to be voted for in a federal election;

G. "presidential election" means any primary election or general election held for the purpose of voting for electors for president and vice president or for president and vice president;

H. "presidential ballot" means a ballot containing only the names of presidential electors, vice presidential electors, or president and vice president; and

I. "presidential officers" means presidential electors, vice presidential electors, president and vice president.

History: 1953 Comp., § 3-21-2, enacted by Laws 1971, ch. 322, § 2; 1973, ch. 138, § 4.

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1-21-3. Eligibility of new resident and former resident to vote.

Any new resident or former resident may vote for presidential officers in a presidential election, but for no other officers or upon any questions or in any other election, if he:

A. otherwise possesses the substantive qualifications to vote in this state except the requirement of residence; and

B. complies with the provisions of the Federal Voting Rights Compliance Act.

History: 1953 Comp., § 3-21-3, enacted by Laws 1971, ch. 322, § 3; 1973, ch. 138, § 5.

1-21-4. Application for presidential ballot.

A. A new resident desiring to vote for presidential officers under the provisions of the Federal Voting Rights Compliance Act shall, at least thirty days prior to the date of a federal election, individually execute in the presence of the county clerk of the county in which he claims residence an application for a presidential ballot for the presidential election.

B. A former resident desiring to vote for presidential officers under the provisions of the Federal Voting Rights Compliance Act shall individually execute an application for a presidential ballot for the presidential election. The application for a presidential ballot shall be made by a former resident on a form obtainable in person or upon written application therefor from the county clerk of the county in which the former resident claimed New Mexico residence prior to his removal to another state. The application for a presidential ballot by a former resident shall be authorization for the county clerk to cancel the former resident's certificate of registration, if such there be.

History: 1953 Comp., § 3-21-4, enacted by Laws 1971, ch. 322, § 4; 1993, ch. 314, § 61; 1993, ch. 316, § 59.

1-21-5. Processing application; issuance of ballot; casting of ballot.

A. If satisfied that the application is proper and that the new resident or former resident is qualified to vote under the Federal Voting Rights Compliance Act, the county clerk shall mark the application "accepted" and shall return the executed original application to the applicant.

B. Acceptance of an application under the provisions of the Federal Voting Rights Compliance Act constitutes registration only for the presidential election in which the presidential ballot is to be cast.

C. The county clerk shall mail the duplicate original of each application accepted under the provisions of the Federal Voting Rights Compliance Act to the appropriate official in the state in which the new resident last resided or in which the former resident now resides.

D. The county clerk shall file, in alphabetical order in his office for six months following each presidential election, the following public records:

(1) a triplicate original of each application of all persons who have applied for a presidential ballot under the provisions of the Federal Voting Rights Compliance Act to vote as new residents or former residents; and

(2) official information received by him from another state indicating that a former resident of New Mexico has made application to vote at a presidential election in another state. Such official information shall be sufficient evidence for the county clerk to cancel the resident's certificate of registration in that county.

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E. Notwithstanding any provision of the Election Code [Chapter 1 NMSA 1978], new residents and former residents shall cast their presidential ballots in the same manner as absentee voters except as provided in the Federal Voting Rights Compliance Act.

F. If presidential ballots are available at the time of application in person therefor, the county clerk shall deliver the presidential ballot to the new resident or former resident, and it shall be marked by the applicant in a voting booth in the courthouse, sealed in the proper envelopes and otherwise properly executed, and returned to the county clerk or his authorized representative before the new resident or former resident leaves the office of the county clerk. Presidential ballots may be cast in person at the county clerk's office until 5:00 p.m. on Thursday immediately prior to the date of the presidential election.

G. If presidential ballots are not available at the time of application in person therefor by a new resident or former resident selecting the absentee option, the county clerk shall mail the presidential ballot to the address shown on the new resident's or former resident's application, as applicable.

H. Notwithstanding any provision of the Election Code, presidential ballots shall be mailed to all new residents, former residents, federal qualified electors, federal voters and voters who have qualified and applied therefor not less than seven days immediately prior to a presidential election.

History: 1953 Comp., § 3-21-5, enacted by Laws 1971, ch. 322, § 5; 1973, ch. 138, § 6; 1993, ch. 314, § 62; 1993, ch. 316, § 60.

1-21-6. New resident; former resident; presidential ballot register.

A. For each presidential election, the county clerk shall keep a "new resident - former resident presidential ballot register" containing the names of new residents and former residents in a form and manner prescribed by the secretary of state.

B. Such register is a public record open to public inspection in the county clerk's office during regular office hours.

C. The county clerk shall transmit to the secretary of state and to the county chairman of each of the major political parties in the county, a complete copy of entries made in such register. Such transmission shall be made once each week beginning four weeks immediately prior to the presidential election. A final copy shall be transmitted on the Friday immediately following the presidential election.

History: 1953 Comp., § 3-21-6, enacted by Laws 1971, ch. 322, § 6.

1-21-7. Form of presidential ballot.

The form of the absentee presidential ballot for new residents and former residents shall be the same as that specified for absentee ballots in the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-21-7, enacted by Laws 1971, ch. 322, § 7.

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1-21-8. Presidential ballot envelopes.

The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of presidential ballot envelopes in the same manner as prescribed for absentee ballot envelopes in the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-21-8, enacted by Laws 1971, ch. 322, § 8.

1-21-9. Manner of voting of new residents and former residents.

A. Any new resident or any former resident, not voting in person at the absent voter precinct, voting under provision of the Federal Voting Rights Compliance Act, shall secretly mark his ballot, place it in the official inner envelope and securely seal the envelope. He shall then place the official inner envelope inside the official outer envelope and securely seal the envelope. The person voting shall then fill in the form on the reverse of the official outer envelope and subscribe and swear to it before a person authorized to administer oaths.

B. The new resident or former resident, not voting in person at the absent voter precinct, shall deliver the voted presidential ballot to the county clerk or his designated representative.

C. A former resident voting in person at an absent voter precinct shall cast his presidential ballot in person at the absent voter precinct.

History: 1953 Comp., § 3-21-9, enacted by Laws 1971, ch. 322, § 9; 1973, ch. 138, § 7.

1-21-10. Delivery of presidential ballots to absent voter precincts.

The county clerk shall deliver presidential ballots to the absent voter precincts at the same time and in the same manner as that specified for absentee ballots in the Election Code [Chapter 1 NMSA 1978] except that all presidential ballots received by the county clerk not later than the time of closing of the polls shall be delivered to the absent voter precincts and processed the same as any other absentee ballot.

History: 1953 Comp., § 3-21-10, enacted by Laws 1971, ch. 322, § 10.

1-21-11. Handling presidential ballots by absent voter precinct board.

Presidential ballots shall be handled in the same manner as that specified for absentee ballots in the Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 3-21-11, enacted by Laws 1971, ch. 322, § 11.

1-21-12. Cancellation of presidential ballot at death.

The cancellation of a presidential ballot due to death of a new resident or former resident shall be the same as that specified for absentee voters in the Election Code [Chapter 1 NMSA 1978].

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History: 1953 Comp., § 3-21-12, enacted by Laws 1971, ch. 322, § 12.

1-21-13. Application of election laws.

Except as provided in the Federal Voting Rights Compliance Act, the provisions of law relating to elections held under the provisions of the Election Code [Chapter 1 NMSA 1978] apply to the casting and counting of ballots and challenging of votes by new residents and former residents, the furnishing of election supplies, ballots, canvassing and making proper returns of the results of the election.

History: 1953 Comp., § 3-21-16, enacted by Laws 1971, ch. 322, § 16; 1973, ch. 138, § 8.

1-21-14. Penalty.

Any person willfully making a false statement or affidavit under the Federal Voting Rights Compliance Act is guilty of a fourth degree felony.

History: 1953 Comp., § 3-21-17, enacted by Laws 1971, ch. 322, § 17.

ARTICLE 22
Local Elections

Sec.
1-22-1. Short title.
1-22-2. Definitions.
1-22-2. Definitions. (Effective July 1, 2022.)
1-22-3. Regular local elections; special local elections; ballot questions; qualifications of candidates.
1-22-3.1. Municipal officer election day; procedures; exceptions.
1-22-3.2. Municipalities; municipal election provisions; adjustment of dates and charter amendments for procedures affected by the Election Code; public financing.
1-22-3.2. Municipalities; municipal election provisions; adjustment of dates and charter amendments for procedures affected by the Election Code; public financing. (Effective January 1, 2020.)
1-22-4. Regular local election; proclamation; publication.
1-22-5. Repealed.
1-22-6. Repealed.
1-22-7. Declaration of candidacy; filing date; penalty.
1-22-8. Declaration of candidacy; sworn statement of intent; form.
1-22-8.1. Write-in candidates.
1-22-9. Repealed.
1-22-10. Candidate qualification; challenges; ballots.
1-22-10.1. Repealed.
1-22-11. Repealed.
1-22-12. Repealed.
1-22-13. Repealed.
1-22-14. Repealed.
1-22-15. Repealed.
1-22-16. Municipal runoff elections.
1-22-17. Recompiled.
1-22-18. Local election; date term of office begins.
1-22-19. Early voting; municipal early voting locations.
1-22-20. Recompiled.

1-22-1. Short title.

Chapter 1, Article 22 NMSA 1978 may be cited as the "Local Election Act".

History: 1978 Comp., § 1-22-1, enacted by Laws 1985, ch. 168, § 3; repealed and reenacted Laws 2018, ch. 79, § 16.

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1-22-2. Definitions.

As used in the Local Election Act:

A. "local election" means a local government election;

B. "local governing body" means a board, council or commission, as appropriate for a given local government;

C. "local government" means a:

(1) political subdivision of the state with authority to levy taxes pursuant to Article 8, Section 9 of the constitution of New Mexico and its enabling legislation, but does not include a conservancy district governed pursuant to Chapter 73, Article 14 or 18 NMSA 1978 or a county; and

(2) political subdivision of the state without authority to levy taxes pursuant to Article 8, Section 9 of the constitution of New Mexico or its enabling legislation, but whose statutory provisions provide for election of officers or ballot questions to be decided pursuant to the Local Election Act;

D. "municipal officers" means the local governing body and any executive and judicial officers of a municipality;

E. "regular local election" means the biennial local election at which local governing body members are elected pursuant to the provisions of the Local Election Act; and

F. "special local election" means a local election conducted at a time other than a statewide election at which only ballot questions are considered pursuant to the provisions of the Special Election Act [Chapter 1, Article 24 NMSA 1978].

History: 1978 Comp., § 1-22-2, enacted by Laws 1985, ch. 168, § 4; 1987, ch. 249, § 45; 1999, ch. 267, § 33; 2015, ch. 145, § 79; repealed and reenacted Laws 2018, ch. 79, § 17; 2019, ch. 212, § 140.

1-22-2. Definitions. (Effective July 1, 2022.)

As used in the Local Election Act:

A. "local election" means a local government election;

B. "local governing body" means a board, council or commission, as appropriate for a given local government;

C. "local government" means a:

(1) political subdivision of the state with authority to levy taxes pursuant to Article 8, Section 9 of the constitution of New Mexico and its enabling legislation, but does not include a county; and

(2) political subdivision of the state without authority to levy taxes pursuant to Article 8, Section 9 of the constitution of New Mexico or its enabling legislation, but whose statutory provisions provide for election of officers or ballot questions to be decided pursuant to the Local Election Act;

D. "municipal officers" means the local governing body and any elective executive and judicial officers of a municipality;

E. "regular local election" means the biennial local election at which local governing body members are elected pursuant to the provisions of the Local Election Act; and

F. "special local election" means a local election conducted at a time other than a statewide election at which only ballot questions are considered pursuant to the provisions of the Special Election Act [Chapter 1, Article 24 NMSA 1978].

History: 1978 Comp., § 1-22-2, enacted by Laws 1985, ch. 168, § 4; 1987, ch. 249, § 45; 1999, ch. 267, § 33; 2015, ch. 145, § 79; repealed and reenacted Laws 2018, ch. 79, § 17; 2019, ch. 212, § 140; repealed and reenacted by Laws 2019, ch. 212, § 141.

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1-22-3. Regular local elections; special local elections; ballot questions; qualifications of candidates.

A. A regular local election shall be held on the first Tuesday after the first Monday in November of each odd-numbered year. A regular local election shall be held to elect qualified persons to membership on a local governing body and, where applicable, to elective municipal executive office and to municipal judicial office.

B. A regular local election shall be a nonpartisan election, and the names of all candidates shall be listed on the ballot with no party or slate designation. No person shall become a candidate in a regular local election unless the person physically resides within the boundaries of the district or districted area in which the person desires to be elected or to represent and the person's record of voter registration shows that the person is both a qualified elector of the state and was registered to vote in the area to be elected to represent on the date the proclamation calling a local election is filed in the office of the secretary of state.

C. A local government may propose a ballot question to be considered by the voters of the local government:

(1) at a regular local election or a general election as provided by Subsection B of Section 1-16-3 NMSA 1978; or

(2) at a special local election called, conducted and canvassed as provided in the Special Election Act [Chapter 1, Article 24 NMSA 1978].

D. Except as otherwise provided in the Local Election Act, local elections shall be called, conducted and canvassed as provided in the Election Code.

History: 1978 Comp., § 1-22-3, enacted by Laws 1985, ch. 168, § 5; 1997, ch. 252, § 1; 2015, ch. 145, § 80; repealed and reenacted by Laws 2018, ch. 79, § 18; 2019, ch. 212, § 142.

1-22-3.1. Municipal officer election day; procedures; exceptions.

A. All municipalities shall elect their municipal officers pursuant to this section on the municipal officer election day, which is the first Tuesday in March of even-numbered years, unless the municipality has opted in to the election of its municipal officers at the regular local election.

B. Except as provided in Subsection C of this section, any municipality may by ordinance opt in to the election of its municipal officers in the regular local election if the municipality passes an ordinance and files the ordinance with the secretary of state no later than June 30 of the year in which the next regular local election is scheduled. The ordinance shall also determine if the terms of office for current office holders will be lengthened or shortened to correspond with the new election date. Following the second regular local election at which its municipal officers are elected at the regular local election, a municipality that has passed an ordinance pursuant to this subsection may rescind the ordinance opting in to the election of its municipal officers in the regular local election and file the rescission with the secretary of state no later than June 30 of the year in which the next regular local election is scheduled.

C. A home rule municipality that pursuant to its charter is implementing a form of required voter identification that supersedes the provisions of Section 1-1-24 NMSA 1978 shall not elect its municipal officers at the regular local election.

D. For municipalities that elect their officers on municipal officer election day:

(1) all provisions of the Local Election Act as supplemented by the Election Code apply, except as provided in this section;

(2) for a municipal officer election, when the Local Election Act or the Election Code references a process or procedure to be conducted by the county clerk in the administration of a regular

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local election, the process or procedure shall instead be fulfilled and administered by the municipal clerk;

(3) for a special local election, the municipal clerk shall fulfill the duties of the county clerk pursuant to the Special Election Act [Chapter 1, Article 24 NMSA 1978] in the conduct of administering a special local election by the municipality, unless the municipal clerk has entered into a memorandum of understanding with the county clerk to administer the special local election on behalf of the municipality;

(4) for a recall election, notwithstanding the laws of any municipality to the contrary, the county clerk shall at all times conduct a municipal recall election pursuant to the provisions of the Recall Act [Chapter 1, Article 25 NMSA 1978];

(5) in an election administered by the municipal clerk, the secretary of state shall provide to the municipal clerk access to the list of voters of the municipality through the voter registration electronic management system;

(6) the provisions of the Uniform Military and Overseas Voters Act [1-6B-1 through 1-6B-17 NMSA 1978] apply to an election administered by the municipal clerk; provided that for the municipal officer election, military-overseas ballots shall be sent to federal qualified electors beginning thirty-five days before the election;

(7) upon the approval of the governing body of a municipality, a local government ballot question may appear on the ballot for an election conducted pursuant to this section at the request of a county, school or special district;

(8) the governing body of a municipality may act in relation to the duties of the board of county commissioners set forth in Section 1-3-2 NMSA 1978 in setting polling places and consolidating precincts for the municipal officer election; provided that if the governing body of a municipality does not pass a resolution as provided by Section 1-3-2 NMSA 1978, the polling places set by the board of county commissioners within the boundaries of the municipality shall be used for municipal officer elections;

(9) the provisions of Section 1-22-3.2 NMSA 1978 apply to a municipality conducting elections pursuant to this section; provided that the adjustment of dates in the laws of the municipality shall accord with the schedule imposed by the Election Code for the conduct of the municipal officer election; and

(10) a municipality that elects its municipal officers pursuant to this section shall bear the costs of administering the municipal officer election.

E. Candidate procedures for municipalities that elect their officers on municipal officer election day are as follows:

(1) the secretary of state shall, in accordance with the provisions of Section 1-22-4 NMSA 1978, issue the proclamation calling for the municipal officer election for all municipalities conducting the election of their officers pursuant to this section. The municipal clerk shall post those portions of the proclamation relevant to the municipality and publish what is posted in accordance with the schedule and procedures provided in Subsection D of Section 1-22-4 NMSA 1978, and each county clerk shall post the entire proclamation on the county clerk's website along with a notice of which municipalities in the county are conducting elections pursuant to this section;

(2) each declaration of candidacy shall be delivered for filing in person by the eligible candidate or by a person acting by virtue of written authorization. The proper filing officer shall not accept for filing from any one individual more than one declaration of candidacy;

(3) declarations of candidacy for municipal officer elections shall be filed between 9:00 a.m. and 5:00 p.m. on the fifty-sixth day before the election. No name shall be placed on the ballot until the person has been notified in writing by the municipal clerk that the certificate of registration of the candidate on file with the county clerk, the declaration of candidacy and the petition, if

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required, are in proper order and that the person, based on those documents, is qualified to be a candidate. The municipal clerk shall deliver the notice to the person no later than 5:00 p.m. on the Friday following the filing date;

(4) write-in candidates for municipal officer elections shall file declarations of candidacy between 9:00 a.m. and 5:00 p.m. on the forty-ninth day before the election. No space shall appear on the ballot for a write-in candidate until the person has been notified in writing by the municipal clerk that the certificate of registration of the candidate on file with the county clerk and the declaration of candidacy are in proper order and that the person, based on those documents, is qualified to be a declared write-in candidate. The municipal clerk shall deliver the notice to the person no later than 5:00 p.m. on the Friday following the filing date;

(5) any voter may challenge the candidacy of any person seeking election to municipal office for the reason that the person does not meet the requirements for the office sought by filing a petition in the district court within seven days after the deadline for filing a declaration of candidacy. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith; and

(6) the municipal clerk shall certify in writing the ballot for each precinct in the municipality containing the name of each candidate who has been qualified, a space for any offices with a declared write-in candidate and any ballot questions to be voted on at the municipal officer election. The order of candidates for the same office in a municipal officer election shall follow the randomization method established by rule by the secretary of state for the regular local election. Each ballot certified pursuant to this paragraph shall, no later than forty-two days before the election, be sent to the ballot printer or other person preparing the ballot for use by the voters and a certified copy sent to the secretary of state. A copy of each certification shall be kept on file in the office of the secretary of state for twelve months, after which the ballot certification shall be transferred to be a permanent record at the state records center.

F. Except for municipalities that provide for a top-two runoff election pursuant to Section 1-22-16 NMSA 1978, the term of office for municipalities holding elections pursuant to this section shall begin the first day of the month following the election. For municipalities that provide for a top-two runoff election, the term of office for municipalities holding elections pursuant to this section shall begin the first day of the month following the runoff election.

G. When the Municipal Code [Chapter 3 NMSA 1978]:

(1) provides for vacancies in municipal office to be filled by election at the next regular local election, the vacancies shall instead be filled by election at the next municipal officer election; or

(2) references a ballot question that may be placed on the regular local election or general election ballot, the reference shall also permit placing the ballot question on the municipal officer election ballot.

History: Laws 2018, ch. 79, § 34; 2019, ch. 212, § 143.

1-22-3.2. Municipalities; municipal election provisions; adjustment of dates and charter amendments for procedures affected by the Election Code; public financing.

A. Election provisions or procedures in the laws of a municipality that operate in addition to and do not conflict with the provisions of the Election Code continue in effect as long as such

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provisions do not conflict with the Election Code or until amended or repealed by the municipality. Election provisions or procedures in an ordinance or charter of a municipality that conflict with the Election Code or other applicable state or federal law are not operable and shall not be enforced. Election provisions or procedures in an ordinance or charter of a municipality that do not conflict with the Election Code shall be administered pursuant to the ordinances or charter of the municipality, unless the municipal clerk and the county clerk have signed a memorandum of understanding for the county clerk to conduct election provisions or procedures on behalf of the municipality.

B. A municipality with election provisions or procedures in an ordinance or its charter that do not conflict with the Election Code shall adjust the calendar dates that implement those election provisions and procedures to accord with the schedules imposed by the Election Code. At the discretion of the municipality, the adjustment of calendar dates may be done administratively, by ordinance or as otherwise provided by the charter of the municipality. The municipal clerk shall post the adjusted dates no later than June 30 of each odd-numbered year.

C. At the discretion of the municipality, a municipality with a charter may amend its charter by ordinance or as otherwise provided by the municipality to conform its ordinances or charter with the requirements of the Election Code and other applicable state or federal laws related to elections.

D. In any municipality implementing public financing for its municipal elections consistent with this section and notwithstanding any provision to the contrary in the ordinances or charter of the municipality:

(1) the municipality shall require as a precondition to the receipt of public financing that a person first be qualified as a candidate;

(2) if the date in the ordinances or charter of the municipality for submitting documents to be approved for public financing is an earlier date than the filing date for declarations of candidacy provided in the Local Election Act, the municipal clerk shall accept declarations of candidacy and other candidate qualification documents from persons seeking to be approved for public financing on the date provided in the ordinances or charter of the municipality upon which the municipal clerk shall deliver to the county clerk the candidate qualification documents of each person seeking to be approved for public financing;

(3) the county clerk shall notify the municipal clerk in writing no later than 5:00 p.m. on the third day following receipt of the candidate qualification documents that the certificate of registration of the candidate, the declaration of candidacy and the petition, if any, are in proper order and whether the person, based on those documents, is qualified to be a candidate;

(4) any voter may challenge the determination of candidacy qualification by the county clerk of a person seeking election to municipal office for the reason that the person does not meet the candidate qualification requirements by filing a petition in the district court within seven days after the deadline for the municipal clerk to approve candidates to receive public financing. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith; and

(5) on the day provided in the Local Election Act to submit declarations of candidacy, any qualified person may file a declaration of candidacy for municipal office and other candidate qualification documents, including a person who failed to be approved for public financing but who otherwise qualifies to be a candidate, but not including a person who previously sought public financing in the same election but was not qualified to be a candidate; provided that any candidate qualification requirements imposed by the municipality other than those pertinent to public

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financing and the date for filing a declaration of candidacy must be fulfilled by a person who submits a declaration of candidacy on the day provided in the Local Election Act.

E. Until December 31, 2019, a municipality with a population greater than one hundred thousand, based on the latest federal decennial census, shall use the provisions of this section that existed prior to the effective date of this 2019 act. After December 31, 2019, all municipalities shall use the provisions of this section as it exists on the effective date of this 2019 act.

History: Laws 2018, ch. 79, § 35; 2019, ch. 212, § 144.

1-22-3.2. Municipalities; municipal election provisions; adjustment of dates and charter amendments for procedures affected by the Election Code; public financing. (Effective January 1, 2020.)

A. Election provisions or procedures in the laws of a municipality that operate in addition to and do not conflict with the provisions of the Election Code continue in effect as long as such provisions do not conflict with the Election Code or until amended or repealed by the municipality. Election provisions or procedures in an ordinance or charter of a municipality that conflict with the Election Code or other applicable state or federal law are not operable and shall not be enforced. Election provisions or procedures in an ordinance or charter of a municipality that do not conflict with the Election Code shall be administered pursuant to the ordinances or charter of the municipality, unless the municipal clerk and the county clerk have signed a memorandum of understanding for the county clerk to conduct election provisions or procedures on behalf of the municipality.

B. A municipality with election provisions or procedures in an ordinance or its charter that do not conflict with the Election Code shall adjust the calendar dates that implement those election provisions and procedures to accord with the schedules imposed by the Election Code. At the discretion of the municipality, the adjustment of calendar dates may be done administratively, by ordinance or as otherwise provided by the charter of the municipality. The municipal clerk shall post the adjusted dates no later than June 30 of each odd-numbered year.

C. At the discretion of the municipality, a municipality with a charter may amend its charter by ordinance or as otherwise provided by the municipality to conform its ordinances or charter with the requirements of the Election Code and other applicable state or federal laws related to elections.

D. In any municipality implementing public financing for its municipal elections consistent with this section and notwithstanding any provision to the contrary in the ordinances or charter of the municipality:

(1) the municipality shall require as a precondition to the receipt of public financing that a person first be qualified as a candidate;

(2) if the date in the ordinances or charter of the municipality for submitting documents to be approved for public financing is an earlier date than the filing date for declarations of candidacy provided in the Local Election Act, the municipal clerk shall accept declarations of candidacy and other candidate qualification documents from persons seeking to be approved for public financing on the date provided in the ordinances or charter of the municipality upon which the municipal clerk shall deliver to the county clerk the candidate qualification documents of each person seeking to be approved for public financing;

(3) the county clerk shall notify the municipal clerk in writing no later than 5:00 p.m. on the third day following receipt of the candidate qualification documents that the certificate of registration of the candidate, the declaration of candidacy and the petition, if any, are in proper order and whether the person, based on those documents, is qualified to be a candidate;

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(4) any voter may challenge the candidacy of a person seeking election to municipal office by the county clerk for the reason that the person does not meet the candidate qualification requirements by filing a petition in the district court within seven days after the deadline for the municipal clerk to approve candidates to receive public financing. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith; and

(5) on the day provided in the Local Election Act to submit declarations of candidacy, any qualified person may file a declaration of candidacy for municipal office and other candidate qualification documents, including a person who failed to be approved for public financing but who otherwise qualifies to be a candidate, but not including a person who previously sought public financing in the same election but was not qualified to be a candidate; provided that any candidate qualification requirements imposed by the municipality other than those pertinent to public financing and the date for filing a declaration of candidacy must be fulfilled by a person who submits a declaration of candidacy on the day provided in the Local Election Act.

History: Laws 2018, ch. 79, § 35; 2019, ch. 212, § 144; repealed and reenacted by Laws 2019, ch. 212, § 145.

1-22-4. Regular local election; proclamation; publication.

A. Between one hundred twenty and one hundred fifty days before the next regular local election, each local government shall notify the county clerk of the county in which the primary administrative office of the local government is situate of all local government positions that are to be filled at the next regular local election. Each county clerk shall inform the secretary of state of all positions to be filled no later than one hundred twelve days before the regular local election.

B. The secretary of state shall by resolution issue a public proclamation in Spanish and English calling a regular local election. The proclamation shall be issued and filed by the secretary of state in the office of the secretary of state ninety days preceding the date of the regular local election, and upon filing the proclamation, the secretary of state shall post the proclamation and certify it to each county clerk.

C. The proclamation shall specify:

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

(2) each elective office, local governing body and judicial position to be filled;

(3) the date on which declarations of candidacy are to be filed;

(4) the date on which declarations of intent to be a write-in candidate are to be filed; and

(5) the municipalities subject to a ranked-choice voting runoff election and those subject to a top-two runoff election and the date of the top-two runoff election should one be necessary.

D. After receipt of the proclamation from the secretary of state, the county clerk shall post the entire proclamation on the county clerk's website and, not less than seventy-five days before the date of the election, shall publish portions of the proclamation relevant to the county at least once in a newspaper of general circulation within the county. The publication of the proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended, and shall specify:

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

(2) for each local government situated in whole or in part in the county, each elective executive, local governing body and judicial position to be filled by voters of any precinct in the county;

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(3) the date on which declarations of candidacy are to be filed and the date on which declarations of intent to be a write-in candidate are to be filed;

(4) the location, days and hours for voting at the office of the county clerk;

(5) the location, days and hours for early voting at each alternate voting location and mobile alternate voting location;

(6) the location, date and hours for voting at each election day polling place; and

(7) the date certificates of registration shall be subscribed and sworn as required by law.

E. Whenever two or more members of a local governing body are to be elected at large for terms of the same length of time, the secretary of state shall numerically designate the positions on the ballot as "position one", "position two" and such additional consecutively numbered positions as are necessary, but only one member shall be elected for each position. Whenever two or more members of a local governing body are to be elected to represent the same area with terms of different lengths of time, the secretary of state shall list the office with the shorter length of time first and shall designate each position with "for a term expiring _____".

History: 1978 Comp., § 1-22-4, enacted by Laws 1985, ch. 168, § 6; 1987, ch. 338, § 1; 1991, ch. 105, § 40; 2007, ch. 337, § 19; repealed and reenacted by Laws 2018, ch. 79, § 19; 2019, ch. 212, § 146.

1-22-5. Repealed.

1-22-6. Repealed.

1-22-7. Declaration of candidacy; filing date; penalty.

A. A candidate for a position that will be filled at a regular local election shall file a declaration of candidacy with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the seventieth day before the date of the regular local election.

B. A candidate shall file for only one position in the same local government but may file for a position in more than one local government on the same filing day.

C. A declaration of candidacy shall not be amended after it has been filed with the proper filing officer.

D. Each declaration of candidacy shall be delivered for filing in person by the eligible candidate or by a person acting by virtue of written authorization. The proper filing officer shall not accept for filing from any one individual more than one declaration of candidacy.

E. Whoever knowingly makes a false statement in a declaration of candidacy is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1978 Comp., § 1-22-7, enacted by Laws 1985, ch. 168, § 9; 1999, ch. 267, § 34; 2015, ch. 145, § 83; repealed and reenacted by Laws 2018, ch. 79, § 20; 2019, ch. 212, § 147.

1-22-8. Declaration of candidacy; sworn statement of intent; form.

In making a declaration of candidacy, the candidate shall submit a sworn statement of intent in substantially the following form:

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"DECLARATION OF CANDIDACY--STATEMENT OF INTENT

I, _____ (candidate's name on certificate of registration), being first duly sworn, say that I am a voter of the county of _____, State of New Mexico. I reside at _____ _____ and was registered to vote at that place on the date of the proclamation calling this election;

I reside within and am registered to vote in the area to be elected to represent;

I desire to become a candidate for the office of _____ at the regular local election to be held in November of the year this declaration is filed;

I will be eligible and legally qualified to hold this office at the beginning of its term; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____
(Signature of Declarant)

_____
(Mailing Address)

_____
(Residence Address)

Subscribed and sworn to before me by _____ this _____ day of _____, 20 _____.

_____.
(Notary Public)

My commission expires:

_____".

History: 1978 Comp., § 1-22-8, enacted by Laws 1985, ch. 168, § 10; 1987, ch. 249, § 47; 1993, ch. 314, § 63; 1993, ch. 316, § 61; 1997, ch. 252, § 2; 2015, ch. 145, § 84; repealed and reenacted by Laws 2018, ch. 79, § 21; 2019, ch. 212, § 148.

1-22-8.1. Write-in candidates.

A. Write-in candidates shall be permitted in regular local elections.

B. A person may be a write-in candidate only if the person has the qualifications to be a candidate for the position for which the person is running.

C. A person desiring to be a write-in candidate for an office shall file with the proper filing officer a declaration of candidacy. The declaration shall be filed between 9:00 a.m. and 5:00 p.m. on the sixty-third day preceding the date of the election. The county clerk shall ensure that a declaration of candidacy filed pursuant to this section specifies that it is for a write-in candidate.

D. At the time of filing the declaration of candidacy, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Local Election Act, except that the write-in candidate's name shall not be printed on the ballot nor posted in any polling place.

History: 1978 Comp., § 1-22-8.1, enacted by Laws 2018, ch. 79, § 22; 2019, ch. 212, § 149.

1-22-9. Repealed.

1-22-10. Candidate qualification; challenges; ballots.

A. The proper filing officer shall determine whether a candidate filing a declaration of candidacy is registered to vote within the area to be elected to represent and, if required for the office

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being sought, whether the candidate's nominating petition for that office has been filed with a number of signatures that is equal to or greater than the number required for that office. If the candidate is so qualified and no withdrawal of candidacy has been filed as provided in the Local Election Act, the proper filing officer shall place the candidate's name on the ballot for the position specified in the declaration of candidacy and notify each candidate in writing no later than 5:00 p.m. on the sixtieth day before the local election.

B. Any voter may challenge the candidacy of any person seeking election at the regular local election for the reason that the person does not meet the requirements for the office sought by filing a petition in the district court within seven days after the day for filing a declaration of candidacy. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith.

C. Ballots for the regular local election shall be prepared by the proper filing officer and printed in accordance with the provisions of Section 1-10-5 NMSA 1978.

D. The printed ballot shall contain the name of each person who is a candidate and the position for which the person is a candidate.

E. The ballot shall also contain all ballot questions that are to be submitted to the voters as certified by a local governing body to the county clerk in each county in which the local government is situate and shall conform to the requirements for ballot questions on the regular local election ballot as provided in Chapter 1, Article 16 NMSA 1978.

History: 1978 Comp., § 1-22-10, enacted by Laws 1985, ch. 168, § 12; 1993, ch. 4, § 1; 2009, ch. 150, § 35; repealed and reenacted by Laws 2018, ch. 79, § 24; 2019, ch. 212, § 150.

1-22-10.1. Repealed.

1-22-11. Repealed.

1-22-12. Repealed.

1-22-13. Repealed.

1-22-14. Repealed.

1-22-15. Repealed.

1-22-16. Municipal runoff elections.

A. All runoff elections authorized by Article 7, Section 5 of the constitution of New Mexico shall be conducted pursuant to this section as a top-two runoff election or as a ranked-choice runoff election as follows:

(1) a top-two runoff election shall be conducted on a separate ballot when the candidate receiving the most votes for an office did not receive the percentage of votes required by the laws of the municipality to be elected in the first round of voting. When ordered, the top-two runoff election shall be held following the regular local election and allow the voter to select between the two candidates who in the first round of voting received the highest number of votes for an office; and

(2) a ranked-choice runoff election shall be conducted on the same ballot as the regular local election and allow the voter to rank the candidates for an office in the order of preference for the voter.

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B. If a municipality whose laws provide for top-two runoff elections is notified by the proper canvassing board that a runoff election is required following the regular local election, the top-two runoff election shall be conducted in accordance with those election provisions and procedures in the ordinances or charter of the municipality that do not conflict with the Election Code or administrative rules issued by the secretary of state; provided that in a municipality in which the first round of voting is conducted at the regular local election:

(1) the county clerk shall perform the duties of administering the top-two runoff election; and

(2) the municipality shall reimburse the secretary of state the actual cost of conducting the runoff election.

C. A municipality whose laws provide for a runoff election shall conduct the election in the manner provided by the municipality's ordinance or charter; provided that a municipality may by ordinance choose between conducting a top-two runoff election and a ranked-choice runoff election. The ordinance shall be filed with the secretary of state no later than June 30 of the year the next regular local election is scheduled.

D. The secretary of state shall issue rules to implement top-two and ranked-choice runoff elections.

History: 1978 Comp., § 1-22-16, enacted by Laws 1985, ch. 168, § 18; repealed and reenacted by Laws 2018, ch. 79, § 29; 2019, ch. 212, § 151.

1-22-17. Recompiled.

1-22-18. Local election; date term of office begins.

The term of office of a candidate elected in a regular local election or ensuing top-two runoff election shall begin on January 1 following the candidate's election, and the candidate to whom a certificate of election has been issued shall take the oath of office before entering upon the duties of office.

History: 1978 Comp., § 1-22-18, enacted by Laws 1985, ch. 168, § 20; 2009, ch. 150, § 36; repealed and reenacted by Laws 2018, ch. 79, § 31.

1-22-19. Early voting; municipal early voting locations.

In a regular local election, a county clerk shall provide at least one alternate voting or mobile alternate voting location in a municipality when requested by a municipality in the county; provided that the:

A. municipality elects its municipal officers at the regular local election and submits a written request to the county clerk no later than January 30 of the year of the local election;

B. alternate voting or mobile alternate voting location may operate for less than the full early voting period, to be decided upon between the municipality and the county clerk;

C. location of the alternate voting or mobile alternate voting location in the municipality conforms to the requirements for alternate voting locations; and

D. municipality provides the facility and services for the alternate voting or mobile alternate voting location.

History: 1978 Comp., § 1-22-19, enacted by Laws 1985, ch. 168, § 21; 1987, ch. 249, § 51; 1999, ch. 267, § 35; 2015, ch. 145, § 86; repealed and reenacted by Laws 2018, ch. 79, § 32; 2019, ch. 212, § 152.

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1-22-20. Recompiled.

ARTICLE 22A
School District Campaign Reporting

Sec.
1-22A-1. Short title.
1-22A-2. Definitions.
1-22A-3. Reports required; time and place of filing.
1-22A-4. Contents of report.
1-22A-5. Anonymous contributions; special event fundraisers.
1-22A-6. Voluntary compliance; complaints and investigations; arbitration; referrals for enforcement.
1-22A-7. Reports and statements; late filing penalty; failure to file.
1-22A-8. Civil penalties.
1-22A-9. Penalties; criminal enforcement.
1-22A-10. Campaign funds; limitations on use.

1-22A-1. Short title.

This act [1-22A-1 to 1-22A-10 NMSA 1978] may be cited as the "School District Campaign Reporting Act".

History: Laws 2013, ch. 180, § 1.

1-22A-2. Definitions.

As used in the School District Campaign Reporting Act:

A. "campaign committee" means one or more persons authorized by a candidate to raise, collect or expend contributions on the candidate's behalf for the purpose of electing the candidate to office;

B. "candidate" means a person who seeks or considers an office in an election covered by the School District Campaign Reporting Act and who either has filed a declaration of candidacy or has received contributions or made expenditures of five hundred dollars ($500) or more or authorized another person or campaign committee to receive contributions or make expenditures of five hundred dollars ($500) or more for the purpose of seeking election to a covered office;

C. "contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign; but "contribution" does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or campaign committee;

D. "covered office" means the position of board of education member of a school district that has an enrollment of twelve thousand students or more or the position of board member of a community college organized or operating pursuant to the provisions of Chapter 21, Article 13 or Article 16 NMSA 1978;

E. "election cycle" means the period beginning thirty days after an election for an office and ending thirty days following the subsequent election day for that office;

F. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign;

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G. "political purpose" means advocating the election or defeat of a candidate in an election;

H. "prescribed form" means a form or electronic format prepared and prescribed by the secretary of state; and

I. "reporting individual" means a candidate or treasurer of a campaign committee.

History: Laws 2013, ch. 180, § 2; 2018, ch. 79, § 36.

1-22A-3. Reports required; time and place of filing.

A. A candidate or campaign committee that has received contributions or made expenditures of five hundred dollars ($500) or more shall file with the secretary of state a report of all contributions received and expenditures made on a prescribed form, and the report shall be filed in the same or similar electronic system as that used for the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978]. Except as otherwise provided in this section, all reports pursuant to the School District Campaign Reporting Act shall be filed electronically and electronically authenticated by the candidate using an electronic signature in conformance with the Electronic Authentication of Documents Act [14-15-1 through 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978].

B. A candidate or campaign committee shall file a campaign report of all contributions received and expenditures made during an election cycle and not previously reported by midnight on the twenty-first day before the election and on the thirtieth day following the election.

C. If a reporting date set by Subsection B of this section falls on a holiday, the report shall be filed on the next business day.

D. If a candidate or campaign committee has not received any contributions and has not made any expenditures since the last report filed with the secretary of state, the candidate or campaign committee shall only be required to file a statement of no activity, which shall not be required to be notarized, in lieu of a full report when that report would otherwise be due.

E. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.

F. Except for candidates and campaign committees that file a statement of no activity, each candidate or campaign committee shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section, regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required until the candidate or campaign committee delivers a report to the secretary of state stating that:

(1) there are no outstanding campaign debts;

(2) all money has been expended in accordance with the provisions of Section 1-22A-10 NMSA 1978; and

(3) the bank account for campaign funds maintained by the candidate or campaign committee has been closed.

G. A candidate who does not ultimately file a declaration of candidacy and does not file a statement of no activity shall file reports in accordance with Subsection B of this section.

H. A candidate may apply to the secretary of state for exemption from electronic filing in case of hardship, which shall be defined by the secretary of state.

History: Laws 2013, ch. 180, § 3; 2018, ch. 79, § 37.

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1-22A-4. Contents of report.

A. Each required report of expenditures and contributions shall be typed or printed legibly, or on a computer disc or format approved by the secretary of state, and shall include:

(1) the name and address of the person to whom an expenditure was made or from whom a contribution was received; provided that for contributors, the name of the legal entity or the first and last names of the individual shall be the full name of the legal entity or individual, and initials only shall not constitute a full name unless that is the complete legal name;

(2) the occupation and type and name of business, if any, of any person making contributions of two hundred fifty dollars ($250) or more in the aggregate per election;

(3) the amount of the expenditure or contribution or value thereof;

(4) the purpose of the expenditure; and

(5) the date that the expenditure was made or the contribution was received.

B. Each report shall contain an opening and closing cash balance for the bank account maintained for campaign funds by the reporting individual during the reporting period and the name of the financial institution.

C. Each report shall specify the amount of each unpaid debt and the identity of the person to whom the debt is owed.

History: Laws 2013, ch. 180, § 4.

1-22A-5. Anonymous contributions; special event fundraisers.

A. No anonymous contributions may be accepted in excess of one hundred dollars ($100). The aggregate amount of anonymous contributions received by a candidate in an election cycle shall not exceed five hundred dollars ($500).

B. Cash contributions received at special events that are unidentifiable as to a specific contributor but identifiable as to the special event are not subject to the anonymous contribution limits provided for in this section so long as no single special event raises, after expenses, more than one thousand dollars ($1,000) in such cash contributions. For those contributions, due diligence and best efforts shall be made to disclose on a special prescribed form with the sponsor, date, place, total amount received, expenses incurred, estimated number of persons in attendance and other identifiable factors that describe the special event.For purposes of this subsection, "special event" means an event such as a barbecue or similar fundraiser where tickets costing twenty-five dollars ($25.00) or less are sold or an event such as a coffee, tea or similar reception.

C. Any contributions received pursuant to this section in excess of the limits established in Subsections A and B of this section shall be donated to the state general fund or an organization to which a federal income tax deduction would be available under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended.

History: Laws 2013, ch. 180, § 5.

1-22A-6. Voluntary compliance; complaints and investigations; arbitration; referrals for enforcement.

A. The secretary of state may initiate investigations to determine whether any provision of the School District Campaign Reporting Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state any time prior to ninety days after an election, except that no complaints from the public

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may be filed within eight days prior to an election. The secretary of state shall adopt procedures for issuing advisory opinions and processing complaints and notifications of violations.

B. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the School District Campaign Reporting Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the reporting individual that the individual has ten working days from the date of the letter to correct the matter and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the fine imposed, the secretary of state may by a written notice of final action partially or fully waive any fine imposed for any late, incomplete or false report or statement of exception. A written notice of final action shall be sent by certified mail.

C. Upon receipt of the notice of final action, the person against whom the penalty has been imposed may protest the secretary of state's determination by submitting on a prescribed form a written request for binding arbitration to the secretary of state within ten working days of the date of the notice of final action. Any fine imposed shall be due and payable within ten working days of the date of notice of final action. No additional fine shall accrue pending the issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

D. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the School District Campaign Reporting Act, Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978], Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] or Financial Disclosure Act [10-16A-1 through 10-16A-8 NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

E. The arbitrator shall conduct the hearing within thirty days of the request for arbitration. The arbitrator may impose any penalty the secretary of state is authorized to impose.The arbitrator shall state the reasons for the arbitrator's decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [Chapter 44, Article 7A NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

F. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunction or other appropriate order or for criminal enforcement.

History: Laws 2013, ch. 180, § 6.

1-22A-7. Reports and statements; late filing penalty; failure to file.

A. If a statement of no activity or a report of expenditures and contributions contains false or incomplete information or is filed after any deadline imposed by the School District Campaign Reporting Act, the candidate, in addition to any other penalties or remedies prescribed by the Election Code, shall be liable for and shall pay to the secretary of state fifty dollars ($50.00) per day for each regular working day after the time required by the School District Campaign Reporting

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Act for the filing of statements of no activity or reports of expenditures and contributions until the complete or true statement or report is filed, up to a maximum of five thousand dollars ($5,000).

B. All sums collected for the penalty shall be deposited in the general fund for credit to the current school fund. A report or statement of exception shall be deemed timely filed only if it is received by the secretary of state by the date and time prescribed by law.

C. Any candidate who fails or refuses to file a report of expenditures and contributions or statement of no activity or to pay a penalty imposed by the secretary of state as required by the School District Campaign Reporting Act shall not, in addition to any other penalties provided by law:

(1) have the candidate's name printed upon the ballot if the violation occurs before or through the final date for the withdrawal of candidates; or

(2) be issued a certificate of election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of the School District Campaign Reporting Act and pays all penalties owed.

D. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions or a statement of no activity or to pay a penalty imposed by the secretary of state as required by the School District Campaign Reporting Act shall not be, in addition to any other penalties provided by law, permitted to file a declaration of candidacy or nominating petition for any future election until the candidate satisfies all reporting requirements of that act and pays all penalties owed.

History: Laws 2013, ch. 180, § 7.

1-22A-8. Civil penalties.

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the School District Campaign Reporting Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or district attorney may institute a civil action in district court for any violation of the School District Campaign Reporting Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of two hundred fifty dollars ($250) for each violation not to exceed five thousand dollars ($5,000), and forfeiture of any contribution received as a result of an unlawful solicitation or unlawful contribution. Each unlawful solicitation and each unlawful contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978].

C. The attorney general or district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the School District Campaign Reporting Act other than that specified in Subsection B of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of fifty dollars ($50.00) for each violation not to exceed five thousand dollars ($5,000).

History: Laws 2013, ch. 180, § 8.

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1-22A-9. Penalties; criminal enforcement.

A. Any person who knowingly and willfully violates any provision of the School District Campaign Reporting Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year or both.

B. The School District Campaign Reporting Act may be enforced by the attorney general or the district attorney in the county where the candidate resides or where the violation occurred.

History: Laws 2013, ch. 180, § 9.

1-22A-10. Campaign funds; limitations on use.

It is unlawful for a candidate or the candidate's agent to make an expenditure of contributions received, except for the following purposes:

A. expenditures of the campaign;

B. donations to the state general fund;

C. donations to an organization to which a federal income tax deduction would be permitted under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended;

D. expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office;

E. donations to a political committee or to another candidate seeking election to a public office that is subject to the reporting provisions of the School District Campaign Reporting Act or the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978]; or

F. disbursements to return unused funds pro rata to the contributors if no campaign debt exists.

History: Laws 2013, ch. 180, § 10.

ARTICLE 23
Mail Ballot Elections

(Repealed by Laws 2018, ch. 79, § 175.)

1-23-1 to 1-23-7. Repealed.

ARTICLE 24
Special Elections

Sec.
1-24-1. Short title; Special Election Act; application; prohibition.
1-24-1.1. Definition.
1-24-2. Special election procedures; proclamation; publication.
1-24-3. Special election procedures; conduct.
1-24-4. Special election procedures; election board; records.
1-24-5. Special election procedures; costs of election; prohibition on nongovernmental entities.
1-24-6. Recompiled.

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1-24-1. Short title; Special Election Act; application; prohibition.

A. Chapter 1, Article 24 NMSA 1978 may be cited as the "Special Election Act".

B. Notwithstanding any state or local laws to the contrary, the provisions of the Special Election Act govern the conduct of all special elections conducted by the state or any local public body.

C. No special election shall be held beginning the seventieth day prior to any statewide election and until:

(1) the one hundredth day following a general or regular local election; or

(2) the seventieth day following a major political party primary or an election to fill a vacancy in the office of united states representative.

History: Laws 1989, ch. 295, § 1; 2018, ch. 79, § 38; 2019, ch. 212, § 153.

1-24-1.1. Definition.

As used in the Special Election Act, "local public body" means:

A. a county;

B. a local government subject to the Local Election Act; or

C. a special district not subject to the Local Election Act.

History: Laws 2018, ch. 79, § 39; 1978 Comp., § 1-24-6 recompiled and amended as § 1-24-1.1 by Laws 2019, ch. 212, § 154.

1-24-2. Special election procedures; proclamation; publication.

A. Whenever a local public body determines that it is necessary or desirable to conduct a special election:

(1) the governing body shall by resolution issue a public proclamation calling the election. The proclamation shall forthwith be filed with the county clerk no later than seventy days prior to the date for the special election. If the boundaries of the local public body include precincts in multiple counties, the proclamation shall forthwith be filed with each county clerk no later than seventy days prior to the election;

(2) the proclamation shall specify:

(a) the date on which the special election will be held;

(b) the purpose for which the special election is called; and

(c) the text of the ballot question or ballot questions to be voted on;

(3) after filing with the county clerk or clerks the proclamation issued pursuant to this subsection, each county clerk shall post the proclamation beginning no later than sixty-seven days before the election and, beginning not less than sixty-three days before the date of the election, each county clerk shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation within the boundaries of the local public body; provided that if the boundaries of the local public body include precincts in multiple counties that share the same newspaper of general circulation, the county clerks may jointly publish the proclamation;

(4) the posting and publication pursuant to this subsection shall also inform the public that the special election will be conducted by mailed ballot, of the date ballots will be initially mailed to voters and of the last day to register to vote or to update an existing registration in advance of the special election; and

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(5) the proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended.

B. Whenever the state determines that it is necessary or desirable to conduct a special election:

(1) the secretary of state shall by resolution issue a public proclamation calling the election. The proclamation shall forthwith be filed with the secretary of state no later than seventy-five days prior to the election;

(2) the proclamation shall specify:

(a) the date on which the special election will be held;

(b) the purpose for which the special election is called; and

(c) the text of the ballot question or ballot questions to be voted upon;

(3) after filing with the secretary of state the proclamation issued pursuant to this subsection, the secretary of state shall within five days certify the proclamation to each county clerk in the state;

(4) the proclamation shall be posted and published in the same manner as provided for a proposed state constitutional amendment pursuant to Section 1-16-4 NMSA 1978;

(5) the posting and publication pursuant to this subsection shall also inform the public that the special election will be conducted by mailed ballot, of the date ballots will be initially mailed to voters and of the last day to register to vote or to update an existing registration in advance of the special election; and

(6) the proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended.

History: Laws 1989, ch. 295, § 2; 2011, ch. 137, § 107; 2017, ch. 101, § 19; 2018, ch. 79, § 40; 2019, ch. 212, § 155.

1-24-3. Special election procedures; conduct.

A. All special elections in this state shall be conducted absentee. Mailed ballots shall be used exclusively for voting in special elections. Except as otherwise provided in the Special Election Act, all special elections in this state shall be conducted and canvassed as provided in the Election Code.

B. Without requiring a voter to file an application to receive a ballot, the county clerk shall send a mailed ballot to every voter of the county or local public body, except a voter:

(1) who was sent a notice pursuant to Subsection C of Section 1-4-28 NMSA 1978 and who has not returned the prepaid and pre-addressed return card sent pursuant to that section and has not filed a new certificate of registration with a new address; or

(2) whose official election-related mail sent through a uniform, nondiscriminatory process was returned to the county clerk or the secretary of state as undeliverable and the voter has not communicated with the county clerk that the official election-related mail was returned as undeliverable in error or filed a certificate of registration with a new address.

C. Forty-two days before the election, the county clerk shall send to each voter of the county or local public body described in Paragraphs (1) and (2) of Subsection B of this section notice, sent by forwardable mail, that the voter will not be sent a ballot for the special election unless the voter updates the voter's address as provided by the Election Code or informs the county clerk that the address on the certificate of registration is valid. The notice shall include contact information for the office of the county clerk and an internet address where the voter may update the voter's address or communicate with the county clerk. The mailed ballot register shall note which voters were sent a notice pursuant to this subsection.

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D. Between the twenty-seventh and twenty-fifth day before the election, pursuant to Subsection B of this section, the county clerk shall send to each voter a ballot for the special election, along with a postage-paid return envelope, a notice that there will be no traditional polling places for the election, the deadline for the ballot to be received by the county clerk and a list of the times and locations of secured containers available in addition to the United States postal service for a voter to return the ballot.

E. Beginning twenty-two days before the election, the county clerk shall issue replacement and provisional ballots as provided in the Absent Voter Act [Chapter 1, Article 6 NMSA 1978] for the mailed ballot process. In addition, the county clerk shall send a ballot to any voter described in Paragraphs (1) and (2) of Subsection B of this section who has not previously been sent a ballot if the voter submits an application pursuant to Section 1-6-4 NMSA 1978.

F. When required by federal law, if the voter has on file with the county a valid certificate of registration that indicates that the voter is a new registrant in the state and who registered by mail without submitting the required voter identification, the county clerk shall notify the voter that the voter must submit with the mailed ballot the required documentary identification from the list in Paragraph (3) of Subsection I of Section 1-4-5.1 NMSA 1978. The county clerk shall note on the mailed ballot register and signature roster that the applicant's mailed ballot must be returned with the required voter identification.

History: Laws 1989, ch. 295, § 3; 2018, ch. 79, § 41; repealed and reenacted by Laws 2019, ch. 212, § 156.

1-24-4. Special election procedures; election board; records.

A. Upon the filing in the office of the county clerk of a proclamation calling a special election, the county clerk shall appoint election boards for the special election pursuant to the provisions of Sections 1-2-6 through 1-2-18 NMSA 1978. The county clerk shall keep a log of how each person was notified and confirmation that the notice was received. Presiding judges and election judges on the election board for the special election shall be appointed from among those persons who served as election board members in a recent statewide election. The handling of mailed ballots returned to the county clerk in a special election shall be pursuant to the provisions of Section 1-6-14 NMSA 1978. The election board for the special election shall tally the votes for each ballot question in the special election ballot in the presence of the county clerk and any other person who may desire to be present; provided that such person does not interfere with the duties of the election board for the special election. After completion of the tally, the election board for the special election shall replace the ballots in the ballot boxes or ballot containers and lock the ballot boxes or ballot containers, and the election board for the special election shall certify for the county canvassing report the results of the special election.

B. The returns of the results of special elections are public documents, subject to retention and inspection pursuant to Section 1-12-69 NMSA 1978.

History: Laws 1989, ch. 295, § 4; 2019, ch. 212, § 157.

1-24-5. Special election procedures; costs of election; prohibition on nongovernmental entities.

A. The costs of conducting a special election shall be paid for by the state or local public body calling for the election.

B. When the proclamation is issued by:

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(1) the secretary of state, the state shall pay all costs of the special election, including reasonable costs incurred by each county clerk; and

(2) a local public body:

(a) unless the local public body has made appropriate arrangements with the county clerk by means of a written memorandum of understanding or has provided the county clerk with written documentation that the local public body has made arrangements for payment with an election vendor, the local public body shall deposit the estimated actual amount for all costs associated with the conduct of the special local election with the county clerk no later than forty-nine days before the special local election; and if multiple local public bodies jointly conduct a special local election, each local public body shall post a pro rata share of the estimated actual cost of conducting the special local election;

(b) a county clerk may refuse to print or mail ballots for a special local election if the estimated actual cost of the election has not been deposited with the county clerk no later than forty-nine days before the special local election and the local public body has not made appropriate arrangements with the county clerk by means of a written memorandum of understanding;

(c) within sixty days following the special local election, the county clerk shall provide an accounting of expenses along with a refund for any funds not expended or a bill for the remainder of the expenses to be paid by the local public body within ninety days following the special local election; and

(d) the secretary of state shall maintain current on the secretary's website guidance for calculating the estimated actual cost of a special local election.

C. No individual, corporation, person, political action committee or other nongovernmental entity shall pay for or reimburse the state or a local public body for the costs associated with conducting a special election. Upon a finding of a violation of this subsection, the district court shall nullify the votes cast in the special election and shall void the result of the special election.

History: Laws 2018, ch. 79, § 42; 2019, ch. 212, § 158.

1-24-6. Recompiled.

ARTICLE 25

Recall

Sec.
1-25-1. Short title.
1-25-2. Definitions.
1-25-3. Recall; elected officials subject to recall; limitations.
1-25-4. Recall; petition.
1-25-5. Recall; responsibilities of petitioner.
1-25-6. Recall; court hearing.
1-25-7. Recall; duties of county clerk.
1-25-8. Recall; affidavit with petition; penalty.
1-25-9. Recall; signatures.
1-25-10. Recall; limitation on appeals of validity of recall petition.
1-25-11. Recall; election.
1-25-12. Recall; expenses.
1-25-13. Recall; vacancy.

1-25-1. Short title.

Chapter 1, Article 25 NMSA 1978 may be cited as the "Recall Act".

History: 1953 Comp., § 77-4A-1, enacted by Laws 1977, ch. 308, § 1; 2018, ch. 79, § 89; 1978 Comp., § 22-7-1 recompiled and amended as 1-25-1 by Laws 2019, ch. 212, § 159.

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1-25-2. Definitions.

As used in the Recall Act:

A. "canvasser" means a person who circulates a petition and collects signatures;

B. "county clerk" means:

(1) the clerk of the county in which the local jurisdiction is situate;

(2) in the case of a multicounty jurisdiction, the clerk of the county in which the primary administrative office of the local jurisdiction is situate; and

(3) the clerk of each county containing any precinct in which votes may be cast for or against the recall of a named official;

C. "face sheet" means the first page of a petition containing the information required in the Recall Act;

D. "filing date" means the date on which the county clerk receives signed petitions for the recall of one or more named officials;

E. "initiation date" means the date on which the district court stamps the face sheet of the petition after entering an order finding that probable cause exists to proceed with the recall process;

F. "malfeasance" means wrongful conduct that affects, interrupts or interferes with the performance of official duties; provided that if the act is discretionary, the act was performed with an improper or corrupt motive;

G. "misfeasance" means performing a legal act in an improper or illegal manner and the conduct evinces an improper or corrupt motive;

H. "named official" means an elected official of a local jurisdiction subject to the Recall Act and who is named on a petition;

I. "petition" means a document consisting of a completed face sheet or exact duplicate thereof and as many subsequent pages as are necessary for signatures;

J. "petitioner" means a person, group or organization initiating the petition;

K. "subsequent page" means the pages in a petition after the face sheet; and

L. "violation of oath of office" means to refuse or neglect to perform, without any just cause, any of the duties that are or shall be required by law of the named official.

History: 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 3; 1985, ch. 169, § 1; 1978 Comp., § 22-7-3 recompiled and amended as § 1-25-2 by Laws 2019, ch. 212, § 160.

1-25-3. Recall; elected officials subject to recall; limitations.

A. An elected official of the following local jurisdictions is subject to recall pursuant to the provisions of the Recall Act:

(1) a school district, pursuant to Article 12, Section 14 of the constitution of New Mexico;

(2) a county, pursuant to Article 10, Section 9 of the constitution of New Mexico;

(3) a commission-manager municipality, pursuant to Section 3-14-16 NMSA 1978; and

(4) a home rule municipality, if the charter of the home rule municipality provides for recall of elective officers and notwithstanding any election provisions or procedures in the laws of the municipality that may conflict with the Recall Act; provided that if the recall procedures of a home rule municipality provide greater due process than the Recall Act, the recall procedures of the home rule municipality shall be utilized in place of the due process procedures of the Recall Act.

B. Recall of elected officials of the local jurisdictions listed in Subsection A of this section is subject to the following limitations:

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(1) the cited grounds for recall shall be based upon acts or failures to act constituting malfeasance in office, misfeasance in office or violation of oath of office occurring during the current term of the named official sought to be recalled;

(2) no petition for recall of a named official shall be submitted more than once during the same term of office to which the official is elected; and

(3) an election to recall a named official shall not be conducted:

(a) later than one hundred eighty days from the end of the term for the office for which the recall of a named official is sought, in the case of any office subject to recall; and

(b) after May 1 in the calendar year in which an election is to be held for the office for which the recall of a named official is sought, in the case of a county official who is a candidate for reelection.

History: 1953 Comp., § 77-4A-4, enacted by Laws 1977, ch. 308, § 4; 1978 Comp., § 22-7-4 recompiled and amended as § 1-25-3 by Laws 2019, ch. 212, § 161.

1-25-4. Recall; petition.

A. The recall petition shall be composed of a face sheet and a subsequent page. An individual, group or organization desiring to initiate the recall process may obtain the forms from the district court.

B. The petition shall be on eight and one-half inch by eleven inch paper.

C. All information written on the petition form shall be in compliance with the federal Voting Rights Act of 1965, as amended.

D. Each face sheet of a petition shall contain the following:

(1) a space for the initiation date;

(2) a notice at the top of the sheet stating: "Recall is a local decision to be funded by local money. State funds will not be advanced to support recall.";

(3) a space for the name of the named official;

(4) a space for the name of the local jurisdiction in which the named official has been elected;

(5) a space for the name of the individual, group or organization initiating the petition;

(6) a space in which to list the specific charges to support recall of the named official that constitute malfeasance in office, misfeasance in office or violation of oath of office; and

(7) a notice stating "Signatures are valid for a maximum of ninety days from the initiation date.".

E. The remaining portion of the face sheet shall be substantially in the following form:

"I, the undersigned, a registered voter and a resident of the _____ (name of local jurisdiction), hereby petition for the recall of the named official on the face sheet of this petition.

1.	_____	_____	_____	_____	_____
	Usual Signature	Name Printed As Registered	Address As Registered	City Or Zip Code	Date Signed
2.	_____	_____	_____	_____	_____
	Usual Signature	Name Printed As Registered	Address As Registered	City Or Zip Code	Date Signed".

F. One completed face sheet or duplicate thereof shall be the first page of all circulated petitions.

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G. Each subsequent page shall describe the purpose of the petition, provide the name of the named official sought to be recalled and indicate that additional details are contained on the face sheet and be substantially in the form provided in this section.

History: 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 6; 1993, ch. 226, § 17; 1978 Comp., § 22-7-6 recompiled and amended as § 1-25-4 by Laws 2019, ch. 212, § 162.

1-25-5. Recall; responsibilities of petitioner.

The petitioner shall complete the following portions of the face sheet:

A. name of the named official;

B. name of the local jurisdiction in which the named official has been elected;

C. name of the individual, group or organization initiating the petition; and

D. the specific charges to support recall of the named official, which shall constitute malfeasance in office, misfeasance in office or violation of oath of office.

History: 1953 Comp., § 77-4A-8, enacted by Laws 1977, ch. 308, § 8; 1985, ch. 169, § 4; 1978 Comp., § 22-7-8 recompiled and amended as § 1-25-5 by Laws 2019, ch. 212, § 163.

1-25-6. Recall; court hearing.

A. The petitioner shall file the completed face sheet along with a petition in the district court of the county in which the named official resides, requesting a hearing for a determination by the court of whether sufficient facts and probable cause exist to allow the petitioner to continue with the recall process. A separate face sheet and petition shall be filed for each named official.

B. Upon the filing of the application, the district court shall set a hearing date on the issue of sufficiency of the facts alleged, which hearing shall be held not more than fourteen days from the date the petitioner files the face sheet and petition. The court shall notify the county clerk of the date for the hearing. At the hearing, the petitioner and the named official shall each be given an opportunity to present evidence and cross-examine witnesses.

C. The district court's decision is appealable by the petitioner or the named official only to the supreme court, and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

History: 1978, Comp., § 22-7-9.1, enacted by Laws 1987, ch. 142, § 2; 1978 Comp., § 22-7-9.1 recompiled and amended as § 1-25-6 by Laws 2019, ch. 212, § 164.

1-25-7. Recall; duties of county clerk.

A. Upon receipt of completed petitions, the county clerk shall stamp the petitions with the filing date. All completed petitions for the recall of one or more named officials shall be filed with the county clerk on the same day within ninety days from the date of initiation.

B. For each petition that is accompanied by the required affidavit pursuant to the Recall Act, the county clerk shall verify the signatures on the completed petitions within fifteen days and determine whether the verified signatures meet the required minimum number.

C. The minimum number of verified signatures required to validate a petition is thirty-three and one-third percent of the total number of voters who voted for all candidates for the elected position currently occupied by the named official at the last election where the official was elected.

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D. Within five days of making a determination whether the verified signatures meet the required minimum number, the county clerk shall notify the petitioner and the named official in writing of the determination, and if the county clerk determines that sufficient signatures have been submitted, the clerk shall initiate procedures for a recall election as provided in the Local Election Act; provided that the order of the district court shall serve as the proclamation calling the recall election.

History: 1953 Comp., § 77-4A-9, enacted by Laws 1977, ch. 308, § 9; 1979, ch. 277, § 1; 1985, ch. 169, § 5; 1987, ch. 142, § 1; 1978 Comp., § 22-7-9 recompiled and amended as § 1-25-7 by Laws 2019, ch. 212, § 165.

1-25-8. Recall; affidavit with petition; penalty.

A. When submitted to the county clerk, each petition shall have a notarized affidavit attached. The affidavit shall state that the canvasser circulated that particular petition and witnessed each signature and any other information recorded on the petition.

B. According to the best information and belief of the canvasser, the canvasser shall ensure the following:

(1) each signature is the signature of the person whose name it purports to be;

(2) each signer is a registered voter of the local jurisdiction listed on the petition;

(3) each signature was obtained on or after the filing date; and

(4) each signer had an opportunity to read the information on the completed face sheet or an exact duplicate thereof.

C. Any knowingly false statement made in the affidavit constitutes a fourth degree felony.

History: 1953 Comp., § 77-4A-7, enacted by Laws 1977, ch. 308, § 7; 1985, ch. 169, § 3; 1978 Comp., § 22-7-7 recompiled and amended as § 1-25-8 by Laws 2019, ch. 212, § 166.

1-25-9. Recall; signatures.

A. No signature may be signed on the petition prior to the initiation date.

B. Signatures are valid for a maximum of ninety days from the date of initiation.

C. Each signer of a recall petition shall sign but one petition for each named official of a local jurisdiction in which the signer is registered to vote.

D. The signature shall not be counted unless the entire line is filled in full and is upon the form prescribed by the Recall Act.

E. A signature shall be counted on a recall petition unless there is evidence presented that the person signing:

(1) is not a registered voter of the local jurisdiction listed on the face sheet of the petition, and in the case of a named official serving in a districted position, is not a registered voter of that district within the local jurisdiction;

(2) has signed more than one recall petition page seeking to recall the same named official or has signed one petition page more than once; or

(3) is not the person whose name appears as a signer of the recall petition.

History: 1953 Comp., § 77-4A-10, enacted by Laws 1977, ch. 308, § 10; 1985, ch. 169, § 6; 1978 Comp., § 22-7-10 recompiled and amended as § 1-25-9 by Laws 2019, ch. 212, § 167.

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1-25-10. Recall; limitation on appeals of validity of recall petition.

A. Any person filing any court action challenging a recall petition provided for in the Recall Act shall do so within seven days after the determination of the county clerk as to whether sufficient signatures have been submitted. Challenges to the recall petition shall be directed to:

(1) the validity of the signatures on the petitions; or

(2) the determination of the county clerk as to the minimum number of signatures.

B. Within ten days after the filing of the action, the district court shall hear and render a decision on the matter. The decision shall be appealable only to the supreme court, and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

History: 1953 Comp., § 77-4A-12, enacted by Laws 1977, ch. 308, § 12; 1979, ch. 277, § 2; 1985, ch. 169, § 7; 1978 Comp., § 22-7-12 recompiled and amended as § 1-25-10 by Laws 2019, ch. 212, § 168.

1-25-11. Recall; election.

A. Except as otherwise provided in the Recall Act, recall elections shall be conducted and canvassed pursuant to the provisions of the Local Election Act.

B. The date of the recall election shall be set no later than ninety days after the date of the determination by the county clerk; provided that:

(1) the date is not in conflict with the provisions of Section 1-24-1 NMSA 1978; and

(2) if the date of the determination by the county clerk is within ninety days but no less than forty-nine days before a statewide election, the recall election shall be the first ballot question following the election or nomination of candidates on the statewide election ballot; and if the statewide election is a political party primary or the regular local election, ballots containing only the recall ballot question shall be available to voters who do not otherwise qualify to vote in the statewide election.

C. The question to be submitted to the voters at the recall election shall be whether the named official shall be recalled and shall present the voter the choice of voting "for the removal of" the named official or "against the removal of" the named official. The ballot or ballot question shall be in compliance with the federal Voting Rights Act of 1965, as amended.

History: 1953 Comp., § 77-4A-13, enacted by Laws 1977, ch. 308, § 13; 1979, ch. 277, § 3; 1985, ch. 169, § 8; 1993, ch. 226, § 18; 2015, ch. 145, § 98; 2018, ch. 79, § 90; 1978 Comp., § 22-7-13 recompiled and amended as § 1-25-11 by Laws 2019, ch. 212, § 169.

1-25-12. Recall; expenses.

Following a decision of the district court, if the county clerk proceeds to initiate proceedings for a recall election as a special local election, the local jurisdiction shall ensure payment of the cost of the recall election as provided in the Special Election Act.

History: 1953 Comp., § 77-4A-5, enacted by Laws 1977, ch. 308, § 5; 1985, ch. 169, § 2; 1978 Comp., § 22-7-5 recompiled and amended as § 1-25-12 by Laws 2019, ch. 212, § 170.

1-25-13. Recall; vacancy.

A. The vacancy created by a recalled official shall be filled as provided by law for vacancies in office for the local jurisdiction.

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B. Under no circumstances may a recalled official be appointed to fill any vacancy for the remainder of the term of office for the recalled official was elected and from which the official was recalled.

History: 1953 Comp., § 77-4A-14, enacted by Laws 1977, ch. 308, § 14; 1978 Comp., § 22-7-14 recompiled and amended as § 1-25-13 by Laws 2019, ch. 212, § 171.

ARTICLE 26

Nonpartisan Judicial Retention

Sec.
1-26-1. Short title.
1-26-2. Judicial retention; eligibility for retention; definitions.
1-26-3. Judicial retention; supreme court justices.
1-26-4. Judicial retention; appeals court judges.
1-26-5. Judicial retention; district court judges.
1-26-6. Judicial retention; metropolitan court judges.

1-26-1. Short title.

Sections 172 through 177 [1-26-1 through 1-26-6 NMSA 1978] of this act may be cited as the "Nonpartisan Judicial Retention Act".

History: Laws 2019, ch. 212, § 172.

1-26-2. Judicial retention; eligibility for retention; definitions.

A. A justice of the supreme court, judge of the court of appeals, district court judge or metropolitan court judge is eligible for nonpartisan judicial retention after the justice or judge has first been elected to that position in a partisan election.

B. In the last year of the term of office for the position to which an eligible justice or eligible judge was elected in a partisan election or by a previous nonpartisan retention election, the eligible justice or judge desiring to continue to serve in that position shall be subject to a nonpartisan judicial retention election as provided in the Nonpartisan Judicial Retention Act.

C. Declarations of candidacy for nonpartisan judicial retention for the supreme court, court of appeals, district court or metropolitan court shall be filed with the proper filing officer between the hours of 9:00 a.m. and 5:00 p.m. on the twenty-third day after the primary election.

D. Each declaration of candidacy for nonpartisan judicial retention shall be delivered for filing in person by the eligible justice or judge therein named or by a person acting by virtue of written authorization. The proper filing officer shall not accept for filing from any one individual more than one declaration of candidacy for nonpartisan judicial retention.

E. As used in the Nonpartisan Judicial Retention Act, "eligible justice" or "eligible judge" means a justice or judge who has been elected to that position in a partisan election.

History: Laws 2019, ch. 212, § 173.

1-26-3. Judicial retention; supreme court justices.

A. Each eligible justice of the supreme court shall be subject to retention or rejection at the general election in the last year of the eight-year term of office for the position in which the justice is serving.

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B. Terms of office for positions on the supreme court shall be staggered so that at least one term of office shall expire each even-numbered year; provided that no more than two terms of office shall expire in the same year.

C. The administrative office of the courts shall maintain current on its website a list of the names of the currently serving justices of the supreme court and the year in which the term of office for each position on the supreme court expires.

History: Laws 2019, ch. 212, § 174.

1-26-4. Judicial retention; appeals court judges.

A. Each eligible judge of the court of appeals shall be subject to retention or rejection at the general election in the last year of the eight-year term of office for the position in which the judge is serving.

B. Terms of office for positions on the court of appeals shall be staggered so that at least two terms of office shall expire each even-numbered year; provided that no more than three terms of office shall expire in the same year.

C. The administrative office of the courts shall maintain current on its website a list of the names of the currently serving judges of the court of appeals and the year in which the term of office for each position on the court of appeals expires.

History: Laws 2019, ch. 212, § 175.

1-26-5. Judicial retention; district court judges.

A. Each eligible district court judge shall be subject to retention or rejection at the general election in the last year of the six-year term of office for the position in which the judge is serving.

B. Terms of office for positions on the district court in each judicial district shall be staggered, as follows:

(1) the term of office for division 1 and for every third division number thereafter shall expire in 2020 and every six years thereafter;

(2) the term of office for division 2 and for every third division number thereafter shall expire in 2022 and every six years thereafter; and

(3) the term of office for division 3 and for every third division number thereafter shall expire in 2024 and every six years thereafter.

C. The administrative office of the courts shall maintain current on its website a list of the names of the currently serving judges of each judicial district and the year in which the term of office for each position expires.

D. As used in this section, "division" means the divisions established pursuant to Section 34-6-18 NMSA 1978.

History: Laws 2019, ch. 212, § 176.

1-26-6. Judicial retention; metropolitan court judges.

A. Each eligible metropolitan court judge shall be subject to retention or rejection at the general election in the last year of the four-year term of office for the position in which the judge is serving.

B. Terms of office for positions on each metropolitan court shall be staggered, as follows:

(1) the term of office for division 1 and for every second division number thereafter shall expire in 2022 and every four years thereafter; and

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(2) the term of office for division 2 and for every second division number thereafter shall expire in 2024 and every four years thereafter.

C. The administrative office of the courts shall maintain current on its website a list of the names of the currently serving judges of the metropolitan court and the year in which the term of office for each position expires.

D. As used in this section, "division" means the divisions established pursuant to Subsection B of Section 34-8A-4 NMSA 1978.

History: Laws 2019, ch. 212, § 177.

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CHAPTER 2

Legislative Branch

ARTICLE 11

Lobbyist Regulation

Sec.
2-11-1. Short title.
2-11-2. Definitions.
2-11-3. Registration statement to be filed; contents; modification to statement.
2-11-4. Recompiled.
2-11-5. Other powers and duties of attorney general not limited or restricted.
2-11-6. Expenditure report to be filed; contents; reporting periods.
2-11-7. Registration and expenditure report; preservation as public record; online reports.
2-11-8. Contingent fees prohibited in lobbying the legislative branch of state government.
2-11-8.1. Restrictions on campaign activities and contributions.
2-11-8.2. Compliance with act; enforcement of act; binding arbitration; civil penalties.
2-11-8.3. State ethics commission; jurisdiction. (Effective January 1, 2020.)
2-11-9. Penalties.

2-11-1. Short title.

Chapter 2, Article 11 NMSA 1978 may be cited as the "Lobbyist Regulation Act".

History: 1953 Comp., § 2-13-1, enacted by Laws 1977, ch. 261, § 1; 1993, ch. 46, § 18.

2-11-2. Definitions.

As used in the Lobbyist Regulation Act:

A. "compensation" means any money, per diem, salary, fee or portion thereof or the equivalent in services rendered or in-kind contributions received or to be received in return for lobbying services performed or to be performed;

B. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value but does not include a lobbyist's own personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer;

C. "legislative committee" means a committee created by the legislature, including interim and standing committees of the legislature;

D. "lobbying" means attempting to influence:

(1) a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor; or

(2) an official action;

E. "lobbyist" means any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the course of his employment is engaged in lobbying on a substantial or regular basis. "Lobbyist" does not include:

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(1) an individual who appears on his own behalf in connection with legislation or an official action;

(2) any elected or appointed officer of the state or its political subdivisions or an Indian tribe or pueblo acting in his official capacity;

(3) an employee of the state or its political subdivisions, specifically designated by an elected or appointed officer of the state or its political subdivision, who appears before a legislative committee or in a rulemaking proceeding only to explain the effect of legislation or a rule on his agency or political subdivision, provided the elected or appointed officer of the state or its political subdivision keeps for public inspection, and files with the secretary of state, such designation;

(4) any designated member of the staff of an elected state official, provided the elected state official keeps for public inspection and files with the secretary of state such designation;

(5) a member of the legislature, the staff of any member of the legislature or the staff of any legislative committee when addressing legislation;

(6) any witness called by a legislative committee or administrative agency to appear before that legislative committee or agency in connection with legislation or an official action;

(7) an individual who provides only oral or written public testimony in connection with a legislative committee or in a rulemaking proceeding and whose name and the interest on behalf of which he testifies have been clearly and publicly identified; or

(8) a publisher, owner or employee of the print media, radio or television, while gathering or disseminating news or editorial comment to the general public in the ordinary course of business;

F. "lobbyist's employer" means the person whose interests are being represented and by whom a lobbyist is directly or indirectly retained, compensated or employed;

G. "official action" means the action or nonaction of a state official or state agency, board or commission acting in a rulemaking proceeding;

H. "person" means an individual, partnership, association, committee, federal, state or local governmental entity or agency, however constituted, public or private corporation or any other organization or group of persons who are voluntarily acting in concert;

I. "political contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for the purpose of influencing a primary, general or statewide election, including a constitutional or other question submitted to the voters, or for the purpose of paying a debt incurred in any such election;

J. "prescribed form" means a form prepared and prescribed by the secretary of state;

K. "rulemaking proceeding" means a formal process conducted by a state agency, board or commission for the purpose of adopting a rule, regulation, standard, policy or other requirement of general applicability and does not include adjudicatory proceedings; and

L. "state public officer" means a person holding a statewide office provided for in the constitution of New Mexico.

History: 1953 Comp., § 2-13-2, enacted by Laws 1977, ch. 261, § 2; 1985, ch. 16, § 1; 1993, ch. 46, § 19; 1994, ch. 85, § 1.

2-11-3. Registration statement to be filed; contents; modification to statement.

A. In the month of January prior to each regular session or before any service covered by the Lobbyist Regulation Act commences, any individual who is initially employed or retained as a

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lobbyist shall register with the secretary of state by paying an annual filing fee of fifty dollars ($50.00) for each of the lobbyist's employers and by filing a single registration statement under oath in an electronic format as prescribed by the secretary of state that states:

(1) the lobbyist's full name, permanent business address and business address while lobbying; and

(2) the name and address of each of the lobbyist's employers.

B. No registration fee shall be required of individuals receiving only reimbursement of personal expenses and no other compensation or salary for lobbying. Except as required by Subsection D of Section 2-11-6 NMSA 1978, no expenditure report shall be required if the lobbyist anticipates making or incurring and makes or incurs no expenditures or political contributions under Section 2-11-6 NMSA 1978. The lobbyist shall indicate in the lobbyist's registration statement whether those circumstances apply to the lobbyist.

C. Upon receipt of the online registration and payment, the secretary of state shall publish the registration information on the secretary of state's lobbying disclosure website.

D. For each employer listed in Paragraph (2) of Subsection A of this section, the lobbyist shall file the following information:

(1) a full disclosure of the sources of funds used for lobbying;

(2) an affirmation from each of the lobbyist's employers authorizing the lobbyist to lobby on the employer's behalf;

(3) a brief description of the matters in reference to which the service is to be rendered; and

(4) the name and address of the person, if other than the lobbyist or the lobbyist's employer, who will have custody of the accounts, bills, receipts, books, papers and documents required to be kept under the provisions of the Lobbyist Regulation Act.

E. For each succeeding year that an individual is employed or retained as a lobbyist by the same employer, and for whom all the information disclosed in the initial registration statement remains substantially the same, the lobbyist shall file a simple annual registration renewal in January and pay the fifty-dollar ($50.00) filing fee for each of the lobbyist's employers together with a short, abbreviated prescribed form for renewal.

F. Whenever there is a modification of the facts required to be set forth by this section or there is a termination of the lobbyist's employment as a lobbyist before the end of the calendar year, the lobbyist shall notify the secretary of state using the electronic registration system within one week of such occurrence and shall furnish full information concerning the modification or termination. If the lobbyist's employment terminates at the end of a calendar year, no separate termination need be reported.

History: 1953 Comp., § 2-13-3, enacted by Laws 1977, ch. 261, § 3; 1985, ch. 16, § 2; 1993, ch. 46, § 20; 2015, ch. 56, § 1; 2016, ch. 13, § 2.

2-11-4. Recompiled.

2-11-5. Other powers and duties of attorney general not limited or restricted.

The powers and duties of the attorney general pursuant to the Lobbyist Regulation Act shall not be construed to limit or restrict the exercise of his power or the performance of his duties.

History: 1953 Comp., § 2-13-5, enacted by Laws 1977, ch. 261, § 5.

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2-11-6. Expenditure report to be filed; contents; reporting periods.

A. Each lobbyist who receives compensation or lobbyist's employer who makes or incurs expenditures or makes political contributions for the benefit of or in opposition to a state legislator or candidate for the state legislature, a state public officer or candidate for state public office, a board or commission member or state employee who is involved in an official action affecting the lobbyist's employer or in support of or in opposition to a ballot issue or pending legislation or official action shall file an expenditure report with the secretary of state using an electronic reporting system approved by the secretary of state in accordance with Section 2-11-7 NMSA 1978. The expenditure report shall include a sworn statement that sets forth:

(1) the cumulative total of all individual expenditures of less than one hundred dollars ($100) made or incurred by the employer or lobbyist during the covered reporting period, separated into the following categories:

(a) meals and beverages;

(b) other entertainment expenditures; and

(c) other expenditures;

(2) each individual expenditure of one hundred dollars ($100) or more made or incurred by the employer or lobbyist during the covered reporting period, indicating the amount spent and a description of the expenditure. The list shall be separated into the following categories:

(a) meals and beverages;

(b) other entertainment expenditures; and

(c) other expenditures;

(3) each political contribution made, and whether the contribution is from the lobbyist's employer or the lobbyist on the lobbyist's own behalf, identified by amount, date and name of the candidate or ballot issue supported or opposed; and

(4) the names, addresses, employers and occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist's employer delivers directly or indirectly separate contributions from those contributors to a candidate, a campaign committee or anyone authorized by a candidate to receive funds on the candidate's behalf.

B. The expenditure report shall be filed electronically and shall be electronically authenticated by the lobbyist or the lobbyist's employer using an electronic signature as prescribed by the secretary of state in conformance with the Electronic Authentication of Documents Act [14-15-1 through 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978]. For the purposes of the Lobbyist Regulation Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the lobbyist or the lobbyist's employer that is required to file the report.

C. In identifying expenditures pursuant to the provisions of Paragraphs (1) and (2) of Subsection A of this section, in the case of special events, including parties, dinners, athletic events, entertainment and other functions, to which all members of the legislature, to which all members of either house or any legislative committee or to which all members of a board or commission are invited, expenses need not be allocated to each individual who attended, but the date, location, name of the body invited and total expenses incurred shall be reported.

D. A lobbyist who accepts compensation for lobbying but does not incur expenditures or make political contributions during a reporting period may file a statement of no activity in lieu of a full report for that period in accordance with the reporting schedule in Subsection E of this section.

E. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed:

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(1) no later than January 15 for all expenditures and political contributions made or incurred during the preceding year and not previously reported;

(2) within forty-eight hours for each separate expenditure made or incurred during a legislative session that was for five hundred dollars ($500) or more;

(3) no later than the first Wednesday after the first Monday in May for all expenditures and political contributions made or incurred through the first Monday in May of the current year and not previously reported; and

(4) no later than the first Wednesday after the first Monday in October for all expenditures and political contributions made or incurred through the first Monday in October of the current year and not previously reported.

F. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer need not be reported.

G. A lobbyist or lobbyist's employer shall obtain and preserve all records, accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act for a period of two years from the date of filing of the report containing such items. When the lobbyist is required under the terms of the lobbyist's employment to turn over any such records to the lobbyist's employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

H. A lobbyist's employer who also engages in lobbying shall also comply with the provisions of this section. A lobbyist and the lobbyist's employer shall coordinate their reporting to ensure that the contributions and expenditures that each have reported are not duplicative.

I. An organization of two or more persons, including an individual who makes any representation as being an organization, that within one calendar year expends funds in excess of two thousand five hundred dollars ($2,500) not otherwise reported under the Lobbyist Regulation Act to conduct an advertising campaign for the purpose of lobbying shall register with the secretary of state within forty-eight hours after expending two thousand five hundred dollars ($2,500). Such registration shall indicate the name of the organization and the names, addresses and occupations of any of its principals, organizers or officers and shall include the name of any lobbyist or lobbyist's employer who is a member of the organization. Within fifteen days after a legislative session, the organization shall report the contributions, pledges to contribute, expenditures and commitments to expend for the advertising campaign for the purpose of lobbying, including the names, addresses, employers and occupations of the contributors, to the secretary of state on a prescribed form.

History: 1953 Comp., § 2-13-6, enacted by Laws 1977, ch. 261, § 6; 1985, ch. 16, § 3; 1993, ch. 46, § 21; 1994, ch. 84, § 2; 1995, ch. 153, § 20; 1997, ch. 112, § 6; 2005, ch. 330, § 1; 2015, ch. 56, § 2; 2016, ch. 13, § 3; 2019, ch. 35, § 1.

2-11-7. Registration and expenditure report; preservation as public record; online reports.

A. Each registration and expenditure report as required by the Lobbyist Regulation Act shall be archived and accessible on the secretary of state's lobbyist disclosure website for a period of at least ten years from the date of filing as a public record, open to public inspection at any reasonable time. Unless an action or prosecution is pending that requires preserving the report, it may be destroyed ten years after the date of filing.

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B. Lobbyist registrations and expenditure reports shall be kept and maintained on the secretary of state's lobbyist disclosure website and shall be available in searchable and downloadable formats.

C. With respect to the secretary of state's lobbyist disclosure website, all items in the records shall be easily searchable, sortable and downloadable by the public to the extent technically practicable.

D. The secretary of state shall ensure that contributions reported by persons pursuant to the Lobbyist Regulation Act are reported in a manner that is nonduplicative and as consistent as practicable with the reporting requirements of the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978]. To the extent possible, the electronic reporting system used for registration and reporting required by the Lobbyist Regulation Act shall be integrated with the electronic reporting system used for compliance with the Campaign Reporting Act.

E. Reporting individuals under the Campaign Reporting Act shall receive automatic electronic notice of the contributions to them reported by lobbyists and lobbyists' employers within twenty-four hours of the filing of each expenditure report.

History: 1953 Comp., § 2-13-7, enacted by Laws 1977, ch. 261, § 7; 1993, ch. 46, § 22; 2015, ch. 56, § 3; 2016, ch. 13, § 4.

2-11-8. Contingent fees prohibited in lobbying the legislative branch of state government.

No person shall accept employment as a lobbyist and no lobbyist's employer shall employ a lobbyist for compensation contingent in whole or in part upon the outcome of the lobbying activities before the legislative branch of state government or the approval or veto of any legislation by the governor.

History: 1953 Comp., § 2-13-8, enacted by Laws 1977, ch. 261, § 8.

2-11-8.1. Restrictions on campaign activities and contributions.

A. No lobbyist may serve as a campaign chair, treasurer or fundraising chair for a candidate for the legislature or other state office.

B. It is unlawful during the prohibited period for any lobbyist or lobbyist's employer to contribute to or act as an agent or intermediary for political contributions to or arrange for the making of political contributions to the campaign funds of any statewide elected official or legislator or any candidate for those offices.

C. For purposes of this section, "prohibited period" is that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on:

(1) the day the session ends for:

(a) any statewide elected official or candidate for statewide office except the governor; and

(b) a legislator or any candidate for the legislature; and

(2) the twentieth day following the adjournment of the regular or special session for the governor or candidate for governor.

History: 1978 Comp., § 2-11-8.1, enacted by Laws 1993, ch. 46, § 23; 1995, ch. 153, § 21; 2016, ch. 13, § 5.

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2-11-8.2. Compliance with act; enforcement of act; binding arbitration; civil penalties.

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act of those duties. This includes advising all registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may conduct thorough examinations of reports and initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the person that he has ten working days to provide a written explanation, under penalty of perjury, stating any reason the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists, the secretary of state may by a written notice of final action partially or fully waive any fine imposed. A written notice of final action shall be sent by certified mail.

D. If the person charged disputes the secretary of state's determination, including an advisory opinion, the person charged may request binding arbitration within ten working days of the date of the final action. Any penalty imposed shall be due and payable within ten working days of the notice of final action. No additional penalty shall accrue pending issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Lobbyist Regulation Act, Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] or Financial Disclosure Act [10-16A-1 through 10-16A-8 NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator may impose any penalty and take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7A-1 through 44-7A-32 NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

G. Any person who files a report after the deadline imposed by the Lobbyist Regulation Act, or any person who files a false or incomplete report, shall be liable for and shall pay to the secretary

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of state fifty dollars ($50.00) per day for each regular working day after the time required for the filing of the report until the complete report is filed, up to a maximum of five thousand dollars ($5,000).

H. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

History: 1953 Comp., § 2-13-4, enacted by Laws 1977, ch. 261, § 4; amended and recompiled as § 2-11-8.2 NMSA 1978 by Laws 1993, ch. 46, § 24; 1995, ch. 153, § 22; 1997, ch. 112, § 7.

2-11-8.3. State ethics commission; jurisdiction. (Effective January 1, 2020.)

A. On and after January 1, 2020:

(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Lobbyist Regulation Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as formalized through an agreement. The secretary of state shall forward complaints it receives alleging violations of the Lobbyist Regulation Act to the state ethics commission in accordance with the agreement.

B. The state ethics commission and the secretary of state shall make recommendations to the first session of the fifty-fifth legislature on any changes to the Lobbyist Regulation Act necessary for the efficient administration and enforcement of the provisions of that act.

History: Laws 2019, ch. 86, § 21.

2-11-9. Penalties.

In addition to any other penalties that may be assessed, any person who knowingly and willfully violates any of the provisions of the Lobbyist Regulation Act shall be punished by a fine of up to five thousand dollars ($5,000) and may have his lobbyist registration revoked or his lobbying activities enjoined for up to three years.

History: 1953 Comp., § 2-13-9, enacted by Laws 1977, ch. 261, § 9; 1993, ch. 46, § 25.

ARTICLE 15

Governmental Ethics Oversight Committee

Sec.
2-15-1. Repealed.
2-15-2. Repealed.
2-15-3. Repealed.
2-15-4. Repealed.
2-15-5. Repealed.
2-15-6. Repealed.
2-15-7. Interim legislative ethics committee; creation; appointment.
2-15-8. Interim legislative ethics committee; duties.
Sec.
2-15-8. Interim legislative ethics committee; duties. (Effective January 1, 2020.)
2-15-9. Interim legislative ethics committee; procedures; confidentiality.
2-15-10. Criminal sanctions.
2-15-11. Staff.
2-15-12. New Mexico legislative council; budget.

2-15-1. Repealed.

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2-15-2. Repealed.

2-15-3. Repealed.

2-15-4. Repealed.

2-15-5. Repealed.

2-15-6. Repealed.

2-15-7. Interim legislative ethics committee; creation; appointment.

A. An interim legislative ethics committee, appointed by the legislative council, is created. Members of the legislative council shall be allowed to serve on the interim legislative ethics committee.

B. All matters arising in the interim pertaining to legislative ethics shall be referred to this special interim legislative ethics committee.

C. The committee shall be appointed by the New Mexico legislative council so as to give the two major political parties in each house equal representation on the committee. In appointing the members to the committee, the legislative council shall adopt the recommendations of the respective floor leaders of each house.

D. The New Mexico legislative council shall name the interim ethics committee at the beginning of each interim, but shall convene the committee only upon the receipt of a complaint, a request for an advisory opinion or a referral.

History: Laws 1993, ch. 46, § 52.

2-15-8. Interim legislative ethics committee; duties.

The interim legislative ethics committee is authorized to:

A. issue advisory opinions on the interpretation and enforcement of ethical principles as applied to the legislature;

B. investigate complaints from another member of the legislature or a member of the public alleging misconduct of a legislator;

C. investigate referrals made to the co-chairmen of the New Mexico legislative council from the attorney general, the secretary of state or a district attorney;

D. hire special counsel or independent hearing officers as necessary; and

E. make recommendations to the respective houses by the end of the first full week of the next convened regular session regarding proposed sanctions for ethical misconduct.

History: Laws 1993, ch. 46, § 53.

2-15-8. Interim legislative ethics committee; duties. (Effective January 1, 2020.)

A. The interim legislative ethics committee is authorized to:

(1) issue advisory opinions on the interpretation and enforcement of ethical principles as applied to the legislature and that are not under the jurisdiction of the state ethics commission;

(2) investigate complaints from another member of the legislature or a member of the public alleging misconduct of a legislator;

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(3) investigate referrals made to the co-chairs of the New Mexico legislative council from the state ethics commission, the attorney general, the secretary of state or a district attorney;

(4) hire special counsel, arbitrators or independent hearing officers as necessary; and

(5) make recommendations to the respective houses regarding proposed sanctions for ethical misconduct.

B. The interim legislative ethics committee shall issue an annual report no later than the first day of May of each year regarding its activities during the previous twelve months, including a listing of the number of complaints received, the disposition of the complaints that have been resolved and the advisory opinions issued.

C. The interim legislative ethics committee shall maintain a web page on the legislature's website.

History: Laws 1993, ch. 46, § 53; 2019, ch. 86, § 22.

2-15-9. Interim legislative ethics committee; procedures; confidentiality.

A. Except as provided in this section, the New Mexico legislative council shall develop procedures to carry out the provisions of this section, in accordance with the existing procedures in the house and senate rules.

B. A member of the interim legislative ethics committee shall be ineligible to participate in any matter relating directly to that member's conduct. In any such case, a substitute member to the committee shall be appointed from the same house from the same political party by the appropriate appointing authority. A member may seek to be disqualified from any matter brought before the ethics committee on the grounds that the member cannot render a fair and impartial decision. Disqualification must be approved by a majority vote of the remaining members of the committee. In any such case, a substitute member to the committee shall be appointed from the same political party as provided in this section.

C. The interim legislative ethics committee is authorized to issue advisory opinions on matters relating to ethical conduct during the interim. Any question relating to the interpretation and enforcement of ethical principles as applied to the legislature may be submitted in writing to the New Mexico legislative council by a legislator describing a real or hypothetical situation and requesting an advisory opinion establishing an appropriate standard of ethical conduct for that situation. The question shall be referred to the joint interim legislative ethics committee.

D. To initiate any action during the interim on alleged misconduct, any legislator or member of the public may file a written, sworn complaint setting forth, with specificity, the facts alleged to constitute unethical conduct. A complaint shall be filed with the New Mexico legislative council. Upon receipt of the complaint, the cochairmen [co-chairmen] shall convene the interim legislative ethics committee.

E. The interim legislative ethics committee shall maintain rules of confidentiality, unless the legislator against whom a complaint is filed waives the rules or any part of them in writing. The confidentiality rules shall include the following provisions:

(1) the complainant, the committee and its staff shall not publicly disclose any information relating to the filing or investigation of a complaint, including the identity of the complainant or respondent, until after a finding of probable cause has been made that a violation has occurred;

(2) the identity of the complainant shall be released to the respondent immediately upon request; and

(3) no member of the committee or its staff may knowingly disclose any confidential information except as authorized by the committee.

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History: Laws 1993, ch. 46, § 54.

2-15-10. Criminal sanctions.

If the interim legislative ethics committee determines that in addition to recommending that sanctions be imposed by the respective house on the member, the conduct involves criminal activity, the interim ethics committee may refer the matter to the district attorney of the first judicial district, the district attorney of the judicial district where the member resides or the attorney general.

History: Laws 1993, ch. 46, § 55.

2-15-11. Staff.

The staff for the interim ethics committee shall be provided by the legislative council service, but the committee is authorized to hire such special counsel or independent hearing officers as necessary to assist the legislative ethics committee when it is convened.

History: Laws 1993, ch. 46, § 56.

2-15-12. New Mexico legislative council; budget.

The New Mexico legislative council shall annually provide an amount sufficient to carry out the duties and mandate of the interim [legislative] ethics committee.

History: Laws 1993, ch. 46, § 57.

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CHAPTER 3

Municipalities

ARTICLE 8

Municipal Elections

(Repealed by Laws 1993, ch. 22, § 7, Laws 1999, ch. 278, § 53, Laws 2003, ch. 244, § 20, Laws 2009, ch. 278, § 40 and Laws 2018, ch. 79, § 175.)

3-8-1 to 3-8-95. Repealed.

ARTICLE 9

Absentee Voting

(Repealed by Laws 1999, ch. 278, § 53, Laws 2015, ch. 145, § 1 and Laws 2018, ch. 79, § 175.)

3-9-1 to 3-9-16. Repealed.

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CHAPTER 10

Public Officers and Employees

ARTICLE 16

Governmental Conduct

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10-16-18. Enforcement; civil penalties. (Effective January 1, 2020.)

10-16-1. Short title.

Chapter 10, Article 16 NMSA 1978 may be cited as the "Governmental Conduct Act".

History: 1953 Comp., § 5-12-1, enacted by Laws 1967, ch. 306, § 1; 1993, ch. 46, § 26.

10-16-2. Definitions.

As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "contract" means an agreement or transaction having a value of more than one thousand dollars ($1,000) with a state or local government agency for:

(1) the rendition of services, including professional services;

(2) the furnishing of any material, supplies or equipment;

(3) the construction, alteration or repair of any public building or public work;

(4) the acquisition, sale or lease of any land or building;

(5) a licensing arrangement;

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(6) a loan or loan guarantee; or

(7) the purchase of financial securities or instruments;

D. "employment" means rendering of services for compensation in the form of salary as an employee;

E. "family" means an individual's spouse, parents, children or siblings, by consanguinity or affinity;

F. "financial interest" means an interest held by an individual or the individual's family that is:

(1) an ownership interest in business or property; or

(2) any employment or prospective employment for which negotiations have already begun;

G. "local government agency" means a political subdivision of the state or an agency of a political subdivision of the state;

H. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

I. "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;

J. "standards" means the conduct required by the Governmental Conduct Act;

K. "state agency" means any branch, agency, instrumentality or institution of the state; and

L. "substantial interest" means an ownership interest that is greater than twenty percent.

History: 1953 Comp., § 5-12-2, enacted by Laws 1967, ch. 306, § 2; 1979, ch. 350, § 1; 1993, ch. 46, § 27; 2007, ch. 362, § 1; 2011, ch. 138, § 2.

10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1978 Comp., § 10-16-3, enacted by Laws 1993, ch. 46, § 28; 2007, ch. 362, § 2; 2011, ch. 138, § 3.

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10-16-3.1. Prohibited political activities.

A public officer or employee is prohibited from:

A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.

History: Laws 2007, ch. 362, § 9; 2011, ch. 138, § 4.

10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

History: 1953 Comp., § 5-12-4, enacted by Laws 1967, ch. 306, § 4; 1993, ch. 46, § 29; 2007, ch. 362, § 3; 2011, ch. 138, § 5.

10-16-4.1. Honoraria prohibited.

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars ($100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

History: Laws 1993, ch. 46, § 38.

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10-16-4.2. Disclosure of outside employment.

A public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency.

History: Laws 2007, ch. 362, § 10; 2011, ch. 138, § 6.

10-16-4.3. Prohibited employment.

It is unlawful for a state agency employee or local government agency employee who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.

History: Laws 2011, ch. 138, § 1.

10-16-5. Repealed.

10-16-6. Confidential information.

No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency or local government agency for the legislator's, public officer's or employee's or another's private gain.

History: 1953 Comp., § 5-12-6, enacted by Laws 1967, ch. 306, § 6; 1993, ch. 46, § 30; 2007, ch. 362, § 4; 2011, ch. 138, § 7.

10-16-7. Contracts involving public officers or employees.

A. A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to a contract of official employment with the state. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

B. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.

C. Subsection B of this section does not apply to a contract of official employment with a political subdivision. A person negotiating or executing a contract on behalf of a local government agency shall exercise due diligence to ensure compliance with the provisions of this section.

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History: 1953 Comp., § 5-12-7, enacted by Laws 1967, ch. 306, § 7; 1983, ch. 90, § 1; 1989, ch. 264, § 26; 1993, ch. 46, § 31; 2007, ch. 362, § 5; 2009, ch. 66, § 11; 2011, ch. 138, § 8.

10-16-8. Contracts involving former public officers or employees; representation of clients after government service.

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars ($1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. A local government agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of that local government agency within the preceding year if the value of the contract or action is in excess of one thousand dollars ($1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of that political subdivision of the state whose official act, while in employment with that political subdivision of the state, directly resulted in the agency's making that contract or taking that action.

D. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked.

History: 1953 Comp., § 5-12-8, enacted by Laws 1967, ch. 306, § 8; 1983, ch. 90, § 2; 1993, ch. 46, § 32; 2011, ch. 138, § 9.

10-16-9. Contracts involving legislators; representation before state agencies.

A. A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.

B. A legislator shall not appear for, represent or assist another person in a matter before a state agency, unless without compensation or for the benefit of a constituent, except for legislators who are attorneys or other professional persons engaged in the conduct of their professions and,

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in those instances, the legislator shall refrain from references to the legislator's legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions.

History: 1953 Comp., § 5-12-9, enacted by Laws 1967, ch. 306, § 9; 1989, ch. 143, § 1; 1993, ch. 46, § 33; 2007, ch. 362, § 6.

10-16-10. Repealed.

10-16-11. Codes of conduct.

A. By January 1, 1994, each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to his control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the secretary of state and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training biennially.

History: 1953 Comp., § 5-12-11, enacted by Laws 1967, ch. 306, § 11; 1969, ch. 93, § 1; 1993, ch. 46, § 34; 2003, ch. 33, § 1.

10-16-11. Codes of conduct. (Effective January 1, 2020.)

A. Each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to the officer's control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

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B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the state ethics commission and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training developed and provided, in consultation with the director of the legislative council service, by the state ethics commission or a national state legislative organization of which the state is a member, approved by the director, biennially.

History: 1953 Comp., § 5-12-11, enacted by Laws 1967, ch. 306, § 11; 1969, ch. 93, § 1; 1993, ch. 46, § 34; 2003, ch. 33, § 1; 2019, ch. 86, § 23.

10-16-11.1. State agency or local government agency authority.

Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act.

History: Laws 2011, ch. 138, § 13.

10-16-12. Repealed.

10-16-13. Prohibited bidding.

No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section.

History: 1953 Comp., § 5-12-13, enacted by Laws 1967, ch. 306, § 13; 2007, ch. 362, § 7; 2011, ch. 138, § 10.

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10-16-13.1. Education and voluntary compliance.

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: 1978 Comp., § 10-16-13.1, enacted by Laws 1993, ch. 46, § 35.

10-16-13.1. Education and voluntary compliance. (Effective January 1, 2020.)

A. The state ethics commission shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The state ethics commission shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: 1978 Comp., § 10-16-13.1, enacted by Laws 1993, ch. 46, § 35; 2019, ch. 86, § 24.

10-16-13.2. Certain business sales to the employees of state agencies and local government agencies prohibited.

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

C. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.

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D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

History: Laws 2007, ch. 362, § 8; 2011, ch. 138, § 11.

10-16-13.3. Prohibited contributions; financial service contractors.

A. A business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

B. A public officer or employee of a state agency or local government agency that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars ($100) consumed in a day; and

(2) "contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

History: Laws 2007, ch. 362, § 11; 2011, ch. 138, § 12.

10-16-14. Enforcement procedures.

A. The secretary of state may refer suspected violations of the Governmental Conduct Act to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the secretary of state, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the attorney general determines that there is sufficient cause to file a complaint against a public officer removable only by impeachment, he shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the attorney general shall make public the nature of the charges, but he shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed

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with the agency head and reviewed pursuant to the procedures provided in the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules.

E. Subject to the provisions of this section, the Governmental Conduct Act may be enforced by the attorney general. Except as regards legislators or statewide elected officials, a district attorney in the county where a person resides or where a violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

History: 1953 Comp., § 5-12-14, enacted by Laws 1967, ch. 306, § 14; 1993, ch. 46, § 36.

10-16-14. Enforcement procedures. (Effective January 1, 2020.)

A. The state ethics commission may investigate suspected violations of the Governmental Conduct Act and forward its findings and evidence to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the state ethics commission, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the state ethics commission determines that there is sufficient cause to file a complaint to remove from office a public officer removable only by impeachment, the commission shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the state ethics commission shall make public the nature of the charges but shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules. Complaints against employees subject to the State Ethics Commission Act [10-16G-1 through 10-16G-16 NMSA 1978] may also be filed with the state ethics commission, which shall determine whether to forward a complaint to the appropriate state agency or investigate the complaint on its own.

E. Subject to the provisions of this section, the provisions of the Governmental Conduct Act may be enforced by the state ethics commission. Except as regards legislators, state employees or statewide elected officials, a district attorney in the county where a person who allegedly violated the provisions resides or where an alleged violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

History: 1953 Comp., § 5-12-14, enacted by Laws 1967, ch. 306, § 14; 1993, ch. 46, § 36; 2019, ch. 86, § 25.

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10-16-15. Repealed.

10-16-16. Recompiled.

10-16-17. Criminal penalties.

Unless specified otherwise in the Governmental Conduct Act, any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

History: Laws 1993, ch. 46, § 37.

10-16-18. Enforcement; civil penalties.

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars ($250) for each violation not to exceed five thousand dollars ($5,000).

History: Laws 1995, ch. 153, § 23.

10-16-18. Enforcement; civil penalties. (Effective January 1, 2020.)

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the state ethics commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars ($250) for each violation not to exceed five thousand dollars ($5,000).

History: Laws 1995, ch. 153, § 23; 2019, ch. 86, § 26.

ARTICLE 16A
Financial Disclosures

Sec.
10-16A-1. Short title; Financial Disclosure Act.
10-16A-1. Short title; Financial Disclosure Act. (Effective January 1, 2020.)
10-16A-2. Definitions.
10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.

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Sec.
10-16A-4. Disclosures by certain public officers or employees of state agencies; condition of employment.
10-16A-5. Education and voluntary compliance.
10-16A-5. Education and voluntary compliance. (Effective January 1, 2020.)
10-16A-6. Investigations; binding arbitration; fines; enforcement.
Sec.
10-16A-6. Investigations; binding arbitration; fines; enforcement. (Effective January 1, 2020.)
10-16A-7. Criminal penalties.
10-16A-8. Enforcement; civil penalties.
10-16A-8. Enforcement; civil penalties. (Effective January 1, 2020.)

10-16A-1. Short title; Financial Disclosure Act.

Sections 39 through 45 [10-16A-1 to 10-16A-7 NMSA 1978] [and 10-16A-8 NMSA 1978] of this act may be cited as the "Financial Disclosure Act".

History: Laws 1993, ch. 46, § 39.

10-16A-1. Short title; Financial Disclosure Act. (Effective January 1, 2020.)

Chapter 10, Article 16A NMSA 1978 may be cited as the "Financial Disclosure Act".

History: Laws 1993, ch. 46, § 39; 2019, ch. 86, § 27.

10-16A-2. Definitions.

As used in the Financial Disclosure Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "employment" means rendering of services for compensation in the form of salary as an employee;

C. "financial interest" means an interest held by an individual or his spouse that is:

(1) an ownership interest in business; or

(2) any employment or prospective employment for which negotiations have already begun;

D. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

E. "person" means an individual or entity; and

F. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges.

History: Laws 1993, ch. 46, § 40.

10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.

A. A person holding a legislative or statewide office shall file with the secretary of state a financial disclosure statement during the month of January every year that the person holds public office.

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B. A candidate for legislative or statewide office who has not already filed a financial disclosure statement with the secretary of state in the same calendar year shall file with the proper filing officer, as defined in the Election Code [Chapter 1, NMSA 1978], a financial disclosure statement at the time of filing a declaration of candidacy. If the proper filing officer is not the secretary of state, the proper filing officer shall forward a copy of the financial disclosure statement to the secretary of state within three days.

C. A state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate or a member of the insurance nominating committee shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that the person holds public office.

D. The financial disclosure statement shall include for any person identified in Subsection A, B or C of this section and the person's spouse the following information for the prior calendar year:

(1) the full name, mailing address and residence address of each person covered in the disclosure statement, except the address of the spouse need not be disclosed; the name and address of the person's and spouse's employer and the title or position held; and a brief description of the nature of the business or occupation;

(2) all sources of gross income of more than five thousand dollars ($5,000) to each person covered in the disclosure statement, identified by general category descriptions that disclose the nature of the income source, in the following broad categories: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described. In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978], the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed;

(3) a general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located;

(4) all other New Mexico business interests not otherwise listed of ten thousand dollars ($10,000) or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(5) all memberships held by the reporting individual and the individual's spouse on boards of for-profit businesses in New Mexico;

(6) all New Mexico professional licenses held;

(7) each state agency that was sold goods or services in excess of five thousand dollars ($5,000) during the prior calendar year by a person covered in the disclosure statement; and

(8) each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of the person's employment during the prior calendar year.

E. A complete financial disclosure statement shall be filed every year. The secretary of state shall deliver to each elected official required to file a financial disclosure statement a copy of any statement the person filed the previous year.

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F. The financial disclosure statements filed pursuant to this section are public records open to public inspection during regular office hours and shall be retained by the state for five years from the date of filing.

G. A person who files a financial disclosure statement may file an amended statement at any time to reflect significant changed circumstances that occurred since the last statement was filed.

H. A person who files to be a candidate for a legislative or statewide office who fails or refuses to file a financial disclosure statement required by this section before the final date for qualification of the person as a candidate as provided for in the Election Code shall not be qualified by the proper filing officer as a candidate.

I. For a state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate or a member of the insurance nominating committee, the filing of the financial disclosure statement required by this section is a condition of entering upon and continuing in state employment or holding an appointed position.

History: Laws 1993, ch. 46, § 41; 1995, ch. 153, § 24; 1997, ch. 112, § 8; 2015, ch. 11, § 1; 2019, ch. 212, § 214.

10-16A-4. Disclosures by certain public officers or employees of state agencies; condition of employment.

A. Every employee who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the state agency by which he is employed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before entering state employment and during the month of January every year thereafter.

B. Every public officer who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the board or commission to which he is appointed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before taking office and during the month of January every year thereafter.

C. The information on the disclosures shall be made available by the secretary of state for inspection to any citizen of this state.

D. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in state employment or, for persons subject to Subsection B of this section, of holding public office.

History: Laws 1993, ch. 46, § 42.

10-16A-5. Education and voluntary compliance.

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Financial Disclosure Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed. Referrals for civil

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enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: Laws 1993, ch. 46, § 43.

10-16A-5. Education and voluntary compliance. (Effective January 1, 2020.)

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Financial Disclosure Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed. Referrals to the state ethics commission for civil enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: Laws 1993, ch. 46, § 43; 2019, ch. 86, § 28.

10-16A-6. Investigations; binding arbitration; fines; enforcement.

A. The secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. Any person who believes that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for processing complaints and notifications of violations.

B. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged and impose the penalty. If the person charged disputes the secretary of state's determination, the person charged may request binding arbitration.

C. The arbitration decision shall be decided by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. No arbitrator may be a person subject to the Financial Disclosure Act, Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] or Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978]. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

D. The arbitrator may take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7A-1 to 44-7A-32 NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

E. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act or any person who files a false or incomplete statement or report is liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars ($50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars ($5,000).

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F. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

History: Laws 1993, ch. 46, § 44; 1997, ch. 112, § 9.

10-16A-6. Investigations; binding arbitration; fines; enforcement. (Effective January 1, 2020.)

A. The state ethics commission and the secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. Any person who believes that act has been violated may file a written complaint with the state ethics commission. The commission shall adopt procedures for processing complaints and notifications of violations.

B. If the state ethics commission determines that a violation has occurred for which a penalty should be imposed, the commission shall so notify the person charged and impose the penalty. If the person charged disputes the commission's determination, the person charged may request binding arbitration.

C. The arbitration decision shall be decided by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the state ethics commission. No arbitrator may be a person subject to the Financial Disclosure Act, Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] or Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978]. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

D. The arbitrator may take any action the state ethics commission is authorized to take. The arbitrator shall state the reasons for the decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the state ethics commission, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7A-1 NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

E. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act or any person who files a false or incomplete statement or report is liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars ($50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars ($5,000).

F. The secretary of state may refer a matter to the state ethics commission, attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

History: Laws 1993, ch. 46, § 44; 1997, ch. 112, § 9; 2019, ch. 86, § 29.

10-16A-7. Criminal penalties.

Any person who knowingly and willfully violates any of the provisions of the Financial Disclosure Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year or both.

History: Laws 1993, ch. 46, § 45.

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10-16A-8. Enforcement; civil penalties.

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars ($250) for each violation not to exceed five thousand dollars ($5,000).

History: Laws 1995, ch. 153, § **25.**

10-16A-8. Enforcement; civil penalties. (Effective January 1, 2020.)

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars ($250) for each violation not to exceed five thousand dollars ($5,000).

History: Laws 1995, ch. 153, § 25; 2019, ch. 86, § 30.

ARTICLE 16B

Gift Act

Sec.
10-16B-1. Short title.
10-16B-1. Short title (Effective January 1, 2020.)
10-16B-2. Definitions.
10-16B-3. Limitation on gifts.
10-16B-4. Penalties.
10-16B-5. Investigations; complaints; enforcement. (Effective January 1, 2020.)

10-16B-1. Short title.

This act [10-16B-1 through 10-16B-4 NMSA 1978] may be cited as the "Gift Act".

History: Laws 2007, ch. 226, § **1.**

10-16B-1. Short title (Effective January 1, 2020.)

Chapter 10, Article 16B NMSA 1978 may be cited as the "Gift Act".

History: Laws 2007, ch. 226, § 1; 2019, ch. 86, § 31.

10-16B-2. Definitions.

As used in the Gift Act:

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A. "family" means a spouse and dependent children;

B. "gift" means any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] or the Federal Election Campaign Act of 1971, as amended;

(2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;

(3) compensation for services rendered or capital invested that is:

(a) normal and reasonable in amount;

(b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;

(c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and

(d) not otherwise prohibited by law;

(4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;

(5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;

(6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;

(7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;

(8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or

(10) a retirement gift;

C. "market value" means the retail cost a person would incur to purchase a gift;

D. "restricted donor" means a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction; and

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E. "state officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage.

History: Laws 2007, ch. 226, § 2.

10-16B-3. Limitation on gifts.

A. A state officer or employee or a candidate for state office, or that person's family, shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state officer or employee or a candidate for state office, or that person's family, a gift of a market value greater than two hundred fifty dollars ($250).

B. A lobbyist registered with the secretary of state, the lobbyist's employer or a government contractor shall not donate gifts of an aggregate market value greater than one thousand dollars ($1,000) in a calendar year to any one state officer or employee or to any one candidate for state office.

C. A state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity in such a manner that it appears that the purpose of the donor in making the gift is to influence the state officer or employee in the performance of an official duty.

History: Laws 2007, ch. 226, § 3.

10-16B-4. Penalties.

A person who violates the provisions of the Gift Act is guilty of a petty misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2007, ch. 226, § 4.

10-16B-5. Investigations; complaints; enforcement. (Effective January 1, 2020.)

A. The state ethics commission may initiate investigations to determine whether the provisions of the Gift Act have been violated. A person who believes that a violation of the Gift Act has occurred may file a complaint with the state ethics commission.

B. If the state ethics commission determines that a violation has occurred, the commission shall refer the matter to the attorney general for criminal prosecution.

History: Laws 2019, ch. 86, § 32.

ARTICLE 16G

State Ethics Commission

Sec.
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10-16G-1. Short title.

Sections 1 through 16 [10-16G-1 through 10-16G-16 NMSA 1978] of this act may be cited as the "State Ethics Commission Act".

History: Laws 2019, ch. 86, § 1.

10-16G-2. Definitions.

As used in the State Ethics Commission Act:

A. "commission" means the state ethics commission;

B. "commissioner" means a member of the commission;

C. "complainant" means a person who files a verified complaint with the commission;

D. "complaint" means a complaint that has been signed by the complainant and the complainant attests under oath and subject to penalty of perjury before a notary public that the information in the complaint, and any attachments provided with the complaint, are true and accurate;

E. "director" means the executive director of the commission;

F. "government contractor" means a person who has a contract with a public agency or who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a public agency;

G. "legislative body" means the house of representatives or the senate;

H. "lobbyist" means a person who is required to register as a lobbyist pursuant to the provisions of the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];

I. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code [Chapter 1 NMSA 1978];

J. "public agency" means any department, commission, council, board, committee, agency or institution of the executive or legislative branch of government of the state or any instrumentality of the state, including the New Mexico mortgage finance authority, the New Mexico finance authority, the New Mexico exposition center authority, the New Mexico hospital equipment loan council and the New Mexico renewable energy transmission authority;

K. "public employee" means an employee of a public agency;

L. "public official" means a person elected to an office of the executive or legislative branch of the state or a person appointed to a public agency; and

M. "respondent" means a person against whom a complaint has been filed with or by the commission.

History: Laws 2019, ch. 86, § 2.

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10-16G-3. State ethics commission created; membership; terms; removal.

A. The "state ethics commission", as created in Article 5, Section 17 of the constitution of New Mexico, is composed of seven commissioners, appointed as follows:

(1) one commissioner appointed by the speaker of the house of representatives;

(2) one commissioner appointed by the minority floor leader of the house of representatives;

(3) one commissioner appointed by the president pro tempore of the senate;

(4) one commissioner appointed by the minority floor leader of the senate;

(5) two commissioners appointed by the four legislatively appointed commissioners; and

(6) one commissioner appointed by the governor, who shall be a retired judge and who shall chair the commission.

B. No more than three members of the commission may be members of the same political party.

C. The appointing authorities shall give due regard to the cultural diversity of the state and to achieving geographical representation from across the state. Each appointing authority shall file letters of appointment with the secretary of state.

D. Commissioners shall be appointed for staggered terms of four years beginning July 1, 2019. The initial commissioners appointed by the speaker of the house of representatives and senate minority floor leader shall serve an initial term of four years; members appointed by the president pro tempore of the senate and house minority floor leader shall serve an initial term of two years; members appointed by the legislatively appointed members shall serve an initial term of one year; and the member appointed by the governor shall serve an initial term of three years. Members shall serve until their successors are appointed and qualified.

E. A person shall not serve as a commissioner for more than two consecutive four-year terms.

F. When any member of the commission dies, resigns or no longer has the qualifications required for the commissioner's original selection, the commissioner's position on the commission becomes vacant. The director shall notify the original appointing authority of the vacant position. The original appointing authority shall select a successor in the same manner as the original selection was made. A vacancy shall be filled by appointment by the original appointing authority no later than sixty days following notification of a vacancy for the remainder of the unexpired term. A vacancy on the commission shall be filled by appointment by the original appointing authority for the remainder of the unexpired term.

G. The commission shall meet as necessary to carry out its duties pursuant to the State Ethics Commission Act. Commissioners are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

H. Four commissioners consisting of two members of the largest political party in the state and two members of the second largest political party in the state constitute a quorum for the transaction of business. No action shall be taken by the commission unless at least four members, including at least two members of the largest political party in the state and two members of the second largest political party in the state, concur.

I. A commissioner may be removed only for incompetence, neglect of duty or malfeasance in office. A proceeding for the removal of a commissioner may be commenced by the commission or by the attorney general upon the request of the commission. A commissioner shall be given notice of hearing and an opportunity to be heard before the commissioner is removed. The supreme court has original jurisdiction over proceedings to remove commissioners, and its decision shall be final. A commissioner is also liable to impeachment pursuant to Article 4, Section 36 of the constitution of New Mexico.

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History: Laws 2019, ch. 86, § 3.

10-16G-4. Commissioners; qualifications; limitations.

A. To qualify for appointment to the commission, a person shall:

(1) be a qualified elector of New Mexico;

(2) not have changed party registration in the five years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the commission;

(3) not continue to serve as a commissioner if the member changes party registration after the date of appointment in such a manner as to make the member ineligible to serve on the commission; and

(4) not be, or within the two years prior to appointment shall not have been, in New Mexico, any of the following:

(a) a public official;

(b) a public employee;

(c) a candidate;

(d) a lobbyist;

(e) a government contractor; or

(f) an office holder in a political party at the state or federal level.

B. Before entering upon the duties of the office of commissioner, each commissioner shall review the State Ethics Commission Act and other laws and rules pertaining to the commission's responsibilities and to ethics and governmental conduct in New Mexico. Each commissioner shall take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico.

C. For a period of one calendar year following a commissioner's tenure or following the resignation or removal of a commissioner, the commissioner shall not:

(1) represent a respondent, unless appearing on the commissioner's own behalf; or

(2) accept employment or otherwise provide services to a respondent unless the commissioner accepted employment or provided services prior to the filing of a complaint against the respondent.

D. During a commissioner's tenure, a commissioner shall not hold another public office or be:

(1) a public employee;

(2) a candidate;

(3) a lobbyist;

(4) a government contractor; or

(5) an office holder in a political party at the state or federal level.

E. A commissioner who changes political party affiliation in violation of the provisions of Subsection A of this section or who chooses to seek or hold an office in violation of Subsection D of this section shall resign from the commission or be deemed to have resigned.

History: Laws 2019, ch. 86, § 4.

10-16G-5. Commission; duties and powers.

A. The commission shall:

(1) employ an executive director, who shall be an attorney, upon approval of at least five commissioners;

(2) develop, adopt and promulgate the rules necessary for it to implement and administer the provisions of the State Ethics Commission Act; and

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(3) establish qualifications for hearing officers and rules for hearing procedures and appeals.

B. Beginning January 1, 2020, the commission shall:

(1) receive and investigate complaints alleging ethics violations against public officials, public employees, candidates, persons subject to the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978], government contractors, lobbyists and lobbyists' employers;

(2) hold hearings in appropriate cases to determine whether there has been an ethics violation;

(3) compile, index, maintain and provide public access to all advisory opinions and reports required to be made public pursuant to the State Ethics Commission Act;

(4) draft a proposed code of ethics for public officials and public employees and submit the proposed code to each elected public official and public agency for adoption; and

(5) submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers and duties, in December of each year to the legislature and the governor.

C. Beginning January 1, 2020, the commission may:

(1) by approval of at least five commissioners, initiate complaints alleging ethics violations against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer;

(2) petition a district court to issue subpoenas under seal requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to an investigation;

(3) issue advisory opinions in accordance with the provisions of the State Ethics Commission Act;

(4) compile, adopt, publish and make available to all public officials, public employees, government contractors and lobbyists an ethics guide that clearly and plainly explains the ethics requirements set forth in state law, including those that relate to conducting business with the state and public agencies; and

(5) offer annual ethics training to public officials, public employees, government contractors, lobbyists and other interested persons.

History: Laws 2019, ch. 86, § 5.

10-16G-6. Executive director; appointment; duties and powers.

A. The commission shall appoint an executive director who shall be knowledgeable about state ethics laws and who shall be appointed without reference to party affiliation and solely on the grounds of fitness to perform the duties of the office. The director shall hold office from the date of appointment until such time as the director is removed by the commission.

B. The director shall:

(1) take the oath of office required by Article 20, Section 1 of the constitution of New Mexico;

(2) hire a general counsel who may serve for no more than five years, unless rehired for up to an additional five years;

(3) hire additional personnel as may be necessary to carry out the duties of the commission;

(4) prepare an annual budget for the commission and submit it to the commission for approval;

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(5) make recommendations to the commission of proposed rules or legislative changes needed to provide better administration of the State Ethics Commission Act;

(6) perform other duties as assigned by the commission; and

(7) be required to reapply for the position after six years of service and may serve as director for no more than twelve years.

C. The director may:

(1) enter into contracts and agreements on behalf of the commission; and

(2) have the general counsel administer oaths and take depositions subject to the Rules of Civil Procedure for the District Courts.

D. For a period of one calendar year immediately following termination of the director's employment with the commission, the director shall not:

(1) represent a respondent, unless appearing on the director's own behalf; or

(2) accept employment or otherwise provide services to a respondent, unless the director accepted employment or provided services prior to the filing of a complaint against the respondent.

History: Laws 2019, ch. 86, § 6.

10-16G-7. Recusal and disqualification of a commissioner.

A. A commissioner may recuse from a particular matter.

B. A commissioner shall recuse from any matter in which the commissioner is unable to make a fair and impartial decision or in which there is a reasonable doubt about whether the commissioner can make a fair and impartial decision, including:

(1) when the commissioner has a personal bias or prejudice concerning a party to the proceeding or has prejudged a disputed evidentiary fact involved in a proceeding prior to a hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner's functions impartially;

(2) when the commissioner has a pecuniary interest in the outcome of the matter; or

(3) when in previous employment the commissioner served as an attorney, adviser, consultant or witness in the matter in controversy.

C. A party to the proceeding may request the recusal of a commissioner and shall provide the commission with the grounds for the request. If the commissioner declines to recuse upon request of a party to the proceeding, the commissioner shall provide a full explanation in support of the refusal to recuse.

D. A party may appeal a commissioner's refusal to recuse, or if the propriety of a commissioner's participation in a particular matter is otherwise questioned, the issue shall be decided by a majority of the other commissioners present and voting.

E. A disqualified commissioner shall not participate in any proceedings with reference to the matter from which the commissioner is disqualified or recused, and the commissioner shall be excused from that portion of any meeting at which the matter is discussed.

F. Minutes of commission meetings shall record the name of any commissioner not voting on a matter by reason of disqualification or recusal.

G. If two or more commissioners have recused themselves or are disqualified from participating in a proceeding, the remaining commissioners shall appoint temporary commissioners to participate in that proceeding. Appointments of temporary commissioners shall be made by a majority vote of the remaining commissioners in accordance with the political affiliation and geographical representation requirements and the qualifications set forth in the State Ethics Commission Act.

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H. The commission shall promulgate rules for the recusal and disqualification of commissioners, for an appeal of a recusal decision and for the appointment of temporary commissioners.

History: Laws 2019, ch. 86, § 7.

10-16G-8. Advisory opinions.

A. The commission may issue advisory opinions on matters related to ethics. Advisory opinions shall:

(1) be requested in writing by a public official, public employee, candidate, person subject to the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978], government contractor, lobbyist or lobbyist's employer;

(2) identify a specific set of circumstances involving an ethics issue;

(3) be issued within sixty days of receipt of the request unless the commission notifies the requester of a delay in issuance and continues to notify the requester every thirty days until the advisory opinion is issued; and

(4) be published after omitting the requester's name and identifying information.

B. A request for an advisory opinion shall be confidential and not subject to the provisions of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

C. Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

History: Laws 2019, ch. 86, § 8.

10-16G-9. Commission jurisdiction; compliance provisions. (Effective January 1, 2020.)

A. The commission has jurisdiction to enforce the applicable civil compliance provisions for public officials, public employees, candidates, persons subject to the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978], government contractors, lobbyists and lobbyists' employers of:

(1) the Campaign Reporting Act;

(2) the Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978];

(3) the Gift Act [Chapter 10, Article 16B NMSA 1978];

(4) the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];

(5) the Voter Action Act [1-19A-1 to 1-19A-17 NMSA 1978];

(6) the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978];

(7) the Procurement Code [13-1-28 through 13-1-199 NMSA 1978];

(8) the State Ethics Commission Act; and

(9) Article 9, Section 14 of the constitution of New Mexico.

B. All complaints filed with a public agency regarding the statutes listed in Subsection A of this section shall be forwarded to the commission.

C. The commission may choose to act on some or all aspects of a complaint and forward other aspects of a complaint to another state or federal agency with jurisdiction over the matter in accordance with Subsection E of this section.

D. If the commission decides not to act on a complaint, whether the complaint was filed with the commission or forwarded from another public agency, or decides only to act on part of a complaint, the commission shall promptly forward the complaint, or any part of a complaint on which it does not wish to act, to the public agency that has appropriate jurisdiction within ten days of the

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decision. The complainant and respondent shall be notified in writing when the complainant's request has been forwarded to another agency unless otherwise provided pursuant to Subsection H of Section 10 [10-16G-10 NMSA 1978] of the State Ethics Commission Act.

E. The commission may share jurisdiction with other public agencies having authority to act on a complaint or any aspect of a complaint. Such shared jurisdiction shall be formalized through an agreement entered into by all participating agencies involved with the complaint and the director. The commission may also investigate a complaint referred to the commission by the legislature, or a legislative committee, in accordance with an agreement entered into pursuant to policies of the New Mexico legislative council or rules of the house of representatives or senate.

F. The commission may file a court action to enforce the civil compliance provisions of an act listed in Subsection A of this section. The court action shall be filed in the district court in the county where the respondent resides.

History: Laws 2019, ch. 86, § 9.

10-16G-10. Complaints; investigations; subpoenas. (Effective January 1, 2020.)

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978], government contractor, lobbyist, lobbyist's employer or a restricted donor subject to the Gift Act [Chapter 10, Article 16B NMSA 1978] may be filed with the commission by a person who has actual knowledge of the alleged ethics violation.

B. The complainant shall set forth in detail the specific charges against the respondent and the factual allegations that support the charges and shall sign the complaint under penalty of false statement. The complainant shall submit any evidence the complainant has that supports the complaint. Evidence may include documents, records and names of witnesses. The commission shall prescribe the forms on which complaints are to be filed. The complaint form shall be signed and sworn by the complainant and notarized.

C. Except as provided in Subsection H of this section, the respondent shall be notified within seven days of the filing of the complaint and offered an opportunity to file a response on the merits of the complaint.

D. The director shall determine if the complaint is subject to referral to another state agency pursuant to an agreement or outside the jurisdiction of the commission, and if so, promptly refer the complaint to the appropriate agency. If the director determines that the complaint is within the commission's jurisdiction, the director shall have the general counsel initiate an investigation.

E. The general counsel shall conduct an investigation to determine whether the complaint is frivolous or unsubstantiated. If the general counsel determines that the complaint is frivolous or unsubstantiated, the complaint shall be dismissed, and the complainant and respondent shall be notified in writing of the decision and reasons for the dismissal. The commission shall not make public a complaint that has been dismissed pursuant to this subsection or the reasons for the dismissal.

F. If the general counsel and the respondent reach a settlement on the matters of the complaint, the settlement shall be submitted to the commission for its approval, and if the matter has been resolved to the satisfaction of the commission, the complaint and terms of the settlement shall be subject to public disclosure.

G. If the general counsel determines that there is probable cause, the director shall promptly notify the respondent of the finding of probable cause and of the specific allegations in the complaint that are being investigated and that a public hearing will be set. If the finding of probable cause

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involves a discriminatory practice or actions by the respondent against the complainant, no settlement agreement shall be reached without prior consultation with the complainant. In any case, the notification, complaint, specific allegations being investigated and any response to the complaint shall be made public thirty days following notice to the respondent.

H. Notwithstanding the provisions of Subsections C and G of this section, the director may delay notifying a respondent and complainant and releasing to the public the complaint and related information required by Subsection G of this section if it is deemed necessary to protect the integrity of a criminal investigation. A decision whether to delay notifying a respondent shall be taken by a majority vote of the commission and shall be documented in writing with reasonable specificity.

I. As part of an investigation, the general counsel may administer oaths, interview witnesses and examine books, records, documents and other evidence reasonably related to the complaint. All testimony in an investigation shall be under oath, and the respondent may be represented by legal counsel. If the general counsel determines that a subpoena is necessary to obtain the testimony of a person or the production of books, records, documents or other evidence, the director shall request that the commission petition a district court to issue a subpoena.

J. The commission may petition the court for a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation. If a person neglects or refuses to comply with a subpoena, the commission may apply to a district court for an order enforcing the subpoena and compelling compliance. All proceedings in the district court prior to the complaint being made public pursuant to Subsection G of this section, or upon entry of a settlement agreement, shall be sealed. A case is automatically unsealed upon notice by the commission to the court that the commission has made the complaint public. No later than July 1 of each even-numbered year, the chief justice of the supreme court shall appoint an active or pro tempore district judge to consider the issuance and enforcement of subpoenas provided for in this section. The appointment shall end on June 30 of the next even-numbered year after appointment.

K. A public official or state public employee who is a respondent who is subject to a complaint alleging a violation made in the performance of the respondent's duties shall be entitled to representation by the risk management division of the general services department.

History: Laws 2019, ch. 86, § 10.

10-16G-11. Status of investigation; reports to commission. (Effective January 1, 2020.)

A. If a hearing has not been scheduled concerning the disposition of a complaint within ninety days after the complaint is received, the director shall report to the commission on the status of the investigation. The commission may dismiss the complaint or instruct the director to continue the investigation of the complaint. Unless the commission dismisses the complaint, the director shall report to the commission every ninety days thereafter on the status of the investigation.

B. Upon dismissal of a complaint or a decision to continue an investigation of a complaint, the commission shall notify the complainant and respondent in writing of its action. If the commission has not notified a respondent pursuant to the provisions of Subsection G of Section 10 [10-16G-10 NMSA 1978] of the State Ethics Commission Act, the commission shall vote on whether to notify the respondent. A decision whether to continue to delay notifying the respondent shall be taken by a majority vote of a quorum of the commission and shall be documented in writing with reasonable specificity.

History: Laws 2019, ch. 86, § 11.

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10-16G-12. Investigation report; commission hearings; decisions and reasons given; disclosure of an ethics violation. (Effective January 1, 2020.)

A. Upon receipt of the general counsel's recommendation, the commission or hearing officer shall:

(1) dismiss a complaint and notify the complainant and the respondent of the dismissal; or

(2) set a public hearing, as soon as practicable.

B. At any time before or during a hearing provided for in Subsection A of this section, the hearing officer may, at a public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, as approved by the commission.

C. The hearing provided for in Subsection A of this section shall be pursuant to the rules of evidence that govern proceedings in the state's courts and procedures established by the commission. An audio recording shall be made of the hearing. The respondent may be represented by counsel. The parties may present evidence and testimony, request the director to compel the presence of witnesses and examine and cross-examine witnesses.

D. The hearing officer shall issue a written decision that shall include the reasons for the decision. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct constituted a violation, the decision may include recommendations for disciplinary action against the respondent, and the hearing officer may impose any fines provided for by law. A finding of fraudulent or willful misconduct shall require clear and convincing evidence.

E. The complainant or respondent may appeal a decision of the hearing officer within thirty days of the decision to the full commission, which shall hear the matter within sixty days of notice of the appeal and issue its decision within 180 days.

F. The commission shall publicly disclose a decision, including a dismissal following a finding of probable cause or the terms of a settlement, issued pursuant to this section. The commission shall provide the decision to the complainant, the respondent and the:

(1) house of representatives if the respondent is a public official who is subject to impeachment;

(2) appropriate legislative body if the respondent is a member of the legislature;

(3) respondent's appointing authority if the respondent is an appointed public official;

(4) appropriate public agency if the respondent is a public employee;

(5) public agency with which the respondent has a government contract if the respondent is a government contractor; and

(6) secretary of state and the respondent's employer, if any, if the respondent is a lobbyist.

G. The commission shall produce a quarterly report subject to public inspection containing the following information:

(1) the number of complaints filed with and referred to the commission;

(2) the disposition of the complaints; and

(3) the type of violation alleged in the complaints.

History: Laws 2019, ch. 86, § 12.

10-16G-13. Confidentiality of records; penalty. (Effective January 1, 2020.)

A. A decision that a respondent's conduct constituted a violation, and the terms of a settlement approved by the commission, are public records. Pleadings, motions, briefs and other documents or

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information related to the decision are public records, except for information that is confidential or protected pursuant to attorney-client privilege, provider-patient privilege or state or federal law.

B. If a complaint is determined to be frivolous, unsubstantiated or outside the jurisdiction of the commission, the complaint shall not be made public by the commission; provided that the commission shall not prohibit the complainant or respondent from releasing the commission's decision or other information concerning the complaint.

C. Except as otherwise provided in the acts listed in Section 9 of the State Ethics Commission Act, all complaints, reports, files, records and communications collected or generated by the commission, hearing officer, general counsel or director that pertain to alleged violations shall not be disclosed by the commission or any commissioner, agent or employee of the commission, unless:

(1) disclosure is necessary to pursue an investigation by the commission;

(2) disclosure is required pursuant to the provisions of the State Ethics Commission Act; or

(3) they are offered into evidence by the commission, respondent or another party at a judicial, legislative or administrative proceeding, including a hearing before a hearing officer.

D. Information and reports containing information made confidential by law shall not be disclosed by the commission or its director, staff or contractors.

E. A commissioner, director, staff or contractor who knowingly discloses any confidential complaint, report, file, record or communication in violation of the State Ethics Commission Act is guilty of a petty misdemeanor.

History: Laws 2019, ch. 86, § 13.

10-16G-14. Criminal violations; referral. (Effective January 1, 2020.)

If the commission finds at any time that a respondent's conduct amounts to a criminal violation, the director shall consult with the attorney general or an appropriate district attorney, and the commission may refer the matter to the attorney general or an appropriate district attorney. The commission may provide the attorney general or district attorney with all evidence collected during the commission's investigation. Nothing in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

History: Laws 2019, ch. 86, § 14.

10-16G-15. Time limitations on jurisdiction. (Effective January 1, 2020.)

A. The commission shall not accept or consider a complaint unless the complaint is filed with the commission within the later of two years from the date:

(1) on which the alleged conduct occurred; or

(2) the alleged conduct could reasonably have been discovered.

B. The commission shall not adjudicate a complaint filed against a candidate, except pursuant to the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] or Voter Action Act [1-19A-1 to 1-19A-17 NMSA 1978], less than sixty days before a primary or general election. During that time period, the commission may dismiss complaints that are frivolous or unsubstantiated or refer complaints that are outside the jurisdiction of the commission.

C. A complainant shall be notified in writing of the provisions of this section and shall also be notified in writing that the complainant may refer allegations of criminal conduct to the attorney general or the appropriate district attorney.

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D. When commission action on a complaint is suspended pursuant to the provisions of this section, the respondent shall promptly be notified that a complaint has been filed and of the specific allegations in the complaint and the specific violations charged in the complaint.

History: Laws 2019, ch. 86, § 15.

10-16G-16. Prohibited actions. (Effective January 1, 2020.)

A. A person shall not take or threaten to take any retaliatory, disciplinary or other adverse action against another person who in good faith:

(1) files a verified complaint with the commission that alleges a violation; or

(2) provides testimony, records, documents or other information to the commission during an investigation or at a hearing.

B. A complainant and a respondent shall not communicate ex parte with any hearing officer, commissioner or other person involved in a determination of the complaint.

C. Nothing in the State Ethics Commission Act precludes civil or criminal actions for libel or slander or other civil or criminal actions against a person who files a false claim.

History: Laws 2019, ch. 86, § 16.

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CHAPTER 22

Public Schools

ARTICLE 7

Local School Board Member Recall

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User's Guide to the Index

This index contains treatment of the laws compiled in the *Election Handbook of the State of New Mexico, 2019 Edition*. Statutory provisions from the *New Mexico Statutes Annotated* are referred to in the index by section number (e.g., §1-6-5).

The index is a combination of two approaches to indexing, topical and descriptive word. The topical approach follows the organization of the Code, and the descriptive word approach uses nonlegal terms and popular names to describe legal terminology. The result is a user-friendly index for both the lawyer and non-lawyer user.

A few basic suggestions for using this index are:

(1) *Begin your search with DEFINED TERMS.* DEFINED TERMS is a collection of entries for terms defined in the Election Handbook of the State of New Mexico. Starting a search in this heading exposes the index user to a diverse sampling of statutory terminology, which could suggest to the user other headings to consult.

(2) *Cross references.* Pay close attention to and make full use of the index cross references. Cross references serve to keep indexes to a manageable size by reducing the amount of repetition of treatment under different headings. An index cross reference directs the index user to go to another part of the index to find treatment. For example "ASSISTANCE TO VOTERS, See VOTERS" directs the index user from the main heading ASSISTANCE TO VOTERS to the main heading VOTERS.

(3) *Use descriptive words or phrases to aid in your search, including commonly used phrases or terms of art.* Examples would be ABSENTEE VOTING, SPECIAL ELECTIONS and VOTING MACHINES.

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