CHAPTER 1
Elections

ARTICLE 1
Definitions and General Provisions

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.

ANNOTATIONS

Temporary provisions. — Laws 2019, ch. 212, § 283 provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For provision that elections are to be free and open, *see* N.M. Const., art. II, § 8.

For elective franchise generally, *see* N.M. Const., art. VII.

For date for holding general elections, *see* N.M. Const., art. XX, § 6.

For provision prohibiting abridging right of suffrage because of race, color or previous servitude, *see* N.M. Const., art. XXI, § 5.

Ballot requirements to protect public. — In an effort to protect the public from the undesirable effects of an unrestrained nominating process, the legislature has seen fit to place certain requirements on the amount of public support a potential candidate must demonstrate before being placed on the ballot. There is no reason to suspect that these requirements are unreasonable. *Bardacke v. Dunigan*, 1982-NMSC-093,98 N.M. 473, 649 P.2d 1386.

1927 act. — The 1927 act was a comprehensive Election Code. *State ex rel. Abercrombie v. District Court of Fourth Judicial Dist*., 1933-NMSC-057, 37 N.M. 407, 24 P.2d 265.

Applicability to referendum. — Former Election Code, and especially Article 7 thereof relating to elections on constitutional amendments and other questions, included and applied to referendum. *State v. Perrault*, 1929-NMSC-099, 34 N.M. 438, 283 P. 902.

Secrecy and purity of ballot to be protected. — Constitutional and statutory provisions calculated to protect the secrecy and purity of the ballot are to receive favorable consideration. *State ex rel. Read v. Crist*, 1919-NMSC-005, 25 N.M. 175, 179 P. 629.

Constructions of election laws should further free exercise of franchise. — In construing election statutes, no construction of constitutional or statutory provisions is to be indulged which

will defeat or unduly restrict or obstruct the free exercise of the elective franchise unless such is compelled by the strict letter of the law. 1963 Op. Att'y Gen. No. 63-139.

Law reviews. — For note, "Why Gunaji v. Macias Matters to Candidates and Voters: Its Impact on New Mexico Election Law," see 33 N.M.L. Rev 431 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — What changes in voting practices or procedures must be precleared under § 5 of Voting Rights Act of 1965 (42 USCA § 1973c) - Supreme Court cases, 146 A.L.R. Fed. 619.

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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 2, 3.

29 C.J.S. Elections § 7(4).

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 137, § 111 made Laws 2011, ch. 137, § 3 effective July 1, 2011.

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.

ANNOTATIONS

"May" is not infrequently used interchangeably with "must," and, as used in former section dealing with county canvass, imported an absolute obligation. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157 (decided under former law).

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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, revised the definition of "election cycle" as used in the Election Code; in Subsection A, after "beginning on", deleted "the day" and added "January 1", and after "ending on", deleted "the day of" and added "December 31 after"; in Subsection B, after "ending on", deleted "the day of" and added "December 31 after"; and in Subsection C, after "beginning on", deleted "the day" and added "January 1".

Temporary provisions. — Laws 2019, ch. 262, § 16 provided that the secretary of state, in consultation with the attorney general, shall promulgate rules to implement the amendatory provisions of this act by August 1, 2019.

The 2011 amendment, effective July 1, 2011, redefined "election cycle" and added definitions of "general election cycle" and "primary election cycle".

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 137, § 111 made Laws 2011, ch. 137, § 1 effective July 1, 2011.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the definition of "election-related organization" as used in the Election Code; and added "but does not include a qualified political party in an election in which the political party is represented on the ballot".

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.

ANNOTATIONS

Cross references. — For qualifications of voters, *see* N.M. Const., art. VII, § 1.

For voting age unaffected by general lowering of age of majority to 18, *see* 28-6-1 NMSA 1978.

The 2019 amendment, effective April 3, 2019, revised the definition of "qualified elector" as used in the Election Code; in Subsection A, added "and rules promulgated by the secretary of

state", and after "United States", added "and includes any qualified resident"; and added Subsection B.

The 2011 amendment, effective July 1, 2011, defined "qualified elector" as a resident of New Mexico.

Compiler's notes. — A three-judge federal district court sitting in Trujillo v. Garley, U.S. Dist. Ct., Civ. A. No. 1353, entered a declaratory judgment on August 11, 1948, that Indians in New Mexico are entitled to vote, the former provisions of the New Mexico constitution to the contrary notwithstanding. The case was not appealed.

Qualification of grand juror. — Grand juror did not have to be a properly registered voter to be a qualified elector, for purposes of sitting on the grand jury. *State v. Chama Land & Cattle Co*., 1990-NMCA-129, 111 N.M. 317, 805 P.2d 86.

A juror has only to meet the requirements of N.M. Const., art. VII, § 1 to be a qualified elector under 38-5-1 NMSA 1978, and therefore to be qualified to serve as a grand juror. *State v. Chama Land & Cattle Co*., 1990-NMCA-129, 111 N.M. 317, 805 P.2d 86.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Women's suffrage amendment to federal or state constitution as affecting pre-existing constitutional or statutory provisions which limited rights or duties to legal or male voters, 71 A.L.R. 1332, 157 A.L.R. 461.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

29 C.J.S. Elections § 1(7).

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.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 145, § 103 made Laws 2015, ch. 145, § 1 effective July 1, 2015.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the definition of "voter" as used in the Election Code; and after "registered", added "to vote".

The 2015 amendment, effective July 1, 2015, removed the specific reference to overseas voter, the meaning of which is included in the definition of federal qualified elector; after "any qualified elector", added "or", and after "federal qualified elector", deleted "or overseas voter".

The 2011 amendment, effective July 1, 2011, included federal qualified voters and overseas voter in the definition of "voter".

Qualification of grand juror. — Grand juror did not have to be a properly registered voter to be a qualified elector, for purposes of sitting on the grand jury. *State v. Chama Land & Cattle Co*., 1990-NMCA-129, 111 N.M. 317, 805 P.2d 86.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Incompetents: voting rights of persons mentally incapacitated, 80 A.L.R.3d 1116.

29 C.J.S. Elections § 1(8).

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 357 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

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

A. For a candidate contest or ballot question 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 candidate contest or ballot question 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 candidate contest in which there is a declared write-in candidate and a write-in vote is cast, 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

(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 NMSA 1978, recompiled as § 1-1-5.2 NMSA 1978 by Laws 2010, ch. 28, § 21; 2019, ch. 212, § 4; 2023, ch. 39, § 3.

ANNOTATIONS

Recompilations. — Laws 2010, ch. 28, § 21 recompiled former 1-9-4.2 NMSA 1978 as 1-1-5.2 NMSA 1978, effective March 3, 2010.

The 2023 amendment, effective June 16, 2023, revised language related to the definition of a vote; in Subsections A and B, after "For a", deleted "paper ballot" and added "candidate contest or ballot question"; and in Subsection C, after "For a", deleted "paper ballot that is machine-tabulated or hand-tallied and that contains" and added "candidate contest in which there is a declared write-in candidate and".

The 2019 amendment, effective April 3, 2019, revised the definition of a vote; in the section heading, deleted "counting of", and added "machine-tabulated", and deleted "ballots" and added "write-in"; in Subsection A, deleted "A vote for" and added "For", deleted "used on an electronic vote tabulating system, optical scan vote tabulating system or high-speed central count vote tabulator consists of a" and added "that is machine-tabulated on a vote tabulation system certified for use in this state, a vote shall be counted if the", added paragraph designations "(1)" and "(2)", and in Paragraph A(2), added "ballot is"; in Subsection B, Paragraph B(3), after "there is a", added "distinct marking, such as a", and in Paragraph B(4), after "judges", deleted "for the precinct" and added "hand-tallying the ballot"; and added Subsection C.

Hand-tallied ballots. — This section, as implemented by the regulations of the secretary of state which lay out detailed guidelines for determining what kinds of ballot marks should and should not constitute a legal vote along with graphical examples of ballots with unconventional markings, accompanied by rules about how to interpret such marks, is constitutional on its face. *State of N.M. ex rel. League of Women Voters v. Herrera*, 2009-NMSC-003, 145 N.M. 563, 203 P.3d 94.

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.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 145, § 103 made Laws 2015, ch. 145, § 2 effective July 1, 2015.

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, space 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; 2024, ch. 21, § 2.

ANNOTATIONS

The 2024 amendment, effective May 15, 2024, included members of the space force in the definition of "uniformed-service voter"; and in Subsection A, after "air force" added "space force".

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.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 145, § 103 made Laws 2015, ch. 145, § 5 effective July 1, 2015.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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 to 1-19-36 NMSA 1978] and the School District Campaign Reporting Act [1-22A-1 to 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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection B, after "pertains to", deleted "emergency" and added "all"; after "paper ballots", added "including"; deleted "retabulated by feeding the ballots into an electronic vote tabulating system, and the voters’ selections on ballots that cannot be read by the system are counted by hand" and added the word "retallied".

The 2007 amendment, effective July 1, 2007, amended Subsection A to define "recheck" as pertaining to electronic vote tabulating systems; and Subsection B to define "recount" to include a verification procedure whereby voters' selections are retabulated by feeding the ballots into an electronic vote tabulating system.

The 2005 amendment, effective July 1, 2005, in Subsection A, changed "voting machines" to "electronic voting systems"; deleted the former provision that "recheck" means a verification procedure where the center counter compartment door of the voting machine is opened; provided that "recheck" means the verification procedure where a printout of the electronic records of votes cast in an election is made from each electronic memory device in the electronic voting system; deleted the former provision that the results of the balloting as shown on the counters of the machine are compared with the official returns; and in Subsection B, defined "recount" to include provisional paper ballots, optical scan paper ballots, voter verifiable and auditable paper ballots, paper ballots printed by electronic voting systems and any other paper ballot; deleted the former provision that "recount" means a retabulation and retallying of individual ballots; and defined "recount" to mean a verification procedure whereby the voters' selection on the paper ballot may be counted by hand and the results compared to the official returns.

Examination of write-in scrolls constitutes a "recheck," and is covered by 1-14-14 NMSA 1978. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

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;

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.

ANNOTATIONS

Cross references. — For residence not acquired or lost by presence or absence in federal or state service or as student, *see* N.M. Const., art. VII, § 4.

Establishing physical presence. — Under Subsections C and H of this section, a person who does not have a sufficient physical presence in a place to qualify that place as an abode or a habitation (i.e., as a place where the person lives or resides, even if only part-time) must establish such a physical presence in the place - that is, he must "remove" to the place - before his voting residence can be changed to that place. *Klumker v. Van Allred*, 1991-NMSC-045, 112 N.M. 42, 811 P.2d 75.

Loss of residence status. — A person who physically leaves the county where he has resided and then votes or qualifies to vote outside that county loses his residence in that county for voting purposes. *Klumker v. Van Allred*, 1991-NMSC-045, 112 N.M. 42, 811 P.2d 75.

Multiple residences not precluded. — This section and 1-1-7.1 NMSA 1978 merely codify the supreme court's pronouncement in *State ex rel. Magee v. Williams*, 1953-NMSC-082, 57 N.M. 588, 261 P.2d 131, and do not preclude the possibility of multiple residences. *Apodaca v. Chavez*, 1990-NMSC-028, 109 N.M. 610, 788 P.2d 366.

Family home as permanent residence. — Political candidate's Santa Fe county family home remained his permanent residence, even though he maintained a home in Rio Arriba county where he resided with his wife and two children. *Apodaca v. Chavez*, 1990-NMSC-028, 109 N.M. 610, 788 P.2d 366.

Circumstantial evidence of intent to reside sufficient. — It is obviously difficult to prove an intent to reside by direct evidence. Circumstantial evidence of intent is sufficient if it can be said that it amounts to substantial evidence. *State ex rel. Huning v. Los Chavez Zoning Comm'n*., 1982-NMSC-024, 97 N.M. 472, 641 P.2d 503, *rev'g* 1979-NMSC-088, 93 N.M. 655, 604 P.2d 121.

Change of residence is accomplished only by the act of moving to another place coupled with the intent to remain in the other place. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Residence for voting similar to residence for jury service. — There is a similarity between residence for the purpose of voting and residence for the purpose of serving as a juror. *State v. Watkins*, 1979-NMCA-003, 92 N.M. 470, 590 P.2d 169.

Right of Indian to vote. — There is nothing in the constitution or the statutes which prohibits an Indian from voting in a proper election, provided he fulfills the statutory requirements required of any other voter. *Montoya v. Bolack*, 1962-NMSC-073, 70 N.M. 196, 372 P.2d 387.

Reservation deemed residence for voting purposes. — A reservation lying within geographic boundaries of the state is a part of the state, and residence for voting purposes, within the meaning of the constitution, follows. *Montoya v. Bolack*, 1962-NMSC-073, 70 N.M. 196, 372 P.2d 387.

Polling places may be placed on reservations. — Inasmuch as there is residence on a reservation for voting purposes, there is no prohibition to the location of polling places thereon. *Montoya v. Bolack*, 1962-NMSC-073, 70 N.M. 196, 372 P.2d 387.

Vote cast outside residence of voter is void; it must be cast in person in the precinct in which the voter has resided for the preceding 30 days. *State ex rel. Bd. of Cnty. Comm'rs v. Board of*

Cnty. Comm'rs, 1954-NMSC-124, 59 N.M. 9, 277 P.2d 960; *Arledge v. Mabry*, 1948-NMSC-047, 52 N.M. 303, 197 P.2d 884.

Franchise cannot be conferred on nonresident. — Former statute purporting to make residents living on condemned lands residents of New Mexico in the constitutional sense did not aid person living on condemned lands at Los Alamos project, since legislature could not constitutionally confer the elective franchise on persons whose legal status was that of a nonresident. *Arledge v. Mabry*, 1948-NMSC-047, 52 N.M. 303, 197 P.2d 884.

Candidate to file in district where he resides. — In order for a candidate for county commission or state representative to qualify for those offices, he must file in the district where he resides. 1966 Op. Att'y Gen. No. 66-30.

Change of residence by candidate. — In order to run in a certain district, a candidate can change his residency at any time up to the filing date, so long as the legislative district is in the same county. 1966 Op. Att'y Gen. No. 66-30.

Those residing on former public domain land may exercise elective franchise in both state and federal elections, since the state retained jurisdiction over the area not inconsistent with federal use. 1964 Op. Att'y Gen. No. 64-123.

No residence on purchased without consent of state. — Those people residing on land obtained by the United States through the constitutional method may not establish their residency so as to become electors; those residing on lands obtained by purchase without obtaining the consent of the state are in a similar position. 1964 Op. Att'y Gen. No. 64-123.

Establishing residence. — "Residence" for voting and election purposes is established initially by actual residence and intent to make that place a home. After "residence" is thus established, the person may move elsewhere, and if he intends to return, his "residence" for voting and election purposes remains as established. 1956 Op. Att'y Gen. No. 56-6445.

For those residing upon lands within military installations which formerly were part of public domain, "residence" for voting purposes could be established thereon. The reasoning behind this conclusion is that the state of New Mexico, as to these lands, exercised concurrent jurisdiction with the federal government even though title was held by the federal government. 1956 Op. Att'y Gen. No. 56-6425.

Term "residence" has been defined as being synonymous with home or domicile denoting the permanent dwelling place to which a party, when absent, intends to return and also as "that place wherein he legally resides and has his domicile and from which, when temporarily absent, he intends to return." 1956 Op. Att'y Gen. No. 55-6208.

No residence for those on lands over which federal government has control. — On any lands over which the United States government has acquired exclusive control, except for the purpose of service of civil and criminal process, no residence can be acquired for the purpose of voting. 1953 Op. Att'y Gen. No. 53-5841.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 163 et seq.

Significance of place where one votes or registers to vote on question as to his domicile or residence for other purposes, 107 A.L.R. 448.

Residence or inhabitancy within district or other political unit for which he is elected or appointed as a necessary qualification of officer or candidate, in absence of express provision to the effect, 120 A.L.R. 672.

Military service, voting by persons in, 140 A.L.R. 1100, 147 A.L.R. 1443, 148 A.L.R. 1402, 149 A.L.R. 1466, 150 A.L.R. 1460, 151 A.L.R. 1464, 152 A.L.R. 1459, 153 A.L.R. 1434, 154 A.L.R. 1459, 155 A.L.R. 1459.

Domicile or residence of person in the armed forces, 149 A.L.R. 1471, 150 A.L.R. 1468, 151 A.L.R. 1468, 152 A.L.R. 1471, 153 A.L.R. 1442, 155 A.L.R. 1466, 156 A.L.R. 1465, 157 A.L.R. 1462, 158 A.L.R. 1474.

State voting rights of residents of federal military establishment, 34 A.L.R.2d 1193.

Absentee voters' laws: validity of, 97 A.L.R.2d 218.

Absentee voters' laws: construction and effect of, 97 A.L.R.2d 257.

Residence or domicile of student or teacher for purpose of voting, 98 A.L.R.2d 488, 44 A.L.R.3d 797.

29 C.J.S. Elections §§ 19 to 25.

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.

ANNOTATIONS

Cross references. — For rules for determining residency for voting, *see* 1-1-7 NMSA 1978.

For elections covered by this chapter, *see* 1-1-19 NMSA 1978.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 1 and Laws 1993, ch. 316, § 1, both effective June 18, 1993, which substituted "certificate" for "affidavit" near the end of the section. The section was set out as amended by Laws 1993, ch. 316, § 1. *See* 12-1-8 NMSA 1978.

Multiple residences not precluded. — This section and 1-1-7 NMSA 1978 merely codify the supreme court's pronouncement in *State ex rel. Magee v. Williams*, 1953-NMSC-082, 57 N.M. 588, 261 P.2d 131, and do not preclude the possibility of multiple residences. *Apodaca v. Chavez*, 1990-NMSC-028, 109 N.M. 610, 788 P.2d 366.

Family home as permanent residence. — Political candidate's Santa Fe county family home remained his permanent residence, even though he maintained a home in Rio Arriba county where he resided with his wife and two children. *Apodaca v. Chavez*, 1990-NMSC-028, 109 N.M. 610, 788 P.2d 366.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 255 et seq., 267 et seq.

29 C.J.S. Elections §§ 110, 114, 130.

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 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.

E. No later than January 1, 2024, the secretary of state shall implement a secure internet application, in addition to the paper circulation process, to gather electronic signatures in accordance with rules developed by the secretary of state. The secure internet application shall provide for the ability to verify that a person signing the petition is a registered voter and is eligible to sign the petition for a particular candidate.

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; 2023, ch. 39, § 4.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 9 recompiled and amended former 1-8-31 NMSA 1978 as 1-1-7.2 NMSA 1978, effective April 3, 2019.

The 2023 amendment, effective June 16, 2023, required the secretary of state to implement a secure internet application to gather electronic signatures, which shall provide for the ability to verify that a person signing the petition is a registered voter and is eligible to sign the petition for a particular candidate; and added Subsection E.

The 2019 amendment, effective April 3, 2019, revised the procedures for counting signatures on a nominating petition; in the section heading, deleted "Nominating petition" and added "Petitions; nominations"; in Subsection C, after "evidence presented that", added "the petition does not provide the information required by the nominating petition for each person signing or", deleted former Paragraph C(1) and redesignated former Paragraphs C(2) and C(3) as Paragraphs C(1) and C(2), in Paragraph C(2), after "Subsection A of this section", deleted "or has signed one petition more than once" and added the remainder of the paragraph, added a new Paragraph C(3), in Paragraph C(4), added "in a primary election"; and deleted former Subsections D and E and redesignated former Subsection F as Subsection D.

The 2017 amendment, effective June 16, 2017, changed the requirements for the invalidation of nominating petitions; in the catchline, deleted "Primary Election Law"; in Subsection C, deleted Paragraph C(1), which stated "was not a registered member of the candidate's political party ten days prior to the filing of the nominating petition", and redesignated the succeeding paragraphs accordingly; in Subsection D, provided paragraph designations for each item that must be listed at the top of a nominating petition, in Paragraph D(2), after "the candidate's name", deleted "the candidate's address, the candidate's county of residence and", in Paragraph D(3), after "office sought by the candidate", deleted "which shall include", and added "and", in Paragraph D(4), after "the district", deleted "or division", after "office sought", added "or", and after "if", deleted "applicable" and added "the office sought is a judicial division office within a judicial district, the judicial division number"; designated the last sentence in former Subsection D as Subsection E and redesignated former Subsection E as Subsection F; in Subsection E, added "With or without a showing of fraud or reasonable opportunity for fraud", after "invalid if any of the", deleted "preceding", after "information", added "required by Subsection D of this section", after "not listed", added "on the petition", and after "if any of the",

deleted "preceding" and added "required"; and in Subsection F, after "except that", deleted "Paragraphs (1) and (5)" and added "Paragraph (4)".

The 2011 amendment, effective July 1, 2011, added Subsection D to list the information that is required to be listed on the nominating petition before it is signed by a voter.

The 1999 amendment, effective June 18, 1999, added Subsection B, and redesignated subsequent subsections accordingly; in Subsection C, added Paragraph (1), redesignated subsequent paragraphs accordingly, and added the language ending "the person is qualified" at the beginning of Paragraph (2); and added the exception to Subsection D.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" in Subsection B(3).

Burden of proof. — The burden is on the challenger to demonstrate that specific signatures should not be counted in a primary election nominating petition. *Ruiz v. Vigil-Giron*, 2008-NMSC-063, 145 N.M. 280, 196 P.3d 1286.

Failure to fill in entire line. — This section does not include as a reason for disqualification the failure to fill in all blanks in a nominating petition. *Simmons v. McDaniel*, 1984-NMSC-049, 101 N.M. 260, 680 P.2d 977 (decided prior to 1999 amendment).

Scope of section. — Although the title of this section is "Primary Election Law; nominating petition; signatures to be counted," it is obvious from the explicit language of Subsection C [now Subsection D] that the legislature intended this section to apply to all petitions required by the Election Code, including ballot access petitions. *Workers World Party v. Vigil-Giron*, 693 F. Supp. 989 (D.N.M. 1988).

Variance between petition and registration. — This section does not include as a reason for disqualification the failure to provide on the petition the signatory's name or address printed as registered. Therefore, where a county clerk automatically excluded signatures of registered voters whose names and addresses on the petitions varied somewhat or differed from their affidavits of registration, there was a failure to comply with the statutory requirements. *Workers World Party v. Vigil-Giron*, 693 F. Supp. 989 (D.N.M. 1988).

Signature to contain address, etc., to be valid. — Any signature on a nominating petition not containing the address, county and precinct number of the elector is invalid. 1952 Op. Att'y Gen. No. 52-5486 (opinion rendered under former law).

1-1-8. Election returns.

As used in the Election Code [Chapter 1 NMSA 1978], "election returns" means the certificate of the precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 2 and Laws 1993, ch. 316, § 2, both effective June 18, 1993, which substituted "certificates" for "affidavits" following "original" and "copies of certificates" for "duplicate affidavits". The section was set out as amended by Laws 1993, ch. 316, § 2. *See* 12-1-8 NMSA 1978.

Actual ballots not included. — The county canvassing board is limited by 1-13-4 and 1-13-5 NMSA 1978 to examining only the "election returns." This does not include the actual ballots. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Copies of registration lists not included. — Under former Election Code, definition of "returns" did not include certified copies of registration lists filed with secretary of state. *Chavez v. Hockenhull*, 1934-NMSC-093, 39 N.M. 79, 39 P.2d 1027.

Poll lists and tally sheets were considered part of returns for purposes of former provisions dealing with correction of returns and county canvassing board certificates by order of state canvassing board. *Chavez v. Hockenhull*, 1934-NMSC-093, 39 N.M. 79, 39 P.2d 1027.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Injunction against canvassing of votes and declaring result of election, 1 A.L.R.2d 588.

1-1-9. Recompiled.

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; § 1-1-9 NMSA 1978, recompiled and amended as § 1-7-7 by Laws 2011, ch. 137, § 48.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 48 recompiled and amended 1-1-9 NMSA 1978 as 1-7-7 NMSA 1978, effective July 1, 2011.

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.

ANNOTATIONS

Cross references. — For nature of precinct, *see* 1-3-1 NMSA 1978.

The 2019 amendment, effective April 3, 2019, revised the definition of "precinct" as used in the Election Code; and after "county for election", added "and redistricting", and after "purposes", deleted the remainder of the section, which related to a polling place and precinct board for each precinct.

Polling place required. — If a precinct, or any portion thereof, is involved in any election whatsoever in this state, at least one polling place must be provided therein, and all of the voters in that precinct involved in the election must be permitted and required to vote in that polling place. 1954 Op. Att'y Gen. No. 54-6067 (opinion rendered under former law).

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.

ANNOTATIONS

Cross references. — For consolidation of precincts, *see* 1-3-4 and 1-3-5 NMSA 1978.

Temporary provisions. — Laws 2023, ch. 39, § 97 provided that each election day polling place established in the 2021 polling place resolution for each county or any election day polling place established by any subsequent amendment to such a resolution shall operate as a voter convenience center for all statewide elections in calendar year 2023.

The 2019 amendment, effective April 3, 2019, revised the definition of "consolidated precinct" as used in the Election Code; in Subsection A, after "means", added "a single precinct or", and after "polling place", added "for the purpose of establishing a voter convenience center"; and in

Subsection B, after "are used", added "to establish a voter convenience center", and after the next occurrence of "in", deleted "an" and added "a statewide".

The 2011 amendment, effective July 1, 2011, corrected the statutory reference to the method of consolidating precincts and clarifies the meaning of "precincts".

Laws 2011, ch. 131, § 1 and Laws 2011, ch. 137, § 7 enacted identical amendments to this section. The section was set out as amended by Laws 2011, ch. 137, § 7. *See* 12-1-8 NMSA 1978.

Constitutional requisite for consolidation. — Any statute providing for consolidation of precincts in any given election is void and unconstitutional unless the old precincts are abolished and a new precinct, including the area desired to be consolidated, is legally created. 1954 Op. Att'y Gen. No. 54-6067 (opinion rendered under former law).

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.

ANNOTATIONS

Cross references. — For appointment and qualification of board members, *see* 1-2-6 and 1-2-7 NMSA 1978.

For composition of board, *see* 1-2-12 NMSA 1978.

For school of instruction, *see* 1-2-17 NMSA 1978.

The 2019 amendment, effective April 3, 2019, changed the name of "precinct board" to "election board", and defined "election board" as used in the Election Code; in the section heading, deleted "precinct" and added "election"; after "Election Code", deleted "precinct" and added "election", after "board", deleted "or 'poll workers'", after "means the", deleted "appointed election officials" and added "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", and after "serving", deleted "a single precinct, a consolidated precinct, an absent voter precinct or an alternate voting location" and added "in a polling place or tallying ballots that have been cast in a statewide or special election".

The 2011 amendment, effective July 1, 2011, defined "poll workers" and added absent voter precincts and alternative voting locations to the list of voting places.

"Precinct board" does not include county clerk. — For the purposes of the Election Code, "precinct board" means the appointed election officials serving a single precinct or a

consolidated precinct and does not include the county clerk. *Gunaji v. Macias*, 2001-NMSC-028, 130 N.M. 734, 31 P.3d 1008.

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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, provided for posting the publication in the offices and on the web sites of the secretary of state and county clerks.

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.

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

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the definition of "posting" as used in the Election Code; in Subsection A, after "means posting", deleted "for not less than seven days prior to an election or to an action to be taken" and added "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"; and in Subsection B, in the introductory clause, after "satisfied by posting", added "on the website and in a public area", in Paragraph B(1), after "secretary of state", deleted "and on the secretary of state's web site", and in Paragraph B(2), after "county clerk", deleted "and on the county's web site, if the county maintains a web site".

The 2011 amendment, effective July 1, 2011, provided for posting in the offices and on the web sites of the secretary of state and county clerks.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Public place defined: what is "public place" within requirement as to posting of election notices, 90 A.L.R.2d 1210.

1-1-16. Registration officer.

As used in the Election Code, "registration officer" means the secretary of state, a county clerk, a clerk's authorized deputy, a clerk-authorized member of an election board 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; 2023, ch. 39, § 5.

ANNOTATIONS

Cross references. — For application for registration to be made to registration officer only, *see* 1-4-5 NMSA 1978.

For the National Voter Registration Act of 1993, *see* 40 U.S.C. Sections 1973gg et seq.

The 2023 amendment, effective June 16, 2023, revised the definition of "registration officer"; added "clerk-authorized" preceding "member", added "an election" preceding "board", and after "board", deleted "of registration".

The 2005 amendment, effective July 1, 2005, provided that "registration officer" included the secretary of state, the authorized deputy of a county clerk, and 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.

The 1995 amendment, effective April 6, 1995, inserted "or" following "deputy" and deleted "or a deputy registration officer" from the end.

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.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 270, § 81 made the act effective July 1, 2005.

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.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 270, § 81 made the act effective July 1, 2005.

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.

ANNOTATIONS

Cross references. — For false swearing, *see* 1-20-10 NMSA 1978.

For oath administered by legislative officers, *see* 2-1-2 NMSA 1978.

For oath administered by chairman of board of county commissioners, *see* 4-38-11 NMSA 1978.

For oath administered by county surveyor, *see* 4-42-3 NMSA 1978.

For oath administered by county clerks, district court clerks, probate court clerks, secretary of state, etc., *see* 14-13-3 NMSA 1978.

For oath administered by magistrates, *see* 35-3-1 NMSA 1978.

For oath administered by highway commission, *see* 67-3-10 NMSA 1978.

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.

ANNOTATIONS

Cross references. — For executing false statement of eligibility to vote as perjury, *see* 1-12-8 NMSA 1978.

For false swearing to secure assistance in voting as perjury, *see* 1-12-13 NMSA 1978.

1-1-19. Elections covered by code.

A. The Election Code applies to the following:

(1) general elections;

(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.

ANNOTATIONS

Cross references. — For primary elections, *see* 1-8-10 to 1-8-44 NMSA 1978.

For election of representative in congress, *see* 1-15-17 NMSA 1978.

For school district elections, *see* 1-22-1 NMSA 1978 et seq.

For municipal elections, *see* 3-8-1 NMSA 1978.

The 2018 amendment, effective July 1, 2018, added certain recall elections to the list of elections covered by the Election Code, and made conforming changes as a result of the enactment of the Local Election Act; in Subsection A, Paragraph A(3), deleted "statewide" preceding "special elections", in Paragraph A(4), after "in the office of", added "United States", after "representative", deleted "in congress; and", in Paragraph A(5), deleted "school district" and added "local", and after "elections", added "included in the Local Election Act; and", and added Paragraph A(6); and in Subsection B, deleted former Paragraph B(1) and paragraph designation "(2)", after "shall also apply to", added "special district officer or special district bond or other", and after "special district elections", added "not covered by the Local Election Act".

Application of the Election Code to public improvement district formation elections. — The Election Code's thirty-day limitation period for filing a complaint to contest an election applies to a public improvement district formation election under the Public Improvement District Act. *Glaser v. LeBus*, 2012-NMSC-012, 276 P.3d 959.

Where the petitioners filed a complaint to contest an election to form a public improvement district under the Public Improvement District Act thirteen months after the election, the action was barred by the thirty-day limitation for filing a complaint to contest an election under the Election Code. *Glaser v. LeBus*, 2012-NMSC-012, 276 P.3d 959.

Scope of section. — County official recall elections are not listed in this section. *Sparks v. Graves*, 2006-NMCA-030, 139 N.M. 143, 130 P.3d 204.

Write-in candidates in conservancy district elections. — Conservancy district board rule prohibiting write-in candidates for election to the board is invalid as contrary to the legislative intent expressed by this section, making the Election Code, Chapter 1, NMSA 1978, applicable to special district elections and to the constitutional mandate in N.M. Const., art. II, § 8 of "free and open" elections. *Gonzales v. Middle Rio Grande Conservancy Dist*., 1987-NMCA-125, 106 N.M. 426, 744 P.2d 554.

Public improvement district formation elections. — The formation election provisions of the Public Improvement District Act incorporate the election contest procedures of the Election Code. *Glaser v. LeBus*, 2012-NMCA-028, 274 P.3d 114.

Special school bond election is not "special election" or "municipal election" within statutes so that the word "election" should apply to all special and municipal elections and so that no person should vote in any special or municipal election unless registered, and voters otherwise qualified were entitled to vote in special school bond election, although not registered. *Johnston v. Board of Educ*., 1958-NMSC-141, 65 N.M. 147, 333 P.2d 1051.

Words "general election," used in act providing for method of changing name of a municipality, contemplated the biennial election for choosing state and county officials and national representatives in congress. *Benson v. Williams*, 1952-NMSC-074, 56 N.M. 560, 246 P.2d 1046.

Elections for board of directors of conservancy district. — A person cannot stand for election for the board of directors of the Middle Rio Grande Conservancy District if that person resides in a county in which part of the district is located but outside the district itself. 1988 Op. Att'y Gen. No. 88-34.

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.

ANNOTATIONS

Cross references. — For computation of time, *see* 12-2A-7 NMSA 1978.

The 2015 amendment, effective July 1, 2015, clarified the computation of time for purposes of deadlines when the deadline falls on a weekday; after "deadline", added "unless the deadline is expressed as a day of the week, in which case that day remains the actual deadline".

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.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, defined "unique identifier" as a randomly generated series of numbers, letters or symbols assigned to a voter, which shall not be the voter’s birth date.

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.

ANNOTATIONS

The 2008 amendment, effective May 14, 2008, deleted "voter identification card" in Paragraph (1) of Subsection A; deleted "unique identifier" in Subsection B; and added "registration address" in Subsection B.

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.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed "voter identification card" to "voter information" and provided that voter information may be issued by the secretary of state.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

Form of nominating petitions. — Where petitioner sought preprimary designation as a candidate for the office of United States representative from New Mexico's third congressional district at the 2020 republican party pre-primary convention, and where petitioner filed forty-nine nominating petitions containing over 700 signatures, along with her declaration of candidacy, and where the secretary of state invalidated the signatures on forty-four of petitioner's nominating petitions because those petitions omitted the heading "2020 Primary Nominating Petition", which the secretary of state deemed to be critical information required by law, the secretary of state's refusal to accept any nominating petition that did not have the heading at issue was improper because the substance of the invalidated nominating petitions conformed with the form prescribed by § 1-8-30 NMSA 1978 and therefore met the requirements of the Election Code. *Morper v. Toulouse Oliver*, 2020-NMSC-012.

1-1-27. Public records; disclosure-procedure.

A. Where the Election Code provides for disclosure or nondisclosure of public records relating to elections, the provisions of the Election Code shall apply, and the provisions of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] shall not be applicable to the disclosure or nondisclosure.

B. For any public records relating to elections where the Election Code does not provide for disclosure or nondisclosure of the public records, the provisions of the Inspection of Public Records Act shall apply.

History: 1978 Comp., § 1-1-27, enacted by Laws 2023, ch. 39, § 6.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

1-1-27.1. Public official home address confidentiality; rulemaking.

The secretary of state shall promulgate rules to allow an elected or appointed public official to designate as confidential the public official's home address as stated in election- and financial-related disclosures filed with the secretary of state or county clerks. A home address designated as confidential pursuant to this section is exempt from disclosure pursuant to an Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] request and shall not be published on a governmental website. Nothing in this section or the secretary of state's rule shall prohibit the disclosure of the public official's home address if relevant to a judicial proceeding.

History: Laws 2023, ch. 39, § 1.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

1-1-28. Real-time synchronization.

As used in the Election Code, "real-time synchronization" means that the internet connection at a voting location is able to synchronize voting data with the office of the county clerk in real time.

History: Laws 2023, ch. 39, § 2.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

ARTICLE 2
Election Officers and Boards

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. If a form is authorized or required by the Election Code and issued or approved by the secretary of state, only the form issued or approved by the secretary may be used.

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; 2023, ch. 39, § 9.

ANNOTATIONS

Cross references. — For violation of Election Code by officers, *see* 1-20-23 NMSA 1978.

For legislature prescribing time, manner and place of voting, *see* N.M. Const., art. VII, § 1.

For bureau of elections created in secretary of state's office, *see* 8-4-5 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided that if a form is authorized or required by the Election Code and issued or approved by the secretary of state, only the form issued or approved by the secretary may be used; in Subsection C, added the last sentence of the subsection.

The 2017 amendment, effective June 16, 2017, changed the deadline for election code rule changes; in Subsection B, Paragraph B(2), after "amended within the", deleted "fifty-six" and added "sixty-three".

The 2015 amendment, effective July 1, 2015, removed the power of the secretary of state to bring such actions as deemed necessary, through the attorney general or district attorney having jurisdiction, for the enforcement of the provisions of the Election Code; in the catchline, after "rules", deleted "enforcement powers"; in Subsection A, after "officer of the state", deleted "and" and designated the remainder of the subsection as Subsection B, and redesignated the succeeding subsection accordingly; in Subsection B, added "The secretary of state"; in Paragraph (1) of Subsection B, after "Election Code;" added "and"; and deleted Paragraph (3) of Subsection B.

The 2011 amendment, effective July 1, 2011, prohibited rules from being adopted or amended within the fifty-six days before a primary or general election.

No power to change mandatory provisions. — The secretary of state does not have the power to change mandatory provisions of the Election Code. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Form of nominating petitions. — Where petitioner sought preprimary designation as a candidate for the office of United States representative from New Mexico's third congressional district at the 2020 republican party pre-primary convention, and where petitioner filed forty-nine nominating petitions containing over 700 signatures, along with her declaration of candidacy, and where the secretary of state invalidated the signatures on forty-four of petitioner's nominating petitions because those petitions omitted the heading "2020 Primary Nominating Petition", which the secretary of state deemed to be critical information required by law, the secretary of state's refusal to accept any nominating petition that did not have the heading at issue was improper because the substance of the invalidated nominating petitions conformed with the form prescribed by § 1-8-30 NMSA 1978 and therefore met the requirements of the Election Code. *Morper v. Toulouse Oliver*, 2020-NMSC-012.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 89 et seq.

Arrest, immunity of election officers from criminal arrest, 1 A.L.R. 1160.

Effect of irregularity in performance of duties of election officials where all electors are given opportunity to express themselves freely, 133 A.L.R. 279.

Liability of public officers for breach of duty in respect of election or primary election laws, 153 A.L.R. 109.

29 C.J.S. Elections §§ 66 to 82.

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.

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.

ANNOTATIONS

Cross references. — For the enforcement powers of the secretary of state, *see* 1-2-1 NMSA 1978.

The 2018 amendment, effective July 1, 2018, made conforming changes as a result of the repeal of the Municipal Election Code; and in Subsection A, after "provisions of the Election Code", deleted "and the Municipal Election Code".

Temporary provisions. — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

The 2015 amendment, effective July 1, 2015, provided for the attorney general to assist the secretary of state in any action to enforce the provisions of the Election Code, and required the attorney general and district attorneys to assist the county clerks to ensure the proper conduct of an election, and required each district attorney to assign a lawyer to be the elections prosecutor; in the catchline, after "Attorney general", deleted "and district attorneys", after "secretary of state;", added "district attorneys required to assist secretary of state and county clerks"; in Subsection A, after "The attorney general", deleted "and the several district attorneys of the state" and added "shall", after the first occurrence of "secretary of state", deleted "shall", after "provide", deleted "to the secretary of state", and after "Election Code", added "and the Municipal Election Code"; in Subsection B, after the first occurrence of "secretary of state", added "or a county clerk", after the second occurrence of "secretary of state", deleted "on election day" and added "and county clerks", and after "proper conduct", deleted "the" and added "an"; and added Subsection C.

1-2-1.2. Secretary of state; service of process; actions related to elections.

For the purposes of any action filed in court challenging a procedure or provision of the Election Code, a petition or a candidacy or a post-election action initiated by any person, the secretary of state shall receive service of process, regardless of whether the secretary of state is a party to the action.

History: 1978 Comp., § 1-2-1.2, enacted by Laws 2023, ch. 39, § 10.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For secretary providing instruction on procedures whereby precinct board shall determine identity of last person in line at time polls close, *see* 1-12-26 NMSA 1978.

For secretary advising state chairman regarding method of nominating and electing presidential electors, *see* 1-15-1 NMSA 1978.

The 2011 amendment, effective July 1, 2011, eliminated the secretary of state's obligation to assist in the recruitment and training of poll workers and other election workers and in the certification of presiding judges of precinct boards.

The 2005 amendment, effective July 1, 2005, in Subsection I, provided that the secretary of state shall assist county clerks in the recruitment and training of poll workers and other election workers and in the certification of the presiding judges of the precinct boards and deleted the former provision that the secretary of state shall assist in the education and training of precinct boards.

The 1995 amendment, effective April 6, 1995, deleted "deputy" preceding "registration" in Subsection I.

Mandamus appropriate on issue of proper way to conduct primary election. — Where petitioners, twenty-seven county clerks, and respondent, the New Mexico secretary of state, submitted a stipulated petition for an emergency writ to compel the secretary of state to mail absentee ballots directly to all registered voters in lieu of conducting in-person voting for the June 2020 primary election, claiming that the primary election was scheduled amidst a global pandemic and national statewide public health emergency, that in-person voting could not be conducted safely under those circumstances, and that the requested relief was necessary to protect the health of election workers, voters, and the general public, and where intervenors argued that the Election Code, §§ 1-1-1 to 1-26-6 NMSA 1978, does not allow elections to be conducted entirely by mail and that it would violate separation of powers principles for a non-legislative branch of government to implement an alternative election procedure, mandamus was appropriate because the case involved a fundamental constitutional question of great public importance, involved a legal rather than a factual dispute, and required an expeditious resolution. *State ex rel. Riddle v. Toulouse Oliver*, 2021-NMSC-018.

The New Mexico secretary of state had a nondiscretionary duty to ensure that the 2020 primary election held during a pandemic was conducted in compliance with the Election Code and executive and public health orders. — Where petitioners, twenty-seven county clerks, and respondent, the New Mexico secretary of state, submitted a stipulated petition for an emergency writ to compel the secretary of state to mail absentee ballots directly to all registered voters in lieu of conducting in-person voting for the June 2020 primary election, claiming that the primary election was scheduled amidst a global pandemic and national statewide public health emergency, that in-person voting could not be conducted safely under those circumstances, and that the requested relief was necessary to protect the health of election workers, voters, and the general public, and where intervenors argued that the Election Code, §§ 1-1-1 to 1-26-6 NMSA 1978, does not allow elections to be conducted entirely by mail and that it would violate separation of powers principles for a non-legislative branch of government to implement an alternative election procedure, the New Mexico supreme court denied petitioners' and respondent's requested relief because the Election Code does not permit the secretary of state to mail absentee ballots directly to voters without a prior request from the voter, but the supreme court issued its writ of mandamus to compel the secretary of state to mail absentee ballot applications to every eligible voter in New Mexico, because the secretary of state had an affirmative duty to conduct elections in full compliance with the Election Code, which requires that all statewide primary and general elections offer both in-person voting and absentee voting options, and an affirmative duty to comply with all pandemic-related executive and public health orders, which required the secretary of state to take all lawful steps to minimize the spread of COVID-19. As the chief election officer of the state, respondent had a duty to manage the election in a manner that minimized the risk of spreading COVID-19 and in a manner that protected lives by helping voters stay home as much as possible. *State ex rel. Riddle v. Toulouse Oliver*, 2021-NMSC-018.

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.

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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For Title III of the federal Help America Vote Act of 2002, *see* 42 U.S.C. § 15481 et seq.

Effective dates. — Laws 2003, ch. 356, § 34 made Laws 2003, ch. 356, § 5 effective July 1, 2003.

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.

ANNOTATIONS

Cross references. — For secretary of state prescribing identification badges for precinct board members and challengers, *see* 1-2-18 and 1-2-24 NMSA 1978.

For secretary prescribing form of affidavit of registration under Voter Records System Act, *see* 1-5-19 NMSA 1978.

For the secretary prescribing the form of the application for absentee ballot, *see* 1-6-4 NMSA 1978.

For order on ballots of offices to be voted on, *see* 1-10-3 and 1-10-8 NMSA 1978.

For secretary prescribing the form of tally sheets and signature rosters, *see* 1-11-15 NMSA 1978.

For secretary prescribing form of signature roster certificates and precinct board member's oath, *see* 1-11-16 NMSA 1978.

For secretary prescribing form for proposed constitutional amendments, *see* 1-16-7 NMSA 1978.

Duty of secretary of state is limited to furnishing of supplies to the various counties according to the demand of each county. The secretary of state has no duty to register, or cause to be registered, any voter. This is the duty of the registration officers of the individual counties. The affidavits of registration as well as other voting supplies are paid for by the state. There is no provision under which the various county clerks or registration officials can obtain affidavits of registration from any other source. 1959 Op. Att'y Gen. No. 59-169 (opinion rendered under former law).

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.

ANNOTATIONS

Duplicate laws. — Laws 1993, ch. 314, § 3 and Laws 1993, ch. 316, § 3 enacted identical new sections of law. Both were compiled as 1-2-3.1 NMSA 1978.

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

A. The secretary of state shall provide:

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

(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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For the secretary of state providing instruction on procedure whereby precinct board shall determine identity of last person in line at time polls close, *see* 1-12-26 NMSA 1978.

The 2007 amendment, effective April 2, 2007, permitted the secretary of state to provide separate manuals for voting systems for each county or if a single training manual is in a looseleaf binder, sections of the voting system used in a given county may be inserted in the manual for that county.

The 2005 amendment, effective July 1, 2005, added Subsection A(2) to provide that the secretary of state shall provide a single training manual.

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.

ANNOTATIONS

Cross references. — For schools of instruction for precinct board members and others, *see* 1-2-17 NMSA 1978.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, changed the name of "precinct board" to "election board", and revised the provisions for appointing an election board by the county clerk; in the section heading, deleted "Precinct" and added "Election", and after "appointment", deleted "term"; in Subsection A, after "on or before", deleted "fifty-five" and added "forty-two", after "next preceding", deleted "the primary" and added "a statewide", and after "shall appoint the", deleted "precinct board for each precinct" and added the remainder of the subsection; and deleted former Subsections B and C and added a new Subsection B.

Cross references. — For definition of precinct board, *see* 1-1-13 NMSA 1978.

For attendance of board members at polling place, *see* 1-12-2 NMSA 1978.

The 1991 amendment, effective April 2, 1991, deleted "and a list of alternates for precinct board members of each precinct" at the end of Subsection A; deleted "and the alternates for members of the precinct board" following "board" in Subsection B; in Subsection C, deleted "representative district and" following "removal from the" and "from the list of alternates" following "qualified person"; and deleted former Subsection D, relating to filling vacancies in the office of alternate precinct board member.

Constitutional grounds for contest. — A candidate's claimed majority, adversely affected by conduct of election officials, afforded sufficient grounds for an election contest under N.M. Const., art. VII, § 5. *Seele v. Smith*, 1947-NMSC-068, 51 N.M. 484, 188 P.2d 337.

Erring officials not liable where foreseeability rule applicable. — Where secretary of state erroneously instructed precinct election officials to mail election returns to county clerk, as result of which they did not arrive within 24 hours as prescribed by law and were not counted, the foreseeability rule was applicable and erring officials were not liable to candidate who was denied emoluments of office until he had established his right thereto in an election contest. *Valdez v. Gonzales*, 1946-NMSC-044, 50 N.M. 281, 176 P.2d 173.

Election irregularities. — Elections conducted fairly and honestly will not be set aside for mere irregularity in the appointment of election officers or in the conduct of the election where no fraud or illegal voting is shown. *Carabajal v. Lucero*, 1916-NMSC-045, 22 N.M. 30, 158 P. 1088.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 89 et seq.

29 C.J.S. Elections §§ 55 to 63.

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

A. In order to qualify for appointment by the county clerk 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

(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 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, domestic partner, 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 or domestic partner 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 qualified residents to serve on an election board under the direct supervision of the presiding judge. A qualified resident appointed by the county clerk shall:

(1) meet the qualifications set forth in Paragraphs (2) through (4) of Subsection A of this section; and

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

E. A qualified resident 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; 2023, ch. 39, § 11.

ANNOTATIONS

Cross references. — For secretary of state prescribing form of precinct board member's oath, *see* 1-11-16 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised the qualifications for appointment or service on an election board, and removed a provision limiting the number of minors that a county clerk may appoint to serve on an election board; deleted "minor" and added "qualified resident" throughout the section; in Subsection A, after "In order to qualify", added "for appointment by the county clerk"; in Subsection B, after "duties of that position", deleted "and be certified for the position"; in Subsection C, Paragraphs C(2) and C(3), after "spouse", added "domestic partner"; and in Subsection D, after "may appoint", deleted "not more than two minors" and added "qualified residents", in Paragraph D(1), after "set forth in", added "Paragraphs (2) through (4) of", and after "of this section", deleted "except the minor need not be eligible to vote", and deleted former Paragraphs D(3) through D(6), which provided certain qualifications for minors to serve on an election board.

The 2019 amendment, effective April 3, 2019, replaced "precinct board" with "election board" throughout the section.

The 2011 amendment, effective July 1, 2011, required members of precinct boards to be voters of the county in which they serve; prohibited the appointment of a person who is married to a person related to a candidate to be voted for at the election or who is the parent of the spouse of

a candidate; and permitted the appointment of minors only to the precinct board in the county in which the minor's parents or legal guardian reside.

The 2010 amendment, effective May 19, 2010, in the catchline, added "qualification of minors"; in Subsection A(3), after "capacity to carry out", deleted "his" and added "a precinct board member's"; and added Subsections D and E.

The 2005 amendment, effective July 1, 2005, added Subsection B to provide that a person shall receive training and be certified before serving as a presiding judge of a precinct board.

Oath of precinct official. — Former Election Code provision, as amended, dealing with oath of precinct election officials merely required that each group of officials certify that they had and would discharge the duties of their respective offices faithfully and impartially. *Seele v. Smith*, 1947-NMSC-068, 51 N.M. 484, 188 P.2d 337.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 90.

29 C.J.S. Elections § 61.

1-2-8. Repealed.

History: 1953 Comp., § 3-2-9, enacted by Laws 1975, ch. 255, § 14; 1987, ch. 249, § 1; 1991, ch. 105, § 2; 1978 Comp., § 1-2-8, repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-2-8 NMSA 1978, as enacted by Laws 1975, ch. 255, § 14, relating to precinct board, lists from major political parties, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, replaced "precinct board" with "election board" throughout the section.

The 1991 amendment, effective April 2, 1991, in Subsection A, deleted "and alternates" following "precinct boards" in two places and deleted "and the number of alternates for each board" following "composing each board" near the end of the subsection.

1-2-10. Repealed.

History: 1953 Comp., § 3-2-9.2, enacted by Laws 1975, ch. 255, § 16; 2010, ch. 90, § 2; 1978 Comp., § 1-2-10, repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-2-10 NMSA 1978, as enacted by Laws 1975, ch. 255, § 16, relating to precinct board, appointment by county clerk, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, replaced "precinct board" with "election board" throughout the section.

The 2011 amendment, effective July 1, 2011, made stylistic changes.

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 election judges under the supervision of one or more presiding judges for absent voter precincts, recounts and special elections; provided that each team shall consist of two election judges and that each election judge on a team shall not belong to the same political party as any other election judge on the team at the time of the appointment; and provided further that an election judge shall not have changed party registration in the two years next preceding the judge's appointment in such manner that the judge's prior party registration would make the judge ineligible to serve on the assigned team.

D. The county clerk may appoint election clerks to an 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; 2023, ch. 39, § 12.

ANNOTATIONS

Cross references. — For appointment of precinct board, *see* 1-2-6 NMSA 1978.

For qualification of board members, *see* 1-2-7 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised the composition for teams of election judges that may be appointed by the county clerk, provided that a team of election judges shall be under the supervision of one or more presiding judges, and established qualifications for election judges appointed to a team; and in Subsection C, after "may appoint teams of", deleted "presiding judges and", after the first occurrence of "election judges", added "under the supervision of one or more presiding judges", after the next occurrence of "for", deleted "alternate voting locations", after "provided that each", added "team shall consist of two election judges and that each election judge on a", and after the next occurrence of "team", deleted "meets the requirements of Subsection B of this section" and added "shall not belong to the same political party as any other election judge on the team at the time of the appointment; and provided further that an election judge shall not have changed party registration in the two years next preceding the judge's appointment in such manner that the judge's prior party registration would make the judge ineligible to serve on the assigned team".

The 2019 amendment, effective April 3, 2019, changed the name of "precinct board" to "election board", and revised the required composition of an election board; replaced "precinct

board" with "election board" throughout the section; in the section heading, deleted "number for each precinct" and added "positions on each board"; in Subsection A, in the introductory clause, deleted "For primary, general and special federal elections, the precinct" and added "Each election", in Paragraph A(3), deleted "one" preceding "election", and after "election", deleted "clerk" and added "clerks who are appointed to assist the presiding judge and election judges"; in Subsection B, in the introductory clause, after "county clerk", deleted "in appointing precinct boards for primary, general and special federal elections", deleted paragraph designations "(1)" and "(2)", and after "election judges so that", deleted "at least one election judge shall not be of the same political party, if any, as the presiding judge; and" and added "not more than two of the three judges belong to the same political party at the time of their appointment; provided that:", and added Paragraphs B(1) and B(2); in Subsection C, added "The county clerk", after "election for judges for", added "alternate voting locations", after "voter precincts", deleted "recount precinct boards" and added "recounts", after the next occurrence of "and", deleted "alternate voting locations" and added "special elections", after "meets the requirements", deleted "pursuant to Paragraph (1) of this subsection" and added "of Subsection B of this section"; deleted former Subsection C; in Subsection D, after the subsection designation, deleted "If", after "county clerk", added "may appoint election clerks to the election board as necessary to assist the presiding judge and election judges if the county clerk", after "additional election", deleted "clerks" and added "board members", and after "are needed", deleted "the clerk may appoint such additional election clerks as the clerk deems necessary"; and in Subsection E, after "employees may be", deleted "appointed to assist a precinct board" and added "assigned by the county clerk to provide support to an election board or polling location".

The 2015 amendment, effective July 1, 2015, authorized the county clerk to appoint teams of presiding judges and election judges for recount precinct boards and authorized the county clerk to appoint county clerk employees to assist a precinct board; in Paragraph (2) of Subsection B, after "voter precincts", added "recount precinct boards"; and added Subsection E.

The 2011 amendment, effective July 1, 2011, provided the method for appointing presiding judges and election judges and eliminated the authority of election clerks to appoint additional election clerks.

The 2009 amendment, effective June 19, 2009, in Subsection B, deleted "When one voting machine is to be used in a precinct" and added "For primary, general and special federal elections"; in Subsection C, deleted "When two voting machine are to be used in a precinct" and added "For all other elections"; in Paragraph (2) of Subsection C, changed "two" to "one"; deleted "judges who shall be of different political parties" and added "judge"; in Paragraph (3) of Subsection C, changed "two" to "one"; deleted "clerks who shall be of different political parties" and added "clerk"; and deleted Subsection D, which provided for cases in which three voting machines are used.

The 1995 amendment, effective January 1, 1996, substituted "multipartisan" for "bipartisan" in the section heading; and in Subsection A, rewrote Paragraphs (2) and (3) and added Paragraph (4).

The 1993 amendment, made a minor stylistic change in Subsection E and substituted "certificate" for "affidavit" in Subsection F.

The 1991 amendment, effective April 2, 1991, deleted former Subsection E which read "Alternates for each precinct board shall be selected in the same proportion as precinct board

members"; redesignated former Subsections F and G as Subsections E and F; and made a minor stylistic change in Subsection E.

County commissioners as election judges unconstitutional. — Former absent voter's law which attempted to constitute board of county commissioners as judges of election was unconstitutional as contrary to N.M. Const., art. VII, § 1, which provides that not more than two judges of election shall belong to same political party at time of their appointment. *Thompson v. Scheier*, 1936-NMSC-026, 40 N.M. 199, 57 P.2d 293.

Mandamus not granted after election. — Mandamus to revoke the appointment of one judge of election from the republican party and make the appointment from the democratic party would not be granted after the election as the issue had become moot. *Board of Comm'rs v. Coors*, 1925-NMSC-023, 30 N.M. 482, 239 P. 524.

Election judges have no tenure. — Election judges created for a specific purpose and to perform certain public duties have no definite tenure of office. *Territory ex rel. Lester v. Suddith*, 1910-NMSC-068, 15 N.M. 728, 110 P. 1038.

Appointment of officials for each precinct. — The appointment of election judges and other election officials for each precinct and election district is contemplated under the primary law. 1944 Op. Att'y Gen. No. 44-4442.

1-2-13. Repealed.

History: 1953 Comp., § 3-2-12, enacted by Laws 1969, ch. 240, § 33; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-2-13 NMSA 1978, as enacted by Laws 1969, ch. 240, § 33, relating to primary elections and appointment of temporary additional clerks, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

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

(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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, changed the name of "precinct board" to "election board", removed a provision requiring the county clerk to post the list of names of appointees to an election board; replaced "precinct board" with "election board" throughout the section; and in Subsection A, Paragraph A(1), after "polling location", deleted "by precinct where applicable, post the list in a conspicuous and accessible place in the county clerk's office and keep it posted for five days", and after "participating in", deleted "the" and added "a partisan".

The 2011 amendment, effective July 1, 2011, required county clerks to certify a list of appointees for each polling location and to send a copy of the list upon request to the county chair and eliminated the requirement that county clerks send the precinct board a copy of instructions.

The 1991 amendment, effective April 2, 1991, in Subsection A, deleted "and alternates" following "boards" in the introductory phrase and "including alternates" following "names" near the beginning of Paragraph (1) and, in Subsection B, deleted "or as an alternate" following "precinct board" and substituted "appoint another qualified person" for "appoint the alternate member to fill the position in the case of a precinct board member, or another qualified person in the case of a vacancy in the position of alternate".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 105, § 6 repealed former 1-2-15 NMSA 1978, as enacted by Laws 1969, ch. 240, § 35, relating to precinct board, vacancy on election day, and enacted the above section, effective April 2, 1991.

The 2019 amendment, effective April 3, 2019, changed the name of "precinct board" to "election board", and revised the provisions related to vacancies on an election board; replaced "precinct board" with "election board" throughout the section; in the section heading, deleted

"vacancy on election day" and added "vacancies"; in Subsection A, after "member of the", deleted "precinct board is not present on election day at the precinct for which he or she" and added "election board fails to appear for the assigned duty to which the member", after "shall", added "immediately", and after "county clerk", deleted "who shall fill the vacancy"; deleted former Subsection B and added new Subsection B; and in Subsection C, after "No vacancy", deleted "on election day", after "open the polls", deleted "and conducting" and added "or otherwise perform their duties for", and after "assigned", deleted "precinct" and added "location".

1-2-16. Election board; messengers; compensation.

A. Members of an election board and messengers shall be compensated for their services at an hourly rate set by the secretary of state; provided that the rate in each county shall not be less than the federal minimum hourly wage rate nor more than four hundred dollars ($400) for an election day; and provided further that the rate may differentiate among the presiding judge, election judges, election clerks and messengers. Election board members and messengers shall be paid for training and may additionally be paid mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] each way over the usually traveled route when an election board member or messenger travels by private vehicle.

B. Members of an election board and messengers 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 and messengers 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; 2023, ch. 39, § 13.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, included messengers in an existing provision related to compensation for members of an election board, and revised compensation requirements; after "an election board", added "and messengers" throughout the section; in the section heading, added "messengers"; and in Subsection A, after "for their services at", added "an hourly rate set by the secretary of state; provided that", after "the rate", deleted "of" and added "in each county shall", after "not", added "be", after "nor more than", deleted "two hundred dollars ($200)" and added "four hundred dollars ($400)", and after "for an election day", added "and provided further that the rate may differentiate among the presiding judge, election judges, election clerks and messengers. Election board members and messengers shall be paid for training and may additionally be paid mileage as provided in the Per Diem and Mileage Act each way over the usually traveled route when an election board member or messenger travels by private vehicle.".

The 2019 amendment, effective April 3, 2019, changed the name of "precinct board" to "election board", and provided for alternate mobile voting locations; replaced "precinct board" with "election board" throughout the section; and in Subsection B, after "alternate voting", added "or alternate mobile voting".

The 2012 amendment, effective March 3, 2012, designated precinct board members as seasonal employees for purposes of eligibility for membership in the public employees retirement association and added Subsection D.

The 2011 amendment, effective July 1, 2011, increased the amount of compensation from one hundred fifty dollars to two hundred dollars and permitted board members assigned to alternate voting locations or absent voter precincts to be compensated at an hourly rate.

The 2001 amendment, effective June 15, 2001, changed the maximum compensation for board members from seven dollars ($7.00) per hour to one hundred fifty dollars ($150) for an election day.

The 1999 amendment, effective June 18, 1999, in Subsection A, substituted "the federal minimum hourly wage rate" for "fifty dollars ($50.00)" and "seven dollars ($7.00) per hour" for "ninety-five dollars ($95.00)".

The 1991 amendment, effective June 14, 1991, in Subsection A, substituted "nor more than ninety-five dollars ($95.00)" for "or more than the per diem rate allowed for members of the legislature".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 63.

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.

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.

ANNOTATIONS

Cross references. — For election seminars for county clerks, *see* 1-2-5 NMSA 1978.

The 2019 amendment, effective April 3, 2019, changed the name of "precinct board" to "election board", and revised the provisions related to schools of instruction for members of an election board; replaced "precinct board" with "election board" throughout the section; in Subsection B, after "shall be", deleted "as follows:" and added "held following an election board member's appointment and before the member performs assigned duties in an election", deleted former Paragraphs B(1) through B(3); in Subsection D, after "interested person, and", added "the county clerk shall post", after "notice of the school", deleted "shall be given to the public press"; and in Subsection E, after "one such school of instruction", deleted "in the calendar year of" and added "for", and after "appointed to serve", deleted "or" and added "and".

The 2011 amendment, effective July 1, 2011, removed the secretary of state as a participant in public schools of instruction and eliminated the secretary of state's responsibility to cover the details of the conduct of elections.

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that the secretary of state may supervise and the county clerk shall cause to be held a public school of instruction and deleted the former provision in Subsection A that a public school of instruction shall be held in any county with a population of one hundred thousand or more; deleted the former provision of Subsection B, which provided that the county clerk shall hold a public school of instruction for persons concerned with the conduct of elections in any county having a population of less that one hundred thousand; changed three to seven in Subsections B(1) through (3); and provided in Subsection C that all major details of elections shall be covered by the secretary of state of the secretary's authorized representative.

The 1991 amendment, effective April 2, 1991, deleted "alternates for precinct board members" following "precinct boards" in Subsections A and B and made a minor stylistic change in Subsection F.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 90.

29 C.J.S. Elections § 58.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, replaced "precinct board" with "election board" throughout the section, and after "board member's", added "name".

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 [election board] unless oral assistance to language minorities can otherwise be rendered by a member of the regular precinct board [election board]. The election translator shall be appointed by the county clerk in the same manner as other precinct board [election 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 [election board] members and shall meet the same qualifications as other precinct board [election board] members. In precincts where election translators are required, an election translator shall represent each political party as required by law for precinct boards [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For the 1975 amendments to the federal Voting Rights Act of 1965, *see* 42 U.S.C. §§ 1973a to 1973d, 1973h, 1973i, 1973k, 1973l, 1973aa, 1973aa-1a, 1973aa-2 to 1973aa-5, 1973bb and 1973bb-1.

1-2-20. Messengers; appointment.

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 mailed ballots from polling places or monitored secured containers and removable media storage devices from polling places and deliver each to locations designated by the county clerk.

B. Messengers shall take an oath of office before entering into service as a messenger. No person shall serve as a messenger unless the person would also meet the requirements to be a challenger, watcher or election observer pursuant to Paragraphs (1) through (4) and (6) of Subsection C of Section 1-2-22 NMSA 1978. 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; 2023, ch. 39, § 14.

ANNOTATIONS

Cross references. — For offenses by messengers, *see* 1-20-19 NMSA 1978.

The 2023 amendment, effective June 16, 2023, removed provisions related to compensation for messengers, and provided certain qualifications for service as a messenger; in the section heading, deleted "compensation", and added "appointment"; in Subsection A, after "authorized to collect", deleted "absentee" and added "mailed", and after "ballots", added "from polling places or monitored secured containers"; deleted former Subsection B, which provided for compensation or messengers, and redesignated former Subsection C as Subsection B; and in Subsection B, added "No person shall serve as a messenger unless the person would also meet the requirements to be a challenger, watcher or election observer pursuant to Paragraphs (1) through (4) and (6) of Subsection C of Section 1-2-22 NMSA 1978.".

The 2019 amendment, effective April 3, 2019, revised a provision related to compensating messengers hired to deliver ballot boxes and other materials pertaining to an election, removed the requirement that messengers be paid mileage, and required messengers to take an oath of office; in Subsection B, after the subsection designation added the first sentence, in the second sentence, after "Messengers", deleted "shall" and added "may", after "traveled route", added "when the messenger travels by private vehicle", and after "date of election", deleted "if funds are available for payment"; and added Subsection C.

The 2015 amendment, effective July 1, 2015, provided for messengers, appointed by the count clerk, to collect removable media storage devices from polling places and deliver them as instructed by the county clerk; in Subsection A, after "absentee ballots", added "and removable media storage devices", and after "places and deliver", deleted "those absentee ballots" and added "them".

The 2007 amendment, effective July 1, 2007, provided that messengers may collect absentee ballots from polling places and deliver them to locations designated by the county clerk.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 63.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the provision related to appointing challengers for each polling location in partisan elections; in Subsection A, after "represented on the ballot", added "in a partisan election"; in Subsection B, after "make such appointments", added "or if there is no county chair", after "political party may", added "in a partisan election" and after "each polling location", deleted "corresponding to the precinct" and added "in the county"; and deleted Subsection C.

The 2011 amendment, effective July 1, 2011, permitted each political party to appoint challengers for each polling location and if more than one challenger is appointed, required that they be listed in ranking order.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 91, 92.

29 C.J.S. Elections §§ 59, 60.

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

A. Before accepting an appointment or entering into service as a challenger or watcher for an election, a person shall attend a training session in advance of that election. The training shall be provided by the county clerk based on a uniform curriculum provided by the secretary of state. The county clerk shall offer the training between thirty-six and twenty-nine days before the election and at least once per week prior to the election through the Thursday before election day. At the end of the training session, each person in attendance shall sign a form provided by the secretary of state indicating an understanding of the permitted and prohibited activities by challengers and watchers. The county clerk shall provide a certificate to each person who completes the training in advance of an election and shall keep and maintain in the office of the county clerk a list of those voters who have completed the training in advance of each election. The list shall be available to be viewed in the office of the county clerk at any

time during the regular hours and days of business beginning with the first day following the first training for an election and concluding with the adjournment of the state or county canvass board for that election, whichever is later. The training shall be open to any interested person, and the county clerk shall post notice of each training at least four days before the training is to be held.

B. Challengers shall be voters of a precinct located in the county to which the challenger is appointed. Watchers shall be voters of a precinct in this state.

C. A person shall not be qualified for appointment or service as a challenger, watcher or election observer if the person:

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

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

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

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

(5) has accepted an appointment to serve as an election board member in the same election;

(6) has been removed from service as a challenger, watcher, election observer or county canvass observer in the current or immediately preceding election cycle by unanimous vote of the presiding judge and election judges of an election board for violating the permitted or prohibited activities of challengers, watchers, election observers or county canvass observers; provided that the election board detailed with reasonable specificity the conduct that led to the violation on a form prescribed by the secretary of state and the form is retained by the county clerk; or

(7) for challengers and watchers, has not completed the training and received a certificate from the county clerk pursuant to Subsection A of this section.

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; 2023, ch. 39, § 15.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, established mandatory training for challengers and watchers, revised the qualifications for service as challengers, watchers and election observers; in the section heading, added "training"; deleted "Challengers and watchers shall be voters of a precinct located in that county to which they are appointed. No."; added new Subsections A and B and redesignated former Subsections A through D as Paragraphs C(1) through C(4), respectively; and in Subsection C, Paragraphs C(2) and C(4), after "spouse", added "domestic partner", and added Paragraphs C(5) through C(7).

The 2011 amendment, effective July 1, 2011, provided criteria that disqualifies challengers, watchers and elections observers from appointment or service.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 90.

29 C.J.S. Elections § 58.

1-2-23. Challengers; permitted activities.

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

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For watchers and precinct board members making memoranda of actions or omissions, *see* 1-2-29 and 1-12-6 NMSA 1978.

For entries by precinct board, *see* 1-12-11 NMSA 1978.

For interposing challenges, *see* 1-12-20 NMSA 1978.

The 2011 amendment, effective July 1, 2011, permitted challengers to view an application to vote form before a voter receives a ballot, the signature roster or checklist of voters, and the voting machine to ensure that no votes have been registered.

The 2009 amendment, effective June 19, 2009, in Paragraph (1) of Subsection B, added "the challenger or alternate challenger"; and in Paragraph (3) of Subsection B, after "envelope and to see", deleted "that all ballot labels are in their proper places and".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 96, 97.

29 C.J.S. Elections § 55.

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

(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.

ANNOTATIONS

Cross references. — For disturbing polling place prohibited, *see* 1-20-20 NMSA 1978.

The 2019 amendment, effective April 3, 2019, changed the name of "precinct board" to "election board", permitted challengers, watchers and county canvass observers to be in the room in which a recount election board or an election board for a special election conducts its business, and changed which counties are entitled to have up to fifteen challengers, watchers or county canvass observers; replaced "precinct board" with "election board" throughout the section; in Subsection A, in Paragraph A(6), in the introductory clause, after "absent voter election board,", added "the recount election board or the election board for a special election", and in Subparagraph A(6)(c), after "more than", deleted "two" and added "one"; and in Subsection B, after "voter election board,", added "the recount election board or the election board for a special election", and after "conduct its business", added "in a partisan election".

The 2011 amendment, effective July 1, 2011, prohibited challengers, watchers and county canvass observers from handling the voter checklist, tallying ballots or the county canvass, from viewing voters' dates of birth and social security numbers, and from interfering with the election, the counting or tallying of ballots or the county canvass; permitted challengers, watchers and county canvass observers to be present when the voting is being conducted and when the absent voter precinct board conducts business, subject to certain specified restrictions; and permitted county clerks to allow additional challengers to be present when the absent voter precinct board conducts business.

1-2-26. Challengers; penalty.

The act of denying a challenger, who has presented a written appointment to the precinct board [election 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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 2011 amendment, effective July 1, 2011, permitted challengers to exercise their rights if they are not interfering with the orderly conduct of the election.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, limited the provisions in this section to statewide and special elections, and changed certain notice provisions for the appointment of watchers; in Subsection A, after "election-related organization may", added "in a statewide or special election", after "at least", deleted "ten" and added "seven", after "days prior to", added "serving as a watcher during early voting", and after "election date", added "or the ballot qualification period for mailed ballots in a statewide or a special election"; and in Subsection B, after "elected office", added "in a statewide election", after "at least", deleted "ten" and added "seven", after "days prior to", added "serving as a watcher during early voting", and after "election date", added "or the ballot qualification period for mailed ballots in a statewide or special election".

The 2011 amendment, effective July 1, 2011, eliminated the right of county chairmen to appoint watchers; eliminated the restriction on the number of watchers that may be appointed; required candidates to give the secretary of state notice at least ten days prior to the election of their appointment of watchers; and required the secretary of state to notify county clerks of the appointment of the watchers at least five days before the election.

The 2005 amendment, effective July 1, 2005, in Subsection B, changed the deadline for when the secretary of state shall notify the county clerk of the qualified appointees from ten to five days; and deleted "a nonpartisan" in the definition of "election-related organization".

The 2003 amendment, effective June 20, 2003, redesignated former Subsections B and C as present Subsection C and D and added present Subsection B.

Third party entitled to watcher in municipal election. — A third party ticket in a municipal election is entitled to have its own watchers provided it follows the outlined procedure. 1950 Op. Att'y Gen. No. 50-5290.

Candidate for office is not disqualified from serving as party watcher, and he may act as such during counting of the ballots. 1944 Op. Att'y Gen. No. 44-4609.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 91, 92.

29 C.J.S. Elections §§ 59, 60.

1-2-28. Repealed.

History: 1953 Comp., § 3-2-26, enacted by Laws 1969, ch. 240, § 47; 1987, ch. 249, § 5; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-2-28 NMSA 1978, as enacted by Laws 1969, ch. 240, § 47, relating to watchers, qualifications and restrictions, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

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

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

(1) be present at any time from the time the precinct board [election board] convenes at the polling place until the completion of the precinct board's [election 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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For challengers and precinct board members making memoranda of actions or omissions, *see* 1-2-23 and 1-12-6 NMSA 1978.

For prohibited activities of challengers, *see* 1-2-25 NMSA 1978.

For admission of watcher to polling place during reading of results of votes cast, *see* 1-12-38 NMSA 1978.

For disturbing the polling place, *see* 1-20-20 NMSA 1978.

The 2011 amendment, effective July 1, 2011, included election observers within the scope of this section and provided that a watcher appointed by candidates may be present only at polling locations where ballots are cast for at least one of the candidates appointing the election observer.

The 2003 amendment, effective June 20, 2003, redesignated former Paragraphs A(3) and A(4) as present Paragraphs A(4) and A(5) and added present Paragraph A(3).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 96, 97.

29 C.J.S. Elections § 55.

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 [election 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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 2011 amendment, effective July 1, 2011, included election observers within the scope of this section and permitted watchers and election observers to exercise their rights if they not interfering with the orderly conduct of the election.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, limited the provisions in this section to statewide and special elections, revised a notice provision, and revised the definition of "county canvass" as used in this section; in Subsection A, after "represented on", deleted "the" and added "partisan", after "election-related organization", added "in a statewide or special election", after "written request to the secretary of state", deleted "at least ten days prior to the election date", after "The secretary of state", added "immediately", and after "qualified appointees", deleted "at least five days before the election"; and in Subsection F, after "means the process", added "in the office of the county clerk".

The 2011 amendment, effective July 1, 2011, allowed county chairs to appoint county canvass observers; required the secretary of state to notify county clerks of appointments of county canvass observers at least five days before the election; disqualified law enforcement officers from serving as county canvass observers; and eliminated the restriction on the number of county canvass observers that may be admitted in the room where the canvass is being conducted.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, limited the provisions in this section to statewide and special elections, revised a notice provision, and revised the definition of "state canvass" as used in this section; in Subsection A, after "represented on", deleted "the" and added "a partisan", after "candidate for elected office", added "in a statewide election", after "election-related organization", added "in a statewide or special election", and after "written request to the secretary of state", deleted "at least ten days prior to the election date"; and in Subsection F, after "means the process", deleted "of examining" and added "in the office of the secretary of state or by such persons as the state canvassing board may appoint to examine".

1-2-33. Election-related organization; registration required.

An election-related organization shall register with the secretary of state at least seventy days before a regularly scheduled statewide election or forty-two days before a special election or an election to fill a vacancy in the United States house of representatives.

History: Laws 2023, ch. 39, § 7.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

1-2-34. Elections security program; general responsibilities.

A. The secretary of state shall maintain an elections security program within the bureau of elections. The program shall have the general responsibility of advising the secretary of state, county clerks and the voting system certification committee regarding voting system and cybersecurity requirements and ensuring their implementation and shall be the primary liaison working with federal oversight and intelligence agencies regarding elections-critical infrastructure.

B. The elections security program may conduct assessments, inspections and incident response in relation to networks and equipment deemed to be elections-critical infrastructure, both at the state and county levels.

C. The elections security program shall monitor the functionality of voting systems certified for use in the state to ensure compliance with the security requirements provided for in Chapter 1, Article 9 NMSA 1978 and administrative rules adopted pursuant to that article.

D. Documents and communications related to election security or that could put elections-critical infrastructure at risk are exempt from disclosure.

E. As used in this section, "elections-critical infrastructure" means those assets, systems and networks, whether physical or virtual, that are considered so vital to elections in this state that their infiltration, incapacitation or destruction would have a debilitating effect on the

administration of elections, the secrecy of the ballot and the efficient reporting of accurate results for any election conducted pursuant to the Election Code.

History: Laws 2023, ch. 39, § 8.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

ARTICLE 3
Precincts and Polling Places

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 to 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.

ANNOTATIONS

Cross references. — For definition of precinct, *see* 1-1-11 NMSA 1978.

For Absent Voter Precinct Act, *see* 1-6-19 NMSA 1978.

The 2019 amendment, effective April 3, 2019, revised the provisions related to precinct boundaries; in Subsection B, after "A precinct", deleted "for general or primary election purposes shall not have had more than eight" and added "shall be divided or its boundaries adjusted if the precinct has had more than", added new paragraph designation "(1)", in Paragraph B(1), after the paragraph designation, added "seven", after "hundred", added "fifty", after "votes cast", deleted "in person in" and added "by voters of", after "precinct at", deleted "the last preceding", and after "general election,", added "based on the two most recent general elections; or", and added new Paragraph B(2); added new Subsections C and D and redesignated former Subsection C as Subsection E; in Subsection E, after the subsection designation, deleted "Each county clerk" and added "The secretary of state", after "each precinct,", added "local government", and after "attached to each map,", deleted "Such" and added "along with a description of the changes from the previous map of the area. The"; and deleted former Subsection D, which related to the delivery of each map to the secretary of state.

The 1995 amendment, effective June 16, 1995, deleted "provided that on and after January 1, 1990, such precinct" at the end of the first sentence and inserted "all precinct" at the beginning of the second sentence in Subsection A.

The 1991 (1st S.S.) amendment, effective October 4, 1991, deleted a proviso from the end of Subsection B relating to precincts having more than 800 votes cast in the last general election; deleted former Subsection C, which provided "Precincts for election purposes shall be designated consecutively in the county by number"; redesignated former Subsections D and E as Subsections C and D; and added the second sentence in Subsection C.

Commissioner to locate polling places to accommodate voters. — This section specifically requires that the board of county commissioners so locate polling places that no polling place located within any precinct or election district may be required to accommodate more than 600 (now 800) voters. 1962 Op. Att'y Gen. No. 62-34.

Accommodation requirements not impliedly repealed. — Section 1-9-5 NMSA 1978 is determinative of the number of machines which the board of county commissioners [now county clerk] must acquire for use at any general or special election, but does not repeal by implication the provisions of this section limiting the number of voters which any polling place may be required to accommodate. 1962 Op. Att'y Gen. No. 62-34.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 7, 8, 9, 13, 16, 17, 21, 24, 25, 28 et seq., 51.

Voter's right to set aside apportionment because of discrimination, 2 A.L.R. 1332, 22 A.L.R. 1189.

Want of contiguity as invalidating apportionment, 2 A.L.R. 1337.

Inequality of population or lack of compactness of territory as invalidating apportionment of representatives, 2 A.L.R. 1337.

Power of judiciary to compel legislature to make apportionment of representatives of election districts as required by constitutional provision, 46 A.L.R. 964.

Detachment of land from municipality as invalid alteration of legislative districts, 117 A.L.R. 267.

Inequalities in population of election districts or voting units, other than districts or units for election to congress or state or territorial offices, as rendering apportionment violative of Federal Constitution - post-Baker cases, 143 A.L.R. Fed. 631.

29 C.J.S. Elections § 53.

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.

ANNOTATIONS

Temporary provisions. — Laws 2019, ch. 212, § 277 provided that polling places for the 2019 regular local election shall be the same polling places that were used in the 2018 general

election, unless the board of county commissioners amends the 2017 polling place resolution no later than July 1, 2019.

The 2019 amendment, effective April 3, 2019, revised the provisions related to precincts; deleted subsection designation "A." and redesignated former Paragraphs A(1) through A(3) as Subsections A through C, respectively, in the introductory clause, added "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 Subsection B, after "any precincts", deleted "for the next succeeding primary and general elections"; in Subsection C, after "precincts", deleted "for the next succeeding primary and general elections;" and added "pursuant to Section 1-6-22.1 NMSA 1978; and"; deleted former Paragraphs A(4) through A(6) and redesignated former Paragraph A(7) as Subsection D; in Subsection D, after "existing precincts", deleted "as necessary"; deleted Paragraph A(8); and deleted former Subsections B through D.

The 2018 amendment, effective July 1, 2018, provided additional duties for county commissioners regarding consolidating precincts, and changed the deadline by when the board of county commissioners must adopt its precinct resolution; in Subsection A, deleted "Not later than the first Monday in November" and added "In June or July", added new Paragraphs A(2) through A(5) and redesignated former Paragraphs A(2) and A(3) as Paragraphs A(6) and A(7), respectively, deleted Paragraph A(4) and redesignated former Paragraph A(5) as Paragraph A(8), and deleted former Paragraph A(6); added a new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively; and in Subsection D, after "next succeeding primary and general elections", added "and the regular local election following the next succeeding general election".

The 2011 amendment, effective July 1, 2011, authorized the consolidation of precincts.

The 2009 amendment, effective July 1, 2009, added Paragraph (5) of Subsection A; and in Subsection C, in the second sentence, after "first Monday in December of" deleted "that" and added "each odd-numbered"

Laws 2009, ch. 251, § 3 and Laws 2009, ch. 274, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2009, ch. 274, § 2. *See* 12-1-8 NMSA 1978.

The 1995 amendment, effective June 16, 1995, deleted "boards of county commissioners" from the end of Paragraph (4) in Subsection A and inserted "proposed" in Subsection B.

The 1991 (1st S.S.) amendment, effective October 4, 1991, in Subsection A, substituted "November" for "December" near the beginning and "that" for "which" in Paragraph (1), rewrote Paragraphs (2) and (3), and added Paragraph (4); in Subsection B, inserted "precincts or" and "and each new or changed precinct" and deleted "or reorganization of polling places" following "polling places"; rewrote Subsection C; and deleted former Subsection D, relating to a requirement beginning January 1, 1990, for precincts which have been consolidated pursuant to the provisions of the Precinct Boundary Adjustment Act.

Legislature did not intend using school buildings as polling place except upon approval. — The legislature did not intend that the institutional buildings of the New Mexico school for the visually handicapped be made available as voting sites for election purposes when the board of

regents of such institution determines otherwise. While it is not mandatory that the board of regents of such institution provide a building for use in connection with the holding of elections within the precinct or election district, it should be noted, however, that buildings of such institution or a portion of such institution may, upon approval of the board of regents of the institution, be made available as an election site whenever the board of regents may grant such permission. However, the using of such property of the New Mexico school for the visually handicapped as an election polling place would be contingent upon the approval by the board of regents of the institution and their determination that such use would not endanger the lives and safety of the students of the school. 1961 Op. Att'y Gen. No. 61-130.

Voting machines do not change requirement that polling place to accommodate voters. — Notwithstanding the fact that voting machines may accommodate more than 600 voters, enactment of Laws 1951, ch. 192 (now repealed) did not supersede or repeal 3-2-1, 1953 Comp., requiring county commissioners to divide precincts and voting districts so that no polling place will be required to accommodate more than 600 voters. 1952 Op. Att'y Gen. No. 52-5489.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 54.

1-3-3. Repealed.

History: 1953 Comp., § 3-3-3, enacted by Laws 1969, ch. 240, § 52; 1975, ch. 255, § 29; 2011, ch. 137, § 29; 1978 Comp., § 1-3-3, repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-3-3 NMSA 1978, as enacted by Laws 1969, ch. 240, § 52, relating to precincts, combined, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-3-3.1. Repealed.

ANNOTATIONS

Repeals. — Laws 2000, ch. 81, § 2 repealed 1-3-3.1 NMSA 1978, as enacted by Laws 2000, ch. 81, § 1, relating to the freezing of precinct boundaries, effective January 31, 2002. For provisions of former section, *see* the 2001 NMSA 1978 on *NMOneSource.com.*

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

A. The board of county commissioners shall establish voter convenience centers through the use of consolidated precincts for voting in a statewide election.

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 synchronization to access 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 if the precinct is designated as a mail ballot election precinct pursuant to Section 1-6-22.1 NMSA 1978.

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;

(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 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.

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; 2023, ch. 39, § 16.

ANNOTATIONS

Cross references. — For the federal Americans with Disabilities Act of 1990, *see* titles 29, 42 and 47 of the U.S. Code.

For consolidated precinct defined, *see* 1-1-12 NMSA 1978.

For contents of notice of election, *see* 1-11-2 NMSA 1978.

The 2023 amendment, effective June 16, 2023, required counties to establish voting convenience centers with real-time synchronization through consolidated precincts for statewide elections; in Subsection A, after "board of county commissioners", deleted "may permit voters in the county to cast ballots in statewide elections at" and added "shall establish", and after "consolidated precincts", deleted "authorized pursuant to this section" and added "for voting in a statewide election"; in Subsection B, Paragraph B(7), after "part of a consolidated precinct", deleted "provided that", after "if the precinct is", deleted "not", and after "Section 1-6-22.1 NMSA 1978", deleted "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"; in Subsection C, Paragraph C(6), after "print ballots", deleted "at a polling location"; and deleted former Subsection D, which related to prerequisites to consolidation of precincts.

Temporary provisions. — Laws 2023, ch. 39, § 97 provided that each election day polling place established in the 2021 polling place resolution for each county or any election day polling place established by any subsequent amendment to such a resolution shall operate as a voter convenience center for all statewide elections in calendar year 2023.

The 2019 amendment, effective April 3, 2019, revised the provisions related to consolidated precincts, and provided for voter convenience centers and mobile alternate voting locations; in the section heading, added "voter convenience centers"; in Subsection A, after the subsection designation, deleted "Precincts may be consolidated by", after "county commissioners", deleted "for the following elections:" and added "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", and deleted former Paragraphs A(1) and A(2); in Subsection B, in the introductory clause, after "consolidated", deleted "for a primary and general election or a regular local election" and added "and voter convenience centers are established for statewide elections", added new paragraph designation "(1)" and redesignated former Paragraphs B(1) and B(2) as Paragraphs B(2) and B(3), respectively, in Paragraph B(1), after "consolidated and the", deleted "designation of the polling place. In addition, when consolidating precincts" and added "location of the voter convenience center within that consolidated precinct", in Paragraph B(2), after "allowed to vote", deleted "in any consolidated precinct polling location" and added "on a regular ballot at any voter convenience center", in

Paragraph B(3), after "each", deleted "consolidated precinct in a primary or general election" and added "voter convenience center", deleted former Paragraph B(3), in Paragraph B(4), after "each", deleted "consolidated precinct" and added "voter convenience center", in Paragraph B(5), after "each", deleted "consolidated precinct polling location" and added "voter convenience center", in Paragraph B(6), after "alternate voting location", added "or mobile alternate voting locations", after "voting on election day", deleted "for any voter in the county" and added "voter convenience center", after "in addition to the", deleted "polling location" and added "voter convenience center", and after "consolidated precinct;", added "provided that the locations otherwise meet the requirements of a voter convenience center", in Paragraph B(7), after "may permit", deleted "rural" and added "certain", after "from operating as", added "a voter convenience center", after "real-time access to the", deleted "statewide", after "vote at any", deleted "consolidated precinct polling location" and added "voter convenience center", and after "also vote in the", deleted "rural precinct" and added "same election on any other ballot"; in Subsection C, replaced "consolidated precinct" with "voter convenience center" throughout the subsection; and in Subsection D, after "process and that the", deleted "consolidated precinct voting location" and added "voter convenience center", and added the last sentence.

The 2018 amendment, effective July 1, 2018, revised the list of elections where precincts may be consolidated by the board of county commissioners, removed from the governing body of a municipality and from local school boards for certain elections the authority to consolidate precincts, revised certain rules for consolidating precincts, and made minor technical changes; in Subsection A, Paragraph A(2), deleted "statewide special" and added "local", and deleted former Paragraphs A(3) and A(4), which related to countywide special elections and elections to fill vacancies in the office of the United States representative; deleted former Subsections B and C, which related to other entities' authority to consolidate precincts, and redesignated Subsection D as Subsection B; in Subsection B, in the introductory paragraph, after "general election" added "or a regular local election", and after "when consolidating precincts", deleted "for primary and general elections", added Paragraph B(3) and redesignated former Paragraphs D(3) through D(6) as Paragraphs B(4) through B(7); and deleted former Subsections E and F and redesignated Subsections G and H as Subsections C and D, respectively.

The 2015 amendment, effective July 1, 2015, required that each consolidated precinct polling location shall have sufficient check-in stations to accommodate voters throughout the day as provided in Section 1-9-5 NMSA 1978, and made other technical amendments; in Paragraph (4) of Subsection A, after "the office of", deleted "the", and after "United States", deleted "house of representatives" and added "representative"; in Paragraph (2) of Subsection D, after "consolidated precinct", added "in a primary or general election", and after "shall be", deleted "comprised" and added "composed"; in Subsection F, after the first occurrence of "vacancy in the office of", deleted "the", after "United States", deleted "house of representatives" and added "representative", after the second occurrence of "vacancy in the office of", deleted "the", and after "United States", deleted "house of representatives" and added "representative"; and added a new Paragraph (5) of Subsection G and redesignated the succeeding paragraphs accordingly.

The 2011 amendment, effective July 1, 2011, authorized governing bodies of counties, municipalities and local schools to consolidate precincts and provided requirements and procedures for consolidating precincts and voting in consolidated precincts.

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 to 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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided additional duties for the board of county commissioners relating to precincts; added a new Subsection A and subsection designation "B."; in Subsection B, after the subsection designation, added the first sentence, after "divided, abolished or", deleted "consolidated" and added "combined", after "boundaries", deleted "or polling place therein changed" and added "adjusted", and after "prior to", deleted "each" and added "statewide"; and added new Subsections C through E.

Court action required to change precinct boundaries. — Precinct boundaries cannot be changed less than four months before any election unless court action is initiated as prescribed in 1-3-6 NMSA 1978. 1960 Op. Att'y Gen. No. 60-67.

To create new precincts it is necessary to follow the procedure set forth in 4-38-21 NMSA 1978 [repealed]. 1946 Op. Att'y Gen. No. 46-4841.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 54.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, changed the period in which voters may petition the district court to protest boundaries fixed for a precinct or the location of the polling place designated by the board of county commissioners; and in Subsection A, after "precinct may", added "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", after "not less than", deleted "fifty-five" and added "one hundred twenty", and after "prior to any", deleted "general" and added "statewide".

The 1995 amendment, effective June 16, 1995, substituted "twenty-five" for "ten" in Subsection A.

Petition to be filed 45 days prior to general election regardless of primary date. — This statute is specific in referring to a general election. However, it is also specific in providing that the petition may be filed at any time not less than 45 days prior to the general election. In speaking of the time within which the commissioners may themselves order an abolishment or boundary change of a precinct or election district, the statute requires that action be taken not less than four months prior to any election. When speaking of the time within which a petition must be filed by dissatisfied electors, the statute uses the term general election. There obviously was an intention on the part of the legislature to make a distinction. The term "general election" has an obvious meaning. Therefore, the petition may be filed at any time not less than 45 days prior to the general election regardless of the time relation between the date the petition is filed and the date of the primary. 1962 Op. Att'y Gen. No. 62-43 (opinion rendered under former law).

1-3-6.1. Repealed.

History: Laws 2009, ch. 222, § 1; repealed by Laws 2009, ch. 222, § 4.

ANNOTATIONS

Repeals. — Laws 2009, ch. 222, § 4 repealed 1-3-6.1 NMSA 1978, as enacted by Laws 2009, ch. 222, § 1, relating to suspension of certain requirements, precinct boundary freeze and exceptions, effective January 31, 2012. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Cross references. — For the federal Voting Accessibility for the Elderly and Handicapped Act, *see* 42 U.S.C. § 1973 et seq.

Temporary provisions. — Laws 2019, ch. 212, § 277 provided that polling places for the 2019 regular local election shall be the same polling places that were used in the 2018 general election, unless the board of county commissioners amends the 2017 polling place resolution no later than July 1, 2019.

The 2019 amendment, effective April 3, 2019, changed the name of "precinct board" to "election board", and required the board of education of a school district to provide the use of school buildings on election day for statewide elections; in Subsection A, after "single", deleted "precinct" and added "election"; in Subsection E, added the last sentence of the subsection; and in Subsection F, completely rewrote the subsection.

The 2018 amendment, effective July 1, 2018, provided that in certain precincts may have a single polling place in local elections; in Subsection A, added "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 precinct board".

The 2011 amendment, effective July 1, 2011, in Subsection D, eliminated the authority of the board of county commissioners to designate buildings as polling places in consolidated precincts.

The 2009 amendment, effective July 1, 2009, in Subsection A, after "each precinct", added the remainder of the sentence; in Subsection B, after "each precinct", added "other than a mail ballot election precinct"; and in Subsection D, after "If", added "in a precinct that is not a mail ballot election precinct, there is".

The 1991 (1st S.S.) amendment, effective October 4, 1991, substituted "No less than" for "Except as provided in the Precinct Boundary Adjustment Act" at the beginning of Subsection A.

Polling place may be outside precinct. — Neither this section nor N.M. Const., art. VII, § 1 requires a voting machine or ballot box to be within the boundaries of a precinct as long as those casting their votes at the designated polling place are registered to vote in their precinct. *Martinez v. Harris*, 1984-NMSC-105, 102 N.M. 2, 690 P.2d 445.

Legislature did not intend using school buildings as polling places except upon approval. — The legislature did not intend that the institutional buildings of the New Mexico school for the visually handicapped be made available as voting sites for election purposes when the board of regents of such institution determines otherwise. While it is not mandatory that the board of regents of such institution provide a building for use in connection with the holding of elections within the precinct or election district, it should be noted, however, that buildings of such institution or a portion of such institution may, upon approval of the board of regents of the institution, be made available as an election site whenever the board of regents may grant such permission. However, the using of such property of the New Mexico school for the visually handicapped as an election polling place would be contingent upon the approval by the board of regents of the institution and their determination that such use would not endanger the lives and safety of the students of the school. 1961 Op. Att'y Gen. No. 61-130 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 322.

29 C.J.S. Elections §§ 76, 78.

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.

ANNOTATIONS

The 1991 (1st S.S.) amendment, effective October 4, 1991, inserted "their own action or upon" and substituted "ten percent of the registered voters" for "fifty qualified electors".

1-3-7.2. Repealed.

History: 1978 Comp., § 1-3-7.2, enacted by Laws 2021, ch. 107, § 1; repealed by Laws 2023, ch. 84, § 24.

ANNOTATIONS

Repeals. — Laws 2023, ch. 84, § 24 repealed 1-3-7.2 NMSA 1978, as enacted by Laws 2021, ch. 107, § 1, relating to polling places on Native American lands, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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 chair of each of the major political parties; and

B. publish once the resolution in a newspaper as provided in the Election Code.

History: 1953 Comp., § 3-3-9, enacted by Laws 1969, ch. 240, § 58; 1975, ch. 255, § 32; 2021, ch. 107, § 2; 2023, ch. 84, § 1.

ANNOTATIONS

Cross references. — For definition of publication, *see* 1-1-14 NMSA 1978.

For duty of board of county commissioners to notify county clerk of any precinct changes, *see* 1-4-19 NMSA 1978.

The 2023 amendment, effective July 1, 2023, removed a provision prohibiting the elimination or consolidation with other polling locations a polling place located on Indian land without the written agreement of the Indian nation, tribe or pueblo on which the polling place is located; redesignated former Paragraphs A(1) and A(2) as Subsections A and B, respectively; and deleted former Subsection B.

The 2021 amendment, effective April 6, 2021, required, prior to the elimination of a polling place located on Indian land, or the consolidation of such a polling place with other polling locations, that a written agreement be obtained from the Indian nation, tribe or pueblo; added new subsection designation "A" and redesignated former Subsections A and B as Paragraphs A(1) and A(2), respectively; and added a new Subsection B.

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.

ANNOTATIONS

The 1991 (1st S.S.) amendment, effective October 4, 1991, substituted "Chapter 1, Article 3 NMSA 1978" for "Sections 1-3-1 through 1-3-8 NMSA 1978".

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.

ANNOTATIONS

The 1991 (1st S.S.) amendment, effective October 4, 1991, substituted "Sections 1-3-10 through 1-3-14 NMSA 1978" for "This act".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 7, 8, 37.

29 C.J.S. Elections §§ 53, 54.

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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, deleted "New Mexico" preceding "election" and deleted "1990" preceding "federal decennial census".

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 census bureau.

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 [1-3-10 to 1-3-14 NMSA 1978] 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 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.

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; 2020, ch. 9, § 1; 2021, ch. 79, § 11.

ANNOTATIONS

Repeals and reenactments. — Laws 1984 (1st S.S.), ch. 3, § 4, repealed former 1-3-12 NMSA 1978, as enacted by Laws 1983, ch. 223, § 3, and enacted a new 1-3-12 NMSA 1978.

Laws 2020, ch. 9, § 1, effective January 1, 2023, removed the requirement that the state legislature redistrict public regulation commission districts upon receiving the results of the federal decennial census, and made certain technical amendments; and in Subsection E, after "chamber of the legislature", deleted "public regulation commission districts".

Laws 2020, ch. 9, § 1 amended 1-3-12 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against.

The 2021 amendment, effective July 1, 2021, amended the existing provision that requires the secretary of state to prepare a standard base map for urban and nonurban areas of the county,

to include in the standard base map Indian nation, tribe and pueblo boundaries and subdivisions or chapter house boundaries, and removed redistricting provisions; in Subsection B, added a new Paragraph B(6) and redesignated former Paragraphs B(6) and B(7) as Paragraphs B(7) and B(8), respectively; and deleted former Subsections D through F.

The 2019 amendment, effective April 3, 2019, revised provisions related to redistricting; in Subsection A, in the introductory clause, after "every precinct", added "shall comply with the requirements of Section 1-3-1 NMSA 1978, and if necessary its", in Paragraph A(2), after "PL 94-171", deleted "2010" and added "2020", and in Paragraph A(3), added "United States" preceding "bureau of the census"; in Subsection C, in the introductory clause, after "secretary of state", added "and upon the recommendation of the county clerk", in Paragraph C(1), after "school district and other", added "special district or", and after "electronic copy", deleted "in a format approved by the secretary of state or four copies of the precinct maps"; in Subsection D, after "each county for the", deleted "2011" and added "2021", after "For the", deleted "2012" and added "2022", and after "subsequent", deleted "primary and general" and added "statewide"; added a new Subsection E and redesignated former Subsection E as Subsection F; in Subsection F, added "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"; and deleted former Subsection F, which required precincts to be designated solely by whole numbers.

The 2009 amendment, effective April 7, 2009, in Subsection A, after "to coincide with a", deleted "numbered or named street or road or with a visible terrain" and after "feature", added "or a boundary"; in Paragraph (2) of Subsection A, changed "2000" to "2010"; in Subsection B, after "standard base map for", added "urban and"; added Paragraphs (5) and (6) of Subsection B; in Paragraph (1) of Subsection C, after "adjust all", deleted "urban"; after "named street boundaries", deleted "(2) adjust all nonurban precinct boundaries to coincide with" and added "or"; after the phrase "provided that", deleted "in order to make an adjustment, two or more existing precincts may be consolidated without consolidating existing polling places; and provided further that"; after "municipal", added "school district and other political" and after "precinct boundaries", added "whenever possible"; in Paragraph (2) of Subsection C, after "shall send", added "an electronic copy in a format approved by the secretary of state or"; in Subsection D, in the first sentence, after "each county for the", changed "2001" to "2011"; and in the last sentence, after "For the", changed "2002" to "2012"; and in Subsection E, at the beginning of the sentence, deleted "county commission" and added "local public body, when creating or redrawing districts"; and after "any elected office", added the remainder of the sentence.

The 2005 amendment, effective July 1, 2005, added Subsection E to provide that a county commission shall not split a precinct into two or more districts; and added Subsection F to provide that precincts shall be designated solely by whole numbers.

The 1997 amendment, effective June 20, 1997, in Subsection A, in the introductory language, added "Before each federal decennial census," at the beginning and inserted "be adjusted to", and, in Paragraph (2), added "a designated census" and inserted "federal" and "2000"; in Subsection B, deleted the former Paragraph (1) designation, redesignated former Subparagraphs (1)(a) to (1)(e) as Paragraphs (1) to (5), and made a minor stylistic change; redesignated former Paragraph B(2) as Subsection C; in Subsection C, redesignated former Subparagraphs B(2)(a) to B(2)(c) as Paragraphs C(1) to C(3) and made minor stylistic changes; redesignated former Subsection C as Subsection D; and, in Subsection D, deleted "Subsection

B of" following "provisions of" near the beginning and inserted "for the 2001 redistricting. For the 2002 and subsequent primary and general elections" near the end.

The 1995 amendment, effective June 16, 1995, deleted "1990" preceding "census block maps" in Paragraph (2) of Subsection A, substituted "Prior to commencement of the federal decennial census" for "As soon as feasible, but no later than April 1, 1985" in Subsection B, substituted "practical" for "practicable" in Paragraph 1 in Subsection B, added Subparagraph B(1)(c), redesignated former Subparagraphs B(1)(c) and (d) as Subparagraphs B(1)(d) and (e), substituted "arroyos, powerlines, pipelines and ridgelines and other acceptable census block boundaries" for "and mountain ranges" in Subparagraph B(1)(e), deleted "as of August 16, 1991" following "approved" and deleted "for the 1991 redistricting of legislative, congressional and state board of education districts. Thereafter and for the 1992 and subsequent primary and general elections" following "county" in the first sentence in Subsection C.

The 1991 (1st S.S.) amendment, effective October 4, 1991, deleted "consolidation of certain precincts permitted" from the section heading; added Subsections A and C; rewrote Subsection B; and deleted former Subsections C and D, relating to precincts shown upon the standard base maps as the official precincts for each county and changes in precinct boundaries made subsequent to 1990, respectively.

1-3-13. Adjusting precinct boundaries; time lines for legislative and local public body redistricting; release of nominating petitions.

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 ninety days following receipt of the results of the federal decennial census, 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.

C. 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 redistricting.

D. Following completion of the procedures outlined in Subsection B of this section and in the same calendar year in which the state receives the results of a federal decennial census:

(1) the legislature shall redistrict federal congressional districts, each house of the legislature and any other state districts requiring redistricting; and

(2) each local public body subject to districting and whose governing body members are not elected at the regular local election shall create or redraw districts for the local public body.

E. In the calendar year following the receipt of the results of a federal decennial census, each local public body subject to districting and whose governing body members are elected at the regular local election shall create or redraw districts for the local public body.

F. A local public body shall establish districts in which the number of persons in each district, as shown in the most recent federal decennial census, is as nearly equal in population as practical, but within five percent of the mean. A local public body subject to districting 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. Each local public body subject to districting shall create or redraw districts pursuant to the time lines of this section.

G. During years in which districts are redrawn pursuant to the provisions of this section, nominating petitions shall not be made available for relevant offices until completion of the procedures specified in Subsection D or E of this section, as applicable.

H. As used in this section:

(1) "local public body subject to districting" means any political subdivision of the state with elected governing body members who:

(a) must reside in designated areas of the political subdivision to qualify for election; or

(b) are elected by a geographically defined subset of voters within the boundaries of the political subdivision; and

(2) "mean" means the total number of persons residing within a political subdivision of the state divided by the number of districts from which governing body members are elected.

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; 2021, ch. 79, § 12.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, provided new redistricting provisions, set time lines for legislative and local public body redistricting, provided that during years in which districts are redrawn, nominating petitions shall not be made available for relevant offices until completion of the procedures set forth in this section, and defined "local public body subject to

redistricting" and "mean", as used in this section; in the section heading, deleted "Secretary of state powers and duties" and added "Adjusting precinct boundaries; time lines for legislative and local public body redistricting; release of nominating petitions"; in Subsection B, after "no later than", deleted "June 30 of the same year" and added "ninety days following receipt of the results of the federal decennial census"; and added Subsections C through H.

The 2019 amendment, effective April 3, 2019, provided additional duties for the secretary of state prior to and following receipt of the federal decennial census; in Subsection A, after the subsection designation, added "Prior to commencement of the federal decennial census", after "Precinct Boundary Adjustment Act", added "and Section 1-3-1 NMSA 1978", after "Section 1-3-12 NMSA 1978", added "or Section 1-3-1 NMSA 1978", and after "required adjustments", deleted "and resubmit one copy of the corrected county precinct map"; and in Subsection B, after the subsection designation, deleted "Prior to January 1, 2020" and added "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", after "meet the legal", deleted "and constitutional", after "redistricting", added "pursuant to Sections 1-3-1 and 1-3-12 NMSA 1978", after "secretary of state shall", added "adjust the boundaries of the precincts only to the extent necessary to achieve compliance with the requirements of those sections and", and after "adjustments", deleted the remainder of the subsection, which related to approval of precincts for prior elections years.

The 2009 amendment, effective April 7, 2009, in Subsection B, in the first sentence, changed "January 1, 2002" to "January 1, 2012", and after "constitutional requirements of", deleted "legislative reapportionment" and added "redistricting"; and in the last sentence, changed "2002" to "2012".

The 1997 amendment, effective on June 20, 1997, in the second sentence of Subsection A, inserted "with the precinct boundary criteria set forth in Subsection A of Section 1-13-12 NMSA 1978", deleted "of noncompliance" following "statement", and substituted "does not comply" for "is in default"; and, in Subsection B, substituted "2002" for "1992" in two places.

The 1991 (1st S.S.) amendment, effective October 4, 1991, substituted "one copy" for "four copies" in the last sentence in Subsection A; deleted former Subsection B, relating to duty of secretary of state to send county's new precinct map to bureau of census"; and redesignated former Subsection C as Subsection B.

The 1991 amendment, effective April 4, 1991, substituted "Section 1-3-12 NMSA 1978" for "Section 3 of the Precinct Boundary Adjustment Act" and "the Precinct Boundary Adjustment Act" for "that Act" in the first sentence in Subsection A and added Subsection C.

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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, deleted "Sections 3 and 4 of" preceding "the Precinct Boundary Adjustment Act".

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

ANNOTATIONS

Repeals. — Laws 1984 (1st S.S.), ch. 3, § 8, repealed 1-3-15 and 1-3-16 NMSA 1978, as enacted by Laws 1983, ch. 223, §§ 6 and 7, relating to implementation of and appropriations for the Precinct Boundary Adjustment Act, effective March 28, 1984.

Laws 1991 (1st S.S.), ch. 6, § 10 repealed 1-3-17 NMSA 1978, as enacted by Laws 1983, ch. 223, § 8, relating to use of adjusted precinct boundaries for reapportionment purposes, effective October 4, 1991. For former provisions, *see* the 1990 NMSA 1978 on *NMOneSource.com.*.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, removed certain restrictions related to polling places; deleted Subsections A and B and redesignated former Subsections C through E as Subsections A through C; in Subsection A, after "appropriate signs,", added "displayed", and after "clearly", deleted "displayed at a height no less than six feet from the floor"; and in Subsection B, after "intended for use as", deleted "a" and added "an alternative voting location, a mobile alternate voting location or an election day", and after "discomfort of the voter.",

deleted "In the event the building is found to meet these standards, the county clerk shall certify for the record its acceptability." and added the remainder of the subsection.

The 2011 amendment, effective July 1, 2011, exempted precincts consolidated pursuant to Section 1-3-4 NMSA 1978 from the restrictions in Subsection A.

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.

ANNOTATIONS

Compiler's notes. — Laws 2015, ch. 145, § 12, effective July 1, 2015, enacted a new section that is identical to Laws 2013, ch. 189, § 1 (compiled as 1-3-19 NMSA 1978), and was therefore not compiled.

The 2019 amendment, effective April 3, 2019, changed "precinct board" to "election board", and made certain clarifying amendments; in Subsection A, after "polling place in a", deleted "primary or general" and added "statewide"; in Subsection B, in the introductory clause, after "Each", added "election-day"; and in Subsection C, Paragraph C(1), after "separate", deleted "precinct" and added "election".

1-3-20. Secretary of state; geographic information system data.

A. Beginning January 1, 2022, the secretary of state shall collect and make publicly available on the secretary of state's website the geographic information system data for each voting district in the state.

B. The geographic information system data shall be accessible free of charge and provided in shapefile format or any comparable open source or convertible geographic information system file format.

C. In the event of a change in voting district boundaries or precinct boundary adjustments, the secretary of state shall promptly update the geographic information system data accordingly.

D. For the purposes of this section, "voting district" means a political subdivision or boundary located in a geographical area that is represented by an elected office.

History: Laws 2021, ch. 79, § 1.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 79, § 13 made Laws 2021, ch. 79, § 1 effective July 1, 2021.

ARTICLE 3A
Redistricting

1-3A-1. Short title.

Sections 2 through 10 [1-3A-1 to 1-3A-10 NMSA 1978] of this act may be cited as the "Redistricting Act".

History: Laws 2021, ch. 79, § 2.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 79, § 13 made Laws 2021, ch. 79, § 2 effective July 1, 2021.

1-3A-2. Definitions.

As used in the Redistricting Act:

A. "committee" means the citizen redistricting committee;

B. "community of interest" means a contiguous population that shares common economic, social or cultural interests;

C. "district plan" means an entire plan of single-member districts for electing members to the United States house of representatives, the state house of representatives, the state senate or other state offices requiring redistricting;

D. "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];

E. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code [Chapter 1 NMSA 1978]; and

F. "public official" means a person elected to an office of the executive or legislative branch of the state.

History: Laws 2021, ch. 79, § 3.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 79, § 13 made Laws 2021, ch. 79, § 3 effective July 1, 2021.

1-3A-3. Citizen redistricting committee created; membership; terms.

A. The "citizen redistricting committee" is created.

B. The committee is composed of seven members, appointed, with due regard to the cultural and geographic diversity of the state, as follows:

(1) one member appointed by the speaker of the house of representatives;

(2) one member appointed by the minority floor leader of the house of representatives;

(3) one member appointed by the president pro tempore of the senate;

(4) one member appointed by the minority floor leader of the senate;

(5) two members appointed by the state ethics commission, who shall not be members of the largest or second largest political parties in the state; and

(6) one member appointed by the state ethics commission, who shall be a retired justice of the New Mexico supreme court or a retired judge of the New Mexico court of appeals, and who shall chair the committee.

C. No more than three members of the committee shall be members of the same political party. A member of the committee shall not have changed party registration in the two years preceding the member's appointment in such a manner that the member's prior party registration would cause one political party to have more than three members. A member of the committee shall not continue to serve on the committee if the member changes party registration after the date of appointment in such a manner as to cause one political party to have more than three members.

D. Members shall be appointed not later than July 1, 2021, and August 1 of each year ending in the number zero thereafter, and shall serve until a district plan for each of New

Mexico's congressional districts, the state house of representatives, the state senate and other state offices requiring redistricting is submitted to the legislature.

E. When any member of the committee dies, resigns or no longer has the qualifications required for the member's original appointment, the member's position on the committee becomes vacant and the chair shall notify the original appointing authority of the vacant position. The vacancy shall be filled by appointment by the original appointing authority no later than fifteen days following notification of the vacancy.

F. The committee shall meet as necessary to carry out its duties pursuant to the Redistricting Act.

G. Members are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 2021, ch. 79, § 4.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 79, § 13 made Laws 2021, ch. 79, § 4 effective July 1, 2021.

1-3A-4. Members; qualifications; limitations.

A. To qualify for appointment to the committee, a person shall:

(1) be a qualified elector of New Mexico and a voter; and

(2) not be, or in the two years prior to appointment have been, in New Mexico, any of the following:

(a) a public official;

(b) a candidate for public office;

(c) a lobbyist;

(d) an office holder in a political party at the state or federal level;

(e) a relative in the first degree of consanguinity of a member of congress, the state house of representatives, the state senate or the public education commission;

(f) an employee of congress, the legislative branch of government or other state office required to be redistricted by the committee; or

(g) an employee of the executive branch of government.

B. Before entering upon the duties of the office of member, a member shall review the Redistricting Act and take the oath of office as provided by state law.

History: Laws 2021, ch. 79, § 5.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 79, § 13 made Laws 2021, ch. 79, § 5 effective July 1, 2021.

1-3A-5. Committee; duties.

A. Beginning July 1, 2021, and every August 1 of each year ending in the number zero thereafter, the committee shall:

(1) no later than October 30, 2021, or as soon thereafter as practicable, and September 1 of each year ending in the number one thereafter, adopt three district plans each for:

(a) New Mexico's congressional districts;

(b) the state house of representatives;

(c) the state senate; and

(d) the other state offices required to be redistricted;

(2) hold no fewer than six public meetings that allow for virtual participation before publishing the district plans for public comment; provided that in-person meetings shall not be required if such meetings would violate a public health order;

(3) hold no fewer than six public meetings that allow for virtual participation for the purpose of adopting district plans; provided that in-person meetings shall not be required if such meetings would violate a public health order;

(4) conduct all meetings pursuant to the requirements of the Open Meetings Act; and

(5) compile, index, maintain and provide public access to the committee's record for each district plan it adopts.

B. Beginning no later than July 1, 2021, and August 1 of each year ending in the number zero thereafter, the committee may:

(1) develop and adopt procedures for public hearings; and

(2) hire staff and enter into contracts and any interagency agreements, including agreements to provide for professional technical or legal services, as necessary to accomplish the duties set forth in this section.

History: Laws 2021, ch. 79, § 6.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 79, § 13 made Laws 2021, ch. 79, § 6 effective July 1, 2021.

1-3A-6. Committee meetings before proposing district plans.

A. Before the committee issues proposed district plans for public comment, the committee shall hold no fewer than six public meetings at which the committee shall receive testimony, documents and information regarding the identification of communities of interest and other testimony, documents and information regarding the creation of district plans. The committee shall provide the public with notice not later than thirty days before these meetings and the notice shall include information about how the public may participate and submit testimony, documents and information. The committee shall hold meetings in various regions across the state, including in central New Mexico and in each of the four geographic quadrants of the state, with at least one meeting on tribal lands.

B. The committee shall compile, index, maintain and provide public access to all testimony, documents and information received in the meetings conducted before issuing proposed district plans for public comment.

C. The proposed district plans that the committee issues for public comment shall be based, in part, on the testimony, documents and information received.

History: Laws 2021, ch. 79, § 7.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 79, § 13 made Laws 2021, ch. 79, § 7 effective July 1, 2021.

1-3A-7. District plans; requirements and prohibitions.

A. The committee shall develop district plans in accordance with the following provisions:

(1) congressional districts shall be as equal in population as practicable;

(2) state districts shall be substantially equal in population; no plans for state office will be considered that have a total deviation of more than ten percent;

(3) the committee shall use the most recent federal decennial census data generated by the United States census bureau and may use other reliable sources of demographic data as determined by majority vote of the committee;

(4) proposed redistricting plans to be considered by the legislature shall not be composed of districts that split precincts;

(5) plans must comport with the provisions of the federal Voting Rights Act of 1965, as amended, and federal constitutional standards; plans that dilute a protected minority's voting strength are unacceptable; race may be considered in developing redistricting plans but shall not be the predominant consideration; traditional race-neutral districting principles shall not be subordinated to racial considerations;

(6) all redistricting plans shall use only single-member districts;

(7) districts shall be drawn consistent with traditional districting principles;

(8) districts shall be composed of contiguous precincts and shall be reasonably compact;

(9) to the extent feasible, districts shall be drawn in an attempt to preserve communities of interest and shall take into consideration political and geographic boundaries, including the boundaries of Indian nations, tribes and pueblos; and

(10) in addition, and to the extent feasible, the committee may seek to preserve the core of existing districts.

B. The committee may incorporate suggested changes to its proposed district plans in accordance with public comments and testimony it receives, but shall not subordinate the requirements of Paragraphs (1) through (9) of Subsection A of this section in doing so.

C. When proposing or adopting district plans, the committee shall not:

(1) use, rely upon or reference partisan data, such as voting history or party registration data; provided that voting history in elections may be considered to ensure that the district plan complies with applicable federal law; or

(2) consider the voting address of candidates or incumbents, except to avoid the pairing of incumbents unless necessary to conform to other traditional districting principles.

History: Laws 2021, ch. 79, § 8.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 79, § 13 made Laws 2021, ch. 79, § 8 effective July 1, 2021.

1-3A-8. Committee adoption of district plans.

The committee shall adopt at a minimum three district plans for each of New Mexico's congressional districts, the state house of representatives, the state senate and other state offices required to be redistricted at an open meeting. After the committee adopts the district plans, the committee shall provide written evaluations of each district plan that address the satisfaction of the requirements set forth in the Redistricting Act, the ability of racial and language minorities to elect candidates of their choice, a measure of partisan fairness and the preservation of communities of interest.

History: Laws 2021, ch. 79, § 9.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 79, § 13 made Laws 2021, ch. 79, § 9 effective July 1, 2021.

1-3A-9. Legislative selection of district plans.

A. The committee shall deliver its adopted district plans and accompanying written evaluations and all accompanying concise explanatory statements to the legislature by October 30, 2021, or as soon thereafter as practicable, and September 1 of each year ending in the number one thereafter.

B. The legislature shall receive the adopted district plans for consideration in the same manner as for legislation recommended by interim legislative committees.

History: Laws 2021, ch. 79, § 10.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 79, § 13 made Laws 2021, ch. 79, § 10 effective July 1, 2021.

ARTICLE 4
Registration of Electors

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.

ANNOTATIONS

Cross references. — For definition of qualified elector, *see* 1-1-4 NMSA 1978.

For lack of registration as ground for challenge, *see* 1-12-20 NMSA 1978.

For registration offenses, *see* 1-20-3 NMSA 1978.

For application for presidential ballot, *see* 1-21-4, 1-21-5 NMSA 1978.

For constitutional provision regarding registration of qualified electors, *see* N.M. Const., art. VII, § 1.

Special school bond election is not a "special election" or a "municipal election" within statutes so that the word "election" should apply to all special and municipal elections and so that no person should vote in any special or municipal election unless registered, and voters otherwise qualified were entitled to vote in special school bond election, although not registered. *Johnston v. Board of Educ*., 1958-NMSC-141, 65 N.M. 147, 333 P.2d 1051.

Meaning of "registrant". — One not registered as a democrat is not entitled to vote in democratic primary as he was not a "registrant" within this section. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157.

Irregular registration does not affect status when evidence showed registrant and voter to be same. — Strong case was presented for holding that irregularity in registration did not affect the status of voters as being duly registered where trial court found on substantial evidence that person voting and person registered were one and the same. *Miera v. Martinez*, 1944-NMSC-005, 48 N.M. 30, 145 P.2d 487.

Enforcement not duty of state canvassing board. — Enforcement of mandate against voting by unregistered persons and counting the ballots of such persons is not the duty of state canvassing board. *Chavez v. Hockenhull*, 1934-NMSC-093, 39 N.M. 79, 39 P.2d 1027.

Registration requirements directory. — Although registration of voters was calculated to prevent fraud, yet the requirements were held to be directory. *State ex rel. Walker v. Bridges*, 1921-NMSC-041, 27 N.M. 169, 199 P. 370.

Irregular election not wholly void when voters present affidavits with ballots. — An election held without appointment of board of registration and registration of voters, while irregular, is not wholly void, since voters participating therein presented the affidavits required by law to the judges of election along with their ballots. *State ex rel. Walker v. Bridges*, 1921-NMSC-041, 27 N.M. 169, 199 P. 370.

Registration is not required as a condition to voting in school bond elections. *Board of Educ. v. Citizens' Nat'l Bank*, 1917-NMSC-059, 23 N.M. 205, 167 P. 715.

Requirements and qualifications for voting at municipal elections are same as those for general elections. 1964 Op. Att'y Gen. No. 64-33.

If voter otherwise qualified. — Registration for voting was not a necessary prerequisite to vote in a school bond election if the voter was otherwise qualified to vote in such election. 1964 Op. Att'y Gen. No. 64-27.

Permissible to copy voter registration records. — It is permissible for an individual or a company such as an abstractor to photocopy voter registrations in the offices of the county clerks so long as adequate precautions are taken to insure the integrity of the records and to preserve their availability for inspection by others. 1959 Op. Att'y Gen. No. 59-170.

Section to be construed liberally. — Registration is required in order to exercise the privilege to vote, and it is a well accepted principle that registration statutes should be construed liberally in favor of the franchise. 1959 Op. Att'y Gen. No. 59-169.

Purpose of section to obtain complete registration. — It is the purpose of this section to obtain as complete a registration as possible. In keeping with this policy, the county clerks or registration officials have discretion in the matter of delivering affidavits of registration to responsible persons in order to effectuate a more complete registration of those entitled to vote. 1959 Op. Att'y Gen. No. 59-169.

One may register in precinct of domicile though resides elsewhere. — If a person is registered and has his domicile in one precinct, he can vote in said precinct although he lives or resides in another precinct. 1954 Op. Att'y Gen. No. 54-5948.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 181, 182.

Constitutionality of statutes in relation to registration, 91 A.L.R. 349.

Nonregistration as affecting legality of votes cast by persons otherwise qualified, 101 A.L.R. 657.

Nonregistration as affecting one's qualification to hold public office, 128 A.L.R. 1117.

Suspension or expulsion of member of labor union for refusal to pay assessment for the purpose of promoting or defeating contemplated legislation as infringement on right of suffrage, 175 A.L.R. 397.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

Residence or domicile of student or teacher for purpose of voting, 98 A.L.R.2d 488, 44 A.L.R.3d 797.

Effect of conviction under federal law or law of another country or state on right to vote, 39 A.L.R.3d 303.

29 C.J.S. Elections § 38.

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 social security pursuant to 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 not disclose information received from the secretary of state pursuant to this subsection except as necessary to complete an investigation pursuant to this section. The county clerk shall investigate or reconcile the information received from the secretary of state.

E. The secretary of state shall develop a general program that is uniform and nondiscriminatory for county clerks to investigate and reconcile the information received from the secretary of state and to identify voters who may be eligible for cancellation from the statewide voter registration list. The general program shall describe the best practices and requirements for 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, and provide a procedure to cancel certificates of registration for voters:

(1) confirmed to have voted in another state requiring residence in that state if previous to the out-of-state vote, the voter was registered to vote in this state; or

(2) confirmed to be on the social security master death index file.

History: Laws 2015, ch. 145, § 19; 2019, ch. 212, § 45; 2023, ch. 39, § 17.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, required the secretary of state to develop a program for county clerks to identify voters who may be eligible for cancellation from the statewide voter registration list and to remove individuals confirmed to have voted in another state or confirmed to be deceased; in Subsection C, after "social security pursuant to", deleted "42 U.S.C. Section 15483"; in Subsection D, after "The county clerk shall", deleted "only" and added "not", and after "pursuant to this subsection", added "except as necessary"; and in Subsection E, after "The secretary of state shall develop", deleted "and maintain a manual for county clerks that describes" and added "a general program that is uniform and nondiscriminatory for county clerks to investigate and reconcile the information received from

the secretary of state and to identify voters who may be eligible for cancellation from the statewide voter registration list. The general program shall describe the", after "best practices", deleted "in" and added "and requirements for", after "official list of voters", added "and provide a procedure to cancel certificates of registration for voters:", and added Paragraphs E(1) and E(2).

The 2019 amendment, effective April 3, 2019, made it discretionary for the secretary of state to enter into a written agreement with the secretary of taxation and revenue to match information in each agency's database; and in Subsection C, after "secretary of state", deleted "may" and added "shall".

1-4-2. Registration of qualified residents; 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.

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.

ANNOTATIONS

Cross references. — For definition of qualified elector, *see* 1-1-4 NMSA 1978.

For eligibility to vote in federal elections, *see* 1-21-3 NMSA 1978.

The 2019 amendment, effective April 3, 2019, provided for registration of qualified residents; in the section heading, deleted "qualification for", and added "of qualified residents"; in Subsection A, after "Any", added "qualified", after "New Mexico", deleted "who will be a qualified elector at the date of the next ensuing general election", and after "Election Code to", deleted "register and become a voter" and added the remainder of the subsection; and in Subsection B, in the introductory clause, after "If a", deleted "person who is seventeen years old will be a qualified elector on the day of the general election and registers to vote in accordance with the provisions of Subsection A of this section, for the purposes of the primary election, that person shall be considered to be a voter and may vote in the primary election immediately preceding that general election" and added the remainder of the introductory clause, and added new Paragraphs B(1) through B(3); and added Subsection C.

The 2016 amendment, effective May 18, 2016, allowed persons who are seventeen years old and who will be eighteen years old by the date of the general election to vote in the primary election; in the catchline, added "right to vote in primary", and at the beginning of the first paragraph, added the subsection designation "A"; in Subsection A, after "next ensuing", added "general", and added new Subsection B.

The 2011 amendment, effective July 1, 2011, limited the right to register to residents of New Mexico.

Residence presumed unchanged unless proven. — Once residence is established, it is presumed to remain until change is proven, and he who attacks the vote must prove the change. *Berry v. Hull*, 1892-NMSC-029, 6 N.M. 643, 30 P. 936.

Elector to vote at place of residence even if place of business different. — A voter may have a residence in one place and business in another, and should vote at his residence; this applies especially to those who are not in a fixed business, such as cowboys. *Berry v. Hull*, 1892-NMSC-029, 6 N.M. 643, 30 P. 936.

Term "residence," as used in constitutional or statutory provisions relating to the qualifications of electors, is synonymous with home or domicile, denoting a permanent place to which a party when absent intends to return. 1954 Op. Att'y Gen. No. 54-5948.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 104.

Women's suffrage amendment to federal or state constitution as affecting pre-existing constitutional or statutory provisions which limited rights or duties to legal or male voters, 157 A.L.R. 461.

Incompetents: voting rights of persons mentally incapacitated, 80 A.L.R.3d 1116.

29 C.J.S. Elections § 40(1).

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.

ANNOTATIONS

Cross references. — For cancellation of registration, *see* 1-4-22 to 1-4-32 NMSA 1978.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 5 and Laws 1993, ch. 316, § 5, both effective June 18, 1993, which substituted "certificate" for "affidavit" and "canceled" for "cancelled". This section was set out as amended by Laws 1993, ch. 316, § 5. *See* 12-1-8 NMSA 1978.

Registration permanent until affirmative act taken. — A person's registration is permanent unless his registration is cancelled in accordance with the provisions of the Election Code. Therefore, a person who registered as a republican in 1951 would continue to be so registered until that person takes an affirmative act to have his registration of party affiliation changed. 1958 Op. Att'y Gen. No. 58-56 (opinion rendered under former law).

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.

ANNOTATIONS

Cross references. — For registration officer defined, *see* 1-1-16 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 161.

Constitutionality and construction of constitutional or statutory provisions which make payment of poll tax condition of right to vote, 139 A.L.R. 561.

29 C.J.S. Elections § 29.

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.

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.

ANNOTATIONS

Cross references. — For definition of registration officer, *see* 1-1-16 NMSA 1978.

For "swear" including "affirm", *see* 1-1-18 NMSA 1978.

For the secretary of state furnishing forms, *see* 1-2-3 NMSA 1978.

The 2015 amendment, effective July 1, 2015, removed certain requirements for registration by a qualified elector; deleted the subsection designation of Subsection E; deleted the first

sentence of former Subsection E and added the remaining language of former Subsection E to Subsection D; and redesignated the succeeding subsection accordingly.

The 2011 amendment, effective July 1, 2011, in Subsection E, prohibited the copying of an elector's month and day of birth.

The 2008 amendment, effective May 14, 2008, in Subsection E, prohibited the copying, conveyance or use by elections administrators in their official capacity of an elector's date of birth or any portion of the elector's social security number.

The 2007 amendment, effective April 2, 2007, added Paragraphs (2) and (3) of Subsection B, providing for confirmation of the registration.

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that an elector may apply to a registration agent for registration; in Subsection B, provided that a registration agent or qualified elector shall fill out the certificate of registration and that the voter shall be given a receipt for the original certificate and the registration agent shall receive a copy that omits the voter's social security number and date of birth and which contains a number traceable to the registration agent or officer; and in Subsection E, provided that is it unlawful to copy, convey or use the voter's date of birth or any part of the voter's social security number, except for voting purposes.

The 2003 amendment, effective July 1, 2003, inserted "unlawful use of information; penalty" in the section heading; added "or" at the end of Paragraph C(1); inserted the second sentence in Subsection E; and added Subsection F.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" in Subsection B; in Subsection C, substituted "a certificate" for "to the affidavit" and deleted "and swear to the truth of the information contained therein before the registration officer" at the end of the introductory paragraph, in Paragraph (1), substituted "certificate" for "affidavit", and, in Paragraph (2), substituted "certificate" for "affidavit" and deleted "and shall be sworn to by him before the registration officer" at the end of the paragraph; substituted "certificate" for "affidavit" in Subsection D; and, in Subsection E, substituted "certificate" for "affidavit" and deleted "attested by the registration officer" following the first occurrence of "elector".

Affidavits of registration may be filled out before any person authorized to administer oaths. 1959 Op. Att'y Gen. No. 59-169.

Incomplete affidavit form fatal. — The completed affidavit must contain each of the essential elements contained in that form and any omission of any of the essential elements would be fatal to the person's registration. The entire form must be completed before an effective registration is accomplished. 1955 Op. Att'y Gen. No. 55-6342.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 185, 186, 187.

Validity of statute requiring information as to age, sex, residence, etc., as condition of right to vote, 14 A.L.R. 260.

Propriety of test or question asked applicant for registration as voter other than formal questions relating to specific conditions of his right to registration, 76 A.L.R. 1238.

29 C.J.S. Elections § 46.

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 [Chapter 40, Article 13B 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 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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, permitted completed certificates of registration to be presented to any county clerk in the state, revised the deadlines for delivering completed certificates of registration, revised the contents of the registration form, and made certain technical amendments; in Subsection A, after "registration", added "using the paper form"; in Subsection C, deleted "Except as provided in Subsection D of this section"; in Subsection D, after "registration officer shall", deleted "not be required to provide physical residence address information on the certificate of registration" and added "be referred to the confidential address program administered by the secretary of state pursuant to the Confidential Substitute Address Act"; in Subsection E, after "resides", added "or to any other county clerk in this state"; in Subsection F, after "mailed and postmarked", deleted "at least twenty-eight days before the election" and added "within the time frame provided in Subsection A of Section 1-4-8 NMSA 1978"; in Subsection I, deleted Paragraph I(2) and redesignated former Paragraphs I(3) through I(5) as Paragraphs I(2) through I(4), respectively; and in Subparagraph I(3)(a), deleted "current and valid" preceding "photo identification", and after "photo identification", added "issued by a government or educational institution".

The 2015 amendment, effective July 1, 2015, amended duties of the secretary of state and county clerk when a certificate of registration is received, and amended certain provisions relating to compliance with voter registration deadlines; in Subsection G, deleted "Upon" and added "Within one business day after", and added the last sentence of the subsection; in Subsection H, after "acceptance thereon", deleted "and when notice has been received by the registrant", and added the last sentence of the subsection; and in Paragraph (2) of Subsection I, after "age on or before", added "the next general", after "election", deleted "day", after "age or older on", added "or before the next general", and after "election", deleted "day".

The 2007 amendment, effective April 2, 2007, in Subsection D, provided that a qualified elector who has an order of protection under the Family Violence Protection Act is not required to provide physical residence address information on a certificate of registration; and in Subsection I(4), deleted "or voter identification card".

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that an elector may apply for registration in the office of the secretary of state or with a registration agent or officer; in Subsection I(4)(a), provided that the statement shall inform the applicant that if the form is submitted by mail, the applicant may submit a voter identification card, student identification card or identification issued by an Indian nation, tribe or pueblo; and added Subsection I(5), which provided that the form shall contain a statement requiring the applicant to swear or affirm that the information supplied by the applicant is true.

The 2003 amendment, effective July 1, 2003, inserted "The form shall also include" at the end of the introductory paragraph in Subsection I and added Subparagraphs I(1) through I(4).

The 1997 amendment, effective June 20, 1997, made a minor stylistic change in Subsection A, and added Subsection D and redesignated the remaining subsections accordingly.

Twenty-eight day registration requirement is not unconstitutional. — Where plaintiff sued the secretary of state and the Bernalillo county clerk, seeking an injunction to enjoin them from prohibiting voters who declined to designate their political affiliation from voting during the primary election, the district court did not err in granting the motion to dismiss plaintiff's complaint, because New Mexico's twenty-eight day registration requirement, 1-4-5.1(F) NMSA 1978, is not too burdensome and does not unconstitutionally infringe on the right to vote because it does not totally deny the electoral franchise to any particular class of residents. *Crum v. Duran*, 2017-NMSC-013.

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 who is not registered to vote in this state and who is not automatically registered to vote pursuant to the automatic voter registration provisions of Section 1-4-47 NMSA 1978 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.

D. Pursuant to Sections 1-4-47 and 1-4-47.1 NMSA 1978, a qualified elector may become registered to vote by automatic voter registration at the motor vehicle division of the taxation and revenue department or other state or local public offices designated by the secretary of state.

History: 1978 Comp., § 1-4-5.2, enacted by Laws 1995, ch. 198, § 3; 2023, ch. 84, § 2.

ANNOTATIONS

The 2023 amendment, effective July 1, 2025, provided for automatic voter registration at the motor vehicle division or other state or local public offices designated by the secretary of state, and clarified language; in Subsection B, after "identification card", added "who is not registered to vote in this state and who is not automatically registered to vote pursuant to the automatic voter registration provisions of Section 1-4-47 NMSA 1978"; and added Subsection D.

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.

ANNOTATIONS

The 2007 amendment, effective April 2, 2007, provided that a qualified elector who lives in an area without a physical address shall be allowed to provide a description such as a map or the latitude and longitude; and added Subsection B.

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.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-5-19 NMSA 1978 as 1-4-5.4 NMSA 1978 effective July 1, 2011.

The 2019 amendment, effective April 3, 2019, provided additional duties for the secretary of state related to the form of certificates of registration, and required the secretary of state to maintain a Privacy Act notice; in Subsection A, after "prescribe the", added "paper", and added "The secretary of state shall also prescribe the form produced by an online or electronic voter registration transaction."; in Subsection B, after "former registration", deleted "social security number", and added the last sentence of the subsection; and added Subsection F.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-5-24 NMSA 1978 as 1-4-5.5 NMSA 1978 effective July 1, 2011.

The 2015 amendment, effective July 1, 2015, added definitions for "election campaign purposes", "governmental purposes", "mailing labels", "special voter list" and "voter data"; and added Subsection E.

Election Code does not prohibit the publication of voter data online. — Where plaintiff, a voting advocacy organization which sought to publish voter data on its website, brought a federal civil action against the New Mexico Attorney General and the New Mexico Secretary of State, alleging that the secretary of state's interpretations of statutory restrictions on the use of voter data violated the First and Fifth Amendments to the United States Constitution, and where plaintiff moved for a preliminary injunction seeking to enjoin the attorney general and the secretary of state from prohibiting plaintiff from disseminating or using New Mexico voter information for purposes related to election integrity, and from prosecuting plaintiff for unlawful use of voter data, the court held that plaintiff was entitled to a preliminary injunction, because plaintiff's election-related work in analyzing and evaluating the secretary of state's work related to the operation of a state government, and is, therefore, a "governmental purpose" as defined in this section, and plaintiff's crowd-sourcing work, which encouraged users to check their own and others' voter data and inform the secretary of state of any errors they find also falls within this section's broad definition of "governmental purposes". New Mexico's Election Code does not prohibit plaintiff, or any organization, from posting voter data online, so long as the organization does not publish voters' birth information or any portion of a voter's social security number. *Voter Reference Found., LLC v. Balderas*, ___ F. Supp.3d ___ (10th Cir. 2022).

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

A. Unlawful use of voter data, mailing labels or special voter lists consists of:

(1) the knowing and willful selling, loaning, providing access to or otherwise surrendering of voter data, mailing labels or special voter lists by a person for purposes prohibited by the Election Code; or

(2) causing voter data, mailing labels or special voter lists or any part of the voter data, mailing label or special voter lists that identifies, or that could be used to identify, a specific voter or the voter's name, mailing or residence address to be made publicly available on the internet or through other means.

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 line of voter information that was unlawfully used.

C. Each 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; 2023, ch. 84, § 3.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-5-25 NMSA 1978 as 1-4-5.6 NMSA 1978 effective July 1, 2011.

The 2023 amendment, effective July 1, 2023, revised the elements of the crime of unlawful use of voter data, mailing labels or special voter lists; and in Subsection A, Paragraph A(1), after "willful", deleted "use of such information for purposes prohibited by the Voter Records System Act" and added "selling, loaning, providing access to or otherwise surrendering of voter data, mailing labels or special voter lists by a person for purposes prohibited by the Election Code; or", and added a new Paragraph A(2).

Election Code does not prohibit the publication of voter data online. — Where plaintiff, a voting advocacy organization which sought to publish voter data on its website, brought a federal civil action against the New Mexico Attorney General and the New Mexico Secretary of State, alleging that the secretary of state's interpretations of statutory restrictions on the use of voter data violated the First and Fifth Amendments to the United States Constitution, and where plaintiff moved for a preliminary injunction seeking to enjoin the attorney general and the secretary of state from prohibiting plaintiff from disseminating or using New Mexico voter information for purposes related to election integrity, and from prosecuting plaintiff for unlawful use of voter data, the court held that plaintiff was entitled to a preliminary injunction, because plaintiff's election-related work in analyzing and evaluating the secretary of state's work related to the operation of a state government, and is, therefore, a "governmental purpose" as defined in 1-4-5.5 NMSA 1978, and plaintiff's crowd-sourcing work, which encouraged users to check their own and others' voter data and inform the secretary of state of any errors they find also falls within that section's broad definition of "governmental purposes". New Mexico's Election Code does not prohibit plaintiff, or any organization, from posting voter data online, so long as the organization does not publish voters' birth information or any portion of a voter's social security number. *Voter Reference Found., LLC v. Balderas*, 616 F. Supp.3d 1132.

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

A. Notwithstanding the provisions of 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 or any early or 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.

C. A voter whose political party affiliation on the voter's certificate of registration is with a major political party shall not be allowed to change party affiliation when updating an existing certificate of registration or registering to vote at a voting location immediately before voting in a primary election.

D. 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 7:00 p.m. on election day; provided that the county clerk shall provide the voter with a ballot and balloting materials immediately after the qualified elector registers to vote or updates the existing certificate of registration.

E. A qualified elector seeking to register to vote or update an existing certificate of registration pursuant to this section shall provide a physical form of identification that is issued by the federal government, a state government, a federally recognized Indian nation, tribe or pueblo or an educational institution and that:

(1) contains the name of the qualified elector, which shall reasonably match the name provided on the certificate of registration;

(2) contains a photograph of the qualified elector, which shall resemble the qualified elector;

(3) need not contain an expiration date, and if it does, the expiration date is not required to be a date on or after the date of the election; and

(4) shall either:

(a) contain an address that matches the address provided for the certificate of registration; or

(b) be accompanied by an original or copy of a utility bill, bank statement, government check, paycheck or other document issued by an educational institution or government, including a document issued by a federally recognized Indian nation, tribe or pueblo, dated within the ninety days prior to the qualified elector registering to vote or updating an existing

certificate of registration and that contains the name of the qualified elector, which shall reasonably match the name provided on the certificate of registration, and an address that matches the address provided for the certificate of registration.

F. If a voting location does not have real-time synchronization with the voting data at the office of the county clerk, a voter desiring to update an existing certificate of registration or to register to vote shall be issued a provisional paper ballot. 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.

History: Laws 2019, ch. 67, § 1; 2020 (1st S.S.), ch.2, § 1; 1978 Comp., § 1-4-5.7 repealed and reenacted by Laws 2023, ch. 84, § 4.

ANNOTATIONS

Repeals and reenactments. — Laws 2023, ch. 84, § 4 repealed former 1-4-5.7 NMSA 1978 and enacted a new section, effective July 1, 2023.

The 2020 (1st S.S.) amendment, effective September 20, 2020, authorized voters that are not affiliated with a major political party to change their party affiliation at voting locations before voting in primary elections; and in Subsection E, after "A voter", added "whose political party affiliation on the voter's certificate of registration is with a major political party".

1-4-5.8. Repealed.

History: Laws 2019, ch. 67, § 2; repealed by Laws 2023, ch. 84, § 24.

ANNOTATIONS

Repeals. — Laws 2023, ch. 84, § 24 repealed 1-4-5.8 NMSA 1978, as enacted by Laws 2019, ch. 67, § 2, relating to automatic voter registration, driver's license and agency registration and updates to registration, effective July 1, 2025. For provisions of former section, *see* the 2024 NMSA 1978 on *NMOneSource.com*.

1-4-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 249, § 52 repealed 1-4-6 NMSA 1978, as enacted by Laws 1969, ch. 240, § 64, relating to receipt for affidavit of registration, effective June 19, 1987.

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.

ANNOTATIONS

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 8 and Laws 1993, ch. 316, § 8, both effective June 18, 1993, which substituted "certificate of registration form" for "blank affidavit of registration in triplicate and fill it out. The qualified elector who is temporarily outside of New Mexico shall subscribe to the affidavit of registration before a person authorized to administer oaths. The qualified elector who is in New Mexico but temporarily out of his county shall subscribe to the affidavit of registration before a registration officer" in the first sentence; in the second sentence, substituted "certificate" for "affidavit" and deleted "and attested" following "subscribed"; and, in the third sentence, substituted "certificate" and "certificate of registration" for "affidavit". The section was set out as amended by Laws 1993, ch. 316, § 8. *See* 12-1-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Nonregistration as affecting legality of votes cast by persons otherwise qualified, 101 A.L.R. 657.

Military service, registration by persons in, 152 A.L.R. 1459; 153 A.L.R. 1434; 154 A.L.R. 1459; 155 A.L.R. 1459.

Absentee voters' laws, construction and effect of, 97 A.L.R.2d 257.

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

Except for qualified electors who register to vote or update a certificate of registration at a voting location prior to voting pursuant to Section 1-4-5.7 NMSA 1978, 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;

D. certificates of registration and cancellations of existing voter registrations not processed pursuant to Subsection B or C of this section may be processed beginning the Monday following an election and shall be processed beginning no later than the first business day after the approval of the county canvass report for that 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; 2023, ch. 39, § 18.

ANNOTATIONS

Cross references. — For election seminars, *see* 1-2-5 NMSA 1978.

The 2023 amendment, effective June 16, 2023, changed the date for county clerks to begin processing certain certificates of registration and cancellations of existing voter registrations, and provided an exception to the provisions of this section; in the introductory clause, added "Except for qualified electors who register to vote or update a certificate of registration at a voting location prior to voting pursuant to Section 1-4-5.7 NMSA 1978"; and in Subsection D, after "Subsection B or C of this section", deleted "shall" and added "may", after "beginning", deleted "thirty-five days after" and added "the Monday following", and after "an election", added "and shall be processed beginning no later than the first business day after the approval of the county canvass report for that election".

The 2019 amendment, effective April 3, 2019, revised the provisions related to voter registration; in the introductory clause, after "qualified electors", added "seeking to register to vote or update an existing voter registration in the state"; added a new Subsection A and redesignated former Subsection A as Subsection B; in Subsection B, after "the clerk shall", deleted "close registration at the end of the twenty-eighth day immediately preceding any election at which the registration books are to be furnished to the precinct board;" and added the remainder of the subsection; deleted former Subsections B through D and added new Subsections C and D; in Subsection E, after "when the", deleted "twenty-eighth day prior to any" and added "deadline to register to vote or update an existing voter registration prior to an", and after "Sunday or", deleted "legal" and added "state"; and in Subsection F, in the introductory clause, after "dated on or before", deleted "the twenty-eighth day preceding", and after the next occurrence of "the", added "deadline to register to vote or update an existing voter registration prior to an", in Paragraph F(1), after "end of the", added "last", after "regular business day", added of the week", after "office of the county clerk", deleted "on the Friday", after "following the", deleted "close of registration" and added "deadline to register to vote or update an existing voter registration prior to an election", and in Paragraph F(2), after "postmarked", deleted "not less than twenty-eight days" and added "on or before the day of the deadline to register to vote or update an existing voter registration".

The 2017 amendment, effective June 16, 2017, changed voter registration closure times; in Subsections A, C and E, deleted "5:00 p.m. on" and added "the end of"; and in Subsection F, Paragraph F(1), after "county clerk", deleted "before 5:00 p.m." and added "by the end of the regular business day for the office of the county clerk".

The 2015 amendment, effective July 1, 2015, removed references to federal qualified elector and overseas voters relating to duties of the county clerk and acceptance of registration; in the catchline, after "close of registration", deleted "federal qualified electors and overseas voters"; deleted the subsection designation of Subsection A; in the undesignated introductory sentence that was formerly Subsection A, after "qualified electors", deleted "other than federal qualified electors or overseas voters"; redesignated former Paragraphs (1) through (6) of Subsection A as Subsections A through F, respectively; in Subsection D, after "shall not file", deleted "the" and added "any"; redesignated former Subparagraphs A(6)(a) through A(6)(c) as Paragraphs (1) through (3) of Subsection F, respectively; and deleted former Subsection B, relating to certificates of registration from federal qualified electors and overseas voters.

The 2008 amendment, effective February 29, 2008, in Subsection A(6), deleted the requirements that the county clerk receive a certificate of registration that is mailed by 5:00 p.m. on Friday following the close of registration or that a state agency receive the certificate of registration not later than twenty-eight days prior to an election.

The 2005 amendment, effective July 1, 2005, in Subsection A(6), provided that the county clerk shall accept any certificate that is subscribed and dated on or before the twenty-eighth day preceding the election and received by the county clerk by the specified deadline and that the county clerk shall accept any mailed certificate that is received by 5:00 p.m. on the Friday immediately following the close of registration.

The 2003 amendment, effective June 20, 2003, inserted "federal qualified electors and overseas voters; late registration" in the section heading; redesignated former Subsections A through F as Subparagraphs A(1) through A(6) and added the introductory paragraph in Subsection A; and added Subsection B.

The 1995 amendment, effective April 6, 1995, substituted "voter identification card" for "copy" in Subsection D; and in Subsection F, deleted "or received in the mail" following "hand delivered" and added the last two sentences of the subsection beginning "The county clerk shall accept".

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "certificates" for "affidavits" and inserted "during normal working hours"; in Subsection D, substituted "certificates" for "affidavits", "certificate of registration" for "affidavit" twice, and "a" for "the triplicate affidavit" preceding "copy"; and, in Subsection F, substituted "certificate" for "affidavit" and deleted "from, a deputy registration officer" following "mail".

Procedure for accepting affidavits when election within 28 days of one another. — The procedure which should be followed with respect to the acceptance of voter registration affidavits when elections are scheduled within 42 (now 28) days of one another is that the county clerk must receive affidavits of registration during the period in which registration is closed prior to the first election and place them in readiness for filing on the Monday after the first election. On the Monday following the first election, the county clerk shall enter the affidavits of registration which were received during the period between the 42nd (now 28th) day prior to the first election and the 42nd (now 28th) day prior to the second election. 1976 Op. Att'y Gen. No. 76-26.

Term "close registration", as used in Subsection A(1) of this section, means merely closing the registration book and not filing the affidavits of registration. 1969 Op. Att'y Gen. No. 69-128.

Affidavits received while books closed to be filed on Monday following election. — Subsection B (now A(2)) of this section specifically provides that affidavits of registration should be filed by the county clerks on the Monday following the election if such applications are received during the period when the registration books have been closed. 1969 Op. Att'y Gen. No. 69-128.

Procedure when elections overlap. — Even though registration is closed 30 (now 28) days prior to a municipal election and the municipal election is within 30 days of a primary election, the county clerk may receive affidavits of registration for the primary election up to 30 (now 28) days prior to that election. On the Monday following the municipal election, the registration

books should be reopened for the sole purpose of filing therein the affidavits of registration received more than 30 (now 28) days prior to the primary election. 1963 Op. Att'y Gen. No. 63-155 (opinion rendered under former law).

Close of registration transfer before municipal elections. — Original registration closes 30 (now 28) days before a municipal election. Registered voters may transfer their registration from one voting division to another up to five days preceding a municipal election, at which time the registration books are to be closed for all purposes. 1948 Op. Att'y Gen. No. 48-5128 (opinion rendered under former law).

When closing day falls on Sunday. — County clerk should receive affidavits of registration until 5:00 p.m. on the Monday following a Sunday which falls on the thirtieth (now twenty-eighth) day before a primary election. 1944 Op. Att'y Gen. No. 44-4482 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 185, 186.

29 C.J.S. Elections § 39.

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.

History: 1953 Comp., § 3-4-8.2, enacted by Laws 1977, ch. 222, § 7; 1978 Comp., § 1-4-10, recompiled as § 1-12-71 by Laws 2011, ch. 137, § 109.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled 1-4-10 NMSA 1978 as 1-12-71 NMSA 1978 effective July 1, 2011. Laws 2019, ch. 212, § 284 repealed 1-12-71 NMSA 1978, effective April 3, 2019.

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 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 full 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 is required to provide the full social security number prior to receiving a ballot and, until it is provided, may only vote on a provisional ballot. The provisional ballot shall be counted if the required information is provided or the voter's full social security number is ascertained during the period for counting provisional ballots, including any appeals provided for in the Election Code.

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; 2023, ch. 39, § 19.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, clarified that a full social security number is required for voter registration; in Subsection D, after "A", added "full"; and in Subsection E, after "indicating that the voter", added "is required to provide the full social security number prior to receiving a ballot and, until it is provided", after "or the voter's" added "full", and after "ascertained", added "during the period for counting provisional ballots, including any appeals provided for in the Election Code".

The 2019 amendment, effective April 3, 2019, revised the duties of the county clerk upon receipt of certificates of registration; in Subsection B, after the subsection designation, deleted

"If the qualified elector is already registered in the county as shown by the qualified elector's original certificate of registration currently on file in the county registration records, the county clerk shall not accept the new certificate of registration unless it is filed pursuant to Section 1-4-13, 1-4-15, 1-4-17 or 1-4-18 NMSA 1978"; in Subsection C, after "qualified elector's name, address", deleted "social security number", and after "usual mark.", added the next sentence; added new Subsections D and E and redesignated former Subsection D as Subsection F; and in Subsection F, after "register in person", deleted "indicates that the qualified elector".

The 2015 amendment, effective July 1, 2015, authorized the county clerk to reject certain certificates of registration; in Subsection A, after "complete certificate of registration, if", added "the certificate of registration is"; and added a new Subsection C and redesignated the succeeding subsection accordingly.

The 2007 amendment, effective April 2, 2007, in Subsection A, eliminated the requirement that a "voter identification card" be mailed to qualified electors.

The 2003 amendment, effective July 1, 2003, added Subsection C.

The 1995 amendment, effective April 6, 1995, substituted "voter identification card" for "copy of the certificate of registration" in Subsection A , and substituted "Section" for "Sections" in Subsection B.

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "a complete certificate" for "the original and the voter's copy of the properly executed affidavit" in the first sentence, substituted "certificate" for "affidavit" throughout the second and third sentences, and made a minor stylistic change; in Subsection B, substituted "certificate" for "affidavit" throughout the subsection and inserted "unless it is filed pursuant to Sections 1-4-13, 1-4-15, 1-4-17 or 1-4-18 NMSA 1978. He".

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.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, amended the duties of the county clerk relating to processing certificates of registration, and removed the provision stating that the contents of certificates of registration, with certain exceptions, are public record; in Paragraph (1) of Subsection A, after "a voter", deleted "identification card" and added "information document"; in Subsection B, after "were received in", deleted "his" and added "the county clerk's", and added the last sentence of the subsection; and deleted Subsection C.

The 2003 amendment, effective July 1, 2003, inserted the exception in Subsection C.

The 1995 amendment, effective April 6, 1995, substituted "a voter identification card" for "the voter's copy of the certificate" in Paragraph (1) of Subsection A; in Subsection B, substituted "that" for "which" and inserted "and" following "form"; and in Subsection C, substituted "The contents of" for "Original" and deleted "and their contents" following "registration".

The 1993 amendment,. effective June 18, 1993, substituted "Certificates" for "Affidavits", "certificate" for "affidavit", and "certificates" for "affidavits" throughout the section and made several minor stylistic changes.

Right to copy voter registration records. — The right to inspect or examine public records, such as voter registration, commonly includes the right of making copies thereof as the right to inspect would be valueless without this correlative right. 1959 Op. Att'y Gen. No. 59-170.

Clerk must accept affidavits in proper order even if from different office. — Affidavits which are in the proper order, acknowledged by a notary public, even though not obtained from the county clerk's office which has to register the voter have to be accepted by the county clerk. 1952 Op. Att'y Gen. No. 52-5505.

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.

ANNOTATIONS

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 12 and Laws 1993, ch. 316, § 12, both effective June 18, 1993, which substituted "certificate" for "affidavit" throughout the section; substituted "filing" for "executing" in Subsection A; in Subsection B, in the second sentence, deleted "and sworn to" following "subscribed" and "before a registration officer, or if he is temporarily out of New Mexico, before a person authorized to administer oaths" following "voter", and substituted "completed" for "executed" in the third sentence. The section was set out as amended by Laws 1993, ch. 316, § 12. *See* 12-1-8 NMSA 1978.

1-4-14. Repealed.

History: 1953 Comp., § 3-4-12, enacted by Laws 1969, ch. 240, § 70; 1975, ch. 255, § 38; 1993, ch. 314, § 13; 1993, ch. 316, § 13; 1995, ch. 198, § 7; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-4-14 NMSA 1978, as enacted by Laws 1969, ch. 240, § 70, relating to certificates of registration, voter identification cards and replacement of lost copies, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

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 on the voter's certificate of registration but who desires to designate a party affiliation on the voter's certificate of registration 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.

D. A voter who has declined to designate on the voter's certificate of registration a party affiliation but who chooses to affiliate with a major political party that is participating in a primary election may do so by requesting the ballot of one of the parties participating in that primary election. The voter's certificate of registration shall not be changed to reflect a new or different party affiliation unless the voter so requests in accordance with the provisions of Subsection B of this section.

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; 2025, ch. 54, § 1.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, allowed voters who have not designated a political party affiliation on their certificates of registration to participate in the primary election process by choosing to affiliate with a major political party participating in a primary by requesting the party's ballot; in Subsection B, after each occurrence of "party affiliation" added "on the voter's certificate of registration"; and added Subsection D.

The 2011 amendment, effective July 1, 2011, provided that a voter who does not designate a party affiliation shall be deemed to have declined to designate a party affiliation.

The 1995 amendment, effective April 6, 1995, substituted "a certificate of registration" for "an application" in Subsections A and B, and deleted former Subsections C and D relating to the contents of the application and the period of retention by the county clerk.

The 1993 amendment, effective June 18, 1993, deleted "Affidavit of" preceding "Registration" in the section heading and "and sworn to" following "subscribed" in Subsection C, and substituted "certificate" for "affidavit" in the second sentence in Subsection D.

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.

ANNOTATIONS

Cross references. — For change of party affiliation, *see* 1-4-15 NMSA 1978.

The 2019 amendment, effective April 3, 2019, in Subsection B, after "date of the", deleted "governor’s" and added "secretary of state’s general election".

The 1993 amendment, effective June 18, 1993, deleted "Affidavit of" preceding "Registration" in the section heading, substituted "certificate" for "affidavit" in Subsections A and B, and added "of a primary election" at the end of Subsection B.

The 1991 amendment, effective June 14, 1991, deleted "between the day the governor issues the proclamation of a primary election and the day after the primary election is held nor shall any such designation be made or changed" following "affidavit of registration" in Subsection A and inserted "primary or" near the beginning of Subsection B.

Registration for party primary. — One not registered as a democrat was not entitled to vote in democratic primary as he was not a "registrant" within statute. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157 (decided under former law).

Law prior to Subsection B. — Prior to the 1981 amendment of this section, an unsuccessful primary candidate could run as an independent in the succeeding general election. *Anderson v. Hooper*, 498 F. Supp. 898 (D.N.M. 1980).

When changes in party affiliation possible. — Changes of party affiliation may be made until the close of regular hours on the day on which the governor's proclamation is made and filed. 1944 Op. Att'y Gen. No. 44-4482 (opinion rendered under former law).

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.

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.

ANNOTATIONS

1993 Multiple Amendments. — Laws 1993, ch. 10, § 1, Laws 1993, ch. 314, § 16, and Laws 1993, ch. 316, § 16, all effective June 18, 1993, enacted amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 1993, ch. 316, § 16, as the last act signed by the governor, is set out above and incorporates all amendments. To view the session laws in their entirety, *see* the 1993 session laws on *NMOneSource.com.*

Laws 1993, ch. 314, § 16, and Laws 1993, ch. 316, § 16, both effective June 18, 1993, enacted identical amendments that substituted "complete a certificate of registration" for "apply to a registration officer" in Subsection A.

Laws 1993, ch. 10, § 1, effective June 18, 1993, added language at the end of Subsection A, and inserted "or notifications of" in Subsection B and "or notification of" in Subsection C.

The 1991 amendment, effective April 2, 1991, purported to amend this section but made no change.

Voter may transfer registration for spouse. — Under this section a husband may transfer registration of his wife and vice versa, but neither of them may transfer the registration of any other member of the family. 1946 Op. Att'y Gen. No. 46-4936 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 107.

29 C.J.S. Elections § 52.

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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, eliminated the requirement that the voter cancel the voter's registration in the county of previous residence.

The 1993 amendment, effective June 18, 1993, substituted "complete a certificate of registration and file it with the appropriate county clerk" for "make application with a registration officer of the county of new residence for an affidavit of registration" and corrected a misspelling of "canceling".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 107.

29 C.J.S. Elections § 52.

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.

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.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, rewrote the section relating to online voter registration; in the catchline, after "registration", deleted "updates"; deleted Subsections A through C; and added new Subsections A through H.

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.

ANNOTATIONS

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 18 and Laws 1993, ch. 316, § 18, both effective June 18, 1993, which deleted "Affidavit of" preceding "Registration" in the section heading. The section was set out as amended by Laws 1993, ch. 316, § 18. *See* 12-1-8 NMSA 1978.

1-4-20. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 249, § 52 repealed 1-4-20 NMSA 1978, as enacted by Laws 1969, ch. 240, § 76, relating to the affidavit of registration form, effective June 19, 1987.

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.

ANNOTATIONS

Cross references. — For definition of major political party, *see* 1-1-9 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, changed the judicial review from mandamus to an appeal pursuant to 12-8A-1 NMSA 1978.

The 1995 amendment, effective January 1, 1996, substituted "any major political party" for "either of the two major political parties".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 113.

Issue of mandamus in exercise of power of superintending control, 112 A.L.R. 1351.

Action against officer for breach of duty in respect of election laws, necessity of proving right to vote as condition of, 153 A.L.R. 143.

29 C.J.S. Elections § 46.

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 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.

ANNOTATIONS

Cross references. — For person listed on purge list as ground for challenge, *see* 1-12-20 NMSA 1978.

The 2019 amendment, effective April 3, 2019, revised the deadline for the secretary of state to petition the district court to cancel certain registrations, and required the secretary of state to report the results of the hearing on the petition; in Subsection A, after "not less than", deleted "ninety" and added "one hundred twenty", after "prior to", added "and following"; and added Subsection D.

The 2011 amendment, effective July 1, 2011, changed the time the secretary of state may file a petition from forty-two days to ninety days before an election; changed the time a court must hear a petition from five days to fourteen days; and eliminated the liability of county chairmen and groups of petitioners to pay the costs of the proceeding.

The 1995 amendment, effective January 1, 1996, substituted "any major political party" for "either of the two major political parties" in Subsection A and made minor stylistic changes in Subsections B and D.

Court without jurisdiction to entertain motion to dismiss purge petition. — District court acted without jurisdiction in entertaining demurrer (now motion to dismiss, *see* Rules 1-007B and 1-007C NMRA) to petition to purge registration list of county under Laws 1927, ch. 41 (now repealed), it being unknown to the provisions of the act, and it being the duty of the district court to hear the proofs and find the facts upon the allegations of the petition. *Hannah v. District Court of Fourth Judicial Dist*., 1928-NMSC-053, 33 N.M. 533, 271 P. 469 (decided under former law).

Sufficient notice and hearing provided for purge petition. — Laws 1927, ch. 41 (now repealed), which provided for petition to purge county registration list, sufficiently provided for notice and hearing. *Hannah v. District Court of Fourth Judicial Dist*., 1928-NMSC-053, 33 N.M. 533, 271 P. 469 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 184.

29 C.J.S. Elections § 48.

1-4-23. Repealed.

History: 1953 Comp., § 3-4-21, enacted by Laws 1969, ch. 240, § 79; 1975, ch. 255, § 44; 1979, ch. 24, § 1; 1993, ch. 314, § 19; 1993, ch. 316, § 19; 1995, ch. 198, § 9; 2005, ch. 270, § 22; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-4-23 NMSA 1978, as enacted by Laws 1969, ch. 240, § 79, relating to review of registration, the board of registration and inactive voter list creation, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

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. at the request of the voter; or

C. 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; 2023, ch. 84, § 5.

ANNOTATIONS

Cross references. — For restoration following conviction, *see* 1-4-27.1 NMSA 1978.

For qualifications of voter, *see* N.M. Const., art. VII, § 1.

For disqualification to vote due to felony conviction and restoration of citizenship, *see* 31-13-1 NMSA 1978.

The 2023 amendment, effective July 1, 2023, removed a felony conviction of the voter as a reason for which the county clerk can cancel a certificate of registration; and deleted former Subsection B and redesignated former Subsections C and D as Subsections B and C, respectively.

The 2019 amendment, effective April 3, 2019, removed the provision requiring the county clerk to cancel a certificate of registration due to the legal insanity of the voter; and deleted former Subsection B and redesignated former Subsections C through E as Subsections B through D, respectively.

The 1995 amendment, effective April 6, 1995, added Subsections D and E.

The 1993 amendment, effective June 18, 1993, substituted "certificates" for "affidavits". Laws 1993, ch. 314, § 20 enacted identical amendments to this section. The section was set out as amended by Laws 1993, ch. 316, § 20. *See* 12-1-8 NMSA 1978.

Affidavits subject to cancellation when voter committed or adjudged insane by court. — The affidavits of registration of persons committed to an institution pursuant to 34-2-1, 1953 Comp. et seq. or to the Los Lunas hospital pursuant to 34-3-6, 1953 Comp., or adjudicated incompetent pursuant to 32-3-1, 1953 Comp. et seq., were subject to cancellation under this section when a district court had made a determination of the individual's insanity based upon applicable statutory requirements, including medical statements. 1969 Op. Att'y Gen. No. 69-65 (opinion rendered under former law).

First three grounds mandatory. — If any one of the first three grounds exists, the board (now county clerk) must cancel the affidavit of registration, but under the fourth ground (deleted in 1979) it is not mandatory to cancel the affidavits in all cses. 1944 Op. Att'y Gen. No. 44-4566 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 174 et seq.

Purging voters' registration lists, remedy and procedure for, 96 A.L.R. 1035.

What amounts to conviction within statute making conviction ground for refusing special privilege, 113 A.L.R. 1179.

Removal by executive clemency of disqualification to vote resulting from conviction of crime as applicable in case of conviction in federal court or court of another state, 135 A.L.R. 1179.

Governing law as to existence or character of offense for which one has been convicted in federal court, or court of another state, as bearing upon disqualification to vote, hold office, practice profession, sit on jury, or the like, 175 A.L.R. 784.

What constitutes "conviction" within constitutional or statutory provision disfranchising one convicted of crime, 36 A.L.R.2d 1238.

Conviction in federal court, or in court of another state or country, as disqualification to vote in election, 39 A.L.R.3d 303.

29 C.J.S. Elections § 33.

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.

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Subsection F.

The 2001 amendment, effective June 15, 2001, in Subsection A, substituted "monthly certified lists" for "periodic certified lists", substituted "secretary of state" for "county clerk"; in Subsection B, inserted "monthly" following "shall file", substituted "secretary of state" for "county clerk of the

proper county for use by the board of registration periodic", inserted "sorted by county"; substituted "monthly" for "periodic" in Subsection C; and added Subsections D and E.

The 1993 amendment, deleted "affidavits of" preceding the first occurrence of "registration" in Subsection A. Laws 1993, ch. 314, § 21 enacted identical amendments to this section. The section was set out as amended by Laws 1993, ch. 316, § 21. *See* 12-1-8 NMSA 1978.

1-4-26. Repealed.

History: 1953 Comp., § 3-4-24, enacted by Laws 1969, ch. 240, § 82; 1993, ch. 314, § 22; 1993, ch. 316, § 22; repealed by Laws 2019, ch. 212, 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-4-26 NMSA 1978, as enacted by Laws 1969, ch. 240, § 82, relating to cancellation of registration, determination of insanity, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-4-27. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 46, § 4 repealed 1-4-27 NMSA 1978, as enacted by Laws 1969, ch. 240, § 83, relating to the cancellation of a convicted felon's voter's registration, effective July 1, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com.*

1-4-27.1. Eligibility to vote and register to vote upon release.

A. A voter is ineligible to vote while imprisoned in a correctional facility as part of a sentence for a felony conviction. Except as provided in this section, an otherwise qualified elector is ineligible to register to vote while imprisoned in a correctional facility as part of a sentence for a felony conviction.

B. During the reentry phase of an inmate's sentence, if the inmate is a voter or otherwise a qualified elector, the inmate shall be given an opportunity to register to vote or update an existing registration by means of a transaction with the motor vehicle division of the taxation and revenue department prior to the inmate's release from custody. If the inmate does not conduct a transaction with the motor vehicle division of the taxation and revenue department prior to the inmate's release from custody, the corrections department shall provide the inmate an opportunity to register to vote or update an existing registration by means of an online portal provided by the secretary of state or, if such a portal is not available, by means of a paper registration form.

C. The corrections department shall deliver to the secretary of state information and data necessary to carry out the provisions of this section. The secretary of state shall maintain current information in the statewide voter registration electronic management system on the ineligibility status of an inmate to vote or register to vote pursuant to this section, as well as an inmate's eligibility status to vote upon release and to register to vote or update an existing voter registration while preparing for release.

D. Notwithstanding a person's status in the statewide voter registration electronic management system, a voter or a qualified elector who appears personally before a county clerk, the clerk's authorized representative or a precinct board member, at an office of the motor vehicle division of the taxation and revenue department or at a state agency that provides public assistance or services to persons with disabilities is presumed to meet the eligibility requirement of non-imprisonment for voting and registering to vote pursuant to the provisions of this section.

E. For the purposes of this section, "correctional facility" means a jail, prison or other detention facility that is used for the confinement of an adult, whether operated by the state or a political subdivision of the state or a private contractor on behalf of the state or a political subdivision of the state.

History: Laws 2001, ch. 46, § 1; 2005, ch. 116, § 1; 2007, ch. 337, § 7; 2011, ch. 137, § 35; 2023, ch. 84, § 6.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, removed provisions related to cancellation of voter registration following conviction of a felony, and provided that inmates are eligible to vote and register to vote upon release from a correctional facility; in the section heading, deleted "Cancellation of registration following conviction", after "Eligibility", deleted "for voting upon satisfaction of conditions", and added "to vote and register to vote upon release"; and deleted former Subsections A through E and added new Subsections A through E.

The 2011 amendment, effective July 1, 2011, rewrote the conditions that permit a convicted felon to register to vote and required the secretary of state to maintain the eligibility status of convicted felons to register to vote.

The 2007 amendment, effective July 1, 2007, provided procedures for canceling voter registration for felony convictions and for notification of eligibility for registration upon discharge from a correctional facility; and added Subsections E and F.

The 2005 amendment, effective June 17, 2005, in Subsection A, provided that the clerk of the district court shall file a certificate of felony conviction with the secretary of state and the secretary of state shall notify the county clerk of the county in which the convicted felon is registered to vote; in Subsection D, provided that when the convicted felon has completed the conditions of deferral or suspension of sentence, the clerk of the court shall notify the secretary of state and the secretary of state shall notify all county clerks that the person is eligible for registration; in Subsection E, provided that when a convicted felon is discharged from a correctional facility or completed all conditions of parole or probation, the corrections department shall notify the secretary of state and the secretary of state shall notify all county clerks that the person is eligible for registration; and in Subsection F, provided that when a voter convicted of a federal felony is unconditionally discharged from a correctional facility or has completed all conditions of parole or probation, the federal agency having jurisdiction of the person shall notify secretary of state and the secretary of state shall notify all county clerks that the person is eligible for registration.

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 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.

ANNOTATIONS

Cross references. — For the federal National Voter Registration Act of 1993, *see* 42 U.S.C. § 1973gg et seq.

For the federal Voting Rights Act of 1965, *see* 42 U.S.C. § 1973 et seq.

For determination of voter's death, *see* 1-4-25 NMSA 1978.

The 2019 amendment, effective April 3, 2019, revised the provisions related to voter eligibility following a change of residence; in Subsection C, deleted Paragraph C(5), which provided guidance to voters who want to remain eligible to vote following a change of residence outside of the county; in Subsection D, added the introductory clause and new paragraph designation "(1)", in Paragraph D(1), added "in the same county", after "information obtained on the", deleted "prepaid and pre-addressed", after "return card", deleted "to a new address in the same county, and such names shall not be removed from the list of eligible voters for reason of change of residence", and added new Paragraph D(2); and in Subsection E, Paragraph E(2), after "place outside the", deleted "county" and added "state".

The 2011 amendment, effective July 1, 2011, required the secretary of state to identify voters who no longer reside at their registration address and to give such voters notice between ninety and one hundred twenty days before an election directing the voter to provide the voter’s current address and informing the voter of the consequences of not providing the information; required county clerks to correct the list of voters in accordance with the information provided in the responses to the notice; and required the cancellation of the registration of any voter who has not responded to the notice or voted during the period from the date of the notice to the day after the second election since the date of the notice or who has changed residence to a place outside the county.

The 2008 amendment, effective February 29, 2008, deleted former Subsections A through E that provided for the cancellation of voters who failed to vote and added new Subsections A and B.

The 1995 amendment, effective April 6, 1995, in Subsection A, substituted "statewide or local election" for "general election or one primary election", and inserted "after being placed on an inactive voter list"; substituted "four-year period, establishing an inactive voter list and providing notice of inactive status to voters on the inactive voter list" for "two general elections" in Subsection B; rewrote Subsection E; and deleted Subsection F prohibiting stamping the certificate "cancelled" until the end of the 60-day period.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" throughout the section; in Subsection A, substituted "in at least one" for "at the last", and "or one" for "and", inserted "in a four-year period", and deleted "affidavits of" preceding the first

occurrence of "registration"; in Subsection B, inserted "least once in" and "two", and made a minor stylistic change; and, in Paragraph (E)(2), inserted "two" and "least one of", and made a minor stylistic change.

Compiler's notes. — Since the following opinions were rendered, the 1979 amendment has substituted "last general election" for "last two general elections" in Subsections A and B and substituted "the last general election" for "either one or both of the last two general elections" in Subsection E(2).

Legislative intent. — The legislature intended that whenever a person fails to vote in two general elections that such person's registration should be canceled. The legislature provided that an additional check should be made if the election affidavit would cause the board of registration to doubt that it was properly marked, and if the pollbook showed that the party had "voted in one of such elections, the registration was not to be canceled." 1957 Op. Att'y Gen. No. 57-281 (opinion rendered under former law).

Voter may retain registration upon giving legitimate reason for failure to vote. — A person who failed to vote at the last two preceding general elections may upon giving a legitimate reason retain his original registration without cancellation, since such person could re-register immediately after the cancellation. 1944 Op. Att'y Gen. No. 44-4550 (opinion rendered under former law).

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1975, ch. 255, § 47, repealed former 3-4-27, 1953 Comp., relating to cancellation of registration, failure to vote and notice, and enacted a new 3-4-27, 1953 Comp.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 25 and Laws 1993, ch. 316, § 25, both effective June 18, 1993, which substituted "certificates" for "affidavits" throughout the section. The section was set out as amended by Laws 1993, ch. 316, § 25. *See* 12-1-8 NMSA 1978.

Compiler's notes. — The following opinions were rendered prior to the 1979 amendment of 1-4-29 NMSA 1978. Cancellation now is grounded upon failure to vote in the last general election rather than the last two general elections.

Cancellation for failure to vote not discretionary. — Cancellation of registration for failure to vote in the previous two general elections is not discretionary but an absolute duty. 1961 Op. Att'y Gen. No. 61-135 (opinion rendered under former law).

Where person has registered twice and failed to vote. — Where a person has registered twice, the first registration being subject to cancellation because the person has not voted in the last two general elections under this registration, the older registration should be cancelled. Once the older registration is cancelled, the newer one is valid. 1961 Op. Att'y Gen. No. 61-135 (opinion rendered under former law).

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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, permitted county clerks to cancel a voter’s registration upon the written request of the voter.

The 1993 amendment, effective June 18, 1993, substituted "a certificate" for "an affidavit" in Subsection A; deleted "affidavit of" preceding the first occurrence of "registration" and made a minor stylistic change in Subsection B; deleted "affidavit of" preceding both occurrences of "registration" in Subsection C; and, in Subsection D, substituted "certificate" for "affidavit" and corrected a misspelling of "canceled".

1-4-31. Repealed.

History: 1953 Comp., § 3-4-29, enacted by Laws 1969, ch. 240, § 87; 1975, ch. 255, § 49; 1979, ch. 24, § 4; 1993, ch. 314, § 27; 1993, ch. 316, § 27; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-4-31 NMSA 1978, as enacted by Laws 1969, ch. 240, § 87, relating to cancellation of registration, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 28 and Laws 1993, ch. 316, § 28, both effective June 18, 1993, and both approved April 8, 1993, which deleted "an affidavit of" and made a related stylistic change in Subsection A, and substituted "certificate" for "affidavit" in Subsection A and "certificates" for "affidavits" near the beginning of Subsection B. The section was set out as amended by Laws 1993, ch. 316, § 28. *See* 12-1-8 NMSA 1978.

1-4-33. Repealed.

History: 1953 Comp., § 3-4-31, enacted by Laws 1969, ch. 240, § 89; 1975, ch. 255, § 51; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-4-33 NMSA 1978, as enacted by Laws 1969, ch. 240, § 89, relating to board of registration, county chairman's list, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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

A. The board of county commissioners shall, in June or July of each odd-numbered year, appoint five voters who shall constitute the board of registration for the county; provided that a county with fewer than five thousand residents as of the last federal decennial census may 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

(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; 2023, ch. 39, § 20.

ANNOTATIONS

Cross references. — For voter defined, *see* 1-1-5 NMSA 1978.

For boards of registration, not more than two members to be of same party, *see* N.M. Const., art. VII, § 1.

The 2023 amendment, effective June 16, 2023, revised the date when a board of county commissioners must appoint five voters to the board of registration for the county, and authorized counties with fewer than five thousand residents to appoint three voters to constitute the board of registration of the county; and in Subsection A, after "The board of county commissioners shall", deleted "at its first regular scheduled meeting", after "June", added "or July", after "provided that a", deleted "Class B", deleted "as defined in Section 4-44-1 NMSA 1978 shall", and added "with fewer than five thousand residents as of the last federal decennial census may".

The 2019 amendment, effective April 3, 2019, revised the duties of the board of county commissioners, and revised the requirements for members of the board of registration; in Subsection A, after "meeting in", deleted "February" and added "June", after "appoint", deleted "three" and added "five", and after "registration for the county;", added "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"; in Subsection B, after the subsection designation, deleted "No" and added "Members of the board of registration shall not during their service be

county employees, elected officials or candidates for public office, and not", after "more than two", deleted "of the three persons appointed to" and added "members of", and after "time of their appointment; deleted "provided that if a major party has no registered, qualified elector who is able to fill the position, a registered, qualified elector from another major party may be chosen by the county clerk" and added the remainder of the subsection; and deleted former Subsections C and D and added a new Subsection C.

The 1995 amendment, effective January 1, 1996, rewrote Subsection B which read: "Two of the three persons appointed to the board of registration shall be members of each of the major political parties respectively at the time of their appointment."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 183, 188.

29 C.J.S. Elections § 42.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, removed the provision prohibiting additional compensation for the secretary to the board of registration; after "secretary to the board of registration", deleted "and shall serve without additional compensation".

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 [10-8-1 to 10-8-8 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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 44.

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.

ANNOTATIONS

Cross references. — For county officers' oaths, *see* N.M. Const., art. XX, § 1 and 10-1-13 NMSA 1978.

The 2019 amendment, effective April 3, 2019, provided the term of office for members of the board of registration; and in Subsection A, added the first sentence.

One contemplating becoming candidate may serve on board. — Even though a justice of the peace (now magistrate) contemplates becoming a candidate in the ensuing election, he may serve as a member of the board of registration and he would not be disqualified from doing so. 1946 Op. Att'y Gen. No. 46-4849 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 90.

29 C.J.S. Elections § 42.

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 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 to 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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, completely rewrote the section; after the section heading, deleted "The board of registration shall meet at the office of the county clerk"; and added new Subsections A through D.

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

ANNOTATIONS

Repeals. — Laws 1995, ch. 198, § 17 repealed 1-4-39 through 1-4-45 NMSA 1978, as enacted by Laws 1971, ch. 195, §§ 1 and 2, and Laws 1969, ch. 240, §§ 97 to 101, relating to deputy registration officers, effective April 6, 1995. For provisions of former sections, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

Compiler's notes. — Laws 1995, ch. 124, § 6 amended former 1-4-40 NMSA 1978, effective January 1, 1996. However, because of the repeal of that section by Laws 1995, ch. 198, the amendment was not given effect.

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; automatic voter registration and updates.

A. Unless a person is automatically registered to vote pursuant to the automatic voter registration provisions of Subsections B through D of this section, when a person who is a qualified elector or qualified resident but not registered to vote in the state conducts a transaction to apply for or renew a driver's license, state-issued identification card, learner's permit or provisional license, the person shall be offered the opportunity to simultaneously register to vote. A person registering to vote pursuant to this subsection shall not be required to provide a second time any information that duplicates information required in the driver's license, state-issued identification card, learner's permit or provisional license portion of the transaction.

B. A qualified elector or qualified resident who provides a document demonstrating United States citizenship in the course of conducting an in-person transaction to apply for or renew a driver's license, state-issued identification card, learner's permit or provisional license shall be confirmed in a database maintained by the motor vehicle division of the taxation and revenue department as satisfying the citizenship requirement for eligibility to vote. If the person is not already registered to vote based on an automated database check, the person shall be registered to vote and shall be informed that the person is being registered to vote and that the person will receive a notice from the county clerk providing additional information, including how to decline to be registered, and the person shall be offered the opportunity to designate affiliation with a qualified political party during the in-person transaction. Within seven days, the motor vehicle division of the taxation and revenue department shall electronically transmit to the secretary of state an electronic record containing the person's full name, full social security number, date of birth, driver's license or state-issued identification card number, residence address, mailing address if different from residence address, county of residence, citizenship status, an electronic image of the person's signature, any affiliation with a qualified political party and any other available information requested by the secretary of state.

C. Upon receiving an electronic record pursuant to Subsection B of this section, the secretary of state shall forward the person's electronic record to the county clerk of the county in which the person resides. The county clerk shall accept and process the electronic record received as a certificate of registration pursuant to the provisions of Section 1-4-11 NMSA 1978.

D. Upon receiving an electronic record pursuant to Subsection C of this section, the county clerk shall send to the person's mailing address, by nonforwardable mail, a notice that the person has been registered to vote. The notice shall include a postage prepaid and pre-addressed return card by which the person may decline to be registered to vote. The notice shall be prescribed by the secretary of state with conforming language depending on whether the person is a qualified elector or a qualified resident, and may be combined with a voter information document and shall include:

(1) an explanation of the voter eligibility requirements, a statement of the penalties for registering to vote when a person is not eligible and a statement that if the person is not eligible to vote that the person should decline to register by returning the card;

(2) a statement that:

(a) if the person declines to register to vote, the fact that the person has declined registration will remain confidential and will be used only to process the declination and for reporting election administration statistics; and

(b) if the person does not decline the registration, the office from which the person's electronic record was received will remain confidential and will be used only for reporting election administration statistics;

(3) information on how a person may become a participant in the confidential substitute address program;

(4) an opportunity for the person to designate affiliation with a qualified political party by returning the card; and

(5) an opportunity for the person to request a mailed ballot for the next statewide election, on a form prescribed by the secretary of state, which shall serve as an application for a mailed ballot pursuant to Section 1-6-4 NMSA 1978.

E. After a person returns the card described in Subsection D of this section:

(1) if the person declines to be registered to vote by returning the card, the person's registration shall be canceled and the person shall be deemed to have not registered to vote. Information relating to a person declining to be registered to vote pursuant to this section shall not be used for any purpose other than to process the declination and for reporting election administration statistics;

(2) if the person votes in an election after registration under this section and subsequently returns the card to decline the registration, the declination shall not be effective until after the election in which the person voted; and

(3) if the person returns the card to designate affiliation with a qualified political party, the person's political party affiliation shall be effective pursuant to Section 1-4-8 NMSA 1978.

F. If a person who is registered to vote in the state conducts a transaction to apply for or renew, update, correct or replace the person's driver's license, state-issued identification card, learner's permit or provisional license or files a notice of change of address and the information provided to the motor vehicle division of the taxation and revenue department indicates a different address or name from the person's existing certificate of registration, the motor vehicle division of the taxation and revenue department shall electronically transmit to the secretary of state an electronic record containing the person's full name, date of birth, driver's license or state-issued identification card number, residence address, mailing address if different from residence address, county of residence, an electronic image of the person's signature and any other available information requested by the secretary of state. The secretary of state shall issue standards for what is considered a different address. If the new address is in:

(1) the same county, or the person's name has changed, the secretary of state shall send the information to the county clerk of the county where the person is registered and the county clerk shall process the change to the official list of eligible voters in accordance with the change of residence information provided; or

(2) a different county, the secretary of state shall send the information to the county clerk of the county where the person's new address is located and the county clerk shall process the change of residence as a transferred registration into the county.

G. Immediately at the conclusion of each in-person transaction to apply for or renew a driver's license or state-issued identification card, a 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 secretary of state by the motor vehicle division as a result of the application for or renewal of a driver's license or state-issued identification card.

H. In carrying out the provisions of this section, a motor vehicle division employee or contractor shall not intentionally influence a 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 a voter registration pursuant to this section to anyone other than a registration officer.

I. Unless a person who is not a qualified elector or is ineligible to register to vote knowingly and willfully takes voluntary action to register to vote knowing that the person is not a qualified elector or is ineligible to register to vote, the transfer of an electronic record or the failure of a person to decline voter registration pursuant to this section shall not be considered a violation of Section 1-20-3 NMSA 1978.

J. A person who is not a qualified elector or who is ineligible to vote but who becomes registered to vote under this section and votes or attempts to vote in an election held after the effective date of the person's registration commits false voting under Section 1-20-8 NMSA 1978 only if the person knowingly and willfully took voluntary action to register to vote with knowledge that the person is not a qualified elector or is ineligible to register or knowingly and willfully voted with knowledge that the person is not a qualified elector or is ineligible to vote.

K. By January 1 following each general election, the secretary of state shall submit to the legislature and make publicly available a report on the implementation of this section. Excluding any personal identifying information, the report shall include:

(1) the number of electronic records transmitted to the secretary of state by the motor vehicle division of the taxation and revenue department pursuant to this section;

(2) the number of new voters statewide as a result of the automatic voter registration system;

(3) the number of voters whose information was updated because of the automatic voter registration system, reported by the type of information updated; and

(4) the number of people who declined to be registered to vote through the automatic voter registration system.

L. The secretary of state shall adopt rules and coordinate as necessary with the motor vehicle division of the taxation and revenue department and other state agencies and Indian nations, tribes and pueblos designated pursuant to Section 1-4-47.1 NMSA 1978.

History: 1978 Comp., § 1-4-47, enacted by Laws 1991, ch. 80, § 4; 1995, ch. 198, § 12; 2013, ch. 184, § 1; 2023, ch. 39, § 21; repealed and reenacted by Laws 2023, ch. 84, § 7.

ANNOTATIONS

Repeals and reenactments. — Laws 2023, ch. 84, § 7 repealed former 1-4-47 NMSA 1978 and enacted a new section, effective July 1, 2025.

The 2023 amendment, effective June 16, 2023, required the motor vehicle division of the taxation and revenue department to transmit to the secretary of state the certificate of registration and electronic signature when a person electronically registers to vote when applying for a driver's license, required that every certificate of registration completed electronically include the applicant's full social security number, and required that any certificate of registration completed on a paper form be transmitted to the secretary of state or the county clerk of the county in which the motor vehicle division office is located; in Subsection C, Paragraph C(3), after "Uniform Electronic Transactions Act", added "and the form and signature shall be transmitted to the secretary of state; and", and added Paragraph C(4); and in Subsection E, after "Any", added "certificate of", after "voter registration", added "completed on a paper form and", after "motor vehicle division office", deleted "or motor vehicle division", after "field office", added "or contract field office", after "transmitted to the secretary of state", deleted "and" and added "or", and after "or the", deleted "appropriate registration officer" and added "county clerk of the county in which the office is located".

The 2013 amendment, effective July 1, 2013, provided for electronic submittal of a voter’s certificate of registration form by the motor vehicle division of the taxation and revenue department; in Subsection A, after "Every person", added "who is a qualified elector and is" and after "card shall, if", deleted "otherwise"; in Subsection B, after "motor vehicle division", deleted "of the taxation and revenue department"; in Paragraph (1) of Subsection C, after second occurrence of "office shall advise", deleted "any" and added "each person who is a qualified

elector and an"; added Paragraphs (2) and (3) of Subsection C; in Subsection E, after "shall be transmitted to the", added "secretary of state and"; and added Subsection F.

The 1995 amendment, effective April 6, 1995, in Subsection A, deleted "or" preceding "to renew" and inserted "or for an identification card" near the beginning, and substituted "with the consent of the applicant be simultaneously registered to vote" for "be permitted to register to vote with a motor vehicle deputy registration officer. The applicant shall complete an affidavit of voter registration"; in Subsection B, substituted "provide assistance to any applicant requesting voter registration assistance" for "be motor vehicle deputy registration officers"; in Subsection C, rewrote the last sentence which read "Personnel in the offices shall make available a motor vehicle deputy registration officer to any person requesting to be registered as a voter"; in Subsection D, substituted "division employee or contractor" for "deputy registration officer" and added the last sentence of Subsection D; and added Subsection E.

1-4-47.1. State agency; Indian nation, tribe or pueblo; automatic voter registration requirements.

A. Upon a determination by the secretary of state that a state agency, including an agency that participates in the state-agency-based voter registration program pursuant to Section 1-4-48 NMSA 1978, collects sufficient information consistent with Section 1-4-47 NMSA 1978 to transmit electronic records for automatic voter registration in accordance with the provisions of that section, including verification of United States citizenship by document or database verification for any agency clients not already registered to vote, the secretary of state shall enter into a memorandum of understanding with the agency requiring the agency to comply with the provisions of Section 1-4-47 NMSA 1978. The secretary of state and county clerks shall process the electronic records according to the provisions of Section 1-4-47 NMSA 1978, subject to any modifications necessary to comply with federal law.

B. An Indian nation, tribe or pueblo that collects sufficient information consistent with Section 1-4-47 NMSA 1978 to transmit electronic records for automatic voter registration in accordance with the provisions of that section, including verification of United States citizenship by document or database verification for any persons not already registered to vote, may in its discretion transmit the records to the secretary of state. The secretary of state shall enter into a memorandum of understanding with the Indian nation, tribe or pueblo detailing compliance with the provisions of Section 1-4-47 NMSA 1978. The secretary of state and county clerks shall process the electronic records according to the provisions of Section 1-4-47 NMSA 1978, subject to any modifications necessary to comply with federal law.

C. If a state agency or an Indian nation, tribe or pueblo is able to transmit electronic records that are complete for automatic voter registration except for an electronic signature image, the records shall be processed as complete records for automatic voter registration. The secretary of state shall adopt rules to obtain a signature from the qualified elector or qualified resident, including through a mailing requesting a signature, uploading a signature through an electronic system, providing a signature on a mailed ballot envelope or providing a signature at an early voting location or polling place.

History: 1978 Comp., § 1-4-47.1, enacted by Laws 2023, ch. 84, § 8.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 8 effective July 1, 2025.

1-4-48. State-agency-based voter registration program; established; human services department [health care authority department].

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 designate other state and local public offices to provide voter registration services with the agreement of those offices.

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.

F. The human services department [health care authority 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 [health care authority department] shall issue an annual report detailing implementation of the requirements of this subsection. The report shall be sent to the legislative council service, the secretary of state and each county clerk.

G. If a person who is not a qualified elector becomes registered to vote pursuant to this section, the person's registration shall be canceled and the person shall be deemed to have never registered.

History: 1978 Comp., § 1-4-48, enacted by Laws 1995, ch. 198, § 13; 2003, ch. 356, § 14; 2023, ch. 84, § 9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

Cross references. — For the federal National Voter Registration Act of 1993, *see* 42 U.S.C. § 1973gg et seq.

For the federal Help America Vote Act of 2002, *see* 42 U.S.C. § 15301 et seq.

The 2023 amendment, effective July 1, 2025, required the human services department to 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, required the human services department to issue an annual report detailing implementation of the requirements of this section, and provided that if a person who is not a qualified elector becomes registered to vote pursuant to this section, the person's registration shall be canceled; in the section heading, added "State", "based voter", and "program; established; human services department"; and added Subsections F and G.

The 2003 amendment, effective July 1, 2003, substituted "rules" for "regulations" in two places in Subsection A; inserted "of state" following "secretary" in the second sentence of Subsection B; and inserted "and the federal Help America Vote Act of 2002" in the first sentence of Subsection C.

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

(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.

ANNOTATIONS

The 2007 amendment, effective April 2, 2007, in Subsection A, required registration agents to register with the secretary of state and provide the names of the officers of the organization; in Subsection D, provided that if a person who violates this section is an employee of an organization and has decision-making authority involving voter registration activities or is an officer of the organization, the organization is subject to civil penalties; and added Subsection E.

Constitutionality. — Section 1-4-19 NMSA 1978 is not void for vagueness or unconstitutionally overbroad. The National Voting Rights Act does not preempt New Mexico's third-party voter registration law, or violate N.M. Const., art. II, § 8. *Am. Ass'n of Disabilities v. Herrera*, 690 F. Supp. 2d 1183 (D.N.M. 2010).

The requirement in 1-4-49 NMSA 1978 that county clerks train and educate registration agents does not violate the New Mexico constitutional principle of non-delagation and the due process clause. *Am. Ass'n of Disabilities v. Herrera*, 690 F. Supp. 2d 1183 (D.N.M. 2010).

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.

ANNOTATIONS

Cross references. — For the Voter Records System Act, *see* 1-5-1 NMSA 1978.

The 2011 amendment, effective July 1, 2011, prohibited the disclosure of the month and day of a voter’s birth except to a registration officer.

ARTICLE 5
Voter Records System

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.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, changed the statutory reference of the Voter Records System Act from "Section 1-5-1 through 1-5-29" to "Chapter 1, Article 5".

The 2005 amendment, effective July 1, 2005, changed the statutory reference to the act and changed the short title of the act from the "Automated Voter Records System Act" to the "Voter Records System Act".

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.

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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, deleted the former definitions of "county register", "voter list", "signature roster", "active data processing media", "intermediate records", "voter file", "program records", "mailing labels", "special voter lists", "statistical data", "voter data", "data processor", "file maintenance list", "precinct voter list", "county voter list", "unofficial election canvassing file", "unofficial election canvassing system", "election campaign purposes", and "governmental purposes" in Subsections B through T respectively, and added the definitions in Subsections B through O.

The 2001 amendment, effective June 15, 2001, deleted "arranged in alphabetical order by voter surname and, if for more than one precinct, without regard to precincts" from the end of Subsection B; substituted "prepared list" for "machine-prepared list" throughout the section; in Subsection E, deleted "punched cards, punched tape, magnetic cards" following "means", substituted "computer" for "suitable machinery", deleted "machine" preceding "preparation"; and added Subsections S and T.

The 1995 amendment, effective June 16, 1995, substituted "certificates" for "affidavits"in Subsection B; in Subsection G, substituted "that" for "which" and "certificate" for "affidavit"; deleted "and providing no more than the name, gender, address, telephone number if its dissemination is not prohibited by the voter, political party affiliation and precinct of the voter", from the end of Subsection J; deleted "and includes no more than the precinct, gender, political party affiliation and year of birth" from the end of Subsection K; and deleted "and includes no more than the voter's name, gender, address, telephone number if its dissemination is not prohibited by the voter, political party affiliation and precinct" from the end of Subsection L.

The 1993 amendment, effective June 18, 1993, inserted "telephone number if its dissemination is not prohibited by the voter" in Subsections J and L, and made a stylistic change in Subsection N.

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.

ANNOTATIONS

Cross references. — For the Help America Vote Act of 2002, *see* 42 U.S.C. Sections 15301 et seq.

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that the Voter Records System Act shall be implemented in all counties by the secretary of state in accordance with the federal Help America Vote Act of 2002; in Subsection B, provided that the secretary of state shall keep the official state voter file which is based on the county registers and shall provide access to the file to the county clerks; that the secretary of state shall implement procedures required by the Voter Records System Act and federal law; and that registration lists requested in electronic form shall be fulfilled within the time specified; in Subsection C, deleted the former provision that the procedures of the Automated Voter Records System Act shall be used in lieu of procedures prescribed in the Election Code; and in Subsection C, provided that records shall be maintained in addition to records required by the Voter Records System Act and federal law.

The 1993 amendment, effective June 18, 1993, deleted former Subsection D, relating to the destruction of duplicate affidavits of registration by the county clerk. Laws 1993, ch. 314, § 33 enacted identical amendments to this section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 180, 181.

29 C.J.S. Elections §§ 37, 50.

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.

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.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, deleted "machine" preceding "data processing" in the section heading; deleted "machine" preceding "preparation" at the end of Subsection B; and deleted "machine" preceding "processing system" in Subsection C.

The 1993 amendment, June 18, 1993, deleted "affidavit of" preceding "registration until" in Subsection D and substituted "certificate" for "affidavit" throughout the section.

1-5-6. Precinct voter lists; signature roster preparation; electronic poll book alternative.

A. The county clerk shall provide for preparation of precinct voter lists and signature rosters generated from the official state voter file for any precincts or an electronic poll book alternative approved by the voting system certification committee and certified by the secretary of state.

B. The precinct voter lists and signature rosters or an electronic poll book alternative 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; 2023, ch. 39, § 22.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, authorized electronic poll books as an alternative to precinct voter lists if approved by the voting system certification committee and certified by the secretary of state; in the section heading, added "electronic poll book alternative"; in Subsection A, after "voter file for any precincts", added "or an electronic poll book alternative approved by the voting system certification committee and certified by the secretary of state"; and in Subsection B, after "signature rosters", added "or an electronic poll book alternative".

The 2005 amendment, effective July 1, 2005, changed "voter lists" to "precinct voter lists" and provided that the precinct voter lists and signature rosters shall be generated from the official state voter file.

The 2001 amendment, effective June 15, 2001, substituted "signature roster preparation" for "signature rosters; machine prepared" in the section heading; and deleted "machine" preceding "preparation" in the first sentence.

The 1993 amendment, effective June 18, 1993, substituted "certificates" for "affidavits" in the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 109.

29 C.J.S. Elections § 47.

1-5-7. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-5-7 NMSA 1978 as 1-12-7.3 NMSA 1978 effective July 1, 2011.

1-5-8. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-5-8 NMSA 1978 as 1-12-7.4 NMSA 1978, effective July 1, 2011.

1-5-9. Repealed.

History: 1953 Comp., § 3-5-9, enacted by Laws 1969, ch. 240, § 111; repealed Laws 2005, ch. 270, § 79.

ANNOTATIONS

Repeals. — Laws 2005, ch. 270, § 79 repealed 1-5-9 NMSA 1978, as enacted by Laws 1969, ch. 240, § 111, relating to signature rosters, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

1-5-10. Recompiled.

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; recompiled as 1-12-7.1 by Laws 2005, ch. 270, § 63.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 270, § 63 recompiled former 1-5-10 NMSA 1978 as 1-12-7.1 NMSA 1978, effective July 1, 2005.

1-5-11. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 270, § 73 recompiled former 1-5-11 NMSA 1978 as 1-12-30.1 NMSA 1978, effective July 1, 2005.

1-5-12. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 270, §78 recompiled former Section 1-5-12 NMSA 1978 as Section 1-12-7.2 NMSA 1978, effective July 1, 2005.

1-5-13. Repealed.

History: 1953 Comp., § 3-5-14, enacted by Laws 1969, ch. 240, § 115; 1993, ch. 314, § 38; 1993, ch. 316, § 38; repealed Laws 2005, ch. 270, § 79.

ANNOTATIONS

Repeals. — Laws 2005, ch. 270, § 79 repealed 1-5-13 NMSA 1978, as enacted by Laws 1969, ch. 240, § 115, relating to signature rosters, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

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.

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.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, provided new duties for the secretary of state relating to file maintenance reports of additions, deletions and changes to each of the county registers, and required that the file maintenance report be provided in a digital format; in the catchline, after "maintenance", deleted "lists" and added "reports; voter file updates"; in Subsection A, after "a month, the", deleted "county clerk" and added "secretary of state", after "file maintenance" deleted "list" and added "report, after "if any, to", added "each of", after "the county", deleted "register" and added "registers. The file maintenance report shall indicate whether each entry listed is an addition, deletion or change to the county register"; in Subsection B, deleted "One copy of the list" and added "A digital version of the file maintenance

report", and after "stored by the", deleted "county clerk" and added "secretary of state"; in Subsection C, deleted "The county clerk shall also furnish copies of the list to the county chairman of each of the major political parties in the county. The copy of the chairman's list shall indicate whether each item is an addition, deletion or change. The file maintenance list" and added "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"; designated the remainder of Subsection C as Subsection D; and in Subsection D, added "File maintenance reports and updated voter files shall be provided in a manipulable digital format and", after "month of birth", added "the voter's email address", after "or", added "if prohibited by the voter", and after "telephone number", deleted "if prohibited by the voter".

The 2005 amendment, effective July 1, 2005, in Subsection A, changed "voter file" to "state voter file"; deleted former Subsection B, which provided that the county clerk shall be furnished with two copies of the file maintenance lists; deleted former Subsection E, which provided that county clerks shall furnish the secretary of state with a copy of the voter file; and relettered subsections accordingly.

The 2001 amendment, effective June 15, 2001, deleted "machine-prepared" preceding "file maintenance" in Subsections A and B; in Subsection C, shortened the length of time that the county clerk must store the list from six years to one year; and deleted "magnetic" preceding "voter file" in two places in Subsection E.

The 1995 amendment, effective June 16, 1995, substituted "six years" for "twelve months" in Subsection C; in Subsection D, deleted "two" preceding "copies", deleted "contain only the name, address, party affiliation and precinct of the voter and shall" following "the chairman's list shall", and added the last sentence of the subsection which begins "The file maintenance list shall not include".

1-5-15. Repealed.

History: 1953 Comp., § 3-5-19, enacted by Laws 1969, ch. 240, § 120; 1975, ch. 255, § 71; repealed Laws 2005, ch. 270, § 79.

ANNOTATIONS

Repeals. — Laws 2005, ch. 270, § 79 repealed 1-5-15 NMSA 1978, as enacted by Laws 1969, ch. 240, § 120, relating to voter files, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Purpose for preparation and safekeeping of "duplicate master record" is to have immediately available the means of replacing the information on the "working master record", if the "working master record", or any portion thereof should be damaged or destroyed. *Ortiz v. Jaramillo*, 1971-NMSC-041, 82 N.M. 445, 483 P.2d 500.

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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, changed "program records" to "voter registration system software" in Subsections A and B; deleted former Subsection B, which provided that program records and instructions for their use shall remain the property of the designated data processor; and relettered succeeding subsection accordingly.

The 2001 amendment, effective June 15, 2001, deleted "machine" preceding "processing" in Subsection A.

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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, changed "county clerk" to "secretary of state" in Subsections A and C; in Subsection A, provided that the secretary of state shall provide to the county clerk the means to prepare lists and rosters; and in Subsection C, changed references from programs to voter registration system software.

The 2001 amendment, effective June 15, 2001, substituted "List and roster preparation" for "Machine preparation" in the section heading; substituted "voter lists" for "voting lists" in Subsection B; and deleted "machine" preceding "facility" in Subsection C.

1-5-19. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-5-19 NMSA 1978 as 1-4-5.4 NMSA 1978 effective July 1, 2011.

1-5-20. Repealed.

History: 1953 Comp., § 3-5-25.1, enacted by Laws 1977, ch. 222, § 11; 1993, ch. 314, § 40; 1993, ch. 316, § 40; repealed Laws 2005, ch. 270, § 79.

ANNOTATIONS

Repeals. — Laws 2005, ch. 270, § 79 repealed 1-5-20 NMSA 1978, as enacted by Laws 1977, ch. 222, § 11, relating to certificates of registration, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that the data processor shall provide the services to the secretary of state; in Subsection B, deleted the former provision which provided that the data processor shall be responsible for the identification of the voter files and program records and their parts, and provided that the data processor shall preserve and safeguard voter files and voter registration system software; in Subsection C, provided that the data processor may provide voter file and information to the secretary of state; deleted former Subsection D, which provided that the data processor shall provide county clerks with data processing services to implement the unofficial election canvassing system; deleted former Subsection E, which provided that the unofficial election canvassing system shall be tested by the secretary of state; and deleted former Subsection F, which provided that the secretary of state shall certify the unofficial election canvassing system.

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.

ANNOTATIONS

Cross references. — For offenses and penalties, *see* 1-20-1 NMSA 1978 et seq.

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that unlawful disposition of voter file includes providing access to the voter file and includes the prohibited acts by a data processor’s agent or employee or a state or county officer's deputy or assistant.

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.

ANNOTATIONS

Cross references. — For offenses and penalties, *see* 1-20-1 NMSA 1978 et seq.

The 2005 amendment, effective July 1, 2005, changed "active data processing media" to "data recording media", "program records" to "voter registration system software" and "records" to "software".

1-5-24. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-5-24 NMSA 1978 as 1-4-5.5 NMSA 1978 effective July 1, 2011.

1-5-25. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-5-25 NMSA 1978 as 1-4-5.6 NMSA 1978 effective July 1, 2011.

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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, provided the secretary of state shall enter into an agreement with a data processor; deleted the provisions in former Subsection A, which provided that each county shall enter into an agreement with a data processor notwithstanding the fact that the data processor is a department of a county or municipality and that parties to the agreement shall be the county, the county clerk and the data processor; deleted former Subsection B, which provided that all agreements shall be approved by the secretary of state with the assistance of the automated voter records system advisory committee; and deleted former Subsection C, which provided that the secretary of state shall provide by regulation contractual provisions required for approval.

1-5-27. Repealed.

History: 1953 Comp., § 3-5-32, enacted by Laws 1975, ch. 255, § 81; 1987, ch. 249, § 17; repealed Laws 2005, ch. 270, § 79.

ANNOTATIONS

Repeals. — Laws 2005, ch. 270, § 79 repealed 1-5-27 NMSA 1978, as enacted by Laws 1975, ch. 255, § 81, relating to automated voter records system advisory committee, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

1-5-28. Repealed.

History: 1953 Comp., § 3-5-33, enacted by Laws 1975, ch. 255, § 82; repealed Laws 2005, ch. 270, § 79.

ANNOTATIONS

Repeals. — Laws 2005, ch. 270, § 79 repealed 1-5-28 NMSA 1978, as enacted by Laws 1975, ch. 255, § 82, relating to automated voter records system advisory committee, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

1-5-29. Repealed.

History: 1953 Comp., § 3-5-34, enacted by Laws 1975, ch. 255, § 83; 1987, ch. 249, § 18; 1993, ch. 314, § 41; 1993, ch. 316, § 41; 2001, ch. 146, § 10; repealed Laws 2005, ch. 270, § 79.

ANNOTATIONS

Repeals. — Laws 2005, ch. 270, § 79 repealed 1-5-29 NMSA 1978, as enacted by Laws 1975, ch. 255, § 83, relating to automated voter records system advisory committee, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

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, 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.

ANNOTATIONS

Cross references. — For the federal Help America Vote Act of 2002, *see* 42 J.S.C. § 15301 et seq.

The 2019 amendment, effective April 3, 2019, provided for a voter registration electronic management system; in Subsection A, after "supervise a", deleted "statewide computerized", and after "voter registration", added "electronic management"; in Subsection B, in the introductory clause, after "The", deleted "statewide computerized" and after "voter registration", added "electronic management", added new Paragraph B(6) and redesignated former Paragraphs B(6) and B(7) as Paragraphs B(7) and B(8), respectively; and added Subsection C.

The 2015 amendment, effective July 1, 2015, provided requirements for the statewide computerized voter registration system that is to be developed and implemented by the secretary of state; and added a new Paragraph (5) of Subsection B and redesignated the succeeding paragraphs accordingly.

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that the voter registration system shall comply with the federal Help America Vote Act of 2002; in Subsection B(2), provided that the system shall permit changes to be made in county information; in Subsection B(6), provided that the system shall permit each county to enter the precinct to which the voter should be assigned; and deleted former Subsection B(7), which provided that the system prescribe a procedure for phasing in or converting existing computerized records.

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.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, provided new duties for the secretary of state in assisting county clerks in verifying voter registrations and processing absentee ballots and

qualifying provisional ballots, and required the secretary of state to adopt rules to establish and administer the voter registration electronic management system and to regulate the use of the driver's license database by county clerks; in Subsection A, after "compatible with the", deleted "statewide computerized", and after "registration", added "electronic management"; in Subsection B, after "maintenance of the", deleted "statewide computerized", after "voter registration", added "electronic management", and after system;", deleted "and"; added a new Subsection C and redesignated former Subsection C as Subsection D; and in Subsection D, after "such rules", deleted "and regulations", after "administer the", deleted "statewide computerized", after "voter registration", added "electronic management", after "system and to", deleted "require deadlines and time limits for the updating of voter files" and added "regulate the use of the driver's license database by count clerks".

The 2005 amendment, effective July 1, 2005, in Subsection B, deleted the requirement that the secretary of state develop computer software; and in Subsection C, deleted the provision that the secretary of state adopt rules and regulations to provide for the update of voter files at each polling place for the next election.

ARTICLE 6
Absentee Voting

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.

ANNOTATIONS

Cross references. — For constitutional provision as to absentee voting laws, *see* N.M. Const., art. VII, § 1.

For absentee voting in municipal elections, *see* 3-9-1 NMSA 1978 et seq.

The 2018 amendment, effective July 1, 2018, changed "Sections 1-6-1 through 1-6-18 NMSA 1978" to "Chapter 1, Article 6 NMSA 1978".

Provisions are applicable to local option district elections, thereby directing the absentee voting procedures to be followed in such elections. 1977 Op. Att'y Gen. No. 77-17.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 355 et seq.

Voting by persons in military service, 140 A.L.R. 1100, 147 A.L.R. 1443, 148 A.L.R. 1402, 149 A.L.R. 1466, 150 A.L.R. 1460, 151 A.L.R. 1464, 152 A.L.R. 1459, 153 A.L.R. 1434, 154 A.L.R. 1459, 155 A.L.R. 1459.

Military establishments, state voting rights of residents of, 34 A.L.R.2d 1193.

Absentee voters' laws: validity of, 97 A.L.R.2d 218.

Absentee voters' laws: construction and effect of, 97 A.L.R.2d 257.

29 C.J.S. Elections §§ 210(1), 210(2).

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

1-6-2. Repealed.

History: 1978 Comp., § 1-6-2, enacted by Laws 1987, ch. 327, § 6; 1991, ch. 105, § 9; 1999, ch. 267, § 4; 2003, ch. 356, § 17; repealed by Laws 2015, ch. 145, § 101.

ANNOTATIONS

Repeals. — Laws 2015, ch. 145, § 101 repealed 1-6-2 NMSA 1978, as enacted by Laws 1987, ch. 327, § 6, relating to definitions, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*.

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.

ANNOTATIONS

Cross references. — For persons not permitted to vote, *see* 1-12-7 NMSA 1978.

For constitutional provisions on the right to vote, *see* U.S. Const., amendments XIX and XXVI.

The 2019 amendment, effective April 3, 2019, rewrote the provision relating to absentee voting; in the section heading, deleted "ballot", and after "A voter may vote absentee", deleted "ballot for all candidates and on all questions appearing on the ballot as if the voter were able to cast the ballot in person" and added the remainder of the section.

The 2015 amendment, effective July 1, 2015, removed the provision relating to federal qualified electors registering for and voting by absentee ballot; deleted the subsection designation for Subsection A; at the beginning of the sentence, deleted "Any" and added "A", after "on the ballot as if", deleted "he" and added "the voter", after "able to cast", deleted "his" and added "the", and after "ballot in person", deleted "at his regular polling place on election day"; and deleted Subsection B.

The 1999 amendment, effective June 18, 1999, substituted the section heading for "Right to absentee ballot; right to vote", and substituted "as if he were able to cast his ballot in person at his regular polling place on election day" for "at his precinct poll as if he were able to cast his ballot in person at the precinct poll" in Subsection A.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted former Paragraphs (1) through (6), identifying persons eligible to vote by absentee ballot, and deleted "statewide" preceding "questions".

Compiler's notes. — The following annotations are from cases decided prior to the 1993 amendment, which eliminated requirements for voting by absentee ballot.

Obvious intent of absentee voting statutes is to enlarge the right of franchise to people who fall into the categories specifically set forth in the law, provided they have good reason to believe that they cannot be available at the polls on election day. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Requirements of valid absentee ballot. — A qualified absentee voter must in good faith have a reasonable belief that he may be unable to vote in person on election day for one or more of the specific statutory reasons and must sign the proper affidavits under oath to prove his status; after he has done this, it is the burden of the one challenging his right to vote to come forward and prove that the ballot is illegal, either when the votes are counted or by election contest. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Certain knowledge of absence not required. — To hold that the application for an absentee ballot must be made with certain knowledge that a voter cannot be present would place unreasonable constraints upon the right to vote and would be in contravention of the legislature's manifest intent to enlarge the voter franchise. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Presence in county on election day by otherwise qualified absentee voter does not invalidate his vote. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

When absentee ballots counted in contested election. — In an election contest trial persons who alleged statutory reasons for applying for, and voting by, absentee ballot, such as health and business, and whose testimony shows reasonable grounds to sustain their good faith application should have their votes counted. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 359.

29 C.J.S. Elections § 210(3).

1-6-3.1. Voluntary permanent absentee voter list; procedures.

A. A voter, except a federal qualified elector who is subject to the provisions of the Uniform Military and Overseas Voters Act [1-6B-1 to 1-6B-17 NMSA 1978] or the Intimate Partner Violence Survivor Suffrage Act [1-6C-1 to 1-6C-9 NMSA 1978], may apply to be added to the voluntary permanent absentee voter list for the county in which the voter is registered by completing a paper or online application that conforms to the mailed ballot application requirements of Section 1-6-4 NMSA 1978, except that the voluntary permanent absentee voter application shall provide an additional checkbox for the voter to affirm that reads:

"[ ] I am requesting to be added to the voluntary permanent absentee voter list in my county. This means that the county clerk shall automatically send a mailed ballot to the mailing address listed on my certificate of voter registration each time there is a statewide election that includes my precinct.".

B. Upon receipt of an application from a voter requesting to be added to the voluntary permanent absentee voter list, the county clerk shall process the application in the same manner as an application for a mailed ballot, except that the county clerk shall not accept an application to be added to the voluntary permanent absentee voter list if the voter's mailing address on the certificate of registration is outside of New Mexico.

C. Upon acceptance of the application to be added to the voluntary permanent absentee voter list, the county clerk shall add the voter's name to the voluntary permanent absentee voter list in the county. The voluntary permanent absentee voter list shall contain the voter's name, year of birth, address and precinct in the county.

D. A voter whose name appears on the voluntary permanent absentee voter list shall remain on the list, except as provided in Subsection F of this section, and shall be sent a mailed ballot by the county clerk for each statewide election conducted that includes the precinct in which the voter is eligible to vote. The mailed ballot shall be sent in the first batch of mailed ballots delivered to voters in that election.

E. At least forty-nine days before each statewide election, the county clerk shall send to each voter on the voluntary permanent absentee voter list a notice reminding the voter that the voter will be receiving a mailed ballot for that election. The notice shall also inform the voter of how to remove the voter's name from the voluntary permanent absentee voter list if the voter would like to do so. The notice shall be sent using non-forwardable mail with return postage prepaid.

F. A voter shall be removed from the voluntary permanent absentee voter list by the county clerk for the following reasons:

(1) the voter fails to return a mailed ballot in two consecutive elections, including at least one general election;

(2) the county clerk has sent a mailed ballot or other piece of election mail to the voter's mailing address that was subsequently returned as undeliverable;

(3) the voter's certificate of registration is canceled pursuant to the provisions of Chapter 1, Article 4 NMSA 1978;

(4) the voter updates the voter's certificate of registration indicating an address that is outside of the county for which the voter is listed on the voluntary permanent absentee voter list; or

(5) the voter submits a written request to the county clerk requesting to be removed from the voluntary permanent absentee voter list.

G. A county clerk shall take the necessary steps to attempt to contact and notify a voter who is removed from the voluntary permanent absentee voter list. If a voter is removed from the voluntary permanent absentee voter list, the voter shall only be added again if the voter submits a new voluntary permanent absentee voter application.

H. A county clerk shall maintain the voluntary permanent absentee voter list for the county and shall make the voluntary permanent absentee voter list available on request pursuant to the provisions of Section 1-4-5.5 NMSA 1978.

History: Laws 2023, ch. 84, § 10.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 10 effective January 1, 2024.

1-6-4. Mailed ballot application.

A. In a statewide election, application by a voter for a mailed ballot shall be made only on the official form approved by the secretary of state or its online equivalent accessed through a website authorized by the secretary of state. 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. A voter who has declined to designate on the voter's certificate of registration a party affiliation shall be provided the option on the application form for a mailed ballot in a primary election to request the ballot of one of the parties participating in the primary election.

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. 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.

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 [Chapter 1 NMSA 1978], 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 and notified that if the registrant votes for the first time in New Mexico by mail and does not follow the instructions for returning the required documentary identification, the registrant waives the right to secrecy in that mailed 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; 2023, ch. 39, § 23; 2025, ch. 54, § 2.

ANNOTATIONS

Cross references. — For processing of applications, *see* 1-6-5 NMSA 1978.

The 2025 amendment, effective July 1, 2025, allowed voters who have not designated a political party affiliation on their certificates of registration to be provided the option on the application form for a mailed ballot in a primary election to request the ballot of one of the parties participating in the primary election; in Subsection A, after "Absent Voter Act", added "A voter who has declined to designate on the voter's certificate of registration a party affiliation shall be provided the option on the application form for a mailed ballot in a primary election to request the ballot of one of the parties participating in the primary election."

The 2023 amendment, effective June 16, 2023, provided that, in a statewide election, application by a voter for a mailed ballot shall be made only on the official form approved by the secretary of state or its online equivalent accessed through a website authorized by the secretary of state, removed a provision that required, on the application form for a primary election ballot, there be a place provided for designation of the voter's political party affiliation, and provided that 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 be notified that if the registrant votes for the first time in New Mexico by mail and does not follow the instructions for returning the required documentary identification, the registrant waives the right to secrecy in that mailed ballot; in Subsection A, after "shall be made only on", deleted "a paper" and added "the official", after "form", added "approved by the secretary of state", after "or its online equivalent", added "accessed through a website authorized by the secretary of state", and deleted "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"; and in Subsection F, added "and notified that if the registrant votes for the first time in New Mexico by mail and does not follow the instructions for returning the required documentary identification, the registrant waives the right to secrecy in that mailed ballot".

The 2019 amendment, effective April 3, 2019, changed procedures related to absentee voting, and provided for mailed ballot application; in the section heading, deleted "absentee" and added "mailed", in Subsection A, after the subsection designation, added "In a statewide election", after "application by a voter for", deleted "an absentee" and added "a mailed", after "on a paper form or its", deleted "electronic" and added "online", after "qualification for issuance of", deleted "an absentee" and added "a mailed", after "application form for a", deleted "general" and added "primary", and after "shall be", deleted "no" and added "a"; in Subsection B, after "Each application", added "on a paper form", after the next occurrence of "for", deleted "an absentee" and added "a mailed", and after "identification.", deleted "except for" and added the remainder of the subsection; added new Subsections C through E and new subsection designation F, and redesignated former Subsection C as Subsection G; in Subsection F, after "registered", added "for the first time in this state", after "documentary identification", added "as required by federal law shall be informed of the need to comply with federal identification requirements when returning the requested ballot"; and in Subsection G, after "any voter", deleted "precinct" and added "election", and after "person's own on", deleted "absentee" and added "a mailed".

The 2017 amendment, effective June 16, 2017, provided for electronic application for absentee ballots; and in Subsection A, after "shall be made only on a", added "paper" and after "form", added "or its electronic equivalent".

The 2015 amendment, effective July 1, 2015, removed references to federal qualified electors and overseas voters relating to absentee voting; in the catchline, after "application", deleted "federal qualified elector; overseas voter"; deleted Subsection A and redesignated Subsections B and C as Subsections A and B, respectively; in Subsection A, after "secretary of state", deleted "in accordance with federal law"; deleted Subsection D; and redesignated former Subsection E as Subsection C.

The 2011 amendment, effective July 1, 2011, provided that a person who violates this section is guilt of a fourth degree felony.

The 2008 amendment, effective May 14, 2008, in Subsection C, deleted "unique identifier" and added "registration address".

The 2007 amendment, effective April 2, 2007, in Subsection C, required the secretary of state to issue rules to exempt voters from submitting identification only as required by federal law.

The 2005 amendment, effective July 1, 2005, moved the provision that the form shall allow the applicant to receive an absentee ballot for all elections within the election cycle from Subsection B to Subsection A; in Subsection B, provided that the application form shall be prescribed in accordance with federal law; and in Subsection C, provided that the application shall require the applicant's printed name, year of birth and unique identifier to be supplied by the applicant, which shall constitute the form of identification except for registrants who registered by mail and did not provide acceptable information.

The 2003 amendment, effective June 20, 2003, inserted "federal qualified elector; overseas voter" in the section heading; in Subsection A, inserted "or an overseas voter"; in Subsection B, in the first sentence, substituted "prescribed by the secretary of state" for "prescribed, printed and furnished by the secretary of state to the county clerk of the county in which the voter resides", and inserted the last sentence; and added Subsection D; in the first sentence in Subsection B. This section was also amended by Laws 2003, ch. 356, § 18, which was repealed by Laws 2005, ch. 270, § 80.

The 1999 amendment, effective June 18, 1999, substituted "in which the voter resides" for "in which he resides" in the first sentence of Subsection B.

The 1997 amendment, effective June 20, 1997, added the language beginning "provided that" at the end of Subsection B.

The 1993 amendment, effective June 18, 1993, inserted "only" and "printed and furnished" in the first sentence of Subsection B; rewrote Subsection C; and deleted former Subsections D and E, relating to the witnessing and mailing of absentee ballots.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 360.

29 C.J.S. Elections § 210(4).

1-6-4.1. Repealed.

History: 1978 Comp., § 1-6-4.1, enacted by Laws 1987, ch. 327, § 9; 1999, ch. 267, § 7; 2003, ch. 355, § 3; repealed by Laws 2015, ch. 145, § 101.

ANNOTATIONS

Repeals. — Laws 2015, ch. 145, § 101 repealed 1-6-4.1 NMSA 1978, as enacted by Laws 1987, ch. 327, § 9, relating to federal and state write-in absentee ballot for overseas voters in general elections for state or federal offices, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*.

1-6-4.2. Repealed.

History: Laws 2003, ch. 355, § 1; repealed by Laws 2015, ch. 145, § 101.

ANNOTATIONS

Repeals. — Laws 2015, ch. 145, § 101 repealed 1-6-4.2 NMSA 1978, as enacted by Laws 2003, ch. 355, § 1, relating to write-in absentee ballots, federal qualified electors and overseas voters, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, replaced "absentee ballots" with "mailed ballots", and provided duties for third party agents who collect applications for mailed ballots; and replaced "absentee ballot applications" with "applications for mailed ballots" throughout the section.

The 2007 amendment, effective July 1, 2007, eliminated the requirement that the secretary of state establish procedures to ensure that absentee ballot applications can be traced to the person and organization collecting the applications; provided that a person who collects absentee ballot applications and fails to submit a completed application is guilty of a petty misdemeanor; and added Subsection C.

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 [Chapter 1, Article 6B NMSA 1978]. An application for a mailed ballot from a voter who is not a federal qualified elector is timely if received by the county clerk no later than fourteen days prior to election day.

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" and file the application in a separate file from those accepted.

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 in the absentee ballot register.

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.

G. If the application for a mailed ballot from a voter who is not a federal qualified elector indicates that the mailed ballot is to be delivered to an address other than an address listed on the voter's certificate of registration, the county clerk shall prepare a notice of requested mailed ballot. The notice of requested mailed ballot shall inform the voter of the address to which the ballot was mailed along with the phone number of the county clerk's office and the internet address of the voter web portal provided by the secretary of state. The notice of requested mailed ballot shall be sent to the address provided on the voter's certificate of registration on the same day the county clerk sends the mailed ballot to the address requested by the voter.

H. When an application for a mailed ballot is rejected pursuant to this section, the county clerk shall send a notice of rejection to the mailing address on the voter's certificate of registration and the address listed on the voter's application for mailed ballot, if different. The notice of rejection shall indicate the reason for the rejection and, if applicable, information on how to correct the deficiency that is the reason for the rejection. If an application is rejected because it was not timely received, the county clerk shall, within twenty-four hours of receipt of the application, send a rejection notice to the voter that shall include a list of the early voting locations and election day polling places in the county.

I. The county clerk shall only accept applications for a mailed ballot made through the official web portal operated by the secretary of state or submitted on the official form. If a voter submits more than one application for a mailed ballot containing the same information, subsequent applications containing the same information shall not be processed.

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; 2023, ch. 39, § 24.

ANNOTATIONS

Cross references. — For change of party affiliation, *see* 1-4-15 and 1-4-16 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided that an application for a mailed ballot from a voter who is not a federal qualified elector is timely if received by the county clerk no later than fourteen days prior to election day, required that an appropriate designation be made in the absentee ballot register when a mailed ballot is sent to an applicant, and revised the county clerk's duties in processing applications for mailed ballots; in Subsection A, added "An application for a mailed ballot from a voter who is not a federal qualified elector is timely if received by the county clerk no later than fourteen days prior to election day."; in Subsection B, after "separate file from those accepted", deleted "and notify the applicant in writing with an explanation why the application was rejected"; in Subsection E, deleted "on the signature line of the signature roster next to the name of the voter" and added "in the absentee ballot register"; in Subsection F, deleted "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."; and added Subsections G through I.

The 2019 amendment, effective April 3, 2019, replaced "absentee ballot" with "mailed ballot", revised notice procedures related to acceptance and rejection of applications for mailed ballots, and provided additional duties for the county clerk related to delivering mailed ballots; replaced "absentee ballot" with "mailed ballot" throughout the section; in Subsection B, after "from those accepted", added "and notify the applicant in writing with an explanation why the application was rejected"; deleted Subsection C and redesignated former Subsections D and E as Subsections C and D, respectively; in Subsection C, added "When required by federal law", after "form of documentary identification", added "from the list in Paragraph (3) of Subsection I of Section 1-4-5.1 NMSA 1978"; in Subsection D, after "'accepted' and", deleted "beginning twenty-eight days before the election", after "ballot to the voter", deleted "in the county clerk's office or mail to the applicant an absentee ballot", and deleted the last sentence of the subsection, which related to

changing party affiliation by an absent voter; added new subsection designation "E."; and deleted former Subsections F through L and added a new Subsection F.

The 2015 amendment, effective July 1, 2015, removed references to federal qualified electors, overseas voters and uniformed-service voters and required that these voters applications for absentee voting should be processed pursuant to the Uniform Military and Overseas Voters Act; in Subsection A, after "applicant is a voter,", deleted "an absent uniformed services" and added "and if the voter is a uniformed-service", after "voter or an overseas voter.", added "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."; in Subsection B, after "file in the county", deleted "and is not a federal qualified elector or if the applicant states that the applicant is a federal qualified elector but the application indicates the applicant is not a federal qualified elector"; in Subsection E, after "If the", deleted "county clerk finds that the applicant is a voter other than a federal qualified elector or overseas voter" and added "applicant has on file with the county a valid certificate of registration", and after "returning the ballot.", deleted "If the county clerk finds that the applicant is a federal qualified elector or overseas voter, the county clerk shall mark the application ‘accepted’ and beginning forty-five days before the election, mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter".

The 2011 amendment, effective July 1, 2011, rewrote the procedure for marking an absentee ballot at the county clerk’s office and prohibited electioneering in county clerks’ offices or at any alternate voting location.

The 2009 amendment, effective June 19, 2009, in Subsection F, added the last sentence; in Subsection G, deleted the second sentence which permitted a voter to be assisted in marking a ballot; and added the last sentence.

The 2007 amendment, effective April 2, 2007, in Subsection G, eliminated the requirement that absentee ballots be airmailed or electronically transmitted to applicants temporarily domiciled inside or outside the continental limits of the United States.

The 2005 amendment, effective July 1, 2005, in Subsection D, provided that if the voter is a new registrant who registered by mail, the county clerk shall notify the voter that the voter must submit the required physical form of identification, and deleted the former provision that the voter must submit a copy of a current and valid photo identification, utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the applicant; in Subsection F, provided that it is unlawful to display the prohibited items in the alternate voting location; in Subsection G, deleted former provisions which provided for the establishment of voting locations and the time of voting; in Subsection G, provided that absentee ballots may be electronically transmitted to applicants; changed the deadline for sending ballots from Thursday to Friday; deleted the former provisions in Subsection J, which provided for the acceptance of absentee ballots by the county clerk from absent uniformed services voters or overseas voters; in Subsection I, provided that the notice must be provided at least ten days before early voting begins; and added Subsection J to provide that the secretary of state shall establish procedures for the submittal, when required by federal law, of required voter identification with mailed-in absentee ballots.

The 2003 amendment, effective June 20, 2003, added a new Subsection D and redesignated the remaining subsections; rewrote Subsection E, inserting the second sentence, rewrote the last two sentences in Subsection F, and rewrote Subsection G, adding the third, fourth, and fifth sentences.

The 2001 amendment, effective June 15, 2001, in Subsection F, moved "on an electronic voting machine" from preceding "at an alternate location" to preceding "at the county clerk's office" and inserted "; provided, a county clerk may allow an absent voter to vote on an electronic voting machine beginning on the fortieth day before the election".

The 1999 amendment, effective June 18, 1999, substituted "marking and delivery" for "making and delivery" in the section heading; in Subsection D, substituted "If the county clerk finds that the applicant is" for "If the applicant is determined to be", inserted "an absentee ballot to the voter in the county clerk's office" in the first sentence and made a similar insertion in the last sentence, and substituted "has been provided or mailed" for "has been sent" in the last sentence; in Subsection E, deleted "in the courthouse" following "secretary of state" in the first sentence, and deleted "upon the execution with the county clerk of an affidavit for assistance stating therein that the voter meets at least one of the conditions for receiving such assistance as is set forth by the provisions of Section 1-12-12 NMSA 1978" at the end of the last sentence; added Subsection F, and redesignated the subsequent subsections accordingly; inserted "by the county clerk" in Subsection H; and added Subsection J.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" in Subsection B.

Absentee ballots taken on weekend valid. — The taking of absentee ballots on a weekend by the county clerk is a technical irregularity which does not threaten the purity of the electoral process; therefore, the trial court erred in invalidating these votes. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Delivery by agent does not void ballot. — Delivery of the completed ballots by an agent of the voters to the county clerk's office, standing alone, is not a sufficient deviation from the provisions of the absentee voter laws to void the votes in question. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Mere technical irregularities do not void election. — An election will not be disturbed by reason of technical irregularities in the manner of conducting it or of making the returns thereof, especially in the absence of pleading and proof that the result was thereby changed or at least made uncertain. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Assistance of voter by candidate's wife not violation. — When the wife of a candidate assisted a voter in casting her ballot and there is no claim or proof of any undue influence or other wrongdoing on the part of the candidate's wife except that she simply helped the voter in casting her ballot, there is no violation of election law. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 361.

29 C.J.S. Elections § 210(6).

1-6-5.1. Repealed.

History: 1978 Comp., § 1-6-5.1, enacted by Laws 1991, ch. 105, § 10; 2003, ch. 356, § 20; 2009, ch. 251, § 6; repealed by Laws 2015, ch. 145, § 101.

ANNOTATIONS

Repeals. — Laws 2015, ch. 145, § 101 repealed 1-6-5.1 NMSA 1978, as enacted by Laws 1991, ch. 105, § 10, relating to absentee ballot distribution to federal qualified electors and overseas voters, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*.

1-6-5.2. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 267, § 36 repealed 1-6-5.2 NMSA 1978, as enacted by Laws 1991, ch. 105, § 11, giving the secretary of state emergency authority to prescribe by regulation procedures to prevent the New Mexico national guard and reserve units from being technically disenfranchised when called to active duty, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

1-6-5.3. Repealed.

History: Laws 1999, ch. 267, § 2; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-6-5.3 NMSA 1978, as enacted by Laws 1999, ch. 267, § 2, relating to secretary of state's emergency authority, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

1-6-5.4. Repealed.

History: Laws 1999, ch. 267, § 3; 2005, ch. 270, § 44; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-6-5.4 NMSA 1978, as enacted by Laws 1999, ch. 267, § 3, relating to security, counting and canvassing, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-6-5.5. Repealed.

History: Laws 2003, ch. 357, § 4; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-6-5.5 NMSA 1978, as enacted by Laws 2003, ch. 357, § 4, relating to early voting, alternative voting locations and poll workers, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, removed the rural area limitation for mobile alternate voting locations; in Subsection A, after "adequate access to", deleted "alternate voting locations for"; and in Subsection D, after "mobile alternate voting locations", deleted "in rural areas".

The 2011 amendment, effective July 1, 2011, required county clerks rather than the secretary of state to administer the duties imposed by this section.

The 2009 amendment, effective June 19, 2009, after "rural areas of the state", added the remainder of the sentence and deleted former Subsection E, which provided for alternative early voting locations on Indian nation, tribal or pueblo land.

The 2007 amendment, effective June 15, 2007, added Subsection E.

The 2005 amendment, effective July 1, 2005, added Subsections C and D.

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 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;

(3) in addition to the regular business hours and days of business of the county clerk's office and on the Saturday immediately prior to the date of the election, early voting may be conducted in each office of the county clerk no earlier than 7:00 a.m. and shall close no later than 9:00 p.m. and shall be available for at least eight consecutive hours each day; and not later than ninety days before each statewide election, the county clerk shall post the location and hours of operation at the county clerk's office and shall not modify the location or hours of operation of early voting at the county clerk's office except with the written approval of the secretary of state and upon posting the approved changes; and

(4) 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.

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 shall 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; 2023, ch. 39, § 25.

ANNOTATIONS

Cross references. — For the federal Americans with Disabilities Act of 1990, *see* titles 29, 42 and 47 of the U.S. Code.

The 2023 amendment, effective June 16, 2023, revised the times and dates for early voting, and prohibited the modification of location or hours of operation of early voting at the county clerk's office except with written approval of the secretary of state and upon posting of the approved changes; in Subsection A, after "at the county clerk's office and", deleted "from 10:00 a.m. to 6:00 p.m.", added a new Paragraph A(3) and redesignated former Paragraph A(3) as Paragraph A(4); and in Subsection B, Paragraph B(2), after "a county clerk", deleted "may" and added "shall".

The 2019 amendment, effective April 3, 2019, revised the period during which early voting is allowed; deleted former Subsection A and redesignated former Subsection B as Subsection A; in Subsection A, after the subsection designation, added "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", and after "county clerk;", deleted "and at such alternate voting locations as may be established by the county clerk", added Paragraphs A(1) through A(3); in Subsection B, added "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:", and redesignated former Paragraphs B(1) through B(3) as Subparagraphs B(1)(a) through B(1)(c), respectively, former Subsection C as Paragraph B(2), and former Subsections D and E as Subsections C and D, respectively; in Paragraph B(2), after "operation for", deleted "alternate" and added "early", after "operation of", deleted "alternate" and added "early", and after "secretary of state", deleted "Alternate" and added "and upon posting the approved changes. Early"; in Subsection C, in the introductory clause, after "Each", deleted "alternate" and added "early"; and in Subsection D, after "identification to the", added "election board", and after "secretary of state", added "or its electronic equivalent approved by the voting system certification committee".

The 2011 amendment, effective July 1, 2011, eliminated the requirement that the county clerk in class A counties establish alternate voting locations; required county clerks to establish the number of alternate voting locations that is specified in this section for the number of voters in the county; and required county clerks to provide for the storage of preprinted ballots and paper ballot stock and to provide a system to print ballots at polling locations.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "prior to an election", added "and ending on the Saturday immediately preceding the election"; in Subsection B, deleted the former last sentence that provided for the times and days for early voting alternative locations; and added Subsections C and D.

1-6-5.8. Repealed.

History: Laws 2009, ch. 251, § 2; 2019, ch. 212, § 67; repealed by Laws 2023, ch. 84, § 24.

ANNOTATIONS

Repeals. — Laws 2023, ch. 84, § 24 repealed 1-6-5.8 NMSA 1978, as enacted by Laws 2009, ch. 251, § 2, relating to early voting, Native American early voting locations, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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 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 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.

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 by a candidate, a political committee or the state or county chair of a political party represented on the ballot in an election, the secretary of state or county clerk shall transmit without charge to an electronic address provided in the request a complete copy of entries made in the absentee ballot register statewide or in the county. Such transmissions shall be made daily beginning four weeks immediately prior to the election through the Saturday immediately following the election.

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; 2023, ch. 39, § 26.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised the duties of the secretary of state and county clerks with regard to requests for information in the absentee ballot register statewide or in the county; in Subsection A, Paragraph A(8), after "the date", deleted "and time"; in Subsection E, after "Upon request", deleted "the county clerk shall transmit to" and added "by a candidate, a political committee or", added "state or" preceding "county chair", after "county chair of", deleted "each of the political parties participating" and added "a political party represented on the ballot", after "an election", deleted "in the county" and added "the secretary of state or county clerk shall transmit without charge to an electronic address provided in the request", after "absentee ballot register", added "statewide or in the county", after "shall be made", deleted "once a week" and added "daily", after "prior to the election", deleted "A final copy shall be transmitted on" and added "through"; and deleted Subsection F.

The 2019 amendment, effective April 3, 2019, provided additional duties for the county clerk related to mailed ballots, and replaced "precinct board" with "election board"; in Subsection A, in Paragraph A(4), after "absentee ballot", deleted "in the county clerk's office or at an alternate" and added "at an early voting", in Paragraph A(8), after "completed", deleted "absentee" and added "mailed", and after "absent voter", added "registered a ballot"; deleted former Subsection B and added a new Subsection B; and in Subsection D, replaced "precinct board" with "election board" throughout the subsection.

The 2015 amendment, effective July 1, 2015, required the county clerk to include in the absentee ballot register whether the applicant is a uniformed-service voter and deleted the requirement to include a federal qualified elector in the absentee ballot register; and in Paragraph (6) of Subsection A, after "applicant is a voter", deleted "a federal qualified elector" and added "and whether the voter is a uniformed-service voter".

The 2009 amendment, effective June 19, 2009, in Subsection B, at the beginning of the paragraph, deleted "Within twenty-four hours after receipt of a voter's application for an absentee ballot"; added the first sentence; added the language in the second sentence from the beginning to "the county clerk"; after "either the ballot", deleted "if it is within twenty-eight days of election day"; and after "rejection to the applicant", added the remainder of the sentence; and in Subsection E, at the beginning of the first sentence, added "Upon request".

The 2003 amendment, effective June 20, 2003, in Subparagraph A(6), deleted "citizen" following "overseas"; inserted Subparagraph A(7); redesignated former A(7) as A(8); in Subsection B, inserted "if it is within twenty-eight days of election day";inserted "and early voters" following "ballot applicants"; in Subsection D, substituted "and early voter up to 6:00 p.m. on the Saturday" for "up to 5:00 p.m. on the Thursday"; in Subsection E, substituted "Saturday" for "Friday" in the second sentence; and added Subsection F.

The 2001 amendment, effective June 15, 2001, inserted the second sentence of Subsection C, which discusses absentee ballot register availability to the public.

The 1999 amendment, effective June 18, 1999, in Subsection A, deleted "county" preceding "address" in Paragraph (1), substituted "issue of an absentee ballot in the county clerk's office or at an alternate location or the mailing" for "delivery or mailing" in Paragraph (4), and added the language beginning "or the absent voter voted" in Paragraph (7); and, in Subsection D, substituted "absent voter precinct" for "absentee board" and "5:00 p.m. on the Thursday preceding" for "noon of the day preceding" in the first sentence and "absent voter precinct board" for "absentee board" in the second sentence.

1-6-7. Repealed.

History: 1953 Comp., § 3-6-7, enacted by Laws 1969, ch. 240, § 133; 1971, ch. 317, § 8; 1975, ch. 255, § 87; 1999, ch. 267, § 10; 2003, ch. 355, § 5; 2009, ch. 150, § 4; repealed by Laws 2009, ch. 251, § 13.

ANNOTATIONS

Repeals. — Laws 2009, ch. 251, § 13 repealed 1-6-7 NMSA 1978, as enacted by Laws 1969, ch. 240, § 133, relating to form of absentee ballots, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com.*

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 under penalty of perjury by the voter completing the mailed ballot. The form shall identify the voter and shall contain the pre-printed name of the voter to whom the ballot was sent and the following statement to be affirmed by the voter: "I attest under penalty of perjury that I am the voter identified on this official mailing envelope and that 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 signature and the last four digits of the voter's social security number, which shall constitute the required voter identification. Under the space for the voter's signature shall be the following statement: "NOTICE: The only people who may lawfully mail or deliver this ballot to the county clerk are the voter, a member of the voter's immediate family or household, the voter's caregiver or a person with whom the voter has a continuing personal relationship.". 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; 2023, ch. 39, § 27.

ANNOTATIONS

Cross references. — For the federal Uniformed and Overseas Citizens Absentee Voting Act, *see* 42 U.S.C.S. § 1973ff et seq.

The 2023 amendment, effective June 16, 2023, revised the required contents for official mailing envelopes, for use in returning mailed ballots; and in Subsection C, after "form to be executed", added "under penalty of perjury", after "shall contain", added "the pre-printed name of the voter to whom the ballot was sent and", after "the following statement", added "to be affirmed by the voter: "I attest under penalty of perjury that I am the voter identified on this official mailing envelope and that", and after "record the voter's", deleted "name, registration address and year of birth" and added "signature and the last four digits of the voter's social security number, which shall constitute the required voter identification. Under the space for the voter's signature shall be the following statement: 'NOTICE: The only people who may lawfully mail or deliver this ballot to the county clerk are the voter, a member of the voter's immediate family or household, the voter's caregiver or a person with whom the voter has a continuing personal relationship.'".

The 2019 amendment, effective April 3, 2019, changed "absentee ballot" to mailed ballot", revised the form to be executed by the voter completing the mailed ballot, and removed a provision prohibiting compensation or reward for giving or withholding a vote; in Subsection A, Paragraph A(2), after "county clerk,", added "which shall be postage-paid"; and in Subsection C, after "I", added "have not and", after "will not vote", deleted "in this election" and added "any", after "other", deleted "than by the enclosed", and after "ballot", deleted "I will not receive or offer any compensation or reward for giving or withholding any vote" and added "in this election".

The 2015 amendment, effective July 1, 2015, removed the requirement that absentee ballot envelopes must be printed in the form prescribed by the federal Uniformed and Overseas

Citizens Absentee Voting Act; in Subsection B, deleted "Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and federal qualified electors shall be printed in the form prescribed by the federal Uniformed and Overseas Citizens Absentee Voting Act."

The 2008 amendment, effective May 14, 2008, in Subsection D, deleted "unique identifier" and required the mailing envelop to contain space for the voter's name and registration address.

The 2005 amendment, effective July 1, 2005, added Subsection D to provide that the official mailing envelope shall contain a space for the voter's unique identifier, year of birth and name and have a flap to cover that information.

The 1999 amendment, effective June 18, 1999, substituted "voter" for "person" twice in Subsection C.

The 1997 amendment, effective June 20, 1997, added the language beginning "provided, the official mailing" at the end of Paragraph A(2).

The 1993 amendment, effective June 18, 1993, deleted "under oath" following "executed" in the first sentence of Subsection C.

1-6-8.1. Mailed ballots; notice to voters.

A. In a statewide election, each mailed ballot sent to a voter in the election shall contain the following notice: "This ballot may be returned to the office of the county clerk or any open voting location or monitored secured container in the county where you are registered to vote at any time up to 7:00 p.m. on the day of the election. If this ballot is returned by mail, to ensure timely postal delivery to the county clerk, the ballot should be mailed no later than _____.".

B. In a special election, each mailed ballot sent to a voter in the election shall contain the following notice: "This ballot may be returned to the office of the county clerk or a monitored secured container in the county where you are registered to vote at any time up to 7:00 p.m. on the day of the election. If this ballot is returned by mail, to ensure timely postal delivery to the county clerk, the ballot should be mailed no later than _____.".

C. The date used in the notice shall be seven days prior to the election day.

History: 1978 Comp., § 1-6-8.1, enacted by Laws 2023, ch. 39, § 28.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

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 under the privacy flap. 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, in a statewide election, to an alternate voting location, mobile alternate voting location, election day voting location or other location where the receipt and storage of the official mailing envelope containing a voted ballot is under the supervision of an election official or county clerk's agent.

E. The official mailing envelope may be returned by depositing the official mailing envelope in a monitored secured container made available by the county clerk to receive an official mailing envelope containing a voted ballot 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 forty-two days before an election;

(2) the location of a monitored 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 monitored 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, which includes a voter's spouse, child, parent, domestic partner, grandchild, grandparent, sibling or person with whom the voter has a continuing personal relationship, to collect and deliver a ballot for another person except as authorized by the Election Code;

(b) that electioneering is prohibited within one hundred feet of the monitored secured container; and

(c) of the range of dates and approximate time the ballots will be collected for that election; and

(5) at least every three days and on election day after the polls close, the county clerk, deputy county clerk, election board member or messenger shall collect the ballots from the monitored secured containers and register the date and container location on each official mailing envelope.

F. It is a violation of Section 1-20-6 NMSA 1978 for any person to possess a key to a monitored secured container without authorization from the county clerk. It is a violation of Section 1-20-7 NMSA 1978 for any person other than the secretary of state or the county clerk to provide or operate a monitored secured container or other receptacle to receive voted ballots.

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; 2023, ch. 39, § 29.

ANNOTATIONS

Cross references. — For definition of person authorized to administer oaths, *see* 1-1-17 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised delivery methods for returning official mailing envelopes used in returning mailed ballots, revised the definition of "immediate family member" authorized to return a mailed ballot, revised the duties of county clerks in collecting mailed ballots, and provided that it is a violation of law for any person to possess a key to a monitored secured container without authorization from the county clerk and it is a violation of law for any person other than the secretary of state or the county clerk to provide or operate a monitored secured container to receive voted ballots; in Subsection A, after "on the reverse of the official mailing envelope", deleted "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" and added "under the privacy flap"; in Subsection D, after "office of the county clerk or", added "in a statewide election", and after "election day voting location", added "or other location where the receipt and storage of the official mailing envelope containing a voted ballot is under the supervision of an election official or county clerk's agent"; in Subsection E, in the introductory clause, after "mailing envelope in a", added "monitored", after "county clerk to receive", added "an official mailing envelope containing a", and after "voted", deleted "mailed ballots" and added "ballot", in Paragraph E(1), after "at least", deleted "ninety days before a statewide election or", and after "before", deleted "a special", in Paragraphs E(2) and E(4), after "location of a" added "monitored", in Paragraph E(4), Subparagraph E(4)(a), after "immediate family member", added "which includes a voter's spouse, child, parent, domestic partner, grandchild, grandparent, sibling or person with whom the voter has a continuing personal relationship", and after "for another person", added "except as authorized by the Election Code", in Subparagraph E(4)(b), added "monitored" preceding "secured container", and in Subparagraph E(4)(c), after "of the", added "range of", and after "collected", added "for that election", in Paragraph E(5), after "at least", deleted "once a day" and added "every three days and on election day after the polls close", after "the county clerk", deleted "or a full-time", after "deputy county clerk", added "election board member or messenger", added "monitored" preceding "secured containers", after "register the date",

deleted "and time stamp" and added "and container location", after "each official mailing envelope", deleted "and identify the location of the secured container in the ballot register"; and added new Subsection F.

The 2019 amendment, effective April 3, 2019, revised the procedures related to mailed ballots; in the section heading, after the section number, added "Mailed ballots", and deleted "alternate"; deleted "Except as provided in Section 1-6-5 or Section 1-6-5.7 NMSA 1978, a person voting pursuant to the Absent Voter Act"; added new subsection designation "A."; in Subsection A, added "When voting a mailed ballot, the voter", and after "address and year of birth.", deleted "Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence" and added the remainder of the subsection; and added Subsections B through E.

The 2015 amendment, effective July 1, 2015, removed procedures for absentee voting by federal qualified electors and overseas voters; deleted the subsection designation from Subsection A, after "Except as provided in", deleted "Subsection B of this", and after "Section", added "1-6-5"; and deleted Subsections B and C, relating to absentee voting procedures by federal qualified electors and overseas voters.

The 2009 amendment, effective June 19, 2009, in Subsection A, at the beginning of the first sentence, added "Except as provided in Subsection B of this section or Section 1-6-5.7 NMSA 1978" and added the last sentence; in Subsection B, after "mailing envelope or" added "in accordance with Subsection C of this section" and deleted the former last sentence that provided for delivery or mailing of the official mailing envelope; and added Subsection C.

The 2008 amendment, effective May 14, 2008, in Subsection A, deleted "unique identifier" and added "registration address".

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that the form on the mailing envelope shall include the voter's name, year of birth and unique identifier.

The 2003 amendment, effective June 20, 2003, in the first sentence of Subsection B, inserted "and overseas voters" following "Federal qualified electors" and "or electronically transmit the absentee ballot" following "mailing envelope".

The 1999 amendment, effective June 18, 1999, made stylistic changes in Subsection A.

The 1993 amendment, effective June 18, 1993, substituted the language beginning "which shall include" for "and have his signature witnessed by another registered voter or subscribed and sworn to before a person authorized to administer an oath" at the end of the last sentence in Subsection A.

The 1991 amendment, effective April 2, 1991, in Subsection A, substituted "The voter" for "He" at the beginning of the second sentence and rewrote the third sentence which read "The person voting shall then fill in the form on the reverse of the official mailing envelope and subscribe and swear to it before a person authorized to administer oaths".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 361.

29 C.J.S. Elections § 210(7).

1-6-9.1. Repealed.

History: 1978 Comp., § 1-6-9.1, enacted by Laws 1991, ch. 105, § 13; 1993, ch. 20, § 4; 1999, ch. 267, § 13; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-6-9.1 NMSA 1978, as enacted by Laws 1991, ch. 105, § 13, relating to voting by electronic ballot, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

1-6-9.2. Repealed.

History: Laws 1999, ch. 267, § 1; 2011, ch. 137, § 43; repealed by Laws 2023, ch. 39, § 99.

ANNOTATIONS

Repeals. — Laws 2023, ch. 39, § 99 repealed 1-6-9.2 NMSA 1978, as enacted by Laws 1999, ch. 267, § 1, relating to preparation of electronic voting machines, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

1-6-10. Receipt of mailed ballots by clerk.

A. Completed official mailing envelopes that are received at the county clerk's office or a polling place or that are retrieved from the post office or a monitored secured container shall be accepted until 7:00 p.m. on election day. A 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 mailed 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.

B. On the day a returned mailed ballot is received by the county clerk, the county clerk shall mark the date of receipt on the outside of the official mailing envelope. Within one business day of receiving a returned official mailing envelope, the county clerk shall remove the privacy flap to verify that the voter signed the official mailing envelope and to confirm that the last four digits of the social security number provided by the voter match the information available to the county clerk; provided that no county clerk or deputy county clerk shall perform the verification process pursuant to this subsection unless the county clerk or deputy county clerk would also meet the requirements to be a challenger, watcher or election observer pursuant to Paragraphs (1) through (4) of Subsection C of Section 1-2-22 NMSA 1978.

C. If the voter's signature is present and the last four digits of the voter's social security number match, the county clerk shall note in the absentee ballot register that the information required to be provided by the voter under the privacy flap has been verified and shall safely keep the official mailing envelope unopened in a locked and number-sealed ballot box until it is delivered to the absent voter election board.

D. If either the voter's signature is missing or the last four digits of the voter's social security number are not provided or do not match, the county clerk shall make the appropriate notation in the absentee ballot register and shall safely keep the official mailing envelope unopened in a secured ballot box designated for those official mailing envelopes received that are missing the voter's signature or the last four digits of the voter's social security number or where the last four digits of the social security number do not match the information available to the county clerk. The county clerk shall immediately send the voter a notice to cure containing information regarding how the voter may provide documentation to cure the missing or incorrect information.

E. If, pursuant to Subsection F of Section 1-6-4 NMSA 1978, the voter was notified of the need to comply with federal identification requirements when returning the requested ballot and failed to comply, the county clerk shall preserve the inner envelope with the official mailing envelope and write "Rejected" on the front of the official mailing envelope, and the county clerk shall update the ballot register accordingly and immediately send the voter a notice to cure containing information regarding how the voter may provide the missing or incorrect information. The county clerk shall place the official mailing envelope with the attached inner envelope in a container provided for rejected ballots; provided that if the county clerk was required to open the inner envelope to determine that the required documentary identification was not included, the untallied ballot shall be returned to the inner envelope and preserved along with the official mailing envelope in a container for this purpose.

F. The voter may provide the missing or corrected information at any time up to the conclusion of the appeal process for rejected ballots. If a voter provides the missing or corrected information:

(1) before the absent voter election board has been convened, the county clerk shall attach the documentation to the unopened official mailing envelope, update the ballot register accordingly and transfer the ballot to the locked and number-sealed ballot box until it is delivered to the absent voter election board;

(2) after the absent voter election board has been convened, the county clerk shall attach the documentation to the unopened official mailing envelope, update the ballot register accordingly and transfer the ballot to the absent voter election board;

(3) after the adjournment of the absent voter election board but before the conclusion of the county canvass process, the county clerk shall attach the documentation to the unopened official mailing envelope, update the ballot register accordingly and transfer the ballot to an election board convened to assist in preparation of the county canvass report; and

(4) after approval of the county canvass report, the voter may appeal in accordance with appeal procedures for provisional ballots established by rule of the secretary of state pursuant to Section 1-12-25.2 NMSA 1978.

G. 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 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 transmitted to an election board convened to assist in

preparation of the county canvass report to be tallied and included in the canvass report of that county for the appropriate precinct.

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; 2023, ch. 39, § 30.

ANNOTATIONS

Cross references. — For absentee ballot register, *see* 1-6-6 NMSA 1978.

For handling of absentee ballots by absent voter precinct boards, *see* 1-6-14 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised the duties of the county clerk related to receiving mailed ballots; deleted former Subsection A and added new Subsections A through F and redesignated former Subsection B as Subsection G; in Subsection G, after each occurrence of "shall be", deleted "logged and", and added "to an election board convened to assist in preparation of the county canvass report"; and deleted former Subsections C and D.

The 2019 amendment, effective April 3, 2019, changed "absentee ballots" to "mailed ballots", changed "precinct board" to "election board", and revised the procedure for receiving mailed ballots; in the section heading, deleted "absentee" and added "mailed"; in Subsection A, after "delivered to the", deleted "absent voter precinct" and added "proper election", after "board,", added "counted in the county canvass", after "or", deleted "until it is"; added a new Subsection B and redesignated former Subsection B as Subsection C; in Subsection D, after "shall not be", deleted "delivered to the absent voter precinct board" and added "qualified or opened", after "preserved by the county clerk", deleted "until the time for election contests has expired. In the absence of a restraining order after expiration of the time for election contests, the county clerk shall destroy all late official mailing envelopes without opening or permitting the contest to be examined, cast, counted or canvassed. Before their destruction" and added "for the applicable retention period provided in Section 1-12-69 NMSA 1978", after "The county clerk shall", deleted "count" and added "report", and after "each category", added "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"; and deleted former Subsection C, which related to the county clerk recording the number of unused ballots and the destruction of those ballots.

The 2015 amendment, effective July 1, 2015, removed the reference to "federal qualified electors" and added "uniformed-service voters" in the provision that requires the county clerk to count and report the number of late ballots from these voters; and in Subsection B, after "the numbers of late ballots from voters", added "uniformed-service voters and", and after "overseas voters", deleted "and federal qualified electors".

The 2011 amendment, effective July 1, 2011, eliminated the requirement that county clerks or absent voter precinct boards accept mailing envelops from precincts and required county clerks to prepare unused ballots for delivery to precinct boards as an alternative to destroying the ballots.

The 2007 amendment, effective April 2, 2007, authorized the county clerk to accept completed official mailing envelopes from precincts within the county.

The 2005 amendment, effective July 1, 2005, in Subsection A, deleted the former reference to the exception in Section 1-6-14(H) NMSA 1978 and the former reference to the delivery of the ballot box on election day to the precinct board; and in Subsection B, provided that the absent voter precinct board shall accept envelopes from precincts within the county of the voters who turned in their absentee ballots at their precinct by the close of polls on election day.

The 1999 amendment, effective June 18, 1999, substituted "and number-sealed ballot box, except as provided in Subsection H of Section 1-6-14 NMSA 1978, until it is delivered on election day to the proper absent voter precinct board" for "ballot box until it is delivered on election day to the proper precinct board" in Subsection A.

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 or household 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, domestic partner, grandchildren, grandparents or siblings of a voter or a person with whom the voter has a continuing personal relationship.

History: Laws 2003, ch. 357, § 5; 2005, ch. 270, § 49; 2019, ch. 212, § 72; 2023, ch. 39, § 31.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised the definition of "immediate family" as used in this section; in Subsection A, after "voter's immediate family", added "or household"; and in Subsection B, after "parents", added "domestic partner, grandchildren, grandparents", and after "siblings of a voter", added "or a person with whom the voter has a continuing personal relationship".

The 2019 amendment, effective April 3, 2019, defined "immediate family" as used in this section; and added Subsection B.

The 2005 amendment, effective July 1, 2005, required the voter to subscribe the outer envelope of the absentee ballot.

1-6-10.2. Repealed.

History: Laws 2003, ch. 378, § 1; 2007, ch. 336, § 20.

ANNOTATIONS

Repeals. — Laws 2007, ch. 336, § 20 repealed 1-6-10.2 NMSA 1978, as enacted by Laws 2003, ch. 378, § 1, relating to absentee voter returns and reporting, effective April 2, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

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 [election 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 [election 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 [election 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 [election 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 [election 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 [election 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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 2005 amendment, effective July 1, 2005, added Subsection A to provide the procedure for delivering the absentee ballots by the county clerk to the absent voter precinct; in Subsection B, provided that the county clerk shall deliver all absentee ballots not yet delivered to the absent voter precinct board to the special deputy county clerks; deleted the former requirements that absentee ballots for each precinct be separately wrapped and that upon delivery of the absentee ballots to the absent voter precinct board, the special deputy county clerk remain in the polling place of the absent vote precinct until the special deputy has observed the opening of the mailing envelope and the deposit of the ballots in the locked ballot box; provided that the special deputy county clerk shall observe the listing of names in the rosters; and in Subsection C, provided that 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 machines used for absentee voting by mail to the precinct board.

The 1999 amendment, effective June 18, 1999, designated the formerly undesignated paragraph as Subsection A and added Subsection B.

1-6-12, 1-6-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 150, § 6 repealed 1-6-12 and 1-6-13 NMSA 1978, relating to delivery routes to absent voter precinct and special duty county clerks and delivery watchers, effective June 19, 1981.

1-6-14. Handling mailed ballots.

A. An absent voter election board may convene as provided in this section to process the official mailing envelopes that have been returned. Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the county clerk has verified the required information on the reverse side of the official mailing envelope.

B. No sooner than the Monday before the election and before the absent voter election board adjourns, the board shall review each uncured returned official mailing envelope that the county clerk determined was missing a signature or the last four digits of the voter's social security number or for which the social security number did not match the information available to the county clerk and determine if the official mailing envelope should be qualified or rejected. An official mailing envelope rejected by the absent voter election board may be qualified if the reason for the rejection is cured at any time before the approval of the county canvass report or prior to the conclusion of an appeal by the voter.

C. Subject to the limitations in Subsection A of Section 1-2-25 NMSA 1978, 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 form on the reverse of the official mailing envelope has been completed by the voter with the voter's correct information, as verified by the county clerk, and the ballot has not been successfully challenged, the judges or election clerks shall make the appropriate notation in the ballot 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 by generating the report of the ballot results beginning no sooner than 9:00 a.m. on election day.

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 by generating the report of the ballot results beginning no sooner than 9:00 a.m. on election day.

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 and not cured by the Friday following election day, it shall be handled by the county clerk in the same manner as a disqualified provisional paper ballot in accordance with the Election Code.

K. On election night, the absent voter election board shall recess upon the earlier of completion of its work or 11:00 p.m. An absent voter election board that recesses at 11:00 p.m. shall continue its work only between the hours of 9:30 a.m. and 9:30 p.m. on each subsequent day until the board has completed its work. If the absent voter election board does not complete its work by 11:00 p.m. on election night, the county clerk shall notify the county sheriff's office that a deputy is required to be present to secure the room or facility where uncounted ballots are locked overnight. If the sheriff indicates that a sheriff's deputy is unavailable, the county clerk

shall notify the secretary of state, who shall request state police to assign a state police officer or other certified law enforcement officer to secure the ballots. The county clerk shall provide as much notice as is practicable in order to secure law enforcement personnel to secure the uncounted ballots overnight. Beginning at 11:00 p.m. on election night, a sheriff's deputy, state police officer or other certified law enforcement officer is required for overnight watch any time the absent voter election board is not present until the return of the absent voter election board. If a sheriff's deputy, a state police officer or other certified law enforcement officer is not available, the county clerk or county clerk's agent shall remain on-site with or near the uncounted ballots until the return of the absent voter election board and shall allow any watcher or observer to remain present as well. A class A county shall also have video surveillance in the area containing uncounted ballots, which shall be considered a record related to voting pursuant to Section 1-12-69 NMSA 1978.

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; 2023, ch. 39, § 32.

ANNOTATIONS

Cross references. — For definition of voter, *see* 1-1-5 NMSA 1978.

For closing of polls, *see* 1-12-1 NMSA 1978.

For grounds for interposing challenges, *see* 1-12-20 NMSA 1978.

For opening of outer envelope prior to counting ballots as ground for challenge, *see* 1-12-20 NMSA 1978.

For disposition of challenges, *see* 1-12-22 NMSA 1978.

For time of closing the polls, *see* 1-12-26 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised the duties of the county clerk and the election board related to handling mailed ballots; in Subsection A, deleted "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." and added "An absent voter election board may convene as provided in this section to process the official mailing envelopes that have been returned.", after "shall determine that", added "the county clerk has verified, and after "required information", deleted "has been completed"; deleted former Subsection B and added a new Subsection B; in Subsection C, added "Subject to the limitations in Subsection A of Section 1-2-25 NMSA 1978"; in Subsection E, after "If the", added "form on the reverse of the", after "official mailing envelope has been", deleted "properly subscribed" and added "completed by the voter with the voter's correct information, as verified by the county clerk", after "election clerks shall", deleted "enter the voter's name and residence address as shown on the official mailing envelop and shall", after "appropriate notation", deleted "opposite the voter's name in the 'Notations' column of"; in Subsection F, after "until votes are counted", deleted "and canvassed following the closing of the polls on election night" and added "by generating the

report of the ballot results beginning no sooner than 9:00 a.m. on election day"; in Subsection J, after "for any reason", added "and not cured by the Friday following election day", and after "shall be handled", added "by the county clerk"; and added Subsection K.

The 2019 amendment, effective April 3, 2019, revised the procedure for qualifying returned mailed ballots; in the section heading, added "mailed"; in Subsection A, added "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."; in Subsection B, after "If the voter's signature", added "or the required voter identification", after "'Rejected--Missing Signature'", added "or 'Rejected--Missing Required Voter Identification'", after "provided for rejected ballots", deleted "seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box"; in Subsection C, in the introductory clause, after "ballot of any", deleted "absentee" and added "mailed ballot", in Paragraph C(1), after "absent voter", deleted "precinct" and added "election", added new Paragraph C(3) and redesignated former Paragraph C(3) as Paragraph C(4); in Subsection D, after "conclusion of the county canvass", added "or as part of an appeal", and after "vote counted.", deleted the last sentence of the subsection, which related to the procedure for determining the validity of other challenged ballots; in Subsection E, deleted paragraph designation "(1)" and redesignated former Paragraph E(2) as Subsection F; in Subsection F, after the subsection designation, added "For any election in which fewer than ten thousand mailed ballots were sent to the voters of a county", and after "preceding the election", deleted "day, including Saturday and Sunday"; added new Subsection G and redesignated former Subsections F and G as Subsections H and I, respectively; in Subsection H, after "machine of", deleted "absentee" and added "mailed", after "prior to the", added "later of the", and after "polls", added "or the deadline for receiving mailed ballots pursuant to Section 1-6-10 NMSA 1978"; in Subsection I, after the subsection designation, deleted "Absentee" and added "Mailed"; deleted former Subsections H and I; added new subsection designation "J."; and in Subsection J, after the subsection designation, added "If a mailed ballot is rejected for any reason", after "handled", added "in the same manner", and after "as a", added "disqualified".

The 2011 amendment, effective July 1, 2011, permitted a judge to enter the voter's name in the signature rosters or register; permitted a challenger to challenge a ballot when the mailing envelope does not contain a signature; eliminated the requirement that challenges of ballots follow the procedure for challenging ballots when a person attempts to vote in person; required a challenge to be upheld by the unanimous vote of the presiding judge and the election judges; and provides that a vote will be counted if the reason for the challenge is satisfied by the voter before the county canvass is concluded.

The 2009 amendment, effective June 19, 2009, in Subsection D(2), after "8:00 a.m.; and", deleted "5:00" and added "10:00".

The 2007 amendment, effective April 2, 2007, in Subsection G, provided a specific NMSA 1978 section number of the Election Code.

The 2005 amendment, effective July 1, 2005, in Subsection D(1), deleted the former provision which provided that the election judge shall open the official mailing envelope and deposit the ballot in its still sealed official inner envelope in the locked ballot box; added Subsection D(2) to provide the time and procedure for opening official mailing envelopes and official inner envelopes; in Subsection E, deleted the former provision which provided the time and procedure

for counting and tallying absentee ballots; and in Subsection H, deleted the former provisions which provided the time for convening the absent voter precinct board and the procedure for processing absentee ballots.

The 2003 amendment, effective July 1, 2003, at the beginning of Subsection C, substituted "A lawfully appointed challenger" for "The accredited challengers"; in Subsection C(2), deleted "citizen" following "overseas"; in Subsection E, substituted "each major political party" for "party"; and added Subsection I.

The 1999 amendment, effective June 18, 1999, inserted "absent voter" preceding "precinct board" in Subsection C(1); substituted "count and tally the absentee ballots on an electronic voting machine" for "register the results of each absentee ballot on a voting machine" in Subsection E; substituted "on an electronic voting machine as provided in the Election Code" for "or registered on a lever voting machine or an electronic voting machine as provided in the Election Code provided that any county with a population in excess of one hundred thousand shall count and tally or register absentee ballots on an electronic voting machine" in Subsection F; and added Subsection H.

The 1993 amendment, effective June 18, 1993, substituted "information has been completed" for "oath has been executed" in Subsection A, "the voter's signature is" for "one or both signatures are" in the first sentence of Subsection B, and "have been properly subscribed" for "have properly executed oaths" in the introductory paragraph of Subsection D.

Voiding of ballot precluded. — There is no statutory provision that permits voiding a ballot if the electronic counting machine refuses to accept it, when a straight ticket is indicated but the ballot is actually voted a split ticket, or when the ballot is marked with two choices for a particular office but is properly voted for only one choice in each of the remaining races. *Klumker v. Van Allred*, 1991-NMSC-045, 112 N.M. 42, 811 P.2d 75.

Procedures for counting ballots. — If a voter votes for more than one candidate in a particular race, the votes for the remaining candidates are still to be counted. *Klumker v. Van Allred*, 1991-NMSC-045, 112 N.M. 42, 811 P.2d 75.

Qualification of an absentee ballot. — An absentee ballot is qualified only if the voter provides the voter's proper identification in the outer envelope. 2004 Op. Att'y Gen. No. 04-05.

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 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.

ANNOTATIONS

Cross references. — For the verification of votes on a voting machine, *see* 1-12-37 NMSA 1978.

For counting and tallying procedures for emergency paper ballots, *see* 1-12-65 NMSA 1978.

For recount of emergency paper ballots, *see* 1-12-68 NMSA 1978.

For the disposition of emergency paper ballots, *see* 1-12-69 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in the first sentence, after "disposition of", deleted "emergency" and in the second sentence, after "recounting of", deleted "emergency".

The 1999 amendment, effective June 18, 1999, deleted "lever voting machines or" preceding "electronic voting machines" in the last sentence and made a minor stylistic change.

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 replacement ballot shall not be mailed to a voter less than seven days before election day, unless the voter is enrolled in the confidential substitute address program pursuant to the Confidential Substitute Address Act [Chapter 40, Article 13B NMSA 1978].

D. 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.

E. 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.

F. 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.

G. 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.

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; 2023, ch. 39, § 33.

ANNOTATIONS

Repeals and reenactments. — Laws 2019, ch. 212, § 74 repealed former 1-6-16 NMSA 1978 and enacted a new section, effective April 3, 2019.

The 2023 amendment, effective June 16, 2023, provided that a replacement ballot shall not be mailed to a voter less than seven days before election day, unless the voter is enrolled in the confidential substitute address program pursuant to the Confidential Substitute Address Act"; and added a new Subsection C and redesignated former Subsections C through F as Subsections D through G, respectively.

The 2011 amendment, effective July 1, 2011, prohibited a person who has been issued an absentee ballot from voting other than on a replacement absentee ballot and prohibited replacement absentee ballots from being placed in a voting system for tabulation of votes cast at the county clerk's office or an alternate voting location.

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 or who was sent a mailed ballot pursuant to Section 1-6-22.1 NMSA 1978 but whose voted ballot has not been received by the county clerk

as of the date of the election may go to a voter convenience center and, after executing an affidavit stating that the person wishes to void any previous mailed ballot that was issued, shall be permitted to vote.

B. If the county clerk has real-time synchronization between the voter convenience centers 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. If the county clerk does not have real-time synchronization between the voter convenience centers and the qualification of ballots received by mail, the voter shall be issued a provisional paper ballot, which shall be counted if no challenge is interposed and once the county clerk has verified that no other ballot from the same voter has been processed in that election.

History: Laws 1989, ch. 368, § 1; 1991, ch. 105, § 14; 1999, ch. 267, § 19; 2009, ch. 150, § 6; 2019, ch. 212, § 75; 2023, ch. 39, § 34.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, clarified provisional ballot provisions; in Subsection A, after "applies for a mailed ballot", added "or who was sent a mailed ballot pursuant to Section 1-6-22.1 NMSA 1978", after "but", deleted "has not received or returned the ballot by mail" and added "whose voted ballot has not been received by the county clerk", after "may go to", deleted "the voter's assigned polling place or", after "stating that the person", deleted "did not and will not vote the" and added "wishes to void any previous", and after "permitted to vote", deleted "on a provisional paper ballot"; and in Subsection B, after "synchronization between the", deleted "election day polling places" and added "voter convenience centers", and added "If the county clerk does not have real-time synchronization between the voter convenience centers and the qualification of ballots received by mail, the voter shall be issued a provisional paper ballot, which shall be counted if no challenge is interposed and once the county clerk has verified that no other ballot from the same voter has been processed in that election.".

The 2019 amendment, effective April 3, 2019, changed "absentee ballot" to "mailed ballot", revised the procedures related to mailed ballots not timely received, and provided that if the county clerk has real-time synchronization between the election-day polling places and the qualification of ballots received by mail, the voter is to be issued a replacement ballot to be filled out and fed by the voter into the electronic vote tabulator; in Subsection A, after "applies for", deleted "an absentee" and added "a mailed", after "received", added "or returned", after "assigned polling place", added "or a voter convenience center", after "affidavit", deleted "of nonreceipt of absentee ballot" and added "stating that the person did not and will not vote the mailed ballot that was issued", and after "vote on a", deleted "replacement absentee" and added "provisional"; and deleted former Subsections B through F and added a new Subsection B.

The 2009 amendment, effective June 19, 2009, in Subsection A, deleted "present himself at his" and added "go to the voter's", and after "to vote on", deleted "an emergency" and added "a replacement absentee"; in Subsection B, in the last sentence, after "to vote by", deleted "emergency" and added "replacement absentee"; in Subsection C, after "presiding", deleted "election" and after "shall put all" added "replacement"; and in Subsection F, after "secrecy of the", deleted "emergency" and added "replacement absentee".

The 1999 amendment, effective June 18, 1999, deleted "or a marksense ballot" at the end of Subsections B and C; substituted "retain the transmittal envelope with the other election returns and place the inner unopened envelope in a secure container" for "destroy the transmittal envelope and place the inner envelope in a secure place" in Subsection E; and substituted "emergency paper ballots" for "ballot" in Subsection F.

The 1991 amendment, effective April 2, 1991, added "or a marksense ballot" at the end of Subsections A and B and made a minor stylistic change in Subsection B.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, changed "absentee ballot" to "mailed "ballot", and removed a provision related to providing a provisional paper ballot and the circumstances under which the county clerk is required to reject the request for a provisional paper ballot; in Subsection A, after "requesting", deleted "absentee ballots by mail" and added "a mailed ballot"; and deleted former Subsection C and redesignated former Subsection D as Subsection C.

The 2017 amendment, effective June 16, 2017, revised the emergency procedures for voting in cases where the voter is unable to vote in person after the close of the period for requesting an absentee ballot by mail; in Subsection A, after "who is unable to vote", deleted "at his regular polling place or alternate location" and added "in person", and after "may request in writing that", deleted "an alternative" and added "a provisional paper"; in Subsection B, after "The", deleted "alternative" and added "provisional paper", and added "county" preceding each occurrence of "clerk"; in Subsection C, after "releasing the", deleted "alternative" and added "provisional paper", deleted "he" and added "the county clerk", and after "reject the request for", deleted "an alternative" and added "a provisional paper"; in Subsection D, after "voter shall mark the", deleted "alternative" and added "provisional paper", after "identification envelope", deleted

"similar to that used for absentee ballots", after "office of the", added "county", deleted the last sentence of the paragraph, which related to verifying the signature of the voter on the provisional paper ballot, and added the current last sentence of the paragraph; and deleted Subsections E and F.

The 1999 amendment, effective June 18, 1999, substituted "regular polling place or alternate location" for "polling place, voting booth, or voting apparatus or machinery" in Subsection A.

1-6-17. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 55, § 1 repealed 1-6-17 NMSA 1978, as enacted by Laws 1969, ch. 240, § 142, relating to the cancellation of absentee ballots at death, effective June 18, 1999.

1-6-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 249, § 52 repealed 1-6-18 NMSA 1978, as enacted by Laws 1975, ch. 255, § 91, relating to marking the affidavit of registration, effective June 19, 1987.

1-6-18.1. Repealed.

History: Laws 2003, ch. 356, § 8; repealed by Laws 2015, ch. 145, § 101.

ANNOTATIONS

Repeals. — Laws 2015, ch. 145, § 101 repealed 1-6-18.1 NMSA 1978, as enacted by Laws 2003, ch. 356, § 8, relating to absentee ballots, overseas voters, reports, effective July 1, 2015. For provisions of the former section, *see* the 2014 NMSA 1978 on *NMOneSource.com.*.

1-6-19. Repealed.

History: 1953 Comp., § 3-6-18, enacted by Laws 1969, ch. 54, § 1; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-6-19 NMSA 1978, as enacted by Laws 1969, ch. 54, § 1, relating to the short title of the Absent Voter Precinct Act, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that the resolution create a precinct for each county; in Subsection A, deleted the former provision which provided that the resolution create a precinct for each state legislative district and the boundaries of each precinct coincide with the boundaries of the state representative district except for multi-county representative districts where the boundaries of the precinct shall coincide with the boundaries of that portion of the representative district lying within the county; and in Subsection B, deleted the former provision which provided that precincts be identified by the name of the state representative district number or in multi-county representative districts the precinct shall be distinguished by the name of the county.

1-6-21. Repealed.

History: 1953 Comp., § 3-6-20.1, enacted by Laws 1975, ch. 255, § 93; 1977, ch. 222, § 15; 1999, ch. 267, § 22; repealed Laws 2005, ch. 270, § 79.

ANNOTATIONS

Repeals. — Laws 2005, ch. 270, § 79 repealed 1-6-21 NMSA 1978, as enacted by Laws 1975, ch. 255, § 93, relating to consolidation of absent voter precincts, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, deleted the former provision that a polling place shall be designated in each precinct when the precinct is consolidated.

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 locations 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 of the ability of the voter to cast a ballot at any voter convenience center on election day if the voter chooses not to receive an absentee ballot, or to cast a replacement ballot at any early voting location or voter convenience center if the voter does not receive an absentee ballot, which will be counted upon confirmation that the voter has not returned the absentee ballot. The notice shall also contain the information required in the voter notification sent by the secretary of state on behalf of each county clerk in advance of a statewide election pursuant to Section 1-11-4.1 NMSA 1978.

C. For a primary election, the notice sent to voters who have not designated a party affiliation on their certificates of registration shall inform such voters that the voters may return the card and indicate which major political party's ballot the voter chooses for that primary election or log on to a website hosted by the secretary of state to indicate which major political party's ballot the voter chooses for that primary election.

D. 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 or does not return the card required by Subsection C of this section indicating which party ballot the voter chooses for that election, along with a notice that there will be no polling place in that precinct on election day.

History: Laws 2009, ch. 251, § 1; 2009, ch. 274, § 1; 2011, ch. 137, § 47; 2015, ch. 145, § 49; 2017, ch. 101, § 5; 2023, ch. 39, § 35; 2025, ch. 54, § 3.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, provided that the notice that a precinct has been designated a mail ballot election precinct sent to voters who have not designated a party affiliation on their certificates of registration shall inform such voters that they may return the card and indicate which major political party's ballot the voter chooses for that primary election or log on to a website hosted by the secretary of state to indicate which major political party's ballot the voter chooses for that primary election; added a new Subsection C and redesignated former Subsection C as Subsection D; and in Subsection D, after "requested otherwise" added "or does not return the card required by Subsection C of this section indicating which party ballot the voter chooses for that election".

The 2023 amendment, effective June 16, 2023, provided additional notice requirements for precincts that are designated mail ballot election precincts; in Subsection B, after "In addition,

the notice shall inform the voter", deleted "if the county is consolidating precincts on election day and, if so" and added "of", after "cast a ballot at any", deleted "consolidated precinct" and added "voter convenience center", after "or to cast a", deleted "provisional" and added "replacement", after "at any", deleted "consolidated precinct" and added "early voting location or voter convenience center", and added "The notice shall also contain the information required in the voter notification sent by the secretary of state on behalf on each county clerk in advance of a statewide election pursuant to Section 1-11-4.1 NMSA 1978."; and deleted former Subsection D, which related to the county clerk's duty to keep a sufficient number of ballots from a mail ballot election precinct.

The 2017 amendment, effective June 16, 2017, provided for replacement or provisional paper ballots for absentee voters who did not receive an absentee ballot by mail or who were unable to vote in person after the close of the period for requesting an absentee ballot by mail; in Subsection D, after "voter from that precinct", deleted "does not receive an absentee ballot before election day, the voter", after "may vote on", deleted "an absentee" and added "a replacement or provisional paper", after "ballot", deleted "in the office of the county clerk on election day in lieu of voting on the missing ballot" and added "pursuant to Section 1-6-16 NMSA 1978 or on an emergency paper ballot pursuant to Section 1-6-16.2 NMSA 1978".

The 2015 amendment, effective July 1, 2015, amended the notice requirements when a precinct is designated a mail ballot election precinct; in Subsection B, after "the county clerk shall notify by", deleted "registered", after "mail", added "with delivery confirmation", after "receive an absentee ballot", added "for that election", after "absentee ballots. The", deleted "card" and added "notice", and after "prefers to vote in person and not by mail.", added the remainder of the subsection.

The 2011 amendment, effective July 1, 2011, required the designation of a precinct as a mail ballot election precinct not later than the first Monday in November of each odd-numbered year if the precinct has less than one hundred voters and the nearest polling place is more than twenty miles from the boundary of the precinct, and required the county clerk to notify voters in the precinct at least forty-two days before an election.

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.

ANNOTATIONS

The 2007 amendment, effective April 2, 2007, required the county clerk to determine the hours between 8:00 a.m. and 5:00 p.m. during which absent voter precinct polling places will open preceding election day and the hours during which absent voter precinct polling places will be open on election day and required that absent voter precinct polling places open at 7:00 a.m. on election day.

The 2005 amendment, effective July 1, 2005, provided that the county clerk or supervisor of the election shall determine the hours when the absent voter precinct shall be open for registering of absentee ballots on the five days preceding election day and the delivery and registering of ballots.

The 1999 amendment, effective June 18, 1999, added "and subsequent days" at the end of the section heading; added the language ending "election shall determine" at the beginning; and substituted the language beginning "on election day and subsequent days" for "shall be set by the county clerk or statutorily appointed supervisor of the election" at the end.

1-6-24. Repealed.

History: 1953 Comp., § 3-6-22, enacted by Laws 1969, ch. 54, § 5; 1971, ch. 317, § 13; 1975, ch. 255, § 96; 1999, ch. 267, § 24; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-6-24 NMSA 1978, as enacted by Laws 1969, ch. 54, § 5, relating to absent voter precinct board appointment, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

1-6-25. Repealed.

History: 1953 Comp., § 3-6-23, enacted by Laws 1969, ch. 54, § 6; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-6-25 NMSA 1978, as enacted by Laws 1969, ch. 54, § 6, relating to watchers and challengers for absent voter precinct, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

ARTICLE 6A
Absentee-Early Voting Act (Repealed.)

1-6A-1 to 1-6A-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 267, § 36 repealed 1-6A-1 to 1-6A-12 NMSA 1978, as enacted by Laws 1993, ch. 37, §§ 1 to 9 and Laws 1995, ch. 165, §§ 4 to 6 and as amended by Laws 1995,

ch. 165, §§ 1 to 3, relating to absentee-early voting, effective June 18, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

ARTICLE 6B
Uniform Military and Overseas Voters

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.

ANNOTATIONS

The 2018 amendment, effective July 1, 2018, changed "Sections 25 through 41 of this act" to "Chapter 1, Article 6B NMSA 1978".

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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.

ANNOTATIONS

Cross references. — For the federal Uniformed and Overseas Citizens Absentee Voting Act, *see* 42 U.S.C.S. § 1973ff et seq.

The 2019 amendment, effective April 3, 2019, revised the definition of "military overseas ballot" as used in the Uniform Military and Overseas Voters Act, and removed certain definitions from the section; deleted former Subsection A, which defined "appropriate clerk", and redesignated former Subsections B through D as Subsections A through C, respectively; in Subsection C, deleted former Paragraph C(1) and paragraph designation "(2)"; and deleted Paragraphs E and F.

The 2018 amendment, effective July 1, 2018, revised the definition of "appropriate clerk" as used in the Uniform Military and Overseas Voters Act; and in Subsection A, after "county clerk", deleted "for elections conducted pursuant to the Election Code and a municipal clerk for elections conducted pursuant to the Municipal Election Code" and added "of the county in which the federal qualified elector is eligible to vote".

Temporary provisions. — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, in Subsection B, added "ballot" preceding "questions"; and in Subsection D, deleted "appropriate" and added "county" preceding each occurrence of "clerk".

The 2018 amendment, effective July 1, 2018, made conforming changes as a result of the repeal of the Municipal Election Code; and in Subsection A, after "Election Code", deleted "and the Municipal Election Code".

Temporary provisions. — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, required the secretary of state to maintain a web page dedicated to federal qualified electors, and changed "absentee ballots" to "mailed ballots" throughout; in Subsection B, added "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."; in Subsection C, after "standardized", deleted "absentee-voting", and after "materials", added "for voting by mail"; and in Subsection E, Paragraph E(2), after "county clerk", added "which shall be postage-paid within the United States postal system".

The 2018 amendment, effective July 1, 2018, made conforming changes as a result of the repeal of the Municipal Election Code; and in Subsection B, after "county clerk", deleted "or municipal clerk".

Temporary provisions. — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

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

(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.

D. A federal qualified elector who registered for the first time in this state by mail is exempt pursuant to federal law from the requirement to provide documentary identification as otherwise required by Subsection F of Section 1-6-4 NMSA 1978.

History: Laws 2015, ch. 145, § 29; 2019, ch. 212, § 80; 2023, ch. 39, § 36.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided that a federal qualified elector who registered for the first time in this state by mail is exempt pursuant to federal law from the requirement to provide documentary identification as otherwise required by state law; and added Subsection D.

The 2019 amendment, effective April 3, 2019, revised the list of methods of registering to vote, and provided statutory citations for references to the Election Code; in Subsection A, Paragraph A(1), after "provided in", added "Chapter 1", after "Article 4", deleted "of the Election Code" and added "NMSA 1978", deleted former Paragraph A(3); in Subsection B, after "valid until", deleted "the voter’s certificate of registration is", and after "specified in", added "Chapter 1", and after "Article 4", deleted "of the Election Code" and added "NMSA 1978".

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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 apply for a military-overseas ballot by:

(1) using a mailed ballot application pursuant to the Absent Voter Act [Chapter 1, Article 6 NMSA 1978]; 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 any election conducted pursuant to the Election Code, whether or not timely, is effective as an automatic application for a military-overseas ballot for all subsequent elections the voter is eligible to participate in through the conclusion of the election cycle.

D. An application from a federal qualified elector who provides information permitting secured electronic delivery of the ballot is timely if received by the county clerk no later than three days prior to election day. An application from a federal qualified elector who does not provide information permitting secured electronic delivery of the ballot is timely if received by the county clerk by the deadline specified in the Absent Voter Act for receipt of mailed ballot applications.

History: Laws 2015, ch. 145, § 30; 2018, ch. 79, § 11; 2019, ch. 212, § 81; 2023, ch. 39, § 37.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, broadened the scope of application for military-overseas ballots, and provided that an absentee application from a federal overseas voter is allowed up to three days prior to election day if the applicant provides information permitting secured electronic delivery of the ballot; in Subsection A, after "to vote in this state may", deleted "by the deadline specified in the Absent Voter Act for receipt of mailed ballot applications"; in Subsection C, after the first occurrence of "military-overseas ballot for", deleted "primary election" and added "any election conducted pursuant to the Election Code", and after the second occurrence of "military-overseas ballot for", deleted "the general election" and added "all subsequent elections the voter is eligible to participate in through the conclusion of the election cycle"; and in Subsection D, after "An application", deleted "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" and added "from a federal qualified elector who provides information permitting secured electronic delivery of the ballot is timely if received by the county clerk no later than three days prior to election day. An application from a federal qualified elector who does not provide information permitting secured electronic delivery of the ballot is timely if received by the county clerk by the deadline specified in the Absent Voter Act for receipt of mailed ballot applications.".

The 2019 amendment, effective April 3, 2019, revised the list of methods for applying for a military-overseas ballot, and changed "absentee ballots" to "mailed ballots" throughout; and in Subsection A, deleted former Paragraph A(3), which related to using the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot.

The 2018 amendment, effective July 1, 2018, made conforming changes as a result of the repeal of the Municipal Election Code, and made a minor technical change; in Subsection A, after each occurrence of "Absent Voter Act", deleted "or Municipal Election Code"; and in Subsection D, after "ballot for a", added "top two".

Temporary provisions. — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

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.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, removed certain methods of transmission of military-overseas ballots, and provided that electronic transmission of ballots be secured; in Subsection D, after "be sent by", deleted "facsimile transmission, electronic mail delivery or other equivalent" and added "secured", deleted "The clerk shall transmit the ballot and balloting materials using the means of transmission requested by the federal qualified elector.", and after "does not request", deleted "a particular means of" and added "secured electronic".

The 2018 amendment, effective July 1, 2018, made conforming changes as a result of the repeal of the Municipal Election Code; and in Subsection B, after "Absent Voter Act", deleted "or the provisions of the Municipal Election Code".

Temporary provisions. — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the methods of delivery of military-overseas ballots from federal qualified electors; in Subsection A, after "no later than the", deleted "closing of the polls on election day" and added "deadline for receiving mailed ballots in Section 1-6-10 NMSA 1978"; in Subsection B, in the introductory clause, after "military-overseas ballot by", deleted "facsimile transmission, electronic mail delivery or other equivalent" and added "secured", and after "electronic", deleted "delivery" and added "transmission", and in Paragraph B(3), after "ballot to the", deleted "absentee precinct" and added "appropriate election".

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, replaced "absentee ballot" with "mailed ballot" throughout the section.

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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 during the county canvass 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; 2023, ch. 39, § 38.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided that a qualified federal write-in absentee ballot shall be processed during the county canvass; and in Subsection C, after "shall be processed", deleted "by" and added "during", and after "during the", deleted "canvassing board" and added "county canvass".

The 2019 amendment, effective April 3, 2019, in Subsection A, after "offices and ballot", deleted "measures" and added "questions".

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 145, § 103 made Laws 2015, ch. 145, § 35 effective January 1, 2018.

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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. 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.

History: Laws 2015, ch. 145, § 36; 2019, ch. 212, § 86.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, changed "absentee ballot" to "mailed ballot", and required that the transmission of military-overseas ballots be secured; in Subsection A, after "including", deleted "transmitting" and added "the secured transmission of", after "requested", deleted "electronic" and added "secured", and after "transmission", deleted "by electronic mail"; in Subsection B, after "If", deleted "an absentee" and added "a mailed", after "elector via", deleted "electronic mail" and added "secured transmission", and after "note in the", deleted "absentee"; and in Subsection C, after "request for", added "secured".

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 145, § 103 made Laws 2015, ch. 145, § 37 effective July 1, 2015.

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 145, § 103 made Laws 2015, ch. 145, § 38 effective July 1, 2015.

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 145, § 103 made Laws 2015, ch. 145, § 39 effective July 1, 2015.

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 145, § 103 made Laws 2015, ch. 145, § 40 effective July 1, 2015.

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

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 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.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 145, § 103 made Laws 2015, ch. 145, § 41 effective July 1, 2015.

Applicability. — Laws 2015, ch. 145, § 102 provided that the Uniform Military and Overseas Voters Act is applicable to any federal postcard application received as of the first day of the current election cycle.

ARTICLE 6C
Intimate Partner Violence Survivor Suffrage

1-6C-1. Short title.

Sections 1 through 9 [1-6C-1 to 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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 226, § 13 made Laws 2019, ch. 226, § 1 effective July 1, 2019.

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 [Chapter 40, Article 13B NMSA 1978] 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;

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 or a participant who is also a qualified resident who may be considered a voter pursuant to Section 1-4-2 NMSA 1978.

History: Laws 2019, ch. 226, § 2; 2023, ch. 39, § 39.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised the definition of "voter-participant" as used in the Intimate Partner Violence Survivor Suffrage Act; and in Subsection I, added "or a participant who is also a qualified resident who may be considered a voter pursuant to Section 1-4-2 NMSA 1978".

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 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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 226, § 13 made Laws 2019, ch. 226, § 3 effective July 1, 2019.

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;

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 226, § 13 made Laws 2019, ch. 226, § 4 effective July 1, 2019.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 226, § 13 made Laws 2019, ch. 226, § 5 effective July 1, 2019.

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 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.

G. A voter-participant needing a replacement ballot may appear in person only at the office of the county clerk and execute an affidavit stating that the voter participant wishes to void any previous mailed ballot that was mailed in that election. When completing the affidavit, the voter-participant shall use the random identifier in place of the voter-participant's name and the verification code in place of the voter-participant's signature. Upon receipt of the sworn affidavit, if the ballot register does not show that a ballot from the voter-participant has been received in that election, the county clerk shall void the ballot that was previously issued and issue to the voter-participant a replacement ballot and ballot materials, which shall include the voter-participant's random identifier, but the county clerk shall not provide to the voter-participant the verification code when issuing a replacement ballot pursuant to this subsection.

History: Laws 2019, ch. 226, § 6; 2023, ch. 39, § 40.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided a process for voter-participants to obtain a replacement ballot; and added Subsection G.

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, 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.

History: Laws 2019, ch. 226, § 7; 2023, ch. 39, § 41.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, removed a provision requiring the appropriate county clerk to provide to the administrator the appropriate notations for any voter-participant whose election mail was returned as undeliverable; and in Subsection D, after "each voter-participant who voted", deleted "and the appropriate notations for any voter-participant whose election mail was returned as undeliverable".

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 226, § 13 made Laws 2019, ch. 226, § 8 effective July 1, 2019.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 226, § 13 made Laws 2019, ch. 226, § 9 effective July 1, 2019.

ARTICLE 7
Political Parties

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.

ANNOTATIONS

Party must file rules and regulations with secretary of state before candidates appear on ballot. — The first step that must be taken by a political party before the names of its candidates may be placed upon the ballot in the general election is to make, adopt and file through its state central committee, or other governing body, a set of rules and regulations providing for its convention and organization, the manner of calling and conducting its elections, the mode of selection of delegates to such conventions, the manner of selecting members of its state central committee, the state chairman and other officers and members of its governing bodies, the powers and duties of such officers, committees and governing bodies, the method of selecting nominees for such offices, and the means and manner of filling vacancies in such offices, committees and governing bodies and on the party ballot. Such rules and regulations must be filed with the secretary of state within 30 days after the organization of the party and at least 60 days before the general election, if the party desires to have the names of its candidates placed on the ballot for national, state or district officers. 1960 Op. Att'y Gen. No. 60-113 (opinion rendered under former law).

Political party must hold convention for purpose of nominating candidates for such offices. 1960 Op. Att'y Gen. No. 60-113 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 198 et seq.

29 C.J.S. Elections § 84.

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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, required the secretary of state to make blank petition forms available at all times and to send notice of nonqualification to the state chair of any political party that fails to remain qualified and to post the notice on the secretary of state’s web site and imposed a forty-five day deadline for sending notice to registered voters who are members of the party.

The 1995 amendment, effective January 1, 1996, inserted "where a county organization exists" and made a minor stylistic change in the second sentence of Subsection A, and inserted "provided that the party has a candidate seeking election to either of these offices" in the second sentence of Subsection C.

The 1990 amendment, effective March 1, 1990, substituted "desire the party to be a qualified political party in New Mexico" for "support the official recognition of that party" at the end of Subsection A and, in Subsection C, substituted the first two sentences for the former first sentence which read "Beginning with the general election in 1988, if two successive general elections are held without at least one candidate from the qualified political party on the ballot or that party does not receive at least one-half of one percent of the total votes cast for the office of governor or president, the party will no longer be considered 'qualified' for purposes of the Election Code."

Constitutionality. — Subsection A's former requirement that a new political party must provide petitions containing 500 signatures from registered voters who declare that they are members of that party was unconstitutional, imposing an unnecessary burden on those signatories' First Amendment rights. *Workers World Party v. Vigil-Giron*, 693 F. Supp. 989 (D.N.M. 1988).

The bylaws of state political parties may not be inconsistent with prevailing law, and those that are inconsistent with law are generally unenforceable. — Political parties organized as nonprofit corporations, are governed by the Nonprofit Corporation Act (NCA), 53-8-1 to 53-8-99 NMSA 1978, which allows organizations to form for socially beneficial purposes, including political purposes, and further provides that through their board of directors, the nonprofits have the power to make and alter bylaws. The NCA makes it clear that a nonprofit corporation's bylaws may not be inconsistent with law or the nonprofit's articles of incorporation. A political party may also be registered as a political committee through the Campaign Reporting Act (CRA), 1-19-25 to 1-19-36 NMSA 1978, which requires organizations operating primarily for the purpose of influencing or attempting to influence an election, to register with the secretary of state as political committees, pay a filing fee, and file reports disclosing their activities and contributors, and although the CRA does not address the bylaws of a political committee, the principles of nonprofit corporations acting for political purposes control in the context of political committee bylaws. Therefore, the bylaws of a political party such as the republican party of New Mexico, which is registered as a domestic nonprofit corporation pursuant to the NCA, or the democratic party of New Mexico, which is registered as a political committee pursuant to the CRA, may not be inconsistent with prevailing law, and bylaws that are inconsistent with law are generally unenforceable. Moreover, an organization cannot become a "qualified political party" unless they comply with specific provisions of the Election Code, which is clear that political party organizations may not adopt rules that conflict with the state party's uniform rules, nor may they adopt rules that abridge the lawful rights of any person. 2024 Op. Att'y Gen. No. 24-09.

Maintaining major party status. — To maintain recognition as a major political party in an upcoming general election, a political party must satisfy the same requirements necessary for initial recognition as a major political party. The party must: 1) have run at least one candidate in one of the last two general elections, with its candidate for governor or U.S. president, if any, having received the statutorily prescribed minimum number of votes, 2) have a candidate who received, in the last preceding general election, the min imum number of votes required, and 3) have in its membership on the day of the primary election proclamation registered voters sufficient to satisfy the minimum membership requirement. 1996 Op. Att'y Gen. No. 96-01.

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;

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.

ANNOTATIONS

County chairman and precinct chairman not automatically delegates. — Nowhere in the New Mexico statutes is it provided that county chairmen and precinct chairmen automatically become delegates by virtue of their positions. In order to be delegates they must be elected in the same manner that other delegates are elected. 1966 Op. Att'y Gen. No. 66-17.

Party to file with secretary of state to place candidates on ballots for national, etc., offices. — When a party wishes to place candidates on the ballots for national, state, district and legislative offices from multiple county districts, such party must comply with this section by filing its rules and regulations with the secretary of state. 1956 Op. Att'y Gen. No. 56-6559.

Party must file with county clerk for county offices. — If a party is interested in having candidates on the ballot for county offices, such party must comply with this section by filing its rules and regulations with the county clerk. 1956 Op. Att'y Gen. No. 56-6559.

Rules need not be filed with county clerk for election of district attorney. — The secretary of state is not concerned with the question of whether there have been party rules and

regulations filed with county clerks with reference to the nomination or election to the office of the district attorney. The office of district attorney is a state office. 1956 Op. Att'y Gen. No. 56-6559.

Nominations for congress must follow rules and regulations. — It is clear that nominations to fill vacancies in United States congress are to be made in accordance with the rules and regulations of the respective parties. 1956 Op. Att'y Gen. No. 56-6540.

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.

ANNOTATIONS

The 2014 amendment, effective March 12, 2014, provided for the filing of a qualifying petition and notice of qualification as a party; provided for standardized filing dates; in Subsection A, after "rules and regulations", added "along with petitions containing the required number signatures, if the signature provision is applicable to the party", after "no later than" deleted "the first Tuesday in April" and added "twenty-three days after the primary election", and after "before any", added "general"; and added Subsection B.

Laws 2014, ch. 40, § 1, effective March 7, 2014, and Laws 2014, ch. 81, § 1, effective March 12, 2014, enacted identical amendments to this section. The section was set out as amended by Laws 2014, ch. 81, § 1. *See* 12-1-8 NMSA 1978.

The 1995 amendment, effective January 1, 1996, substituted "first Tuesday in April" for "second Tuesday in July" in Subsection A.

Party must file with secretary of state for national, etc., offices. — When a party wishes to place candidates on the ballots for national, state, district and legislative offices from multiple county districts, such party must comply with this section by filing its rules and regulations with the secretary of state. 1956 Op. Att'y Gen. No. 56-6559 (opinion rendered under former law).

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 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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, modified the definition of "minor political party" by eliminating the requirement that candidates of the party receive not more than five percent of the votes cast in the preceding general election for the office of governor or president of the United States.

The 1995 amendment, effective January 1, 1996, inserted the language beginning "and whose membership" and ending "election proclamation" in Subsection A.

Minimum vote requirement for major party. — To satisfy the minimum vote requirement for recognition as a major political party, at least one candidate of the qualified political party, irrespective of office sought, must have received at least five percent of the total votes cast at the last preceding general election for the office of governor or U.S. president, whichever election is applicable. Additionally, Subsection A requires that the political party must satisfy a minimum membership requirement of at least one-third of one percent of the statewide registered voter file on the day of the primary election proclamation. 1996 Op. Att'y Gen. No. 96-01.

Maintaining major party status. — To maintain recognition as a major political party in an upcoming general election, a political party must satisfy the same requirements necessary for initial recognition as a major political party. The party must: 1) have run at least one candidate in one of the last two general elections, with its candidate for governor or U.S. president, if any, having received the statutorily prescribed minimum number of votes, 2) have a candidate who received, in the last preceding general election, the minimum number of votes required, and 3) have in its membership on the day of the primary election proclamation registered voters sufficient to satisfy the minimum membership requirement. 1996 Op. Att'y Gen. No. 96-01.

Candidate for governor or president not required. — The intent of the Election Code is to permit qualified political parties to run candidates for governor or U.S. president, but not to mandate that they do so. Accordingly, Subsection A does not require a major political party to run a candidate for governor or U.S. president in each general election in which the office is to be filled. 1996 Op. Att'y Gen. No. 96-01.

ARTICLE 8
Nominations and Primary Elections

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 [1-8-10 to 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.

ANNOTATIONS

Cross references. — For qualified political party, *see* 1-7-2 NMSA 1978.

The 2014 amendment, effective March 12, 2014, changed statutory references to definitions of major and minor political parties; and in Subsections A and B, changed "1-1-9" to "1-7-7".

Laws 2014, ch. 40, § 2, effective March 7, 2014, and Laws 2014, ch. 81, § 2, effective March 12, 2014, enacted identical amendments to this section. The section was set out as amended by Laws 2014, ch. 81, § 2. *See* 12-1-8 NMSA 1978.

The 2003 amendment, effective June 20, 2003, inserted "other than its presidential candidates" following "shall nominate its candidates," near the middle of Subsection A.

Primary Election Law not violative of equal protection clause of U.S. constitution. — Although plaintiff complains that Democrats seeking nomination face an unconstitutionally more onerous burden than do other political party candidates because the greater number of Democrats in New Mexico requires that a greater number of signatures be obtained on nominating petitions, only invidious discrimination violates the United States constitution, and this statute must be sustained if a valid public purpose can be shown for the statute, and limitation of the number of names on the ballot remains a valid consideration. The New Mexico Primary Election Law does not violate the equal protection clause. *Dillon v. Evans*, 549 F.2d 183 (10th Cir. 1977).

Candidates not required to be registered electors of party. — Candidates nominated by a political party, not required to be nominated at the primary election, are not required to be registered electors of such minority party. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445 (decided under former law).

Applicability to nonpartisan ticket in municipal election. — Former act relating to political party organization and nominating procedures did not apply to nonpartisan tickets offered in a municipal election. *Hampton v. Priddy*, 1946-NMSC-010, 50 N.M. 23, 168 P.2d 100.

Write-in method not permissible. — Write-in method of nominating candidates was not permissible under former Primary Election Law. *State ex rel. Van Schoyck v. Board of Cnty. Comm'rs*, 1942-NMSC-061, 46 N.M. 472, 131 P.2d 278.

Provision limiting selection and nomination methods required reasonable construction. — Provision of former primary election statute that candidates "shall not be otherwise selected or nominated" required a reasonable, albeit strict, construction. *State ex rel. Van Schoyck v. Board of Cnty. Comm'rs*, 1942-NMSC-061, 46 N.M. 472, 131 P.2d 278.

Filling vacancy by party committee is exception. — Former provision for filling of vacancy after primary by party committee operated as an exception to statute requiring candidates to be nominated at primary election and required strict construction. *State ex rel. Van Schoyck v. Board of Cnty. Comm'rs*, 1942-NMSC-061, 46 N.M. 472, 131 P.2d 278.

Law reviews. — For article, "Judicial Selection in New Mexico: A Hybrid of Commission Nomination and Partisan Election," see 30 N.M.L. Rev. 177 (2000).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 207 et seq.

Extent of power of political party, committee or officer to exclude persons from participating in primaries as voters or candidates, 70 A.L.R. 1501, 88 A.L.R. 473, 97 A.L.R. 685, 151 A.L.R. 1121.

Quo warranto to test results of primary election, 86 A.L.R. 246.

Power of political party or its officials to withdraw nominations, 155 A.L.R. 186.

State court jurisdiction over contest involving primary election for member of congress, 68 A.L.R.2d 1320.

Validity of percentage of vote or similar requirement for participation by political parties in primary elections, 70 A.L.R.2d 1162.

Construction and effect of absentee voters' laws, 97 A.L.R.2d 257.

29 C.J.S. Elections § 89 et seq.

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:

(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, 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 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 state for statewide offices; provided that if there are fewer members of the minor party registered to vote in the state for statewide offices or registered to vote in the district for offices other than statewide offices than the number of signatures required for that office, a nominating petition shall contain the signatures of voters totaling not less than the required number of signatures of voters for independent candidates for the same office; and provided

further that for the public education commission, a nominating petition shall be signed by at least two-thirds of the number of signatures that would otherwise be required, and for a judicial office, a nominating petition shall be signed by two-thirds of the number of signatures that would otherwise be required; 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; provided that if there are fewer members of the minor party registered to vote in the county for countywide offices or registered to vote in the district for offices other than countywide offices than the number of signatures required for that office, a nominating petition shall contain the signatures of voters totaling not less than the required number of signatures of voters for independent candidates for the same office; and provided further that for a judicial office, a nominating petition shall be signed by two-thirds of the number of signatures that would otherwise be required.

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; 2020, ch. 9, § 2; 2023, ch. 39, § 42.

ANNOTATIONS

Cross references. — For other methods of nomination, *see* 1-8-3 NMSA 1978.

For certification of minor party nominees, *see* 1-8-4 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised the nominating petition requirements for minor party candidates; in Subsection B, Paragraph B(1), added "provided that if there are fewer members of the minor party registered to vote in the state for statewide offices or registered to vote in the district for offices other than statewide offices than the number of signatures required for that office, a nominating petition shall contain the signatures of voters totaling not less than the required number of signatures of voters for independent candidates for the same office; and provided further that for the public education commission, a nominating petition shall be signed by at least two-thirds of the number of signatures that would otherwise be required, and for a judicial office, a nominating petition shall be signed by two-thirds of the number of signatures that would otherwise be required"; and in Subsection C, Paragraph C(2), added "provided that if there are fewer members of the minor party registered to vote in the county for countywide offices or registered to vote in the district for offices other than countywide offices than the number of signatures required for that office, a nominating petition shall contain the signatures of voters totaling not less than the required number of signatures of voters for independent candidates for the same office; and provided further that for a judicial office, a nominating petition shall be signed by at least two-thirds of the number of signatures that would otherwise be required, and for a judicial office, a nominating petition shall be signed by two-thirds of the number of signatures that would otherwise be required".

The 2020 amendment, effective January 1, 2023, removed the public regulation commission from the rules that minor political parties use to elect certain officers; and in Subsection A, Paragraph (1), after "multicounty districts", deleted "the public regulation commission".

Laws 2020, ch. 9, § 2 amended 1-8-2 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against.

The 2019 amendment, effective April 3, 2019, replaced "governor" with "secretary of state" with regard to issuing the general election proclamation, and limited the section to general elections; replaced each occurrence of "governor" with "secretary of state" throughout the section; and replaced each occurrence of "primary" with "general" throughout the section.

The 2014 amendment, effective March 12, 2014, provided for standardized filing dates; required that petitions be signed by one percent of the votes cast for governor at the general election; provided qualifications for candidates; in Subsection B, in the first paragraph, after "filed on the", deleted "twenty-first" and added "twenty-third", after "accompanied by", deleted "a petition containing a list of signatures and addresses of voters" and added "nominating petitions

containing the signatures of voters", after "number of votes cast", added "for governor", and after "preceding general election", deleted "for the office of governor or president of the United States, as the case may be" and added "at which a governor was elected", and in the second paragraph, after "residents of the" deleted "state, district, county or"; in Subsection C, in the first paragraph, after "filed on the", deleted "twenty-first" and added "twenty-third", after "shall be accompanied by a", added "nominating", after "petition containing" deleted "a list of" and added "the", after "petition containing the signatures", deleted "and addresses", after "votes cast" added "for governor", and after "general election", deleted "for the office of governor or president of the United States, as the case may be" and added "at which a governor is elected"; and in the second paragraph, after "residents of the", deleted "state, district, county or"; in Subsection D, at the beginning of the sentence, added "Except in the case of a political party certified in the year of the election", after "persons certified as", deleted "nominees" and added "candidates", and after "of that party" deleted "before" and added "on"; added Subsection E; and in Subsection F, after "the number of", deleted "minor party".

The 2007 amendment, effective April 2, 2007, in Subsection B, changed the date that the names certified to the secretary of state be filed from the second Tuesday in July to the twenty-first day following the primary election; and in Subsection C, required the names certified to the county clerk be filed on the twenty-first day following the primary election.

The 1998 amendment, effective March 6, 1998, inserted ", public regulation commission" in Paragraph A(1).

The 1995 amendment, effective January 1, 1996, substituted "less than one percent" for "less than one-half of one percent" in Subsections B and C, rewrote Subsection D which previously read "Such persons certified as nominees shall be members of that party as shown by their certificates of registration, at the time their names are certifed", and made a minor stylistic change in Subsection E.

The 1993 amendment, effective June 18, 1993, substituted "certificates" for "affidavits" in Subsection D. Laws 1993, ch. 314, § 44 enacted identical amendments to this section.

The 1990 amendment, effective March 1, 1990, deleted the former second sentence in Subsection B which read "Such petition shall be to the effect that the voters signing the petition endorsed the principles of the political party named thereon or that the voters signing the petition will designate or have designated such party affiliation on their affidavits of registration," deleted the former second sentence of Subsection C which was similar to the above-quoted provision, added Subsection E, and made stylistic changes.

Two-petition system not unconstitutional. — The two-petition ballot-access system, which requires a minor political party to first show a modicum of support and then show additional support for each candidate, does not unconstitutionally burden First and Fourteenth Amendment rights absent a showing of evidence to support the claim. *Libertarian Party of New Mexico v. Herrera*, 506 F.3d 1303 (10th Cir. 2007).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 244 et seq.

29 C.J.S. Elections §§ 97 to 103.

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 chair 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, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county;

B. the county chair 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 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; 2020, ch. 9, § 3.

ANNOTATIONS

The 2020 amendment, effective January 1, 2023, removed the public regulation commission from the rules that minor political parties use to elect certain officers, and made certain technical amendments; and in Subsection A, after "multicounty districts", deleted "public regulation commission".

Laws 2020, ch. 9, § 3 amended 1-8-3 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against.

The 1998 amendment, effective March 6, 1998, inserted ", public regulation commission" in Subsection A and substituted "that" for "which" in Subsection B.

Signature list requirements not unconstitutional. — Signature list requirements under Subsections B and C of this section and 1-8-3C NMSA 1978 do not violate plaintiff's United States constitutional rights of freedom of association, as guaranteed by U.S. Const., amend. I, and of equal protection, as guaranteed by U.S. Const., amend. XIV. *People's Constitutional Party v. Evans*, 1971-NMSC-116, 83 N.M. 303, 491 P.2d 520.

Requirements to endorse party or designate affiliation not unconstitutional. — That signers of a nominating petition must in effect state that they "endorse the principles of a political party named thereon" or "will designate or have designated such party affiliation on their

affidavits of registration" did not violate plaintiff's rights of association or equal protection. *People's Constitutional Party v. Evans*, 1971-NMSC-116, 83 N.M. 303, 491 P.2d 520.

Lists guard against abuse of elective franchise and secure election purity. — The New Mexico legislature has determined that the signature list requirements as provided by Subsections B and C of this section and 1-8-3C NMSA 1978 are consistent with its authority and duty to secure the purity of elections and guard against abuse of the elective franchise, and it is the supreme court's duty to uphold this legislative determination, unless satisfied beyond all reasonable doubt that the legislature went outside its constitutional authority in enacting these statutory requirements. *People's Constitutional Party v. Evans*, 1971-NMSC-116, 83 N.M. 303, 491 P.2d 520.

Legitimate state interests. — The state has a legitimate interest in trying to determine some degree of good faith on the part of electors who sign nominating petitions, and in assuring at least a modicum of support for a political party and its nominees whose names are placed on the general election ballot and these requirements imposed by the legislature under this section and 1-8-3 NMSA 1978 are consistent with its duty to protect the purity of elections and safeguard against abuse of the elective franchise. *People's Constitutional Party v. Evans*, 1971-NMSC-116, 83 N.M. 303, 491 P.2d 520.

Two-petition system not unconstitutional. — The two-petition ballot-access system, which requires a minor political party to first show a modicum of support and then show additional support for each candidate, does not unconstitutionally burden First and Fourteenth Amendment rights absent a showing of evidence to support the claim. *Libertarian Party of New Mexico v. Herrera*, 506 F.3d 1303 (10th Cir. 2007).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 227.

Constitutionality of election laws as regards nomination otherwise than by statutory convention or primary election, 146 A.L.R. 668.

29 C.J.S. Elections § 105.

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.

ANNOTATIONS

Duplicate laws. — Laws 2014, ch. 40, § 6, effective March 7, 2014, and Laws 2014, ch. 81, § 6, effective March 12, 2014, enacted identical new sections. The section was set out as enacted by Laws 2014, ch. 81, § 6. *See* 12-1-8 NMSA 1978.

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 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.

ANNOTATIONS

Cross references. — For nomination by minor political party, *see* 1-8-2 and 1-8-3 NMSA 1978.

For certification of nominees participating in primary, *see* 1-8-5 NMSA 1978.

The 2017 amendment, effective June 16, 2017, changed the deadline for the supreme court to hear and render a decision on an appeal from the district court in cases where a minor political party candidate is challenging a decision that the candidate is not qualified to have the candidate’s name appear on the ballot; and in Subsection B, after "render a decision no later than", deleted "fifty-six" and added "sixty-three".

The 2014 amendment, effective March 12, 2014, provided for notification that a candidate is qualified; provided for judicial challenge of a determination that a candidate is not qualified;

provided for voter challenges of a candidate's nominating petition; in Subsection A, after "minor political party" added "and nominating petitions", after "5:00 p.m. on the", deleted "thirty-fifth day" and added "first Tuesday", and after "filing date, the", deleted "secretary of state" and added "proper filing officer"; in Subsection A, in Paragraph (2), after "determine whether", added "the number of signatures required have been submitted and", and after "complied with", deleted "and that the petition and list of signatures and addresses of voters are valid and comply with law"; in Subsection A, in Paragraph (3), after "in the affirmative", deleted "within forty-two days following the filing date certify the names of each minor party's nominees as candidates for the office for which each is nominated to each county clerk in the state" and added the remainder of the sentence; and added Subsections B and C.

The 2011 amendment, effective July 1, 2011, imposed a thirty-five day deadline to determine whether the nomination complies with the rules of the party and the requirements of Sections 1-8-1 through 1-8-3 NMSA 1978 and imposed a forty-two day deadline to certify the party's nominees.

Secretary of state need not certify candidates who clearly cannot qualify. — The secretary of state has some discretion under this section, and if it clearly appears that any of the candidates could not qualify for the offices which they seek, the secretary of state has no duty to certify their names. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445.

Mandamus is proper action to contest validity of secretary of state's action in failing to certify a party's nominees. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445 (decided under former law).

Mandamus will be denied if certificate fails to comply. — Certificate of nomination of candidates for presidential electors by communist party convention did not comply with former statute where signed by secretary of party alone, and mandamus to secretary of state to certify candidates' names to counties under such a certificate, would be denied. *Wilson v. Gonzales*, 1940-NMSC-073, 44 N.M. 599, 106 P.2d 1093.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 221.

Political principles or affiliations as ground for refusal of government officials to file certificate of nomination, 130 A.L.R. 1471.

Constitutionality, construction and application of statutes regarding party affiliations or change thereof as affecting eligibility to nomination for public office, 153 A.L.R. 641.

29 C.J.S. Elections §§ 135, 137.

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.

ANNOTATIONS

Since it was not possible to determine for whom unregistered persons had voted, state canvassing board acted correctly in taking position that it could not throw out all the votes of six precincts, disenfranchising a large number of voters, when doing so could not change result of contested race. *Reese v. Dempsey*, 1944-NMSC-057, 48 N.M. 485, 153 P.2d 127 (decided under former law).

Certificate of election furnishes prima facie right to office only, and in a canvass of returns, no one is foreclosed thereby if any other statutory remedy, including recount or contest, remain available. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157.

Certificate of tally may be used in recount where ballots destroyed. — Since ballots cast at election were not available for use during recount because they had been destroyed by election officials, the authentic certificate of tally of votes might be considered in absence of fraud on part of officials. *Walker v. Mechem*, 1952-NMSC-072, 56 N.M. 529, 246 P.2d 201.

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.

ANNOTATIONS

Cross references. — For declaration of candidacy, time for filing, *see* 1-8-26 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Construction and application of statutes relating to filling vacancies in nominations for election to public office, 143 A.L.R. 996.

Party affiliations or change thereof as affecting eligibility to nomination for public office, application of statutes as to, to filling vacancies, 153 A.L.R. 641.

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. Appointments to fill vacancies in the list of a party's nominees for the general election ballot shall be made and filed with the proper filing officer on the twenty-third day after the primary election using the form prescribed by the secretary of state, along with the declaration of candidacy subscribed and sworn by the selected nominee and the required form for candidates pursuant to the Campaign Reporting Act [1-22A-1 to 1-22A-10 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; 197 9, ch. 378, § 5; 2015, ch. 145, § 50; 2017, ch. 101, § 7; 2019, ch. 212, § 88; 2023, ch. 39, § 43.

ANNOTATIONS

Cross references. — For vacancy on primary ballot, *see* 1-8-6 NMSA 1978.

For vacancy occurring after primary, *see* 1-8-8 NMSA 1978.

The 2023 amendment, effective June 16, 2023, clarified the required forms and time for filling a vacancy on a general election ballot occurring before a primary; and in Subsection C, deleted "The name of the person to fill the vacancy on the general election ballot shall be" and added "Appointments to fill vacancies in the list of a party's nominees for the general election ballot shall be made and", after "the proper filing officer", deleted "on a form approved by the secretary of state", and after "primary election", added "using the form prescribed by the secretary of state".

The 2019 amendment, effective April 3, 2019, revised the provisions related to vacancies on a general election ballot; in Subsection A, added new Paragraph A(2) and redesignated former Paragraph A(2) as Paragraph A(3), and in Paragraph A(3), after "included in", deleted "governor's" and added "general election"; in Subsection C, after "secretary of state", deleted "within fifteen days" and added "on the twenty-third day", after "primary election", deleted "and when so filed, it shall be placed on the general election ballot as the political party's nominee for such office" and added "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"; and added Subsection D.

The 2017 amendment, effective June 16, 2017, provided for the secretary of state to approve the form to be filed when filling vacancies on a general election ballot when such vacancies

occur before the primary election; and in Subsection B, after "the proper filing officer", added "on a form approved by the secretary of state".

The 2015 amendment, effective July 1, 2015, amended the date for filling vacancies on a general election ballot when the vacancy was caused by the resignation or death of a person holding a public office; in Paragraph (2) of Subsection A, after "public office after the", deleted "date for filing a declaration of candidacy or after the date required for certification as a convention designated nominee, and before the primary election" and added "last Friday before the first Tuesday in March".

Section only authorizes filling vacancies after primary. — This section and 1-8-8 NMSA 1978 only authorize the filling of vacancies on the party tickets for elective offices after the holding of the primary election. *State ex rel. Robinson v. King*, 1974-NMSC-028, 86 N.M. 231, 522 P.2d 83.

Duty of the secretary of state to place state central committee's nominee on the ballot. — Where petitioners filed a petition for writ of mandamus, injunction, and declaratory relief seeking a declaration that the secretary of state acted arbitrarily, capriciously, and in violation of law by placing the republican party state central committee's nominee on the November 2016 general election ballot, the petition for writ of mandamus was denied because the secretary of state had a clear and indisputable duty under 1-8-8 NMSA 1978 to place the nominee on the general election ballot after a vacancy was created by a district judge who resigned, the vacancy was of an office required by the New Mexico constitution to be filled at the next general election, and sixty days prior to the general election, the state central committee submitted the name of its nominee to be placed on the November 2016 general election ballot for the judicial office. *Hand v. Winter*, 2017-NMSC-005.

Filling vacancy when deceased candidate received highest vote. — When candidate for justice of the peace (now magistrate) died shortly before a primary election, but received highest number of votes, the vacancy should have been filled by the county central committee of the political party of the deceased by certification to the county clerk and the secretary of state. 1950 Op. Att'y Gen. No. 50-5305 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 217 et seq.

29 C.J.S. Elections §§ 93, 136.

1-8-8. Vacancy on general election ballot; occurring after primary.

A. If after a primary election, but ninety 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 on or before the seventieth day prior to a general election using the form prescribed by the secretary of state, along with the declaration of candidacy form subscribed and sworn by the selected nominee and the form for candidates pursuant to the Campaign Reporting Act [1-19-25 to 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; 2023, ch. 39, § 44.

ANNOTATIONS

Cross references. — For printing of ballots, time of, *see* 1-10-4 and 1-10-5 NMSA 1978.

The 2023 amendment, effective June 16, 2023, clarified the required forms and time for filling a vacancy on a general election ballot occurring after a primary; in Subsection A, after "primary election, but", deleted "seventy" and added "ninety"; and in Subsection D, after "proper filing officer", added "on or before the seventieth day prior to a general election", and after "prescribed by the secretary of state", deleted "at least sixty-three days prior to the general election".

The 2019 amendment, effective April 3, 2019, required additional documents be included with the form for filling vacancies, and replaced "governor" with "secretary of state" with regard to issuing the general election proclamation; in Subsection A, in the introductory clause, replaced each occurrence of "governor" with "secretary of state's general election"; and in Subsection D, after "general election,", added "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."

The 2017 amendment, effective June 16, 2017, changed the deadline for filling a vacancy on a general election ballot when a vacancy occurs after the primary, changed the deadline by which appointments to fill such vacancies are made, and provided for the secretary of state to approve

the form on which appointments to fill such vacancies are made and filed; in Subsection A, in the introductory paragraph, after "after a primary election", added "but seventy or more days before the general election"; and in Subsection D, after "shall be made and filed", added "with the proper filing officer using a form approved by the secretary of state", and after "at least", deleted "fifty-six" and added "sixty-three".

The 2015 amendment, effective July 1, 2015, required that the county or state central committee making an appointment to fill a vacancy on a general election ballot, occurring after the primary, include members residing within the boundaries of the area to be represented by the public office; and added a new Subsection C and redesignated the succeeding subsections accordingly.

The 2011 amendment, effective July 1, 2011, provided for filling the vacancy in a new public office that was not included in the governor's proclamation; required that appointments to vacancies qualify pursuant to Section 1-8-18 NMSA 1978; eliminated the five day deadline for filling a vacancy caused by the death of a nominee; and eliminated the requirement that a nominee's name be pasted over the name of the initial candidate when the nominee is appointed after the ballot has been printed.

The 1995 amendment, effective January 1, 1996, added Subsection B and redesignated former Subsections B and C as Subsections C and D.

Nomination for a district court judicial position, which is a state position, not a county position, must be filled by a state central committee and not by a county central committee. *Johnson v. Vigil-Giron*, 2006-NMSC-051, 140 N.M. 667, 146 P.3d 312.

No vacancy occurs if there is no primary candidate. — Where the Republican Party did not run a primary election candidate for the position of state representative, a vacancy did not exist on the general election ballot for the Republican Party to fill. *Johnson v. Vigil-Giron*, 2006-NMSC-051, 140 N.M. 667, 146 P.3d 312.

Notice of withdrawal as candidate. — There are no formal requirements for the withdrawal of candidates from a general election and the secretary of state may rely on a candidate's press release that the candidate has withdrawn from the general election. *Johnson v. Vigil-Giron*, 2006-NMSC-051, 140 N.M. 667, 146 P.3d 312.

Fifty-six day rule of Subsection B (now C) invalid. — The fifty-six day restriction placed upon political party central committees by Subsection B (now C) is inconsistent with the panoply of rights provided in the remainder of Chapter 1, the Election Code; because its enforcement would result in unjust, absurd or unreasonable consequences, it cannot stand. *Thompson v. Robinson*, 1984-NMSC-096, 101 N.M. 703, 688 P.2d 21.

Section only authorizes filling of vacancies after primary. — Section 1-8-7 NMSA 1978 and this section only authorize the filling of vacancies on the party tickets for elective offices after the holding of the primary election. *State ex rel. Robinson v. King*, 1974-NMSC-028, 86 N.M. 231, 522 P.2d 83.

Vacancies for county offices. — Since no candidate appeared on democratic primary ballot for county superintendent of schools because candidate who filed for office was declared ineligible prior to election, the party's county executive committee did not have right to designate

a successor candidate to appear on general election ticket. *Granito v. Grace*, 1952-NMSC-088, 56 N.M. 652, 248 P.2d 210 (decided under former law).

Section as exception to nominating candidates at primary. — Former provision for filling of vacancy after primary by party committee operated as an exception to statute requiring candidates to be nominated at primary election and required strict construction. *State ex rel. Van Schoyck v. Board of Cnty. Comm'rs*, 1942-NMSC-061, 46 N.M. 472, 131 P.2d 278.

Vacancy cannot be filled if no candidate nominated at primary. — Former statute did not permit selection of candidate after primary when there was no candidate for nomination in the primary. *State ex rel. Van Schoyck v. Board of Cnty. Comm'rs*, 1942-NMSC-061, 46 N.M. 472, 131 P.2d 278.

Constitutionality. — This section meets the strict scrutiny test and serves a compelling state interest. *Skeen v. Hooper*, 631 F.2d 707 (10th Cir. 1980).

Nominations after death of unopposed candidate. — When an unopposed candidate died before general election, only his political party may select a nominee for the general election. *Skeen v. Hooper*, 631 F.2d 707 (10th Cir. 1980).

Resignation of appeals judge after primary. — The office of any court of appeals judge who resigns after the 1988 primary election is not subject to the central committee nomination procedures in this section; the governor must appoint someone to fill the unexpired term. 1988 Op. Att'y Gen. No. 88-52.

Fifty-six day time limit applicable to resignations after primary. — While the fifty-six day limit of Subsection B (now C) is "impossible of performance" or "impractical" in the case of vacancies in nominations created by successful election contests, there is no reason why it would be unreasonable, unjust or absurd to require the appropriate central committees to conform to that time period in filling vacancies created by resignations after the June, 1988 primary election. 1988 Op. Att'y Gen. No. 88-52.

A prospective, unconditional resignation that takes effect within the fifty-six day time limit but before the general election, creates a present vacancy in the ballot that the appropriate party central committee may fill in accordance with this section. 1988 Op. Att'y Gen. No. 88-52.

Committee authority exercisable only in event of vacancy. — The authority of a state central committee of a political party to select a nominee for an office, to be voted upon at a general election, exists only in the event that there is a vacancy in the list of the party's nominees for that office. 1980 Op. Att'y Gen. No. 80-31.

When there has been no party nominee for an office, there is no vacancy in the list of nominees to be filled by the committee. 1980 Op. Att'y Gen. No. 80-31.

Congressional nominations. — When a political party's state central committee is performing the function of choosing a nominee for the office of United States representative under this section, only the members from the congressional district to be represented by the nominee are eligible to vote. 1980 Op. Att'y Gen. No. 80-30.

Section only authorizes filling of vacancies after primary. — This section applies in the case in which the position to be voted upon in the general election does not become "vacant" until after the primary. 1978 Op. Att'y Gen. No. 78-05.

When vacancy occurs in position that could not have been subject to primary procedure, the responsibility for selecting the nominees falls to the political parties. 1978 Op. Att'y Gen. No. 78-05.

Vacancies in single county and multicounty districts. — The intent of this section was to allow the county central committee to fill all candidate vacancies that occur in a district that is entirely within the county. Where the district involved is composed of a multicounty district, the intent is to allow the state central committee to fill any vacancies that may occur. 1974 Op. Att'y Gen. No. 74-33.

In the case of a judicial district which is a multicounty one, the state central committee names the nominees. If the judicial district is composed of a single county, then the nominee is to be selected by the county central committee. 1972 Op. Att'y Gen. No. 72-49.

Party committee may not nominate candidate if no primary candidate. — If a political party to which the primary election laws apply did not have a candidate for a particular office at the primary election, its committee could not select a nominee for the office after the primary election. 1964 Op. Att'y Gen. No. 64-64 (opinion rendered under former law).

No filing fee necessary for filling vacancy after primary. — Persons selected to fill in vacancies occurring after the primary election need not pay a filing fee in order to have their names appear on the general election ballot. 1948 Op. Att'y Gen. No. 48-5173 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 217 et seq.

29 C.J.S. Elections §§ 93, 136.

1-8-9. Repealed.

History: 1953 Comp., § 3-8-8.1, enacted by Laws 1975, ch. 255, § 104; 2007, ch. 274, § 1; 2011, ch. 137, § 52; 2017, ch. 101, § 9; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-8-9 NMSA 1978, as enacted by Laws 1975, ch. 255, § 104, relating to general election, withdrawal of candidates, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-8-10. Repealed.

History: 1953 Comp., § 3-8-9, enacted by Laws 1969, ch. 240, § 159; repealed by Laws 2019, ch. 212, 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-8-10 NMSA 1978, as enacted by Laws 1969, ch. 240, § 159, relating to Primary Election Law, short title, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-8-10.1. Short title.

Sections 1-8-10.1 through 1-8-52 NMSA 1978 may be cited as the "Primary Election Law".

History: 1978 Comp., § 1-8-10.1, enacted by Laws 2023, ch. 39, § 45.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

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.

History: 1953 Comp., § 3-8-10, enacted by Laws 1969, ch. 240, § 160; 2011, ch. 137, § 53.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, required a primary election to be held on the first Tuesday after the first Monday in June in even-numbered years.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of public election as affected by fact that it was held at time other than that fixed by law, 121 A.L.R. 987.

Scheduling election on religious holiday as violation of federal constitutional rights, 44 A.L.R. Fed. 886.

29 C.J.S. Elections § 117.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided that the secretary of state issue the proclamation calling a general election, and provided for the calling of a primary election; in the section heading, added "calling primary and general elections"; in Subsection A, deleted "governor" and added "secretary of state", after "public proclamation calling", added "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."; in Subsection B, added "The general election proclamation shall also call", after "primary election", added "for the nomination of general election candidates by each major political party"; and in Subsection C, after "filed", deleted "with" and added "by", and added "in the office of the secretary of state".

Cross references. — For date prescribed for holding primary election, *see* 1-8-11 NMSA 1978.

Proclamation must include district boundaries and terms of office for county commissioner. — When the proclamation required under this section lists the "office" of county commissioner, it must also specifically describe the boundaries of the districts which make up this office, and set forth the terms of office pertinent to the office of county commissioner, specifying the term which applies to each district. *State ex rel. Robinson v. King*, 1974-NMSC-028, 86 N.M. 231, 522 P.2d 83.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 117.

1-8-13. Primary and general election; 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 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 nominating petition;

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;

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; 2020, ch. 9, § 4; 2023, ch. 39, § 46.

ANNOTATIONS

Cross references. — For appeals of nominating petitions, *see* Rule 12-603 NMRA.

The 2023 amendment, effective June 16, 2023, removed a provision allowing candidates to file a pauper's statement of inability to pay in lieu of paying filing fees, but allowed candidates to instead file a nominating petition; in the section heading, deleted "election law" and added "and general election"; and in Subsection D, after "in lieu thereof, a" deleted "pauper's statement of inability to pay" and added "nominating petition".

The 2020 amendment, effective January 1, 2023, removed the public regulation commission from the secretary of state’s election proclamation; and in Subsection C, after "public education commission", deleted "public regulation commission".

Laws 2020, ch. 9, § 4 amended 1-8-13 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against.

The 2019 amendment, effective April 3, 2019, revised provisions relating to primary elections; in the introductory clause, after "The", added "general election", and after "primary", added "and general"; in Subsection B, after "the offices", added "to be elected at the general election and", after "after the date", deleted "of" and added "to amend", after "prior to the date", deleted "of the primary election" and added "to fill vacancies pursuant to Section 1-8-7 or 1-8-8 NMSA 1978", after the next occurrence of "the", deleted "proclamation" and added "secretary of state" and after "conform", added "the proclamation"; in Subsection C, replaced "state board of education" with "public education commission", and after "party at the primary election", added "or in order to have the candidates' names printed on the official ballot at the general election, as applicable"; after Subsection G, deleted "As used in the Primary Election Law, 'statewide office' means any office voted on by all the voters of the state."; and added Subsections H through K.

The 1999 amendment, effective June 18, 1999, deleted former Subsections E and F, relating to the date on and place at which declarations of intent to be a write-in candidate for a statewide office, office of the United States representative, or any other office, shall be filed, and redesignated subsequent subsections accordingly.

The 1998 amendment, effective March 6, 1998, substituted "the" for "such" twice in Subsection B and inserted "public regulation commission" in Subsection C.

The 1995 amendment, effective January 1, 1996, inserted "calling a primary election" in the introductory phrase, deleted "or declarations of candidacy" preceding "and nominating petitions" in Subsection C, and inserted "petitions and" preceding "declarations" in Subsection G.

The 1994 amendment, effective January 1, 1996, substituted "or declarations of candidacy and nominating petitions" for "and nominating petitions" in Subsection C, and deleted "petitions and" following "parties shall file" in Subsection G.

The 1993 amendment, effective November 15, 1993, substituted "shall" for "must" in Subsection D, and added Subsections G through I and the last sentence.

Effect on general election of no listing of offices. — Not being listed on the proclamation does not preclude the office for which parties are to nominate candidates from appearing on the general election ballot. 1978 Op. Att'y Gen. No. 78-05.

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.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, required the secretary of state to post the proclamation, calling a primary election to be held, and any amended proclamation on the secretary of state's website and to send to each county clerk a copy of the proclamation or any amended proclamation along with a copy of the test in an editable electronic format; in Subsection A, after "state", deleted "and"; added a new Subsection B and redesignated former Subsection B as Subsection C; and in Subsection C, after "send", deleted "by certified mail", after "copy of the proclamation", added "or any amended proclamation", and after "each county clerk", added "along with a copy of the text in an editable electronic format".

Publication costs. — The secretary of state should pay for the publications made from that office. 1943 Op. Att'y Gen. No. 43-4334 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of public officers for breach of duty in respect of election or primary election laws, 153 A.L.R. 109.

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.

ANNOTATIONS

Cross references. — For publication of proclamation by secretary of state, *see* 1-8-14 NMSA 1978.

For amendment of proclamation, *see* 1-8-16 NMSA 1978.

Publication costs. — The county clerk's publication costs should be paid for from the county fund provided therefor. 1943 Op. Att'y Gen. No. 43-4344 (opinion rendered under former law).

1-8-16. Primary and general elections; proclamation; amendment.

The secretary of state 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; 2023, ch. 39, § 47.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, authorized the secretary of state to amend the proclamation between the time of its issuance and the first Tuesday in March for certain offices that are capable of being filled in the next succeeding general election when such vacancy occurs no later than the last Friday before the first Tuesday in March, or to provide for any corrections or omissions, removing this authority from the governor; in the section heading, deleted "election law" and added "and general elections"; and after "The", deleted "governor" and added "secretary of state".

The 2015 amendment, effective July 1, 2015, provided that the governor may amend the proclamation between the time of its issuance and the first Tuesday in March when an existing office becomes vacant by removal, resignation or death when such vacancy occurs no later than the last Friday before the first Tuesday in March; and after "resignation or death", added "when such vacancy occurs no later than the last Friday before the first Tuesday in March".

When permissive language of section construed as mandatory. — When governor's proclamation omitted certain descriptions which would have a profound effect on voter notice and knowledgeability, the permissive language of this section was construed as being mandatory, and therefore, the governor was directed to amend proclamation to include the specific boundaries of the districts which make up the office and terms of each office relative to its district. *State ex rel. Robinson v. King*, 1974-NMSC-028, 86 N.M. 231, 522 P.2d 83.

Mandamus properly granted. — Since the governor's duty under the Primary Election Law to issue a proclamation is mandatory, mandamus is properly granted to compel the governor to specify in his proclamation the boundaries of the district making up the office of county commissioner and terms of that office. *State ex rel. Robinson v. King*, 1974-NMSC-028, 86 N.M. 231, 522 P.2d 83.

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.

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.

ANNOTATIONS

Cross references. — For presidential electors not to be nominated at primary, *see* 1-15-2 NMSA 1978.

Candidate for member of state education board not nominated by primary convention. — Under former law, since the manifest object of the classifications of the primary election statutes

was to require candidates for office, elected from a judicial district only, as contrasted to those elected from the state at large, to follow the provisions of 3-11-16, 1953 Comp., rather than to have to be nominated by a statewide primary convention, a candidate for the office of member of the state board of education was not nominated by the primary nominating convention. 1964 Op. Att'y Gen. No. 64-10.

Party may follow own rules for school board nominations. — A political party may nominate whomever it chooses for school board elections under such rules and regulations as it may adopt. 1943 Op. Att'y Gen. No. 43-4222 (opinion rendered under former law).

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.

ANNOTATIONS

Cross references. — For determination of residency for purposes of candidacy, *see* 1-1-7.1 NMSA 1978.

For rule relating to contest of nomination in primary elections, *see* Rule 1-087 NMRA.

For appeal as of right, *see* Rule 12-201 NMRA.

For appeals of nominating petitions, *see* Rule 12-603 NMRA.

The 2019 amendment, effective April 3, 2019, provided for the secretary of state to issue the general election proclamation; replaced "governor" with "secretary of state" throughout the section.

Right of political party to select own candidates. — Principle that political party shall have right to select its own candidates and that such right should be protected was adopted by the legislature in former Primary Election Code. *Roberts v. Clev eland*, 1944-NMSC-031, 48 N.M. 226, 149 P.2d 120.

One-year party affiliation requirement void. — Requirement contained in former version of this section that a person's record of registration show his affiliation with a political party for a period of at least one year next preceding the filing date of primary election before he could become a candidate for nomination by that party added an impermissible requirement of at least two years residency to the qualifications for United States senator and was therefore void. *Dillon v. Fiorina*, 340 F. Supp. 729 (D.N.M. 1972).

Applicability to individual named to fill vacancy. — The predecessor of this section, providing that candidates for nomination of a political party must have been affiliated with that party for at least one year, was applicable to an individual named by the party to fill a vacancy on the general election ballot. 1964 Op. Att'y Gen. No. 64-105.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 263, 264, 265.

Residence or inhabitancy within district or other political unit as necessary qualification of candidate, 120 A.L.R. 672.

Political principles or affiliations as ground for refusal of government officials to take steps necessary to representation of party or candidate upon official ticket, 130 A.L.R. 1471.

Constitutionality, construction and application of statutes regarding party affiliations or change thereof as affecting eligibility to nomination for public office, 153 A.L.R. 641.

29 C.J.S. Elections § 131.

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.

ANNOTATIONS

Cross references. — For independent candidates, *see* 1-8-45 to 1-8-52 NMSA 1978.

Intent of section is to prevent party switching after an unsuccessful primary bid in order to run in the general election. *Anderson v. Hooper*, 498 F. Supp. 898 (D.N.M. 1980).

Section does not apply to presidential primary and does not prevent placement of candidate's name on general election ballot. *Anderson v. Hooper*, 498 F. Supp. 898 (D.N.M. 1980)(decided prior to 1981 amendment).

Running as independent in succeeding election not prevented. — This section and 1-10-7 NMSA 1978 do not prevent an unsuccessful party primary candidate from running as an independent in the succeeding general election. *Anderson v. Hooper*, 498 F. Supp. 898 (D.N.M. 1980)(decided prior to 1981 amendment).

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.

ANNOTATIONS

Cross references. — For candidates for expiring and next succeeding congressional term, *see* 1-15-19 to 1-15-23 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — More than one office in the same election, right to such nomination, or to become candidate, for, 94 A.L.R.2d 557.

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 state or federal office listed in the proclamation issued pursuant to Section 1-8-13 NMSA 1978 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 any county office listed in the proclamation issued pursuant to Section 1-8-13 NMSA 1978 shall have their names placed on the primary election ballot by filing declarations of candidacy and paying a fifty-dollar ($50.00) filing fee or filing a nominating petition containing no fewer than ten signatures for offices elected by district or twenty signatures for offices elected countywide 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; 2023, ch. 39, § 48.

ANNOTATIONS

Repeals and reenactments. — Laws 1975, ch. 228, § 2, repealed former 3-8-19, 1953 Comp., relating to declaration of candidacy under Primary Election Law, and enacted a new 3-8-19, 1953 Comp., relating to method of placing names on primary ballot under Primary Election Law.

Laws 1975, ch. 295, § 7, repealed former 3-8-19, 1953 Comp., relating to method of placing names on primary ballot under Primary Election Law, and enacted a new 3-8-19, 1953 Comp.

Laws 1994, ch. 92, § 2 repealed 1-8-21 NMSA 1978, as amended by Laws 1993, ch. 55, § 2, and enacted a new section, effective January 1, 1996.

Laws 1996, ch. 20, § 2 repealed 1-8-21 NMSA 1978, as amended by Laws 1996, ch. 20, § 1, relating to primary elections, effective January 1, 1997. Section 3 of Laws 1996, ch. 20 enacted a new section, effective January 1, 1997.

The 2023 amendment, effective June 16, 2023, set the filing fee at fifty dollars, and removed a provision allowing county candidates to file a pauper's statement in lieu of paying filing fees, but allowed such candidates to instead file a nominating petition; in Subsection B, after "for any other", added "state or federal", after "listed in", added "the proclamation issued pursuant to", after "Section", deleted "1-8-13C" and added "1-8-13 NMSA 1978"; and in Subsection C, after "Candidates for", added "any", after "county office", added "listed in the proclamation issued pursuant to Section 1-8-13 NMSA 1978", after "paying", added "a fifty-dollar ($50.00)", after "or filing", deleted "the proper paupers' statements" and added "a nominating petition containing no fewer than ten signatures for offices elected by district or twenty signatures for offices elected countywide".

The 2009 amendment, effective June 19, 2009, deleted former Subsection B, which provided that other candidates may have their names placed on the primary election ballot by filing a declaration of candidacy and nominating petitions with the proper filing officer; and added Subsections B and C.

In filing for office, candidate may use his regular legal name and insert his nickname between his given name and surname, but he should be placed on the ballot only by his legal name and the nickname should be omitted. 1960 Op. Att'y Gen. No. 60-51.

Nickname should be omitted from ballot. — If the candidate inserted the nickname between his initials and his surname, he should go on the ballot by his initials and surname and the nickname should be omitted. 1960 Op. Att'y Gen. No. 60-51.

Person using only nickname not legally filed. — A person would not be legally filed if he uses neither his initials for his given name nor his given name but uses only a nickname with his surname. 1960 Op. Att'y Gen. No. 60-51.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 236, 237.

29 C.J.S. Elections § 114.

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.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the time for filing declarations of candidacy and nominating petition signatures to allow time for judicial resolution of nominating petition and other candidacy challenges; and in Subsection B, after "shall be held later than the", deleted "third" and added "second".

1-8-22 to 1-8-24. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 2, § 13 repealed 1-8-22 to 1-8-24 NMSA 1978, as enacted by Laws 1975, ch. 295, §§ 8 to 10, relating to candidates for statewide office and United States representatives, requirements for being placed on ballot, and statement of candidacy for convention designation, effective June 14, 1985.

1-8-25. Repealed.

History: 1953 Comp., § 3-8-20, enacted by Laws 1969, ch. 240, § 170; 1975, ch. 295, § 11; 1985, ch. 2, § 3; 1998, ch. 36, § 4; 2011, ch. 137, § 55; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-8-25 NMSA 1978, as enacted by Laws 1969, ch. 240, § 170, relating to proper filing officer, declaration of candidacy, nominating petitions, withdrawal of candidacy, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1975, ch. 295, § 12, repealed former 3-8-21, 1953 Comp., relating to declaration of candidacy and time of filing under Primary Election Law, and enacted a new 3-8-21, 1953 Comp.

The 2019 amendment, effective April 3, 2019, revised the provisions related to the time of filing declarations for candidacy; and deleted former Subsection D and redesignated former Subsections E and F as Subsections D and E, respectively.

The 2015 amendment, effective July 1, 2015, amended the deadline by which declarations of candidacy for retention for all affected judicial offices shall be filed; and in Subsection D, after "5:00 p.m. on the", deleted "second Tuesday in March of each even-numbered year" and added "twenty-third day after the primary election".

The 2014 amendment, effective March 12, 2014, provided for a standardized filing date; in Subsection D, after "5:00 p.m. on the", deleted "twenty-first day after the primary election" and added "second Tuesday in March of each even-numbered year".

The 2013 amendment, effective June 14, 2013, changed the time for filing declarations of candidacy and nominating petition signatures to allow time for judicial resolution of nominating petition and other candidacy challenges; in Subsection A, after "filing officer on the", deleted "second" and added "first"; and in Subsection B, after "filing officer on the", deleted "third" and added "second".

The 2011 amendment, effective July 1, 2011, imposed deadlines for filing declarations of candidacy for retention of judicial offices and for appeals to the supreme court.

The 2009 amendment, effective June 19, 2009, in Subsection D, after "declaration of candidacy, the petition", added "if required".

The 1997 amendment, effective June 20, 1997, substituted "Primary election law; time of filing; documents necessary to qualify for ballot; challenge" for "Primary election law; declaration of candidacy; time of filing" in the section heading; made minor stylistic changes in Subsection D, and added Subsection E.

The 1995 amendment, effective January 1, 1996, deleted former Subsection B, which set forth the proper date and times for filing declarations of candidacy for statewide office or office of the United States representative, and redesignated the remaining subsections accordingly.

The 1994 amendment, effective January 1, 1996, added Subsection A, redesignated former Subsection A as Subsection B, deleted former Subsection B relating to declarations of candidacy for other offices, added Subsections C and D, redesignated former Subsection C as Subsection E, and inserted "for candidates not seeking preprimary convention designation" and made minor stylistic changes in Subsection B.

The 1994 amendment, effective January 31, 1994, added Subsection A, redesignated former Subsection A as Subsection B, deleted former Subsection B relating to declarations of candidacy for other offices, added Subsections C and D, redesignated former Subsection C as Subsection E, and inserted "for candidates not seeking preprimary convention designation" and made minor stylistic changes in Subsection B.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" in Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Time of filing candidate's application or certificate of nomination before primary or election, mandatory or directory character of statutory provision as to, 72 A.L.R. 290.

Residence or inhabitancy within district or other political unit as necessary qualification of candidate, 120 A.L.R. 672.

Residency: validity of requirement that candidate or public officer have been resident of governmental unit for specified period, 65 A.L.R.3d 1048.

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.

ANNOTATIONS

The 1993 amendment, effective November 15, 1993, inserted "by nominating petition or by pre-primary convention designation" in the first sentence and added the language beginning "except that candidates" at the end of the second sentence.

Simultaneous declarations prohibited. — A district judge may not file a declaration of candidacy for retention of office and, at the same time, file a declaration of candidacy in a primary election for a statewide judicial office. 1990 Op. Att'y Gen. No. 90-04.

1-8-28. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 2, § 13 repealed 1-8-28 NMSA 1978, as amended by Laws 1975, ch. 295, § 14, relating to statements of candidacy for convention designation for candidates for the same office having different terms, effective June 14, 1985.

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 as approved by the secretary of state for that election:

"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;

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 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; 2023, ch. 39, § 49.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised the declaration of candidacy form, and required the declaration of candidacy form to be approved by the secretary of state; in the introductory clause, after "the following form", added "as approved by the secretary of state"; and in the third undesignated paragraph of the form, after "set by law for this year, and", deleted "if the office be that of a member of the legislature or that of a member of the public education commission".

The 2019 amendment, effective April 3, 2019, provided for the secretary of state to issue the general election proclamation, and replaced "the state board of education" with the "public education commission"; in the second undesignated paragraph, replaced "governor" with "secretary of state's general election"; and in the third undesignated paragraph, after "member of the", deleted "state board of" and added "public", and after "education", added "commission".

1993 Amendments. — Laws 1993, ch. 314, § 46 and Laws 1993, ch. 316, § 46, both effective June 18, 1993, enacted identical amendments that substituted "certificate" for "affidavit" throughout the section.

Laws 1993, ch. 55, § 5, effective November 15, 1993, inserted "by nominating petition or by pre-primary convention designation" in the introductory paragraph and added "BY PRE-PRIMARY CONVENTION DESIGNATION (OR BY NOMINATING PETITION)" to the form heading.

Time for meeting eligibility requirements for taking office. — The language of this section, "will be eligible and legally qualified to hold [the] office at the beginning of its term", is a clear and unambiguous statement of legislative intent. A candidate for any office in this state must meet its eligibility requirements at the time of taking office. *Lopez v. Kase*, 1999-NMSC-011, 126 N.M. 733, 975 P.2d 346.

When eligibility requirements to be met. — A candidate for any office in this state must meet its eligibility requirements at the time of taking office. *Chavez v. Yontz*, 1986-NMSC-034, 104 N.M. 265, 720 P.2d 300.

Candidate need not use same name as on registration. — A candidate is not required to file a declaration of candidacy in the identical name shown on his or her affidavit of registration, but may use a legal given name or initials. 1957 Op. Att'y Gen. No. 57-309.

Married woman may use her registered name or given name. — The language in a provision such as this one is construed to permit, at least, a married woman to use either her required registered name or her own given name. 1957 Op. Att'y Gen. No. 57-309.

Wife may use her given Christian and maiden name with her husband's in a declaration of candidacy. 1957 Op. Att'y Gen. No. 57-309.

A wife may use the name by which she is registered, or her own given name, in the declaration of candidacy and substantially conform with form of certificate of filing. 1956 Op. Att'y Gen. No. 56-6399.

Candidate may use initials. — There is nothing in the form of the declaration of candidacy that says initials cannot be used. 1956 Op. Att'y Gen. No. 56-6399.

Section not applicable to person who previously failed or declined to show party affiliation. 1944 Op. Att'y Gen. No. 44-4500.

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 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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, made stylistic changes to the nominating petition and required the secretary of state to post a sample of a nominating petition on the secretary of state’s website.

The 2001 amendment, effective June 15, 2001, changed the paper length for nominating petitions from fourteen inches long to eleven inches long in Subsection C.

The 1999 amendment, effective June 18, 1999, deleted former Subsection E, relating to circumstances under which voter signatures shall not be counted, and redesignated former Subsection F as Subsection E.

The 1995 amendment, effective January 1, 1996, deleted "provided that candidates for statewide office or the office of United States representative who seek preprimary convention designation shall not be required to file nominating petitions with the declaration of candidacy" from the end of Subsection B, and added the first sentence in Subsection E.

The 1994 amendment, effective January 1, 1996, in Subsection B, deleted "whether by petition or preprimary convention designation" following "candidacy,", and added the language after "prescribed by law".

The 1993 amendment, effective November 15, 1993, substituted "whether by petition or pre-primary convention designation" for "or statement of candidacy for convention designation" in Subsection B.

Form of nominating petitions. — Where petitioner sought preprimary designation as a candidate for the office of United States representative from New Mexico's third congressional district at the 2020 republican party pre-primary convention, and where petitioner filed forty-nine nominating petitions containing over 700 signatures, along with her declaration of candidacy, and where the secretary of state invalidated the signatures on forty-four of petitioner's nominating petitions because those petitions omitted the heading "2020 Primary Nominating Petition", which the secretary of state deemed to be critical information required by law, the secretary of state's refusal to accept any nominating petition that did not have the heading at issue was improper because the substance of the invalidated nominating petitions conformed with the form prescribed by this section and therefore met the requirements of the Election Code. *Morper v. Toulouse Oliver*, 2020-NMSC-012.

A nominating petition for magistrate judgeship must include the division number of the judgeship that the candidate seeks. *Charley v. Johnson*, 2010-NMSC-024, 148 N.M. 246, 233 P.3d 775.

Failure to fill in entire line does not disqualify signature, notwithstanding Subsection E. *Simmons v. McDaniel*, 1984-NMSC-049, 101 N.M. 260, 680 P.2d 977 (decided prior to 1999 amendment).

Nominating petition filing requirement not violative of equal protection. — States may impose on minor political parties the precondition of demonstrating the existence of some reasonable quantum of voter support by requiring such parties to file petitions for a place on the ballot signed by a percentage of those who voted in a prior election. Consequently, 1-8-33 NMSA 1978 is not repugnant to the equal protection clause of the fourteenth amendment, since the percentage requirements are identical for the different political parties, all candidates of the same party running for the same office must acquire the same number of signatures, and any disparity in the number of signatures required as between the different parties merely accentuates the basic fairness of the procedure in recognizing the variation in the number of registered voters affiliated with the numerous parties in this state. *Dillon v. King*, 1974-NMSC-096, 87 N.M. 79, 529 P.2d 745.

Filing requirement discourages "laundry list" ballots. — "Laundry list" ballots discourage voter participation and confuse and frustrate those who participate. Rational results within the framework of our system are not likely to be reached if the ballot for a single office must list a dozen or more aspirants who are relatively unknown or have no prospects for success. Our electoral history vividly demonstrates that unrestricted primaries foster a rank and verdant growth of candidates. *Dillon v. King*, 1974-NMSC-096, 87 N.M. 79, 529 P.2d 745.

Legitimate state interest. — Free and open elections do not require a total lack of restraint on the number of political parties and nominees entitled to placement on the ballot. The state has a legitimate interest in trying to determine some degree of good faith on the part of electors who

sign nominating petitions, in assuring at least a modicum of support for a political party and its nominees whose names are placed on the general election ballot, and in regulating the size of the ballot so as to minimize voter confusion and to prevent the overwhelming of voting machines. *Dillon v. King*, 1974-NMSC-096, 87 N.M. 79, 529 P.2d 745.

Scope of section. — This section is limited by its language to nominating petitions for primary elections. *Workers World Party v. Vigil-Giron*, 693 F. Supp. 989 (D.N.M. 1988).

Language mandatory. — The language of this section is mandatory and not discretionary and any nominating petition not containing the address of the candidate and his official designation on each sheet is invalid. 1952 Op. Att'y Gen. No. 52-5486 (opinion rendered under former law).

Candidate's name on petition. — So long as the name of the candidate upon the nominating petition reasonably and sufficiently identifies the declarant or candidate and so long as there is no patent discrepancy between the name on the nominating petition and the name on the declaration of candidacy, the petition is valid and acceptable. 1952 Op. Att'y Gen. No. 52-5486 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 236, 237.

29 C.J.S. Elections § 112.

1-8-31. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 9 recompiled and amended former 1-8-31 NMSA 1978 as 1-1-7.2 NMSA 1978, effective April 3, 2019.

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.

ANNOTATIONS

Cross references. — For offenses and penalties, *see* 1-20-1 NMSA 1978 et seq.

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 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 the greater of:

(1) for the public education commission, two percent of the total vote of the candidate's party in the district; for judicial candidates, two percent of the total vote of the candidate's party in the district or division; and for all other candidates, three percent of the total vote of the candidate's party in the district; or

(2) for metropolitan court and magistrate courts, ten 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, 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; 2020, ch. 9, § 5; 2023, ch. 39, § 50.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, reduced the nominating petition signature requirement for the public education commission and for judicial candidates; in Subsection C, Paragraph C(1), added "for the public education commission, two percent of the total vote of the candidate's party in the district; for judicial candidates, two percent of the total vote of the candidate's party in the district or division; and for all other candidates", and after "the candidate's party in the district", deleted "or division, or the following number of voters, whichever is greater".

The 2020 amendment, effective January 1, 2023, removed the public regulation commission from the calculation of petition signatures needed to run in a primary election; and in Subsection C, after "ten voters", deleted "for the public regulation commission, fifty voters".

Laws 2020, ch. 9, § 5 amended 1-8-33 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against.

The 2008 amendment, effective February 29, 2008, added Subsection D.

The 2007 amendment, effective July 1, 2007, eliminated the procedure by which a candidate who failed to receive a preprimary convention designation could obtain a declaration of candidacy and nominating petition.

The 1998 amendment, effective March 6, 1998, inserted "; for the public regulation commission, fifty voters" in Subsection C.

The 1995 amendment, effective January 1, 1996, in Subsection B, deleted "do not" preceding "seek", substituted "two" for "three", and substituted the language beginning "or the following number" at the end for "as the case may be"; in Subsection C, substituted the language beginning "or the following number of voters" at the end for "as the case may be"; and in Subsection D, substituted "additional signatures to total at least four percent" for "signatures equal to at least three percent" and made minor stylistic changes.

The 1994 amendment, effective January 1, 1996, in Subsection B, inserted the first sentence and substituted "those candidates" for "a candidate for United States senator, any statewide officer or any candidate for United States representative" in the second sentence; deleted former Subsection D relating to the submission of nominating petitions and redesignated former Subsection E as Subsection D; and substituted "equal to at least three" for "from an additional one" in Subsection D.

The 1993 amendment, effective November 15, 1993, substituted "As used in this section, 'Total vote' means the sum of all votes cast for all of" for "The basis of percentage for the votes of the party in each instance referred to in this section shall be the total vote for" at the beginning of Subsection A, deleted "provided that in determining the total vote of the party on the nominating petition for a candidate for member of the legislature, absentee votes shall be excluded" at the end of Subsection C, and added Subsections D and E.

Nominating petition signature requirement not violative of equal protection. — States may impose on minor political parties the precondition of demonstrating the existence of some reasonable quantum of voter support by requiring such parties to file petitions for a place on the

ballot signed by a percentage of those who voted in a prior election. Consequently, this section is not repugnant to the equal protection clause of the fourteenth amendment, since the percentage requirements are identical for the different political parties, all candidates of the same party running for the same office must acquire the same number of signatures, and any disparity in the number of signatures required as between the different parties merely accentuates the basic fairness of the procedure in recognizing the variation in the number of registered voters affiliated with the numerous parties in this state. *Dillon v. King*, 1974-NMSC-096, 87 N.M. 79, 529 P.2d 745.

Signature requirement discourages "laundry list" ballots. — "Laundry list" ballots discourage voter participation and confuse and frustrate those who participate. Rational results within the framework of our system are not likely to be reached if the ballot for a single office must list a dozen or more aspirants who are relatively unknown or have no prospects for success. Our electoral history vividly demonstrates that unrestricted primaries foster a rank and verdant growth of candidates. *Dillon v. King*, 1974-NMSC-096, 87 N.M. 79, 529 P.2d 745.

Legitimate state interest. — Free and open elections do not require a total lack of restraint on the number of political parties and nominees entitled to placement on the ballot. The state has a legitimate interest in trying to determine some degree of good faith on the part of electors who sign nominating petitions, in assuring at least a modicum of support for a political party and its nominees whose names are placed on the general election ballot, and in regulating the size of the ballot so as to minimize voter confusion and to prevent the overwhelming of voting machines. *Dillon v. King*, 1974-NMSC-096, 87 N.M. 79, 529 P.2d 745.

Official canvass record used in determining number of signatures required. — In determining the number of signatures required under former 3-11-7, 1953 Comp. to be contained in a petition for nomination the official canvass is to be the record that is used. 1964 Op. Att'y Gen. No. 64-35.

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.

ANNOTATIONS

Inclusion of signatures filed for convention designation not prohibited. — This section should not be construed to prohibit the inclusion of the signatures originally filed by the

candidate for convention designation in the total necessary to appear on the ballot using the alternate method. 1975 Op. Att'y Gen. No. 75-61.

Withdrawals must be 30 days before primary. — Section 3-11-54.1, 1953 Comp., governed withdrawals from primary elections by virtue of 3-11-20, 1953 Comp., and provided that such withdrawals must be at least 30 days prior to the primary election. 1964 Op. Att'y Gen. No. 64-28 (opinion rendered under former law).

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 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.

ANNOTATIONS

Cross references. — For rule relating to contest of nomination in primary elections, *see* Rule 1-087 NMRA.

For appeal as of right, *see* Rule 12-201 NMRA.

For rule governing appeals of nominating petitions, *see* Rule 12-603 NMRA.

The 1993 amendment, effective November 15, 1993, added "with which the nominating petition was filed" at the end of the first sentence of Subsection A and made stylistic changes.

Request for expedited hearing. — Complaints challenging nominating petitions should be accompanied by a request for an expedited hearing, and the matter should immediately be called to the attention of the judge assigned to the case. *Charley v. Johnson*, 2010-NMSC-024, 148 N.M. 246, 233 P.3d 775.

Notice to the candidate of the proceeding. — Time is of the essence in a proceeding challenging a nominating petition, and plaintiff must notify the candidate of the action by serving the complaint on the candidate’s statutory agent for service of process and by immediately

delivering a copy of the complaint and notice of hearing to the candidate. *Charley v. Johnson*, 2010-NMSC-024, 148 N.M. 246, 233 P.3d 775.

Challenged signatures must be set forth in a single count. — Each signature challenged by the plaintiff must be set forth in a separate count in the complaint, and if the signature is challenged on multiple grounds, each of those grounds must be set forth in the count for that signature. *Charley v. Johnson*, 2010-NMSC-024, 148 N.M. 246, 233 P.3d 775.

Required procedure not followed. — Where plaintiffs challenged the sufficiency and validity of defendant's nominating petition for magistrate judge; plaintiffs neither filed a request for an expedited hearing when the complaint was filed nor obtained a setting within ten days of the filing of the complaint; the complaint did not state who conducted the search of the voter registration records; the complaint did not set forth each challenged signature and the multiple challenges to the signature as a separate count, but multiple signatures into a single count based on the type of challenge; plaintiffs did not attempt to deliver the complaint or a notice of hearing to defendant; and the county clerk testified summarily that the nominating petition had only eighteen valid signatures, but neither discussed each signature individually nor explained why the county clerk concluded that the remaining signatures were invalid, the district court erred by removing defendant's name from the ballot. *Charley v. Johnson*, 2010-NMSC-024, 148 N.M. 246, 233 P.3d 775.

Contest of primary election not governed by section. — After a primary election, the unsuccessful candidate or any other challenger has 30 days from date of issuance of the certificate of nomination, pursuant to 1-14-3 NMSA 1978, to properly contest the election; this section is not controlling. *Thompson v. Robinson*, 1984-NMSC-096, 101 N.M. 703, 688 P.2d 21.

1-8-36. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 156, § 3, repealed 1-8-36 NMSA 1978, relating to write-in candidates on primary election ballots. For present provisions, *see* 1-8-36.1 NMSA 1978, effective June 19, 1981.

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 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 same 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, accompanied by a nominating petition containing the same number of signatures required of other candidates for major party nomination for the same office. Such

declaration of intent shall be filed between 9:00 a.m. and 5:00 p.m. on the third Tuesday in March.

D. A person shall not be a declared write-in candidate 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 nominating 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 by the Friday following the filing date. The determination by the proper filing officer that a person is a declared write-in candidate is subject to the provisions of Section 1-8-18 NMSA 1978.

E. If a person is notified by the proper filing officer that the person is not qualified to be a write-in 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.

F. A 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 [1-22A-1 to 1-22A-10 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; 2020, ch. 9, § 6; 2023, ch. 39, § 51.

ANNOTATIONS

Cross references. — For write-in candidates in general election, *see* 1-12-19.1 NMSA 1978.

The 2023 amendment, effective June 16, 2023, established a petition signature, qualification, and challenge process for write-in candidates filing to appear on the primary election ballot; in Subsection C, after "intent to be a write-in candidate", added "accompanied by a nominating petition containing the same number of signatures required of other candidates for major party nomination for the same office"; in Subsection D, deleted "At the time of filing the declaration of intent to be a write-in candidate, the" and added the remainder of the subsection; and added new Subsection E.

The 2020 amendment, effective January 1, 2023, removed the public regulation commission from the write-in qualifications for certain offices; and in Subsection A, after "district attorneys", deleted "public regulation commission".

Laws 2020, ch. 9, § 6 amended 1-8-36.1 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against.

The 2019 amendment, effective April 3, 2019, revised the provisions related to write-in candidates; deleted Subsection D and redesignated former Subsection E as Subsection D; and deleted former Subsections F and G.

The 2011 amendment, effective July 1, 2011, in Subsection C, required that a declaration of intent be filed on the third Tuesday in March.

The 2009 amendment, effective June 19, 2009, in Subsection A, deleted "state board of education" and added "public education commission"; in Paragraph (2) of Subsection D, after "name is written", deleted "in the proper slot on the voting machine or"; after "proper line provided on", deleted "an absentee ballot or emergency paper" and after "declaration of intent", added the remainder of the sentence; in Subsection E, deleted "he shall not be entitled to have his" added "the write-in candidate's"; and after "name", added "shall not be"; in Subsection F, deleted "he" in three places, added "the write-in candidate's"; and in Subsection G, after "writing in the name", added "and following the directions for casting a vote for the write-in candidate".

The 1998 amendment, effective March 6, 1998, inserted ", public regulation commission" in Subsection A and substituted "pursuant to" for "under" in Subsection B.

The 1994 amendment, effective January 31, 1994, in Subsection C, deleted former Paragraphs (1) and (2), relating to the time for filing a declaration of intent, inserted "one of" in the first sentence and substituted "before 5:00 p.m. on the second Tuesday in March" for "as follows" in the second sentence.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" in Subsection B.

Write-in procedure is constitutionally acceptable alternative to the nominating petition procedures. *Dillon v. King*, 1974-NMSC-096, 87 N.M. 79, 529 P.2d 745 (decided under former 1-8-36 NMSA 1978).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Elections: validity of state or local legislative ban on write-in votes, 69 A.L.R.4th 948.

1-8-37 to 1-8-39. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 2, § 13 repealed 1-8-37 to 1-8-39 NMSA 1978, as amended by Laws 1983, ch. 232, §§ 11 to 13, relating to the duties of the secretary of state with regard to statements of candidacy for convention designation, the designation of candidates by convention, and the alternative method of placing name on primary election ballot, respectively, effective June 14, 1985.

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.

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.

ANNOTATIONS

Cross references. — For offenses and penalties, *see* 1-20-1 NMSA 1978 et seq.

For sentencing for a fourth degree felony, *see* 31-18-15 NMSA 1978.

The 1993 amendment, effective November 15, 1993, inserted "by nominating petition or by pre-primary convention designation".

1-8-41. Repealed.

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; 1978 Comp., § 1-8-41, repealed by Laws 2023, ch. 39, § 99.

ANNOTATIONS

Repeals. — Laws 2023, ch. 39, § 99 repealed 1-8-41 NMSA 1978, as enacted by Laws 1973, ch. 228, § 11, relating to Primary Election Law, filing fee, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

History: 1953 Comp., § 3-8-30, enacted by Laws 1969, ch. 240, § 180; 1975, ch. 295, § 24; 1985, ch. 2, § 9; 1988, ch. 17, § 4; 1994, ch. 3, § 1; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-8-43 NMSA 1978, as enacted by Laws 1969, ch. 240, § 180, relating to Primary Election Law, order of candidates on ballot, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, required that a withdrawal be filed with a proper filing officer rather than with the secretary of state.

The 2007 amendment, effective June 15, 2007, required a candidate who wishes to withdraw from candidacy to file a signed and notarized statement of withdrawal with the secretary of state.

The 1999 amendment, effective June 18, 1999, rewrote the section, which formerly read: "No candidate shall withdraw from a primary election unless he withdraws no later than the first Friday after the filing date."

Withdrawal before primary creates no vacancy. — When the only candidate for a county office for a given political party participating in the primary withdraws prior to the primary, no vacancy exists. 1956 Op. Att'y Gen. No. 56-6419.

Section applies at any time after filing of any declaration. Hence, the candidate would be required to file an affidavit of withdrawal on a separate sheet with the county clerk and then file a second declaration of candidacy. 1956 Op. Att'y Gen. No. 56-6407.

Withdrawal from first office necessary to file for second. — A person who filed for an office and then without the benefit of a formal withdrawal changed his original declaration and filed for a second office is eligible to run for the first office filed for and not the second as no withdrawal has been accomplished. The moneys paid by that person cannot be refunded and must be treated as a filing fee despite the mistake which was made by the candidate. 1956 Op. Att'y Gen. No. 56-6407.

Procedure for withdrawal. — A candidate may withdraw his candidacy before the official ballots are printed, a valid withdrawal being effected by notifying the officer with whom the declaration of candidacy was originally filed, before she issues her certificate. 1950 Op. Att'y Gen. No. 50-5294.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 213, 214.

Power of political party or its officials to withdraw nominations, 155 A.L.R. 186.

29 C.J.S. Elections § 95.

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 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 [1-1-7.2 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2019, ch. 212, § 9 recompiled and amended former 1-8-31 NMSA 1978 as 1-1-7.2 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, provided for the secretary of state to issue the general election proclamation; and replaced "governor's" with "secretary of state's general election" throughout.

The 2011 amendment, effective July 1, 2011, defined an independent candidate as a person whose certificate of voter registration shows affiliation with no qualified political party; prohibited a person from being an independent candidate for office unless the person complies with this section; and provided the procedure for challenging the candidacy of a person as an independent candidate.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" in Subsection D.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided for the secretary of state to issue the general election proclamation; in the section heading, deleted "special"; and in Subsection B, after "issuance of the", deleted "governor's" and added "secretary of state's general election".

The 2011 amendment, effective July 1, 2011, added statements to the declaration that the candidate has not designated any current affiliation with a qualified political party on the candidate's certificate of registration; that the candidate meets the qualifications in Section 1-8-45 NMSA 1978; and if the candidate seeks a state or county office, that the candidate resides in the county where the office is located.

The 1998 amendment, effective March 6, 1998, rewrote the form in Subsection B.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" twice in the form in Subsection B.

Section not unconstitutional on equal protection grounds. *Anderson v. Hooper*, 632 F.2d 116 (10th Cir. 1980).

Candidate's late party affiliation change bars certification as independent. — Candidate who changes party affiliation on September 3 of the year of the general election is barred from being certified as an independent candidate for congress. *Anderson v. Hooper*, 632 F.2d 116 (10th Cir. 1980)(decided prior to 1981 amendment).

For person to qualify as independent candidate for office other than president in the general election, his affidavit of registration on file with the county clerk must show that since January 1, of that year (now, since the date of issuance of governor's proclamation for primary election), he has declined to designate a party affiliation. 1980 Op. Att'y Gen. No. 80-26.

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)	
_____ (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)

_____
(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.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, rewrote the section, which formerly read: "If the person filing the declaration of independent candidacy is a candidate for president of the United States, he shall also file the names and addresses of the required number of presidential electors who intend to vote for such independent candidate in the electoral college".

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 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For county clerk making available a sample copy of the nominating petition, *see* 1-8-30 NMSA 1978.

The 2011 amendment, effective July 1, 2011, deleted the statement in the heading of the form that the form is for any office except president of the United States and required the secretary of state to post the nominating petition form on the secretary of state's web site in March of even-numbered years.

The 2001 amendment, effective June 15, 2001, in Subsections C and D, changed the paper length for nominating petitions from fourteen inches long to eleven inches long.

The 1999 amendment, effective June 18, 1999, updated the statutory references and inserted "authorized" in Subsection A; added Subsections B and D; in present Subsection C, inserted "for an independent candidate for any office except president of the United States" in the introductory language, inserted "FOR ANY OFFICE EXCEPT PRESIDENT OF THE UNITED STATES" in the form heading, and inserted "or at a United States representative special election" within the form; deleted former Subsection D, which read "The signature of the voter shall not be counted unless the entire line is filled out in full and is upon the form prescribed by this section"; and made stylistic changes, including redesignation of subsections due to addition and deletion of subsections.

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.

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, district judge, district attorney 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; provided that for the public education commission, nominating petitions shall be signed by at least two-thirds of the number of signatures that would otherwise be required, and for a judicial office, nominating petitions shall be signed by at least two-thirds of the number of signatures that would otherwise be required.

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; 2020, ch. 9, § 7; 2023, ch. 39, § 52.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, reduced the number of signatures required on nominating petitions submitted by independent candidates for the public education commission and for judicial offices; and in Subsection E, after "district attorney", deleted "member of the public education commission, magistrate", and after "as the case may be", added "provided that for the public education commission, nominating petitions shall be signed by at least two-thirds of the number of signatures that would otherwise be required, and for a judicial office, nominating petitions shall be signed by at least two-thirds of the number of signatures that would otherwise be required."

The 2020 amendment, effective January 1, 2023, removed the public regulation commission from the calculation of petition signatures needed to run as an independent candidate; and in Subsection E, after "member of the legislature", deleted "public regulation commission".

Laws 2020, ch. 9, § 7 amended 1-8-51 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the

general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against.

The 2019 amendment, effective April 3, 2019, revised the number of voter signatures required for nominating petitions; after "at least", deleted "three" and added "two" throughout; in Subsection B, after "voters equal to", deleted "at least three percent of the total number of votes cast in the state" and added "the number signatures required to form a new political party"; in Subsection E, after "member of the", deleted "state board of" and added "public", and after "education", added "commission"; and added a new Subsection F and redesignated former Subsection F as Subsection G.

The 1998 amendment, effective March 6, 1998, inserted ", public regulation commission" in Subsection E and substituted "A" for "The" at the beginning of Subsection F.

The 1991 amendment, effective April 2, 1991, substituted "three percent" for "five percent" in Subsections B, C, D and E and inserted "other" preceding "statewide" in Subsection C.

The 1990 amendment, effective March 1, 1990, deleted "three percent of the total number of votes cast in each of at least fifteen counties in the state and not less than" following "equal to at least" in Subsection B, deleted "three percent of the total number of votes cast in each of at least ten counties in the state and not less than" following "equal to at least" in Subsection C, deleted "three percent of the total number of votes cast in each of at least five counties in the district and not less than" following "equal to at least" in Subsection D, in Subsection F, deleted former item (2) which read "he has signed a petition for a candidate for the same office in the primary election," deleted the former final sentence which read "The voter shall not sign any nominating petition for more persons than the number of independent candidates necessary to fill such office at the next ensuing general election" and made related stylistic changes.

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.

ANNOTATIONS

The 2014 amendment, effective March 12, 2014, provided for a standardized filing date; in Subsection A, after the first instance of "5:00 p.m. on the", deleted "twenty-first" and added

"twenty-third"; and in Subsection B, after "5:00 p.m. on the", deleted "twenty-first" and added "twenty-third".

Laws 2014, ch. 40, § 8, effective March 7, 2014, and Laws 2014, ch. 81, § 8, March 12, 2014, enacted identical amendments to this section. The section was set out as amended by Laws 2014, ch. 81, § 8. *See* 12-1-8 NMSA 1978.

The 2011 amendment, effective July 1, 2011, required declarations to be filed on the twenty-first day following a primary election.

The 2005 amendment, effective July 1, 2005, in Subsection A, changed the date for filing declarations of independent candidacy and nominating petitions from the second Tuesday of July to the day following the primary election; and in Subsection B, changed the date for filing declarations of independent candidacy and nominating petitions from the fifty-sixth day prior to the general election to the day following the primary election.

This section invidiously discriminates against independent presidential candidates, as distinguished from partisan candidates. *Anderson v. Hooper*, 498 F. Supp. 905 (D.N.M. 1980)(decided prior to 1981 amendment).

For person to qualify as independent candidate for office other than president in the general election, his affidavit of registration on file with the county clerk must show that since January 1, of that year (now, since the date of issuance of governor's proclamation for primary election), he has declined to designate a party affiliation. 1980 Op. Att'y Gen. No. 80-26.

1-8-52.1. Repealed.

History: Laws 2007, ch. 25, § 1; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-8-52.1 NMSA 1978, as enacted by Laws 2007, ch. 25, § 1, relating to independent candidates for general elections and who may become a candidate for nomination, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

1-8-53. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-53 NMSA 1978 as 1-15A-1 NMSA 1978 effective July 1, 2011.

1-8-54. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-54 NMSA 1978 as 1-15A-2 NMSA 1978 effective July 1, 2011.

1-8-54.1. Recompiled.

History: Laws 2003, ch. 300, § 3; 1978 Comp., § 1-8-54.1 recompiled as § 1-15A-3 by Laws 2011, ch. 137, § 109.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-54.1 NMSA 1978 as 1-15A-3 NMSA 1978 effective July 1, 2011.

1-8-55. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-55 NMSA 1978 as 1-15A-4 NMSA 1978 effective July 1, 2011.

1-8-56. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-56 NMSA 1978 as 1-15A-5 NMSA 1978 effective July 1, 2011.

1-8-57. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-57 NMSA 1978 as 1-15A-6 NMSA 1978 effective July 1, 2011.

1-8-58. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-58 NMSA 1978 as 1-15A-7 NMSA 1978 effective July 1, 2011.

1-8-59. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-59 NMSA 1978 as 1-15A-8 NMSA 1978 effective July 1, 2011. Laws 2023, ch. 39, § 99 repealed 1-15A-8 NMSA 1978, effective June 16, 2023.

1-8-60. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-60 NMSA 1978 as 1-15A-9 NMSA 1978 effective July 1, 2011.

1-8-61. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-61 NMSA 1978 as 1-15A-10 NMSA 1978 effective July 1, 2011. Laws 2023, ch. 39, § 99 repealed 1-15A-10 NMSA 1978, effective June 16, 2023.

1-8-62. Repealed.

ANNOTATIONS

Repeals. — Laws 1980, ch. 13, § 6, and Laws 1980, ch. 43, § 6, repealed 1-8-62 NMSA 1978, relating to the certification of names of delegates to the credentials committees of national conventions by the secretary of state.

1-8-63. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-63 NMSA 1978 as 1-15A-11 NMSA 1978 effective July 1, 2011. Laws 2023, ch. 39, § 99 repealed 1-15A-11 NMSA 1978, effective June 16, 2023.

1-8-64. Repealed.

History: 1978 Comp., § 1-8-64, enacted by Laws 1979, ch. 74, § 5; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-8-64 NMSA 1978, as enacted by Laws 1979, ch. 74, § 5, relating to authority of the secretary of state and county clerks with regard to acceptance or rejection of petitions, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

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 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.

ANNOTATIONS

Duplicate laws. — Laws 2014, ch. 40, § 7, effective March 7, 2014, and Laws 2014, ch. 81, § 7, effective March 12, 2014, enacted identical new sections. The section was set out as enacted by Laws 2014, ch. 81, § 7. *See* 12-1-8 NMSA 1978.

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, accompanied by a petition signed by a number of voters equal to at least one percent of the total number of votes cast in the area sought to be represented as were cast for governor at the last preceding general election at which a governor was elected.

B. A person shall not be a declared write-in candidate 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 nominating 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 on the Friday following the filing date. The determination by the proper filing officer that a person is a declared write-in candidate is subject to the provisions of Section 1-8-18 NMSA 1978.

C. If a person is notified by the proper filing officer that the person is not qualified to be a write-in 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.

D. A 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 [1-22A-1 to 1-22A-10 NMSA 1978], except that the candidate shall not be entitled to have the candidate's name printed on the ballot.

E. 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.

F. 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; 2023, ch. 39, § 53.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 112 recompiled and amended former 1-12-19.1 NMSA 1978 as 1-8-66 NMSA 1978, effective April 3, 2019.

Cross references. — For write-in candidates in primary election, *see* 1-8-36.1 NMSA 1978.

The 2023 amendment, effective June 16, 2023, established a petition signature, qualification, and challenge process for write-in candidates filing to appear on the general election ballot; in Subsection A, after "intent to be a write-in candidate", added "accompanied by a petition signed by a number of voters equal to at least one percent of the total number of votes cast in the area sought to be represented as were cast for governor at the last preceding general election at which a governor was elected"; in Subsection B, deleted "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" and added the remainder of the subsection; added a new Subsection C and redesignated former Subsections C through E as Subsections D through F, respectively; and in Subsection D, deleted "At the time of filing the declaration of intent to be a write-in candidate, the" and added "A".

The 2019 amendment, effective April 3, 2019, revised the procedures for being a write-in candidate, and removed the section’s application to special elections; in the section heading, "special elections"; in Subsection A, after "intent to be a write-in candidate", deleted "A person

desiring to be a write-in candidate in a special election for United States representative or a statewide special election shall file with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the sixty-third day immediately preceding the election a declaration of intent to be a write-in candidate."; in Subsection E, after "who was a candidate", added "or who filed a declaration of candidacy; and deleted Subsections F through H.

The 2014 amendment, effective March 12, 2014, provided for a standardized filing date; and in Subsection A, in the first sentence, after "5:00 p.m. on the", deleted "twenty-first" and added "twenty-third".

The 2011 amendment, effective July 1, 2011, required a write-in candidate to file a declaration of intent on the twenty-first day after the primary election; in Subsection D, required the secretary of state to certify the names of write-in candidates not more than ten days after the filing date; required write-in candidates for governor or lieutenant governor to have a companion write-in candidate; and prescribed the minimum number of votes an unopposed write-in candidate must receive to have the election certified.

The 2009 amendment, effective June 19, 2009, in Paragraph (2) of Subsection F, after "in the proper office", deleted "or entered upon the keyboard on the voting machine"; after "provided on", deleted "a marksense ballot, absentee ballot or emergency paper" and after "declaration of intent" added the remainder of the sentence.

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that a person desiring to be a write-in candidate in a general election shall file the declaration of intent between 9:00 a.m. and 5:00 p.m. on the day after the primary election.

The 1991 amendment, effective April 2, 1991, substituted "sixty-third day" for "fifty-sixth day" in the second sentence in Subsection A and, in Paragraph (2) of Subsection F, substituted "office or entered upon the keyboard" for "slot", inserted "a marksense ballot", and made a related stylistic change.

Write-in ballots in conservancy district elections. — Certain requirements of Section 1-12-19.1 NMSA 1978 pertaining to write-in ballots do not specifically encompass or relate to special district elections and are not capable of adoption in their entirety to those elections. *Gonzales v. Middle Rio Grande Conservancy Dist*., 1987-NMCA-125, 106 N.M. 426, 744 P.2d 554.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Elections: validity of state or local legislative ban on write-in votes, 69 A.L.R.4th 948.

ARTICLE 9
Voting Machines

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 website. Only certified voting systems that are also approved

for use 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 through 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; 2023, ch. 39, § 54.

ANNOTATIONS

Cross references. — For unlawful opening of voting machines, *see* 1-20-5 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided that, in addition to existing requirements, only certified voting systems that are approved by the secretary of state shall be used in any election for public office in New Mexico; and in Subsection A, after "Only", added "certified", after "voting systems", deleted "certified" and added "that are also approved for use".

The 2011 amendment, effective July 1, 2011, made stylistic changes.

The 2010 amendment, effective March 3, 2010, in the catchline, added ";voting system defined"; in Subsection A, in the first sentence, after "study, examine and", deleted "approve" and added "certify"; at the beginning of the second sentence, deleted "Any type of"; added the second sentence; at the beginning of the third sentence, added "Only"; and in the third sentence, after "voting systems", deleted "not approved" and added "certified"; after "secretary of state", added "and acquired pursuant to a competitive bid process in accordance with the provisions of the Procurement Code"; and after "Procurement Code shall", deleted "not"; and in Subsection B, after "component of the system", added the remainder of the sentence.

The 2001 amendment, effective June 15, 2001, inserted the Subsection A designation and added Subsection B; in Subsection A, substituted "voting systems" for "voting machines" in two places.

Machines do not change requirement that precincts accommodate voters. — Notwithstanding the fact that voting machines may accommodate more than 600 voters, enactment of Laws 1951, ch. 192 (now repealed) did not supersede or repeal 3-2-1, 1953 Comp., requiring county commissioners to divide precincts and voting districts so that no polling place will be required to accommodate more than 600 voters. 1952 Op. Att'y Gen. No. 52-5489 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 365, 431.

29 C.J.S. Elections §§ 153, 203.

1-9-2. Repealed.

History: 1953 Comp., § 3-9-3, enacted by Laws 1969, ch. 240, § 185; 1976 (S.S.), ch. 5, § 2; 2001, ch. 233, § 2; 2003, ch. 356, § 23; repealed by Laws 2010, ch. 28, § 22.

ANNOTATIONS

Repeals. — Laws 2010, ch. 28, § 22 repealed 1-9-2 NMSA 1978, as enacted by Laws 1969, ch. 240, § 185, relating to approval of voting systems, effective March 3, 2010. For provisions of former section, *see* the 2009 NMSA 1978 on *NMOneSource.com*.

1-9-3. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 233, § 16 repealed 1-9-3 NMSA 1978, as enacted by Laws 1969, ch. 240, § 186, relating to compensation for mechanical experts, effective June 15, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com*.

1-9-4. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 233, § 16 repealed 1-9-4 NMSA 1978, as enacted by Laws 1969, ch. 240, § 187, relating to the specifications of lever-type voting machines, effective June 15, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com*.

1-9-4.1. Repealed.

History: Laws 2001, ch. 233, § 15; 2003, ch. 356, § 24; repealed by Laws 2010, ch. 28, § 22.

ANNOTATIONS

Repeals. — Laws 2010, ch. 28, § 22 repealed 1-9-4.1 NMSA 1978, as enacted by Laws 2001, ch. 233, § 15, relating to touch-screen direct recording electronic voting systems, effective March 3, 2010. For provisions of former section, *see* the 2009 NMSA 1978 on *NMOneSource.com*.

1-9-4.2. Recompiled.

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

ANNOTATIONS

Recompilations. — Laws 2010, ch. 28, § 21 recompiled former 1-9-4.2 NMSA 1978 as 1-1-5.2 NMSA 1978, effective March 3, 2010.

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.

ANNOTATIONS

Cross references. — For provision as to number of voters a polling place is to accommodate, *see* 1-3-1 NMSA 1978.

The 2015 amendment, effective July 1, 2015, provided that the secretary of state shall provide to the county clerk of each county at least one optical scan tabulator and a sufficient number of check-in stations for use in each polling location in the primary and general election when electronic rosters or their equivalents are used; in the catchline, added "sufficient check-in stations and voting booths"; in Subsection B, after "at least one", deleted "voting system" and added "optical scan tabulator", and after "in the general and primary elections.", added the remainder of the subsection; and added a new Subsection C and redesignated former Subsection C as Subsection D.

The 2010 amendment, effective March 3, 2010, in the catchline, after "Requirement to" deleted "Purchase and"; in Subsection A, at the beginning of the sentence, added "Certified" and after "used in all", deleted "precincts" and added "polling locations"; in Subsection B, after "The", added "secretary of state shall provide to the"; after "clerk of each county", deleted "shall provide" and added "at least"; after "voting system", deleted "in each precinct"; after "for use in", added "each polling location in"; and after "primary elections", deleted "when the total number of registered voters in that precinct amounted to fewer than six hundred at the close of registration"; in Subsection C, at the beginning of the sentence, deleted "At least one additional voting system shall be provided in such precinct for every six hundred registered voters in that precinct; provided that if the voting system used in the precinct is a paper ballot system" and after "booths are provided", deleted "in lieu of providing more electronic vote tabulators"; deleted former Subsection D, which provided for the acquisition of new or previously owned voting or electronic vote tabulating systems for use in elections for public office and that the acquisition of these systems may be in excess of the number provided in this section; deleted former Subsection E, which provided that except for intercounty acquisitions of equipment, a previously owned voting or electronic vote tabulating system shall have a warranty equal to the warranty required of a new voting or electronic system; and added "to ensure that voters in each polling location may cast their ballots in secret".

The 2006 amendment, effective May 17, 2006, provides in Subsection C that if the voting system is a paper ballot system, the county clerk shall provide an adequate number of voting booths.

The 2001 amendment, effective June 15, 2001, substituted "voting systems" for "voting machines" throughout the section; and substituted "six hundred" for "four hundred" in Subsections B and C.

The 1993 amendment, effective June 18, 1993, inserted "new or previously owned voting or" in the first sentence of Subsection D and added Subsection E.

The 1991 amendment, effective April 2, 1991, in Subsection B, substituted "county clerk" for "board of county commissioners" and deleted "according to the county clerk" following "four hundred".

Commissioners to provide machines based on number of preceding election ballots. — It is the duty of county commissioners to provide voting machines for use in primary elections, the number of required machines to be based on the total number of ballots cast in the precinct or voting division in the preceding general election. 1964 Op. Att'y Gen. No. 64-52 (opinion rendered under former law).

Section does not impliedly repeal polling place requirement to accommodate voters. — This section is determinative of the number of machines which the board of county commissioners must acquire for use at any general or special election, but does not repeal by implication the provisions of 1-3-1 NMSA 1978 limiting the number of voters which any polling place may be required to accommodate. 1962 Op. Att'y Gen. No. 62-34 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Voting machines, constitutionality of statutes providing for use of, 66 A.L.R. 855.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1975, ch. 255, § 116 repealed 3-9-7, 1953 Comp., relating to voting machines, use in other elections, and enacted a new section.

The 2001 amendment, effective June 15, 2001, substituted "voting systems" for "voting machines" throughout the section.

The 1991 amendment, effective April 2, 1991, in the introductory phrase of Subsection A, substituted "county clerk" for "board of county commissioners" and "the county clerk shall" for "it shall".

Voting for justices of the peace (now magistrates) and constables may be properly conducted by voting machines where all other provisions of the law applicable to the installation and operations of voting machines are observed. 1953 Op. Att'y Gen. No. 53-5737.

Constitutional requirement for separate ballot boxes in municipal bond election. — That portion of 3-4-3 (now repealed) relating to the use of voting machines in bond elections should be regarded as inconsistent with N.M. Const., art. IX, § 12, requiring separate ballot boxes and for that reason separate ballot boxes should be used in all municipal bond elections. 1953 Op. Att'y Gen. No. 53-5643.

Machines do not change requirement that precincts accommodate voters. — Notwithstanding the fact that voting machines may accommodate more than 600 voters, enactment of Laws 1951, ch. 192 (now repealed) did not supersede or repeal 3-2-1, 1953 Comp., requiring county commissioners to divide precincts and voting districts so that no polling place will be required to accommodate more than 600 voters. 1952 Op. Att'y Gen. No. 52-5489.

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.

ANNOTATIONS

Cross references. — For electronic voting system revolving fund, *see* 1-9-19 NMSA 1978.

The 2015 amendment, effective July 1, 2015, provided that unless new voting systems are paid for in full by the county at the time of purchase, the cost of the voting system shall be paid out of the voting system revolving fund; and in Subsection C, after "board of finance.", added "Unless paid in full by the county at the time of purchase".

The 2010 amendment, effective March 3, 2010, added Subsection A; in Subsection B, added the first sentence; at the beginning of the second sentence, added "No less than"; in the second sentence, after "commissioners of each county", deleted "shall" and added "may"; after "board of finance for", deleted "those" and added "any"; after "additional voting systems", deleted "required by the Election Code" and added the remainder of the sentence; in Subsection C, in the first sentence, after "shall be of a type", deleted "approved" and added "certified" and in the third sentence, after "paid out of the", deleted "electronic"; and added Subsection D.

The 2001 amendment, effective June 15, 2001, substituted "voting systems" for "voting machines" throughout the section; and inserted "electronic" in the second sentence of Subsection B.

The 1991 amendment, effective April 2, 1991, substituted "county clerk" for "board of county commissioners" in the final sentence in Subsection B.

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.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, required the secretary of state to establish procedures by which blind or visually impaired voters may independently mark their ballots; in the catchline, added "access for blind or visually impaired voters"; and added Subsection D.

The 2010 amendment, effective January 1, 2011, in Subsection A, deleted former language, which provided that voting systems owned or used by a county on May 1, 2006 that do not use a paper ballot may be used until an adequate supply of voting systems is available and funds are available to replace the voting system, to acquire the necessary software and to hold the counties harmless for payments due for voting systems under lease-purchase agreements; in Subsection B, after "secretary of state", deleted "to" and added "shall"; after "all counties to use", deleted "on the new voting system"; deleted former Subsection B, which provided that a voting system shall not be used if it has not been certified by the secretary of state and if a competitive bid process has not been conducted by the secretary of state; in new Subsection B, added the second sentence; and in Subsection C, after "ballot shall be used", deleted "by the state or its contractor to check either the veracity of a machine count or the count itself, and shall be used" and after "recount proceeding", deleted "as are absentee ballots".

The 2006 amendment, effective May 17, 2006, in Subsection A, provided that all voting systems shall use a paper ballot on which the voter physically or electronically marks choices on the ballot itself except that voting systems owned or used on May 1, 2006 do not have to use a paper ballot until an adequate supply of voting systems and funds are available; added Paragraphs (1) through (4) of Subsection A, which provided criteria for compliance with the requirement to replace existing voting systems with paper ballot systems; added the provision to Subsection B that no voting system shall be used if a competitive bid process has not be conducted by the secretary of state pursuant to Chapter 13, Article 1 NMSA 1978; deleted former Subsection C, which defined "voting system" and "voter-verifiable and auditable paper

trail"; and in Subsection C, deleted "trail" and inserted "ballot" and provided that ballots shall be used on a recount proceeding as are absentee ballots.

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.

History: Laws 2005, ch. 270, § 57; 2010, ch. 28, § 14; 2017, ch. 101, § 12.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, removed the deadline by which tests and inspections of voting systems must be completed; and after "Section 1-9-14 NMSA 1978", deleted "and shall be completed within six months of the date on which the secretary of state orders testing to begin".

The 2010 amendment, effective March 3, 2010, in the first sentence, after "previously certified by", deleted "other states or by the national association of state election directors" and added "the United States election assistance commission"; and in the second sentence, after "section shall follow the", deleted "testing", and after "six months of the date on which", deleted "testing begins" and added "the secretary of state orders testing to begin".

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.

ANNOTATIONS

Emergency clauses. — Laws 2010, ch. 28, § 24 contained an emergency clause and was approved March 3, 2010.

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 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 and implemented by the United States election assistance commission shall be decertified for use in this state.

History: Laws 2010, ch. 28, § 2; 2023, ch. 39, § 55.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided that, in addition to existing requirements, a voting system that does not comply with all the requirements in the most recent voluntary voting system guidelines implemented by the United States election assistance commission shall be decertified for use in this state; and in Subsection B, after "guidelines adopted", added "and implemented".

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 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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, in Subsection C, provided that the terms of members begin on May 1 of each even-numbered year; and in Subsection D, provided that per diem and mileage will be paid from funds appropriated to the secretary of state.

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.

ANNOTATIONS

Emergency clauses. — Laws 2010, ch. 28, § 24 contained an emergency clause and was approved March 3, 2010.

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;

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.

ANNOTATIONS

Emergency clauses. — Laws 2010, ch. 28, § 24 contained an emergency clause and was approved March 3, 2010.

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.

ANNOTATIONS

Emergency clauses. — Laws 2010, ch. 28, § 24 contained an emergency clause and was approved March 3, 2010.

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;

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.

ANNOTATIONS

Emergency clauses. — Laws 2010, ch. 28, § 24 contained an emergency clause and was approved March 3, 2010.

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-two 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;

E. be able to read a single ballot with at least four hundred twenty voting positions; and

F. tabulate as a vote only the human-readable marks in the voter response area of a ballot.

History: Laws 2010, ch. 28, § 8; 2023, ch. 39, § 56.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, reduced the maximum ballot size that voting systems must accept to be certified, and clarified that only human readable marks shall be tabulated; in Subsection A, after "maximum of", deleted "twenty-four" and added "twenty-two"; and added Subsection F.

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.

ANNOTATIONS

Emergency clauses. — Laws 2010, ch. 28, § 24 contained an emergency clause and was approved March 3, 2010.

1-9-8. Repealed.

History: 1953 Comp., § 3-9-9, enacted by Laws 1969, ch. 240, § 191; 1972, ch. 28, § 3; 1975, ch. 255, § 117; 2001, ch. 233, § 6; repealed by Laws 2010, ch. 28, § 22.

ANNOTATIONS

Repeals. — Laws 2010, ch. 28, § 22 repealed 1-9-8 NMSA 1978, as enacted by Laws 1969, ch. 240, § 191, relating to lease-purchase contracts for purchase of additional voting systems, effective March 3, 2010. For provisions of former section, *see* the 2009 NMSA 1978 on *NMOneSource.com*.

1-9-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1992, ch. 59, § 2 repealed 1-9-9 NMSA 1978, as enacted by Laws 1969, ch. 240, § 192, relating to method of payment by counties, effective July 1, 1992. For provisions of former section, *see* the 1991 NMSA 1978 on *NMOneSource.com*.

1-9-10. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 233, § 16 repealed 1-9-10 NMSA 1978, as enacted by Laws 1969, ch. 240, § 193, relating to lever machine disposition, effective June 15, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com*.

1-9-11. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 106, § 12 repealed 1-9-11 NMSA 1978 as enacted by Laws 1972, ch. 28, § 1, relating to lever voting machine revolving fund, effective April 2, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

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.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1975, ch. 255, § 120, repealed former 3-9-13, 1953 Comp., relating to care and custody of machines, and enacted a new 3-9-13, 1953 Comp.

Cross references. — For custody of machines after elections, *see* 1-13-22 NMSA 1978.

The 2010 amendment, effective March 3, 2010, in the catchline, after "Care and custody of", deleted "keys and seals" and added "removable storage media devices"; after "responsibility for

transportation", deleted "repair" and added "of voting systems; responsibility for security"; and after "charge for such", deleted "use"; in Subsection A, after "The county clerk shall", deleted "have custody of all voting systems, shall keep them in good repair and shall", and after "be responsible for", deleted "their transportation" and added "transporting all voting systems"; in Subsection B, after "responsible for the", changed "keys and seals for the voting systems" to "removable storage media devices for all voting systems", after "all voting systems", added "in the custody of the county"; and deleted the former second sentence, which provided that all keys for voting systems shall be kept in a secure place in the county clerk's office until supplies are available to program or maintain the voting system; in Subsection C, after "When voting systems are", deleted "being programmed for" and added "used in"; after "any election", deleted "or maintained after an election"; after "the county clerk", deleted "or the county clerk's assigned deputy who is knowledgeable in the procedure of programming voting systems shall have custody of the keys and"; after "assure the security of the", deleted "keys" and added "removable storage media devices"; and after "voting systems are being programmed", deleted "or maintained" and added "and until the votes recorded on the removable storage media devices are cleared pursuant to Section 1-13-21"; deleted the former second sentence, which provided that all keys shall be returned to the county clerk's office at the end of the day, except that if the deputy is programming the voting systems outside the county seat, the county clerk may authorize the deputy to retain the keys; in the second sentence, after "written authorization in advance", deleted "to the deputy to retain the keys for as long as needed"; after "to program the", deleted "voting systems" and added "removable storage media devices" and after "authorization with the", deleted "deputy" and added "programmer"; and deleted the former third sentence, which provided that in January of each even-numbered year, the county clerk shall give an affidavit to the secretary of state describing the method used to keep the voting system keys secured; in Subsection D, after "security of voting system", deleted "keys" and added "removable storage media devices"; and in Subsection E, after "county for the", deleted "use" and after "voting systems", added "when used pursuant to Section 1-9-6 NMSA 1978".

The 2001 amendment, effective June 15, 2001, substituted "voting systems" for "voting machines" throughout the section.

The 1991 amendment, effective April 2, 1991, substituted "county clerk" for "board of county commissioners" in Subsection A and made minor stylistic changes in Subsection B.

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.

ANNOTATIONS

The 2010 amendment, effective March 3, 2010, in the catchline, after "technicians", deleted "approval of contracts"; deleted former Subsection A, which provided that the secretary of state shall approve all arrangements between a county and a voting system technician based on the adequacy of the training and expertise of the technician and the reasonableness of the compensation for the services based on the type of election and number of systems used; in Subsection A, after "technicians shall be", added "trained and"; after "and expertise on", deleted "electronic"; and after "voting systems", added "certified for use in the state"; added Subsection B; in Subsection C, after "means any person who", deleted "programs, clears, inspects, repairs electronic" and added "is trained and certified to program, inspect, properly store and troubleshoot"; and at the end of the sentence, deleted "for compensation"; and in Subsection D, after "shall adopt rules", deleted "governing the use, maintenance and repair of electronic voting systems" and added the remainder of the sentence.

The 2001 amendment, effective June 15, 2001, substituted "voting system" for "voting machine" throughout the section; deleted the provisions that specified compensation amounts for voting system technicians in Subsection A; and deleted "lever voting machines and" preceding "electronic voting systems" in Subsections B, C and D.

The 1991 amendment, effective April 2, 1991, in Paragraph (2) of Subsection A, inserted "for programming" and "lever-type voting" in the first sentence and added the second and third sentences.

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 and implemented 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 the Election Code and the most recent voluntary voting system guidelines adopted and implemented 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 and implemented 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; 2023, ch. 39, § 57.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided that, in addition to existing requirements, a voting system certified for use in the state must comply with the most recent voluntary voting system guidelines implemented by the United States election assistance commission; and after "adopted", added "and implemented" throughout the section.

The 2017 amendment, effective June 16, 2017, removed the deadline by which tests and inspections of voting systems must be completed; and in Subsection B, deleted "These tests and inspections shall be completed within six months of the date of application.".

The 2010 amendment, effective March 3, 2010, in the catchline, deleted "Computer voting devices" and added "Voting systems" and after "test;", added "certification"; in Subsection A, in the first sentence, deleted "Notwithstanding any other provision of the Election Code"; after "testing and evaluation of", deleted "internal computers" and added "voting systems"; and added the second sentence; in Subsection B, in the first sentence, after "Any person who has", deleted "an internal computer which" and added "a voting system that" and after "examined and tested", added "for certification"; in the second sentence, after "application is made", added "for initial certification"; in the third sentence, after "examine and study the", deleted "computer" and after "voting system" added the remainder of the sentence; in the fourth sentence, after "operation and component parts of", deleted "an internal computer for recording and tabulating votes" and added "voting systems"; and in the fifth sentence, after "in one or more", deleted "precincts" and added "polling places"; in Subsection C, in the first sentence, after "findings and shall", deleted language that required the secretary of state to submit a report of the findings to a committee composed of the secretary of state, the state chief information officer and a county clerk appointed by the governor and added the remainder of the sentence; and added the second sentence; deleted former Subsection D, which provided that if the committee approves the use of internal computers, then the secretary of state shall prescribe specifications for internal computers designed to provide a system of recording and tabulating votes to secure the integrity of the ballot; in new Subsection D, added the first sentence; in the second sentence, after "The", added "voting system certification"; and deleted the former second sentence, which provided that the report shall be a public record; added Subsections E, F and G; in Subsection H, after "If the", added "voting system certification"; after "committee recommends that the", deleted "internal computer for recording and tabulating votes" and added "voting system"; after "suitable for use in", deleted "polling places for the conduct of"; after "New Mexico,", deleted "such" and added "within thirty days of receiving the recommendation, the secretary of state shall certify or recertify the"; after "recertify the equipment", deleted "shall be deemed approved"; and at the end of the sentence, deleted "no later than January 1 of the succeeding year"; and added Subsection I.

The 2001 amendment, effective June 15, 2001, substituted "system" for "machine" throughout Subsection A; and substituted "state chief information officer" for "director of the information systems division of the general services department" in Subsection B.

The 1991 amendment, effective April 2, 1991, in Subsection A, rewrote the third sentence which read "At the time application is made, the applicant shall pay to the secretary of state an examination fee of two thousand five hundred dollars ($2,500) per machine to be tested", deleted "and examination fee" following "application" in the fourth sentence, deleted the former sixth sentence which read "The application fee shall be used to pay for the cost of such testing" and, at the beginning of the present sixth sentence, substituted "The secretary of state may" for "In addition, the secretary of state shall".

Applicability of Procurement Code. — This section does not bar application of the Procurement Code, 13-1-28 to 13-1-199 NMSA 1978, to the purchase of internal computers used to record and tabulate votes, and the Procurement Code applies to such devices so used after November 1, 1984. 1988 Op. Att'y Gen. No. 88-68.

1-9-15. Repealed.

History: 1953 Comp., § 1-9-15, enacted by Laws 1985, ch. 207, § 14; 1989, ch. 297, § 2; 1991, ch. 106, § 8; 2001, ch. 233, § 10; 2003, ch. 356, § 25; repealed by Laws 2010, ch. 28, § 22.

ANNOTATIONS

Repeals. — Laws 2010, ch. 28, § 22 repealed 1-9-15 NMSA 1978, as enacted by Laws 1985, ch. 207, § 14, relating to electronic recording and tabulating voting systems, effective March 3, 2010. For provisions of former section, *see* the 2009 NMSA 1978 on *NMOneSource.com*.

1-9-16. Repealed.

History: 1978 Comp., § 1-9-16, enacted by Laws 1985, ch. 207, § 15; 1989, ch. 297, § 3; 1991, ch. 106, § 9; 2001, ch. 233, § 11; 2003, ch. 356, § 26; repealed by Laws 2010, ch. 28, § 22.

ANNOTATIONS

Repeals. — Laws 2010, ch. 28, § 22 repealed 1-9-16 NMSA 1978, as enacted by Laws 1985, ch. 207, § 15, relating to electronic vote tabulating systems, effective March 3, 2010. For provisions of former section, *see* the 2009 NMSA 1978 on *NMOneSource.com*.

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.

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.

ANNOTATIONS

Cross references. — For the state board of finance, *see* 6-1-1 NMSA 1978.

The 2010 amendment, effective March 3, 2010, in the catchline, deleted "Electronic" and added "Additional", and after "voting systems;", added "state"; in Subsection A, after "purchase of", deleted "electronic" and added "additional" and after "county commissioners", added "pursuant to Section 1-9-7 NMSA 1978"; in Subsection B(1), after "specified number of", deleted "electronic"; in Subsection B(3), after "shall not exceed", deleted "twenty" and added "ten"; and in Subsection B(4), after "custody and", deleted "maintenance" and added "proper storage", and after "support equipment", added "pursuant to specifications issued by the secretary of state".

The 2001 amendment, effective June 15, 2001, substituted "systems" for "machines" throughout the section.

The 1991 amendment, effective April 2, 1991, purported to amend this section but made no change.

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.

ANNOTATIONS

The 2010 amendment, effective March 3, 2010, in the catchline, deleted "electronic", and after "purchase contract;", added "disposition of voting systems"; in Subsection A, in the first sentence, after "contract for", deleted "an electronic" and added "a"; after "Section", deleted "1-19-17" and added "1-9-17"; after "providing that, upon the", deleted "transfer of the ownership in" and added "return of physical control of" and after "physical control of the", deleted "electronic"; and in the second sentence, after "may dispose of", deleted "electronic" and after "voting systems", deleted "acquired" and added "returned"; and added Subsection B.

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.

ANNOTATIONS

Cross references. — For the electronic voting machine revolving fund, *see* 1-9-19 NMSA 1978.

For the severance tax bond fund, *see* 7-27-2 NMSA 1978.

The 2001 amendment, effective June 15, 2001, substituted "systems" for "machines" and "system" for "machine" throughout the section.

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.

ANNOTATIONS

Cross references. — For the general fund, *see* 6-4-2 NMSA 1978.

The 2010 amendment, effective March 3, 2010, in the catchline, deleted "Electronic"; in Subsection A, in the first sentence, after "The", deleted "electronic", and in the second sentence, after "The", deleted "electronic"; added Paragraph (1) of Subsection A; in Subsection A(2), at the beginning of the sentence, added "by the counties to"; after "the purchase of", deleted "electronic"; and after "Section 1-9-17 NMSA 1978;", added the remainder of the sentence; in Subsection B, in the first sentence, after "The", deleted "electronic"; and in Subsection C, after "fiscal year the", deleted "electronic".

The 2003 amendment, effective July 1, 2003, substituted "six million five hundred thousand dollars ($6,500,000)" for "four million dollars ($4,000,000)" in the last sentence.

The 2001 amendment, effective June 15, 2001, substituted "systems" for "machines" and "system" for "machine" throughout the section; and substituted "four million dollars ($4,000,000)" for "two million dollars ($2,000,000)" in two places at the end of the section.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 137, § 111 made Laws 2011, ch. 137, § 66 effective July 1, 2011.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 137, § 111 made Laws 2011, ch. 137, § 67 effective July 1, 2011.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 137, § 111 made Laws 2011, ch. 137, § 68 effective July 1, 2011.

ARTICLE 10
Ballots and Ballot Labels

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "includes absentee ballots", deleted "ballot labels, ballot cards, ballot sheets" and after "provisional paper ballots and", deleted "emergency" and added "all other"; deleted former Subsection B, which defined "ballot label"; deleted former Subsection C, which defined "emergency paper ballot"; deleted former Subsection D, which defined "ballot card"; deleted former Subsection E, which defined "ballot sheet"; and in Subsection B, deleted reference to Section 1-5-10 NMSA 1978 and added Section 1-12-7.1 NMSA 1978.

The 2003 amendment, effective July 1, 2003, inserted "provisional paper ballots" preceding "and emergency paper ballots" at the end of Subsection A and added Subsection F.

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.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, permitted the secretary of state to assist in preparing and supplying ballots.

1-10-2.1. Repealed.

History: 1978 Comp., § 1-10-2.1, enacted by Laws 1991, ch. 105, § 16; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-10-2.1 NMSA 1978, as enacted by Laws 1991, ch. 105, § 16, relating to ballots and equipment, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

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.

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 fifty-six 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; 2023, ch. 39, § 58.

ANNOTATIONS

Cross references. — For position of names on ballots, *see* 1-10-3 and 1-10-8 NMSA 1978.

The 2023 amendment, effective June 16, 2023, changed the time that a ballot must be certified in writing by the county clerk prior to an election; and in Subsection C, after "not less than", deleted "sixty" and added "fifty-six".

The 2019 amendment, effective April 3, 2019, revised the ballot preparation procedures for each types of election; in Subsection A, added "In a primary election, after "not less than", deleted "sixty-three" and added "sixty", after "shall group", deleted "all candidates for", after "each", added "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"; in Subsection B, added "In a general election", after "not less than", deleted "sixty-three" and added "sixty", after "nominee of a qualified political party,", added "each unaffiliated candidate who has been qualified by a proper filing officer, a space for any offices with a declared write-in candidate", and after "and any", deleted "constitutional amendments, questions or other propositions that are to be voted on and certify all such information to the ballot printer. A copy of each certification shall be kept on file in the office of the secretary of state." and added "ballot questions to be voted on at the general election", and added the remaining language; added new Subsections C through G; and in Subsection H, added the first sentence.

The 2017 amendment, effective June 16, 2017, changed the deadlines for preparation of ballots; and in Subsections A and B, after "Not less than", deleted "fifty-six" and added "sixty-three".

The 2011 amendment, effective July 1, 2011, required the secretary of state to prepare primary election ballots fifty-six days before the election, to prepare general election ballots fifty-six days before the election, and to furnish proof sheets of the ballot to the county chair of each political party upon request.

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 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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, after "All other", added "pre-printed", and after "shall be", deleted "printed and".

The 2015 amendment, effective July 1, 2015, removed the reference to "overseas voters" in the provision requiring the county clerk to have sufficient ballots for an election; after "federal qualified electors", deleted "and overseas voters", after "day prior to", deleted "a primary or general" and added "an", and after "election", deleted "as required by federal law".

The 2011 amendment, effective July 1, 2011, required county clerks to send ballots to federal qualified electors and overseas voters not later than the forty-fifth day prior to the election and to have all other ballots at least forty days before the election.

The 2009 amendment, effective June 19, 2009, at the beginning of the sentence, deleted "Ballot labels" and added "Ballots" and changed "thirty" to "forty".

Printing ballots under voting machine law. — Since voting machines are to be used in the precinct or election districts involved, it is only ballots to the amount of 10% of the total number of registered voters that would be necessary to have printed. Paper ballots are only required to be used under the voting machine law in the event a voting machine should become disabled or in the event a person presents himself to vote by triplicate registration affidavit when his name does not appear in the registration book. 1954 Op. Att'y Gen. No. 54-5920 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 335.

29 C.J.S. Elections §§ 153, 155.

1-10-6. Ballots; name to be printed; order of names; 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. The order of candidates for the same office in a statewide election shall be determined using a randomization method provided by rule.

C. 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 candidates shall be differentiated on the ballot in accordance with rules adopted by the secretary of state.

D. 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; 2023, ch. 39, § 59.

ANNOTATIONS

Cross references. — For position of names on ballots, *see* 1-8-59, 1-10-3 and 1-10-8 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided that the order of candidates for the same office in a statewide election shall be determined using a randomization method provided by rule, and provided that the secretary of state shall adopt rules to differentiate between candidates whose names are the same or are so similar as to tend to cause confusion as to the candidates' identities; added a new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively; and in Subsection C, after "tend to confuse the voter as to the candidates' identities", deleted "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" and added "the candidates shall be differentiated on the ballot in accordance with rules adopted by the secretary of state".

The 2019 amendment, effective April 3, 2019, provided certain items that should, and items that should not, be on the ballot, provided additional criteria to differentiate candidates with similar names, and provided certain circumstances when a candidate’s name should not be printed on the ballot; in the section heading, deleted "candidates with", added "names not to be printed"; in Subsection A, after "preparation of ballots", added "for a statewide election", and added Paragraphs A(1) through A(5); in Subsection B, after "occupation and,", deleted "post office address" and added "if further differentiation is necessary, the year of birth"; and added Subsection C.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" in Subsection A and made a minor stylistic change in Subsection B.

Purpose of "similar name" statute is to prevent voter confusion. 1964 Op. Att'y Gen. No. 64-25.

Section is remedial in nature and should receive liberal construction. 1964 Op. Att'y Gen. No. 64-25.

On same ballot but different offices. — When two or more candidates for different offices but whose names will appear on the same ballot are the same or are so similar as to tend to confuse the voter as to their identity, the occupation and address of each such candidate is to be printed under such candidate's name on the ballot. 1964 Op. Att'y Gen. No. 64-25.

Same ballot and same office. — When two or more candidates with the same or similar names are running for either the same or different offices and whose names will appear on the same ballot, the occupation and address of each candidate for the office or offices involved is to be printed on the ballot. 1964 Op. Att'y Gen. No. 64-25.

Present principal occupation. — The occupation which is to be listed on the ballot is the candidate's present principal occupation. 1964 Op. Att'y Gen. No. 64-25.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised provisions related to names appearing on a ballot, and added a separate provision applicable to regular local elections; in the section heading, added "exceptions"; deleted "Except in the case of a candidate for United States senate or United States representative who is also a candidate for president or vice president of the United States"; in Subsection A, added "In a primary or general election", and after "once on the ballot", deleted "Whenever a person is, with his knowledge and consent, a candidate at any nominating convention or primary for nomination as the candidate of any political party for any office to be voted on at the election to be held next after such convention or primary, his name shall not be printed on the ballot at such election except in the column under the party name and emblem of the party designated on his declaration of candidacy or statement of candidacy for convention designation" and added "except in the case of a candidate who is also a candidate for president or vice president of the United States."; and added Subsection B.

Intent of section is to prevent party switching after an unsuccessful primary bid in order to run in the general election. *Anderson v. Hooper*, 498 F. Supp. 898 (D.N.M. 1980) (decided prior to 1981 amendment).

Running as independent in succeeding election not prevented. — Section 1-8-19 NMSA 1978 and this section do not prevent an unsuccessful party primary candidate from running as an independent in the succeeding general election. *Anderson v. Hooper*, 498 F. Supp. 898 (D.N.M. 1980)(decided prior to 1981 amendment).

Section does not apply to presidential primary and does not prevent placement of candidate's name on general election ballot. *Anderson v. Hooper*, 498 F. Supp. 898 (D.N.M. 1980)(decided prior to 1981 amendment).

1-10-7.1. Repealed.

History: Laws 1997, ch. 93, § 1; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-10-7.1 NMSA 1978, as enacted by Laws 1997, ch. 93, § 1, relating to removal of names of deceased candidates from ballots, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

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 education commission;

(10) district attorney;

(11) district court;

(12) metropolitan court;

(13) county clerk;

(14) county treasurer;

(15) county commission; and

(16) when applicable:

(a) county sheriff;

(b) county assessor; and

(c) probate judge.

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 education commission;

(15) district court;

(16) metropolitan court;

(17) magistrate court;

(18) county sheriff;

(19) county assessor;

(20) county commission;

(21) probate judge; and

(22) when applicable:

(a) county clerk; and

(b) county treasurer.

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 nondistricted, nonjudicial office are to be elected on the same ballot and the qualifications for each position are the same, the nondistricted, nonjudicial district shall be elected at large in a single contest on the ballot in which voters shall be given the instruction to "vote for no more than X". If two or more positions for the same office are to be elected to represent the same area but with terms of different lengths of time, the candidate receiving the highest number of votes shall be elected to the position with the longest term length, and the candidate receiving the next highest number of votes shall be elected to the position with the next longest term length, with additional candidates elected to positions accordingly.

F. When multiple positions for the same districted, nonjudicial office are listed on the same ballot or the qualifications for one or more at-large positions are distinct from the qualifications of the rest:

(1) offices designated by district number shall appear on the ballot in ascending numerical order of the districts; and

(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.

G. When multiple positions for the same judicial office are listed on the same ballot, each position is to be elected or voted on individually as follows:

(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.

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; 2020, ch. 9, § 8; 2023, ch. 39, § 60.

ANNOTATIONS

Repeals and reenactments. — Laws 2019, ch. 212, § 103 repealed former 1-10-8 NMSA 1978, and enacted a new section, effective April 3, 2019.

The 2023 amendment, effective June 16, 2023, revised the order on the ballot that partisan offices are to be voted on in years in which the president of the United States is elected, revised the order on the ballot that partisan offices are to be voted on in years in which the governor is elected, and revised the process for voting on multiple positions for the same office on the same ballot; in Subsection A, Paragraph A(9), after "commission", deleted "districts with odd-numbered designations"; added a new Paragraph A(10) and redesignated former Paragraphs A(10) through A(14) as Paragraphs A(11) through A(15), respectively, and added Paragraph A(16); in Subsection B, Paragraph B(14), after "commission", deleted "districts with even-numbered designations", deleted Paragraph B(16) and redesignated former Paragraphs B(17) through B(22) as Paragraphs B(16) through B(21), respectively, in Paragraph B(20), after "county commission", deleted "districts and positions with even-numbered designations; and", and added Paragraph B(22); added a new Subsection E and redesignated former Subsections E and F as Subsections F and G, respectively; and in Subsection F, in the introductory clause, after "for the same", added "districted", and after "on the same ballot", deleted "and each position is to be elected individually" and added "or the qualifications for one or more at-large positions are distinct from the qualifications of the rest", and deleted Paragraph E(3).

The 2020 amendment, effective January 1, 2023, removed the public regulation commission from the order of how candidates are required to appear on the ballot; in Subsection A, deleted Paragraph (9) and redesignated the succeeding paragraphs accordingly; and in Subsection B, deleted Paragraph (14) and redesignated the succeeding paragraphs accordingly.

Laws 2020, ch. 9, § 8 amended 1-10-8 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the

general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against.

Temporary provisions. — Laws 2019, ch. 212, § 281 provided that the secretary of state shall ensure that the public regulation commission, public education commission, magistrate judges and county officers are aligned with the offices listed for election in Section 1-10-8 NMSA 1978. The secretary of state shall provide a process to renumber district numbers so that offices are aligned with the offices listed for election in Section 1-10-8 NMSA 1978 and, where necessary, shall provide for an extended term to the general election in 2022 or 2024 only as required to align offices and positions to the offices listed for election in Section 1-10-8 NMSA 1978; provided that where one member of a local governing body must receive an extended term pursuant to this section, the secretary of state shall have the members whose terms expire the same year draw lots to make the determination.

The 2015 amendment, effective July 1, 2015, amended the order in which offices are to be placed on a ballot in primary and general elections; in Subsection D, deleted "candidates for" and added "non-judicial", and after "large, in", added "the"; in Subsection G, after "other", deleted "district candidates" and added "districted offices"; in Subsection H, deleted "metropolitan and magistrate judges" and added "judicial offices in partisan contests, in the order prescribed by the secretary of state"; in Subsection O, deleted "other issues as" and added "in the order"; and added Paragraphs (1) through (3) of Subsection O.

The 2011 amendment, effective July 1, 2011, eliminated the position of county surveyor.

The 1991 amendment, effective April 2, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

Order declaration of candidacy filed. — All candidates for legislative, judicial district, county and precinct offices are to appear on the ballot for a particular office in the order in which they filed a declaration of candidacy. 1964 Op. Att'y Gen. No. 64-18 (opinion rendered under former law).

1-10-8.1. Repealed.

History: Laws 1981, ch. 166, § 1; 1985, ch. 207, § 22; 1991, ch. 105, § 18; 2009, ch. 150, § 13; 2019, ch. 212, § 104; repealed by Laws 2023, ch. 39, § 99.

ANNOTATIONS

Repeals. — Laws 2023, ch. 39, § 99 repealed 1-10-8.1 NMSA 1978, as enacted by Laws 1981, ch. 166, § 1, relating to ballots, order of candidate names, party position on ballot, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 316.

29 C.J.S. Elections § 173.

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.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, provided that the county clerk shall make available a number of sample ballots in a quantity and format prescribed by the secretary of state and shall make the sample ballots available at the county clerk’s office, in each polling place and on the county’s web site, if the county maintains a web site; in Subsection A, deleted "At the time of printing the official ballots", after "county clerk shall", deleted "cause to be printed" and added "make available", after "in a quantity", deleted "equal to ten percent of the number of voters in each precinct" and added "and in a printed or electronic format as prescribed by the secretary of state"; in Subsection B, after "except that," added "if printed"; in Subsection C, added "Printed", after "interested persons", deleted "for distribution to the voters within the appropriate precincts." and added "at the county clerk’s office, in each polling place and on the county’s website, if the county maintains a web site"; and deleted Subsection D.

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.

ANNOTATIONS

Cross references. — For offenses and penalties, *see* 1-20-1 NMSA 1978 et seq.

The 2009 amendment, effective June 19, 2009, deleted former Subsection A, which required the county clerk to provide sample ballots that show the entire front of the voting machine.

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.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 150, § 10 recompiled former 1-12-44 NMSA 1978 as 1-10-12 NMSA 1978, effective June 19, 2009.

The 2009 amendment, effective June 19, 2009, at the beginning of the sentence, before "Paper ballots", deleted "Emergency" and after "Paper ballots", deleted "used in the primary and general elections"; in Subsection A, deleted language that provided for the numbering of ballots beginning with precinct one; deleted former Subsection E, which required all words, phrases and the name of candidates to be printed in their proper places; in Subsection E, after "have the", deleted "legislative district, commissioner district and", and after "printed on each", deleted "emergency"; and added Subsection F.

The legislature did not delegate to the secretary of state the authority to reinstate straight-ticket voting in New Mexico. — Where the New Mexico secretary of state sought to

reinstate straight-ticket voting in the November 2018 general election, and where petitioners, a coalition of voters, political parties, and political organizations, filed a petition for writ of mandamus requesting an order prohibiting the secretary of state from further efforts to reinstate the straight-ticket option on the grounds that she does not possess the authority to do so, the writ of mandamus was issued because N.M. Const., Art. VII, § 1(B) gives the legislature plenary authority over elections, an authority which cannot be delegated and which is limited only by the New Mexico constitution. Moreover, the history of straight-ticket voting in New Mexico indicates that the legislature never delegated or attempted to delegate to the secretary of state the authority to decide whether straight ticket voting shall be an option to voters in general elections, and 1-10-12(F) NMSA 1978, which gives the secretary of state the authority to prescribe the form of the ballot, was never intended to authorize the secretary of state to decide questions related to straight-ticket voting. *Unite New Mexico v. Oliver*, 2019-NMSC-009.

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.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 150, § 11 recompiled former 1-12-47 NMSA 1978 as 1-10-13 NMSA 1978, effective June 19, 2009.

The 2019 amendment, effective April 3, 2019, provided that the names of write-in candidates shall not be pre-printed on the ballot; in the introductory clause, after "has been", deleted "certified" and added "qualified by the proper filing officer; in Subsection A, added "'Declared'" preceding "Write-in Candidate"; and added Subsection B.

The 2009 amendment, effective June 19, 2009, at the beginning of the sentence, deleted "Where space is allowed on an emergency paper ballot" and added "When a write-in candidate has been certified pursuant to the Election Code, a space"; and after "Write-in Candidate", added "after the listing of other candidates for that office".

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.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 150, § 12 recompiled 1-12-49 NMSA 1978 as 1-10-14 NMSA 1978, effective June 19, 2009.

The 2009 amendment, effective June 19, 2009, after "procurement of", deleted "emergency".

ARTICLE 10A
Ballot Positioning (Repealed.)

1-10A-1 to 1-10A-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1994, ch. 3, § 2, repealed 1-10A-1 through 1-10A-3 NMSA 1978, as enacted by Laws 1988, ch. 17, §§ 1 through 3, the Ballot Positioning Act, effective January 31, 1994. For provisions of former sections, *see* the 1993 NMSA 1978 on *NMOneSource.com*.

ARTICLE 11
Notices, Preparation for Elections and Election Supplies

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.

ANNOTATIONS

Cross references. — For notice of referendum election, *see* 1-17-14 NMSA 1978.

For date for holding general elections, *see* N.M. Const., art. XX, § 6.

The 2019 amendment, effective April 3, 2019, increased the amount of notice that the county clerk must give for a statewide election; and after "at least", deleted "twelve" and added "twenty-one", and after "prior to", deleted "any county or" and added "a".

Provisions directory. — Former statute (Code 1915, § 1977) relating to notice of election was directory, and notice was sufficient though first insertion was made after statutory period had elapsed. *Board of Educ. v. Citizens' Nat'l Bank*, 1917-NMSC-059, 23 N.M. 205, 167 P. 715.

Constitutional amendments must be set forth in full in election proclamation published by the board of county commissioners. 1955 Op. Att'y Gen. No. 55-6181 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 289 et seq.

Injunction against holding of election, 70 A.L.R. 733.

Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

Validity of public election as affected by fact that it was held at time other than that fixed by law, 121 A.L.R. 987.

Notice of election to fill vacancy in office at general election, 158 A.L.R. 1184.

29 C.J.S. Elections §§ 71 to 75.

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:

(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.

ANNOTATIONS

Cross references. — For contents of notice when precincts have been consolidated, *see* 1-3-4 NMSA 1978.

The 2019 amendment, effective April 3, 2019, revised the required contents of a notice of election; in the section heading, added "Notice of election"; in the introductory clause, after "The", deleted "proclamation" and added "notice of election", and after "shall", added "as applicable"; added new Subsections C through E and redesignated former Subsections C through F as Paragraphs E(1) through E(4), respectively; in Subsection E, Paragraph E(1), after "filled", added "by voters of any precinct of the county", in Paragraph E(2), after "qualified candidates", deleted "and" and added "for those offices whose names shall appear on the ballot and, except in the case of a regular local election, list"; deleted former Subsection G and redesignated former Subsection H as Paragraph E(5); in Paragraph E(5), after "location", deleted "of each polling place and alternate voting location" and added "and the hours of operation", and added new Subparagraphs E(5)(a) through E(5)(c)".

The 2011 amendment, effective July 1, 2011, required the proclamation to list the party affiliation of all candidates, all candidates for judicial retention, write-in candidates without their party affiliation, polling locations, and alternate voting locations.

The 1991 amendment, effective April 2, 1991, added Subsection E and redesignated former Subsections E and F as Subsections F and G.

Provisions of section apply to primary elections. 1942 Op. Att'y Gen. No. 42-4124.

Constitutional amendments must be set forth in full in election proclamation published by the board of county commissioners. 1949 Op. Att'y Gen. No. 49-5244.

Provisions do not apply to municipal board of education elections or to city elections. 1943 Op. Att'y Gen. No. 43-4220.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 289, 293.

29 C.J.S. Elections § 71.

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.

ANNOTATIONS

Cross references. — For publication defined, see 1-1-14 NMSA 1978.

For posting defined, *see* 1-1-15 NMSA 1978.

For the federal Voting Rights Act of 1965, *see* 42 U.S.C. § 1973 et seq.

The 2019 amendment, effective April 3, 2019, changed "proclamation" to "notice of election", and provided additional duties for the county clerk regarding posting notice of an election; replaced each occurrence of "proclamation" with "notice of election" throughout the section; and in Subsection D, deleted "A copy of the proclamation shall be posted in a public building" and added the remainder of the subsection.

The 1991 amendment, effective April 2, 1991, substituted "14-11-2 NMSA 1978" for "10-2-2 NMSA 1953" in Subsection B; added "In a public building" at the end of Subsection D; and added Subsection F.

If no newspaper in county publishes in Spanish language, or if there are not as many as four newspapers of general circulation in the state that will publish the notices in Spanish, it must be assumed that no legal newspaper is published in compliance with this requirement. Thus, the Spanish section should be published in every newspaper in the county which will publish in the Spanish language. In the event no newspaper is published or circulated in that county which will handle the Spanish publication, then the posting provision will be the only method by which the law can be complied with. 1956 Op. Att'y Gen. No. 56-6367 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 293.

What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210.

29 C.J.S. Elections § 74.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, replaced each occurrence of "proclamation" with "notice of election" throughout the section.

1-11-4.1. Voter notification.

A. At least forty-two days prior to each statewide election, the secretary of state, on behalf of each county clerk, shall mail a voter notification of the election. The voter notification shall include:

(1) the date and purpose of the election;

(2) an internet address where a voter may apply for a mailed ballot;

(3) a telephone number where a voter may call to request the paper form of the mailed ballot application;

(4) a list of the days and times and addresses of early voting locations and voter convenience centers where a voter may vote in person; and

(5) a list of the locations of monitored secured containers where a voter may return a mailed ballot.

B. At least forty-nine days prior to each special election, the county clerk shall mail a voter notification of the election. The voter notification shall include:

(1) the date and purpose of the election;

(2) notification that the election will be conducted by mail and that no polling places will be available for the special election;

(3) the deadline for voted mailed ballots to be received by the county clerk and the recommended deadline to deposit the voted mailed ballot with the United States postal service for return by mail, which shall be seven days before the election;

(4) the address and the telephone number of the county clerk's office for a voter requiring a replacement ballot or returning a mailed ballot; and

(5) a list of the monitored secured containers where a voter may return a mailed ballot.

C. The voter notification shall be sent to each voter, except the voter notification shall not be sent to a voter whose:

(1) election mail has been returned as undeliverable and who has not updated the voter's certificate of registration with a new address;

(2) ballot is delivered pursuant to the provisions of the Uniform Military and Overseas Voters Act [Chapter 1, Article 6B NMSA 1978];

(3) ballot is delivered pursuant to the provisions of the Intimate Partner Violence Survivor Suffrage Act [1-6C-1 to 1-6C-9 NMSA 1978]; or

(4) ballot, in a statewide election, is delivered pursuant to the provisions of Section 1-6-22.1 NMSA 1978.

History: 1978 Comp., § 1-11-4.1, enacted by Laws 2023, ch. 39, § 61.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

1-11-5. Voting device; preparation; certification.

A. 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. The process of preparing, inspecting, certifying and sealing electronic voting machines shall be open to observation by the public.

B. 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: 1953 Comp., § 3-11-6, enacted by Laws 1969, ch. 240, § 215; 1981, ch. 137, § 1; 1985, ch. 207, § 24; 2011, ch. 137, § 74; 2023, ch. 39, § 62.

ANNOTATIONS

Cross references. — For manner of preparing voting machine, *see* 1-11-6 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided that the voting system certification process for electronic voting machines is open to the public, and required county clerks to 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; in Subsection A, after "certified and sealed", added "The process of preparing, inspecting, certifying and sealing electronic voting machines shall be open to observation by the public."; and added Subsection B.

The 2011 amendment, effective July 1, 2011, required county clerks to certify electronic voting machines and to perform their duties under this section forty-two days before the election.

Clerk may seal machines anywhere after notifying required persons. — The county clerk may reset or seal the machines at the courthouse or any place where the machines are stored or at the polling place so long as the required persons are present, or have been properly notified, when such resetting and sealing occurs. 1954 Op. Att'y Gen. No. 54-5958 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 365.

29 C.J.S. Elections § 203.

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.

ANNOTATIONS

Cross references. — For challengers, inspection of voting machines, *see* 1-2-23 NMSA 1978.

For watchers, inspection of voting machines, *see* 1-2-29 NMSA 1978.

The 2011 amendment, effective July 1, 2011, required county clerks to seal and retain the logic and accuracy test printout until it may be disposed of pursuant to Section 1-12-69 NMSA 1978.

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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, eliminated the requirement that county clerks test electronic voting machines ten days before the election and retain the logic and accuracy test printout; and eliminated the requirement that all counters be set at zero and sealed after they are tested.

The 1991 amendment, effective April 2, 1991, in Subsection A, substituted "logic and accuracy test printout, known as the internal audit trail" for "test cards and results of the test" in the third sentence and "test ballots used in the marksense voting machines" for "test cards used in the electronic vote tabulating machines" in the fourth sentence.

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.

ANNOTATIONS

Cross references. — For manner of preparing voting machine, *see* 1-11-6 NMSA 1978.

For notice of sealing, *see* 1-11-8 NMSA 1978.

The 2011 amendment, effective July 1, 2011, made stylistic changes.

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.

ANNOTATIONS

Cross references. — For challengers examining machine seals, *see* 1-2-23 NMSA 1978.

For watchers examining voting machines, *see* 1-2-29 NMSA 1978.

The 2011 amendment, effective July 1, 2011, required county clerks to notify the county chair of each political party at least three days before the county clerk prepares a voting machine for an election.

1-11-9. Repealed.

History: 1953 Comp., § 3-11-10, enacted by Laws 1969, ch. 240, § 219; 1985, ch. 207, § 29; repealed by Laws 2011, ch. , § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-11-9 NMSA 1978, as enacted by Laws 1969, ch. 240, § 219, relating to voting machines and sealing of keys, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Cross references. — For election supplies, *see* 1-11-18 NMSA 1978.

1-11-12. Repealed.

History: 1953 Comp., § 3-11-13, enacted by Laws 1969, ch. 240, § 222; 1985, ch. 207, § 30; 1991, ch. 105, § 22; 1993, ch. 314, § 53; 1993, ch. 316, § 53; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-11-12 NMSA 1978, as enacted by Laws 1969, ch. 240, § 222, relating to certifying county register, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

1-11-12.1. Repealed.

History: Laws 2005, ch. 270, § 9; 2007, ch. 336, § 14; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-11-12.1 NMSA 1978, as enacted by Laws 2005, ch. 270, § 9, relating to distribution of voter information, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

1-11-12.2. Monitored secured containers; distribution to counties.

A. Each county shall have at least two monitored secured containers; provided that, in consideration of geographic or security constraints existent in a county, a county clerk may

request from the secretary of state a waiver from this requirement. The secretary of state may approve a request by a county clerk for additional monitored secured containers in a county.

B. In addition to the monitored secured containers provided pursuant to Subsection A of this section, a political subdivision of the state, including a municipality, school district or community college, may make a written request to the county clerk for one or more monitored secured containers on or near the boundaries of the political subdivision. A county clerk who receives a written request for monitored secured containers from a political subdivision shall evaluate the population in and near the area of the request, the distance voters have to travel to get to the nearest monitored secured container and the number of monitored secured containers and early voting locations on or near the area of the request. The county clerk shall respond in writing to the requesting political subdivision within thirty days of receiving the written request. A written request for monitored secured containers for future statewide elections may be made between the second Tuesday in March and the second Tuesday in April of any year.

C. A political subdivision whose written request to a county clerk for monitored secured containers is denied may appeal that decision by submitting the written request along with the denial letter from the county clerk to the secretary of state, along with any response to the denial letter from the requesting political subdivision. The secretary of state may place a monitored secured container on or near an area that is the subject of the request in response to an appeal submitted pursuant to this subsection.

D. A monitored secured container located on or near the boundaries of a political subdivision shall comply with all requirements for monitored secured containers provided in the Election Code. If a monitored secured container is provided pursuant to this section, the requesting political subdivision shall provide the facility and services necessary for the monitored secured container.

History: 1978 Comp., § 1-11-12.2, enacted by Laws 2023, ch. 84, § 11.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 11 effective July 1, 2023.

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 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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, rewrote this section to require the secretary of state to furnish an index of voters and registration information to political parties, candidates, election-related organizations and election observers upon request.

Certified copies of registration lists not part of return. — Under former statute (1929 Comp. § 41-229), certified copies of registration lists filed with secretary of state were not part of "returns" required to be canvassed by state canvassing board (1929 Comp. § 41-347 et seq.). *Chavez v. Hockenhull*, 1934-NMSC-093, 39 N.M. 79, 39 P.2d 1027.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 109.

29 C.J.S. Elections §§ 47, 197.

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.

ANNOTATIONS

Cross references. — For form for tally sheets, *see* 1-11-15 NMSA 1978.

For tally books in emergency situations, *see* 1-12-66 NMSA 1978.

The 2011 amendment, effective July 1, 2011, permitted the use of computer-based tally sheets upon recommendation of the voting system certification committee.

The 2003 amendment, effective June 20, 2003, added the last sentence.

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.

ANNOTATIONS

Cross references. — For preparation of tally sheets, *see* 1-11-14 NMSA 1978.

For tally sheets in emergency situations, *see* 1-12-66 NMSA 1978.

The 1991 amendment, effective April 2, 1991, inserted references to "checklist of registered voters" in the section heading and in the text.

1-11-16. Signature roster certificates; checklist of registered voter's certificates; precinct board [election 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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 1991 amendment, effective April 2, 1991, inserted "checklist of registered voter's certificates" in the section heading and in the text of the section.

1-11-17. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 105, § 44 repealed 1-11-17 NMSA 1978, as enacted by Laws 1977, ch. 124, § 7, relating to affidavits for assistance, form, effective April 2, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

1-11-18. Election supplies.

The secretary of state shall prescribe the types and number of election supplies to be used in the precincts.

History: 1953 Comp., § 3-11-27.1, enacted by Laws 1977, ch. 222, § 34.

ANNOTATIONS

Rubber stamps for write-in candidate not necessary supplies. — Under the former statutory provision calling for necessary election supplies to be delivered to each polling place, rubber stamps bearing a write-in candidate's name were not necessary election supplies, nor was a county clerk authorized to affix the stamps to a voting machine. 1964 Op. Att'y Gen. No. 64-131.

1-11-19. Costs of elections; election fund.

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;

(3) federal funds received by the state that are designated by the federal government or the state executive for elections or that have been appropriated by the legislature for election purposes;

(4) grants or capital outlay funds received by a county clerk for which the secretary of state has agreed to serve as the fiscal agent;

(5) grants or capital outlay funds received by the secretary of state for the purposes of Subsection A of this section and not designated for any other fund; and

(6) money transferred to the fund pursuant to Section 2 of this 2024 act.

D. The secretary of state may submit a budget adjustment request to use money in the election fund for the purposes authorized in Subsection A of this section beyond a five percent variance from the approved elections budget for the current fiscal year.

E. If the 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; 2023, ch. 39, § 63; 2024, ch. 24, § 1.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 110 recompiled and amended former 1-22-20 NMSA 1978 as 1-11-19 NMSA 1978, effective April 3, 2019.

The 2024 amendment, effective July 1, 2024, required that money received from the department of finance and administration for the costs of an election be deposited in the election fund; and in Subsection C, added Paragraph C(6).

The 2023 amendment, effective June 16, 2023, expanded the funding sources for the state election fund, and authorized the secretary of state to submit a budget adjustment request to use money in the election fund for certain purposes; in the section heading, deleted "local election assessment", and "established"; in Subsection C, added new Paragraphs C(3) and C(4) and redesignated former Paragraph C(3) as Paragraph C(5), and in Paragraph C(5), after "grants", added "or capital outlay funds", and after "secretary of state", added "for the purposes of Subsection A of this section and not designated for any other fund"; and added a new Subsection D and redesignated former Subsection D as Subsection E.

The 2019 amendment, effective April 3, 2019, revised the purpose of the election fund; changed "Local Election Act" to "Election Code" throughout; in Subsection A, added a new Paragraph A(1) and redesignated former Paragraphs A(1) through A(3) as Paragraph A(2) through A(4), in Paragraph A(4), after "Election Code" added "not already covered by another fund administered by the secretary of state"; in Subsection B, after "revert to the general fund", added the remainder of the subsection; in Subsection C, deleted former Paragraph C(1) and redesignated former Paragraph C(2) as Paragraph C(1), added new Paragraphs C(2) and C(3); deleted Subsection D and redesignated former Subsection E as Subsection D; and deleted former Subsection F.

1-11-20. Transfer; general fund to election fund.

Within ninety days after an election, the secretary of state shall certify to the department of finance and administration the total costs incurred by the office of the secretary of state to administer the election. Within thirty days of receipt of the certification, the department of finance and administration shall transfer from the general fund to the election fund an amount equal to the lesser of the certified amount or fifteen million dollars ($15,000,000).

History: Laws 2024, ch. 24, § 2.

ANNOTATIONS

Effective dates. — Laws 2024, ch. 24, § 3 made Laws 2024, ch. 24, § 2 effective July 1, 2024.

ARTICLE 12
Conduct of Elections

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.

ANNOTATIONS

Cross references. — For right of challengers and watchers to be present, *see* 1-2-23 and 1-2-29 NMSA 1978.

For proclaiming closing of polls, *see* 1-12-26 NMSA 1978.

For allowing employees time off to vote, *see* 1-12-42 NMSA 1978.

For provision prohibiting local or special laws regarding opening or conducting any election or designating voting place, *see* N.M. Const., art. IV, § 24.

Mere irregularity in manner of conducting an election, in absence of fraud or evidence of a change in result, did not necessarily destroy validity of election, nor probative force of ballots as evidence. *Gallegos v. Miera*, 1923-NMSC-018, 28 N.M. 565, 215 P. 968.

Effect of mere irregularities. — Elections conducted fairly and honestly will not be set aside for mere irregularity in the appointment of election officers or in conduct of the election where no fraud or illegal voting is shown. *Carabajal v. Lucero*, 1916-NMSC-045, 22 N.M. 30, 158 P. 1088.

No ballots received after 7:00 p.m. regardless of voter position. — From and after 7:00 p.m. no ballots shall be received by the officials, irrespective of whether voting machines or the ordinary type of balloting is employed. Thus it makes no difference that the person is in line outside the polling place and has not announced his name to the poll clerk, or that a person is inside the polling place and has not yet announced his name to the poll clerk or that he has announced his name to the poll clerk but has not yet gone into the voting machine to vote. At 7:00 p.m. the machine should be locked where voting machines are used, and where ordinary balloting is employed the officials must not allow the deposit of any ballots in the ballot boxes after this time. 1956 Op. Att'y Gen. No. 56-6532.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 103.

Violation of law as regards time for keeping polls open as affecting election results, 66 A.L.R. 1159.

Validity of public election as affected by fact that it was held at time other than fixed by law, 121 A.L.R. 987.

29 C.J.S. Elections § 198.

1-12-2. Conduct of election; precinct board [election board] attendance.

Precinct board [Election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 1999 amendment, effective June 18, 1999, inserted "excepting those members scheduled to work only the second shift".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 325.

29 C.J.S. Elections § 192.

1-12-2.1. Precinct board [Election board] work shift option.

A. The county clerk may choose to schedule precinct board [election board] members into two work shifts on election day and also may determine the length of each shift for each precinct board [election 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 [election board] members in shifts, the presiding judge on each precinct board [election 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 [election board] appointments in accordance with Section 1-2-14 NMSA 1978.

History: Laws 1999, ch. 236, § 1; 2011, ch. 137, § 81.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 2011 amendment, effective July 1, 2011, made stylistic changes.

1-12-3. Conduct of election; precinct board [election board] duties.

The secretary of state shall prescribe the duties of the precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For secretary of state providing instructions for precinct board, *see* 1-2-4 NMSA 1978.

The 2011 amendment, effective July 1, 2011, authorized the secretary of state to prescribe duties and permitted presiding judges to reassign the duties during the election to judges and election clerks.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 325, 365.

29 C.J.S. Elections § 192.

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For offenses and penalties, *see* 1-20-1 NMSA 1978 et seq.

For obstructing polling place, *see* 1-20-17 NMSA 1978.

For disturbing polling place, *see* 1-20-20 NMSA 1978.

Mandatory nature of statute. — This section does not require that law enforcement officers called to assist in establishing order in a polling place conduct an independent investigation of the premises or personally witness the polling place in disorder. The statute merely states that when called, an officer "shall render assistance". It is reasonably related to New Mexico's interests in protecting voters from intimidation at the polls and from preventing disruptions that might undermine the integrity of state elections. The statute is viewpoint neutral, and does not depend on the nature of or the reason for the disruption a particular citizen's presence at the polling place might cause. *Ramos v. Carbajal*, 508 F. Supp. 2d 905 (10th Cir. 2007).

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Effective dates. — Laws 2005, ch. 270, § 81 made Laws 2005, ch. 270, § 59 effective July 1, 2005.

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For impounding of ballots by state police not to interrupt course of election, *see* 1-14-10 NMSA 1978.

For offenses and penalties, *see* 1-20-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 200.

1-12-6. Conduct of election; memoranda of actions or omissions.

Any member of the precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For challengers and watchers making memoranda, *see* 1-2-23 and 1-2-29 NMSA 1978.

1-12-7. Conduct of election; persons not permitted to vote; persons permitted to vote upon choosing to affiliate with a party.

A. A person shall not vote in a primary, general or statewide special election unless the person is a voter of the county in which the person 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 at a primary election shall not be permitted to vote for the candidate of any party other than the party designated on the person's current certificate of registration; provided that a person who has declined to designate a political party affiliation on the person's certificate of registration shall be permitted to choose to affiliate with a major political party in a primary election by requesting a major political party's primary election ballot and shall be permitted to vote for the candidates on that party's ballot.

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; 2025, ch. 54, § 4.

ANNOTATIONS

Cross references. — For voter defined, *see* 1-1-5 NMSA 1978.

For lack of registration as ground for challenge, *see* 1-12-20 NMSA 1978.

For listing on purge list as ground for challenge, *see* 1-12-20 NMSA 1978.

For lack of party affiliation as ground for challenge, *see* 1-12-20 NMSA 1978.

For person arriving at polls after closing time not entitled to vote, *see* 1-12-27 NMSA 1978.

For provision that right to vote not to be restricted, etc., on account of religion, etc., *see* N.M. Const., art. VII, § 3.

The 2025 amendment, effective July 1, 2025, allowed voters who have not designated a political party affiliation on their certificates of registration to participate in the primary election process by choosing to affiliate with a major political party participating in a primary election by requesting a major political party's primary election ballot; in the section heading, after "not permitted to vote" added "persons permitted to vote upon choosing to affiliate with a party";

deleted former Subsection B and redesignated former Subsection C as Subsection B; and in Subsection B, after "certificate of registration" added the remainder of the subsection.

The 2003 amendment, effective July 1, 2003, substituted "county" for "precinct" in the first sentence of Subsection A; and rewrote Subsection B which read "No person shall vote in any primary election whose party affiliation is not designated on his original certificate of registration".

The 1999 amendment, effective June 18, 1999, in Subsection C, substituted "current certificate" for "original certificate", and deleted "at the time the governor issues the primary election proclamation" at the end; and deleted former Subsection D, which stated that no person shall vote in any primary, general or statewide special election whose name and certificate of registration number appears on the list of voters purged from the rolls.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" throughout the section.

The 1991 amendment, effective April 2, 1991, added "at the time the governor issues the primary election proclamation" at the end of Subsection C.

Closed primary election system. — Under New Mexico's closed primary election system, a voter who wants to vote during the primary election must be affiliated with a major political party and can only vote for candidates of a party which is designated on the voter's current voter registration certificate. *Crum v. Duran*, 2017-NMSC-013.

New Mexico's closed primary election system is not unconstitutional. — Where plaintiff sued the secretary of state and the Bernalillo county clerk, seeking an injunction to enjoin them from prohibiting voters who declined to designate their political affiliation from voting during the primary election, the district court did not err in granting the motion to dismiss plaintiff's complaint, because requiring voters to designate their affiliation with a major political party at least twenty-eight days before the primary election, and only allowing voters to vote for candidates of a party which is designated on their voter registration, are reasonably modest burdens which further the state's interests in securing the purity of and efficiently administering primary elections. *Crum v. Duran*, 2017-NMSC-013.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 163 et seq., 181, 182, 184; 26 Am. Jur. 2d Elections § 329.

Purging voters' registration lists, remedy and procedure for, 69 A.L.R. 1035.

Attorney general as proper party to bring action to purge voters' registration lists, 96 A.L.R. 1035.

Residence or domicile of student or teacher for purpose of voting, 98 A.L.R.2d 488, 44 A.L.R.3d 797.

Residence of students for voting purposes, 44 A.L.R.3d 797.

29 C.J.S. Elections §§ 19, 48, 49, 51.

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 [election 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 [election 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 [election 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 either currently registered in a party designated on the primary election ballot or has declined to designate a party affiliation on the voter's certificate of registration and chooses to affiliate with a major political party for that primary election by requesting a ballot of 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 [election 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 [election 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; 2025, ch. 54, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Recompilations. — Laws 2005, ch. 270, § 63 recompiled former 1-5-10 NMSA 1978 as 1-12-7.1 NMSA 1978, effective July 1. 2005.

The 2025 amendment, effective July 1, 2025, allowed voters who have not designated a political party affiliation on their certificates of registration, but have chosen to affiliate with a major political party participating in a primary election, to be placed on the checklist of voters used during an election; in Subsection D, after "that the voter is" added "either currently" and after " the primary election ballot" added "or has declined to designate a party affiliation on the voter's certificate of registration and chooses to affiliate with a major political party for that primary election by requesting a ballot of a party designated on the primary election ballot".

The 2015 amendment, effective July 1, 2015, required the precinct board to post a map of the precincts represented in each polling place, required the presiding judge of the precinct board to assign one judge or clerk to be in charge of a copy of the checklist of voters at each polling location where physical rosters are used to confirm the registration and voting of each person offering to vote; in Subsection A, after "A.", added "At", after "each", added "election day polling location, other than a consolidated precinct where any voter in the county may vote, the", after "precinct board", deleted "using voter lists", after "alphabetical list of voters", added "and a map of the precincts represented in that polling place", after "years", added "months or days", and after "of birth", deleted "unique identifiers"; in Subsection B, added "At each polling location where physical rosters are used"; in Subsection D, after "clerk assigned to", deleted "the checklist of voters used for confirmation of" and added "confirm", after the first occurrence of "registration", deleted "and voting", after "registration is confirmed", deleted "by the presence of the person’s name on the checklist of voters"; in Subsection E, after "shall locate", deleted "that list number and" and added "the", and after "clerks of the precinct board.", designated the remainder of the subsection as Subsection F, and after "the ballot shall be qualified", deleted the remainder of the subsection; and redesignated former Subsections F and G as Subsections G and H, respectively.

The 2011 amendment, effective July 1, 2011, authorized the presiding judge to assign an election clerk to be in charge of one copy of the checklist of voters and authorized such election clerks to determine that each person offering to vote is registered and to witness a voter’s mark; required a person who votes on a provisional ballot to provide voter identification before 5:00

p.m. on the second day after the election; and eliminated the requirement that election clerks strike through each signature space in the signature roster that has no signature or mark.

The 2008 amendment, effective May 14, 2008, in the catchline, changed "precinct voter list" to "checklist of voters"; and in Subsection A, provided that the posted copy shall not contain the voter's address, year of birth or unique identifier.

The 2005 amendment, effective July 1, 2005, changed "voter list" to "precinct voter list"; deleted the former provision of Subsection D that if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the clerks the list number and name of the voter; provided in Subsection D that if the voter provides the required voter identification, the judge shall announce to the clerks the list number and name of the voter, that if the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot and shall provide the voter identification to the county clerk before the canvas begins or to the precinct board before the poll closes or the provisional ballot shall not be qualified, and that if the voter identification is provided, the provisional ballot shall be qualified and the voter shall not vote on any type of ballot; deleted the former provision in Subsection E, which provided that if the roster indicated that the voter is required to present identification before voting, the judge shall ask for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the roster; and in Subsection E, provided that if the roster indicates that the voter is required to present physical identification before voting, the judge shall ask for the required physical form of identification and that if the voter does not provide the required identification and votes on a provisional ballot, the ballot shall be qualified if the voter brings the required physical form of identification to the polling place after casting the provisional ballot and the voter shall not vote on any other type of ballot.

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.

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 that 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 unless the voter's certificate of registration shows that the voter has declined to designate a party affiliation and the voter chooses to affiliate with a major political party for that primary election by requesting the ballot of a party participating in the primary. 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; 2025, ch. 54, § 6.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 270, § 78 recompiled former 1-5-12 NMSA 1978 as 1-12-7.2 NMSA 1978, effective July 1. 2005.

Cross references. — For definition of qualified elector, *see* 1-1-4 NMSA 1978.

For definition of voter, *see* 1-1-5 NMSA 1978.

For the National Voter Registration Act of 1993, *see* 42 USCS § 1973gg et seq.

The 2025 amendment, effective July 1, 2025, allowed voters who have not designated a political party affiliation on their certificates of registration, but have chosen to affiliate with a major political party participating in a primary by requesting the party's ballot, to vote in a primary election; in Subsection D, after "certificate of registration" added "unless the voter's certificate of registration shows that the voter has declined to designate a party affiliation and the voter chooses to affiliate with a major political party for that primary election by requesting the ballot of a party participating in the primary".

The 2011 amendment, effective July 1, 2011, eliminated the prohibition against verbal authorization from the county clerk.

The 2003 amendment, effective July 1, 2003, in Subsection A, inserted "and Section 1-12-8 NMSA 1978"; in Subsection B, substituted "a provisional paper ballot" for "an emergency paper ballot"; at the beginning of Subsection C, substituted "provisional" for "emergency"; and in the first sentence of Subsection D, substituted "a voter shall not be permitted" for "no voter shall be permitted".

The 2001 amendment, effective June 15, 2001, in Subsection A, substituted the former requirements necessary to allow a voter to vote in a precinct that does not have that voter's name on the list or roster for a reference to the requirements of the National Voter Registration Act of 1993; in Subsection B, substituted "to sign an affidavit of eligibility and cast an emergency paper ballot" for "to cast his ballot", substituted "both the signature roster and checklist of registered voters" for "both rosters"; in Subsection C, substituted "The emergency paper ballot" for "The voting machine public counter number or the ballot"; substituted "the affidavit of eligibility, the signature roster and the checklist of registered voters" for "his certificate of eligibility or copy of his certificate of registration", deleted the provision that required the certificate of eligibility or certificate of registration be retained by the precinct board and returned to the county clerk with election returns; deleted former Subsection D, which made the certificate of eligibility valid for use only in the precinct, election and date specified thereon, and renumbered the remaining subsections accordingly; in present Subsection D, deleted the provision that party affiliation must be on the certificate of eligibility or registration for the voter to cast a ballot, deleted "certificate of eligibility or the copy of his" preceding "certificate of

registration", added the last sentence; and in Subsection E, deleted "under this section" following "person to vote".

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "voter's copy of a certificate" for "triplicate affidavit", inserted "of eligibility", and substituted "certificate" for "affidavit"; in Subsection C, inserted "of eligibility" twice, and substituted "copy of his certificate" for "triplicate affidavit" and "voter's copy of his certificate of registration" for "triplicate affidavit"; inserted "of eligibility" in Subsection D; and, in Subsection E, inserted "of eligibility" twice, and substituted "copy of his certificate" for "triplicate affidavit" and "the copy of his certificate" for "triplicate affidavit".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 182.

29 C.J.S. Elections § 51.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-5-7 NMSA 1978 as 1-12-7.3 NMSA 1978 effective July 1, 2011.

The 2008 amendment, effective May 14, 2008, deleted "precinct voter lists", added "checklist of voters" and deleted the requirement that the signature roster and checklist of voters contain the last four digits of the voter's social security number.

The 2005 amendment, effective July 1, 2005, changed "voter list" to "precinct voter list"; added Subsection A(4) to provide that the precinct voter lists and signature rosters shall contain the last four digits of the voter's social security number; and deleted former Subsection D, which related to the dissemination of voter telephone numbers.

The 1993 amendment, effective June 18, 1993, added Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 109.

29 C.J.S. Elections § 47.

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 [election board]. The voter shall sign the signature roster before receiving a ballot. The precinct board [election 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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-5-8 NMSA 1978 as 1-12-7.4 NMSA 1978 effective July 1, 2011.

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.

ANNOTATIONS

Cross references. — For false voting, *see* 1-20-8 NMSA 1978.

For falsifying election documents, *see* 1-20-9 NMSA 1978.

For false swearing, *see* 1-20-10 NMSA 1978.

For perjury, *see* 30-25-1, NMSA 1978.

The 2011 amendment, effective July 1, 2011, in Subsection D, required election clerks to have a voter sign the signature roster and issue a provisional ballot and required the voter to return the ballot to the judge or election clerk.

The 2005 amendment, effective July 1, 2005, in Subsection B(1), provided that a voter shall vote on a provisional ballot if the voter has been purged from the voter list; deleted the former provision of Subsection B(2) that the voter shall vote on a provisional ballot if the voter did not register to vote in person; in Subsection B(2), provided that the voter shall vote on a provisional ballot if the voter registered to vote by mail; in Subsection B(3), provided that the voter shall vote on a provisional ballot if the voter did not submit the physical form of identification; in Subsection B(4), deleted the former provision that the voter shall vote on a provisional ballot if the voter does not submit the a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter that matches the name and address on the voter's certificate of registration; in Subsection B(4), provided that the voter shall vote on a provisional ballot if the voter does not submit a physical form of the required voter identification; and added Subsection C to provide that a voter shall vote on a provisional ballot if the voter does not provide the required voter identification.

The 2003 amendment, effective July 1, 2003, substituted "provisional" for "voter's copy or certificate" in the section heading; in Subsection A, deleted "Notwithstanding the provisions of Section 1-12-7 NMSA 1978" and inserted "on a provisional paper ballot" following "vote"; substituted "county" for "precinct" in Subparagraph A(1) and present Subparagraph A(3); redesignated former Subparagraph A(4) as present Subparagraph A(3) and deleted former Subparagraph A(3); added present Subsection B and redesignated former Subsections B and C as present Subsections C and D; rewrote Subsection C; and deleted former Subsections D and E, concerning signature stamp and investigation of statements.

The 1995 amendment, effective April 6, 1995, in Subsection A, deleted Paragraph (2) which read "his name is not on the purged list;", redesignated former Paragraphs (3) to (5) as Paragraphs (2) to (4), and substituted "his voter identification card that" for "the voter's copy of the certificate of registration which" in Paragraph (3); and deleted "such" preceding "actions" in Subsection E.

The 1993 amendment, effective June 18, 1993, substituted "certificate" and "certificate of registration" for "affidavit" throughout the section; inserted "of eligibility" throughout the section; and made several minor stylistic changes.

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 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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, required election clerks to inform the voter that the voter will be notified if the original certificate is not located.

The 2007 amendment, effective April 2, 2007, provided that for purposes of investigation or prosecution, the county clerk shall provide the district attorney and the secretary of state with the person’s name and address and the receipt number of the person’s certificate of registration of each person whose certificate of registration is not located.

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 [election 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 [election board] before the absent voter precinct board [election board] has adjourned, it shall be logged and transmitted to the absent voter precinct board [election board] to be tallied immediately. If the unopened mailing envelope is received by the county clerk from a precinct board [election board] after the absent voter precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 2011 amendment, effective July 1, 2011, permitted voters to return absentee ballots to any polling place in the county; provided that official mailing envelopes for absentee ballots that are delivered to a judge shall be delivered to the county clerk unopened; and provided for the processing of absentee ballots by the county clerk.

The 2007 amendment, effective April 2, 2007, provided that the precinct board shall deliver unopened envelopes to the county clerk.

1-12-9. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-12-9 NMSA 1978 as 1-20-8.1 NMSA 1978 effective July 1, 2011.

1-12-9.1. Recompiled.

History: Laws 1995, ch. 198, § 15; 1978 Comp., § 1-12-9.1 recompiled as § 1-20-13.1 by Laws 2011, ch. 137, § 109.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-12-9.1 NMSA 1978 as 1-20-13.1 NMSA 1978 effective July 1, 2011.

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.

ANNOTATIONS

Cross references. — For interposing challenges, *see* 1-12-20 NMSA 1978.

The 2011 amendment, effective July 1, 2011, included election clerks within the scope of this section.

The 2005 amendment, effective July 1, 2005, in Subsection A, provideed that the election judge shall ask the voter to provide the required voter identification; and added Subsection B to provide that if a voter fails to provide the required voter identification, the voter shall vote on a provisional ballot.

The 1991 amendment, effective April 2, 1991, deleted "and address" following "name" in the second sentence; substituted "or make his mark on the signature line" for "and write his address or, if he is unable to write, shall have his name and address written for him by the election clerk and initialed by the presiding judge" in the third sentence; and inserted "or mark" in the fourth sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 329.

29 C.J.S. Elections §§ 197, 205.

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.

ANNOTATIONS

Cross references. — For the Help America Vote Act of 2002, *see* 42 U.S.C. § 15301.

The 2015 amendment, effective July 1, 2015, required the secretary of state to provide voting information to the county clerks, required the county clerks to ensure that in each polling place there is posted phone numbers of the county clerk and the secretary of state, and removed the requirement that a map of the precincts and a voter list be posted at each polling place; in the catchline, deleted "voter" and added "voting"; in Subsection A, after "state shall", deleted "issue rules describing the voter information" and added "provide voting information, which", after "in each polling place", deleted "on election day", after "county clerk's office and", deleted "alternate" and added "at any", and after "location where", deleted "absentee or early"; in Subsection B, added "The county clerk shall ensure that in", after "each polling place", deleted "shall post" and added "there is posted", after "secretary of state", deleted "and a map of the precincts represented in that polling place and an alphabetical list of the voters in each precinct represented in that polling place".

The 2005 amendment, effective July 1, 2005, added Subsection B to provide that each polling place shall post a map of the precincts represented in that polling place and an alphabetical list of voters in each precinct.

1-12-11. Repealed.

History: 1953 Comp., § 3-12-14, enacted by Laws 1969, ch. 240, § 250; 1985, ch. 207, § 33; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-12-11 NMSA 1978, as enacted by Laws 1969, ch. 240, § 250, relating to conduct of elections and entries by precinct board, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the provision related to assistance in voting; and in Subsection E, after "system", added "provided for voting access for people with disabilities".

The 2005 amendment, effective July 1, 2005, added Subsection E to provide that a voter may request assistance if the voter requires assistance in operating the voting system.

General election laws apply to municipal school board elections unless the statutes provide otherwise. Therefore in a municipal school board election a voter who is in need of assistance is entitled to have one person of his own choice assist him in casting his vote. 1963 Op. Att'y Gen. No. 63-08 (rendered under former law).

Disabled voter may be accompanied in polling place. — This section provides for assistance to electors who declare to the judges of election that they are unable to mark the ballot because of blindness, defective eyesight, other physical disability or because they cannot read either the English or Spanish language and any of these provisions prevent their marking the ballot. The elector may be accompanied in the polling place by the two poll clerks and one person of his own selection. 1961 Op. Att'y Gen. No. 61-132 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 331 et seq.

29 C.J.S. Elections § 208.

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.

ANNOTATIONS

Cross references. — For perjury, *see* 30-25-1 NMSA 1978.

The 2015 amendment, effective July 1, 2015, provided that a person who swears falsely in order to secure assistance in marking a ballot or using the voting system is guilty of a misdemeanor, such a person was previously guilty of perjury; and in Subsection D, after "guilty of", deleted "perjury" and added "a misdemeanor".

The 2007 amendment, effective July 1, 2007, prescribed the procedure for voters to request assistance in using the voting system.

Vote to be that desired by assisted voter. — It is the duty of all of the persons assisting such voter to be certain that the vote, on the ballot or machine, to be cast for each office, is the vote desired by such voter. 1966 Op. Att'y Gen. No. 66-51 (opinion rendered under former law).

Blind voter may be assisted in voting machine. — For the purpose of this section a voting machine is a voting booth and, in compliance with that law, a voter who is blind or otherwise infirm may be assisted in a voting machine. This requires only the poll clerks of the party of the voter to do the assisting. 1956 Op. Att'y Gen. No. 56-6367 (opinion rendered under former law).

1-12-14. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 259, § 3 repealed 1-12-14 NMSA 1978, as enacted by Laws 1977, ch. 124, § 9, relating to oral translation of affidavit for language minorities, effective June 16, 1989.

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 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.

ANNOTATIONS

Cross references. — For the election translator and oral assistance for language minority voters, *see* 1-2-19 NMSA 1978.

The 2015 amendment, effective July 1, 2015, provided that a person who provides assistance to a voter when the person knows the voter does not require assistance is guilty of a misdemeanor; in Subsection A, after "In any", deleted "primary, general or statewide special", after "accompanied into the voting", deleted "machine" and added "booth"; and added Subsection C.

The 2005 amendment, effective July 1, 2005, added Subsection B to provide that the name of the person providing assistance shall be recorded on the signature roster.

Vote to be that desired by assisted voter. — It is the duty of all of the persons assisting such voter to be certain that the vote, on the ballot or machine, to be cast for each office, is the vote desired by such voter. 1966 Op. Att'y Gen. No. 66-51.

Disabled voter may be accompanied in polling place. — Section 1-12-12 NMSA 1978 provides for assistance to electors who declare to the judges of election that they are unable to mark the ballot because of blindness, defective eyesight, other physical disability or because they cannot read either the English or Spanish language and any of these provisions prevent

their marking the ballot. The elector may be accompanied in the polling place by the two poll clerks and one person of his own selection. 1961 Op. Att'y Gen. No. 61-132.

Assistance while in voting machine. — For the purpose of this section a voting machine is a voting booth and, in compliance with that law, a voter who is blind or otherwise infirm may be assisted in a voting machine. This requires only the poll clerks of the party of the voter to do the assisting. 1956 Op. Att'y Gen. No. 56-6367.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 331.

29 C.J.S. Elections § 208.

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.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, permitted persons to provide assistance to a voter in reading and marking ballots or using the voting system.

1-12-17. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 259, § 3 repealed 1-12-17 NMSA 1978, as enacted by Laws 1969, ch. 240, § 269, relating to return of affidavit, effective June 16, 1989.

1-12-18. Conduct of election; disclosure of vote.

An election official, a member of the precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For secrecy of ballot to be preserved, *see* N.M. Const., art. VII, § 1.

The 2009 amendment, effective June 19, 2009, at the beginning of the sentence, added "An election official" and after "precinct board", added "a watcher or a challenger".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 328.

29 C.J.S. Elections § 201(2).

1-12-19. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 156, § 3, repealed 1-12-19 NMSA 1978, relating to write-in votes at general elections, effective June 19, 1981.

1-12-19.1. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 112 recompiled and amended former 1-12-19.1 NMSA 1978 as 1-8-66 NMSA 1978, effective April 3, 2019.

1-12-20. Conduct of election; interposing challenges.

A challenge may be interposed by a member of the precinct board [election 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 currently affiliated with a major political party or a political party not represented on the ballot and the person requests a ballot for a party with which the person is not affiliated.

History: 1953 Comp., § 3-12-37, enacted by Laws 1969, ch. 240, § 273; 1987, ch. 249, § 31; 2011, ch. 137, § 90; 2025, ch. 54, § 7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For definition of qualified elector, *see* 1-1-4 NMSA 1978.

For provision that challenger may inspect registration book, *see* 1-2-23 NMSA 1978.

For registration required, *see* 1-4-1 NMSA 1978.

For cancellation of registration, *see* 1-4-22 to 1-4-32 NMSA 1978.

For handling of and challenge of absentee ballots, *see* 1-6-14 NMSA 1978.

For persons not permitted to vote, *see* 1-12-7 NMSA 1978.

For provision that challenge may be interposed upon voter writing name in pollbook, *see* 1-12-10 NMSA 1978.

The 2025 amendment, effective July 1, 2025, revised the list of reasons for challenging an election to include, in the case of a primary election, that the person desiring to vote is currently affiliated with a major political party or a political party represented on the ballot and the person has requested a ballot for a party with which the person is not affiliated; and in Subsection E, after "desiring to vote is" deleted "not" and added "currently", after "affiliated with a" added "major" after "major political party" added "or a political party", and after "on the ballot" added "and the person requests a ballot for a party with which the person is not affiliated".

The 2011 amendment, effective July 1, 2011, permitted a challenge if the person offering to vote has already voted in the election and eliminated a challenge on the ground that the outer envelope of an absentee ballot has been opened prior to the counting of ballots.

Challenger must have personal knowledge. — A challenge under this section must come from the personal knowledge of the challenger because the voter is entitled to the prima facie evidence of the voter list that he is indeed a resident. 1975 Op. Att'y Gen. No. 75-27.

Election not wholly void though voters not registered. — Under Laws 1868, ch. 26, § 1 (now repealed) and Laws 1903, ch. 64 (now repealed), an election held without appointment of board of registration and registration of voters, while irregular, was not wholly void, where voters participating in election presented affidavits required by law to judges of election along with their ballots. *State ex rel. Walker v. Bridges*, 1921-NMSC-041, 27 N.M. 169, 199 P. 370 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 329.

Legality of votes cast by persons otherwise qualified as affected by nonregistration, 101 A.L.R. 657.

29 C.J.S. Elections § 209.

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.

ANNOTATIONS

The 2011 amendment, required the reasons for a challenge, the time the challenge was made, and the name and title of the person making the challenge to be entered in the signature roster.

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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, eliminated the requirements that the voter’s name be announced, the challenged ballot be placed in an enveloped marked "Rejected", be placed in the ballot box, and not be counted, and required that the voter’s name be entered in the checklist of registered voters together with the word "Affirmed".

The 1991 amendment, effective April 2, 1991, substituted "the signature roster and the checklist of registered voters" for "both signature rosters" at the end of Subsection B and made minor stylistic changes in Subsection A.

Limited discretion of election judges. — Territorial statutes gave election judges no discretion in the matter of counting or declaring ballots once received, though there was discretion at the

moment a ballot was tendered. *Territory of New Mexico ex rel. Lester v. Suddith*, 1910-NMSC-068, 15 N.M. 728, 110 P. 1038.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Absentee voter, applicability of provisions of general election laws as to right to challenge, 132 A.L.R. 356.

1-12-23. Conduct of election; voting machines; instructions.

Before each voter receives a ballot, a member of the precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For assistance of voter, *see* 1-12-12 to 1-12-16 NMSA 1978.

The 2011 amendment, effective July 1, 2011, required a member of the precinct board to instruct voters on the voting process when the voter receives a ballot and to assist voters upon request with the voting process.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 365.

29 C.J.S. Elections § 203.

1-12-24. Repealed.

History: 1953 Comp., § 3-12-42, enacted by Laws 1969, ch. 240, § 278; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-24 NMSA 1978, as enacted by Laws 1969, ch. 240, § 278, relating to conduct of election, voting machines, inspection of face after vote, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

1-12-25. Repealed.

History: 1953 Comp., § 3-12-43, enacted by Laws 1969, ch. 240, § 279; 1987, ch. 249, § 34; 1991, ch. 105, § 29; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-12-25 NMSA 1978, as enacted by Laws 1969, ch. 240, § 279, relating to entry into voting machines, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

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 [election board];

B. take the ballot to a voting booth and, with the writing utensil provided, mark it in accordance with the instructions for that ballot type; and

C. feed the ballot into the electronic vote tabulator to record the vote.

History: 1978 Comp., § 1-12-25.1, enacted by Laws 1991, ch. 105, § 30; 2009, ch. 150, § 16.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 2009 amendment, effective June 19, 2009, at the beginning of the sentence, after "A voter", deleted "voting on a lever type machine" and added "using an electronic vote tabulator system to vote"; deleted former Paragraph (1) of Subsection A, which required a voter to enter the machine and push the red handle; deleted former Paragraph (2) of Subsection A, which required each voter to set the pointer under the candidate’s name or question on which the voter desires to vote; deleted former Paragraph (3) of Subsection A, which required the voter to make all selections and pull the red handle to record the voter’s vote; deleted former Subsection B, which provided for voting on a direct recording electronic machine; in former Subsection C, deleted "A voter voting on a marksense machine shall"; in Subsection B, after "with the", deleted "pencil" and added "writing utensil"; and after "mark it", deleted "by completing the arrow to the right of the candidate’s name or question on which he desires to vote" and added the remainder of the sentence; and in Subsection C, after "ballot into the", deleted "machine" and added "electronic vote tabulator".

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. At any time up to and including the appeal, the voter may provide information or documentation to satisfy the reason the ballot was rejected.

History: Laws 2003, ch. 356, § 3; 2005, ch. 270, § 70; 2007, ch. 336, § 17; 2011, ch. 137, § 94; 2017, ch. 101, § 15; 2023, ch. 39, § 64.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided that a voter may provide documentation to satisfy a rejected ballot at any time up to and including the appeal; and in Subsection C, after "a decision to reject the voter's ballot", added "At any time up to and including the appeal, the voter may provide information or documentation to satisfy the reason the ballot was rejected."

The 2017 amendment, effective June 16, 2017, removed the duty from the county clerk, and placed the duty on the secretary of state, to provide a free access system through which voters can ascertain whether their vote was counted; and, in Subsection B, deleted "county clerk" and added "secretary of state", and after "voter’s provisional paper ballot", added "through the free access system".

The 2011 amendment, effective July 1, 2011, included the presiding judge within the scope of this section.

The 2007 amendment, effective April 2, 2007, required that the free access system inform voters how to appeal a decision that the voter’s ballot was not counted.

The 2005 amendment, effective July 1, 2005, added Subsection C to provide that the county clerk shall notify each person whose provisional ballot was not counted the reason the ballot was not counted, that the voter may appeal to the county clerk the decision to reject the ballot, and that the secretary of state shall establish procedure for appeals to the canvassing board.

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.

ANNOTATIONS

The 2008 amendment, effective May 14, 2008, in Subsection A, deleted the "voter’s social security number".

The 2005 amendment, effective July 1, 2005, provided in Subsection B that a provisional ballot shall be qualified if the voter provides a signature and information for the county clerk to determine the voter is a qualified elector.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, required the county clerk to maintain a provisional ballot register, and revised certain provisions related to the disposition of provisional paper ballots; in Subsection C, after "shall not be counted, added "and the voter registration certificate shall be processed following the canvass of the election; in Subsection D, after "was in error,", added "or that the voter continues to reside in the same precinct"; in Subsection F, after "provisional paper ballot", deleted "at a polling place", after "other than the", deleted "voter's designated polling place" and added "ballot of the voter's correct precinct"; and in Subsection H, added "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.", and after "The county", deleted "canvassing board" and added "clerk".

The 2015 amendment, effective July 1, 2015, provided that when the county clerk determines that a voter's name was erroneously placed on a list of voters whose registrations were canceled, the voter's registration shall be immediately restored and the provisional paper ballot counted; and in Subsection D, after "cancellation was in error", added "or that the voter's name should not have been placed on the list of voters whose registrations were to be canceled".

The 2005 amendment, effective July 1, 2005, in Subsection I, provided that the rules shall secure the secrecy of provisional paper ballots, especially during canvassing, reviewing or recounting the ballots.

Qualification of provisional ballot. — A provisional ballot shall be subject to qualification if the voter casting the ballot validly signed either the voter roll or the provisional ballot. 2004 Op. Att'y Gen. No. 04-05.

1-12-26. Conduct of election; closing polls.

When the polls are closed, the precinct board [election 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 [election board] the secretary of state shall specify procedures whereby the precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For hour of closing, *see* 1-12-1 NMSA 1978.

No ballots to be received after 7:00 p.m. regardless of voter position. — From and after 7:00 p.m. no ballots shall be received by the officials, irrespective of whether voting machines or the ordinary type of balloting is employed. Thus it makes no difference that the person is in line outside the polling place and has not announced his name to the poll clerk, or that a person is inside the polling place and has not yet announced his name to the poll clerk or that he has announced his name to the poll clerk but has not yet gone into the voting machine to vote. At 7:00 p.m. the machine should be locked where voting machines are used, and where ordinary balloting is employed the officials must not allow the deposit of any ballots in the ballot boxes after this time. 1956 Op. Att'y Gen. No. 56-6532 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 319 et seq.

Violation of law as regards time for keeping polls open as affecting election results, 66 A.L.R. 1159.

Validity of public election as affected by fact that it was held at time other than fixed by law, 121 A.L.R. 987.

29 C.J.S. Elections § 198.

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.

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 356, § 34 made Laws 2003, ch. 356, § 4 effective July 1, 2003.

1-12-28. Conduct of election; election certificate.

Immediately upon the closing of the polls, the precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Signing certificates deemed taking oath. — When an election official signs the certificates required by this section such official is deemed to have taken the oath that he will and has

faithfully discharged the duties of his office, and that this is the only oath that is required, namely, the signing of these certificates. 1956 Op. Att'y Gen. No. 56-6525 (opinion rendered under former law).

1-12-29. Conduct of election; counting and tallying; who may be present.

Only the members of the precinct board [election 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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For challengers being present for counting and tallying, *see* 1-2-23 NMSA 1978.

For watchers being present for counting and tallying, *see* 1-2-29 NMSA 1978.

Giving news media voting results. — Under former law, it was permissible to give the newspapers and radio media the voting results from the precincts or voting divisions at the close of the polls at 7:00 p.m. on election day. 1964 Op. Att'y Gen. No. 64-133.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 225.

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.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 270, § 81 made Laws 2005, ch. 270, § 61 effective July 1, 2005.

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 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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, prohibited the placing of removable media storage devices in the ballot box and permitted the destruction of signature rosters and machine-printed returns only pursuant to Section 1-12-69 NMSA 1978.

The 1991 amendment, effective April 2, 1991, inserted "and the direct recording electronic cartridge for electronic and marksense machines" in two places in Subsection B and made related stylistic changes.

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Recompilations. — Laws 2005, ch. 270, § 73 recompiled former 1-5-11 NMSA 1978 as 1-12-30.1 NMSA 1978 effective July 1, 2005.

The 2005 amendment, effective July 1, 2005, in Subsection A, changed "voter list" to "precinct voter list"; in Subsection B, deleted the former provision that the rosters shall be preserved and disposed of in the manner provided in the Election Code for poll books; in Subsection B, provided that the rosters shall be preserved and disposed of in the manner provided in the 42 U.S. C. 1974; and in Subsection C, deleted the former provision that the punishment for willful destruction, defacement, unauthorized alteration or improper disposition of the rosters shall be the same as for similar treatment of poll books, and provided that whoever willfully destroys, defaces, alters without authorization or improperly disposes of rosters is guilty of a fourth degree felony.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the list of items that are required to be returned to the county clerk along with the locked ballot box; in Subsection A, Paragraph A(1), added "the number on the numbered seal affixed to secure the ballot box or", in Paragraph A(3), after "one", deleted "tally sheet; and", and added "certificate of returns for the polling place", added new Paragraphs A(4) through A(7) and redesignated former Paragraph A(4) as Paragraph A(8); and in Subsection C, after "the presiding judge shall place", added "the number on the numbered seal affixed to secure the ballot box or".

The 2015 amendment, effective July 1, 2015, provided that removable media storage devices are not to be placed in the ballot box but should be returned immediately to the county clerk; in Paragraph (3) of Subsection A, after "sheet", added "and"; in Paragraph (4) of Subsection A, after "Code", deleted "and"; redesignated Paragraph (5) of Subsection A as new Subsection B, and after "storage device", added "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"; and redesignated former Subsection B as Subsection C.

The 2011 amendment, effective July 1, 2011, required that election materials be locked in the ballot box; removed the registration binder and machine cartridges for electronic vote tabulators from the list of election materials; and added removable media storage devices to the list of election materials.

The 2009 amendment, effective June 19, 2009, in Subsection A(6), after "electronic", deleted "or marksense machine" and added "vote tabulator"; and in Subsection B, at the beginning of the sentence, deleted "In the event emergency paper ballots have been voted".

The 1991 amendment, effective April 2, 1991, in Subsection A, substituted "sheet" for "book" in Paragraph (3), added Paragraph (6) and made a related stylistic change.

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For messengers, *see* 1-2-20 NMSA 1978.

Returns recognized when delay beyond control. — Delayed returns are entitled to recognition when forces beyond control of election officials are responsible; such forces need not be acts of God or physical forces. *Valdez v. Herrera*, 1944-NMSC-013, 48 N.M. 45, 145 P.2d 864.

Returns counted in absence of tampering. — Returns delayed beyond the statutory 24 hours due to faulty instructions were counted in absence of tampering with the ballots and pollbooks, the delay being considered beyond control of election officials. *Valdez v. Herrera*, 1944-NMSC-013, 48 N.M. 45, 145 P.2d 864.

Constitutional mandate and principle controlling. — While former provision that election returns be filed with county clerk within 24 hours was probably mandatory, the constitutional mandate that person receiving highest number of votes be elected and the principle that voters must not be denied their rightful voice in government, unless public interest would not be served by preserving validity of election, were controlling. *Valdez v. Herrera*, 1944-NMSC-013, 48 N.M. 45, 145 P.2d 864.

Court will not view challenge in absence of fraud, etc. — In absence of any bad faith, fraud or reasonable opportunity for fraud, supreme court will view unsympathetically any challenge to right of a large number of persons to participate in an election. *Valdez v. Herrera*, 1944-NMSC-013, 48 N.M. 45, 145 P.2d 864.

Court could compel board to recanvass where returns incomplete. — When canvassing board proceeded to canvass votes without waiting for returns from one precinct which were unavoidably 25 hours late, court was authorized to compel board to reconvene, and recanvass the votes, and cancel certificates of election issued, without making holders of certificates parties. *Board of Cnty. Comm'rs v. Chavez*, 1937-NMSC-022, 41 N.M. 300, 67 P.2d 1007.

Custodians so remiss to create doubt. — If custodian of ballots has been so remiss in their preservation as to suggest probability of tampering or to create doubt as to their integrity, then none of the ballots, nor a recount thereof, may be relied on to overcome the official returns. *Madrid v. Sandoval*, 1932-NMSC-052, 36 N.M. 274, 13 P.2d 877.

Mere irregularity does not destroy election validity. — In absence of statute, mere irregularities in manner of conducting election, or making returns thereof, will not destroy validity of such election. *Gallegos v. Miera*, 1923-NMSC-018, 28 N.M. 565, 215 P. 968.

Strict compliance not required for ballot preservation. — Departure from strict letter of statute as to preservation of ballots will not warrant their rejection, in absence of fraud or suspicion of fraud. *Montoya v. Ortiz*, 1918-NMSC-114, 24 N.M. 616, 175 P. 335).

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.

ANNOTATIONS

Clerk to keep office open in primary. — The county clerk's office must be kept open continuously for 24 hours after closing of polls in a primary election. 1942 Op. Att'y Gen. No. 42-4154 (opinion rendered under former law).

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.

ANNOTATIONS

The 1991 amendment, effective April 2, 1991, rewrote this section which read "Upon completion of the certificate of returns, the presiding judge shall deliver upon demand, one copy thereof to a representative of each political party present, bearing the precinct board signatures, the same as on the original. The presiding judge shall also post one signed copy of the certificate in the polling place. Certified copies of the certificate may be taken and used as evidence in all cases the same as the original certificate. The secretary of state shall supply printed forms of such additional certificates."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 400.

29 C.J.S. Elections § 237(4).

1-12-35. Repealed.

History: 1953 Comp., § 3-12-59, enacted by Laws 1969, ch. 240, § 295; 1981, ch. 149, § 6; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-12-35 NMSA 1978, as enacted by Laws 1969, ch. 240, § 295, relating to closing polls and locking voting machines, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

1-12-36. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 149, § 10, repealed 1-12-36 NMSA 1978, as enacted by Laws 1973, ch. 358, § 1, relating to the procedure for opening voting machines, effective June 19, 1981.

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 amendment or other question submitted, and the return shall be signed by each member of the precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 2011 amendment, effective July 1, 2011, eliminated the procedure for canvassing machine-printed returns that are not legible.

Law reviews. — For note, "Why Gunaji v. Macias Matters to Candidates and Voters: Its Impact on New Mexico Election Law", see 33 N.M.L. Rev. 431 (2003).

1-12-37.1. Repealed.

History: Laws 2002, ch. 51, § 1; 2009, ch. 150, § 18; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-12-37.1 NMSA 1978, as enacted by Laws 2002, ch. 51, § 1, relating to remedy for use of incorrect ballots, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

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 [election board].

History: 1953 Comp., § 3-12-62.1, enacted by Laws 1973, ch. 358, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For permissible and impermissible activities of watchers, *see* 1-2-29 NMSA 1978.

1-12-39. Conduct of election; voting machine; completion of locking procedures.

Before adjourning, the precinct board [election board] shall complete the locking procedures on the voting machine.

History: 1953 Comp., § 3-12-63, enacted by Laws 1969, ch. 240, § 299.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

1-12-40. Repealed.

History: 1953 Comp., § 3-12-64, enacted by Laws 1969, ch. 240, § 300; 1973, ch. 358, § 4; 1977, ch. 222, § 44; 1981, ch. 149, § 8; repealed by Laws 2011, ch. 137, § 110.

ANNOTATIONS

Repeals. — Laws 2011, ch. 137, § 110 repealed 1-12-40 NMSA 1978, as enacted by Laws 1969, ch. 240, § 300, relating to voting machines and duration of locking and sealing, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

1-12-41. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 153, § 2, repealed 1-12-41 NMSA 1978, as enacted by Laws, 1977, ch. 222, § 45, relating to the clearing of voting machines, effective June 19, 1981.

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.

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.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, added present Subsection C; redesignated former Subsection C as Subsection D; and in present Subsection D, deleted "or corporation" preceding "who refuses".

Adjustment of working hours allowed. — An employer's adjustment of its customary daily work schedule on election day, so as to release its employees from work more than three hours prior to the closing of the polls, without any wage deduction for the shortened workday, came within the exception provided by Subsection B and did not, therefore, violate Subsection A. *State v. Kenneth P. Thompson Co*., 1985-NMCA-098, 103 N.M. 453, 708 P.2d 1054.

Work day means the normal or usual work day as scheduled by the employer during the course of the year. An employer may not adjust the working hours on election day to bring the working hours of employees within the exemption provision. 1974 Op. Att'y Gen. No. 74-36.

Employer not to designate lunch or other period outside normal hours. — The employer may not designate a period in which the employee may absent himself that includes either the employee's normal lunch period or that includes a period either prior or subsequent to his normal working hours. 1974 Op. Att'y Gen. No. 74-36.

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 [election board].

History: 1953 Comp., § 3-12-77, enacted by Laws 1977, ch. 222, § 46; 2009, ch. 150, § 19; 2011, ch. 137, § 98.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For care and custody of voting machines, *see* 1-9-12 NMSA 1978.

The 2011 amendment, effective July 1, 2011, eliminated the requirement that counties appropriate funds for maintaining electronic vote tabulators.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "If any", deleted "voting machine" and added "electronic vote tabulator", after "recorded by the", deleted "machine" and added "electronic vote tabulator"; and after "or another", deleted "machine" and added "electronic vote tabulator"; in Subsection B, after "substituting", deleted "voting machines" and added "electronic vote tabulators"; in Subsection C, after "If a disabled", deleted "voting machines" and added "electronic vote tabulators"; after "there are no other", deleted "voting machines" and added "electronic vote tabulator"; after "judge shall order", deleted "emergency paper" and added "marked" and after "ballots to be", deleted "substituted and used" and added the remainder of the sentence; added Subsection D; and in Subsection E, after "provide additional", deleted "emergency paper".

Booth necessary for paper ballots. — At least one voting booth should be supplied to take care of the voting that may be necessary for voting by paper ballots at voting machine polling places. 1954 Op. Att'y Gen. No. 54-5920 (opinion rendered under former law).

1-12-44. Recompiled.

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 as § 1-10-12 NMSA 1978 by Laws 2009, ch. 150, § 10.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 150, § 10 recompiled former 1-12-44 NMSA 1978, relating to emergency situations, emergency paper ballots and general requirements, as 1-10-12 NMSA 1978, effective June 19, 2009.

1-12-45. Repealed.

History: 1953 Comp., § 3-12-79, enacted by Laws 1977, ch. 222, § 48; 1979, ch. 57, § 2; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-45 NMSA 1978, as enacted by Laws 1977, ch. 222, § 48, relating to emergency situations, emergency paper ballots, form for primary, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

1-12-45.1. Repealed.

History: 1978 Comp., § 1-12-45.1, enacted by Laws 1991, ch. 105, § 35; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-45.1 NMSA 1978, as enacted by Laws 1991, ch. 105, § 35, relating to emergency situations, counties using marksense ballots,

effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

1-12-46. Repealed.

History: 1953 Comp., § 3-12-80, enacted by Laws 1977, ch. 222, § 49; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-46 NMSA 1978, as enacted by Laws 1977, ch. 222, § 49, relating to emergency situations, emergency paper ballots, form for general election, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

1-12-47. Recompiled.

History: 1953 Comp., § 3-12-81, enacted by Laws 1977, ch. 222, § 50; recompiled by Laws 2009, ch. 150, § 11.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 150, § 11 recompiled former 1-12-47 NMSA 1978, relating to emergency situations, emergency paper ballots and write-in candidates, as 1-10-13 NMSA 1978, effective June 19, 2009.

1-12-48. Repealed.

History: 1953 Comp., § 3-12-82, enacted by Laws 1977, ch. 222, § 51; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-48 NMSA 1978, as enacted by Laws 1977, ch. 222, § 51, relating to emergency situations, emergency paper ballots and number supplied, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

1-12-49. Recompiled.

History: 1953 Comp., § 3-12-83, enacted by Laws 1977, ch. 222, § 52; recompiled by Laws 2009, ch. 150, § 12.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 150, § 12 recompiled former 1-12-49 NMSA 1978, relating to emergency situations and election supplies, as 1-10-14 NMSA 1978, effective June 9, 2009.

1-12-50. Repealed.

History: 1953 Comp., § 3-12-84, enacted by Laws 1977, ch. 222, § 53; 1993, ch. 314, § 56; 1993, ch. 316, § 56; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-50 NMSA 1978, as enacted by Laws 1977, ch. 222, § 53, relating to emergency situations, emergency paper ballots, one to a voter, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

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 [election board] or at an alternate voting location. No person other than a member of the precinct board [election board] or officer authorized by law shall deliver a paper ballot to any voter.

History: 1953 Comp., § 3-12-85, enacted by Laws 1977, ch. 222, § 54; 2009, ch. 150, § 20; 2011, ch. 137, § 99.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 2011 amendment, effective July 1, 2011, eliminated the restriction that prohibited a voter from receiving a paper ballot from a polling place where the voter is not authorized to vote.

The 2009 amendment, effective June 19, 2009, at the beginning of the sentence, added "Except for absentee ballots and"; after "shall not receive", deleted "an emergency"; after "authorized to vote", added "or at an alternate early voting location"; and after "law shall deliver", deleted "an emergency".

1-12-52. Repealed.

History: 1953 Comp., § 3-12-86, enacted by Laws 1977, ch. 222, § 55; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-52 NMSA 1978, as enacted by Laws 1977, ch. 222, § 55, relating to emergency situations and occupation of voting machines when used to

mark emergency paper ballots, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

1-12-53. Repealed.

History: 1953 Comp., § 3-12-87, enacted by Laws 1977, ch. 222, § 56; 1979, ch. 57, § 3; 2005, ch. 270, § 74; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-53 NMSA 1978, as enacted by Laws 1977, ch. 222, § 56, relating to emergency situations; voters; emergency paper ballots; general election and marking, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

1-12-54. Repealed.

History: 1953 Comp., § 3-12-88, enacted by Laws 1977, ch. 222, § 57; 1979, ch. 57, § 4; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-54 NMSA 1978, as enacted by Laws 1977, ch. 222, § 57, relating to emergency situations, voting on constitutional amendments and other questions by emergency paper ballot, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, deleted former language which required ballots to be marked with a cross or a check and defined each term.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 341 et seq.

29 C.J.S. Elections §§ 176 to 178.

1-12-56. Repealed.

History: 1953 Comp., § 3-12-90, enacted by Laws 1977, ch. 222, § 59; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-56 NMSA 1978, as enacted by Laws 1977, ch. 222, § 59, relating to emergency situations, emergency paper ballots and identification marks, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, in the introductory clause, after "polling place", deleted "alternate voting location" and in Subsection A, after "any person in", added "the polling place in".

The 2009 amendment, effective June 19, 2009, after "After marking and preparing", deleted "his emergency"; after "paper ballot", added "in a polling place or alternate voting location"; deleted former Subsection A, which require a voter to fold the ballot so that the number on the ballot appears on the outside; in Subsection B, at the beginning of the sentence, deleted "deliver it to the presiding judge who shall then detach the visible number on the ballot, hand it to the voter, then deposit the emergency" and added "feed the"; and after "paper ballot", deleted "in the ballot box in the presence of the voter" and added the remainder of the sentence.

Power of election judges to reject ballots. — After ballots had been tendered by the voter and deposited in the ballot box, the quasi-judicial function to reject ballots given election judges by Comp. Laws 1897, §§ 1665, 1668 became exhausted, and thereafter their powers as to such ballots became purely ministerial. *Territory of New Mexico ex rel. Lester v. Suddith*, 1910-NMSC-068, 15 N.M. 728, 110 P. 1038 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 328, 337.

29 C.J.S. Elections §§ 206, 207.

1-12-58. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-12-58 NMSA 1978 as 1-20-8.2 NMSA 1978 effective July 1, 2011.

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.

History: 1953 Comp., § 3-12-93, enacted by Laws 1977, ch. 222, § 62; 2009, ch. 150, § 24; 2019, ch. 212, § 116.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, authorized voters to disclose information on their ballot, and prohibited the disclosure of information on a ballot without the voter’s consent; added a new Subsection A; in Subsection B, after "paper ballot", added "or coerce a voter to reveal any of the information listed in Subsection A of this section."; and added Subsections C and D.

The 2009 amendment, effective June 19, 2009, deleted the first sentence "Only the presiding judge shall receive from any voter an emergency paper ballot prepared by such voter"; after "No person shall", deleted "examine or"; and after "voter to show", deleted "his emergency" and added the remainder of the sentence.

1-12-60. Repealed.

History: 1953 Comp., § 3-12-94, enacted by Laws 1977, ch. 222, § 63; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-60 NMSA 1978, as enacted by Laws 1977, ch. 222, § 63, relating to emergency situations, emergency paper ballots and removal of ballot numbers, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, after "remove any", deleted "emergency" and after "polling place", deleted "before the completion of the ballot count", and added the remainder of the sentence.

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A after "erroneously prepares", deleted "his emergency" and added "the voter's"; after "erroneously prepared", deleted "emergency" and after "receive a new", deleted "emergency"; in Subsection B, after "new" in two places, deleted "emergency"; in Subsection C, after "election clerks shall", deleted "cross out the number of the spoiled or erroneously prepared emergency paper ballot" and added "make a record"; and after "registered voters", deleted "with a single line and shall insert in lieu thereof the number of the new emergency paper" and added the remainder of the sentence; and in Subsection D, after "The", deleted "presiding judge" and added "voter" and after "prepared", deleted "emergency".

The 1991 amendment, effective April 2, 1991, in Subsection C, inserted "and checklist of registered voters" following "roster" and deleted a second sentence which read "In similar manner, an election judge shall correct the voter's original affidavit of registration" and made a minor stylistic change in Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 204.

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, after "Immediately upon", added "the time of"; after "closing of the polls", deleted "and before any ballot box is unlocked"; and after "unused", deleted "emergency".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Treatment of excess or illegal ballots when it is not known for which candidate or on which side of a proposition they were cast, 155 A.L.R. 677.

1-12-64. Repealed.

History: 1953 Comp., § 3-12-98, enacted by Laws 1977, ch. 222, § 67; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-12-64 NMSA 1978, as enacted by Laws 1977, ch. 222, § 67, relating to emergency situations, the county clerk and destruction of unused emergency paper ballots, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

1-12-65. 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 sealed with either a numbered seal or a locking device and transmitted directly to the county clerk for machine-tabulation or hand-tallying of the ballots.

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 sealed with either a numbered seal or a locking device and 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.

D. If the county clerk receives a sealed envelope pursuant to Subsection A or B of this section and the absent voter election board has not adjourned, the sealed envelope shall be logged and transmitted to the absent voter election board to be opened and tallied immediately. If the sealed envelope is received by the county clerk after the absent voter election board has adjourned, the sealed envelope shall be logged and transmitted to be opened and tallied by an election board appointed to assist in the preparation of the county canvass report.

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; 2023, ch. 39, § 65.

ANNOTATIONS

Cross references. — For marking emergency paper ballots, *see* 1-12-53 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised certain counting and tallying procedures; in the section heading, deleted "Emergency situations"; in Subsections A and B, after "but shall instead be", added "sealed with either a numbered seal or a locking device and; and added Subsection D. effective June 16, 2023, revised certain counting and tallying procedures; in the section heading, deleted "Emergency situations"; in Subsections A and B, after "but shall instead be", added "sealed with either a numbered seal or a locking device and; and added Subsection D.

The 2019 amendment, effective April 3, 2019, revised the procedure for counting paper ballots when the paper ballots were not tabulated by the electronic vote tabulator; in Subsection A, after "shall count", deleted "and tally", after the next occurrence of "the", added "number of", after "electronic vote tabulator", deleted "and certify the results of the election on the form on the tally sheet setting opposite the name of each candidate in figures the total number of votes cast for the candidate, and they shall set forth in the spaces provided therefor the total number of votes cast for and against each constitutional amendment and other questions. Paper ballots not marked as required by the Election Code shall not be counted. The precinct board shall sign the tally sheet certificate" and added "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."; added a new Subsection B and redesignated former Subsection B as Subsection C; and in Subsection C, deleted "counting and", and after "paper ballots", deleted "in an emergency situation" and added "that were not tabulated by the electronic vote tabulator at the polling place and the counting of ballots with write-in votes".

The 2009 amendment, effective June 19, 2009, in Subsection A, after "tally the", deleted "emergency"; after "paper ballots", added "that were not tabulated by the electronic vote

tabulator"; and at the beginning of the second sentence, deleted "Emergency"; and in Subsection B, after "tallying of", deleted "emergency"; and after "paper ballots", added "in emergency situations".

The 1991 amendment, effective April 2, 1991, in Subsection A, in the first sentence, substituted "on the tally sheet" for "in the tally books", deleted "words and" following "candidate in" and substituted "and against" for "or against" near the end and, in the third sentence, substituted "sheet" for "books".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 385 et seq.

Excess or illegal ballots, treatment of, when it is not known for which candidate or upon which side of a proposition they were cast, 155 A.L.R. 677.

29 C.J.S. Elections §§ 221 to 240.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, replaced "tally sheet" with "certificate of return"; in Subsection A, after "After", deleted "the counting and tallying of paper ballots are completed and after", and after "one copy of the", deleted "tally sheet" and added "certificate of returns in that polling place"; in Subsection B, after "original", deleted "tally sheet" and added "certificate of returns in that polling place", and after "roster and the", deleted "tally sheet" and added "certificate of returns"; and in Subsection C, after "registered voters,", added "certificate of returns".

The 2011 amendment, effective July 1, 2011, permitted voter records to be destroyed only pursuant to Section 1-12-69 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "tallying of", deleted "emergency"; after "judges shall place", deleted "one copy of the signature roster" and added "the checklist of voters"; and in Subsection B, after "The", deleted "remaining copy of the".

The 1991 amendment, effective April 2, 1991, inserted "checklists of registered voters" in Subsection C.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, replaced "precinct board" with "election board"; and deleted "the paper ballots are tallied, the precinct" and added "all certificates have been executed, the election", and after "bundles of", deleted "counted" and added "tabulated".

The 2009 amendment, effective June 19, 2009, after "After the" deleted "emergency"; after "board shall place", deleted "the following in the ballot box:"; after "bundles of counted" deleted "emergency"; deleted former Subsection A(2), which required envelopes containing spoiled ballots to be placed in the ballot box; deleted former Subsection A(3), which required envelopes containing rejected ballots to be placed in the ballot box; and in former Subsection B, at the beginning of the sentence, deleted "After the required items have been placed".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 234.

1-12-68. Paper ballots; county canvass; when recount is required.

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

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

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

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

E. The precinct board [election 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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For contests and recounts, *see* 1-14-1 NMSA 1978 et seq.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "recount of the", deleted "emergency"; in Subsection B, after "recount of the", deleted "emergency"; and in Subsection F, after "ballot box the", deleted "emergency".

1-12-69. Disposition of paper ballots and records requisite to voting.

A. Paper ballots marked by voters and records requisite to voting in any election shall be retained and preserved for the greater of:

(1) twenty-two months from the date of the election for any election in which a federal office appears on the ballot;

(2) ten months from the date of the election for all other elections; or

(3) four months following resolution of a contest or other judicial inquiry, including all appeals, for any election, precinct or polling place that is the subject of the contest or other judicial inquiry.

B. Following the retention period, paper ballots marked by voters and records requisite to voting retained and preserved in the county may be destroyed at a time and in a manner as determined by the county clerk; provided that the county clerk shall use one of the destruction methods approved by the state records administrator for destruction of public records. Any interested person shall be permitted to be present during the destruction of paper ballots marked by a voter and records requisite to voting by the county clerk. At least seven days prior to a destruction, the clerk shall post on the county website a notice of destruction of paper ballots and records requisite to voting and shall provide notice to the county chair of each political party participating in that election. The notice shall include information regarding the

election that is the subject of the records destruction and the date, time and place where marked ballots and records requisite to voting will be destroyed.

C. During the retention period, the county clerk may determine that paper ballots marked by voters and physical records requisite to voting from an election should be retained and preserved by the state records administrator. The state records administrator shall receive for storage paper ballots marked by voters and physical records requisite to voting and, following the retention periods required by this section, may destroy the ballots and physical records pursuant to the procedures used by the state records administrator for destruction of public records following a retention period. The state records administrator may enter into a memorandum of understanding with the secretary of state to cover the costs of storage through the election fund. The county clerk shall post on the county website a notice at least seven days prior to sending ballots and physical records requisite to voting to the state records administrator.

D. Paper ballots marked by voters, their digitized equivalents and records requisite to voting are exempt from third-party inspection except as otherwise provided in the Election Code until the later of sixty days following adjournment of the state or county canvassing board for that election or sixty days following any recount, contest or other judicial inquiry for any election, precinct or polling place that is the subject of the recount, contest or judicial inquiry. Thereafter, during the retention period and prior to destruction of the ballots or records, a third-party inspection not otherwise provided for in the Election Code shall be conducted for good cause shown and upon order of the district court. When a third-party inspection is ordered, a county clerk, the clerk's agent, the state records administrator or the state records administrator's agent shall be present during the inspection to ensure that all ballots and records are properly catalogued and returned in proper order. An inspection of paper ballots marked by voters, their digitized equivalents or records requisite 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; 1978 Comp., § 1-12-69, repealed and reenacted by Laws 2023, ch. 39, § 66.

ANNOTATIONS

Repeals and reenactments. — Laws 2023, ch. 39, § 66 repealed former 1-12-69 NMSA 1978 and enacted a new section, effective June 16, 2023.

The 2015 amendment, effective July 1, 2015, required the county clerk to hold paper ballots for forty-five days following a recount, judicial inquiry or inspection of contents, provided that paper ballots shall be destroyed using a destruction method approved by the state records administrator for destruction of public records, and provided that paper ballots marked by voters and records related to voting are exempt from the Inspection of Public Records Act for a certain time; in Subsection C, after "precincts intact", deleted "subject to order of the district court or other authority having jurisdiction of the contest or inspection", and added "until forty-five days following the recount, judicial inquiry or inspection of contents is completed, whichever is later"; in Subsection D, after "destroyed", deleted "pursuant to rules promulgated" and added "using a destruction method approved", and after "state records", deleted "center" and added "administrator"; in Subsection E, after the first occurrence of "state records", deleted "center"

and added "administrator", after the second occurrence of "state records" deleted "center" and added "administrator"; and added Subsection G.

The 2008 amendment, effective February 29, 2008, deleted former Subsection A, which provided for destruction of ballots where there was no notice of contest or judicial inquiry; added Subsections A, B, D and E; and relettered subsections accordingly.

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.

ANNOTATIONS

Emergency clauses. — Laws 2007, ch. 336, § 21 contained an emergency clause and was approved April 2, 2007.

1-12-71. Repealed.

History: 1953 Comp., § 3-4-8.2, enacted by Laws 1977, ch. 222, § 7; 1978 Comp., § 1-4-10, recompiled as § 1-12-71 by Laws 2011, ch. 137, § 109; 2015, ch. 145, § 67; 2018, ch. 79, § 13; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-12-71 NMSA 1978, as enacted by Laws 1977, ch. 222, § 7, relating to restriction on local government elections, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-12-72. Repealed.

History: 1978 Comp., § 1-12-72, enacted by Laws 2020 (1st S.S.), ch. 2, § 2; repealed by Laws 2020 (1st S.S.), ch. 2, § 3.

ANNOTATIONS

Repeals. — Laws 2020 (1st S.S.), ch. 2, § 3 repealed 1-12-72 NMSA 1978, relating to conduct of 2020 general election, special provisions and contingencies, effective December 31, 2020. For provisions of former section, *see* Laws 2020 (1st S.S.), ch. 2, § 2.

ARTICLE 13
Post-Election Duties

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.

C. The county canvass report prepared by the county clerk and approved by the county canvassing board shall consist of:

(1) the certificate of canvass to be signed by the county clerk and the county canvassing board members;

(2) a report of the final vote counts for each candidate contest and ballot question voted on by voters of the county separated by mailed ballots, early voting and election day voting;

(3) a report of the total ballots requested, returned, accepted and rejected from uniformed-service voters or overseas voters; and

(4) a report of all provisional ballots accepted and rejected.

D. Immediately after the meeting of the county canvassing board, the county clerk shall transmit a copy of the county canvass report, along with any hand tally sheets, to the secretary of state.

History: 1953 Comp., § 3-13-1, enacted by Laws 1969, ch. 240, § 303; 2019, ch. 212, § 120; 2023, ch. 39, § 67.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided the required contents of a county canvass report, and required the county clerk to transmit a copy of the county canvass report to the secretary of state immediately after the meeting of the county canvassing board; and added Subsections C and D.

Temporary provisions. — Laws 2023, ch. 39, § 97 provided that each election day polling place established in the 2021 polling place resolution for each county or any election day polling

place established by any subsequent amendment to such a resolution shall operate as a voter convenience center for all statewide elections in calendar year 2023.

The 2019 amendment, effective April 3, 2019, added Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 395.

Injunction against canvassing of votes and declaring result of election, 1 A.L.R.2d 588.

29 C.J.S. Elections § 236.

1-13-2. Post-election duties; missing returns.

A. If at the time the county canvassing board meets it appears that a precinct board [election 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 [election 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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For returns defined, *see* 1-1-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections §§ 229, 232.

1-13-3. Repealed.

History: 1953 Comp., § 3-13-3, enacted by Laws 1969, ch. 240, § 305; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-13-3 NMSA 1978, as enacted by Laws 1969, ch. 240, § 305, relating to post-election duties, county canvass, commencement, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-13-4. Post-election duties; county canvass; method.

The county clerk shall:

A. appoint an election board to conduct a machine-tabulation or hand-tally if the county clerk has received and logged any:

(1) paper ballots not previously tabulated;

(2) absentee ballots delivered to an election board not previously tabulated;

(3) provisional paper ballots that have been qualified and contain votes that are to be counted; or

(4) ballots with write-in votes not previously counted;

B. 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;

C. present the report of the canvass to the county canvassing board for the board's consideration and approval; and

D. provide the county canvassing board a summary report of the ballots tallied by the election board pursuant to Subsection A of this section and deliver directly to the secretary of state a cumulative report to be used in the event of a recount.

History: 1953 Comp., § 3-13-4, enacted by Laws 1969, ch. 240, § 306; 1977, ch. 222, § 74; 2019, ch. 212, § 121; 2023, ch. 39, § 68.

ANNOTATIONS

Cross references. — For ballots cast by unregistered or otherwise unqualified electors not to be canvassed, *see* 1-4-1 NMSA 1978.

For election return certificates, *see* 1-12-34 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised the county clerk's post-election duties, and required that all ballots be tabulated by an election board; added a new Subsection A and redesignated former Subsections A and B as Subsections B and C, respectively; and added Subsection D.

The 2019 amendment, effective April 3, 2019, provided additional post-election duties for the county clerk; in the introductory clause, after "county", deleted "canvassing board" and added "clerk"; in Subsection A, added "prepare the report of the"; and added Subsection B.

Board may not examine actual ballots. — The county canvassing board is limited to examining only the "election returns." This does not include the actual ballots. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Board may not correct errors. — The duty of the county canvassing board is limited to finding errors, not correcting them. If an error is found, the precinct board and the secretary of state must be notified. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

"May" is not infrequently used interchangeably with "must," and where 1941 Comp. § 56-349(6) provided that original affidavits of registration, constituting the official registration list and record in the office of the county clerk may be considered a part of the official election returns, and where the law required the board to canvass all of the returns of an election, the board had an absolute obligation to consider the certified list of registered electors. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157.

Court not bound by board's certificate excluding unregistered votes. — Since it appeared affirmatively that the total number of unregistered votes cast was insufficient to alter result of the race, the district court was not bound by county canvassing board's certificate of election upon finding, correctly, that certificate improperly excluded returns from a precinct in which unregistered votes were allegedly cast. *Miera v. Martinez*, 1944-NMSC-005, 48 N.M. 30, 145 P.2d 487.

Effect of irregularity in registration. — Strong case is presented for holding that irregularity in registration does not affect status of voters as being duly registered where trial court finds on substantial evidence that person voting and person registered are one and the same. *Miera v. Martinez*, 1944-NMSC-005, 48 N.M. 30, 145 P.2d 487.

Mere irregularity does not void election. — Honest mistake or mere omission on part of election officers, or nonfraudulent irregularities, even though gross, will not void election unless they affect result, or render it uncertain. *Orchard v. Board of Comm'rs*, 1938-NMSC-011, 42 N.M. 172, 76 P.2d 41.

Order requiring board to cancel certificates proper where returns incomplete. — In proceeding to compel county canvassing board to canvass votes delivered late, order requiring board to cancel certificates of election previously issued was proper, although holders of previous certificates were not made parties to the proceeding. *Board of Cnty. Comm'rs v. Chavez*, 1937-NMSC-022, 41 N.M. 300, 67 P.2d 1007.

Canvassing officers not to determine legality of votes. — Section 2035 of Code 1915, providing that probate judge, with a justice of peace (now magistrate), should publicly examine vote polled for each candidate did not confer on canvassing officers the power to determine illegality of votes and reject them on that ground, because that was covered by § 55 of the same act, Code 1915, § 2069 (repealed by Laws 1927, ch. 41, § 722). *Bull v. Southwick*, 1882-NMSC-015, 2 N.M. 321.

Officials not entitled to compensation. — Since an omission to tally the results of a primary election was made by the election officials, the officials were not entitled to compensation as the provisions of the statute are mandatory. 1952 Op. Att'y Gen. No. 52-5563.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 237(2).

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 [election 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 [election board] served.

C. After issuing the necessary summonses, the county canvassing board shall proceed with the canvass of all correct election returns.

History: 1953 Comp., § 3-13-5, enacted by Laws 1969, ch. 240, § 307; 1977, ch. 222, § 75.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For mileage allowed sheriff for service of process, *see* 4-41-19 to 4-41-22 NMSA 1978.

For service of summons, *see* Rule 1-004 NMRA.

County canvassing board may not examine actual ballots. — The county canvassing board is limited to examining only the "election returns." This does not include the actual ballots. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Canvassing board may not correct errors. — The duty of the county canvassing board is limited to finding errors, not correcting them. If an error is found, the precinct board and the

secretary of state must be notified. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

When trial court may disregard county canvasses. — If county canvasses are conducted in contravention of the Election Code, the trial court is correct in disregarding the county canvasses and relying on the precinct returns. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 396.

Power of election officers to withdraw or change their returns, 168 A.L.R. 855.

Power to enjoin canvassing votes and declaring result of election, 1 A.L.R.2d 588.

29 C.J.S. Elections § 237(1).

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Duty of board limited to finding errors. — The duty of the county canvassing board is limited to finding errors, not correcting them. If an error is found, the precinct board and the secretary of state must be notified. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 398.

29 C.J.S. Elections § 238.

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.

ANNOTATIONS

Cross references. — For application for recount, *see* 1-14-14 NMSA 1978.

For recounts, *see* 1-14-14 to 1-14-21 NMSA 1978.

Compiler's notes. — Several of the following notes are from cases decided under former Election Code provisions.

Court to correct election official's error in counting ballot. — The supreme court can correct any error of law appearing on the face of a ballot which has been made by election officials in counting a ballot for a candidate which is not a vote for that candidate. *Turner v. Judah*, 1955-NMSC-058, 59 N.M. 470, 286 P.2d 317.

Court to decline jurisdiction when number of unregistered votes cannot affect result. — District court should decline jurisdiction, leaving vote of a contested precinct to be included in official county canvass, when total number of unregistered votes cast cannot possibly affect the result. *Miera v. Martinez*, 1944-NMSC-005, 48 N.M. 30, 145 P.2d 487.

Applicability to primary elections. — Former provision dealing with recount upon finding that ballots were cast by unregistered persons was applicable to primary elections. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 389, 391, 399.

29 C.J.S. Elections §§ 237(3), 239.

1-13-8. Post-election duties; county canvass; search for missing returns.

If it is necessary to open a ballot box on election night through the adjournment of the state canvass to ascertain if missing election returns are enclosed in the ballot box, the ballot box

shall be opened in the presence of the presiding judge and two election judges of an election board that meets the requirements of Subsection B of Section 1-2-12 NMSA 1978 by the county clerk or a deputy clerk designated by the county clerk. The county clerk or deputy clerk may remove the missing returns necessary to canvass the election. The presiding judge and election judges shall document the search for missing returns using a form prescribed by the secretary of state.

History: 1953 Comp., § 3-13-8, enacted by Laws 1969, ch. 240, § 310; 1977, ch. 222, § 77; 2011, ch. 137, § 101; 2023, ch. 39, § 69.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided that if a ballot box is required to be opened at any time during the county or state canvass process, it shall be done in the presence of a presiding judge and two election judges or a deputy clerk; after "a ballot box on election night", added "through the adjournment of the state canvass", after "shall be opened", added "in the presence of the presiding judge and two election judges of an election board that meets the requirements of Subsection B of Section 1-2-12 NMSA 1978", after "by the county clerk", deleted "and the district judge", after the next occurrence of "or", deleted "someone" and added "a deputy clerk", after "designated by the", deleted "district judge. In the presence of the district judge or the designated representative of the district judge" and added "county clerk", after "The county clerk", added "or deputy clerk", and after "necessary to canvass the election", deleted "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" and added "The presiding judge and election judges shall document the search for missing returns using a form prescribed by the secretary of state.".

The 2011 amendment, effective July 1, 2011, made this section applicable only to opening the ballot box on election night; eliminated the county canvassing board from the list of persons who must be present when the ballot box is opened; and permitted the county clerk to remove missing ballots from the ballot box only in the presence of the district judge or the district judge's designated representative.

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 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.

ANNOTATIONS

Cross references. — For recounts and rechecks, *see* 1-14-14 to 1-14-21 NMSA 1978.

For unlawful opening of voting machine, *see* 1-20-5 NMSA 1978.

The 2015 amendment, effective July 1, 2015, amended the procedures for a voting machine recheck upon written request for a recheck; in Subsection A, after "the results appearing", deleted "and registered", after "on the", deleted "counter dials" and added "alphanumeric printout of the contest, candidates and vote totals"; deleted Subsection B and redesignated the succeeding subsection accordingly.

District judge serves as aid to canvassing board in canvass of election returns. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 180; 26 Am. Jur. 2d Elections § 396.

Treatment of excess or illegal ballots when it is not known for which candidate or on which side of a proposition they were cast, 155 A.L.R. 677.

29 C.J.S. Elections §§ 38, 237(1), 237(3).

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 1-13-9 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 state canvassing board shall determine the estimated actual cost of a recheck per voting machine no later than March 15 of even-numbered years.

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; 2023, ch. 39, § 70.

ANNOTATIONS

Cross references. — For cost of recount proceedings, *see* 1-14-15 NMSA 1978.

The 2023 amendment, effective June 16, 2023, required the state canvassing board to determine the estimated actual cost of a voting machine recheck; in Subsection A, after "defray the cost of the recheck", deleted "The deposit or the surety bond shall be in the amount of ten dollars ($10.00) for each machine to be rechecked." and added "The state canvassing board shall determine the estimated actual cost of a recheck per voting machine no later than March 15 of even-numbered years.".

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.

ANNOTATIONS

Cross references. — For constitutional provision as to tie vote, *see* N.M. Const., art. V, § 2.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 411, 429.

29 C.J.S. Elections § 244.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, removed a provision prohibiting the county canvassing board from adjourning until it has canvassed all the returns of the election; deleted Subsection A and Subsection designation "B."; and after "compel it to", added "approve the report of the county", and after "canvass", deleted "declare".

Cross references. — For mandamus to obtain recount, *see* 1-14-21 NMSA 1978.

Mandamus properly refused when necessary recount observers could not attend. — Since county clerk and district judge were necessary observers at recount, a writ of mandamus to compel recount was properly refused when neither district judge nor county clerk could attend. *Chavez v. Baca*, 1943-NMSC-052, 47 N.M. 471, 144 P.2d 175.

Board may cancel certificate in canvassing late votes. — As additional relief, the county canvassing board may order cancellation of certificates of election, in proceeding to compel canvass of votes delivered late. *Board of Cnty. Comm'rs v. Chavez*, 1937-NMSC-022, 41 N.M. 300, 67 P.2d 1007.

Mandamus proper remedy to enforce duty to count ballots. — When judges in a municipal election showed, in making their return under Comp. Laws 1897, §§ 1687 and 1689, that a certain number of ballots had been cast which they had failed to count for any candidate, mandamus, and not quo warranto, was the proper remedy to enforce compliance with the duty

to count and make returns of such ballots. *Territory of New Mexico ex rel. Lester v. Suddith*, 1910-NMSC-068, 15 N.M. 728, 110 P. 1038.

Court presumes certificate authorized instrument. — In mandamus proceedings to compel county commissioners to canvass an election certificate, the appellate court will presume that trial court found a copy of certificate, which it admitted in evidence, to have been an instrument authorized by Comp. Laws 1884, § 1196, *Sloan v. Territory ex rel. Read*, 1891-NMSC-022, 6 N.M. 80, 27 P. 416.

Commissioners not to review legality of votes. — Under former statute which provided that commissioners should determine results of election from returns of precinct judges and declare the result, it was their ministerial duty to count all votes passed by the judges and declare result from such returns alone, without sitting as a court of review passing upon legality of individual votes. *Bull v. Southwick*, 1882-NMSC-015, 2 N.M. 321.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 402, 403.

Failure to comply with statutory provisions relating to the form or manner in which election returns from voting districts or precincts are to be made, 106 A.L.R. 398.

Determination of canvassing boards or election officials as regards counting or exclusion of ballots as subject of review by mandamus, 107 A.L.R. 618.

Issue of mandamus in exercise of power of superintending control, 112 A.L.R. 1351.

Appellate court's discretion to refuse exercise of its original jurisdiction to issue writs of mandamus, 165 A.L.R. 1431.

29 C.J.S. Elections § 237(5).

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 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.

ANNOTATIONS

Cross references. — For county canvassing board certifying votes for officers elected by more than one county, *see* N.M. Const., art. XX, § 7.

The 2019 amendment, effective April 3, 2019, provided additional post-election duties for the county canvassing board; in Subsection A, after each occurrence of "shall", deleted "complete" and added "meet to approve the report of", and after each occurrence of "declare the results", deleted "within" and added "no sooner than six days and no later than"; added a new Subsection B and redesignated former Subsection B as Subsection C; in Subsection C, after "primary or general", deleted "or district special", after the next occurrence of "the", deleted "county canvassing board" and added "secretary of state", after "county canvassing board", added "immediately after completion of the canvass", after "declare the results", deleted "immediately after completion of the canvass", and after "affecting only", added "precincts within"; and deleted former Subsection C.

The 2015 amendment, effective July 1, 2015, required certain counties to complete the canvass of the returns and declare the results within thirteen days from the date of the election; in Subsection A, after "from the date of the election.", added the last sentence of the subsection; and in Subsection C, after "deliver to the county", deleted "chairman" and added "chair".

Board's certificate not binding on court when returns excluded. — Certificate of county canvassing board that contestee had been duly elected did not bind district court when certificate improperly excluded returns from a questioned precinct because unregistered persons supposedly voted and it affirmatively appeared that number of unregistered votes cast was not enough to alter the election result. *Miera v. Martinez*, 1944-NMSC-005, 48 N.M. 30, 145 P.2d 487 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 400, 401.

29 C.J.S. Elections § 240.

1-13-14. Post-election duties; opening the ballot box.

Once the ballot box has been locked by the precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For unlawful opening of ballot box, *see* 1-20-4 NMSA 1978.

The 2015 amendment, effective July 1, 2015, required a court order to open a ballot box once the ballot box has been locked by the precinct board after its first count and tally; and after "contents except", deleted "as" and added "by court order or as otherwise".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 226.

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.

History: 1953 Comp., § 3-13-16, enacted by Laws 1969, ch. 240, § 318; 1977, ch. 222, § 79; 2019, ch. 212, § 124.

ANNOTATIONS

Cross references. — For membership and duties of the state canvassing board, *see* N.M. Const., art. V, § 2.

For canvassing returns for officers elected by more than one county, *see* N.M. Const., art. XX, § 7.

The 2019 amendment, effective April 3, 2019, limited the section's application to statewide elections, and required the state canvassing board to meet after each statewide election or special state election to approve the report of the canvass; in the section heading, added "statewide election"; in Subsection A, after "each", added "statewide", and after "proceed to", added "approve the report of the"; and in Subsection B, after "shall also", added "meet in the state capitol on the third Tuesday after each statewide election or special state election to approve the report of the".

Enforcement not duty of board. — Enforcement of mandate against voting by unregistered persons and counting of ballots of such persons was not the duty of state canvassing board. *Chavez v. Hockenhull*, 1934-NMSC-093, 39 N.M. 79, 39 P.2d 1027 (decided under former law).

Applicability to land grant board of trustees. — Provisions relating to state canvassing board did not apply to election for board of trustees of land grant. *Montoya v. Gurule*, 1934-NMSC-092, 39 N.M. 42, 38 P.2d 1118 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 392 et seq.

29 C.J.S. Elections §§ 235 to 240.

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.

ANNOTATIONS

Cross references. — For ballots cast by unregistered or otherwise unqualified electors not to be canvassed, *see* 1-4-1 NMSA 1978.

The 2019 amendment, effective April 3, 2019, provided additional post-election duties for the secretary of state; in the section heading, deleted "state canvass method" and added "secretary of state"; in Subsection A, added the last sentence; in Subsection B, after "Upon", deleted "the completion" and added "approval of the report", after "general", deleted "or district special", and after "election, the", deleted "state canvassing board" and added "secretary of state"; and deleted former Subsection C and added a new Subsection C.

Since not possible to determine for whom unregistered persons had voted, state canvassing board acted correctly in taking position that it could not throw out all of the votes of six precincts when doing so could not change result of election. *Reese v. Dempsey*, 1944-NMSC-057, 48 N.M. 485, 153 P.2d 127.

Certificate of election furnishes prima facie right to office only, and in a canvass of returns no one is foreclosed thereby if any other statutory remedy, including recount or contest remains available. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157.

Party affiliation to be included in index of registered electors. — In providing for an index of registered electors, legislature intended not merely that state canvassing board be provided with names and addresses of registrants, but that their party affiliation also be included. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157.

Board may initiate mandamus for indexes. — State canvassing board could initiate mandamus proceedings to aid in obtaining certified lists or indexes of voters from county clerks. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157.

Mandamus for board to procure indexes not too broad. — An alternative writ of mandamus which commanded state canvassing board to procure from county clerks of designated counties indexes of registered voters, showing their names, addresses and party affiliations, duly certified, was not too broad. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157.

State board may deduct unregistered votes though it arrived at ultimate fact of right to vote through findings of a judicial officer. *Reese v. Dempsey*, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157.

Certified copies of registration lists not part of returns. — Under former statute, certified copies of registration lists filed with secretary of state were not part of "returns" required to be canvassed by state canvassing board. *Chavez v. Hockenhull*, 1934-NMSC-093, 39 N.M. 79, 39 P.2d 1027.

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.

ANNOTATIONS

Official canvass record used to determine number of signatures required. — In determining the number of signatures required under Laws 1963, ch. 317, § 7 (now repealed) to be contained in a petition for nomination the official canvass is to be the record that is used. 1964 Op. Att'y Gen. No. 64-35 (opinion rendered under former law).

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 [election board] or county canvassing board, directing them to appear forthwith before him to complete or correct such returns or certificate.

History: 1953 Comp., § 3-13-19, enacted by Laws 1969, ch. 240, § 321.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Tally sheets and pollbooks considered "face of the returns". — For purpose of discovering any "discrepancy, omission, or error," and securing correction thereof in conformity with former statutes, not only certificate but also tally sheets and pollbooks were to be considered as constituting the "face of the returns" to be transmitted to secretary of state. *Chavez v. Hockenhull*, 1934-NMSC-093, 39 N.M. 79, 39 P.2d 1027 (decided under former law).

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Inability to comply with judgment or order as defense to charge of contempt, 22 A.L.R. 1256, 31 A.L.R. 649, 40 A.L.R. 546, 76 A.L.R. 390, 120 A.L.R. 703.

Mandamus, contempt for disobedience of, 30 A.L.R. 148.

Contempt, degree of proof necessary in proceeding based on, 49 A.L.R. 975.

Punishment of election officers for contempt, 64 A.L.R. 1019.

Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous, 12 A.L.R.2d 1059.

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.

ANNOTATIONS

Cross references. — For cost of recount proceedings, *see* 1-14-15 NMSA 1978.

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.

ANNOTATIONS

Cross references. — For unlawful opening of a voting machine, *see* 1-20-5 NMSA 1978.

The 2019 amendment, effective April 3, 2019, revised the date after which the county clerk may clear the votes record on a removable storage media device; and in Subsection A, after "adjournment of the", added "county or", and after "state canvassing board,", added "whichever is later".

The 2015 amendment, effective July 1, 2015, amended the period of time that the county clerk must preserve votes recorded on a removable storage media device from thirty to forty-five days, and amended the procedures providing for transferring ballots from the locked ballot boxes for disposition pursuant to Section 1-12-69 NMSA 1978; in the catchline, added "transferring ballots"; in Subsection A, after "at least", deleted "thirty" and added "forty-five"; and added Subsection C.

The 2011 amendment, effective July 1, 2011, prohibited the county clerk from clearing votes recorded on the removable storage media devices until thirty days after adjournment of the canvassing board or when there is a recount, judicial inquiry, or inspection is sought; and eliminated the requirement that the county clerk notify county chairs of each political party before clearing voting system memory cards.

The 2007 amendment, effective July 1, 2007, provided for clearing the votes recorded on memory cards; requires the county clerk to keep locked memory cards where a recount, judicial inquiry or inspection is sought; and deleted the provision that required the county clerk to obtain an order from the district court to use a voting machine before the expiration of the thirty-day period after adjournment of the canvassing board.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 234.

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.

ANNOTATIONS

Cross references. — For custody of voting machines, *see* 1-9-12 NMSA 1978.

The 1991 amendment, effective April 2, 1991, rewrote the first sentence which read "After the election, the county clerk shall see that the voting machines are turned back to the custody of the board of county commissioners" and substituted "county clerk" for "board of county commissioners" in the second sentence.

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 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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 127 recompiled and amended former 1-22-17 NMSA 1978 as 1-13-23 NMSA 1978, effective April 3, 2019.

Repeals and reenactments. — Laws 2018, ch. 79, § 30 repealed 1-22-17 NMSA 1978 and enacted a new section effective July 1, 2018.

Cross references. — For the state records center, *see* 14-3-8 NMSA 1978.

The 2019 amendment, effective April 3, 2019, provided that the returns and certificates of the result of a state canvass are public documents and subject to inspection and retention; in Subsection A, after "result of the", added "county", and after "canvass", deleted "of a regular or special local election"; and added Subsection B.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286 contained an emergency clause and was approved April 3, 2019.

ARTICLE 14
Contests and Recounts

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.

ANNOTATIONS

Cross references. — For quo warranto proceedings not affecting election contest statutes, *see* 44-3-15 NMSA 1978.

For contest of nomination, *see* Rule 1-087 NMRA.

I. APPLICABILITY.

Election Code applies to public improvement district formation elections. — The formation election provisions of the Public Improvement District Act incorporate the election contest procedures of the Election Code. *Glaser v. LeBus*, 2012-NMCA-028, 274 P.3d 114.

Residency challenge of candidate is proper election contest. *Thompson v. Robinson*, 1984-NMSC-096, 101 N.M. 703, 688 P.2d 21.

Applicability of rules of procedure. — Prior to the adoption of the New Mexico Rules of Civil Procedure for the district courts, none of the rules of procedure applicable in civil actions were

applicable to an election contest. *Montoya v. McManus*, 1961-NMSC-060, 68 N.M. 381, 362 P.2d 771.

Court jurisdiction to entertain municipal election contest. — District court had jurisdiction to entertain election contest for various municipal offices irrespective of the act under which they might be operating. *Ostic v. Stephens*, 1951-NMSC-063, 55 N.M. 497, 236 P.2d 727.

Action brought in name of state. — Under Laws 1919, ch. 28, § 4 (44-3-4 NMSA 1978), action in name of state could be brought on complaint of private person claiming election as acequia commissioner, the district attorney having refused to act. *State ex rel. Besse v. District Court of Fourth Judicial Dist*., 1925-NMSC-025, 31 N.M. 82, 239 P. 452.

Justices of peace (now magistrates) and constables may institute election contest proceedings. *Carabajal v. Lucero*, 1916-NMSC-045, 22 N.M. 30, 158 P. 1088.

II. EXCLUSIVITY.

Election contest and recount are not mutually exclusive. Although an election contest is a completely separate remedy from a recount, the election contest is a much broader remedy. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Election contest is special proceeding unknown to common law. — A contestant has a right to contest only in the manner and to the extent provided in the election contest statutes. *Montoya v. McManus*, 1961-NMSC-060, 1944-NMSC-013, 68 N.M. 381, 362 P.2d 771.

Right to challenge not precluded by prior adverse mandamus. — Contestant's right to challenge election of contestee in statutory election contest was not precluded by prior adverse judgment in mandamus proceeding instituted on relation of contestant. *Valdez v. Herrera*, 1944-NMSC-013, 48 N.M. 45, 145 P.2d 864.

Special statutory contest proceedings bar quo warranto. — The election contest being a special statutory proceeding, the right is not to be inferred from doubtful provisions, since granting of contest bars contestants from right to statutory quo warranto. *Montoya v. Gurule*, 1934-NMSC-092, 39 N.M. 42, 38 P.2d 1118.

Exclusive remedy for election contest. — Former article provided exclusive remedy for contest of elections and superseded remedy by quo warranto. *State ex rel. Abercrombie v. District Court of Fourth Judicial Dist*., 1933-NMSC-057, 37 N.M. 407, 24 P.2d 265.

III. GROUNDS.

Elements of election contest. — An election contest is a challenge to the result of an election, as well as a challenge to the inherent validity of an election when the challenge would necessarily require overturning the results or effects of an election. An election contest can derive from a violation of a provision of the Election Code, from a violation of another statute governing the particular election at issue, or from the New Mexico Constitution. *Glaser v. LeBus*, 2012-NMCA-028, 274 P.3d 114.

Plaintiff’s complaint presented an election contest under the Public Improvement District Act. — Where plaintiff alleged that the petition and ballot to form a public improvement district

were invalid because they did not meet statutory requirements; that the information provided to the municipality and the voters prior to the formation election was false, fraudulent, or misleading; and that the ballot did not present a question that specifically addressed the authority to tax, the challenges to the underlying validity of the election based on a failure to comply with statutory requirements was an election contest governed by the Election Code's election contest procedures. *Glaser v. LeBus*, 2012-NMCA-028, 274 P.3d 114.

Sufficiency of complaint. — A complaint alleging that a candidate received a majority of the votes cast, and that the improper conduct of the election officials in refusing to count certain votes deprived him of victory, is sufficient to support an election contest. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Right to hold office is not property right nor is it vested one. *Montoya v. McManus*, 1961-NMSC-060, 68 N.M. 381, 362 P.2d 771.

Claimed majority as constitutional grounds. — A candidate's claimed majority, adversely affected by conduct of election officials, afforded sufficient grounds for an election contest under N.M. Const., art. VII, § 5. *Seele v. Smith*, 1947-NMSC-068, 51 N.M. 484, 188 P.2d 337.

Challenge to rights of voters should show bad faith, etc. — In absence of any showing of bad faith, fraud or reasonable opportunity for fraud, court will rather unsympathetically and most carefully examine any challenge to rights of a large number of voters in an election. *Valdez v. Herrera*, 1944-NMSC-013, 48 N.M. 45, 145 P.2d 864.

Allegation that unsuccessful candidate elected constitutes contest grounds. — Any allegations showing that the unsuccessful candidate was legally elected will constitute ground for election contest; allegation that contestant received majority of votes, but that ballots were fraudulently altered after return stated ground for contest. *Rogers v. Scott*, 1931-NMSC-027, 35 N.M. 446, 300 P. 441.

Election not set aside for mere irregularity. — If no fraud or illegal voting is shown, elections conducted fairly and honestly, will not be set aside for mere irregularity in the manner of the appointment of the election officers, or in the conduct of the election. *Carabajal v. Lucero*, 1916-NMSC-045, 22 N.M. 30, 158 P. 1088.

Court to reject illegal votes. — Code 1915, § 2069 (now repealed) provided "to reject any illegal votes that may be polled at any election . . . it shall not be necessary to contest or question them at the polls, but they may be rejected by the authorities qualified by law to determine the validity of said elections, by being proved, after due notice is given by the party contesting said election to the opposing party . . .." It was then the only mode by which illegal votes received and returned by the judges of election could be determined and rejected, and it was not to be done by the canvassing officers at the time the returns from several precincts were canvassed by them. The only lawful tribunal having jurisdiction to determine questions of this kind was the district court. *Bull v. Southwick*, 1882-NMSC-015, 2 N.M. 321.

IV. NONAPPLICABILITY.

Local option election not contestable. — Provision in local option election statute that those elections should be conducted in manner provided by law for general elections did not provide

for election contest or recounts therein since general laws did not grant rights of contest or recount. *State ex rel. Denton v. Vinyard*, 1951-NMSC-030, 55 N.M. 205, 230 P.2d 238.

Remedy not lost due to knowledge of prior events. — A candidate is not deprived of his remedy by contest because of anything which happened prior to the contest where he did not participate, though it transpired with his knowledge or consent. *Valdez v. Herrera*, 1944-NMSC-013, 48 N.M. 45, 145 P.2d 864.

Contests not applicable to changing county seat. — Former contest provisions had no application to contest of election for changing county seat. *Orchard v. Board of Comm'rs*, 1938-NMSC-011, 42 N.M. 172, 76 P.2d 41.

Municipal school board election not contestable. — An election for members of board of education of a municipal school district was not contestable. *Auge v. Owen*, 1935-NMSC-074, 39 N.M. 470, 49 P.2d 1134.

Contests not applicable to land grant board of trustees. — Contest and recount provisions are applicable only to general elections for state, district and county offices, and not to election of board of trustees of land grant. *Montoya v. Gurule*, 1934-NMSC-092, 39 N.M. 42, 38 P.2d 1118.

District attorney may not entertain contest. — Code 1915, §§ 2060 to 2080 did not authorize district courts to entertain contest proceeding for office of district attorney. *Crist v. Abbott*, 1917-NMSC-009, 22 N.M. 417, 163 P. 1085.

Constitutional amendment election. — There are no lawful grounds for a recount in New Mexico of a constitutional amendment election. 2004 Op. Att'y Gen. No. 04-01

Law reviews. — For note, "Why Gunaji v. Macias Matters to Candidates and Voters: Its Impact on New Mexico Election Law", see 33 N.M.L. Rev. 431 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 427, 429.

Jurisdiction of courts to determine election or qualifications of member of legislative body, and conclusiveness of its decision, as affected by constitutional or statutory provision making legislative body the judge of election and qualification of its own members, 107 A.L.R. 205.

State court jurisdiction over contest involving primary election for member of congress, 68 A.L.R.2d 1320.

Construction and effect of absentee voters' laws, 97 A.L.R.2d 257.

29 C.J.S. Elections §§ 261 to 266.

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.

ANNOTATIONS

Court not bound by certificate excluding returns. — Certificate of county canvassing board that contestee had been duly elected did not bind district court when certificate improperly excluded returns from a questioned precinct because unregistered persons supposedly voted and it affirmatively appeared that number of unregistered votes cast was not enough to alter the election result. *Miera v. Martinez*, 1944-NMSC-005, 48 N.M. 30, 145 P.2d 487 (decided under former law).

Person holding certificate takes possession and discharges duties of office. — Election of justices of peace (now magistrates) may be contested before probate judge, and contest must be heard and determined in summary manner; pending such contest, person holding certificate of election takes possession and discharges duties of office. *Quintana v. Tompkins*, 1853-NMSC-001, 1 N.M. 29, *overruled on other grounds*, *Arellano v. Chacon*, 1859-NMSC-002, 1 N.M. 269, (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of one holding certificate of election to take office as against incumbent whose term has expired, notwithstanding election contest, 81 A.L.R. 620.

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.

ANNOTATIONS

Cross references. — For the Rules of Civil Procedure, *see* Rule 1-001 NMRA et seq.

Application of the Election Code to public improvement district formation elections. — The Election Code's thirty-day limitation period for filing a complaint to contest an election applies to a public improvement district formation election under the Public Improvement District Act. *Glaser v. LeBus*, 2012-NMSC-012, 276 P.3d 959.

Where the petitioners filed a complaint to contest an election to form a public improvement district under the Public Improvement District Act thirteen months after the election, the action was barred by the thirty-day limitation for filing a complaint to contest an election under the Election Code. *Glaser v. LeBus*, 2012-NMSC-012, 276 P.3d 959.

Shorter filing period in Rule 1-087 NMRA held invalid. — The 30-day filing period granted by the legislature in this section represents a substantive right which the supreme court has no power to reduce. Therefore, that portion of Rule 1-087 NMRA requiring notice of an election contest to be filed within 15 days of the issuance of the certificate of nomination is invalid, although other portions of the rule remain valid and must be followed. *Eturriaga v. Valdez*, 1989-NMSC-080, 109 N.M. 205, 784 P.2d 24.

"Election contest" construed. — Where petitioner sought a writ of mandamus directing respondent to effectuate the compilation of three constitutional amendments which were voted on in three separate elections, and where the petition was filed one, five, and seven years after the elections at issue were certified, the petition was not time-barred, because the substantive issue presented, whether a simple majority of the voters was enough to approve the 2008, 2010, and 2014 amendments to N.M. Const., art. VII, § 1 is not an election contest and the 30-day filing period does not apply, because the petition, rather than seeking to alter the certified results of the elections, sought clarity about the meaning and effect of the uncontested certified results of the elections under the New Mexico constitution. *State ex rel. League of Women Voters v. Advisory Comm*., 2017-NMSC-025.

Unverified petition dismissed. — A petition contesting the validity of a special bond election for the construction of a cultural facility did not invoke the jurisdiction of the district court, because it was not verified in accordance with this section, and was, therefore, properly dismissed. *Dinwiddie v. Board of Cnty. Comm'rs*, 1985-NMSC-099, 103 N.M. 442, 708 P.2d 1043, cert. denied, 476 U.S. 1117, 106 S. Ct. 1974, 90 L. Ed. 2d 658 (1986).

Section applicable to contest of primary election. — This section, not 1-8-35 NMSA 1978, applies to the contest of a primary election. *Thompson v. Robinson*, 1984-NMSC-096, 101 N.M. 703, 688 P.2d 21.

Notice of contest to allege contestant received more votes. — Since the objective of the contestant in an election contest is to be declared the winner, his notice of contest should allege that he has received more legal votes than the contestee, and a failure to so allege is not a claim showing that the contestant is entitled to relief. *Heth v. Armijo*, 1972-NMSC-011, 83 N.M. 498, 494 P.2d 160.

Function and effect of prayer in election contests does not differ from that in ordinary civil actions. *Heth v. Armijo*, 1972-NMSC-011, 83 N.M. 498, 494 P.2d 160.

Prayer to only determine relief sought or interpret ambiguity. — The prayer in election contests can be looked to and considered only to determine what relief is sought by the complaint, or to interpret any ambiguity in the complaint. *Heth v. Armijo*, 1972-NMSC-011, 83 N.M. 498, 494 P.2d 160.

Prayer not to determine if complaint states cause of action. — The prayer cannot be taken into account to determine whether or not the body of the complaint states a cause of action in ordinary civil cases, and the same is true in election contests. *Heth v. Armijo*, 1972-NMSC-011, 83 N.M. 498, 494 P.2d 160.

Rules of civil procedure apply to election contests except when inconsistent. *Heth v. Armijo*, 1972-NMSC-011, 83 N.M. 498, 494 P.2d 160.

Quo warranto proper action to contest municipal school board election. — Quo warranto was a proper action to bring since there was no provision in the Election Code or other related statutes providing for contests for municipal school board elections. *State v. Rodriguez*, 1958-NMSC-136, 65 N.M. 80, 332 P.2d 1005 (decided under former law).

Names of voters need not be specified. — Names of persons whose ballots were fraudulently changed after returns of election need not be specified in notice of contest. *Rogers v. Scott*, 1931-NMSC-027, 35 N.M. 446, 300 P. 441 (decided under former law).

Justices of peace (now magistrates) and constables may institute contest proceedings. *Carabajal v. Lucero*, 1916-NMSC-045, 22 N.M. 30, 158 P. 1088 (decided under former law).

District court only tribunal having original jurisdiction. — Under former statute providing for commencement of actions to contest elections, district court was only tribunal having original jurisdiction to determine questions regarding legality of individual ballots. *Bull v. Southwick*, 1882-NMSC-015, 2 N.M. 321.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 425, 432, 433.

29 C.J.S. Elections §§ 254, 267, 268(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.

ANNOTATIONS

Cross references. — For cost of recount proceedings, *see* 1-14-15 NMSA 1978.

Purpose. — This section was intended to place the successful contestant of a general election into the office to which he is entitled. In the words of the statute, there is no "office in controversy" when the results of a primary are contested. It is the legal entitlement to the certificate of nomination which is in controversy. *Eturriaga v. Valdez*, 1963-NMSC-123, 109 N.M. 205, 784 P.2d 24.

A primary election contest becomes moot, as a general rule, if not finally determined prior to the balloting in the general election. *Eturriaga v. Valdez*, 1963-NMSC-123, 109 N.M. 205, 784 P.2d 24.

Advanced and paid costs may be adjudged. — The costs advanced and paid by the contestant are the only costs which may be adjudged against the contestee. *Montoya v. McManus*, 1961-NMSC-060, 68 N.M. 381, 362 P.2d 771.

Judgment on pleadings when no answer filed. — District court properly rendered a judgment on the pleadings when contestee in election contest did not file and serve answer to notice of contest within 20 days from service of notice as required by former statute. *Ostic v. Stephens*, 1951-NMSC-063, 55 N.M. 497, 236 P.2d 727.

May recover salary by judgment. — By judgment placing successful contestant in possession of the office, he may also recover from the ousted official the salary which has been paid to him. 1931 Op. Att'y Gen. No. 31-109 (decided under 1929 Comp. § 41-611).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 453, 459.

Attorney's fees to successful party in election contest, validity of statute allowing, 11 A.L.R. 884, 90 A.L.R. 530.

Costs or reimbursement for expenses incident to election contest or recount, 106 A.L.R. 928.

29 C.J.S. Elections §§ 302 to 307, 319.

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.

History: 1953 Comp., § 3-14-13, enacted by Laws 1969, ch. 240, § 338.

ANNOTATIONS

Cross references. — For appeals to the supreme court, *see* 39-3-2 NMSA 1978.

County official recall elections. — The Election Code does not expressly cover an appeal of a decision concerning a county official recall election filed before the election occurred, because is was not, when filed, a contest of an election. *Sparks v. Graves*, 2006-NMCA-030, 139 N.M. 143, 130 P.3d 204.

Constitutional power of superintending control used where appeal inadequate. — Since the right to vote of large segments of the population would remain undetermined unless a case is at least allowed to proceed beyond its present initial stage, as distinguished from the ordinary election contest, involving more appealable issues, the power of superintending control, described in N.M. Const., art. VI, § 3, may be exercised. In cases (1) where the remedy by appeal seems wholly inadequate, and (2) where the use of the power is necessary to prevent irreparable mischief, great, extraordinary or exceptional hardship, costly delays and unusual burdens of expense, it may be exercised. *Montoya v. McManus*, 1961-NMSC-060, 68 N.M. 381, 362 P.2d 771.

Election contest judgments reviewable under appeal, not writ of error. — Judgments in election contest cases could be reviewed in supreme court only under statute authorizing appeal, and writs of error did not lie to review such judgments under Laws 1917, ch. 43, §§ 1, 2,

4 (39-3-2, 39-3-15 and 39-3-5 NMSA 1978). *Hannett v. Mowrer*, 1927-NMSC-018, 32 N.M. 231, 255 P. 636.

Appeal deemed inadequate remedy in prohibition proceeding. — Prohibition proceeding to prevent district court's entertaining contest proceeding for office of district attorney was not denied on ground that there was adequate remedy by appeal, such remedy being deemed inadequate. *Crist v. Abbott*, 1917-NMSC-009, 22 N.M. 417, 163 P. 1085.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 454 et seq.

29 C.J.S. Elections §§ 308 to 318.

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.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, amended the procedures for requesting preservation of ballots when there is contest of election; and after "may give", added "written", after "notice", deleted "by registered mail" and added "with delivery confirmation", and after "counties wherein", deleted "he" and added "the contestant or contestee".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Custody of ballots since original count, determination of facts as condition of recount, 71 A.L.R. 435.

29 C.J.S. Elections § 234.

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.

ANNOTATIONS

Cross references. — For constitutional grounds for designation of judge by agreement or by chief justice, *see* N.M. Const., art. VI, § 15.

For constitutional grounds for disqualification of judges, *see* N.M. Const., art. VI, § 18.

For change of judge, affidavit of disqualification and selection of judge, *see* 38-3-9 NMSA 1978.

For disqualification of judge and failure to agree on another, *see* Rule 1-088.1 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 46 Am. Jur. 2d Judges § 207 et seq.

Timeliness of affidavit of disqualification of trial judge under 28 USCS § 144, 141 A.L.R. Fed. 271.

48 C.J.S. Judges § 94.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 249, § 1 repealed former 3-14-16, 1953 Comp., relating to contest of election, impounding ballots, and enacted a new 3-14-16, 1953 Comp.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 57 and Laws 1993, ch. 316, § 57, both effective June 18, 1993 which substituted "certificates" for "affidavits" and made a minor stylistic change. The section was set out as amended by Laws 1993, ch. 316, § 57. *See* 12-1-8 NMSA 1978.

The 1991 amendment, effective April 2, 1991, substituted "include tally sheets" for "includes poll books, tally books, affidavits for assistance".

1-14-9. Impounding ballots; application for court order; deposit required.

A. Upon an order of the district court, ballots may be impounded during the period of time between the completion of the county canvass and the last day to file a candidate contest in that election.

B. Any candidate in an election may petition the district court for an order impounding ballots in one or more precincts or polling places within which the candidate's name appeared on the ballot. The action shall be brought in the district court for the county in which the precincts or polling places are located. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along with a sufficient cash deposit or a sufficient surety bond to cover the costs of each precinct or polling place for which impoundment is demanded, the court shall issue an order of impoundment.

C. Ballots shall be impounded in the county courthouse or secured in the county clerk's office. When impounded ballots are being handled, a county clerk or the clerk's agent shall be present to ensure that all documents are properly catalogued and returned in proper order.

D. The state canvassing board shall determine the estimated actual cost of impoundment per polling place and for mailed ballots no later than March 15 of even-numbered years. The secretary of state shall post the impoundment cost determinations on the secretary of state's website when the state canvassing board issues its cost determinations.

History: 1953 Comp., § 3-14-16.1, enacted by Laws 1971, ch. 249, § 2; 2023, ch. 39, § 71.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, amended requirements for ballot impoundment, required the canvassing board to determine the estimated actual cost of impoundment per polling place and for mailed ballots, and required the secretary of state to post the impoundment cost determinations on the secretary of state's website; added a new Subsection A; in Subsection B, after "one or more precincts", added "or polling places", after "within which", deleted "he is a candidate" and added "the candidate's name appeared on the ballot", after "in which the precincts", added "or polling places", and after "cash deposit", deleted "of twenty-five dollars ($25.00) per precinct" and added "or a sufficient surety bond to cover the costs of each precinct or polling place for which impoundment is demanded"; and added Subsections C and D.

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 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.

ANNOTATIONS

Cross references. — For use of state police in conduct of election, *see* 1-12-5 NMSA 1978.

For closing of polls, *see* 1-12-26 NMSA 1978.

For counting and tallying, *see* 1-12-29 NMSA 1978.

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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

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 [election 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 [election board] during the conduct of election, shall cast upon the candidates of the political party having majority representation on the precinct board [election board] the

burden of proving that no fraud, intimidation, coercion or undue influence was exerted by such members of the precinct board [election 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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For constitutional provision as to securing the secrecy of the ballot and purity of election, *see* N.M. Const., art. VII, § 1.

Ballot errors by county clerks. — Although the statute applied to precinct boards, where the county clerk omitted a candidate's name from the ballot, and there was no fraud, the court drew an analogy from this section to order the entire vote of the affected precinct rejected. *Gunaji v. Macias*, 2001-NMSC-028, 130 N.M. 734, 31 P.3d 1008.

Constitutional amendment election. — There are no lawful grounds for a recount in New Mexico of a constitutional amendment election. 2004 Op. Att'y Gen. No. 04-01.

Law reviews. — For note, "Why Gunaji v. Macias Matters to Candidates and Voters: Its Impact on New Mexico Election Law", see 33 N.M.L. Rev. 431 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 328, 417.

29 C.J.S. Elections §§ 201(2), 249.

1-14-13.1. Repealed.

History: Laws 2005, ch. 270, § 75; repealed by Laws 2009, ch. 233, § 3.

ANNOTATIONS

Repeals. — Laws 2009, ch. 233, § 3 repealed 1-14-13.1 NMSA 1978, as enacted by Laws 2005, ch. 270, § 75, relating to post-election duties, random voting system checks and recounts, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

1-14-13.2. Post-election duties; voting system check.

A. At least ninety days prior to each statewide election or as soon as practicable prior to an election to fill a vacancy in the office of United States representative, 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, for contests in the regular local election 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 an automatic 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 Percent	Number of precincts in the state to be tested for that office
greater than 15	no precincts for that office
greater than 14 but less than or equal to 15	4
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 greater than 6.0	9
but less than or equal to 7.0 greater than 5.5	10
but less than or equal to 6.0 greater than 5.0	11
but less than or equal to 5.5 greater than 4.5	13
but less than or equal to 5.0 greater than 4.0	14
but less than or equal to 4.5 greater than 3.5	16
but less than or equal to 4.0 greater than 3.0	18
but less than or equal to 3.5 greater than 2.5	22
but less than or equal to 3.0 greater than 2.0	26
but less than or equal to 2.5 greater than 1.8	32
but less than or equal to 2.0 greater than 1.6	37
but less than or equal to 1.8 greater than 1.4	42
but less than or equal to 1.6 greater than 1.2	47
but less than or equal to 1.4 greater than 1.1	54
but less than or equal to 1.2 greater than 1.0	59
but less than or equal to 1.1 greater than 0.9	65
but less than or equal to 1.0 greater than 0.8	73
but less than or equal to 0.9 greater than 0.7	82
but less than or equal to 0.8 greater than 0.6	93
but less than or equal to 0.7 greater than 0.5	109
but less than or equal to 0.6	130
0.5 or less	165.

C. After selecting the random sample of precincts pursuant to Subsection B of this section or as required for a regular local election, the auditor shall also randomly select one precinct from each county where a precinct was not selected in the random sample.

D. 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 and remove ballots from the selected precincts and:

(1) in a primary or general election, the auditor shall direct the appropriate county clerks to compare the original machine count precinct 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;

(2) in a regular local election, the size of the random sample shall be the largest number of precincts that were used for the random sample in the previous general election. The auditor shall direct the appropriate county clerks to compare the original machine count precinct vote totals for the three contests with the closest margin between the two candidates receiving the greatest number of votes affecting the final outcome for an office from each of the selected precincts with the respective vote totals of a hand recount of the paper ballots from those precincts; provided that if there are fewer than three contested contests in a precinct, the auditor shall randomly select one or more contests so that three contests are included in the sample from that precinct; and

(3) in an election called to fill a vacancy in United States representative, the auditor shall direct the appropriate county clerks to compare the original machine count precinct vote totals for candidates for United States representative from the selected precincts with the respective vote totals of a hand recount of the paper ballots from those precincts.

E. The county clerks shall report their results to the auditor within fourteen 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 fourteen days following the conclusion of the recount.

F. 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 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.

G. 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.

H. Persons designated as county canvass observers may observe the hand recount described in Subsection D of this section. Observers shall comply with the procedures governing county canvass observers as provided in Section 1-2-31 NMSA 1978.

I. 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.

J. All costs of a voting system check or required hand recount shall be paid in the same manner as automatic recounts.

K. The secretary of state may issue rules to implement voting system checks.

History: Laws 2009, ch. 233, § 1; 2015, ch. 145, § 73; 2023, ch. 39, § 72.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, amended requirements for voting system checks, revised post-election duties related to voting system audits, and authorized the secretary of state to issue rules to implement voting system checks; in Subsection A, after "prior to each", deleted "general" and added "statewide", after the next occurrence of "election", added "or as soon as practicable prior to an election to fill a vacancy in the office of the United States representative", after "for governor", added "for contests in the regular local election", and after "for any office for which", deleted "a" and added "an automatic"; added a new Subsection C and redesignated former Subsection C as Subsection D; in Subsection D, Paragraph D(1), added "in a primary or general election, the auditor shall direct the appropriate county clerks to", and after "precinct vote totals", deleted "including early absentee and absentee by mail machine count vote totals", and added Paragraphs D(2) and D(3); and redesignated former Subsections D through H as Subsections F through J, respectively; in Subsection E, after each occurrence of "auditor within", deleted "ten" and added "fourteen"; and added Subsection K.

The 2015 amendment, effective July 1, 2015, provided for a certain waiver for a voting system check; in Subsection A, after "New Mexico", added "The voting system check is waived for any office for which a recount is conducted."; in Table 1 of Subsection B, after "0.5 or less", deleted "automatic recount for that office" and added "165"; and in Subsection C, after "the appropriate county clerks to", added "open the locked ballot boxes, remove ballots from the selected precincts and", and after "voting system check", added the remainder of the subsection.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 233 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

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. All applications for recount or recheck shall be filed with the secretary of state.

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; 2023, ch. 39, § 73.

ANNOTATIONS

Cross references. — For definition of recheck and recount, *see* 1-1-6 NMSA 1978.

For notice when recount required, *see* 1-13-7 NMSA 1978.

For recount upon notification of county canvassing board, *see* 1-13-7 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided that all applications for recount or recheck shall be filed with the secretary of state, and removed a provision requiring certain applications for recount or recheck be filed with the district judge for the county in which the applicant resides; in Subsection B, deleted "In the case of any office for which the state canvassing board issues a certificate of nomination or election, application" and added "All applications"; and deleted Subsection C.

The 2018 amendment, effective July 1, 2018, expanded the applicability of the section; in Subsection A, after "Whenever any candidate", deleted "for any office for which the state canvassing board or county canvassing board issues a certificate of nomination or election"; and in Subsection C, after "canvassing board", added "or secretary of state".

The 2009 amendment, effective June 19, 2009, in Subsection A, after "tallying the", deleted "emergency paper ballots or absentee"; and in Subsection B, after "recount of the", deleted "emergency paper ballots or absentee".

Election contest and recount are not mutually exclusive. Although an election contest is a completely separate remedy from a recount, the election contest is a much broader remedy. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Examination of write-in scrolls constitutes a "recheck", and is covered by this section. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Failure to request recount bars examination of write-ins. — The trial court correctly refuses to examine write-in scrolls in an election contest where the contestant failed to apply for a recount. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Rights to election contest or recount are purely statutory and do not apply to local option elections. *State ex rel. Denton v. Vinyard*, 1951-NMSC-030, 55 N.M. 205, 230 P.2d 238.

Provisions not applicable to local option elections. — Provision in local option election statute that those elections should be conducted in manner provided by law for general elections did not provide for election contests or recounts therein since general laws did not grant rights of contest or recount. *State ex rel. Denton v. Vinyard*, 1951-NMSC-030, 55 N.M. 205, 230 P.2d 238.

Provisions not applicable to land grant board of trustees election. — Contest and recount provisions are applicable only to general elections for state, district and county offices, and not to election of board of trustees of land grant. *Montoya v. Gurule*, 1934-NMSC-092, 39 N.M. 42, 38 P.2d 1118.

Application alleged in statute language sufficient. — Application for recount alleging in language of statute that applicant had reason to believe that error or fraud had been committed by election officers in counting ballots or certifying results was sufficiently specific. *Sandoval v. Madrid*, 1930-NMSC-118, 35 N.M. 252, 294 P. 631, *aff'd*, 1932-NMSC-052, 36 N.M. 274, 13 P.2d 877.

When sixth day after completion of canvass fell on Sunday, application for recount filed on Monday following was seasonable. *Sandoval v. Madrid*, 1930-NMSC-118, 35 N.M. 252, 294 P. 631, *aff'd*, 1932-NMSC-052, 36 N.M. 274, 36 N.M. 274, 13 P.2d 877.

County to handle recount of officials elected by one county. — The intent of the legislature was that counties should handle all matters relating to officials who were elected by the electors of one county alone. The fact that a candidate is nominated by the electors of only one county determines the place where he is to file his declaration of candidacy, who is to issue his certificate of nomination and who is to fill a vacancy in case the nominated candidate dies or withdraws. It does not seem logical to assume that the legislature intended that a different standard was to prevail in the case of recount. 1956 Op. Att'y Gen. No. 56-6478.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 389 et seq.

Determination of facts regarding custody of ballots since original count, as condition of recount, 71 A.L.R. 435.

29 C.J.S. Elections § 291.

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 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 polling place and for mailed ballots 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 website 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 election board members, at the same rates allowed witnesses in civil actions. If error or fraud has been committed by an election 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; 2023, ch. 39, § 74.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 48, § 1, repealed 3-14-19, 1953 Comp. (former 1-14-15 NMSA 1978), relating to recounts, rechecks and cost of proceedings, and enacted a new section.

Cross references. — For costs of election contests, *see* 1-14-4 NMSA 1978.

For sheriff's fees in serving summons, etc., *see* 4-41-16 NMSA 1978.

For per diem expenses of sheriffs, etc., *see* 4-44-18 NMSA 1978.

For per diem and mileage for witnesses, *see* 38-6-4 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised the provision related to the determination of the cost of a recount or recheck; in Subsection A, after "actual cost of a recount per", deleted "precinct" and added "polling place and for mailed ballots"; and in Subsection D, after "mileage of", deleted "precinct" and added "election", and after "committed by", deleted "a precinct" and added "an election"

The 2007 amendment, effective April 2, 2007, in Subsection A, required a deposit of sufficient cash to cover the cost of a recount or recheck and provided that the 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 2005 amendment, effective July 1, 2005, in Subsection B, provided that the state canvassing board may condition the issuance of the summons on receipt of a part or all of the estimated costs of the recount or recheck.

Compiler's note. — *Cobb v. State Canvassing Board*, 2006-NMSC-034, 140 N.M. 77, 140 P.3d 498, held the 2005 amendment to 1-14-15 NMSA 1978 unconstitutional and that Laws 2001, ch. 109, § 1 was still effective.

The 2001 amendment, effective June 15, 2001, in Subsection A, added the requirements that deposits for certain recounts or rechecks are to be deposited with the secretary of state; and substituted "secretary of state" for "state canvassing board" in Subsection C.

Unconstitutional delegation. — The 2005 amendment to 1-14-15 NMSA 1978, which gave the state canvassing board discretionary authority, without adequate standards to guide its discretion, to condition any voting recount and recheck on advance payment of the full estimated costs of the procedures is an unconstitutional delegation of legislative authority, with the result that the 2001 version of the statute is in effect. *Cobb v. State Canvassing Board*, 2006-NMSC-034, 140 N.M. 77, 140 P.3d 498.

Under the 2001 version of 1-14-15 NMSA 1978, the state canvassing board has no authority to require advance payment of the full estimated costs of a voting recount and recheck before starting the procedures. *Cobb v. State Canvassing Board*, 2006-NMSC-034, 140 N.M. 77, 140 P.3d 498.

Constitutionality of recount and bond provisions. — Where plaintiffs, the libertarian party of New Mexico, the chair of the libertarian party of New Mexico, and Stephen Curtis, a libertarian party of New Mexico candidate for a position on the New Mexico court of appeals during the 2020 New Mexico primary election, filed an action alleging that the discretionary recount and bond provisions set forth in § 1-14-15 NMSA 1978, violate the first amendment, the equal protection clause, and the due process clause of the United States constitution, and where the plaintiffs demonstrated by a preponderance of the evidence, through discrepancies between county canvass reports and state canvass reports, that fundamental unfairness in how New Mexico tabulates write-in ballots changed the election outcome for Mr. Curtis, and where the secretary of state could not proffer an explanation for the discrepancies, the court found that, although plaintiffs had a valid right-to-vote claim under the due process clause because they showed that a significant number of votes in the libertarian party primary election in Bernalillo county had not been counted, the discretionary recount provision does not violate the first amendment because the discretionary recount provision is a privilege and not a federal constitutional right and the bond requirement does not substantially burden voters rights to make free choices and to associate politically through the vote, that the discretionary recount provision does not violate the equal protection clause because the provision does not interfere with a fundamental right or discriminate against a suspect class and the bond requirement was rationally related to a legitimate governmental purpose of ensuring election fairness and accuracy, and that the discretionary recount provision and bond requirement do not render New Mexico's election process fundamentally unfair. *Curtis v. Oliver*, 479 F. Supp. 3d 1039 (D. N.M. 2020).

Bond in election contest proceeding was designed and intended by legislature to afford security for the payment of costs which might be adjudged against the obligor in the bond. The bond was designed as a protection to the opposite party to secure him in the collection of any

judgment for costs which he might recover. *Montoya v. McManus*, 1961-NMSC-060, 68 N.M. 381, 362 P.2d 771.

Purpose was to require more in way of bond than written promise to pay. *Montoya v. McManus*, 1961-NMSC-060, 68 N.M. 381, 362 P.2d 771.

Term "bond" is commonly used in judicial procedure in connection with the giving of security for a stay of proceedings upon appeal or otherwise. *Montoya v. McManus*, 1961-NMSC-060, 68 N.M. 381, 362 P.2d 771.

Corporate surety bond not required. — A bond with personal sureties complied with this section, requiring "a sufficient surety bond," as a condition of a recount. The expression "of commercial surety type" means substantially the same as "corporate surety type" and to require such a bond is going beyond the legislative fiat. *Montoya v. McManus*, 1961-NMSC-060, 68 N.M. 381, 362 P.2d 771.

State could not maintain action on bond to recover fees and mileage due to sheriff and election officials after recount, because state did not own the right sought to be enforced and judgment in its favor would not bar action by sheriff or election officials. *State v. Barker*, 1947-NMSC-010, 51 N.M. 51, 178 P.2d 401.

Individuals may qualify as sureties on the required bond. *Sandoval v. Madrid*, 1930-NMSC-118, 35 N.M. 252, 294 P. 631, *aff'd*, 1932-NMSC-052, 36 N.M. 274, 13 P.2d 877.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Costs or reimbursement for expenses incidental to election contest or recount, 106 A.L.R. 928.

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 [election 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 [election board] pursuant to the provisions of Section 1-2-12 NMSA 1978 and shall send notices of the names of the recount precinct board [election 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 [election board] shall be appointed from among those persons who served as precinct board [election board] members in the most recent election.

C. The recount precinct board [election 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 [election 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 [election board] shall replace the ballots in the ballot boxes and ballot containers and lock them, or the voting machines shall be locked and resealed, and the precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Repeals and reenactments. — Laws 2008, ch. 41, § 3 repealed former 1-14-16 NMSA 1978, as enacted by Laws 1969, ch. 240, § 345, and enacted a new section, effective May 14, 2008.

The 2015 amendment, effective July 1, 2015, amended the procedures for a recount or recheck following an election; in Subsection A, after "county clerk to convene", deleted "the absent voter" and added "a recount"; in Subsection B, after "clerk shall", added "appoint a recount precinct board pursuant to the provisions of Section 1-2-12 NMSA 1978 and shall", after "send notices", deleted "by registered mail", after "of", added "the names of the recount precinct board members and", after "judge for the county", deleted "the absent voter precinct board members", and after "office in question.", added the last two sentences of the subsection; in Subsection C, after "The", deleted "absent voter" and added "recount", after "shall be opened. The", deleted "absent voter" and added "recount", and after "district judge", deleted "or person designated to act for the district judge"; and in Subsection D, after "recheck, the", deleted "absent voter" and added "recount", after "board shall certify to the", deleted "secretary of state" and added "proper canvassing board", and after "The district judge", deleted "or the person designated to act for the district judge".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 389 et seq.

Power of election officers to withdraw or change their returns, 168 A.L.R. 855.

Compelling election officers to withdraw or change returns, as affected by nonexistence of power of officer to withdraw or change, 168 A.L.R. 864.

29 C.J.S. Elections §§ 289 to 295.

1-14-17. Repealed.

History: 1953 Comp., § 3-14-21, enacted by Laws 1969, ch. 240, § 346; 1977, ch. 222, § 85; repealed by Laws 2008, ch. 41, § 5.

ANNOTATIONS

Repeals. — Laws 2008, ch. 41, § 5 repealed 1-14-17 NMSA 1978, as enacted by Laws 1969, ch. 240, § 346, relating to recount and recheck proceedings, effective May 14, 2008. For provisions of former section, *see* the 2007 NMSA 1978 on *NMOneSource.com*.

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 [election 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 [election boards] instead of the original returns from the precinct boards [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 2015 amendment, effective July 1, 2015, substituted absent voter precinct board with recount precinct board; in Subsection A, after "recheck from all the", deleted "absent voter" and added "recount"; and in Subsection B, after "recheck from the", deleted "absent voter" and added "recount".

The 2008 amendment, effective May 14, 2008, changed "precinct boards" to "absent voter precinct boards".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 399.

Statutory provisions relating to form or manner in which election returns from voting districts or precincts are to be made, 106 A.L.R. 398.

29 C.J.S. Elections § 239.

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.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, clarified that the provision applies to a candidate for a partisan office; and after "candidate", added "for partisan office".

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.

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For mandamus to compel canvass, *see* 1-13-12 NMSA 1978.

For writ of mandamus generally, *see* 44-2-1 NMSA 1978 et seq.

Writ properly discharged when necessary persons not made parties. — Presence of both county clerk and district judge was necessary for a lawful recount, and a writ of mandamus to compel recount was properly discharged since neither county clerk nor district judge or his duly appointed representative was a party. *Chavez v. Baca*, 1943-NMSC-052, 47 N.M. 471, 144 P.2d 175 (decided under former law).

Supreme court was without jurisdiction to mandate district judge to certify that recount of ballots was made in his presence, since his status in performance of such duty was not that of a state officer, board, commission or of an inferior court. *State ex rel. Scott v. Helmick*, 1930-NMSC-103, 35 N.M. 219, 294 P. 316 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 462.

Mandamus to put one in office, title to which is in dispute, 84 A.L.R. 1114, 136 A.L.R. 1340.

Determination of canvassing board or election official as regards counting or exclusion of ballots as subject of review by mandamus, 107 A.L.R. 618.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, authorized the district court to permit, upon petition by the secretary of state, a review of ballot images in place of paper ballots; in the section heading, added "use of ballot images"; and added Subsection B.

The 2007 amendment, effective April 2, 2007, eliminated references to recheck.

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 [election board].

History: Laws 2007, ch. 337, § 2; 2015, ch. 145, § 77.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

The 2015 amendment, effective July 1, 2015, amended the procedures for a recount following an election; in Subsection A, after "tabulating systems", deleted "the secretary of state shall issue rules to implement the recount procedures provided for in Subsections B and C of this section" and added "in a recount"; added the language of former Subsection B to Subsection A; after "electronic vote tabulating" deleted "system" and added "systems to be used in the recount", after "shall be equal to", deleted "at least" and added "the greater of one hundred, or", and added the last sentence of the subsection; redesignated former Subsection C as Subsection B, deleted "For a statewide or federal office", after "system tabulation", added "do not", after "differ", deleted "by one-fourth of one percent or less", and after "vote tabulating", deleted "systems. Otherwise, the remaining ballots shall be recounted by hand" and added "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"; added a new Subsection C; deleted Subsection D, relating to when the hand-tally and the electronic vote tabulating system tabulation differ by the greater of one percent or less, or two votes; and deleted Subsection E.

1-14-24. Automatic recounts; 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 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 or five or fewer votes between the two candidates receiving the greatest number of votes 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; 2020, ch. 9, § 9; 2023, ch. 39, § 75.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, amended the automatic recount provision to also require an automatic recount when there are five or fewer votes between two candidates in an election; in the section heading, deleted "elections for state and federal offices"; and in

Subsection A, Paragraph A(3), after "cast in that election", added "or five or fewer votes between the two candidates receiving the greatest number of votes".

The 2020 amendment, effective January 1, 2023, removed public regulation commissioners from the candidate contests in which automatic recounts apply; in Subsection A, Subparagraph A(2)(a), after "the case of a", deleted "public regulation commissioner".

Laws 2020, ch. 9, § 19 amended 1-14-24 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against.

The 2019 amendment, effective April 3, 2019, revised the procedures for automatic recounts; in Subsection A, in the introductory clause, after "canvass of returns", deleted "in a primary or general election for a federal or statewide office, or a judicial office in a county with more than two hundred thousand registered qualified electors", after "votes for an office", added "the margin between those supporting and those opposing a ballot question or the margin affecting the outcome of a nonpartisan judicial retention election", in Subparagraph A(1)(a), after "for that office", deleted "in that election. An automatic recount of the vote is required when the canvass of returns in a primary or general election for any other state office indicates that the margin between the two candidates receiving the greatest number of votes for the office is less than one percent of the total votes cast for that office in that election" and added "in the case of a federal or statewide office;", and added Subparagraphs A(1)(b) and A(1)(c), added Paragraphs A(2) and A(3); and deleted former Subsection D, which defined "state office" for purposes of this section.

The 2015 amendment, effective July 1, 2015, amended the provisions providing for automatic recounts; in Subsection A, after "canvass of returns", added "in a primary or general election", after "for a federal or", deleted "state office in a primary or general election" and added "statewide office, or a judicial office in a county with more than two hundred thousand registered qualified electors", after "the office is less than", deleted "one-half" and added "one-fourth", and added the last sentence; in Subsection B, added "For an office for which ballots were cast in more than one county", after the first occurrence of "canvassing board", deleted "within five days of" and added "upon", and added the last sentence; and in Subsection C, after "1-14-18 through", deleted "1-14-22" and added "1-14-23".

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 41 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

ARTICLE 15
Presidential Electors, Senators, Congressmen and Expiring Terms

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.

ANNOTATIONS

Cross references. — For qualified political party, *see* 1-1-10 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 5.

Presidential and vice presidential electors, nomination of, 153 A.L.R. 1066.

Withdrawal of nomination, power of political party as to, 155 A.L.R. 186.

91 C.J.S. United States § 28.

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.

ANNOTATIONS

Cross references. — For Primary Election Law not applying to presidential electors, *see* 1-8-17 NMSA 1978.

For Presidential Primary Act, *see* 1-8-53 to 1-8-63 NMSA 1978.

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.

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.

ANNOTATIONS

Cross references. — For party filing rules with the secretary of state, *see* 1-7-2 to 1-7-5 NMSA 1978.

The 2017 amendment, effective June 16, 2017, changed the deadline for certifying the names and address of presidential electors nominated by the state party convention, and made stylistic amendments; and, in Subsection C, after "the nominees not less than", deleted "fifty-six" and added "sixty-three".

Indirect election of nominees valid. — Laws 1953, ch. 40 (now repealed), and the provisions of the same are valid, even though it provides for the indirect or proxy elections of unlisted presidential election nominees in presidential general elections in New Mexico. 1954 Op. Att'y Gen. No. 54-5949 (opinion rendered under former law).

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 [1-15-4.1 NMSA 1978] 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.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, provided an exception to the provision that 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 provided that if the Agreement Among the States to Elect the President by National Popular Vote is in effect, 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; in Subsection C, added "Except as provided in Subsection D of this section"; and added Subsection D.

Selection of unqualified persons as electors is tantamount to failure to select, which is specifically mentioned in the statute. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445 (decided under former law).

Indirect election of nominees valid. — Laws 1953, ch. 40 (now repealed), and the provisions of same are valid, even though it provides for the indirect or proxy elections of unlisted presidential election nominees in presidential general elections in New Mexico. 1954 Op. Att'y Gen. No. 54-5949 (opinion rendered under former law).

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.

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.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 199 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

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 [10-8-1 to 10-8-8 NMSA 1978], and he shall receive no other compensation. Per diem and mileage shall be paid by the state treasurer on warrants drawn 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.

ANNOTATIONS

Cross references. — For nominating procedures, *see* 1-8-1 to 1-8-8 NMSA 1978.

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 4; 77 Am. Jur. 2d United States § 20.

91 C.J.S. United States § 11.

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.

ANNOTATIONS

Cross references. — For casting and counting votes, *see* 1-12-1 NMSA 1978 et seq.

For returns and canvasser, *see* 1-13-1 NMSA 1978 et seq.

Official canvass record used to determine signatures required. — In determining the number of signatures required to be contained in a petition for nomination the official canvass is to be the record that is used. 1964 Op. Att'y Gen. No. 64-35 (opinion rendered under former law).

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Death or disability of one elected to office before qualifying as creating a vacancy, 74 A.L.R. 486.

Election within contemplation of constitutional or statutory provisions relating to filling vacancy in public office occurring before expiration of regular term, 132 A.L.R. 574.

1-15-15. United States representative; congressional districts established.

New Mexico is divided into three congressional districts to be known and designated as congressional district one, congressional district two and congressional district three.

History: 1953 Comp., § 3-15-15, enacted by Laws 1969, ch. 240, § 365; 1982 (2nd S.S.), ch. 4, § 1; repealed and reenacted by Laws 2021 (2nd S.S.), ch. 2, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 2021 (2nd S.S.), ch. 2, § 1 repealed former 1-15-15 NMSA 1978 that was declared malapportioned and, therefore, unconstitutional in *Jepsen v. Vigil-Giron*, D-0101-CV-2001-02177 (1st Dist. Ct., filed January 8, 2002), and enacted a new section, effective March 17, 2022.

1-15-15.1. Unconstitutional.

ANNOTATIONS

Compiler's notes. — The New Mexico congressional districts adopted in *Jepsen v. Vigil-Giron*, D-0101-CV-2001-02177 (N.M. 1st Jud. Dist. January 8, 2002) and set forth in Section 1-15-15.1 NMSA 1978, were held to be malapportioned and therefore unconstitutional in *Egolf v. Duran*, D-101-CV-2011-02942 (N.M. 1st Jud. Dist. January 25, 2012). The redistricting plan embodied in Section 1-15-15.2 NMSA 1978 was adopted by that court.

1-15-15.2. Deleted.

ANNOTATIONS

Compiler's notes. — Laws 2021 (2nd S.S.), ch. 2, § 5 directed the compiler to remove the provisions of 1-15-15.2 from the NMSA 1978, effective March 17, 2022.

1-15-16. United States representative; congressional districts.

A. Congressional district one is composed of Bernalillo county precincts 2 through 23, 25 through 28, 30, 39, 68, 69, 78 through 80, 83, 84, 86, 87, 89, 100 through 103, 105, 107, 108, 110, 111, 113, 114, 116, 121 through 126, 128, 129, 131 through 133, 150 through 155, 161 through 189, 191 through 197, 200, 202, 204, 207 through 226, 230, 232, 235, 238, 241 through 246, 248, 249, 251 through 259, 261, 263, 266, 271 through 287, 289 through 339, 341 through 366, 368 through 393, 395 through 398, 400 through 598, 601 through 603, 605, 608, 610, 613 through 616, 623 through 625, 627, 634, 637, 640 through 651 and 656 through 686; Chaves county precincts 1, 2, 10, 12, 44 and 46; De Baca county; Guadalupe county; Lincoln county; Otero county precinct 56; Sandoval county precincts 1 through 5, 11 through 13, 28 through 50,

52 through 76, 80 through 90, 92 through 94, 96 through 117, 119 through 148, 150, 151 and 153 through 157; Santa Fe county precincts 15, 18, 73, 84, 85, 115, 125, 148, 156 and 157; Torrance county; and Valencia county precincts 4 through 6, 8 through 11, 14 through 16, 18, 22, 24, 28, 30, 32, 36, 38, 45, 49, 50, 56 through 58 and 60 through 63.

B. Congressional district two is composed of Bernalillo county precincts 1, 24, 29, 31 through 38, 40 through 67, 70 through 77, 81, 82, 85, 88, 90 through 99, 104, 106, 109, 112, 115, 117 through 120, 127, 130, 134 through 149, 156 through 160, 190, 198, 199, 201, 203, 205, 206, 227 through 229, 231, 233, 234, 236, 237, 239, 240, 247, 250, 260, 262, 264, 265, 267 through 270, 288, 340, 367, 394, 399, 599, 600, 604, 606, 607, 609, 611, 612, 617 through 622, 626, 628 through 633, 635, 636, 638, 639, 652 through 655 and 687; Catron county; Chaves county precinct 104; Cibola county; Dona Ana county; Eddy county precincts 9 through 21, 23 through 30, 32 through 40, 42, 44, 45, 47 through 52 and 54; Grant county; Hidalgo county; Lea county precincts 36, 41, 43, 50, 53 through 55, 58, 59, 62 and 71 through 74; Luna county; McKinley county precincts 26, 27, 29, 30, 64 and 66; Otero county precincts 1 through 55 and 57 through 66; Sierra county; Socorro county; and Valencia county precincts 1 through 3, 7, 12, 13, 17, 19 through 21, 23, 25 through 27, 29, 31, 33 through 35, 37, 39 through 44, 46 through 48, 51 through 55, 59 and 64 through 66.

C. Congressional district three is composed of Chaves county precincts 3 through 9, 11, 13 through 18, 20 through 25, 31 through 36, 40 through 43, 45, 47, 51, 52, 61 through 64, 71 through 74, 81 through 85, 90 through 95, 101 through 103, 105 and 106; Colfax county; Curry county; Eddy county precincts 1 through 8, 22, 31, 41, 43, 46 and 53; Harding county; Lea county precincts 2, 3, 8 through 35, 37 through 40, 42, 44, 51, 52, 56, 57 and 61; Los Alamos county; McKinley county precincts 1 through 25, 28, 31 through 63, 65 and 67 through 71; Mora county; Quay county; Rio Arriba county; Roosevelt county; Sandoval county precincts 6 through 10, 14 through 27, 51, 77 through 79, 91, 95, 118, 149 and 152; San Juan county; San Miguel county; Santa Fe county precincts 1 through 14, 16, 17, 19 through 72, 74 through 83, 86 through 114, 116 through 124, 126 through 147, 149 through 155 and 158 through 179; Taos county; and Union county.

History: 1978 Comp., § 1-15-16, enacted by Laws 1991 (1st S.S.), ch. 7, § 1; repealed and reenacted by Laws 2021 (2nd S.S.), ch. 2, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 2021 (2nd S.S.), ch. 2, § 2 repealed former 1-15-16 NMSA 1978 that was declared malapportioned and, therefore, unconstitutional in *Jepsen v. Vigil-Giron*, D-0101-CV-2001-02177 (1st Dist. Ct., filed January 8, 2002), and enacted a new section, effective March 17, 2022.

1-15-16.1. Precincts.

A. Precinct designations and boundaries used in the 2021 congressional redistricting are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act and revised and approved pursuant to that act by the secretary of state as of November 30, 2021.

B. A board of county commissioners shall not create any precinct, combine precincts or adjust the boundaries of any precinct in such manner that a precinct lies in more than one congressional district. A county precinct map determined not to be in compliance with this subsection shall be rejected by the secretary of state and returned to the appropriate county clerk with a written statement setting forth those instances in which the county precinct boundaries do not comply.

History: Laws 1991 (1st S.S.), ch. 7, § 2; 2021 (2nd S.S.), ch. 2, § 3.

ANNOTATIONS

The 2021 (2nd S.S.) amendment, effective March 17, 2022, changed provisions of the election code related to precincts; in Subsection A, after "used in the", deleted "1991" and added "2021", and after "secretary of state as of", deleted "August 16, 1991" and added "November 30, 2021"; and in Subsection B after the subsection designation, deleted "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 case 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." and added the remainder of the subsection.

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 one, congressional district two and congressional district 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; 2021 (2nd S.S.), ch. 2, § 4.

ANNOTATIONS

The 2021 (2nd S.S.) amendment, effective March 17, 2022, in the second sentence, after each occurrence of "district", deleted "number".

Constitution gives congress exclusive power over qualifications of its members. — United States Const., art. I, § 5, relating to the powers of congress, provides that each house shall be sole and exclusive judge of the election and qualifications of its own members and deprives the courts of jurisdiction to determine those matters. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445.

State law cannot add to or subtract from constitutional qualifications. — The constitutional qualifications for membership in the lower house of congress exclude all other qualifications, and state law can neither add to nor subtract from them. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445.

Court must look to creating authority for all qualifications. — The state may provide such qualifications and restrictions as it may deem proper for offices created by the state; but for

offices created by the United States Constitution, the court must look to the creating authority for all qualifications and restrictions. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445.

Constitution does not require election of representatives by district. — While holding under 3-10-19.1, 1953 Comp., (now repealed) that at large elections in a state entitled to more than one congressman do not work an abridgement of the privileges and immunities clause of U.S. Const., amend. XIV, § 1, the court also said that U.S. Const., art. I, § 2 is not a mandate to state legislatures and to the congress to provide for election of representatives by districts, but is optional. *Norton v. Campbell*, 359 F.2d 608 (10th Cir.), cert. denied, 385 U.S. 839, 87 S. Ct. 89, 17 L. Ed. 2d 73 (1966).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 4; 77 Am. Jur. 2d United States §§ 11, 23.

Death or disability of one elected to office before qualifying as creating a vacancy, 74 A.L.R. 486.

Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

State court jurisdiction over contest involving primary election for member of congress, 68 A.L.R.2d 1320.

91 C.J.S. United States § 11.

1-15-17.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1982 (3d S.S.), ch. 3, § 11, effective June 23, 1982, and Laws 1983, ch. 232, § 17, effective June 17, 1983, both repealed 1-15-17.1 NMSA 1978, which provided that the provisions of Laws 1982 (2nd S.S.), ch. 4 would be repealed in the event that either Chapter 1 or Chapter 2 of Laws 1982 (2nd S.S.) were held unconstitutional by any court of competent jurisdiction.

Laws 1982 (2nd S.S.), ch. 1, enacted former 2-7A-1 to 2-7A-79 NMSA 1978. Laws 1982 (2nd S.S.), ch. 2, enacted former 2-8A-1 to 2-8A-52 NMSA 1978. Laws 1982 (2nd S.S.), ch. 4, enacted 1-15-16 and former 1-15-17.1 NMSA 1978 and amended former 1-15-15 and 1-15-17 NMSA 1978.

Articles 7A and 8A of Chapter 2 NMSA 1978 were held unconstitutional in 1982.

1-15-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 232, § 17, repealed 1-15-18 NMSA 1978, as enacted by Laws 1969, ch. 240, § 368, relating to a vacancy in the office of the United States representative in congress. For present provisions, *see* 1-15-18.1 NMSA 1978, effective June 17, 1983.

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, adjust the day provided in the Uniform Military and Overseas Voters Act [1-6B-1 to 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.

ANNOTATIONS

Temporary provisions. — Laws 2021, ch. 17, § 1, effective April 1, 2021, repealed effective December 31, 2021, provided:

A. This section regulates the conduct of any election held in 2021 to fill a vacancy in the office of United States representative. To the greatest extent possible, the provisions of this section are to be read as supplemental to and in harmony with the provisions of the Election Code; provided, however, that if a direct conflict exists with other provisions in the Election Code, the provisions of this section shall apply.

B. Each election day polling location located in the district established in the 2019 polling place resolution for each county or a location in the district established by any subsequent amendment to such a resolution shall operate as a voter convenience center.

C. A polling place located on Indian nation, tribal or pueblo land shall not be closed or consolidated with other polling locations, nor shall the days and times of voting be modified, without the written agreement of the Indian nation, tribe or pueblo where the polling location is located. If, as a result of public health concerns, voters registered within the Indian nation, tribe or pueblo are unable to leave the Indian nation, tribe or pueblo during the time when voting occurs for the election, regardless of whether voters residing outside the boundaries of the Indian nation, tribe or pueblo are able to access such polling locations, there shall be at least one polling location within the boundaries of the Indian nation, tribe or pueblo.

D. On behalf of each county clerk, the secretary of state shall automatically deliver to each mailable voter in the district a notice informing the voter of the date of the election, an internet web address where a voter may request a mailed ballot, a telephone number where a voter may call to request a paper mailed ballot application and a list of the days and times and addresses where voters may vote in person. The notice shall be mailed beginning on the fiftieth day before the election. As used in this subsection, a "mailable voter" is a voter in the district other than a voter:

(1) to whom a notice was sent pursuant to Subsection C of Section 1-4-28 NMSA 1978 in 2018 or 2020, and subsequent to the sending of the most recent notice:

(a) did not return the prepaid and pre-addressed return card provided pursuant to that section;

(b) has not filed a new or amended certificate of registration with a new address at which election-related mail is to be sent; and

(c) has not since voted;

(2) who registered to vote on or before December 31, 2016, has not submitted a new certificate of registration at any time since January 1, 2017 and has not voted in any election since January 1, 2017; or

(3) whose ballot is delivered pursuant to the provisions of the Uniform Military and Overseas Voters Act or the Intimate Partner Violence Survivor Suffrage Act.

E. Each mailed ballot sent to a voter in the election shall contain the following notice: "This ballot may be returned to the office of the county clerk or any open polling location in the county where you are registered to vote at any time up to and including the day of the election. If this ballot is returned by mail, to ensure timely postal delivery to the county clerk, the ballot should be mailed no later than _____.". The date used in the notice shall be seven days prior to the election.

F. An application for a mailed ballot from a voter who is not a federal qualified elector is timely if received by the county clerk no later than fourteen days prior to the election. An application for a mailed ballot from a voter who is not a federal qualified elector that is received by the county clerk after the fourteenth day prior to the election shall be rejected, and if the application was received by the county clerk by the fourth day prior to the election, the county clerk shall within twenty-four hours of receipt of the application send a rejection notice to the voter that shall include a list of the early and election day polling locations in the county. The county clerk shall only accept applications for a mailed ballot submitted through the official web portal operated by the secretary of state or submitted on the official paper form sent to a voter by the county clerk, and shall process only the first request submitted by the voter. A request for a replacement ballot is not subject to the deadlines in this subsection.

G. If the application for a mailed ballot from a voter who is not a federal qualified elector indicates that the mailed ballot is to be delivered to an address other than an address listed on the voter's certificate of registration, the county clerk shall prepare a notice of requested mailed ballot. The notice of requested mailed ballot shall inform the voter of the address to which the ballot was mailed along with the phone number of the county clerk's office and the internet address of the voter web portal provided by the secretary of state. The notice of requested mailed ballot shall be delivered to the address provided on the voter's certificate of registration on the same day the county clerk delivers the mailed ballot to the address requested by the voter.

H. An application for a mailed ballot from a voter who is a federal qualified elector is timely if received by the county clerk no later than seven days prior to the election; provided that the voter provides information permitting secured electronic delivery of the ballot to the voter. An application for a mailed ballot from a voter who is a federal qualified elector who does not provide information permitting secured electronic delivery of the ballot is timely if received by the county clerk no later than fourteen days prior to the election.

I. To return a mailed ballot, each voter shall provide in the space provided for that purpose under the privacy flap of the official mailing envelope the voter's signature on a line located under the required attestation and the last four digits of the voter's social security number, which shall constitute the required voter identification. The attestation shall include the pre-printed name of the voter to whom the mailed ballot was sent. No additional information shall be required of a voter to return a mailed ballot.

J. Upon receipt of a mailed ballot, the county clerk shall remove the privacy flap to verify that the voter signed the official mailing envelope and confirm that the last four digits of the social security number provided by the voter matches the information available to the county clerk. If the signature is present and the last four digits of the voter's social security number match, the county clerk shall note in the absentee ballot register that the ballot was accepted and shall transfer the ballot to the special deputy for mailed ballots for delivery to the absent voter election board. If either the voter's signature is missing or the last four digits of the voter's social security number are not provided or do not match, the county clerk shall reject the mailed ballot and make the appropriate notation in the absentee ballot register and shall transfer the ballot to the special deputy for mailed ballots for delivery to the absent voter election board. If the mailed ballot is rejected, the county clerk shall within one day send the voter a notice of rejection, along with information regarding how the voter may cure the reason for the rejection. When an application for a mailed ballot is rejected pursuant to this section, the county clerk shall send a notice of rejection to the mailing address on the voter's certificate of registration and, if different, also to the address listed on the voter's application for a mailed ballot. The determination of the county clerk to accept or reject a mailed ballot is subject to a later interposition of a challenge before the absent voter election board. In addition to existing procedures in the Election Code for qualifying a previously rejected absentee ballot after election day, a previously rejected absentee ballot may be qualified by the presiding judge and election judges of the absent voter election board before the day of the election if the ballot was rejected for the lack of a signature or missing required voter identification if the voter provides such information pursuant to procedures established by the secretary of state.

K. A political party with a candidate on the ballot may appoint a challenger to observe the determination made by the county clerk to accept or reject a mailed ballot. The challenger shall not interpose a challenge to the county clerk, but may make notes to interpose a challenge to the absent voter election board; provided that a challenger shall not copy, record or transcribe any portion of a voter's social security number. Challengers are subject to the same public health requirements as county clerk staff and election board members.

L. On election night, the absent voter election board shall recess upon the earlier of completion of its work or 11:00 p.m. An absent voter election board that recesses at 11:00 p.m. shall continue its work only between the hours of 9:30 a.m. and 8:00 p.m. on each subsequent day until the board has completed its work.

M. If the absent voter election board does not complete its work by 11:00 p.m. on election night, the county clerk shall notify the county sheriff's office that a deputy is required to be present to secure the room or facility where uncounted ballots are locked overnight. If the sheriff indicates a sheriff's deputy is unavailable, the county clerk shall notify the secretary of state who shall request state police to assign a patrolman to secure the room or facility where uncounted ballots are locked overnight. The county clerk shall provide as much notice as is practicable in order to secure law enforcement personnel to secure the uncounted ballots overnight. A sheriff's deputy or state police patrolman is required for overnight watch any time the absent voter election board is not present until the return of the absent voter election board. If neither a sheriff's deputy nor a state police patrolman is available, the county clerk or chief deputy shall remain on site until the return of the absent voter election board and shall allow any challenger or observer to remain present, as well.

N. When preparing the county canvass report, each county clerk shall appoint an election board to conduct a machine tabulation or hand tally if the county clerk has received and logged any:

(1) paper ballots not previously tabulated;

(2) mailed ballots delivered to an election board not previously tabulated;

(3) provisional paper ballots that have been qualified and contain votes that are to be counted; or

(4) ballots with write-in votes not previously counted.

O. Certificates of registration and cancellations of existing voter registrations not processed until after the election pursuant to existing law may be processed by the county clerk beginning the first Monday following the election; provided that such certificates of registration and cancellations of existing voter registrations shall be processed beginning the first business day following approval of the report of the county canvass by the county canvassing board.

P. No later than fifty days before the election and in consultation with the department of health, the secretary of state shall procure sufficient personal protective equipment and sanitizing supplies for distribution to each county clerk and for each early, mobile and election day polling location.

Q. Nothing in this section shall alter or modify the time lines or procedures provided in the Uniform Military and Overseas Voters Act except for the deadlines provided in this section for the request of a military-overseas ballot by a voter who is a federal qualified elector. Nothing in this section shall alter or modify the time lines or procedures provided in the Intimate Partner Violence Survivor Suffrage Act.

R. The secretary of state shall deposit sufficient funds in the business reply mail account for each county clerk to ensure delivery of all mailed ballot applications and returned mailed ballots.

S. Notwithstanding any limitations to the contrary, the state board of finance shall authorize sufficient funds to be timely distributed to the secretary of state and the department of health for necessary and reasonable expenses incurred pursuant to this section.

T. The compiler shall not compile this section, but shall reference it in a compiler's note.

The 2019 amendment, effective April 3, 2019, revised the procedures for filling a vacancy in the office of United States representative; in Subsection A, added "Within", after "United States representative, the", deleted "governor" and added "secretary of state", after "call", deleted "a special" and added "an", after "not less than", deleted "eighty-four" and added "seventy-seven", after "Subsections", deleted "E" and added "H", and after the next occurrence of "and", deleted "F" and added "I"; added new Subsections B and C and redesignated former Subsections B and C as Subsections D and E, respectively; added a new Subsection F and redesignated former Subsections D through F as Subsections G through I, respectively; in Subsection G, deleted "Special", after "Election Code", added "for general elections", and after "shall control", added the remainder of the subsection; in Subsection H, after "United States representative", deleted "after the date of the primary election and before the date of the general election of that same

year, the vacancy shall be filled at that general election of the same year" and added "beginning one hundred sixty days and no less than sixty-three days before a statewide election, the vacancy shall be filled a the next statewide election; provided that when filling a vacancy", in Paragraph H(1), added "at a general election", and added Paragraph H(2); in Subsection I, in the introductory clause, after "United States representative", added "in extraordinary circumstances", after "scheduled election", deleted "or previously scheduled special election", and added "pursuant to 2 U.S.C. Section 8(b)", in Paragraph I(1), added "immediately issue a writ of election, upon which the secretary of state shall", after "call", deleted "a special" and added "an", and after "announced", added "and file the proclamation along with the writ in the office of the secretary of state", added a new Paragraph I(2) and redesignated former Paragraphs (2) and (3) as Paragraphs I(3) and I(4), in Paragraph I(4), after "on the", deleted "twentieth" and added "tenth business", and added Paragraph I(5); and added Subsection J.

The 2008 amendment, effective February 29, 2008, added Subsection F.

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided the procedure for instances when a person is initially elected for the next succeeding term of a congressional office at a general election and there becomes a vacancy in the expiring term of that office; in Subsection A, after "expiring term of", deleted "any elective state or district office or"; and added Subsection B.

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.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, deleted "ballot; write-in" at the end of the section heading; deleted the Subsection A designation; and deleted former Subsection B, which related to write-in ballots.

ARTICLE 15A
Presidential Primary

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-53 NMSA 1978 as 1-15A-1 NMSA 1978, effective July 1, 2011.

Cross references. — For presidential electors, *see* 1-15-1 to 1-15-10 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 5.

91 C.J.S. United States § 28.

1-15A-2. Voting in presidential primary; date of election.

A. 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 political 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.

B. A voter may vote in a presidential primary election on the ballot of only one of the parties participating in the primary election in accordance with the provisions of Section 1-12-7 NMSA 1978.

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; 2025, ch. 54, § 8.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-54 NMSA 1978 as 1-15A-2 NMSA 1978 effective July 1, 2011.

Cross references. — For date for holding a primary election, *see* 1-8-11 NMSA 1978.

The 2025 amendment, effective July 1, 2025, provided that voters may vote in a presidential primary election on the ballot of only one of the parties participating in the primary election; in the section heading, added "Voting in" preceding "presidential primary"; and added Subsection B.

The 2003 amendment, effective June 20, 2003, inserted "in either a presidential primary election or in accordance with the selection procedure for presidential candidates of each voter's party" following "candidate of their party" at the end of the first sentence.

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 [repealed].

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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 39, § 99 repealed 1-15A-10 NMSA 1978, effective June 16, 2023.

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-54.1 NMSA 1978 as 1-15A-3 NMSA 1978 effective July 1, 2011.

The 2016 amendment, effective May 18, 2016, allowed persons who would otherwise be qualified to vote in a party's primary to participate in the party's alternate selection procedure; in the catchline, added "use of alternate selection procedures"; in Subsection A, after "it shall", added the paragraph designation "(1)", and added new Paragraph (2); and in Subsection B, after "The state", deleted "chairman" and added "chair", and after "Section", deleted "1-8-61" and added "1-15A-10".

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.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-55 NMSA 1978 as 1-15A-4 NMSA 1978 effective July 1, 2011.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-56 NMSA 1978 as 1-15A-5 NMSA 1978 effective July 1, 2011.

Cross references. — For names of nominees, not electors, to be placed on general election ballot, *see* 1-15-4 NMSA 1978.

The 1995 amendment, effective January 1, 1996, inserted "or supported by any major political party in the state" following "nationally recognized" near the end of the section.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-57 NMSA 1978 as 1-15A-6 NMSA 1978 effective July 1, 2011.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-58 NMSA 1978 as 1-15A-7 NMSA 1978 effective July 1, 2011.

The 2017 amendment, effective June 16, 2017, changed the deadline by which a person nominated by the committee or by petition may request in writing that the person's name not be printed as a candidate on the New Mexico presidential primary ballot, and made stylistic changes; and after "requests in writing otherwise at least", deleted "fifty" and added "sixty-three".

Candidate who fails to make a timely withdrawal from presidential primary is legitimate candidate in that primary. *Anderson v. Hooper*, 498 F. Supp. 898 (D.N.M. 1980).

1-15A-8. Repealed.

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; repealed by Laws 2023, ch. 39, § 99.

ANNOTATIONS

Repeals. — Laws 2023, ch. 39, § 99 repealed 1-15A-8 NMSA 1978, as enacted by Laws 1977, ch. 230, § 7, relating to voting in presidential primary, ballot position, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-8-60 NMSA 1978 as 1-15A-9 NMSA 1978 effective July 1, 2011.

1-15A-10. Repealed.

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; repealed by Laws 2023, ch. 39, § 99.

ANNOTATIONS

Repeals. — Laws 2023, ch. 39, § 99 repealed 1-15A-10 NMSA 1978, as enacted by Laws 1977, ch. 230, § 9, relating to delegate pledge, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

1-15A-11. Repealed.

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; repealed by Laws 2023, ch. 39, § 99.

ANNOTATIONS

Repeals. — Laws 2023, ch. 39, § 99 repealed 1-15A-11 NMSA 1978, as enacted by Laws 1977, ch. 230, § 11, relating to penalty, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

ARTICLE 16
Ballot Questions

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.

History: 1953 Comp., § 3-16-1, enacted by Laws 1969, ch. 240, § 374; 2019, ch. 212, § 133.

ANNOTATIONS

Cross references. — For federal constitutional amendments, *see* 1-18-1 NMSA 1978 et seq.

For requirements for amendment of elective franchise provisions, *see* N.M. Const., art. VII, § 3.

For constitutional provision as to proposing and ratifying amendments, *see* N.M. Const., art. XIX, § 1.

For voters' ratification of amendments, *see* N.M. Const., art. XIX, § 1.

For amendment of compact with the United States, *see* N.M. Const., art. XIX, § 4.

The 2019 amendment, effective April 3, 2019, removed references to "constitutional amendments" and added "ballot questions"; in the section heading, deleted "State constitutional amendments" and added "Ballot questions"; and after "which any", deleted "proposed constitutional amendment or" and added "ballot", and after "conducted", added "and canvassed".

Constitutional requirement to publish full text of other questions. — When the legislature stated that other questions should have their full text published "in accordance with the constitution of New Mexico" in 1-16-4 NMSA 1978 the reference is necessarily to the provision for publication in N.M. Const., art. XIX, § 1, as there is no other provision in the constitution setting forth the requirements for publication. *State ex rel. Constitutional Convention v. Evans*, 1969-NMSC-139, 80 N.M. 720, 460 P.2d 250.

Publication requirement must be complied with in adoption of new constitution. Election Code requires compliance with the publication provisions of N.M. Const., art. XIX, § 1, when the question of the adoption of the new constitution is published. *State ex rel. Constitutional Convention v. Evans*, 1969-NMSC-139, 80 N.M. 720, 460 P.2d 250.

Act proposing amendment election not submitted to referendum. — An act calling for a special election on a proposed constitutional amendment is not one that may, by petition of election, be submitted to referendum. *Hutcheson v. Gonzales*, 1937-NMSC-047, 41 N.M. 474, 71 P.2d 140 (decided under former law).

Applicability to referendum elections. — Former sections relating to mode of submitting questions to be presented to electorate, conduct of election thereon, manner of ascertaining result and certification thereof were applicable to referendum elections. *State v. Perrault*, 1929-NMSC-099, 34 N.M. 438, 283 P. 902 (decided under former law).

Withdrawals from petition for form of government election permitted. — Under Laws 1909, ch. 87 (now repealed), where petition had been presented for election upon question of commission form of government, withdrawals from petition were permitted and effectual.

Territory ex rel. Stockard v. Roswell, 1911-NMSC-041, 16 N.M. 340, 117 P. 846 (decided under former law).

An insert subject to attack. — Publication of the proposed constitution and proclamation in the form of a removable insert similar to the Sunday supplement type inserts and advertising flyers included in newspapers would be subject to legal attacks. 1969 Op. Att'y Gen. No. 69-125.

Publication should be regular part of newspaper. — In order to insure that the material is "published in the newspaper" and not merely "distributed" therein, it should be published either as part of a regular section of the newspaper, or as a separate section containing the running head of the newspaper, the date of publication and some designation to indicate that it is a section of that day's newspaper. 1969 Op. Att'y Gen. No. 69-125.

Requirement for registrants list not applicable in amendment election. — Since a list of registrants can serve no useful purpose in connection with an election solely on constitutional amendments, former Section 3-2-30, 1953 Comp., requiring the clerk to furnish such a list, is neither practical nor applicable in such case. 1951 Op. Att'y Gen. No. 51-5403 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 16 Am. Jur. 2d Constitutional Law §§ 26 to 39; 26 Am. Jur. 2d Elections § 313 et seq.

Legislature's power to raise constitutional minimum required on special election, 91 A.L.R. 1021.

Nonregistration as affecting signature to petition for special election, 100 A.L.R. 1308.

Validity of special elections as affected by publication or dissemination of matter or information, extrinsic to the question as submitted, regarding nature or effect of the proposal, 122 A.L.R. 1142.

Constitutional or other special proposition submitted to voters, basis for computing majority essential to adoption of, 131 A.L.R. 1382.

Injunction against submission of proposition because of unconstitutionality, 19 A.L.R.2d 519.

16 C.J.S. Constitutional Law §§ 6 to 14.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, completely rewrote the section, providing the items that may be included in a state ballot question and in a local government ballot question; replaced the section heading; and deleted "The secretary of state shall provide ballots for the use of voters in all special elections where constitutional amendments or other questions are submitted to the voters of the entire state. Paper ballots shall bear on their face the facsimile signature of the secretary of state and shall be furnished to each of the county clerks.", and added Subsections A and B.

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].

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.

ANNOTATIONS

Cross references. — For constitutional provision on the proposal and ratification of constitutional amendments, *see* N.M. Const., art. XIX, § 1.

The 2019 amendment, effective April 3, 2019, removed references to "constitutional amendments", and revised the procedures for certifying state or local government ballot questions; in the section heading, deleted "State constitutional amendments" and added "Ballot questions"; in Subsection A, after "Whenever a", deleted "proposed constitutional amendment or other" and added "state ballot", after "entire state", deleted "secretary of state" and added "on a general election or regular local election ballot", after "not less than", deleted "sixty-three" and added "seventy", after "submitted", added "secretary of state", and after "certify the", deleted "proposed constitutional amendment or" and added "state ballot"; and added Subsections B and C.

The 2017 amendment, effective June 16, 2017, changed the deadline by which the secretary of state must certify a proposed constitutional amendment or question to the county clerk of each county; and after "not less than", deleted "fifty-six" and added "sixty-three".

1-16-4. Ballot questions; state constitutional amendments; publication.

A. The secretary of state shall cause the ballot question for 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; 2023, ch. 39, § 76.

ANNOTATIONS

Cross references. — For publication of proposed amendments, see N.M. Const., art. XIX, § 1.

The 2023 amendment, effective June 16, 2023, clarified language related to proposed constitutional amendments on a ballot; and in Subsection A, after "cause", added "the ballot question for".

The 2019 amendment, effective April 3, 2019, completely rewrote the section, providing the procedures for publication of proposed state constitutional amendments; in the section heading, added "Ballot questions"; deleted "Upon receipt of the certified proposed constitutional amendment or other question, the county clerk shall include it in the proclamation to be issued and shall publish the full text of each proposed constitutional amendment or other question in accordance with the constitution of New Mexico" and added new Subsections A through C.

Constitutional requirement to publish full text of other questions. — When the legislature stated that other questions should have their full text published "in accordance with the constitution of New Mexico" in this section, the reference is necessarily to the provision for publication in N.M. Const., art. XIX, § 1, as there is no other provision in the constitution setting forth the requirements for publication. *State ex rel. Constitutional Convention v. Evans*, 1969-NMSC-139, 80 N.M. 720, 460 P.2d 250.

Publication must be complied with in adoption of new constitution. — Election Code requires compliance with the publication provisions of N.M. Const., art. XIX, § 1, when the question of the adoption of the new constitution is published. *State ex rel. Constitutional Convention v. Evans*, 1969-NMSC-139, 80 N.M. 720, 460 P.2d 250.

Publication of proclamation. — This language requires the publication of the full text of the proposed constitutional amendment together with the proclamation. 1969 Op. Att'y Gen. No. 69-125.

Publication should be regular part of newspaper. — In order to insure that the material is "published in the newspaper" and not merely "distributed" therein, it should be published either as part of a regular section of the newspaper, or as a separate section containing the running head of the newspaper, the date of publication and some designation to indicate that it is a section of that day's newspaper. 1969 Op. Att'y Gen. No. 69-125.

An insert subject to attack. — Publication of the proposed constitution and proclamation in the form of an insert would be subject to legal attacks. 1969 Op. Att'y Gen. No. 69-125.

Publication of constitutional amendments. — Proposed constitutional amendments must be set forth in full in the election proclamation published by the board of county commissioners. 1955 Op. Att'y Gen. No. 55-6181 (opinion rendered under former law).

1-16-5. Repealed.

History: 1953 Comp., § 3-16-5, enacted by Laws 1969, ch. 240, § 378; 1977, ch. 222, § 94; 1981, ch. 146, § 2; 2003, ch. 356, § 31; 2007, ch. 337, § 16; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-16-5 NMSA 1978, as enacted by Laws 1969, ch. 240, § 378, relating to state constitutional amendments, form of ballots, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-16-6. Repealed.

History: 1953 Comp., § 3-16-6, enacted by Laws 1969, ch. 240, § 379; 1977, ch. 222, § 95; 2003, ch. 356, § 32; 2007, ch. 337, § 17; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-16-6 NMSA 1978, as enacted by Laws 1969, ch. 240, § 379, relating to state constitutional amendments, marking ballots, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, required the secretary of state to prescribe uniform guidelines for state and local ballot questions; in the section heading, deleted "State constitutional amendments", and added "questions"; in Subsection A, after "shall", added "by rule", after "prescribe", deleted "the form in which state constitutional amendments shall" and added "uniform guidelines for a state or local ballot question to"; and in Subsection B, added "For a proposed constitutional amendment, the", and after "form", added "of the ballot question", and deleted the last sentence of the subsection, which authorized the secretary of state to provide an analysis of the proposed constitutional amendment.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, removed a provision related to the form for ballots; replaced the section heading; deleted former Subsection A and deleted the subsection designation "B.".

The 2018 amendment, effective July 1, 2018, changed the deadline by when a copy of the resolution proposing a question to be submitted to the voters of a county or local government must be sent to the secretary of state, and provided that nonbinding or advisory questions shall not be placed on the ballot for any election held pursuant to the Election Code; added subsection designation "A."; in Subsection A, after "submitted to the voters of a county", added "or local government", and after "not less than", deleted "thirty" and added "seventy"; and added Subsection B.

Municipal questions. — A municipality has no legal authority to submit questions to voters of the municipality on a general election ballot. A municipality may submit a question to voters of the municipality on a municipal ballot in a municipal election held on the same day as a general election. 2012 Op. Att'y Gen. No. 12-05.

Ballot instructions. — Ballots for voting upon a referred act should bear the following instructions: "Instructions to voters. If you desire to vote for the retention of the act, mark X in square opposite the words 'FOR APPROVAL OF THE ACT.' If you desire to vote against the retention of the act, mark X in the square opposite the words 'FOR REJECTION OF THE ACT.'" 1950 Op. Att'y Gen. No. 50-5315 (opinion rendered under former law).

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.

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided procedures for printing ballot questions; in the section heading, deleted "State constitutional amendments" and added "Ballot questions", and added "space on ballot"; deleted "Proposed constitutional amendments or other"; and added Subsections B through D.

The 2007 amendment, effective July 1, 2007, eliminated reference to emergency and provisional paper ballots and absentee ballots.

The 2003 amendment, effective July 1, 2003, inserted "and provisional" in the section heading and inserted "or provisional" following "voters on emergency".

1-16-10. Repealed.

History: 1953 Comp., § 3-16-10, enacted by Laws 1969, ch. 240, § 383; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-16-10 NMSA 1978, as enacted by Laws 1969, ch. 240, § 383, relating to state constitutional amendments, sample ballots, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-16-11. Repealed.

History: 1953 Comp., § 3-16-11, enacted by Laws 1969, ch. 240, § 384; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-16-11 NMSA 1978, as enacted by Laws 1969, ch. 240, § 384, relating to state constitutional amendments, expense, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-16-12. Repealed.

History: 1953 Comp., § 3-16-12, enacted by Laws 1969, ch. 240, § 385; 1977, ch. 222, § 99; repealed by Laws 2009, ch. 150, § 37.

ANNOTATIONS

Repeals. — Laws 2009, ch. 150, § 37 repealed 1-16-12 NMSA 1978, as enacted by Laws 1969, ch. 240, § 385, relating to state constitutional amendments, general elections, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

Compiler's notes. — Laws 2009, ch. 150, § 33, effective June 19, 2009, also amended 1-16-12 NMSA 1978, as follows: after "submitted to the voters, the", deleted "emergency paper ballots or absentee ballot on the", and after "printed on the", deleted "emergency paper ballots or absentee". The section was set out as repealed.

1-16-13. Repealed.

History: 1953 Comp., § 3-16-13, enacted by Laws 1975, ch. 287, § 1; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-16-13 NMSA 1978, as enacted by Laws 1975, ch. 287, § 1, relating to constitutional amendments, text provided, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

ARTICLE 17
Referendum Petitions

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.

ANNOTATIONS

Cross references. — For definition of qualified voter, *see* 1-1-4 NMSA 1978.

For constitutional provisions as to referendum, *see* N.M. Const., art. IV, § 1.

Sections on referendum petitions are applicable only to referendums which are permitted by N.M. Const., art. IV, § 1. 1964 Op. Att'y Gen. No. 64-108 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum § 28.

Applicability of constitutional requirements as to legislation or constitutional amendments, to statutes or constitutional amendments under provision conferring initiative or referendum powers, 62 A.L.R. 1349.

Judicial decisions relating to adoption or repeal of amendments to federal constitution, 83 A.L.R. 1374, 87 A.L.R. 1321, 122 A.L.R. 717.

Inclusion in single initiative or referendum petition of proposed constitutional or statutory enactments covering different and distinct subjects, 90 A.L.R. 572.

Legislature's power to raise constitutional minimum required on special election, 91 A.L.R. 1021.

Nonregistration as affecting one's qualification as signer of petition for special election, 100 A.L.R. 1308.

Validity of special elections as affected by publication or dissemination of matter or information, extrinsic to the question as submitted, regarding nature or effect of the proposal, 122 A.L.R. 1142.

Constitutional or other special proposition submitted to voters, basis for computing majority essential to adoption of, 131 A.L.R. 1382.

Construction and application of constitutional or statutory provisions expressly excepting laws from referendum, 146 A.L.R. 284, 100 A.L.R.2d 314.

Taxpayer's capacity to maintain suit to enjoin submission of initiative, referendum or recall measure to voters, 6 A.L.R.2d 557.

Injunction against submission of proposition because of unconstitutionality, 19 A.L.R.2d 519.

82 C.J.S. Statutes § 123.

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum § 22.

82 C.J.S. Statutes § 122.

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.

History: 1953 Comp., § 3-17-4, enacted by Laws 1969, ch. 240, § 389.

ANNOTATIONS

Cross references. — For offenses and penalties, *see* 1-20-1 NMSA 1978 et seq.

For obtaining signatures to petition by unlawful means, *see* 30-27-4 NMSA 1978.

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum §§ 22 to 46.

82 C.J.S. Statutes §§ 122 to 131.

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum § 30.

82 C.J.S. Statutes § 124.

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.

History: 1953 Comp., § 3-17-7, enacted by Laws 1969, ch. 240, § 392.

ANNOTATIONS

Cross references. — For false swearing, *see* 1-20-10 NMSA 1978.

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 that is the object of the petition.

B. Within thirty 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; 2023, ch. 39, § 77.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, expanded the time for the secretary of state to approve an original draft of a referendum petition from ten to thirty days; and in Subsection B, after "Within", deleted "ten" and added "thirty".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Time within which officer must perform duty to pass upon sufficiency of initiative, referendum, or recall petition, 102 A.L.R. 51.

82 C.J.S. Statutes §§ 131 to 134.

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum § 46.

Construction and application of constitutional or statutory requirement as to short title, ballot title, or explanation of nature of proposal and initiative, referendum, or recall petition, 106 A.L.R. 555.

82 C.J.S. Statutes §§ 134, 139.

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 thirty days after it is filed in the secretary's office.

History: 1953 Comp., § 3-17-10, enacted by Laws 1969, ch. 240, § 395; 2023, ch. 39, § 78.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, expanded the time for the secretary of state to determine the sufficiency of a referendum petition from fifteen to thirty days; and after "within", deleted "fifteen" and added "thirty".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum §§ 37 to 40.

82 C.J.S. Statutes §§ 133, 137.

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.

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum §§ 26, 37 to 40.

82 C.J.S. Statutes §§ 127, 133, 137.

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.

ANNOTATIONS

Cross references. — For writ of mandamus generally, *see* 44-2-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum §§ 49, 50.

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.

ANNOTATIONS

Cross references. — For definition of publication, *see* 1-1-14 NMSA 1978.

For definition of posting, *see* 1-1-15 NMSA 1978.

For publication of proposed constitutional amendments, *see* 1-16-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum § 44.

82 C.J.S. Statutes § 141.

ARTICLE 18
Federal Constitutional Amendments

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 16 Am. Jur. 2d Constitutional Law §§ 20 to 25.

Judicial decisions relating to adoption or repeal of amendments to federal constitution, 5 A.L.R. 1417, 10 A.L.R. 1510.

Judicial decisions relating to adoption or repeal of amendments to federal constitution, 83 A.L.R. 1374, 87 A.L.R. 1321, 122 A.L.R. 717.

Propositions submitted to people as covering one or more than one proposed constitutional amendment, 94 A.L.R. 1510.

16 C.J.S. Constitutional Law § 5.

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.

ANNOTATIONS

Cross references. — For per diem and mileage of members of the legislature, *see* N.M. Const., art. IV, § 10 and 2-1-8 NMSA 1978.

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

1-19-1. Repealed.

History: 1953 Comp., § 3-19-1, enacted by Laws 1969, ch. 240, § 405; 1978 Comp., § 1-19-1, repealed by Laws 2021, ch. 109, § 22.

ANNOTATIONS

Repeals. — Laws 2021, ch. 109, § 22 repealed 1-19-1 NMSA 1978, as enacted by Laws 1969, ch. 240, § 405, relating to campaign practices, primary election, expenditure of party money, effective July 1, 2021. For provisions of former section, *see* the 2020 NMSA 1978 on *NMOneSource.com*.

1-19-2 to 1-19-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 360, § 13, repealed 1-19-2 to 1-19-15 NMSA 1978, relating to campaign practices, expenditures, statement filings and political committees. For present provisions *see* 1-19-25 to 1-19-37 NMSA 1978.

1-19-16. Repealed.

History: 1953 Comp., § 3-19-16.1, enacted by Laws 1973, ch. 401, § 1; repealed by Laws 2019, ch. 262, § 17.

ANNOTATIONS

Repeals. — Laws 2019, ch. 262, § 17 repealed 1-19-16 NMSA 1978, as enacted by Laws 1973, ch. 401, § 1, relating to campaign practices, printing or publishing campaign material without specifying sponsor, penalty, effective July 1, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-19-17. Repealed.

History: 1953 Comp., § 3-19-16.2, enacted by Laws 1973, ch. 401, § 2; repealed by Laws 2019, ch. 262, § 17.

ANNOTATIONS

Repeals. — Laws 2019, ch. 262, § 17 repealed 1-19-17 NMSA 1978, as enacted by Laws 1973, ch. 401, § 2, relating to campaign practices, circulation of campaign material without specifying sponsor, penalty, effective July 1, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-19-18 to 1-19-24. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 360, § 13, repealed 1-19-18 to 1-19-24 NMSA 1978, relating to campaign practices, political committees, oaths and filing of statements. For present provisions *see* 1-19-25 to 1-19-37 NMSA 1978.

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.

ANNOTATIONS

Federal election law expressly preempts state election law with respect to election to federal office. — The Federal Election Campaign Act, 52 U.S.C. §§ 30101 et seq., expressly provides that it, and the rules prescribed under it, supersede and preempt any provision of state law with respect to election to federal office, and would therefore preempt any interpretation or application of New Mexico's Campaign Reporting Act (act), 1-19-25 to 1-19-36 NMSA 1978, that would prevent a state candidate from donating campaign funds to a candidate for federal office. As a result, the New Mexico secretary of state does not have the authority under the act to restrict donations from a state candidate's campaign funds to federal candidates. *Campaign Reporting Act* (9/2/21), Att'y Gen. Adv. Ltr. 2021-11.

Law reviews. — For note, "Campaign Reform in New Mexico and First Amendment Limits," see 6 N.M.L. Rev. 151 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 381 et seq.

Treating of voters by candidate for office as violation of corrupt practices or similar act, 2 A.L.R. 402.

Criminal responsibility of one cooperating in violation of election which he is incapable of committing personally, 5 A.L.R. 782, 74 A.L.R. 1110, 131 A.L.R. 1322.

Recital of, or reference to, the offense in pronouncing sentence or judgment for violation of election laws, 14 A.L.R. 998.

Constitutionality of Corrupt Practices Act, 69 A.L.R. 377.

Newspapers or other publicity sources, statute regarding statement by candidate as to his interest in, 103 A.L.R. 1424.

Salary or fees of office, statement by candidate regarding as violation of Corrupt Practices Act, 106 A.L.R. 493.

Application of provisions of Corrupt Practices Act regarding contributions by corporations, 125 A.L.R. 1029.

Labor organizations, constitutionality and construction of statute respecting political contributions or other political activities by, 167 A.L.R. 1461.

Political advertising, constitutionality, construction and application of statute respecting, 168 A.L.R. 855.

State regulation of the giving or making of political contributions or expenditures by private individuals, 94 A.L.R.3d 944.

29 C.J.S. Elections §§ 216, 329.

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. "artificial intelligence" means a machine-based or computer-based system that through hardware or software uses input data to emulate the structure and characteristics of input data in order to generate synthetic content, including images, video or audio;

D. "ballot question" means a constitutional amendment or other question submitted to the voters in an election;

E. "bank account" means an account in a financial institution regulated by the United States or a state of the United States;

F. "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;

G. "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;

H. "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:

(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;

I. "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;

J. "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;

K. "deliver" or "delivery" means to deliver by certified or registered mail, telecopier, electronic transmission or facsimile or by personal service;

L. "depicted individual" means an individual whose image, photo, likeness or voice is represented in an advertisement or other media in such a manner that results in the individual being identifiable;

M. "distribution platform" means a website, internet forum or message board, application or a published newspaper, magazine or other periodical of general circulation, including an internet or electronic publication, that carries news and commentary;

N. "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;

O. "election year" means an even-numbered year in which an election covered by the Campaign Reporting Act is held;

P. "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;

Q. "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

(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;

R. "legislative caucus committee" means a political committee established by the members of a political party in a chamber of the legislature;

S. "materially deceptive media" means an image, video or audio that:

(1) depicts an individual engaged in conduct or speech in which the depicted individual did not engage;

(2) was published, disseminated, distributed or displayed to the public without the consent of the depicted individual; and

(3) was produced in whole or in part by using artificial intelligence;

T. "person" means an individual or entity;

U. "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;

V. "political party" means an association that has qualified as a political party pursuant to the provisions of Section 1-7-2 NMSA 1978;

W. "political purpose" means for the purpose of supporting or opposing a ballot question or the nomination or election of a candidate;

X. "prescribed form" means a form or electronic format prepared and prescribed by the secretary of state;

Y. "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

Z. "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; 2024, ch. 57, § 1.

ANNOTATIONS

The 2024 amendment, effective May 15, 2024, added the definitions of "artificial intelligence", "depicted individual", "distribution platform" and "materially deceptive media" to the Campaign Reporting Act; added a new Subsection C and redesignated former Subsections C through J as Subsections D through K, respectively; added new Subsections L and M and redesignated former Subsections K through O as Subsections N through R, respectively; and added a new Subsection S and redesignated former Subsections P through V as Subsections T through Z, respectively.

The 2019 amendment, effective July 1, 2019, defined "advertisement", "ballot question", "campaign expenditure", "coordinated expenditure", "independent expenditure", "legislative caucus committee", and "political party", and revised and removed the definitions of certain terms, as used in the Campaign Reporting Act; deleted former Subsection A, which defined "advertising campaign", and added a new Subsection A; added a new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; in Subsection D, after "financial institution", deleted "located in New Mexico" and added "regulated by the United States or a state of the United States"; in Subsection E, after "authorized by a candidate to", deleted "raise, collect or expend contributions" and added "act", and after "office;", added "provided that a candidate shall not authorize more than one campaign committee"; added a new Subsection F and redesignated former Subsections E and F as Subsections G and H, respectively; in Subsection G, in the introductory clause, after "declaration of candidacy" deleted "or nominating petition" and added "and has not subsequently filed a statement of withdrawal", in Paragraph G(2), after "made expenditures of", deleted "two thousand five hundred dollars ($2,500)", after "more", added "than three thousand dollars "($3,000)", after "make expenditures of", deleted "two thousand five hundred dollars ($2,500)", and after "more", added "than three thousand dollars ($3,000)"; in Subsection H, added paragraph designations "(1)" and "(3)" and Paragraphs H(2) and H(4); added a new Subsection I and redesignated former Subsections G through J as Subsections J through M, respectively; in Subsection M, after "pre-primary convention", deleted "but does not include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee"; added new Subsections N and O and redesignated former Subsections K and L as Subsections P and Q, respectively; in Subsection Q, after "means", deleted the remainder of the introductory clause, deleted former Paragraphs (1) through (3), and added new Paragraphs Q(1) through Q(4); added new Subsection R and redesignated former Subsection M and N as Subsections S and T, respectively; in Subsection S, after "means", deleted "influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters" and added "for the purpose of supporting or opposing a ballot question or the nomination or election of a candidate"; deleted former Subsection O, which defined "proper filing officer", and redesignated former Subsections P and Q as Subsections U and V, respectively.

2009 Multiple Amendments. — Laws 2009, ch. 68, § 2, effective November 3, 2010, in Subsection L(1), added "political parties".

Laws 2009, ch. 67, § 1, effective June 19, 2009, deleted Subsection R, which defined "statement of exception".

Severability. — Laws 2009, ch. 68, § 5 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

The 2003 amendment, effective June 20, 2003, in Subsection G, inserted "to deliver" preceding "by certified", substituted "transmission" for "mail" preceding "or facsimile"; inserted "political committee" near the end of Subsection L; added designations Paragraphs L(1) to L(3); deleted "provided that a political committee includes" at the end of Paragraph L(1); substituted "five hundred dollars ($500)" for "two thousand dollars ($2,000)" in Paragraph L(3); inserted "or electronic format" in Subsection N.

The 1997 amendment, effective June 20, 1997, added Subsection A and redesignated the following subsections accordingly.

The 1995 amendment, effective June 1, 1995, added Subsections H, J, N, O, and Q and redesignated the remaining subsections accordingly; in Subsection D, inserted "including a public official" and "nominating petition or"; in Subsection G, deleted "regular" before "primary"; in Subsection P, inserted "public official" and deleted "who contributes, receives contributions or makes expenditures as defined in the Campaign Reporting Act" following "political committee"; and made minor stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, rewrote the section to the extent that a detailed comparison would be impracticable.

Campaign Reporting Act's "appeal to vote" definition is neither overbroad nor unconstitutionally vague. — Plaintiffs, arguing that the Campaign Reporting Act's definition of "independent expenditure" as an expenditure for an advertisement "susceptible to no other reasonable interpretation than as an *appeal to vote* for or against a clearly identified candidate or ballot question" was overbroad and vague, failed to establish that the definition in NMSA 1978, § 1-19-26(N)(3)(b) prohibited a substantial amount of protected speech. The Campaign Reporting Act's definition of "appeal to vote" in § 1-19-26(N)(3)(b), therefore, is neither overbroad nor unconstitutionally vague. *Republican Party of N.M. v. Torrez*, ___ F.Supp.3d ___ (D. N.M. 2023).

Campaign Reporting Act's "electioneering communication" definition is neither overbroad nor unconstitutionally vague. — Where plaintiffs challenged as overbroad and vague the Campaign Reporting Act's definition of "independent expenditure" as an expenditure for an advertisement that "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", and where plaintiffs argued that this definition, in NMSA 1978, 1-19-26(N)(3)(c), requires disclosure of all communications about a candidate or a ballot measure that are made close to an election, regardless of whether the speech qualifies as express advocacy and regardless of whether the communication is cabined in terms of medium and number of viewers targeted, plaintiffs failed in their burden of showing a substantial number of

applications of the Campaign Reporting Act's definition of "independent expenditure" are unconstitutional, judged in relation to the statute's plainly legitimate sweep. The Campaign Reporting Act's definition of "electioneering communication" in § 1-19-26(N)(3)(c), therefore, is neither overbroad nor unconstitutionally vague. *Republican Party of N.M. v. Torrez*, ___ F.Supp.3d ___ (D. N.M. 2023).

Campaign Reporting Act's definition of "artificial intelligence" is not unconstitutionally vague. — This section's definition of "artificial intelligence" as a "machine-based or computer-based system that through hardware or software uses input data to emulate the structure and characteristics of input data in order to generate synthetic content, including images, video or audio" can reasonably be understood on its face by a person of ordinary intelligence as applying to generative AI applications capable of producing realistic deepfakes, and therefore the definition does not appear to be facially overbroad or unconstitutionally vague. 2025 Op. Att'y Gen. No. 25-09.

Defining political committee. — The secretary of state cannot regulate as political committees those organizations which do not engage in express advocacy or the functional equivalent of advocacy for the election or defeat of candidates. New Mexico Youth Organized v. Herrera, No. 09-2212 (10th Cir. June 30, 2010).

Expenditures for political purposes independently of a candidate. — An expenditure of funds for political purposes separately and independently of a candidate is not, by itself, an in-kind contribution to the candidate. If, however, the person gives the goods, services or other product of the expenditure to the candidate, the goods, services or other product will constitute an in-kind contribution. 2010 Op. Att'y Gen. No. 10-03.

A political committee that makes contributions to candidates may solicit unlimited contributions from allowable persons on behalf of political committees that only make "independent expenditures". — The Campaign Reporting Act, §§ 1-19-25 to 1-19-36 NMSA 1978, limits the amounts persons may contribute to candidates, candidates' campaign committees, and political committees during primary and general election cycles, and further prohibits persons, including political committees, from knowingly soliciting or accepting contributions from other persons, including political committees, that exceed these limits, § 1-19-34.7(A)(1), (E), but § 1-19-34.7(I) provides that these limits and prohibitions do not apply to political committees that make "independent expenditures" only, and therefore a political committee that only makes independent expenditures may indirectly solicit unlimited contributions through a political committee that makes contributions to candidates, and further, a political committee that makes contributions to candidates may solicit unlimited contributions on behalf of a political committee that only makes independent expenditures. For similar reasons, an officeholder and a candidate may request third-party donors to contribute at any amount to a political committee that only makes independent expenditures. 2022 Op. Ethics Comm'n No. 2022-05.

A candidate may not solicit unlimited contributions for a political committee that makes expenditures to support the candidate's election. — The Campaign Reporting Act's prohibitions on fundraising do not apply to political committees that only make "independent expenditures", but if a candidate solicits contributions to be given to a political committee, and the political committee uses contributions to pay for advertisements supporting the candidate's election, then the political committee is not making an "independent expenditure", but is making

a "coordinated expenditure", which is prohibited by 1-19-34.7(E) NMSA 1978. 2022 Op. Ethics Comm'n No. 2022-05.

Energy company's payment of legislators' expenses incidental to an educational tour need not be reported as in-kind donations. — Payments from an energy company that is proposing to build a nuclear waste storage facility in southeastern New Mexico for members of the New Mexico legislature to attend a series of educational programs at the company's Missouri nuclear generating station are not required to be reported by legislators on their filings with the secretary of state, because the energy company's payment of reasonable expenses for flights, meals, refreshments, and lodging incidental to the educational tour are not given for a political purpose and therefore are not contributions under 1-19-26(H)(1) NMSA 1978. 2020 Op. Ethics Comm'n No. 2020-03.

The Campaign Reporting Act does not apply to federal elections. — Members of the New Mexico legislature and certain other elected officials are prohibited from knowingly soliciting contributions governed by the Campaign Reporting Act between January 1 and the adjournment of any regular legislative session and between the proclamation and adjournment of any special session, 1-19-34.1 NMSA 1978, but the Campaign Reporting Act only applies to candidates in primary, general or statewide special elections in New Mexico and excludes federal elections from the application of the act, and therefore a New Mexico state legislator who solicited campaign contributions for the federal office of United States Representative during a state legislative session did not violate the Campaign Reporting Act. 2021 Op. Ethics Comm'n No. 2021-05.

Federal election law expressly preempts state election law with respect to election to federal office. — The Federal Election Campaign Act, 52 U.S.C. §§ 30101 et seq., expressly provides that it, and the rules prescribed under it, supersede and preempt any provision of state law with respect to election to federal office, and would therefore preempt any interpretation or application of New Mexico's Campaign Reporting Act (act), 1-19-25 to 1-19-36 NMSA 1978, that would prevent a state candidate from donating campaign funds to a candidate for federal office. As a result, the New Mexico secretary of state does not have the authority under the act to restrict donations from a state candidate's campaign funds to federal candidates. *Campaign Reporting Act* (9/2/21), Att'y Gen. Adv. Ltr. 2021-11.

The Campaign Reporting Act (CRA) does not prohibit candidates for local elected office from using contributions received in local elections to support the candidate's subsequent campaign for an office covered by the CRA. — The Campaign Reporting Act (CRA) excludes municipal and special district offices from its definition of "election" thereby excepting candidates seeking municipal or special district elected office from the CRA's requirements concerning registration, disclosure, contributions, and expenditures, and the School District Campaign Reporting Act, §§ 1-22A-1 to 1-22A-10 NMSA 1978, permits the use of contributions for a candidate's election to any public office, including a public office subject to the CRA, and therefore a candidate for municipal, school district, or special district elected office is not prohibited by the CRA from using contributions to that candidacy to support the candidates subsequent campaign for an office covered by the CRA. Municipalities and special districts, however, may limit contributions or impose restrictions on the permissible use of those contributions by candidates for municipal or special district elected office. 2022 Op. Ethics Comm'n No. 2022-02.

1-19-26.1. Political committees; registration; disclosures; penalties.

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.

E. If a political committee fails to update the statement of organization within the time prescribed in Subsection D of this section, the political committee is subject to a fine of five hundred dollars ($500).

F. A state political party shall furnish to the secretary of state a list of each county political party associated with it and the names and contact information of the county party officers as submitted to the state political party. The list shall be updated quarterly if there have been any reported changes.

G. 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; 2021, ch. 109, § 1.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, provided a penalty for political committees that fail to update their statement of organization within the time prescribed, required state political parties to furnish to the secretary of state a list of each county political party associated with it, including contact information of the county party officers, and to update the list quarterly if there have been any reported changes; in the section heading, after "disclosures", added "penalties"; and added new Subsections E and F and redesignated former Subsection E as Subsection G.

The 2019 amendment, effective July 1, 2019, removed the five hundred dollar ($500) threshold on amounts a political committee received, contributed or expended before it was required to meet the registration and other requirements of the provision, and required that any political committee must meet the specified requirements before it may receive or make any contributions or make expenditures for a political purpose; in Subsection A, after "political committee", deleted "that receives, contributes or expends in excess of five hundred dollars ($500) in any calendar year", after "political purpose", deleted "unless that political committee appoints and maintains a treasurer and registers with the secretary of state" and added "if the committee fails to meet the requirements of Subsections B and C of this section"; in Subsection B, after "shall", deleted "register" and added "appoint and maintain a treasurer, file a statement of organization", after "secretary of state", deleted "within ten days of receiving, contributing or expending in excess of five hundred dollars ($500) by paying" and added "and pay"; added new subsection designation "C"; in Subsection C, in the introductory clause, after "organization", added "required by Subsection B of this section shall be made", deleted former Paragraph (3) and redesignated Paragraphs (4) and (5) as Paragraphs C(3) and C(4); added Subsection D and redesignated former Subsection C as Subsection E.

The 2002 amendment, effective May 15, 2002, substituted "five hundred dollars ($500)" for "two thousand dollars ($2,000)" in Subsections A and B.

The 1995 amendment, effective June 16, 1995, added Subsection C; substituted "two thousand dollars ($2,000)" for "five hundred dollars ($500)" in Subsections A and B; and in Subsection B, deleted "no later than ten days after the effective date of this section or" following "secretary of state" in the first sentence, inserted "identity of the committee, including any" in Paragraph (2), made a minor stylistic change in Paragraph (4), and deleted "account" following "bank" in Paragraph (5).

A state employee who also receives a monthly salary from a political campaign committee does not necessarily violate state ethics laws. — Although the Gift Act, 10-16B-1 to 10-16B-4 NMSA 1978, the Governmental Conduct Act, 10-16-1 to 10-16-18 NMSA 1978, the Financial Disclosure Act, 10-16A-1 to 10-16A-8 NMSA 1978, the Campaign Reporting Act, 1-19-25 to 1-19-36 NMSA 1978, and the State Ethics Commission Act, Chapter 10, Article 16G NMSA 1978, impose certain duties on state employees and regulate certain state employees' conduct, the limited set of facts presented in this request, that a state employee, while employed and performing regular public duties, is also receiving a monthly salary from a political campaign committee or political organization, do not establish a violation of any of the foregoing statutes. 2020 Op. Ethics Comm'n No. 2020-01.

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 [12-8-1 to 12-8-25 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.

History: Laws 2002, ch. 89, § 1.

ANNOTATIONS

Effective dates. — Laws 2002, ch. 89 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

1-19-26.4. Disclaimers in advertisements; artificial intelligence; materially deceptive media; violation; penalty.

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.

D. If a person creates, produces or purchases an advertisement that contains materially deceptive media, the advertisement shall include a disclaimer. The disclaimer shall appear in a clear and conspicuous manner in every language used in the advertisement and shall indicate: "This ____ has been manipulated or generated by artificial intelligence". The blank line in the disclaimer shall be filled with each of the following terms that describes the media:

(1) image;

(2) video; or

(3) audio.

E. The disclaimer required in Subsection D of this section shall be included as follows:

(1) for visual media that is an image, the text of the disclaimer shall appear in a size that is easily readable;

(2) for visual media that is video, the disclaimer shall appear for the duration of the video in a size that is easily readable;

(3) for media that contains audio only, the disclaimer shall be read in a clearly spoken manner and in a pitch that can be easily heard at the beginning of the audio, at the end of the audio and, if the audio is greater than two minutes in length, interspersed within the audio at intervals of not greater than two minutes each; and

(4) for mixed media, there shall be a disclaimer in the same form as provided in this section for each form of media used.

F. Each occurrence of a person creating, producing or purchasing an advertisement subject to the disclaimer requirements as provided in Subsection D of this section that fails to meet the disclaimer requirements constitutes a separate violation. A person found to have violated the requirements provided in Subsection D of this section shall be subject to civil penalties as provided in Section 1-19-34.6 NMSA 1978.

G. It is not a violation of this section for:

(1) a radio or television broadcasting station, including a cable television, satellite television or streaming service operator, programmer or producer, that broadcasts an advertisement as part of a bona fide newscast, news interview, news documentary or on-the-spot coverage of a bona fide news event if the broadcast clearly acknowledges through content or a disclaimer, in a manner that can be easily read or heard, that the advertisement was generated in whole or in part by using artificial intelligence and does not accurately represent the speech or conduct of the depicted individual;

(2) a radio or television broadcasting station, including a cable television, satellite television or streaming service operator, programmer or producer, that broadcasts an advertisement when the station or streaming service is paid to broadcast the advertisement if the station or streaming service can show that it has disclaimer requirements that are consistent with the requirements provided in Subsection D of this section and that it provided those disclaimer requirements to each person or entity that purchased the broadcast or streaming of the advertisement;

(3) an advertisement that reasonably constitutes satire or parody if the advertisement includes a disclaimer consistent with the requirements provided in Subsection D of this section; and

(4) a distribution platform that published, posted or distributed an advertisement or a prerecorded phone message if the distribution platform can show that it has disclaimer requirements that are consistent with the requirements provided in Subsection D of this section and that it provided those disclaimer requirements to the person or entity that purchased the distribution of the advertisement or prerecorded phone message by or on the distribution platform.

H. Nothing in this section shall be construed to preclude a claim pursuant to any other section of law or any civil action for damages.

History: Laws 2019, ch. 262, § 2; 2024, ch. 57, § 2.

ANNOTATIONS

The 2024 amendment, effective May 15, 2024, added a disclaimer requirement for materially deceptive media, provided that a person found to have violated the disclaimer requirement is subject to civil penalties, and provided certain exceptions; in the section heading, added "artificial intelligence; materially deceptive media; violation; penalty"; and added Subsections D through H.

Campaign Reporting Act's definition of "artificial intelligence" is not unconstitutionally vague. — The definition of "artificial intelligence," as provided in 1-19-26(C) NMSA 1978 as a "machine-based or computer-based system that through hardware or software uses input data to emulate the structure and characteristics of input data in order to generate synthetic content, including images, video or audio" can reasonably be understood on its face by a person of ordinary intelligence as applying to generative AI applications capable of producing realistic deepfakes, and therefore the definition does not appear to be facially overbroad or unconstitutionally vague. 2025 Op. Att'y Gen. No. 25-09.

Statutes that create disclaimer language for political speech are subject to exacting scrutiny. — Statutes that create disclaimer requirements for political speech are subject to a lower standard of exacting scrutiny, rather than strict scrutiny, because such laws impose no ceiling on campaign-related activities and do not prevent anyone from speaking. Exacting scrutiny requires that the disclaimer requirement bear a substantial relationship to a sufficiently important governmental interest, and it requires that the disclaimer requirement be narrowly tailored to the government's asserted interest. 2025 Op. Att'y Gen. No. 25-09.

Constitutionality of disclaimer requirement. — The disclaimer requirement in 1-19-26.4(D) NMSA 1978 prevents viewers or listeners from being misled into believing that an advertisement depicts conduct or speech genuinely engaged in by the depicted individual. The disclaimer serves the sufficiently important governmental interest in protecting the voting public from misinformation or disinformation about an election, does not create an undue burden on an advertiser, and is narrowly tailored to the government interests it serves. The statute is therefore not impermissibly overbroad on its face. 2025 Op. Att'y Gen. No. 25-09.

The legislature's decision to exclude consensual depictions from the reach of the Campaign Reporting Act does not violate the first amendment. — The legislature intended to prevent a person's likeness from being used for a portrayal that the person had not approved; the legislature viewed a lack of consent as an integral component of the deception and falsity of the media. The disclaimer requirement in 1-19-26.4(D) NMSA 1978 merely alerts a viewer or listener that the depiction of the individual is not genuine, a disclaimer that would have less impact for consensual renderings. The disclaimer requirement is therefore substantially related to an important governmental interest and is narrowly tailored to the interest, and therefore the legislature's decision to exclude consensual depictions from the reach of the Campaign Reporting Act does not violate the first amendment. 2025 Op. Att'y Gen. No. 25-09.

Disclaimer requirement for advertisement reasonably constituting satire or parody is likely unconstitutional on its face. — The legislature expressly provided that an advertisement that reasonably constitutes satire or parody does not violate this section "if the advertisement includes a disclaimer consistent with the requirements provided in Subsection D of this section." Section 1-19-26.4 NMSA 1978 is designed to protect against misleading advertisements. By its nature, however, an advertisement that reasonably constitutes satire or parody is not likely to mislead a reasonable viewer or listener. The disclaimer is thus not

substantially related to the governmental interests it is designed to protect and is not narrowly tailored for this purpose. 2025 Op. Att'y Gen. No. 25-09.

A political committee may make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question. — The Campaign Reporting Act, generally, does not purport to regulate the contents of a political committee's advertisements, and therefore, where a political committee intends to make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question, there is no violation of the Campaign Reporting Act. Whether an advertisement refers to a ballot question is immaterial to its classification as a coordinated or independent expenditure. For the coordinated expenditure, however, the political committee would be subject to contribution limits and disclosure requirements. 2022 Op. Ethics Comm'n No. 2022-08.

1-19-26.5. Political committees; acknowledgment of responsibilities; penalty.

A. Beginning on July 1, 2021, for all new political committees registering with the secretary of state, the treasurer for the political committee shall submit an electronically signed statement acknowledging the political committee's responsibilities on a form prescribed by the secretary of state within ten days of registering the political committee. The signed acknowledgment statement serves as notification of the responsibilities of the political committee to comply with the financial reporting prescribed in the Campaign Reporting Act and the potential personal liability of the treasurer for penalties assessed against the political committee.

B. The secretary of state shall notify the political committee of any individual who has failed to submit the acknowledgment statement. Failure to return the acknowledgment statement is a violation of this section for which a fine of one hundred dollars ($100) may be assessed against the political committee. This section also applies to individuals named in an updated or amended registration who have not previously submitted an acknowledgment statement for the political committee.

C. For all political committees already registered with the secretary of state prior to July 1, 2021, the secretary of state shall notify the principal officer and treasurer of record requiring the treasurer to submit an acknowledgment form required in Subsection A of this section. If the political committee does not respond to the request made by the secretary of state or disputes current responsibility for the political committee, the political committee shall not raise or spend any funds until the registration is amended and the acknowledgment form has been signed.

D. If there are already fines accrued against a political committee previously registered with the secretary of state, the treasurer of record shall sign the acknowledgment statement accepting personal liability from that date forward. Outstanding fines are still due unless the secretary of state is compelled to file a petition in court to have the fines dissolved.

History: Laws 2021, ch. 109, § 18.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 109, § 23 made Laws 2021, ch. 109, § 18 effective July 1, 2021.

1-19-26.6. Political committees; notice of resignation or removal of treasurer.

A. An individual who resigns as the treasurer of a political committee shall submit a written resignation statement to the secretary of state. An individual's resignation is not effective until the secretary of state receives the written resignation statement from the individual and a replacement treasurer is appointed for the political committee. If an individual is involuntarily removed from the position of treasurer, the political committee shall notify the secretary of state by amending the electronic registration maintained by the secretary of state. An individual who resigns as the treasurer of a political committee remains personally liable for any penalties or fines accrued during the time that the individual served in the position.

B. The secretary of state shall prescribe the form and process for notifying the secretary of state of a resignation or replacement of a treasurer and shall maintain all records electronically to the extent practicable.

History: Laws 2021, ch. 109, § 19.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 109, § 23 made Laws 2021, ch. 109, § 19 effective July 1, 2021.

1-19-26.7. Legislative caucus committee.

A. No later than thirty days after the effective date of this 2019 act, the speaker and minority floor leader of the house of representatives and the majority floor leader and the minority floor leader of the senate shall establish or designate the political committee that is the legislative caucus committee.

B. The speaker and minority floor leader of the house of representatives and the majority floor leader and the minority floor leader of the senate shall be the designated leaders of the legislative caucus committees for the members of their political party in their legislative chamber unless two-thirds of the members of a political party in a legislative chamber vote to designate a different leader for the legislative caucus committee from among their members. The results of that vote shall be recorded with the secretary of state.

C. Upon a change of the designated leader of the legislative caucus committee, no funds shall be expended by the legislative caucus committee until the secretary of state has been notified of the change in designated leader of the legislative caucus committee.

D. Funds belonging to a legislative caucus committee shall be managed by the designated leader or the leader's designee.

History: Laws 2019, ch. 262, § 15; 1978 Comp., § 2-21-1, recompiled as 1-19-26.7 by Laws 2023, ch. 39, § 98.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 39, § 98 recompiled former 2-21-1 NMSA 1978 as 1-19-26.7 NMSA 1978, effective June 16, 2023.

1-19-26.8. Prohibited use of materially deceptive media; disclaimers required; crime for violation; exceptions; enforcement.

A. Except as otherwise provided in Subsections B through D of this section, it is a violation of the Campaign Reporting Act for a person to distribute or enter into an agreement with another person to distribute materially deceptive media. A person violates this subsection if that person distributes or enters into an agreement with another person to distribute materially deceptive media and:

(1) the person knows the materially deceptive media falsely represents a depicted individual;

(2) the distribution occurs within ninety days before an election; and

(3) the person intends the distribution to result in altering the voting behavior of electors in an election by misleading the electors into believing that the depicted individual engaged in the speech or conduct depicted, and the distribution is reasonably likely to cause that result.

B. The prohibition provided in Subsection A of this section does not apply to materially deceptive media if that media includes a disclaimer that appears in a clear and conspicuous manner in every language used in the media and indicates: "This ____ has been manipulated or generated by artificial intelligence". The blank line in the disclaimer shall be filled in with each of the following terms that describes the media:

(1) image;

(2) video; or

(3) audio.

C. The disclaimer required in Subsection B of this section shall be included as follows:

(1) for visual media that is an image, the text of the disclaimer shall appear in a size that is easily readable;

(2) for visual media that is video, the disclaimer shall appear for the duration of the video;

(3) for media that contains audio only, the disclaimer shall be read in a clearly spoken manner and in a pitch that can be easily heard at the beginning of the audio, at the end of the audio, and if the audio is greater than two minutes in length, interspersed within the audio at intervals of not greater than two minutes each; and

(4) for mixed media, there shall be a disclaimer in the same form as provided in this section for each form of media used.

D. A person found to have willfully and knowingly violated the prohibition provided in Subsection A of this section is guilty of a crime as follows:

(1) for a first conviction, a misdemeanor; and

(2) for a second conviction, a fourth degree felony.

E. Enforcement of the provisions of this section, including injunctive relief, against a person who violates this section may be sought in any court of competent jurisdiction by any of the following:

(1) the attorney general;

(2) a district attorney;

(3) a depicted individual who is falsely represented;

(4) a candidate for office who has been injured or is likely to be injured by the distribution of materially deceptive media; or

(5) any organization that represents the interests of voters who are likely to be misled by the distribution of materially deceptive media.

F. Nothing in this section shall be construed to preclude a claim pursuant to any other section of law or any civil action for damages.

History: 1978 Comp., § 1-19-26.8, enacted by Laws 2024, ch. 57, § 3.

ANNOTATIONS

Effective dates. — Laws 2024, ch. 57 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2024, 90 days after adjournment of the legislature.

Campaign Reporting Act's definition of "artificial intelligence" is not unconstitutionally vague. — The definition of "artificial intelligence" as provided in 1-19-26(C) NMSA 1978 as a "machine-based or computer-based system that through hardware or software uses input data to emulate the structure and characteristics of input data in order to generate synthetic content, including images, video or audio" can reasonably be understood on its face by a person of ordinary intelligence as applying to generative AI applications capable of producing realistic deepfakes, and therefore the definition does not appear to be facially overbroad or unconstitutionally vague. 2025 Op. Att'y Gen. No. 25-09.

Statutes that create disclaimer language for political speech are subject to exacting scrutiny. — Statutes that create disclaimer requirements for political speech are subject to a lower standard of exacting scrutiny, rather than strict scrutiny, because such laws impose no

ceiling on campaign-related activities and do not prevent anyone from speaking. Exacting scrutiny requires that the disclaimer requirement bear a substantial relationship to a sufficiently important governmental interest, and it requires that the disclaimer requirement be narrowly tailored to the government's asserted interest. 2025 Op. Att'y Gen. No. 25-09.

Constitutionality of disclaimer requirement. — The disclaimer requirement in 1-19-26.8(B) NMSA 1978 prevents viewers or listeners from being misled into believing that certain media depicts conduct or speech genuinely engaged in by the depicted individual. The disclaimer serves the sufficiently important governmental interest in protecting the voting public from misinformation or disinformation about an election, does not create an undue burden on a distributor, and is narrowly tailored to the government interests it serves. The statute is therefore not impermissibly overbroad on its face. 2025 Op. Att'y Gen. No. 25-09.

The legislature's decision to exclude consensual depictions from the reach of the Campaign Reporting Act does not violate the first amendment. — The legislature intended to prevent a person's likeness from being used for a portrayal that the person had not approved; the legislature viewed a lack of consent as an integral component of the deception and falsity of the media. The disclaimer requirements in 1-19-26.4(D) NMSA 1978 and 1-19-26.8(B) NMSA 1978 merely alert a viewer or listener that the depiction of the individual is not genuine, a disclaimer that would have less impact for consensual renderings. The disclaimer requirements are therefore substantially related to an important governmental interest and are narrowly tailored to the interest, and therefore the legislature's decision to exclude consensual depictions from the reach of the Campaign Reporting Act does not violate the first amendment. 2025 Op. Att'y Gen. No. 25-09.

Subsection E does not grant private individuals the authority to appear on behalf of the state for purposes of seeking civil or criminal penalties. — The legislature is presumed to be aware of existing law when it undertakes to amend its own statutes, and therefore if 1-19-26.8(E) NMSA 1978 were construed to authorize private prosecutions, it would conflict with 36-1-19 NMSA 1978 and the constitutional and statutory authority of the attorney general and the district attorneys to represent the state in criminal proceedings; such a construction of the statute would be contrary to established rules of statutory construction. Therefore, interpreting the statute as a whole and *in pari materia* with other statutes, there is little question that the legislature intended to allow the private individuals listed in 1-19-26.8(E) NMSA 1978 to seek injunctive relief for a violation of this section but not to seek civil or criminal penalties on behalf of the State. 2025 Op. Att'y Gen. No. 25-09.

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 to 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.

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.

ANNOTATIONS

Cross references. — For reports required of general purpose political committees, *see* 1-19-27 NMSA 1978.

For examination of reports and forwarding of reports, *see* 1-19-32.1 NMSA 1978.

The 2016 amendment, effective December 15, 2017, established requirements for the electronic reporting of political contributions and expenditures, provided for public inspection of all report data, and created the campaign reporting system fund; in the catchline, deleted "proper filing officer" and added "electronic reporting system; campaign reporting system fund"; deleted former Subsections A, B and C, added a new Subsection A, and redesignated former Subsection D as Subsection B; in Subsection B, in the introductory paragraph, after "electronic reporting system for", deleted "receiving and for public inspection of" and added "reporting individuals to register with the secretary of state and file all", after "no activity", deleted "to" and added "as required by", in Paragraph (1), after "a person to", added "register and", after "online

by", deleted "filling out forms on" and added "electronically submitting the relevant data to", and added new Paragraphs (2) through (8); and added a new Subsection C.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "candidates", added "and public officials"; after "file a statement of", deleted "exception in an election year pursuant to Section 1-19-33 NMSA 1978" and added "no activity"; deleted "annually" after "individuals shall"; deleted the last sentence which provided the deadline for filing the report; in Subsection C, added "candidates and" before "public officials"; and in Subsections C and D, changed "exception" to "no activity".

The 2003 amendment, effective January 1, 2006, deleted former Subsections B and C; redesignated former Subsection D as present Subsection B; and added present Subsections C and D.

The 1995 amendment, effective June 16, 1995, added "proper filing officer" in the section heading, and rewrote the section to the extent that a detailed comparison is impracticable.

The costs of educational programs related to a legislator's official duties need not be reported as in-kind donations. — The costs of certain educational programs offered by an energy company to members of the New Mexico legislature that pertain to the energy company's proposed nuclear waste storage facility in southeastern New Mexico need not be characterized or included as in-kind donations on a legislator's campaign finance report if the educational programs are for the purpose of informing members of the New Mexico legislature about the storage facility and not offered for a political purpose. *Educational Program Exception under the New Mexico Gift Act* (4/22/20), Att'y Gen. Adv. Ltr. 2020-04.

A political committee may make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question. — The Campaign Reporting Act, generally, does not purport to regulate the contents of a political committee's advertisements, and therefore, where a political committee intends to make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question, there is no violation of the Campaign Reporting Act. Whether an advertisement refers to a ballot question is immaterial to its classification as a coordinated or independent expenditure. For the coordinated expenditure, however, the political committee would be subject to contribution limits and disclosure requirements. 2022 Op. Ethics Comm'n No. 2022-08.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 381 et seq.

29 C.J.S. Elections § 216.

1-19-27.1, 1-19-27.2. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 46, § 58 repealed former 1-19-27.1 and 1-19-27.2 NMSA 1978, as enacted by Laws 1981, ch. 331, §§ 3 and 4, relating to reports required and time of filing reports, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on

NMOneSource.com. For reports required of special purpose political committees, *see* 1-19-27 NMSA 1978.

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 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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 262, § 18 made Laws 2019, ch. 262, § 1 effective July 1, 2019.

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.

ANNOTATIONS

Temporary provisions. — Laws 2019, ch. 262, § 16 provided that the secretary of state, in consultation with the attorney general, shall promulgate rules to implement the amendatory provisions of this act by August 1, 2019.

The 2019 amendment, effective July 1, 2019, replaced "proper filing officer" with "secretary of state"; and in Subsection B, after "nominating petition, the", deleted "proper filing officer" and added "secretary of state".

Cross references. — For time of filing statements of candidacy for convention designation or declarations of candidacy, *see* 1-8-26 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsections A and B, changed "exception" to "no activity".

The 1995 amendment, effective June 16, 1995, in Subsection A, substituted "all reporting individuals" for "registered political committees", inserted "supplemental reports and a statement of exception" and made stylistic changes; in Subsection B, in the first sentence, inserted "In addition to the provisions of Subsection A of this section" in the beginning and "or a statement of exception" near the end, added the last sentence, substituted "or a" for "by", and deleted "or pre-primary convention designation for nomination at a primary election or for an office not requiring a primary election" following "nominating petition".

The 1993 amendment, effective June 18, 1993, rewrote the section to the extent that a detailed comparison would be impracticable.

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 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 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 to 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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 46, § 5 repealed former 1-19-29 NMSA 1978, as amended by Laws 1981, ch. 331, § 6, relating to time of filing reports, and enacted the above section, effective July 1, 1993.

Temporary provisions. — Laws 2019, ch. 262, § 16 provided that the secretary of state, in consultation with the attorney general, shall promulgate rules to implement the amendatory provisions of this act by August 1, 2019.

The 2019 amendment, effective July 1, 2019, revised campaign finance reporting deadlines and reporting thresholds and reporting requirements for independent and coordinated expenditures, added additional reporting after a statewide election for expenditures and contributions not otherwise previously reported, and allowed a political committee to cancel its registration after a period of no activity by filing a request with the secretary of state; in Subsection A, after "shall file with the", deleted "proper filing officer by 5:00 p.m. on" and added "secretary of state no later than", after "biannually until the", deleted "reporting individual’s bank account has been closed and the other", and after "Subsection F", added "G or H"; in

Subsection B, Paragraph B(1), deleted "by 5:00 p.m. on" and added "no later than", in Paragraph B(2), deleted "by 5:00 p.m. on" and added "no later than", in Paragraph B(3), deleted "by 5:00 p.m. on" and added "no later than", in Paragraph B(4), deleted "by 5:00 p.m. on" and added "no later than", and after "previously reported", added "provided that if the second Monday of October is a state holiday, the report shall be made on the following day", and in Paragraph B(5), deleted "by 5:00 p.m. on" and added "no later than", after "Tuesday before the election", added "and not previously reported", after "that is for", deleted "five hundred dollars ($500) or", after "more", added "than one thousand dollars ($1,000)", after "in a", deleted "legislative or", after "nonstatewide", deleted "judicial", after "election, or", deleted "two thousand five hundred dollars ($2,500)", after "more", added "than three thousand dollars ($3,000)", after "reported to the", deleted "proper filing officer" and added "secretary of state", and after "report to be filed", deleted "by 5:00 p.m. on" and added "no later than", in Paragraph B(6), deleted "by 5:00 p.m. on" and added "no later than", after "primary", deleted "general or statewide special", after "a report", added "by all reporting individuals, except those individuals that become candidates after the primary election", and after "after the", added "primary", and added Paragraphs B(7) and B(8); in Subsection C, after "candidate", added "political committee, campaign committee"; in Subsection F, in the introductory clause, after "candidates", added "campaign committees", after "activity, each", deleted "reporting individual" and added "candidate, campaign committee or public official", and after "report to the", deleted "proper filing officer" and added "secretary of state"; deleted former Subsection G and added a new Subsection G; in Subsection H, after "petition with the", deleted "proper filing officer" and added "secretary of state"; and in Subsection I, after "political committee", added "or, in the case of candidates for judicial office, by the treasurer of the candidate's campaign committee".

The 2009 amendment, effective June 19, 2009, in Subsection A, deleted "Annually" at the beginning of the sentence; after "second Monday in", changed "May" to "April and October"; and after "first Monday in", changed "May" to "those months"; and in the last sentence, changed "annually" to "biannually"; in Subsection B, after "election year" changed "in addition to the May report" to "instead of the biannual reports"; after "except for", deleted "persons who file a statement of exceptions pursuant to Section 1-19-33 NMSA 1978, candidates who file a statement of no activity" and after "contributions received", added "or, if applicable, statements of no activity"; added Paragraphs (1) through (3) of Subsection B; in Subsection C, after "candidate", added "or public official" and after "candidate", added "or official"; in Subsection D, deleted all of the former language which provided that the due date of the report was the thirteenth day after the election, and added new language; in Subsection F, after "candidates" added "and public officials" and deleted "annually" after "contributions"; in Subsection G, deleted "annually" after "contributions"; in Subsection H, deleted the former language which required the filing of a report of contributions not later than the second Monday in May for a primary election or the second Monday in October for a general election; and added "file biannual reports in accordance with Subsection A of this section".

The 2007 amendment, effective June 15, 2007, added new Subsections C and I.

The 2003 amendment, effective January 1, 2006, added Subsections H and I.

The 1997 amendment, effective June 20, 1997, rewrote Subsection B(2); and in Subsection E, inserted "regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required".

The 1995 amendment, effective June 16, 1995, inserted "and place" in the section heading; deleted former Subsections A through D, listing the proper place and time for filing reports of expenditures and contributions required from candidates for office; added Subsections A through F; redesignated former Subsection E as Subsection G and inserted "amount of" preceding "contributions he receives", deleted "pursuant to the provisions of Subsection D of Section 1-19-26 NMSA 1978" following "expenditures he makes", and substituted the language beginning "or a nominating petition" at the end for "shall file a report of expenditures and contributions not later than thirty days after the deadline for filing a declaration of candidacy".

A political committee may make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question. — The Campaign Reporting Act, generally, does not purport to regulate the contents of a political committee's advertisements, and therefore, where a political committee intends to make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question, there is no violation of the Campaign Reporting Act. Whether an advertisement refers to a ballot question is immaterial to its classification as a coordinated or independent expenditure. For the coordinated expenditure, however, the political committee would be subject to contribution limits and disclosure requirements. 2022 Op. Ethics Comm'n No. 2022-08.

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.

ANNOTATIONS

Cross references. — For the Code of Judicial Conduct, *see* Rule 21-001 NMRA et seq.

For Section 170 of the Internal Revenue Code of 1986, *see* 26 U.S.C.S. § 170.

The 2009 amendment, effective November 3, 2010, in Paragraph (6) of Subsection A, after "political", changed "party" to "committee".

Severability. — Laws 2009, ch. 68, § 5 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

The 1995 amendment, effective June 16, 1995, deleted "federal campaign funds prohibited in state races" following "use" in the section heading; in Subsection A, deleted "elected official" following "candidate" and inserted "or as otherwise provided in this section"; rewrote Paragraph (5) of Subsection A, which related to donations made to a political party, another candidate, or for the elimination of campaign debt; added Paragraphs (6) and (7) of Subsection A and made related changes; rewrote Subsection B which prohibited the use of contributions received in a federal election campaign in a state election campaign; and added Subsection C.

Subsection C of Section 1-19-29.1 violates the First Amendment to the United States Constitution. New Mexicans for Bill Richardson v. Gonzales, Memorandum Opinion and Order, Cv. No. 93-1135 JP (U.S. Dist. Ct. D. N.M. filed August 2, 1996).

Ripeness of challenge on first amendment grounds. — Although the congressman had not officially declared a candidacy for state office, this section's prohibition against using funds raised during a federal campaign for a statewide race created a direct and immediate dilemma for the congressman, and he should not have had to risk prosecution under this section before his challenge on first amendment grounds was ripe for judicial action. *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495 (10th Cir. 1995).

A candidate for an office covered by the Campaign Reporting Act is not prohibited from donating campaign funds to a candidate for a municipal, school board, or special district election. — Although the Campaign Reporting Act excludes from its definition of "election", any municipal, school board or special district election, 1-19-29.1(A)(6) NMSA 1978 permits donations to another candidate seeking election to "public office," a position whose occupant has legal authority to exercise a government's sovereign powers for a fixed period, and municipal, school board, or special district offices meet this definition. Accordingly, 1-19-29.1(A)(6) NMSA 1978 permits donations of contributions received to candidates for public

offices, including municipal, school board, and special district offices. 2021 Op. Ethics Comm'n No. 2021-11.

The Campaign Reporting Act does not prohibit a state campaign committee from making a donation to a municipal candidate. — Subsection 1-19-29.1(A)(6) NMSA 1978 of the Campaign Reporting Act permits the use of campaign contributions to make "donations to a political committee or to another candidate seeking election to public office"; the Campaign Reporting Act does not make a distinction between a federal, state or local candidate, and a plain reading of the law is that a donation to a candidate for any public office, federal, state or local, is permissible. It is permissible, therefore, under the New Mexico Campaign Reporting Act, for a state campaign committee to make a donation to a municipal candidate or local committee advocating for a municipal candidate. *Restrictions of Campaign Committee Contributions to a Municipal Measure Finance Committee* (6/17/20), Att'y Gen. Adv. Ltr. 2020-06.

A candidate for judicial office is prohibited from using contributions in a subsequent campaign for other public office. — Under the Campaign Reporting Act (CRA), a candidate for judicial office may solicit and accept campaign funds but must return unused funds in accordance with the provisions of the Code of Judicial Conduct, and likewise, 21-404(B) NMRA of the Code of Judicial Conduct permits candidates for elective judicial office to accept contributions to support a campaign for judicial office, but prohibits the retention of contributions received after the election takes place, and therefore the CRA, which incorporates the Code of Judicial Conduct by reference, prohibits a municipal judge who intends to run for county office in 2022 from transferring unexpended contributions received as a candidate for judicial office to a newly-formed campaign committee that supports his candidacy for county office. Moreover, 21-405 NMRA of the Code of Judicial Conduct prohibits a judge seeking appointment or election to a public, nonjudicial office from soliciting or accepting funds, either personally or through a committee, to support the candidacy. 2022 Op. Ethics Comm'n No. 2022-02.

A candidate may contract with a family member for bona fide goods or services to the candidate's campaign. — The Campaign Reporting Act, NMSA 1978, §§ 1-19-25 to -37, provides that a candidate may make an expenditure of campaign contributions for campaign expenses, and regulations promulgated by the secretary of state implementing the Campaign Reporting Act prohibit personal use of campaign funds, including payments to a candidate's family, but the regulations except from this prohibition situations where the family member is providing a bona fide service to the campaign and further specifies that any salary in excess of the fair market value of the services provided is personal use, and therefore a candidate may make payments to a member of the candidate's family so long as the family member provides bona fide goods or services to the campaign and is not being paid in excess of the fair market value for those goods or services. 2023 Op. Ethics Comm'n No. 2023-09.

A candidate must report the expenditure of personal funds for campaign expenditures, and may be reimbursed for those expenditures if they are a loan to the campaign. — Regulations promulgated by the secretary of state implementing the Campaign Reporting Act require candidates to report the use of personal funds for campaign expenditures. If a candidate expends personal funds on goods or services for the candidate's campaign, the expenditure must be reported either as a contribution or as a loan; if the expenditure is a loan, the candidate may be reimbursed for the expenditure so long as the campaign committee properly itemizes and reports the expenditures. 2023 Op. Ethics Comm'n No. 2023-09.

Expenditures for conferences and courses reasonably related to performing the duties of legislative office are permissible. — The Campaign Reporting Act, NMSA 1978, §§ 1-19-25(A)(2), provides that permissible uses of campaign funds includes expenditures of legislators that are reasonably related to performing the duties of the office held to serve constituents, and therefore a legislator may use campaign funds to pay for registration and associated travel to conferences and courses reasonably related to the elected legislative office. "Reasonably related" requires some degree of meaningful connection between the training and the legislative office held, and the use of campaign funds cannot be used for personal uses, which includes the use of campaign funds for personal travel, or travel associated with a training that is so broad or generalized it is not directly connected to the position of the legislative office held. 2024 Op. Ethics Comm'n No. 2024-02.

The Campaign Reporting Act does not prohibit a legislator from using campaign funds to cover childcare expenses where the expenses are reasonably related to performing the duties of office. — The Campaign Reporting Act and state regulations implementing the provisions of the Campaign Reporting Act provide that a campaign may expend funds for expenditures of the campaign or for expenditures reasonably related to the duties of office, but may not use campaign contributions for personal expenses, and therefore a legislator would be permitted under New Mexico law to expend campaign funds on expenditures for childcare expenses the legislator incurs as a direct result of the specific duties of the legislative office, so long as the expenses would not exist regardless of the responsibilities as a legislator, and the expense are reasonably related to those duties. 2025 Op. Ethics Comm'n No. 2025-01.

A legislator may use campaign funds to cover legal expenses in certain circumstances. — A legislator may use campaign funds to cover legal expenses so long as the expenditure does not constitute "personal use" and so long as the expenses are reasonably related to performing the duties of legislative office. 2025 Op. Ethics Comm'n No. 2025-04.

A candidate for legislative office may use campaign funds to cover legal expenses in certain circumstances. — A candidate for legislative office may use campaign funds to cover legal expenses so long as the expenditure does not constitute "personal use" and so long as the expenses are reasonably related to the candidate's campaign. 2025 Op. Ethics Comm'n No. 2025-04.

A legislator, former legislator, or a candidate may use campaign funds to pay for legal expenses to initiate a defamation lawsuit under certain circumstances. — A legislator, former legislator, or a candidate may use campaign funds to pay for legal expenses to bring a defamation lawsuit as a plaintiff provided the underlying allegations are reasonably related to the legislator's or former legislator's legislative duties of legislative office or are reasonably attributable to the candidate's campaign. The legislator, former legislator, or candidate is prohibited, however, from converting to personal use any monetary recovery incurred as a result of a lawsuit paid for by the campaign. 2025 Op. Ethics Comm'n No. 2025-04.

A candidate may use campaign funds to cover security expenses. — A candidate may use campaign funds to cover security expenses that are reasonably attributable to the candidate's campaign. A legislator may use campaign funds to cover those same security expenses so long as the funds are reasonably attributable to the legislator's duties of office, and are not used to fulfill a commitment, obligation, or expense of the legislator that would exist even if the legislator were not in office. Other than legislators, however, public officers may not use campaign funds

to cover security or other expenses that are incurred as a direct result of holding public office. 2025 Op. Ethics Comm'n No. 2025-07.

Federal election law expressly preempts state election law with respect to election to federal office. — The Federal Election Campaign Act, 52 U.S.C. §§ 30101 *et seq*., expressly provides that it, and the rules prescribed under it, supersede and preempt any provision of state law with respect to election to federal office, and would therefore preempt any interpretation or application of New Mexico's Campaign Reporting Act (act), 1-19-25 to 1-19-36 NMSA 1978, that would prevent a state candidate from donating campaign funds to a candidate for federal office. As a result, the New Mexico secretary of state does not have the authority under the act to restrict donations from a state candidate's campaign funds to federal candidates. *Campaign Reporting Act* (9/2/21), Att'y Gen. Adv. Ltr. 2021-11.

1-19-30. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 46, § 58 repealed former 1-19-30 NMSA 1978, as enacted by Laws 1978, ch. 360, § 6, relating to reporting period, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Cross references. — For political committee treasurer, *see* 1-19-34 NMSA 1978.

For electronic authentication and substitution for signature, *see* 14-3-15.2 NMSA 1978.

For the requirement that reporting be subscribed and sworn to, *see* Subsection I of 1-19-29 NMSA 1978.

Temporary provisions. — Laws 2019, ch. 262, § 16 provided that the secretary of state, in consultation with the attorney general, shall promulgate rules to implement the amendatory provisions of this act by August 1, 2019.

The 2019 amendment, effective July 1, 2019, revised the required contents of a report of expenditures and contributions; deleted subsection designation "A" and redesignated former Paragraphs A(1) through A(5) and former Subsections B and C as Subsections A through G, respectively; in Subsection B, after "occupation", deleted "or", and added "name and", after "making contributions of", deleted "two hundred fifty dollars ($250)" and added "two hundred dollars ($200)"; in Subsection F, deleted "Each report shall contain an" and added "the", and in Subsection G, deleted "Each report shall specify".

The 2007 amendment, effective June 15, 2007, deleted former Subsection B, which required that reports be subscribed and sworn to by the candidate or treasurer of the political committee; and relettered succeeding subsections accordingly.

The 1995 amendment, effective June 16, 1995, at the end of Subsection B, substituted "political committee and delivered to the secretary of state within forty-eight hours after the report is electronically filed" for "political party and filed with the proper filing officer, as defined by the Election Code"; at the end of Subsection D, deleted "except that the debts to suppliers of goods and services that are not more than thirty days past due need not be reported"; and made minor stylistic changes throughout the section.

The 1994 amendment, effective May 18, 1994, added the second sentence in Subsection B.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

A political committee may make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question. — The Campaign Reporting Act, generally, does not purport to regulate the contents of a political committee's advertisements, and therefore, where a political committee intends to make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question, there is no violation of the Campaign Reporting Act. Whether an advertisement refers to a ballot question is immaterial to its classification as a coordinated or independent expenditure. For the coordinated expenditure, however, the political committee would be

subject to contribution limits and disclosure requirements. 2022 Op. Ethics Comm'n No. 2022-08.

A candidate must report the expenditure of personal funds for campaign expenditures, and may be reimbursed for those expenditures if they are a loan to the campaign. — Regulations promulgated by the secretary of state implementing the Campaign Reporting Act require candidates to report the use of personal funds for campaign expenditures. If a candidate expends personal funds on goods or services for the candidate's campaign, the expenditure must be reported either as a contribution or as a loan; if the expenditure is a loan, the candidate may be reimbursed for the expenditure so long as the campaign committee properly itemizes and reports the expenditures. 2023 Op. Ethics Comm'n No. 2023-09.

Law reviews. — For note, "Administrative Law - Whole Record Review and the Real Story Behind Walck v. City of Albuquerque," see 23 N.M.L. Rev. 237 (1993).

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 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.

ANNOTATIONS

Cross references. — For Public Records Act, *see* 14-3-1 NMSA 1978 et seq.

The 2019 amendment, effective January 1, 2020, added advisory opinions issued by the state ethics commission to the list of public records open to inspection, and provided an exception; in Subsection A, Paragraph A(1), after "statement of", deleted "exception" and added "no activity", in Paragraph A(3), after "issued by the", deleted "secretary of", and after "state", added "ethics commission; except for the name of the person who requested the opinion", and in Paragraph A(5), after "secretary of state", added "or state ethics commission"; and in Subsection C, after "contributions and statements of", deleted "exception", and added "no activity".

The 2003 amendment, effective June 20, 2003, added Subsection C.

The 1995 amendment, effective June 16, 1995, rewrote the section heading which read "Public inspection of reports" and rewrote the section to the extent that a detailed analysis is impracticable.

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 non-election year, to determine compliance with the provisions of the Campaign Reporting Act. 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 and come into voluntary compliance within ten working days of the date of the notice.

B. After the date stated in the notice 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 state ethics commission and the attorney general for enforcement pursuant to the provisions of Sections 1-19-34.6 and 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; 2021, ch. 109, § 2.

ANNOTATIONS

Cross references. — For time and place of filing reports, *see* 1-19-29 NMSA 1978.

For contents of report, *see* 1-19-31 NMSA 1978.

The 2021 amendment, effective July 1, 2021, provided that if the secretary of state finds a reporting discrepancy in a report, the reporting individual shall be permitted to come into voluntary compliance within ten working days, provided that a copy of the secretary of state's annual report of unresolved discrepancies shall be transmitted to the state ethics commission, and provided for enforcement of reporting requirements; in Subsection A, after "explanation for

the discrepancy", added "and come into voluntary compliance", and after "date of notice", deleted "The notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply to examinations conducted under this section."; and in Subsection B, after "report shall be transmitted to the", added "state ethics commission and the", and after "pursuant to the provisions of", deleted "Section" and added "Sections 1-19-34.6 and".

The 2009 amendment, effective June 19, 2009, in Subsection A, before "reports", changed "May" to "April" and deleted former Subsection C which provided for the delivery of each report of expenditure and contributions or statement of exception by each county clerk to the secretary of state and for the delivery of each report of expenditure and contributions by legislative candidates for a multicounty district by the secretary of state to county clerks.

The 1995 amendment, effective June 16, 1995, rewrote the section to the extent that a detailed analysis is impracticable.

1-19-33. Repealed.

History: 1978 Comp., § 1-19-33, enacted by Laws 1979, ch. 360, § 9; 1993, ch. 46, § 10; 1995, ch. 153, § 10; repealed by Laws 2009, ch. 67, § 7.

ANNOTATIONS

Repeals. — Laws 2009, ch. 67, § 7 repealed 1-19-33 NMSA 1978, as enacted by Laws 1979, ch. 360, § 9, relating to the exclusion of certain candidates from reporting, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com.*

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:

(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.

ANNOTATIONS

Cross references. — For Section 170 of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 170.

Temporary provisions. — Laws 2019, ch. 262, § 16 provided that the secretary of state, in consultation with the attorney general, shall promulgate rules to implement the amendatory provisions of this act by August 1, 2019.

The 2019 amendment, effective July 1, 2019, increased from fifteen dollars to twenty-five dollars the maximum cost of special event tickets that are exempt from the Campaign Reporting Act’s anonymous contribution limits; and precluded a candidate from accepting contributions of more than twenty-five dollars in cash at a special event from any one contributor; in the section

heading, added "or campaign"; in Subsection A, in the introductory clause, deleted "It is unlawful for the members of any" and added "A", after "candidate", deleted "to make any expenditure or solicit or accept any contribution for a political purpose unless" and added "shall ensure that", in Paragraph A(1), after "successor", added "and notify the secretary of state within ten days"; and in Subsection C, after "tickets costing", deleted "fifteen dollars ($15.00)" and added "twenty-five dollars ($25.00)", and after "reception;", added "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".

The 2018 amendment, effective May 16, 2018, prohibited a candidate or political committee from accepting 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 and the billing address associated with the card; in the catchline, added "credit and debit card contributions"; and added Subsection E.

The 2013 amendment, effective June 14, 2013, required that the date, amount and payee of disbursements from a bank account, that are not made by a check, be automatically recorded; and in Paragraph (3) of Subsection A, in the second sentence, after "one hundred dollars ($100) or less shall be", added "made in a form such that the date, amount and payee of the transaction are automatically recorded or".

The 1995 amendment, effective June 16, 1995, substituted "are" for "shall be" preceding "deposited in" in Paragraph (3) of Subsection A, substituted "record" for "book" in Paragraph (4) of Subsection A, and made minor stylistic changes throughout the section.

The 1993 amendment, effective July 1, 1993, rewrote the section heading and rewrote this section to the extent that a detailed comparison is impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 379.

29 C.J.S. Elections § 329.

1-19-34.1. Legislative session fundraising prohibition.

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.

ANNOTATIONS

The 2019 amendment, effective January 1, 2020, prohibited certain public officials, and candidates for these offices, from soliciting contributions governed by the Campaign Reporting Act during a prohibited period; in Subsection A, added "the attorney general, the secretary of state, the state treasurer, the commissioner of public lands or the state auditor", after "candidate for state legislator", added "attorney general, secretary of state, state treasurer, commissioner of public lands or state auditor", after "agent on behalf of", deleted "either" and added "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, commission of public lands or state auditor", and after "knowingly solicit a contribution", deleted "for a political purpose" and added "governed by the Campaign Reporting Act"; and in Subsection B, after "prohibited period for the governor", added "or the lieutenant governor", after "agent on", deleted "his" and added "the governor's or the lieutenant governor's", and after "knowingly solicit a contribution", deleted "for a political purpose" and added "governed by the Campaign Reporting Act".

The 1995 amendment, effective June 16, 1995, made a minor stylistic change in Subsection A and substituted "the governor" for "a person holding a state office" in the first sentence of Subsection B.

Application to contributions to candidates for federal office. — The legislative session fundraising prohibition in the State Campaign Reporting Act, Section 1-19-34.1 NMSA 1978, does not apply to contributions to candidates for federal office based on the doctrine of federal preemption and because the State Campaign Reporting Act does not regulate contributions to candidates for federal office. 2007 Op. Att'y Gen. No. 07-01.

A member of the New Mexico state legislature does not violate the Campaign Reporting Act by soliciting campaign contributions for federal office during the "prohibited period". — Members of the New Mexico legislature and certain other elected officials are prohibited from knowingly soliciting contributions governed by the Campaign Reporting Act between January 1 and the adjournment of any regular legislative session and between the proclamation and adjournment of any special session, but the Campaign Reporting Act only applies to candidates in primary, general or statewide special elections in New Mexico and excludes federal elections from the application of the act, and therefore a New Mexico state legislator who solicited campaign contributions for the federal office of United States Representative during a state legislative session did not violate the Campaign Reporting Act. 2021 Op. Ethics Comm'n No. 2021-05.

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.

History: 1978 Comp., § 1-19-34.2, enacted by Laws 1993, ch. 46, § 13; 1995, ch. 153, § 13.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, inserted "regulatory" preceding the last two references to "office" in the section and made a stylistic change.

Justices may not solicit funds from attorneys. — This section precludes justices of and candidates for the New Mexico Supreme Court, either directly or through anyone they authorize, to solicit funds on their behalf, or to knowingly solicit campaign contributions from attorneys licensed in New Mexico. This section, however, is directed at the solicitation of funds, and does not prohibit Supreme Court justices or candidates from accepting voluntary, unsolicited contributions from attorneys. In addition, this section would not prevent lawyers or organizations of lawyers or other citizens from soliciting contributions for a justice or candidate for Supreme Court justice if they were not authorized by the justice or candidate to solicit contributions on his or her behalf. 1994 Op. Att'y Gen. No. 94-04.

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.

ANNOTATIONS

Temporary provisions. — Laws 2019, ch. 262, § 16 provided that the secretary of state, in consultation with the attorney general, shall promulgate rules to implement the amendatory provisions of this act by August 1, 2019.

The 2019 amendment, effective July 1, 2019, prohibited a person from making 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 are the true recipients of the expenditures; and added Subsection B.

The 2009 amendment, effective November 3, 2010, deleted the former language which made it unlawful for a political committee or a candidate or his agent to accept a contribution that is reported as coming from one person or entity when the candidate or his agent knows that the contribution is from another person or entity; and added the language after "It is unlawful for a person".

Severability. — Laws 2009, ch. 68, § 5 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

The 1995 amendment, effective June 16, 1995, inserted the second "or his agent" following "when the candidate" and substituted "the" for "its" following "directed that".

The 1994 amendment, effective May 18, 1994, deleted "bundling disclosure required" following "prohibited" in the section heading, deleted the Subsection A designation which appeared at the beginning of the section, and deleted former Subsection B relating to the disclosure of multiple contributions.

Contributions by an individual through a corporation owned by the individual. — The transfer funds to a corporation by a person who controls the corporation for purposes of making a political contribution in the name of the corporation is a violation of the Campaign Reporting Act. 2010 Op. Att'y Gen. No. 10-03.

1-19-34.4. Education and voluntary compliance; investigations; 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 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 no activity. The state ethics commission, in consultation with the secretary of state, shall issue advisory opinions, when requested in writing to do so, on matters concerning that act.

B. The secretary of state may conduct examinations of reports filed pursuant to Section 1-19-29 NMSA 1978 and the state ethics commission may initiate investigations to determine whether any provision of the Campaign Reporting Act has been violated.

C. Any person who believes that a provision of the Campaign Reporting Act has been violated may file a written complaint with the state ethics commission pursuant to the terms of the State Ethics Commission Act [Chapter 10, Article 16G NMSA 1978]. If the commission has jurisdiction for the complaint, the state ethics commission shall refer the complaint to the secretary of state. Upon referral, the secretary of state shall attempt to achieve voluntary compliance with the Campaign Reporting Act. Within thirty-five days after receiving the complaint from the state ethics commission, the secretary of state shall return the complaint to the state ethics commission and certify to the state ethics commission whether voluntary compliance was achieved. If the secretary of state certifies voluntarily compliance, the state ethics commission shall dismiss the complaint or that part of the complaint alleging a violation of the Campaign Reporting Act. If the secretary of state does not certify voluntarily compliance, the state ethics commission shall proceed with the complaint pursuant to the terms of the State Ethics Commission Act.

D. The secretary of state and the state ethics commission shall at all times seek to ensure voluntary compliance with the provisions of the Campaign Reporting Act.

E. At any time, the secretary of state may refer a matter to the state ethics commission for a civil injunctive or other appropriate order or to the attorney general or a district attorney 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; 2021, ch. 109, § 3.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, revised administrative and enforcement duties of the state ethics commission and the secretary of state under the Campaign Reporting Act, modified the complaint procedure under the Campaign Reporting Act, removed provisions related to binding arbitration following a notice of final action, and removed provisions allowing the secretary of state to refer violations of the Campaign Reporting Act to the attorney general or a district attorney for enforcement; in the section heading, after "investigations", deleted "binding arbitration"; in Subsection A, after "statements of", deleted "exception" and added "no activity", after the next occurrence of "The", deleted "secretary of state, in consultation with the attorney general" and added "state ethics commission, in consultation with the secretary of state", and after "concerning the act", deleted "All prescribed forms prepared shall be clear and easy to complete."; in Subsection B, after "The secretary of state may", added "conduct examinations of reports filed pursuant to Section 1-19-29 NMSA 1978 and the state ethics commission may", and after "has been violated", deleted the remainder of the subsection; added a new Subsection C and redesignated former Subsection C as Subsection D; in Subsection D, after "The secretary of state", added "and the state ethics commission", after "Campaign Reporting Act.", deleted the remainder of the subsection; deleted former Subsections D through F and redesignated former Subsection G as Subsection E; and in Subsection E, after "may refer a matter to the", deleted "attorney general or a district attorney" and added "state ethics commission", and after "appropriate order or", added "to the attorney general or a district attorney".

The 1997 amendment, effective June 20, 1997, in Subsection A, substituted "that" for "the Campaign Reporting"; made minor stylistic changes in Subsection B; and rewrote Subsections D, E and F.

The 1995 amendment, effective June 16, 1995, inserted "statements of exception" at the end of the second sentence in Subsection A, inserted "any provision of" preceding "the Campaign Reporting Act" and made a related change in Subsection B, rewrote Subsections C through E, and in Subsection F, added the first sentence and inserted "and filed with the secretary of state" following "shall be issued" in the fifth sentence.

Constitutionality. — Provision of this section providing for binding arbitration of alleged violations of the Campaign Reporting Act, 1-19-25 through 1-19-36 NMSA 1978, for which a penalty has been imposed is not unconstitutional, because the act specifically requires that the arbitration procedures be governed by the Uniform Arbitration Act, 44-7-1 through 44-7-22 [44-7A-1 to 44-7A-32] NMSA 1978, which expressly authorizes judicial review of the arbitrator's decision. 2002 Op. Att'y Gen. No. 02-01.

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 exhausts efforts in seeking voluntary compliance and 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 state ethics commission for enforcement; provided, however, that if the secretary of state waives the imposition of a fine pursuant to Subsection D of Section 1-19-35 NMSA 1978, the matter shall not be referred.

B. With or without a referral from the secretary of state, the state ethics commission 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 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 state ethics commission 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; 2021, ch. 109, § 4.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, required the secretary of state, after exhausting efforts in seeking voluntary compliance, to refer violations of the Campaign Reporting Act to the state ethics commission for enforcement, removed a provision allowing the secretary of state to refer violations to the attorney general or a district attorney for enforcement, provided an

exception when the secretary of state waives the imposition of a fine, authorized the state ethics commission to institute a civil action in district court, with or without a referral from the secretary of state, 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, and removed this authority from the attorney general and district attorney; changed "attorney general or a district attorney" to "state ethics commission", throughout; and in Subsection A, after "If the secretary of state", added "exhausts efforts in seeking voluntary compliance and", and after "for enforcement", added "provided, however, that if the secretary of state waives the imposition of a fine pursuant to Subsection D of Section 1-19-35 NMSA 1978, the matter shall not be referred".

The 2019 amendment, effective July 1, 2019, increased the penalty for violations of the Campaign Reporting Act to not more than one thousand dollars ($1,000) for each violation, not to exceed twenty thousand dollars ($20,000); in Subsection B, added "With or without a referral from the secretary of state", after "civil penalty of", deleted "two hundred fifty dollars ($250)" and added "up to one thousand dollars ($1,000)", after "not to exceed", deleted "five thousand dollars ($5,000)" and added "a total of twenty thousand dollars ($20,000)"; and in Subsection C, added "With or without a referral from the secretary of state", after "civil penalty of", deleted "fifty dollars ($50.00)" and added "up to one thousand dollars ($1,000)", and after "not to exceed", deleted "five thousand dollars ($5,000)" and added "a total of twenty thousand dollars ($20,000)".

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' 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.

ANNOTATIONS

Temporary provisions. — Laws 2019, ch. 262, § 16 provided that the secretary of state, in consultation with the attorney general, shall promulgate rules to implement the amendatory provisions of this act by August 1, 2019.

The 2019 amendment, effective July 1, 2019, set a flat limit on contributions to all candidates and political committees of $5,000 per election cycle, provided that a primary election candidate who does not move on to the general election shall remain subject to the primary election cycle contribution limits 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, provided that 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 by the section during a primary or a general election cycle, prohibited contributions to a political party or legislative caucus committee that will cause the contributor's total contributions to the political party or legislative caucus committee to exceed five times the limit imposed by the section during a primary or a general election cycle, changed the date on which contribution limits are increased, provided that the limitation on contributions to candidates or campaign committees do not apply to the value of in-kind contributions from political parties or legislative caucus committees to candidates nominated by the parties in the general election, excluded contributions from candidates or campaign committees from the limitations on contributions to political parties or legislative caucus committees, and limited a political party caucus to one legislative caucus committee in each chamber of the legislature; deleted former Subsection A, added new Subsections A through C and redesignated former Subsections B through F as Subsections D through H, respectively; in Subsection F, after "On", deleted "the day" and added "January 1", and after "shall take effect the", deleted "day after the" and added "January 1"; and deleted former Subsection G and added Subsections I through L.

Severability. — Laws 2009, ch. 68, § 5 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Constitutionality. — For a contribution limit to survive, a state must first show a sufficiently important interest in that limit, and that the challenged contribution limits are closely drawn to avoid unnecessary abridgement of associational freedoms. *Republican Party of N.M. v. Torrez*, ___ F.Supp.3d ___ (D. N.M. 2023).

Campaign Reporting Act's limit on contributions from persons and political committees to state political parties is constitutional. — The state has established that it has a sufficiently important interest in limiting contributions to political parties to prevent circumvention of other valid contribution limits and actual or apparent *quid pro quo* corruption, and the Campaign Reporting Act's limits on contributions to parties are closely drawn to the state's interest in preventing circumvention and actual or apparent *quid pro quo* corruption. *Republican Party of N.M. v. Torrez*, ___ F.Supp.3d ___ (D. N.M. 2023).

Campaign Reporting Act's limit on contributions from state to county political parties is unconstitutional. — The state has failed to put forth evidence that there is a serious risk of donors circumventing valid contribution limits by donating money to a state party with the intention that the money be donated to a county party so that the money can ultimately be donated to a candidate in exchange for a *quid pro quo* arrangement or the appearance of one. The limit on contributions from state to county parties, therefore, is too attenuated from the root concern of *quid pro quo* corruption between individuals and candidates. *Republican Party of N.M. v. Torrez*, ___ F.Supp.3d ___ (D. N.M. 2023).

Campaign Reporting Act's limit on contributions from state political parties to nongubernatorial candidates and gubernatorial candidates is unconstitutional. — The state has established that it has a sufficiently important interest in limiting contributions from state parties to candidates to prevent circumvention of other valid contribution limits, but the Campaign Reporting Act's limits on contributions by state parties to candidates are substantially lower than limits previously upheld by the United States supreme court and are substantially lower than comparable limits in other states, and the state has failed to show that it tailored its contribution limits to how much it costs to run a competitive statewide and local campaign, which demonstrates that the limits on contributions from state parties to candidates are not closely drawn to the state's interest in preventing circumvention of other valid contribution limits. *Republican Party of N.M. v. Torrez*, ___ F.Supp.3d ___ (D. N.M. 2023).

A political committee that makes contributions to candidates may solicit unlimited contributions from allowable persons on behalf of political committees that only make "independent expenditures". — The Campaign Reporting Act, §§ 1-19-25 to 1-19-36 NMSA 1978, limits the amounts persons may contribute to candidates, candidates' campaign committees, and political committees during primary and general election cycles, and further prohibits persons, including political committees, from knowingly soliciting or accepting contributions from other persons, including political committees, that exceed these limits, § 1-19-34.7(A)(1), (E), but § 1-19-34.7(I) provides that these limits and prohibitions do not apply to political committees that make "independent expenditures" only, and therefore a political committee that only makes independent expenditures may indirectly solicit unlimited contributions through a political committee that makes contributions to candidates, and further, a political committee that makes contributions to candidates may solicit unlimited contributions on behalf of a political committee that only makes independent expenditures. For similar reasons, an officeholder and a candidate may request third-party donors to contribute at any amount to a political committee that only makes independent expenditures. 2022 Op. Ethics Comm'n No. 2022-05.

A candidate may not solicit unlimited contributions for a political committee that makes expenditures to support the candidate's election. — The Campaign Reporting Act's prohibitions on fundraising do not apply to political committees that only make "independent expenditures", but if a candidate solicits contributions to be given to a political committee, and the political committee uses contributions to pay for advertisements supporting the candidate's election, then the political committee is not making an "independent expenditure", but is making a "coordinated expenditure", which is prohibited by 1-19-34.7(E) NMSA 1978. 2022 Op. Ethics Comm'n No. 2022-05.

Contributions by national committees of political parties. — The Campaign Reporting Act prohibits the national committee of a political party from contributing to its state political party in

an amount greater than five thousand dollars ($5,000) during a primary election or during a general election. 2010 Op. Att'y Gen. No. 10-03.

Contributions by an individual and through a corporation owned by the individual. — The campaign Reporting Act does not prohibit an individual and a corporation controlled by the individual from making separate contributions in their own names up to the limits of the act. If, however, instead of separate contributions by the individual and the corporation, the individual makes a personal contribution and transfers funds to the corporation for purposes of making another contribution, the act would attribute both contributions to the individual for purposes of the act's contribution limits and if the contributions, in the aggregate exceed the contribution limits for either a primary or a general election, the contributions would be a violation of the act, even if the violation was not intentional. 2010 Op. Att'y Gen. No. 10-03.

1-19-34.8. State ethics commission; jurisdiction.

A. 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.

B. 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 provisions of the Campaign Reporting Act and a formalized agreement.

History: Laws 2019, ch. 86, § 19; 2021, ch. 109, § 5.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, revised duties of the state ethics commission, and removed a provision requiring the state ethics commission and the secretary of state to make recommendations to the legislature on any necessary changes to the Campaign Reporting Act; deleted "On and after January 1, 2020" and redesignated former Paragraphs A(1) and A(2) as Subsections A and B, respectively; in Subsection B, after "The", deleted "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", and after "state ethics commission in accordance with the", added "provisions of the Campaign Reporting Act and a formalized"; and deleted former Subsection B.

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 1978, if a statement of no activity or a report of expenditures and contributions is not filed or is filed after any deadline imposed by the Campaign Reporting Act, the responsible reporting individual or political committee 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 statement or report is filed, up to a maximum fine as provided in Subsection H of this section.

B. If any reporting individual fails to file or files a 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 complete report is filed, up to a maximum fine as provided in Subsection H of this section.

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. If the secretary of state determines that a reporting individual or political committee has failed to file or has filed a report past the deadline, the secretary of state shall by written notice set forth the violation and the fine that may be imposed and inform the reporting individual that the individual has ten working days from the date of the letter to come into voluntary compliance 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 or reduce the imposition of the fine, the secretary of state may by a written notice of final action partially or fully waive the imposition of a fine for any late report or statement of no activity. A written notice of final action shall be sent by certified mail. The secretary of state may file a petition with the court to remit outstanding fines for good cause or refer unpaid fines for enforcement under Subsection A of Section 1-19-34.6 NMSA 1978.

E. 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.

F. 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.

G. 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.

H. The maximum cumulative penalties for each report for which fines are assessed in accordance with Subsections A and B of this section are as follows:

(1) five thousand dollars ($5,000) for statewide candidate committees and political committees;

(2) two thousand five hundred dollars ($2,500) for legislative, district judge, district attorney and public education commission candidate committees;

(3) one thousand dollars ($1,000) for county candidate committees running in a county designated as class A; and

(4) five hundred dollars ($500) for all other non-class A county candidate committees.

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; 2021, ch. 109, § 6.

ANNOTATIONS

Cross references. — For penalty for filing false report, *see* 1-19-36 NMSA 1978.

For election offenses and penalties in general, *see* 1-20-1 NMSA 1978 et seq.

The 2021 amendment, effective July 1, 2021, changed the maximum fines for not filing statements of no activity or reports of expenditures and contributions or for filing these reports after the imposed deadline, required the secretary of state to notify reporting individuals or political committees when they are violation of filing provisions and to inform the reporting individual that the individual has ten working days from the date of the letter to come into voluntary compliance and to provide a written explanation stating the reason why the violation occurred, and authorized the secretary of state to waive the imposition of a fine for any late report or statement of no activity upon a showing of good cause; in Subsection A, after "Section 1-19-29 NMSA 1978", deleted "that is due prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978", after "report of expenditures and contributions", deleted "contains false or incomplete information" and added "is not filed", after "political committee", deleted "in addition to any other penalties or remedies prescribed by the Election Code", and after "up to a maximum", deleted "of five thousand dollars ($5,000)" and added "fine as provided in Subsection H of this section"; in Subsection B, after "reporting individual", added "fails to file or", after "files a", deleted "false, intentionally incomplete or", and after "up to a maximum", deleted "of five thousand dollars ($5,000)" and added "fine as provided in Subsection H of this section"; added a new Subsection D and redesignated former Subsections D through F as Subsections E through G, respectively; and added Subsection H.

The 2019 amendment, effective July 1, 2019, made certain technical changes to the section; and in Subsection D, after "statement of", deleted "exception" and added "no activity", and after "received by the", deleted "proper filing officer" and added "secretary of state".

The 2009 amendment, effective June 19, 2009, in Subsection A, changed "Paragraph (2)" to "Paragraph (5)" and after "statement of", changed "exception" to "no activity"; in Subsection C, changed "Paragraph (2)" to "Paragraph (5)"; and in Subsection E, changed "exception" to "no activity".

The 1997 amendment, effective June 20, 1997, in Subsections A and B, substituted "Thursday" for "Friday"; and in Subsection F, substituted "that act" for "the Campaign Reporting Act".

The 1995 amendment, effective June 16, 1995, inserted "and statements" following "reports" in the section heading, rewrote Subsections A and B, added Subsection C, redesignated former Subsections C through E as Subsections D through F and rewrote those Subsections.

The 1994 amendment, effective May 18, 1994, deleted "final" preceding "report" near the beginning of Subsection A.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

1-19-36. Criminal 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.

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; 2021, ch. 109, § 7.

ANNOTATIONS

Cross references. — For penalty for late filing or failure to file, *see* 1-19-35 NMSA 1978.

For election offenses and penalties in general, *see* 1-20-1 NMSA 1978 et seq.

The 2021 amendment, effective July 1, 2021, in the section heading, added "Criminal" preceding "penalties".

The 2019 amendment, effective July 1, 2019, in the section heading, deleted "criminal enforcement".

The 1995 amendment, effective June 16, 1995, added "criminal" in the section heading and substituted "provision" for "of the provisions" in Subsection A.

The 1993 amendment, effective July 1, 1993, inserted "enforcement" in the section heading and rewrote this section to the extent that a detailed comparison is impracticable.

Intent is required for a violation of the Campaign Reporting Act. — Persons who make contributions in excess of the various contribution limits in the Campaign Reporting Act are subject to criminal penalties and sanctions if they knowingly and willfully violated the limitations on campaign contributions. 2010 Op. Att’y Gen. No. 10-03.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 379.

29 C.J.S. Elections § 329.

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

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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, changed "Section 1 through 17 of this act" to "Chapter 1, Article 19A NMSA 1978".

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

(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 district judge;

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; 2020, ch. 9, § 10; 2021, ch. 57, § 1.

ANNOTATIONS

Repeals. — Laws 2021, ch. 57, § 5, effective June 18, 2021, repealed Laws 2020, ch. 9, §§ 10 through 13, which would have become effective January 1, 2023.

The 2021 amendment, effective June 18, 2021, included the office of district judge within the definition of "covered office", and removed the office of public regulation commissioner from the definition of "covered office", as that term is used in the Voter Action Act; and in Subsection F, after "office of", deleted "public regulation commissioner" and added "district judge".

The 2019 amendment, effective July 1, 2019, defined "contribution", "coordinated expenditure", and "expenditure", and revised and removed certain defined terms, as used in the Voter Action Act; in Subsection C, deleted "contested election" and added "contested", and after "means", deleted "an election in which"; added new Subsections D and E and redesignated former Subsection D as Subsection F; deleted former Subsection E, which defined "election cycle"; added a new Subsection G and redesignated former Subsection F as Subsection H; deleted former Subsection G and redesignated former Subsections H through J as Subsections I through K, respectively; in Subsection I, deleted "or a check or money order" and added "a check, a money order or an electronic form of payment as prescribed by the secretary, and", and in Paragraph I(1), after "made by a", deleted "registered"; in Subsection J, Paragraph J(1), after "for", deleted "major party applicant candidates for covered offices" and added "candidates who are seeking public financing for a primary election or for both a primary and a general election", in Paragraph J(2), after "for", deleted "independent and minor party", after "candidates", added "who are seeking public financing only for a general election", after "beginning", deleted "February" and added "January", and after "5:00 p.m. on the", deleted "filing date for independent or minor party candidates" and added "twenty-third day following the primary election"; and deleted former Subsection K, which defined "seed money".

The 2007 amendment, effective June 28, 2007, added "any office of the judicial department subject to statewide elections" to the definition of "covered office"; changed "public regulation commissioner" to "covered offices" in the definition of "qualifying period"; and deleted the definition of "total vote".

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 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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, provided that a person who accepts contributions totaling more than $100 from any one contributor during the election cycle in which the person is running for office may still be eligible to become an applicant for public financing if the person meets the specified criteria; in Subsection C, added "Except as provided in Subsection D of this section", after "accepted contributions totaling", deleted "five hundred dollars ($500) or more or made expenditures totaling five hundred dollars ($500) or more between the beginning of the qualifying period and filing a declaration of intent" and added "more than one hundred dollars ($100) from any one contributor during the election cycle in which the person is running for office."; and added Subsection D.

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 percent of the number of voters in the state; and

(2) for the office of district judge:

(a) four hundred qualifying contributions in a district with four hundred thousand or more voters;

(b) three hundred qualifying contributions in a district with two hundred thousand or more but fewer than four hundred thousand voters;

(c) two hundred qualifying contributions in a district with one hundred thousand or more but fewer than two hundred thousand voters; and

(d) one hundred qualifying contributions in a district with fewer than one hundred thousand voters.

B. Applicant candidates may accept qualifying contributions from persons who become registered within the statutory time frame that would enable those persons 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. A payment, gift or anything of value shall not be given in exchange for a qualifying contribution.

History: Laws 2003, ch. 14, § 4; 2007 (1st S.S.), ch. 2, § 2; 2020, ch. 9, § 11; 2021, ch. 57, § 2.

ANNOTATIONS

Repeals. — Laws 2021, ch. 57, § 5, effective June 18, 2021, repealed Laws 2020, ch. 9, §§ 10 through 13, which would have become effective January 1, 2023.

The 2021 amendment, effective June 18, 2021, prescribed qualifying contribution amounts for the office of district judge, removed references to the office of public regulation commissioner, and made technical corrections; in Subsection A, Paragraph A(2), after "for the office of", deleted "public regulation commissioner, the number of qualifying contributions equal to one-tenth percent of the number of voters in the district of the office for which the candidate is running" and added "district judge", and added Subparagraphs A(2)(a) through A(2)(d); and in Subsection D, deleted "No" and added "A", and after "shall", added "not".

The 2007 amendment, effective June 28, 2007, amended Subsection A to change the required number of registered voters from one-quarter percent to one-tenth of one percent.

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.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 175, § 12 made Laws 2019, ch. 175, § 8 effective July 1, 2019.

1-19A-5. Repealed.

History: Laws 2003, ch. 14, § 5; 2007 (1st S.S.), ch. 2, § 3; repealed by Laws 2019, ch. 175, § 11.

ANNOTATIONS

Repeals. — Laws 2019, ch. 175, § 11 repealed 1-19A-5 NMSA 1978, as enacted by Laws 2003, ch. 14, § 5, relating to seed money, effective July 1, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, revised the process for certifying candidates by requiring the secretary of state to determine whether an applicant candidate has met the requirements for certification from the applicant candidate's signed statement; and in Subsection A, added "from the applicant candidate's statement", in Paragraph A(2), added "collected and", and after "qualifying contributions", added "after filing a declaration of intent", in Paragraph A(3), deleted "qualified as" and added "met the qualifications", and in Paragraph A(4), deleted "seed money".

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, domestic partner, 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.

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 1-19A-4.1 NMSA 1978. 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 1-19A-4.1 NMSA 1978.

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 1-19A-4.1 NMSA 1978 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 1-19A-4.1 NMSA 1978 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 1-19A-4.1 NMSA 1978 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; 2023, ch. 39, § 79.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, expanded the prohibition of using campaign funds for personal living expenses or compensation to include a domestic partner; and in Subsection B, after "candidate's spouse", added "domestic partner"; and changed "8 of this 2019 act" to "1-19A-4.1 NMSA 1978" throughout the section.

The 2019 amendment, effective July 1, 2019, added restrictions on the use of campaign funds, restricted total campaign expenditures to the amount received from political parties under Section 1-19A-8 and allowable contributions, in addition to money distributed from the public election fund, and required candidates to return any unspent amounts to the public election fund; in Subsection A, after "shall be used", added "only"; added a new Subsection B and redesignated former Subsections B through E as Subsections C through F, respectively; in Subsection D, after "campaign expenditures", deleted "and debts", and added "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", and added "and contributions collected pursuant to

Section 8 of this 2019 act"; in Subsection E, added "who does not remain a candidate in the general election", after "shall", deleted "return to the secretary", after "primary election", deleted "any amount that is" and added "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", and after "primary election", deleted "for direct deposit into the fund"; in Subsection F, after "certified candidate shall", deleted "return to the secretary", after "general election", deleted "any amount that is" and added "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", and after "general election", deleted "for direct deposit into the fund"; and added Subsection G.

The 2007 amendment, effective June 28, 2007, changed "two weeks" to "thirty days" in Subsections D and E.

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 14, § 23 made the act effective July 1, 2003.

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.

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 to 1-19-36 NMSA 1978].

History: Laws 2003, ch. 14, § 9; 2019; ch. 175, § 6.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, required the secretary of state to publish guidelines outlining penalties for violations of the Voter Action Act, and removed certain reporting requirements; in Subsection A, added "and penalties for violations of the Voter Action Act by September 1, 2019"; in Subsection B, after "report listing", deleted "seed money"; in Subsection D, after "shall report", added "all contributions and", after "campaign reporting", deleted "requirements" and added "schedule", and after "specified in the", deleted "Election Code" and added "Campaign Reporting Act"; and deleted former Subsections E and F, which specified certain reporting requirements.

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) [Chapter 7, Article 8A NMSA 1978]; and

(7) money appropriated by the legislature or as otherwise provided by law.

History: Laws 2003, ch. 14, § 10; 2007 (1st S.S.), ch. 2, § 5; 2014, ch. 2, § 1; 2019, ch. 175, § 7; 2020, ch. 9, § 12; 2021, ch. 57, § 3.

ANNOTATIONS

Repeals. — Laws 2021, ch. 57, § 5, effective June 18, 2021, repealed Laws 2020, ch. 9, §§ 10 through 13, which would have become effective January 1, 2023.

The 2021 amendment, effective June 18, 2021, removed provisions related to establishing a subaccount in the public election fund and amounts to be deposited in the subaccount; and deleted Subsections D and E.

The 2019 amendment, effective July 1, 2019, revised the list of funds received that must be deposited directly into the public election fund; and in Subsection C, Paragraph C(5), after "unspent", deleted "seed money that cannot be used for any other purpose" and added "contributions to a candidate", and in Paragraph C(7), after "legislature", added "or otherwise provided by law".

The 2014 amendment, effective July 1, 2014, eliminated a distribution from the insurance premium tax to the public regulation commission elections subaccount in the public election fund; in Subsection E, in the initial paragraph, deleted "Three hundred thousand dollars ($300,000)" and added" Two hundred thousand dollars ($200,000)" and in Subsection E, deleted Paragraph (3) which provided for the deposit of one hundred thousand dollars from the insurance premium tax collected pursuant to Section 59A-6-2 NMSA 1978 in the subaccount for public regulation commission elections.

The 2007 amendment, effective June 28, 2007, added Paragraph (6) of Subsection C; added Subsection D; and in Subsection E, provided for the deposit of listed funds in the subaccount for public regulation commission elections.

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 14, § 23 made the act effective July 1, 2003.

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 14, § 23 made the act effective July 1, 2003.

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 district judge, for each voter of the candidate's party in the district of the office for which the candidate is running:

(a) fifteen cents ($.15) in a district with four hundred thousand or more voters;

(b) twenty-five cents ($.25) in a district with two hundred thousand or more but fewer than four hundred thousand voters;

(c) forty cents ($.40) in a district with one hundred thousand or more but fewer than two hundred thousand voters; and

(d) fifty-five cents ($.55) in a district with fewer than one hundred thousand voters; and

(2) for the office of justice of the supreme court or 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 district judge, for each voter in the district of the office for which the candidate is running:

(a) fifteen cents ($.15) in a district with four hundred thousand or more voters;

(b) twenty-five cents ($.25) in a district with two hundred thousand or more but fewer than four hundred thousand voters;

(c) forty cents ($.40) in a district with one hundred thousand or more but fewer than two hundred thousand voters; and

(d) fifty-five cents ($.55) in a district with fewer than one hundred thousand voters; and

(2) for the office of justice of the supreme court or judge of the court of appeals, fifteen cents ($.15) for each voter in the state.

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, 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; 2020, ch. 9, § 13; 2021, ch. 57, § 4

ANNOTATIONS

Repeals. — Laws 2021, ch. 57, § 5, effective June 18, 2021, repealed Laws 2020, ch. 9, §§ 10 through 13, which would have become effective January 1, 2023.

The 2021 amendment, effective June 18, 2021, prescribed distribution amounts from the public election fund to each certified candidate based on the type of election; in Subsection B, Paragraph B(1), after "for the office of", deleted "public regulation commissioner, twenty-five cents ($.25)" and added "district judge", and added Subparagraphs B(1)(a) through B(1)(d), and in Paragraph B(2), after "supreme court", deleted "and" and added "or"; and in Subsection E, Paragraph E(1), after "for the office of", deleted "public regulation commissioner, twenty-five cents ($.25)" and added "district judge", and added Subparagraphs E(1)(a) through E(1)(d), and in Paragraph E(2), after "supreme court", deleted "and" and added "or".

The 2019 amendment, effective July 1, 2019, revised the amounts distributed from the public election fund; in Subsection A, deleted "August 1, 2007" and added "September 1 of each odd-numbered year", after "general election", deleted "in 2008", and after "Subsections B through", deleted "F" and added "G"; in Subsection C, after "primary elections", added "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", and after "equal to", deleted "fifty" and added "twenty"; added a new Subsection D and redesignated former Subsections D through I as Subsections E through J, respectively; in Subsection F, deleted "For uncontested general elections, except as provided in Subsection I of this section, the amount of money to be distributed to a certified candidate is equal to fifty percent of the amount specified in Subsection D of this section", and after "the qualification of", deleted "an independent or minor party candidate to appear on the ballot" and added "a candidate"; in Subsection G, deleted "The secretary shall increase the total amount by twenty percent to provide funds for additional matching funds in the primary election.", deleted "This estimate shall be increased by twenty percent to provide funds for additional matching funds in the general election.", after "primary election cycle", deleted "plus the added twenty percent", and after "general election cycle", deleted "plus the added twenty percent, all"; in Subsection H, after "Subsection", deleted "F" and added "G", and after "Subsections B through", deleted "C" and added "F"; in Subsection I, deleted "consider and account for inflation in the evaluations" and added "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"; and in Subsection J, deleted "No money shall be distributed to judicial candidates in uncontested general elections; provided that if a general election race that is initially uncontested later becomes contested, the certified judicial candidate shall receive a distribution in accordance with Subsection D of this section" and added "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".

The 2007 amendment, effective June 28, 2007, in Subsection A, changed "April 1, 2005" to "August 1, 2007"; added Paragraphs (1) and (2) of Subsections B and D; provided that for uncontested primary elections and uncontested general elections, the distribution shall be based on the amount specified in Subsection D; eliminated the provision that provided the method for determining the distribution if the preceding four election cycles did not provide sufficient data; and added Subsection I relating to judicial retention elections.

1-19A-14. Repealed.

History: Laws 2003, ch. 14, § 14; 2007 (1st S.S.), ch. 2, § 7; repealed by Laws 2019, ch. 175, § 11.

ANNOTATIONS

Repeals. — Laws 2019, ch. 175, § 11 repealed 1-19A-14 NMSA 1978, as enacted by Laws 2003, ch. 14, § 14, relating to matching funds, effective July 1, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 14, § 23 made the act effective July 1, 2003.

1-19A-15.1. State ethics commission; jurisdiction.

A. 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 the State Ethics Commission Act [Chapter 10, Article 16G NMSA 1978].

B. The secretary of state shall forward complaints it receives alleging violations of the Voter Action Act to the state ethics commission in accordance with a formalized agreement.

History: Laws 2019, ch. 86, § 20; 2021, ch. 109, § 8.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, removed jurisdiction from the secretary of state to investigate and adjudicate complaints; and removed a provision requiring the state ethics commission and the secretary of state to make recommendations to the legislature on any necessary changes to the Voter Action Act; deleted "On and after January 1, 2020" and redesignated former Paragraphs A(1) and A(2) as Subsections A and B, respectively; in Subsection B, after "The", deleted "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", and after "in accordance with", added "a formalized"; and deleted former Subsection B.

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 14, § 23 made the act effective July 1, 2003.

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 state ethics commission makes a determination that a violation of that act has occurred, the state ethics commission shall impose a fine and, if the violation is willful or knowing, 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 state ethics commission 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.

History: Laws 2003, ch. 14, § 17; 2019, ch. 175, § 10; 2021, ch. 109, § 9.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, revised duties of the state ethics commission and the secretary of state in administering and enforcing the Voter Action Act, and required the state ethics commission to transmit findings of willful or knowing violations of the Voter Action Act to the attorney general for criminal prosecution; changed "secretary" to "state ethics commission" throughout; and in Subsection A, after "impose a fine and", added "if the violation is willful or knowing".

The 2019 amendment, effective July 1, 2019, clarified certain penalty provisions; in Subsection A, after "impose a fine", deleted "or" and added "and", added "criminal" preceding "prosecution", and after "prosecution", added "pursuant to Subsection B of this section"; and in Subsection B, after "Voter Action Act", deleted "or rules of the secretary".

Imposition of a fine by the secretary of state. — If the secretary of state elects not to refer a violation of the Voter Action Act to the attorney general for possible criminal prosecution, then the secretary is statutorily obligated to impose a civil penalty under the act. The secretary has discretion only to determine the amount of the penalty. *Montoya v. Herrera*. 2012-NMSC-011, 276 P.3d 952.

Where the applicant candidate violated the Voter Action Act by contributing more than $8,000 of the candidate's own funds to the candidate's election campaign and the secretary of state elected not to refer the violation to the attorney general for possible criminal prosecution, the secretary had the statutory obligation to impose a fine on the candidate and the secretary had the discretion to impose a $2,000 fine on the candidate. *Montoya v. Herrera*. 2012-NMSC-011, 276 P.3d 952.

Attorney general's authority to initiate criminal prosecutions. — Section 1-19A-17 NMSA 1978 does not limit the attorney general's authority to initiate criminal prosecutions of the Voter

Action Act. The attorney general is not required to first receive a referral from the secretary of state before the attorney general can initiate criminal proceedings. *State v. Block*, 2011-NMCA-101, 150 N.M. 598, 263 P.3d 940.

Double jeopardy. — The civil penalty authorized under Section 1-19A-17 NMSA 1978 is remedial and does not constitute punishment for double jeopardy purposes. The imposition of a civil penalty does not bar a subsequent criminal prosecution under the Voter Action Act for the same conduct for which the secretary of state assessed the civil penalty. *State v. Block*, 2011-NMCA-101, 150 N.M. 598, 263 P.3d 940.

Imposition of civil penalty and subsequent criminal prosecution. — Where the secretary of state assessed civil penalties against defendant for violations of the Voter Action Act; the secretary of state did not refer the matter to the attorney general for criminal prosecution; and the attorney general subsequently filed criminal charges against defendant for the same violations of the act, the attorney general was authorized to initiate the criminal prosecution and the assessment of the civil penalties did not preclude the subsequent criminal prosecution. *State v. Block*, 2011-NMCA-101, 150 N.M. 598, 263 P.3d 940.

ARTICLE 20
Offenses and Penalties

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.

ANNOTATIONS

Cross references. — For denial of rights of challengers as petty misdemeanor, *see* 1-2-26 NMSA 1978.

For denial of rights of watchers as petty misdemeanor, *see* 1-2-30 NMSA 1978.

For false statements in declaration of candidacy as fourth degree felony, *see* 1-8-40 NMSA 1978.

For failure of delegate to national convention to vote as pledged, *see* 1-8-63 NMSA 1978.

For defacing, etc., sample ballots as petty misdemeanor, *see* 1-10-11 NMSA 1978.

For interference by state police as petty misdemeanor, *see* 1-12-5 NMSA 1978.

For false swearing to secure assistance in voting as perjury, *see* 1-12-13 NMSA 1978.

For provision that refusing to permit employee time off to vote as misdemeanor, *see* 1-12-42 NMSA 1978.

For delivery of two or more emergency paper ballots folded together as fourth degree felony, *see* 1-12-58 NMSA 1978.

For failure to obey summons as contempt, *see* 1-13-19 NMSA 1978.

For presidential electors casting ballots for candidate of party other than one which nominated them as fourth degree felony, *see* 1-15-9 NMSA 1978.

For fourth degree felonies relating to referendum petition, *see* 1-17-4 NMSA 1978.

For false certification of referendum petition as fourth degree felony, *see* 1-17-7 NMSA 1978.

For late filing and failure to file report of expenditures, *see* 1-19-35 NMSA 1978.

For willful filing of false report of expenditures as misdemeanor, *see* 1-19-36 NMSA 1978.

For obtaining signatures to petition by unlawful means, *see* 30-27-4 NMSA 1978.

Applicability to violation of Primary Election Law. — When legislature passed provision relating to penalties for violations of Primary Election Law, and later at same session enacted provision making penalties of general Election Code applicable thereto, the latter enactment, in effect, modified the earlier so as to make it applicable only to willful neglect of duty or corrupt conduct by a judge, clerk or other officer which was not specifically punishable by some other act. *State v. Lucero*, 1944-NMSC-036, 48 N.M. 294, 150 P.2d 119 (decided under former law).

Violation to transport voters in state car to polling place. — It would constitute a violation of the Election Code to transport inmates of the Meadows Home for the Aged at Las Vegas to the polling places in a state car. 1952 Op. Att'y Gen. No. 52-5539 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Treating of voters by candidate for office as violation of corrupt practices or similar acts, 2 A.L.R. 402.

Aiding and abetting violation of election laws, criminal responsibility for, 5 A.L.R. 786, 74 A.L.R. 1110, 131 A.L.R. 1322.

Recital of or reference to, the offense in pronouncing sentence or judgment for violation of election laws, 14 A.L.R. 998.

"Infamous offense," elective franchise violation as, within constitutional or statutory provision in relation to presentment or indictment by grand jury, 24 A.L.R. 1002.

Libel or slander by charging political leader or boss with election frauds or corrupting voters, 55 A.L.R. 856.

Punishment of election officers for contempt, 64 A.L.R. 1019.

Constitutionality of Corrupt Practices Acts, 69 A.L.R. 377.

Personal liability of public officer for breach of duty in respect of election or primary election laws, 153 A.L.R. 109.

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 [repealed].

History: 1953 Comp., § 3-20-1.1, enacted by Laws 1975, ch. 255, § 123.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2019, ch. 212, § 284 repealed the Bond Election Act, 6-15-23 to 6-15-28 NMSA 1978, effective April 3, 2019.

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].

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.

ANNOTATIONS

Cross references. — For registration of electors, *see* 1-4-1 NMSA 1978 et seq.

For sentencing for felonies, *see* 31-18-15 NMSA 1978.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 60 and Laws 1993, ch. 316, § 58, both effective June 18, 1993, which substituted "certificate" for "affidavit" throughout the section. The section was set out as amended by Laws 1993, ch. 316, § 58. *See* 12-1-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Purging voters' registration lists, remedy and procedure for, 69 A.L.R. 1035.

Voters' registration lists, attorney general as proper party to bring action to purge, 96 A.L.R. 1035.

29 C.J.S. Elections §§ 326, 342.

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.

ANNOTATIONS

Cross references. — For opening ballot box, *see* 1-13-14 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 469, 487 et seq.

29 C.J.S. Elections §§ 327, 340.

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, ballot box or monitored secured container, 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. 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; 2023, ch. 39, § 80.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised the definition of the crime of unlawful possession of keys; and after "ballot box", added "or monitored secured container".

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 to be in possession of such materials, or when such materials were obtained in an unlawful manner, and includes the establishment, designation or operation of any container or receptacle to receive voted ballots by a person who is not authorized by the Election Code and entering information into or altering the absentee ballot register. 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; 2023, ch. 39, § 81.

ANNOTATIONS

Cross references. — For right to vote by absentee ballot, *see* 1-6-3 NMSA 1978.

For issuance of ballot, *see* 1-6-5 NMSA 1978.

For penalty for fourth degree felony, *see* 31-18-15 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised the definition of the crime of unlawful possession of absentee ballot; and added "and includes the establishment, designation or operation of any container or receptacle to receive voted ballots by a person who is not authorized by the Election Code and entering information into or altering the absentee ballot register".

Severability. — Laws 1979, ch. 378, § 18, provided for the severability of the act if any part or application thereof is held invalid.

1-20-8. False voting.

False voting consists of:

A. voting or offering to vote with the knowledge of not being a qualified elector;

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.

ANNOTATIONS

Cross references. — For person not permitted to vote, *see* 1-12-7 NMSA 1978.

For executing false statement of eligibility to vote as perjury, *see* 1-12-8 NMSA 1978.

For fraudulent and double voting as a fourth degree felony, *see* 1-20-8.1 NMSA 1978.

For voting on basis of falsely executed statement of eligibility to vote as constituting fraudulent voting, *see* 1-12-8 NMSA 1978.

For delivery of two or more emergency paper ballots folded together as fourth degree felony, *see* 1-20-8.2 NMSA 1978.

The 2011 amendment, effective July 1, 2011, removed from the list of acts that constitute false voting, the act of knowingly voting in a precinct in which the voter is not registered and added to the list the act of falsifying information on an absentee ballot envelope or signing an absentee ballot envelope that is not the vote’s absentee ballot envelope.

Convicted election official cannot question constitutionality of primary law. — Election official convicted of permitting fraudulent voting and making false entries in pollbook could not question constitutionality of primary law because he was not prejudiced by alleged restraints. *State v. Lucero*, 1944-NMSC-036, 48 N.M. 294, 150 P.2d 119 (decided under former law).

Concurrent sentences for fraudulent voting and false entries. — Imposition of concurrent sentences of 18 to 24 months for permitting fraudulent voting and for making false entries in pollbooks was error since maximum imprisonment allowed for permitting fraudulent voting was 6 months, notwithstanding that penalty for other offense was 1 to 5 years; sentence as to the first offense was void. *State v. Lucero*, 1944-NMSC-036, 48 N.M. 294, 150 P.2d 119 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 468, 489.

"Infamous offense," elective franchise violation as, within constitutional or statutory provision in relation to presentment or indictment by grand jury, 24 A.L.R. 1002.

Purging voters' registration lists, remedy and procedure for, 69 A.L.R. 1035.

Voters' registration lists, attorney general as proper party to bring action to purge, 96 A.L.R. 1035.

Legality of votes cast by person otherwise qualified as affected by nonregistration, 101 A.L.R. 657.

What amounts to conviction within statute making conviction ground for refusal of special privilege, 113 A.L.R. 1179.

Removal by executive clemency of disqualification to vote resulting from conviction of crime as applicable in case of conviction in federal court or court of another state, 135 A.L.R. 1493.

Governing law as to existence or character of offense for which one has been convicted in a federal court or court of another state, as bearing upon disqualification to vote, 175 A.L.R. 804.

Federal court, or court of another state or county, conviction in, as disqualification to vote at election, 39 A.L.R.3d 303.

Incompetents: voting rights of persons mentally incapacitated, 80 A.L.R.3d 1116.

29 C.J.S. Elections §§ 325, 341.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-12-9 NMSA 1978 as 1-20-8.1 NMSA 1978 effective July 1, 2011.

Cross references. — For false voting, *see* 1-20-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 468.

29 C.J.S. Elections § 325.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-12-58 NMSA 1978 as 1-20-8.2 NMSA 1978 effective July 1, 2011.

Cross references. — For offenses and penalties, *see* 1-20-1 NMSA 1978 et seq.

The 2009 amendment, effective June 19, 2009, after "who knowingly", deleted "hands to the presiding judge" and added "attempts to vote on"; after "two or more", deleted "emergency"; and after "paper ballots", deleted "folded together".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 468.

29 C.J.S. Elections § 325.

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 [election 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.

History: 1953 Comp., § 3-20-7, enacted by Laws 1969, ch. 240, § 433; 1983, ch. 61, § 1; 2009, ch. 150, § 34.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For falsifying nominating petition under Primary Election Law, *see* 1-8-32 NMSA 1978.

For making a false statement in declaration of candidacy, *see* 1-8-40 NMSA 1978.

For making false certificate on referendum petition, *see* 1-17-7 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection B, after "facsimile diagram", deleted "ballot label".

Convicted election official cannot question constitutionality of primary law. — Election official convicted of permitting fraudulent voting and making false entries in pollbook could not question constitutionality of primary law because he was not prejudiced by alleged restraints. *State v. Lucero*, 1944-NMSC-036, 48 N.M. 294, 150 P.2d 119 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Statutory provisions relating to form or manner in which election returns from voting districts or precincts are to be made, failure to comply with, 106 A.L.R. 398.

Power of election officer to withdraw or change returns, 168 A.L.R. 855.

29 C.J.S. Elections §§ 331, 334(2).

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.

ANNOTATIONS

Cross references. — For oath including affirmation, *see* 1-1-18 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Election as affected by failure of election officers to take proper oath, 1 A.L.R. 1542.

Officer's jurat or certificate as to oath, necessity and sufficiency of, 1 A.L.R. 1568, 116 A.L.R. 587.

Telephone, taking oath over, 12 A.L.R. 538, 58 A.L.R. 604.

Formalities of administering or making oath, 51 A.L.R. 840.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Nominal price sale of lots as inducement for votes. — Sale of lots, at nominal price, was, under the evidence, an inducement for votes for location of county seat, within meaning of Laws 1889, ch. 135, § 4 (now repealed). *Berry v. Hull*, 1892-NMSC-029, 6 N.M. 643, 30 P. 936 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 470.

29 C.J.S. Elections §§ 332, 343.

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.

ANNOTATIONS

Judgment and decision of voter to be unbiased. — Intention of Laws 1889, ch. 135, § 4 (now repealed), making it unlawful for voter to take or receive any bribe, compensation, money, article or thing as inducement to vote for any person or question, was to see that judgment and decision of voter was absolutely unbiased by any illegal offers up to moment of voting. *Berry v. Hull*, 1892-NMSC-029, 6 N.M. 643, 30 P. 936 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 470.

Contributions or subscriptions, construction of statute prohibiting solicitation or acceptance of, by public officer or employee, 85 A.L.R. 1146.

Statement by candidate regarding salary or fees of office as violation of Corrupt Practice Acts or bribery, 106 A.L.R. 493.

Bribery or improper influencing of voters, acts of others upon which charges of, are predicated as chargeable to candidate, for purpose of disqualifying him for the office to which he is elected, 121 A.L.R. 601.

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery, 55 A.L.R.2d 1137.

Construction and application of § 2C1.1 of United States Sentencing Guidelines (18 USCS APPX § 2C1.1) pertaining to offenses involving public officials offering, giving, soliciting, or receiving bribes, or extortion under color of official right, 144 A.L.R. Fed. 615.

29 C.J.S. Elections §§ 332, 343.

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.

ANNOTATIONS

Cross references. — For employers giving employees time off to vote, *see* 1-12-42 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 473.

Suspension or expulsion of member of labor union for refusal to pay assessment imposed for purpose of promoting or defeating contemplated legislation as violation of statute against intimidation of voters, 175 A.L.R. 397.

29 C.J.S. Elections §§ 333, 334(2), 344.

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.

ANNOTATIONS

Recompilations. — Laws 2011, ch. 137, § 109 recompiled former 1-12-9.1 NMSA 1978 as 1-20-13.1 NMSA 1978 effective July 1, 2011.

1-20-14. Intimidation.

Intimidation consists of inducing or attempting to induce fear in the secretary of state, a county clerk, a municipal clerk or any employee or agent of the secretary of state, employee or agent of a county clerk, employee or agent of a municipal clerk, member of an election 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 the secretary of state, a county clerk, a municipal clerk or any employee or agent of the secretary of state, employee or agent of a county clerk, employee or agent of a municipal clerk, member of an election board, voter, 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.

Whoever commits intimidation is guilty of a fourth degree felony.

History: 1953 Comp., § 3-20-12, enacted by Laws 1969, ch. 240, § 438; 1978 Comp., § 1-20-14; 2023, ch. 32, § 1.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, amended the crime of intimidation to include acts against election officials and employees and agents of the secretary of state, county clerks and municipal clerks; after "attempting to induce fear in", added "the secretary of state, a county clerk, a municipal clerk or", after the next occurrence of "any", added "employee or agent of the secretary of state, employee or agent of a county clerk, employee or agent of a municipal clerk", after "member of", deleted "a precinct" and added "an election", after "retaliation upon", added "the secretary of state, a county clerk, a municipal clerk or", after the next occurrence of "any", deleted "voter, precinct board" and added "employee or agent of the secretary of state, employee or agent of a county clerk, employee or agent of a municipal clerk", and after the next occurrence of "member", added "of an election board, voter"..

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 473.

Suspension or expulsion of member of labor union for refusal to pay assessment imposed for purpose of promoting or defeating contemplated legislation as violation of statute against intimidation of voters, 175 A.L.R. 397.

29 C.J.S. Elections §§ 333, 344.

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.

ANNOTATIONS

Cross references. — For conspiracy, *see* 30-28-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 474, 488.

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.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, prohibited electioneering within one hundred feet of a school, church or residential building and within one hundred feet of the entry door of a voting place that is not a school, church or residence and listed acts that constitute electioneering.

Provisions also apply to Absent Voter Act if the absentee voting is for such elections. 1970 Op. Att'y Gen. No. 70-90.

Applicable to rubber stamps made available by write-in candidate. — Under former 3-3-20(20), 1953 Comp., a write-in candidate could have rubber stamps bearing his name made available at each polling place at his expense only if such rubber stamps were made available at least 50 feet from the polling place. 1964 Op. Att'y Gen. No. 64-131 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 467.

29 C.J.S. Elections § 330.

1-20-17. Obstructing the polling place.

A. Obstructing the polling place consists of a person other than an authorized individual approaching nearer than fifty feet from the door through which voters may enter to vote at a polling place or a person who willfully blocks access to a monitored secured container or 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 access to a monitored secured container or the entrance to the polling place.

C. As used in this section, "authorized individual" means an individual who is not electioneering and who is:

(1) a voter offering to vote;

(2) a member of the election board;

(3) a lawfully appointed watcher, challenger or election observer;

(4) an individual giving assistance to a specific person offering to vote;

(5) an election official or contractor having business in the polling place;

(6) an attorney representing the county or state, a political party or a candidate having business in the polling place; or

(7) a language translator where required by federal law.

D. 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; 2023, ch. 39, § 82.

ANNOTATIONS

Cross references. — For maintenance of order in polling place, *see* 1-12-4 NMSA 1978.

For use of state police to maintain order and control of access, *see* 1-12-5 NMSA 1978.

For persons who may assist the voter, *see* 1-12-15 NMSA 1978.

For all elections being free and open, *see* N.M. Const., art. II, § 8.

The 2023 amendment, effective June 16, 2023, revised the definition of the crime of obstructing a polling place, and revised the definition of "authorized individual"; in Subsection A, deleted former Paragraph A(1) and added "a person other than an authorized individual approaching nearer than fifty feet from the door through which voters may enter to vote at a polling place or a", and after "willfully blocks", added "access to a monitored secured container or"; in Subsection B, after "willfully block", added "access to a monitored secured container or"; and added new Subsection C and redesignated former Subsection C as Subsection D.

The 2011 amendment, effective July 1, 2011, prohibited a person, other than voters, election officials, and persons conducting lawful, non-election-related business, from being less than fifty feet from the entry door of a polling place.

Physical presence within fifty feet of polling place constitutes violation. — Unless a candidate or a campaign worker falls within the exceptions outlined in Subsection A, those persons' physical presence within 50 feet of the polling place on the day of the election constitutes a violation of this section. 1989 Op. Att'y Gen. No. 89-09.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 385.

29 C.J.S. Elections §§ 330, 346.

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 [Chapter 1, Article 6 NMSA 1978].

History: 1953 Comp., § 3-20-16, enacted by Laws 1969, ch. 240, § 442; 1975, ch. 255, § 124; 2001, ch. 46, § 3.

ANNOTATIONS

Cross references. — For persons convicted of a felonious or infamous crime as not being qualified voters, *see* N.M. Const., art. VII, § 1 and 1-4-24 NMSA 1978.

For restoration of voting rights, *see* 1-4-27.1 and 31-13-1 NMSA 1978.

The 2001 amendment, effective July 1, 2001, in Subsection A, changed the penalty for someone who permits a prisoner guilty of a felony to vote from a fine from $100 to $1000, imprisonment from 30 to 90 days, or both, to the penalty provided in Section 31-19-1 NMSA 1978, made stylistic changes throughout the subsection; and substituted "a prisoner convicted of a misdemeanor from voting" for "prisoners to vote" in Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What amounts to conviction within statute making conviction ground for refusal of special privilege, 113 A.L.R. 1179, 36 A.L.R.2d 1238.

Removal by executive clemency of disqualification to vote resulting from conviction of crime as applicable in case of conviction in federal court or court of another state, 135 A.L.R. 1493.

Governing law as to existence or character of offense for which one has been convicted in a federal court or court of another state, as bearing upon disqualification to vote, 175 A.L.R. 804.

Federal court, or court of another state or county, conviction in as disqualification to vote at election, 39 A.L.R.3d 303.

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For appointment and compensation of messengers, *see* 1-2-20 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Conduct contemplated by statute which makes neglect of duty by public officer or employee a punishable offense, 134 A.L.R. 1250.

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.

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 [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For challenger interfering with orderly conduct of election, *see* 1-2-25 NMSA 1978.

For maintenance of order at polling place, *see* 1-12-4 NMSA 1978.

For state police not interfering but maintaining order, *see* 1-12-5 NMSA 1978.

For all elections being free and open, *see* N.M. Const., art. II, § 8.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 385.

29 C.J.S. Elections §§ 330, 344.

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 election board while performing official duties on election day.

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; 2023, ch. 39, § 83.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised the definition of the crime of unlawful possession of alcoholic liquors; and after "any member of the", deleted "precinct" and added "election", and deleted "Unlawful possession also consists of the use, possession or carrying of alcoholic liquor within two hundred feet of the polling place during any election.".

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.

ANNOTATIONS

Burden is upon party attacking person's vote to prove it is illegal; the presumption that a vote is legal must be overcome. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Illegal voter may assert privilege against self-incrimination. — An illegal voter cannot be required to testify if he claims his constitutional privilege against self-incrimination since voting when not qualified subjects the voter to criminal sanctions. *Kiehne v. Atwood*, 1979-NMSC-098, 93 N.M. 657, 604 P.2d 123.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 353.

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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For excusal of precinct board member by county clerk for sufficient cause, *see* 1-2-6 NMSA 1978.

Severability. — Laws 1969, ch. 240, § 453, provided for the severability of the act if any part or application thereof is held invalid.

Prima facie election official violation creates favor for contestant. — Laws 1935, ch. 147, § 42 (now repealed) created a prima facie case in favor of contestant running on ticket of minority political party upon prima facie showing of violation of Election Code by election officials; when such showing was made it became contestee's duty, as member of dominant political party having majority representation on board of election officials, to prove that no fraud or coercion was exerted and that secrecy of ballot was preserved; prima facie showing required of contestant consisted of alleging and proving specific facts entitling him to favored position; facts constituting noncompliance charged against election officials were to be specifically set out. *Trujillo v. Trujillo*, 1948-NMSC-040, 52 N.M. 258, 197 P.2d 421 (decided under former law).

Purpose to secure free expression at polls. — Imposition of fines and imprisonment under Comp. Laws 1884, §§ 1205, 1206, for violation by county commissioners of their duties in elections was to secure free, fair and honest expression of people at polls, for which board of canvassers were provided; one who undertakes to obstruct free expression of public sentiment at polls is an enemy to society and a public criminal. *In re Sloan*, 1891-NMSC-011, 5 N.M. 590, 25 P. 930 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 469.

Punishment of election officers for contempt, 64 A.L.R. 1019.

Personal liability of public officer who is member of board or corporate body for nonperformance or improper performance of duty imposed upon board, 123 A.L.R. 756.

Conduct contemplated by statute which makes neglect of duty by public officer or employee a punishable offense, 134 A.L.R. 1250.

Liability of public officer for breach of duty in respect of election or primary election laws, 153 A.L.R. 109.

Officer, necessity of proving right to vote as condition of action against, for breach of duty in respect of election laws, 153 A.L.R. 143.

29 C.J.S. Elections §§ 327, 340.

1-20-24. Unlawful possession of a firearm at a polling place.

A. Unlawful possession of a firearm at a polling place consists of possession of a loaded or unloaded firearm by any person within:

(1) one hundred feet of the door through which voters may enter to vote at a school building in which a polling place is located while early voting is in progress or on election day;

(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 while early voting is in progress or on election day that is not a school; or

(3) fifty feet of a monitored secured container as used in Subsection E of Section 1-6-9 NMSA 1978, beginning twenty-eight days before an election through election day.

B. The provisions of Subsection A of this section do not apply to:

(1) a certified law enforcement officer in performance of the officer's official duties;

(2) a law enforcement officer who is certified pursuant to the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978] acting in accordance with the policies of the officer's law enforcement agency;

(3) a commissioned law enforcement officer with the power to arrest in performance of the officer's official duties;

(4) a commissioned law enforcement officer with the power to arrest acting in accordance with the policies of the officer's law enforcement agency;

(5) a person in a private automobile or other private means of conveyance; or

(6) a person carrying a concealed firearm who is in possession of a valid concealed handgun license for that firearm pursuant to the Concealed Handgun Carry Act [Chapter 29, Article 19 NMSA 1978].

C. A person conducting lawful, non-election-related business nearer than one hundred feet from the door through which voters may enter to vote or nearer than fifty feet from a monitored secured container is not guilty of unlawful possession of a firearm at a polling place.

D. A person who commits unlawful possession of a firearm at a polling place is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

E. For the purposes of this section, "firearm" means a weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion, or the frame or receiver of any such weapon.

History: Laws 2024, ch. 50, § 1; 2025, ch. 28, § 1.

ANNOTATIONS

The 2025 amendment, effective June 20, 2025, exempted commissioned law enforcement officers from the crime of unlawful possession of a firearm at a polling place; and in Subsection B, added new Paragraphs B(3) and B(4), and redesignated former Paragraphs B(3) and B(4) as Paragraphs B(5) and B(6), respectively.

ARTICLE 21
Federal Voting Rights Compliance

1-21-1. Short title.

This act [1-21-1 to 1-21-14 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.

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.

ANNOTATIONS

Cross references. — For qualifications to vote, *see* N.M. Const., art. VII, § 1.

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.

ANNOTATIONS

Cross references. — For certificate of registration, *see* 1-4-5 to 1-4-21 NMSA 1978.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 61 and Laws 1993, ch. 316, § 59, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" in the last sentence in Subsection B. The section was set out as amended by Laws 1993, ch. 316, § 59. *See* 12-1-8 NMSA 1978.

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.

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.

ANNOTATIONS

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 62 and Laws 1993, ch. 316, § 60, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" in the second sentence in Paragraph D(2). The section was set out as amended by Laws 1993, ch. 316, § 60. *See* 12-1-8 NMSA 1978.

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.

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.

ANNOTATIONS

Cross references. — For absentee ballot envelopes, *see* 1-6-8 NMSA 1978.

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.

ANNOTATIONS

Cross references. — For persons authorized to administer oaths, *see* 1-1-17 NMSA 1978.

For absent voter precincts, *see* 1-6-19 to 1-6-25 NMSA 1978.

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.

ANNOTATIONS

Cross references. — For delivery of absentee ballots to absent voter precincts, *see* 1-6-11 NMSA 1978.

1-21-11. Handling presidential ballots by absent voter precinct board [election 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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2019, ch. 212, § 283, effective April 3, 2019, provided that references in the Election Code to "precinct board", shall be deemed to be references to "election board", as that term is defined in Section 1-1-13 NMSA 1978.

Cross references. — For handling absentee ballots by absent voter precinct boards, *see* 1-6-14 NMSA 1978.

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].

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.

ANNOTATIONS

Cross references. — For falsifying election documents, *see* 1-20-9 NMSA 1978.

For false swearing, *see* 1-20-10 NMSA 1978.

ARTICLE 21A
Native American Voting Rights

1-21A-1. Short title.

Chapter 1, Article 21A NMSA 1978 may be cited as the "Native American Voting Rights Act".

History: 1978 Comp., § 1-21A-1, enacted by Laws 2023, ch. 84, § 12.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 12 effective July 1, 2023.

1-21A-2. Definitions.

As used in the Native American Voting Rights Act:

A. "early voting location" means an alternate voting location and a mobile alternate voting location;

B. "Indian nation, tribe or pueblo" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico;

C. "polling place" means an early voting location and an election day polling place; and

D. "written request" means a request sent in writing by the president, governor or governing body of an Indian nation, tribe or pueblo, including a request sent by a person designated by the president, governor or governing body of an Indian nation, tribe or pueblo to submit written requests pursuant to the Native American Voting Rights Act; provided that the designation has been communicated in writing to the secretary of state and county clerk by the president, governor or governing body of the Indian nation, tribe or pueblo.

History: 1978 Comp., § 1-21A-2, enacted by Laws 2023, ch. 84, § 13.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 13 effective July 1, 2023.

1-21A-3. Precinct boundaries.

A. When adjusting precinct boundaries for any group of census blocks that are on Indian nation, tribal or pueblo lands, the board of county commissioners shall inquire of each Indian nation, tribe or pueblo in the county to provide internal and external political boundaries for the Indian nation, tribe or pueblo that the Indian nation, tribe or pueblo has provided to the United States census bureau.

B. The board of county commissioners shall adjust precinct boundaries to correspond to the internal and external political boundaries that each Indian nation, tribe or pueblo in the county has provided to the United States census bureau.

C. The secretary of state shall reject any precinct boundary maps that do not comply with the provisions of this section.

History: 1978 Comp., § 1-21A-3, enacted by Laws 2023, ch. 84, § 14.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 14 effective July 1, 2023.

1-21A-4. Requests for polling places and monitored secured containers.

A. An Indian nation, tribe or pueblo may submit a written request to a county clerk for locating early voting locations, election day polling places or monitored secured containers on or near the Indian nation's, tribe's or pueblo's lands.

B. A written request for election day polling places for all statewide elections in the next election cycle shall be made between the second Tuesday in March and the second Tuesday in April of each even-numbered year.

C. A written request for early voting locations for all statewide elections in the current election cycle shall be made between the second Tuesday in March and the second Tuesday in April of each odd-numbered year.

D. A written request for early voting locations for the general election in that year by an Indian nation, tribe or pueblo that has not already done so shall be made between the first business day in January and the day the secretary of state issues the proclamation for the general election.

E. A written request for monitored secured containers for future statewide elections may be made by July 15, 2023 for the 2023 regular local election and between the second Tuesday in March and the second Tuesday in April of any year for all subsequent elections.

History: 1978 Comp., § 1-21A-4, enacted by Laws 2023, ch. 84, § 15.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 15 effective July 1, 2023.

1-21A-5. Election day polling places; requirements.

A. A county clerk who has received a written request from an Indian nation, tribe or pueblo for one or more election day polling places on or near Indian nation, tribal or pueblo land shall consider the request when submitting recommendations to the board of county commissioners for the biennial election day polling place resolution establishing voter convenience centers for the subsequent election cycle pursuant to Section 1-3-4 NMSA 1978; provided that:

(1) any voter of the county shall have access to and be permitted to vote at the election day polling place;

(2) the location of the election day polling place conforms to the requirements for election day polling places, except as specified in this section;

(3) the county clerk provides federally mandated language translators at the election day polling places; and

(4) if the election day polling place is located on Indian nation, tribal or pueblo land, the Indian nation, tribe or pueblo provides the facility and services for the election day polling place.

B. In considering the written request, the county clerk shall evaluate the distance voters have to travel to get to the nearest election day polling place and the number of monitored secured containers and early voting locations on or near the Indian nation, tribal or pueblo lands.

C. At the time of submitting the election day polling place resolution to the board of county commissioners, the county clerk shall inform the board of county commissioners of any written requests received by an Indian nation, tribe or pueblo for an election day polling place.

D. Once the election day polling place resolution is adopted, an election day polling place located on Indian nation, tribal or pueblo lands shall not be eliminated or consolidated with other election day polling places in that election cycle without the written agreement of the Indian nation, tribe or pueblo on whose lands the election day polling place is located.

History: 1978 Comp., § 1-21A-5, enacted by Laws 2023, ch. 84, § 16.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 16 effective July 1, 2023.

1-21A-6. Early voting locations; requirements.

A. A county clerk who has received a written request from an Indian nation, tribe or pueblo for one or more early voting locations shall provide at least one alternate voting or mobile alternate voting location on or near the Indian nation, tribal or pueblo land; provided that:

(1) any voter of the county shall have access to and be permitted to vote at the early voting location;

(2) the location of the early voting location on Indian nation, tribal or pueblo land conforms to the requirements for alternate voting locations, except as specified in this section;

(3) the county clerk provides federally mandated language translators at the early voting locations;

(4) the Indian nation, tribe or pueblo provides the facility and services for the early voting location; and

(5) the early 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.

B. When responding to a written request, the county clerk shall evaluate the population on the Indian nation, tribal or pueblo land, the distance voters have to travel and the number of monitored secured containers and early voting locations on or near the Indian nation, tribal or pueblo land.

History: 1978 Comp., § 1-21A-6, enacted by Laws 2023, ch. 84, § 17.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 17 effective July 1, 2023.

1-21A-7. Monitored secured containers; requirements.

A. A county clerk who has received a written request from an Indian nation, tribe or pueblo for one or more monitored secured containers on or near Indian nation, tribal or pueblo land shall evaluate the population on the Indian nation, tribal or pueblo land, the distance voters have to travel and the number of monitored secured containers and early voting locations on or near the Indian nation, tribal or pueblo land. The county clerk shall respond in writing to the Indian nation, tribe or pueblo regarding the provision of monitored secured containers on or near Indian nation, tribal or pueblo land within thirty days of receiving the written request.

B. An Indian nation, tribe or pueblo whose written request to a county clerk for monitored secured containers is denied may appeal that decision by submitting the written request along with the denial letter from the county clerk to the secretary of state, along with any response to the denial letter from the Indian nation, tribe or pueblo. The secretary of state may place a monitored secured container on or near Indian nation, tribal or pueblo land in response to an appeal submitted by an Indian nation, tribe or pueblo.

C. A monitored secured container located on or near Indian nation, tribal or pueblo land shall comply with all requirements for monitored secured containers provided in the Election Code. If a monitored secured container is located on Indian nation, tribal or pueblo land, the Indian nation, tribe or pueblo shall provide the facility and services necessary for the monitored secured container.

History: 1978 Comp., § 1-21A-7, enacted by Laws 2023, ch. 84, § 18.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 18 effective July 1, 2023.

1-21A-8. Use of governmental and official buildings as mailing addresses on voter registration certificates and mailed ballot applications.

A. The secretary of state shall maintain a list of government and official buildings on Indian nation, tribal and pueblo land where members of the Indian nation, tribe or pueblo may request delivery of mailed ballots. The list shall include the common name for each building and the mailing address for the building. The list shall be provided by county to each county clerk with an Indian nation, tribe or pueblo in the county.

B. If a county clerk receives a voter registration certificate or an application for a mailed ballot that lists a government or official building on Indian nation, tribal or pueblo land by name only, the county clerk shall not reject the certificate or application for lack of a mailing address and, if the certificate or application is otherwise in the proper form, shall mail the ballot and balloting materials to the voter using the address for the government or official building.

History: 1978 Comp., § 1-21A-8, enacted by Laws 2023, ch. 84, § 19.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 19 effective July 1, 2023.

1-21A-9. Emergency situations.

If the president, governor or governing body of an Indian nation, tribe or pueblo has declared a state of emergency or has invoked emergency powers pursuant to other laws:

A. a polling place located on the Indian nation, tribal or pueblo land shall not be eliminated or consolidated with other polling places, nor shall the days and times of voting be modified, without the written agreement of the Indian nation, tribe or pueblo;

B. no later than ninety-eight days before a statewide election by means of a written request or no later than forty-nine days before a statewide election with a court order, the county clerk shall provide to an Indian nation, tribe or pueblo that has not previously requested for that election cycle at least one alternate voting or mobile alternate voting location for that election; provided that the alternate voting or mobile alternate voting location shall otherwise comply with the requirements of Section 1-21A-6 NMSA 1978;

C. no later than eighty-four days before a statewide election by means of a written request or no later than thirty-five days before a statewide election with a court order, the county clerk shall provide an election day polling place to an Indian nation, tribe or pueblo that does not already have an election day polling place within its boundaries if voters registered within the Indian nation, tribe or pueblo are unable to leave the Indian nation, tribe or pueblo during the time when voting occurs for a statewide election; and

D. the requirement that a polling place be available to all voters in the county shall be waived if an Indian nation, tribe or pueblo is inaccessible or the borders are closed.

History: 1978 Comp., § 1-21A-9, enacted by Laws 2023, ch. 84, § 20.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 20 effective July 1, 2023.

1-21A-10. Expenses.

A. All necessary and reasonable expenses incurred by a county clerk for compliance with the Native American Voting Rights Act, including the costs of voting equipment and personnel for polling places and monitored secured containers on Indian nation, tribal or pueblo land, shall be paid for by the secretary of state or shall be reimbursed to the county by the secretary of state.

B. The secretary of state shall distribute from the election fund sufficient funds to each county for the costs related to compliance with the Native American Voting Rights Act, either as grants or reimbursement.

History: 1978 Comp., § 1-21A-10, enacted by Laws 2023, ch. 84, § 21.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 84, § 21 was renumbered by the compiler to correct an error in the legislation as passed by the legislature and signed into law by the governor.

Effective dates. — Laws 2023, ch. 84, § 25 made Laws 2023, ch. 84, § 21 effective July 1, 2023.

ARTICLE 22
Local Elections

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.

ANNOTATIONS

Repeals and reenactments. — Laws 2018, ch. 79, § 16 repealed 1-22-1 NMSA 1978 and enacted a new section effective July 1, 2018.

Temporary provisions. — Laws 2019, ch. 212, § 282 provided that in fiscal years 2019 and 2020, if sufficient funding is deemed available by the secretary of state no later than May 1, 2019 and May 1, 2020, money in the election fund may be expended to reimburse local governments for transitional costs associated with implementation of the Local Election Act, based on written guidance provided by the secretary of state and posted on the secretary's website no later than May 1, 2019 and May 1, 2020.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections § 1; 68 Am. Jur. 2d Schools § 38.

Applicability and application of § 2 of Voting Rights Act of 1965 (42 USCS § 1973) to members of school board, 105 A.L.R. Fed. 254.

29 C.J.S. Elections §§ 1(2), 1(3); 78 C.J.S. Schools and School Districts § 94.

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 county or a conservancy district created and organized pursuant to The Conservancy Act of New Mexico [73-14-1 NMSA 1978]; 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; 2025, ch. 21, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 2019, ch. 212, § 141 repealed former 1-22-2 NMSA 1978 and enacted a new section, effective July 1, 2022.

The 2025 amendment, effective March 21, 2025, revised the definition of "local government" as used in the Local Election Act; in Subsection C, Paragraph C(1), after "does not include a county" added "or a conservancy district created and organized pursuant to The Conservancy Act of New Mexico".

The 2019 amendment, effective April 3, 2019, revised the definition of "local government", defined "regular local election" and "special local election", and removed the definition of "proper filing officer", as used in the Local Election Act; in Subsection C, after "means a", deleted the remainder of the subsection and added Paragraphs C(1) and C(2); and deleted former Subsection E, which defined "proper filing officer", and added new Subsections E and F.

The 2015 amendment, effective July 1, 2015, removed the qualifier "local" from "school district"; in Subsection A, after "authority of the", deleted "local"; and in Subsection F, after "schools of the", deleted "local".

The 1999 amendment, effective June 18, 1999, substituted "but does not include a recall election" for "except a recall election" in Subsection E.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 2018, ch. 79, § 18 repealed 1-22-3 NMSA 1978 and enacted a new section effective July 1, 2018.

The 2019 amendment, effective April 3, 2019, revised the provisions related to regular local elections; in Subsection B, added " 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", after "unless the", added "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", after "qualified elector of the state", deleted "physically resides in the district in which the person is a candidate"; in Subsection C, deleted "In addition to candidates in the election, a regular local election ballot may contain ballot questions proposed by the state, county or local government or as otherwise provided by law. An election on a ballot question held at any time other than the date for a regular local election shall be held with the general election, as provided by law, or municipal officer election if authorized by the governing body of the municipality; or shall be" and added "A local government may propose a ballot question to be considered by the voters of the local government:", added a new Paragraph C(1), in Paragraph C(2), after "as provided in", deleted "Chapter 1, Article 24 NMSA 1978" and added "the Special Election Act"; and deleted former Subsection D and redesignated former Subsection E as new Subsection D.

The 2015 amendment, effective July 1, 2015, removed the qualification that a candidate for a school board election must have physically resided in the district on the date of the board's proclamation calling a regular school district election and instead required that the candidate be registered to vote in the district on the date of the board's proclamation calling a regular school district election; in Subsection A, after "membership on a", deleted "local school", after "a board unless", deleted "his" and added "the person's", deleted "he" and added "the person" in two places, after "candidate and", deleted "physically resided" and added "was registered to vote", after "on the date", deleted "of", after "the", deleted "school", and after "district election", added "is filed in the office of the county clerk"; and in Subsection C, deleted "A school district" and added "An", after "election", added "on a ballot question", and after "special school district election", added "called, conducted and canvassed as provided in the Election Code".

The 1997 amendment, effective June 20, 1997, in the second sentence of Subsection A, substituted "physically resides in the" for "and a resident of the" and added the language beginning "and physically resided" at the end.

Mill levy election. — Pursuant to 21-16-16 NMSA 1978, which sets up two alternative election procedures, the board may hold a mill levy election pursuant either to the repealed Sections 22-6-1 through 22-6-34 NMSA 1978 or the new provisions at Sections 1-22-3 through 1-22-6 NMSA 1978. 1988 Op. Att'y Gen. No. 88-14.

It is necessary to hold election for office of member of board even though only one candidate has filed for each position to be filled. 1973 Op. Att'y Gen. No. 73-6 (issued under former 22-6-1 NMSA 1978).

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 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 [Chapter 1, Article 6B 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 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:

(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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the procedures related to the election of municipal officers; in Subsection A, after "numbered years,", added "unless the municipality has opted in to the election of its municipal officers at the regular local election"; in Subsection B, after "new election date.", added "Following the second regular local election at which its municipal officers are elected at the regular local election", and after "no later than", deleted "January" and added "June"; in Subsection D, added paragraph designation "(1)", in Paragraph D(1), after "in this section", deleted "and except for those election procedures contained in the charter of a home rule municipality that operate in lieu of or in addition to the provisions of the Election Code.", added new Paragraphs D(2) through D(10); in Subsection E, in the introductory clause, after the subsection designation, deleted "Except as otherwise provided in this

subsection" and added the remainder of the introductory clause, added new Paragraphs E(1) and E(2) and new paragraph designation "(3)", in Paragraph E(3), after "before the election", deleted "For a home rule municipality whose charter or ordinance requires that a candidate file a declaration of candidacy before qualifying for public financing, declarations of candidacy shall be filed on the date provided in the municipality's charter" and added the remainder of the paragraph, added new paragraph designation "(4)", in Paragraph E(4), after "before the election.", deleted "The last day to file a statement of withdrawal for a municipal officer election is forty-nine days before the election" and added the remainder of the paragraph; and added new Paragraphs E(5) and E(6); in Subsection F, after "municipalities that", added "provide for a top-two runoff election", after "NMSA 1978", deleted "have chosen to have a top-two runoff election", and after "For", deleted "home rule"; deleted former Subsections G through J and added new Subsection G.

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 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 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.

ANNOTATIONS

Repeals and reenactments. — Laws 2019, ch. 212, § 145 repealed former 1-22-3.2 NMSA 1978 and enacted a new section, effective January 1, 2020.

The 2019 amendment, effective April 3, 2019, revised municipal election procedures; in the section heading, added "municipal election provisions", and "and charter amendments", and after "election", deleted "act" and added "code; public financing"; added a new Subsection A and redesignated former Subsections A and B as Subsections B and C, respectively; in Subsection B, after "charter that", deleted "are supplemental to provisions in" and added "do not conflict with", after "imposed by the", deleted "Local Election Act for the conduct of local or municipal officer elections" and added "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.", and after "no later than", deleted "January" and added "June"; in Subsection C, after the subsection designation, added "At the discretion of the municipality", after "requirements of", deleted "this section" and added "the Election Code and other applicable state or federal laws related to elections."; and added Subsections D and E.

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. The proclamation may be amended no later than eleven days before the filing date for the regular local election.

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;

(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.

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; 2023, ch. 39, § 84.

ANNOTATIONS

Repeals and reenactments. — Laws 2018, ch. 79, § 19 repealed 1-22-4 NMSA 1978 and enacted a new section effective July 1, 2018.

Cross references. — For the federal Voting Rights Act of 1965, *see* 42 U.S.C. § 1973 et seq.

The 2023 amendment, effective June 16, 2023, allowed a regular local election proclamation to be amended up to eleven days before the filing date for such an election, and removed a provision directing the secretary of state how to designate certain positions on the ballot when two or more members of a local governing body are to be elected at large for terms of the same length of time and when 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; in Subsection B, added "The proclamation may be amended no later than eleven days before the filing date for the regular local election."; and deleted former Subsection E.

The 2019 amendment, effective April 3, 2019, revised the procedures for regular local elections; in the section heading, deleted "municipal officer election"; added a new Subsection A, redesignated former Subsection A as Subsection B and deleted former subsection designation "B."; in Subsection B, after "regular local election, deleted "Between one hundred twenty and one hundred fifty days before the next local election, each local government shall notify the secretary of state of all local government positions that are to be filled at the next election for that local government" and added "and upon filing the proclamation, the secretary of state shall post the proclamation and certify it to each county clerk"; in Subsection C, Paragraph C(1), after "governing body", added "and judicial position", deleted former Paragraph C(3) and redesignated former Paragraphs C(4) through C(6) as Paragraphs C(3) through C(5), respectively; and in Subsection D, deleted Paragraphs D(2) and D(3), added a new Paragraph D(2) and redesignated former Paragraphs D(4) through D(6) as Paragraphs D(3) through D(5), respectively, in Paragraph D(3), after "to be filed", added "and the date on which declarations of intent to be a write-in candidate are to be filed", in Paragraph D(4), after "location,", deleted "of each polling place" and added "days and hours for voting at the office of the county clerk", in Paragraph D(5), after "location,", deleted "of each alternate voting location for early voting" and added "days and hours for early voting at each alternate voting location and mobile alternate voting location", deleted former Paragraph D(7), added a new Paragraph D(6) and redesignated former Paragraph D(8) as Paragraph D(7), and in Paragraph D(7), after "the date", deleted "and time of the closing of the registration books by the county" and added "certificates of registration shall be subscribed and sworn".

The 2007 amendment, effective July 1, 2007, changed the day the proclamation is to be filed with the county clerk from the last Friday to the last Tuesday in November.

The 1991 amendment, effective April 2, 1991, inserted "in Spanish and English" in the first sentence in Subsection A and made a minor stylistic change in Subsection C.

1-22-5. Repealed.

History: 1978 Comp., § 1-22-5, enacted by Laws 1985, ch. 168, § 7; 1987, ch. 249, § 46; 1987, ch. 338, § 2; 1991, ch. 105, § 41; 2015, ch. 145, § 81; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-22-5 NMSA 1978, as enacted by Laws 1985, ch. 168, § 7, relating to special election, proclamation, publication, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

1-22-6. Repealed.

History: 1978 Comp., § 1-22-6, enacted by Laws 1985, ch. 168, § 8; 1989, ch. 2, § 1; 2015, ch. 145, § 82; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-22-6 NMSA 1978, as enacted by Laws 1985, ch. 168, § 8, relating to precincts, consolidation, polling places, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

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 accompanied by a nominating petition containing at least the number of signatures as required by law for the specific office.

E. 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.

F. 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; 2023, ch. 39, § 85.

ANNOTATIONS

Repeals and reenactments. — Laws 2018, ch. 79, § 20 repealed 1-22-7 NMSA 1978 and enacted a new section effective July 1, 2018.

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided that each declaration of candidacy shall be accompanied by a nominating petition containing at least the number of signatures as required by law for the specific office; and added a new Subsection D and redesignated former Subsections D and E as Subsections E and F, respectively.

The 2019 amendment, effective April 3, 2019, provided for the delivery of a declaration of candidacy; added a new Subsection D and redesignated former Subsection D as Subsection E.

The 2015 amendment, effective July 1, 2015, removed the provision relating to the filing date for a special school district election; in Subsection A, after "candidate for a", deleted "school"; deleted Subsection B and redesignated the succeeding subsections accordingly; in Subsection B, after "only one", deleted "school"; and in Subsection C, after "statement in", deleted "his" and added "a".

The 1999 amendment, effective June 18, 1999, added Subsection C, redesignated former Subsection C as Subsection D, and, in that subsection, inserted "and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978".

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:

"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.

ANNOTATIONS

Repeals and reenactments. — Laws 2018, ch. 79, § 21 repealed 1-22-8 NMSA 1978 and enacted a new section effective July 1, 2018.

The 2019 amendment, effective April 3, 2019, revised the form for a declaration of candidacy; after "in the area to be", deleted "represented" and added "elected to represent"; and after "to be held", deleted "on the date set by law" and added "in November of the year this declaration is filed".

The 2015 amendment, effective July 1, 2015, amended the declaration of candidacy form; in the first undesignated paragraph, after "I reside at _____ and was", deleted "a resident" and added "registered to vote", after "place on the date", deleted "of", after "calling the election", deleted "for which I am a candidate" and added "was filed in the office of the county clerk"; in the second undesignated paragraph, after "for the office of", deleted the blank space added "School Board"; and in the notary affidavit, deleted "19" and added "20".

The 1997 amendment, effective June 20, 1997, added the language beginning "and was a resident" at the end of the first paragraph of the form.

The 1993 amendment, effective June 18, 1993, substituted "certificate" for "affidavit" in the form. This section was also amended by Laws 1993, ch. 314, § 63. The section was set out as amended by Laws 1993, ch. 316, § 61. *See* 12-1-8 NMSA 1978.

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 intent to be a write-in candidate. 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.

D. The declaration of intent to be a write-in candidate shall be accompanied by a nominating petition containing the same number of signatures or the filing fee required of other candidates for the same office.

E. A 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; 2023, ch. 39, § 86.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided that write-in candidates have the same filing requirements as other candidates for the same office; in Subsection C, after a declaration of", deleted "candidacy" and added "intent to be a write-in candidate", and deleted "The county clerk shall ensure that a declaration of candidacy filed pursuant to this section specifies that it is for a write-in candidate."; and in Subsection D, deleted "At the time of filing the declaration of candidacy", and added "declaration of intent to be a write-in candidate shall be accompanied by a nominating petition containing the same number of signatures or the filing fee required of other candidates for the same office.".

The 2019 amendment, effective April 3, 2019, removed certain provisions related to write-in candidates; deleted former Subsection D, which related to counting a write-in vote; redesignated former Subsection E as Subsection D; and deleted former Subsections F and G, which related to casting a write-in vote and certifying an election where a write-in candidate is unopposed.

1-22-9. Repealed.

History: 1978 Comp., § 1-22-9, enacted by Laws 1985, ch. 168, § 11; repealed and reenacted by Laws 2018, ch. 79, § 23; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-22-9 NMSA 1978, as enacted by Laws 1985, ch. 168, § 11, relating to withdrawal of candidates, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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 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 the sixty-seventh 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; 2023, ch. 39, § 87.

ANNOTATIONS

Repeals and reenactments. — Laws 2018, ch. 79, § 24 repealed 1-22-10 NMSA 1978 and enacted a new section effective July 1, 2018.

Cross references. — For the federal Voting Rights Acts of 1965, *see* 42 U.S.C. § 1973 et seq.

The 2023 amendment, effective June 16, 2023, changed the deadline by when a candidate shall be notified that the candidate qualified to be placed on the ballot for the position specified in the declaration of candidacy; and in Subsection A, after "no later than", deleted "5:00 p.m. on the sixtieth" and added "the sixty-seventh".

The 2019 amendment, effective April 3, 2019, revised the provisions related to challenging a candidate’s qualifications; in the section heading, added "Candidate qualification; challenges"; added a new Subsection B and redesignated former Subsection B as Subsection C; in

Subsection E, after "ballot questions", deleted "permitted by the board of county commissioners pursuant to Section 1-22-10.1 NMSA 1978", and after "conform to the requirements", deleted "of Section 1-16-8 NMSA 1978" and added "for ballot questions on the regular local election ballot as provided in Chapter 1, Article 16 NMSA 1978"; and deleted former Subsections C through E.

The 2009 amendment, effective June 19, 2009, in Subsection C, after "Paper ballots", deleted "and ballot labels"; in Subsection G, after "paper ballots may be", deleted "used" and added "hand counted" and after "in lieu of", added "using"; and after "voting machine", added "to tabulate ballots"; and deleted former Paragraph (3) of Subsection G, which provided that paper ballots may be used for emergency ballots in case of a voting machine malfunction and added "the Election Code".

The 1993 amendment, effective January 29, 1993, in Subsection (G), inserted the paragraph designations "(1)" and "(3)", inserted paragraph (2), and made minor stylistic changes.

County clerks do not have a duty to ensure that candidates for local soil and water conservation district boards satisfy the applicable statutory criteria. — Elections for soil and water conservation district supervisor positions are held in accordance with the Local Election Act, 1-22-1 to 1-22-19 NMSA 1978, and while county clerks are responsible for determining whether a candidate filing a declaration of candidacy is registered to vote within the area to be elected to represent, they do not have the authority under the Local Election Act to determine whether the candidate either resides in the district or owns land within the geographical boundaries of the district. Instead, any registered voter may file a legal challenge to the qualifications of candidates in the appropriate district court. *Recent Amendments to the Soil and Water Conservation District Act* (12/4/20), Att'y Gen. Adv. Ltr. 2020-11.

1-22-10.1. Repealed.

History: 1978 Comp., § 1-22-10.1, enacted by Laws 2018, ch. 79, § 25; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-22-10.1 NMSA 1978, as enacted by Laws 2018, ch. 79, § 25, relating to ballot order, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-22-11. Repealed.

History: 1978 Comp., § 1-22-11, enacted by Laws 1985, ch. 168, § 13; 1987, ch. 249, § 48; 1991, ch. 105, § 42; repealed and reenacted by Laws 2018, ch. 79, § 26; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-22-11 NMSA 1978, as enacted by Laws 1985, ch. 168, § 13, relating to publication, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-22-12. Repealed.

History: 1978 Comp., § 1-22-12, enacted by Laws 1985, ch. 168, § 14; 1993, ch. 4, § 2; 2015, ch. 145, § 85; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-22-12 NMSA 1978, as enacted by Laws 1985, ch. 168, relating to conduct of elections, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

1-22-13. Repealed.

History: 1978 Comp., § 1-22-13, enacted by Laws 1985, ch. 168, § 15; repealed and reenacted by Laws 2018, ch. 79, § 27; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-22-13 NMSA 1978, as enacted by Laws 1985, ch. 168, § 15, relating to watchers, observers, challengers, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

1-22-14. Repealed.

History: 1978 Comp., § 1-22-14, enacted by Laws 1985, ch. 168, § 16; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-22-14 NMSA 1978, as enacted by Laws 1985, ch. 168, § 16, relating to votes required, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

1-22-15. Repealed.

History: 1978 Comp., § 1-22-15, enacted by Laws 1985, ch. 168, § 17; 1987, ch. 249, § 49; 1987, ch. 338, § 3; repealed and reenacted by Laws 2018, ch. 79, § 28; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 1-22-15 NMSA 1978, as enacted by Laws 1985, ch. 168, § 17, relating to canvassing board, duties, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 2018, ch. 79, § 29 repealed 1-22-16 NMSA 1978 and enacted a new section effective July 1, 2018.

The 2019 amendment, effective April 3, 2019, revised the procedures related to municipal runoff elections; in Subsection A, after each occurrence of "regular local election", deleted "or municipal officer election"; in Subsection B, in the introductory clause, after "regular local election", deleted "or municipal officer election", after "election provisions", deleted "of the municipality’s ordinance or charter that supplement the Local Election Act" and added "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", and added Paragraph B(2); and in Subsection C, after "no later than", deleted "January" and added "June", and after "regular local election", deleted "or municipal officer election".

1-22-17. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 127 recompiled and amended former 1-22-17 NMSA 1978 as 1-13-23 NMSA 1978, effective April 3, 2019.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 2018, ch. 79, § 31 repealed 1-22-18 NMSA 1978 and enacted a new section effective July 1, 2018.

The 2009 amendment, effective June 19, 2009, in Paragraph (2) of Subsection D, after "name is written", deleted "in the proper slot on the voting machine or"; after "provided on the", deleted "paper ballot, absentee ballot or emergency"; and after "has declared intent", added the remainder of the sentence; and in Subsection E, after "except that", deleted "he shall not be entitled to have his" and added "the write-in candidate's".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Elections: validity of state or local legislative ban on write-in votes, 69 A.L.R.4th 948.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 2018, ch. 79, § 32 repealed 1-22-19 NMSA 1978 and enacted a new section effective July 1, 2018.

The 2019 amendment, effective April 3, 2019, revised the procedures for early voting; deleted former Subsections A and B and redesignated former Paragraphs C(1) through C(4) as Subsections A through D, respectively; in the introductory clause, added "In a regular local election", and in Subsection A, after "municipality", added "elects its municipal officers at the regular local election and".

The 2015 amendment, effective July 1, 2015, removed certain restrictions on absentee voting procedures; in Subsection A, after "appearing on the ballot in", deleted "his" and added "the voter's", after "precinct as if", deleted "he" and added "the voter", and after "casting", deleted "his" and added "the"; and in Subsection B, after "Absent Voter Act", deleted "of the Election Code", after "date of the election.", added "In addition", after "electronic voting machine", deleted "from 8:00 a.m." and added "at alternate voting locations at any time beginning", and after "preceding an election", deleted "until 5:00 p.m. on the Friday" and added "through the Saturday".

The 1999 amendment, effective June 18, 1999, in Subsection A, deleted language from the beginning of the section which described reasons that a voter may vote by absentee ballot, and made stylistic changes; added the last sentence to Subsection B; and, in Subsection C, substituted "a regular precinct board" for "other precinct board" in the first sentence.

1-22-20. Recompiled.

History: Laws 2018, ch. 79, § 33; 1978 Comp., § 1-22-20, recompiled and amended as § 1-11 19 by Laws 2019, ch. 212, § 110.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 110 recompiled and amended former 1-22-20 NMSA 1978 as 1-11-19 NMSA 1978, effective April 3, 2019.

ARTICLE 22A
School District Campaign Reporting

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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 180, § 11 made the School District Campaign Reporting Act effective July 1, 2013.

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 one thousand dollars ($1,000) or more or authorized another person or campaign committee to receive contributions or make expenditures of one thousand dollars ($1,000) 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 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;

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; 2024, ch. 43, § 1.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, revised the definitions of "candidate" and "covered office", as used in the School District Campaign Reporting Act; in Subsection B, after each occurrence of "expenditures of", deleted "five hundred dollars ($500)" and added "one thousand dollars ($1,000)"; and in Subsection D, after "school district", deleted "that has an enrollment of twelve thousand students or more".

The 2018 amendment, effective July 1, 2018, revised the definition for "election cycle" as used in the School District Campaign Reporting Act; and in Subsection E, after "office and ending", deleted "on" and added "thirty days following".

1-22A-3. Reports required; time and place of filing.

A. A candidate or campaign committee that has received contributions or made expenditures of one thousand dollars ($1,000) 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 to 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 to 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; 2024, ch. 43, § 2.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, increased the amount of contributions received or expenditures made that trigger a reporting requirement for candidates or campaign committees; and in Subsection A, after "expenditures of", deleted "five hundred dollars ($500)" and added "one thousand dollars ($1,000)".

The 2018 amendment, effective July 1, 2018, changed the dates by when candidates or campaign committees must file campaign reports, and revised a statutory reference; in Subsection B, after "reported by midnight on the", deleted "second Monday in April" and added "twenty-first day before the election and on the thirtieth day following the election"; in Subsection C, after "falls on a", deleted "weekend or"; and in Paragraph F(2), after "Section", deleted "6 of the School District Campaign Reporting Act" and added "1-22A-10 NMSA 1978".

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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 180, § 11 made the School District Campaign Reporting Act effective July 1, 2013.

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.

ANNOTATIONS

Cross references. — For Section 170 of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 170.

Effective dates. — Laws 2013, ch. 180, § 11 made the School District Campaign Reporting Act effective July 1, 2013.

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 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 to 1-19-36 NMSA 1978], Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] or Financial Disclosure Act [10-16A-1 to 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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 180, § 11 made the School District Campaign Reporting Act effective July 1, 2013.

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 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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 180, § 11 made the School District Campaign Reporting Act effective July 1, 2013.

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 to 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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 180, § 11 made the School District Campaign Reporting Act effective July 1, 2013.

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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 180, § 11 made the School District Campaign Reporting Act effective July 1, 2013.

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 to 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.

ANNOTATIONS

Cross references. — For Section 170 of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 170.

Effective dates. — Laws 2013, ch. 180, § 11 made the School District Campaign Reporting Act effective July 1, 2013.

ARTICLE 23
Mail Ballot Elections (Repealed.)

1-23-1. Repealed.

History: Laws 1987, ch. 160, § 1; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-23-1 NMSA 1978, as enacted by Laws 1987, ch. 160, § 1, relating to the short title of the Mail Ballot Election Act, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

1-23-2. Repealed.

History: Laws 1987, ch. 160, § 2' repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-23-2 NMSA 1978, as enacted by Laws 1987, ch. 160, § 2, relating to definitions, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

1-23-3. Repealed.

History: Laws 1987, ch. 160, § 3; 1989, ch. 73, § 1; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-23-3 NMSA 1978, as enacted by Laws 1987, ch. 160, § 3, relating to election by all-mailed ballots, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

1-23-4. Repealed.

History: Laws 1987, ch. 160, § 4; 2011, ch. 137, § 106; pealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-23-4 NMSA 1978, as enacted by Laws 1987, ch. 160, § 4, relating to law governing, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

1-23-5. Repealed.

History: Laws 1987, ch. 160, § 5; 1989, ch. 73, § 2; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-23-5 NMSA 1978, as enacted by Laws 1987, ch. 160, § 5, relating to no polling place, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

1-23-6. Repealed.

History: Laws 1987, ch. 160, § 6; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-23-6 NMSA 1978, as enacted by Laws 1987, ch. 160, § 6, relating to notice to voters, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

1-23-6.1. Repealed.

History: 1978 Comp., § 1-23-6.1, enacted by Laws 1991, ch. 105, § 43; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-23-6.1 NMSA 1978, as enacted by Laws 1991, ch. 105, § 43, relating to checklist of registered voters, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

1-23-7. Repealed.

History: Laws 1987, ch. 160, § 7; 1989, ch. 73, § 3; repealed by Laws 2018, ch. 79, § 175.

ANNOTATIONS

Repeals. — Laws 2018, ch. 79, § 175 repealed 1-23-7 NMSA 1978, as enacted by Laws 1987, ch. 160, § 7, relating to mail ballot election not to be combined with other elections, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

ARTICLE 24
Special Elections

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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the procedures for special elections; in the section heading, deleted "exception" and added "prohibition"; in Subsection B, after "conducted by the state or", deleted "a local government, except for ballot questions printed on a general election ballot or a ballot on which local governing body members are elected pursuant to the Local Election Act" and added "any local public body."; and added Subsection C.

The 2018 amendment, effective July 1, 2018, provided a short title and statutory citation, and provided an exception to the provisions of the Special Election Act; in the section heading, after the section number, added "Short title", after "special election", deleted "procedures" and added "act", and after "application;", added "exception"; deleted "To the extent separate laws pertaining to the conduct of special elections by local governments or special districts or to the extent procedures are not specified under such separate laws for the conduct of special elections, the provisions of Sections 1 through 4 of this act shall apply" and added Subsections A and B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 278 et seq., 291, 317.

29 C.J.S. Elections, §§ 67, 70 to 75, 190 et seq.

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 [Chapter 1, Article 22 NMSA 1978]; 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.

ANNOTATIONS

The 2019 amendment, replaced "local government" with "public body" as the defined term in the section; in the introductory clause, after "local" deleted "government" and added "public body".

Recompilations. — Laws 2019, ch. 212, § 154 recompiled and amended former 1-24-6 NMSA 1978 as 1-24-1.1 NMSA 1978, effective April 3, 2019.

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

(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.

ANNOTATIONS

Cross references. — For the federal Voting Rights Act of 1965, *see* 42 U.S.C. § 1973 et seq.

The 2019 amendment, effective April 3, 2019, revised special election procedures; in Subsection A, in the introductory clause, after "Whenever a local", deleted "government special election is to be called or is required by law" and added "public body determines that it is necessary or desirable to conduct a special election:", added paragraph designations "(1)" and "(2)" and redesignated former Paragraphs A(1) through A(3) as Subparagraphs A(2)(a) through A(2)(c), respectively; in Paragraph A(1), after "filed with the county clerk", added the remainder of the paragraph, deleted former Paragraph A(4) and redesignated former Subsections B and C as Paragraph A(3) and Subsection B, respectively, in Paragraph A(3), after "issued pursuant to", deleted "Subsection A of this section" and added "this subsection, each county clerk shall post the proclamation beginning no later than sixty-seven days before the election", and after "boundaries of the local", deleted "government or special district" and added the remainder of the paragraph, added new Paragraph A(4) and new paragraph designation "(5)"; in Subsection B, after "Whenever", deleted "a statewide special election is to be called or is required by law" and added ‘the state determines that it is necessary or desirable to conduct a special election:", added paragraph designations "(1)" and "(2)", deleted former Paragraphs B(3) and B(5) and redesignated former Paragraph C(4) as Subparagraph B(2)(c), in Paragraph B(1), after the first occurrence of "the", deleted "governor" and added "secretary of state", after "calling the election.", deleted "Whenever an election to fill a vacancy in the office of United States representative is to be called or is required by law, the governor shall by resolution issue a public proclamation calling the election pursuant to the requirements of Section 1-15-18.1 NMSA 1978", and after "filed with the secretary of state", added "no later than seventy-five days prior to the election;", in Paragraph B(2), redesignated former Paragraphs C(1) and C(2) as Subparagraphs B(2)(a) and B(2)(b), respectively, in Paragraph B(3), after "after", added "filing with the secretary of state", after "pursuant to" deleted "Subsection C of this section is filed with the secretary of state" and added "this subsection", and deleted the last sentence of the paragraph, which related to publishing the proclamation; and deleted former Subsection E and added Paragraphs B(4) and B(5) and new subsection designation "(6)".

The 2018 amendment, effective July 1, 2018, revised the required contents of a public proclamation calling for a special election, and required the county clerk to publish the proclamation; in Subsection A, deleted former Paragraph A(3) and paragraph designation "(4)", added new paragraph designation "(3)", deleted former Paragraphs A(5) and A(6) and

redesignated former Paragraph A(7) as Paragraph A(4); in Subsection B, after "Subsection A of this section, and", added "beginning", and after "the date of the election, the", deleted "governing body" and added "county clerk"; in Paragraph C(4), deleted "if a question is" and added "the text of any questions", and after "voted upon", deleted "the text of that question"; in Subsection D, after "newspaper of general circulation", deleted "which shall include the precincts in the county in which the election is to be held and the location of each polling place in the precinct and the hours that each polling place will be open"; and added new subsection designation "E.".

The 2017 amendment, effective June 16, 2017, changed the deadline by which the governing body of the local government calling for a local government special election must publish the proclamation that calls for the local government special election, and changed the deadline by which the county clerk must publish the proclamation that calls for a statewide special election whenever a statewide special election is to be called or is required by law; and in Subsections B and D, after "Not less than", deleted "fifty-six" and added "sixty-three".

The 2011 amendment, effective July 1, 2011, made Subsection A applicable to local government special elections; and provided a procedure for issuing, certifying, and publishing proclamations calling statewide special elections and elections to fill a vacancy in the office of United States representative.

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;

(2) whose voter notification pursuant to Section 1-11-4.1 NMSA 1978 or 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 voter notification or election-related mail was returned as undeliverable in error or filed a certificate of registration with a new address; or

(3) whose ballot is delivered pursuant to the provisions of the Intimate Partner Violence Survivor Suffrage Act [1-6C-1 to 1-6C-9 NMSA 1978].

C. Forty-two days before the election or in the case of a voter notification returned to the county clerk, as soon thereafter as practicable, 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.

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 recommended deadline to deposit the voted mailed ballot with the United States postal service for return by mail, the deadline for the ballot to be received by the county clerk and a list of the times and locations of monitored secured containers available in the county.

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 documentary 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 documentary identification.

History: Laws 1989, ch. 295, § 3; 2018, ch. 79, § 41; repealed and reenacted by Laws 2019, ch. 212, § 156; 2023, ch. 39, § 88.

ANNOTATIONS

Repeals and reenactments. — Laws 2019, ch. 212, § 156 repealed former 1-24-3 NMSA 1978 and enacted a new section, effective April 3, 2019.

The 2023 amendment, effective June 16, 2023, revised special election procedures; in Subsection B, Paragraph B(2), after "whose", added "voter notification pursuant to Section 1-11-4.1 NMSA 1978", and after "the official", added "voter notification", and added Paragraph B(3); in Subsection C, after "before the election", added "or in the case of a voter notification returned to the county clerk, as soon thereafter as practicable"; in Subsection D, after "polling places for the election", added "the recommended deadline to deposit the voted mailed ballot with the United States postal service for return by mail", after "times and locations of", added "monitored", and after "available in", deleted "addition to the United States postal service for a voter to return the ballot" and added "the county"; and in Subsection F, substituted "voter" with "documentary" preceding each occurrence of "identification".

The 2018 amendment, effective July 1, 2018, completely rewrote the special election procedures; deleted "Special elections shall be conducted and canvassed in the same manner that regular elections are conducted in the local government or special district; provided, the

governing body may, as set forth in the proclamation, consolidate precincts. A polling place shall be provided within each of the consolidated precincts."; and added Subsections A through D.

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.

ANNOTATIONS

The 2019 Amendment, effective April 3, 2019, revised special election procedures; in the section heading, added "election board"; added Subsection A and new subsection designation "B."; and in Subsection B, after "The returns", deleted "and certificates", after "subject to", added "retention and", and after "inspection", deleted "during the customary hours and days of business. Poll books, signature rosters and tally books may be destroyed three years after the election to which they apply. The certificate of results of the canvass of the election shall, after three years, be placed on filed as a permanent record in the records center" and added "pursuant to Section 1-12-69 NMSA 1978".

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:

(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.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised certain provisions related to responsibility for costs of an election; in Subsection A, after "local", deleted "government" and added "public body"; added a new Subsection B and redesignated former Subsection B as Subsection C; and in Subsection C, after "local", deleted "government" and added "public body".

1-24-6. Recompiled.

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 154 recompiled and amended former 1-24-6 NMSA 1978 as 1-24-1.1 NMSA 1978, effective April 3, 2019.

ARTICLE 25
Recall

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, 159 recompiled and amended former 22-7-1 NMSA 1978 as 1-25-1 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, changed the name of the "Local School Board Member Recall Act" to the "Recall Act" and deleted "Chapter 22, Article 7" and added "Chapter 1, Article 25".

The 2018 amendment, effective July 1, 2018, changed "This act" to "Chapter 22, Article 7 NMSA 1978".

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, 160 recompiled and amended former 22-7-3 NMSA 1978 as 1-25-2 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, changed the name of the "Local School Board Member Recall Act" to the "Recall Act", and defined "county clerk", "filing date", "initiation date", "malfeasance", "misfeasance", and "violation of oath of office", and revised other definitions, for purposes of the Recall Act; in Subsection A, after "means a", deleted "registered voter" and added "person"; deleted former Subsections B and C, which defined "date of closure" and "date of initiation", respectively; added a new Subsection B and redesignated former Subsection D as Subsection C; in Subsection C, after "information", deleted "as provided in Subsections D and E of Section 22-7-6 NMSA 1978"; deleted former Subsection E, added new Subsections D through G and redesignated former Subsections F through H as Subsections H through J, respectively; in Subsection H, after "named", deleted "member" and added "official", after "means", deleted "a local school board member" and added "an elected official of a local jurisdiction subject to the Recall Act and who is"; deleted former Subsections I and J, which defined "registered voter" and "signature", respectively; in Subsection K, after "face sheet", deleted "arranged as provided in Subsection G of Section 22-7-6 NMSA 1978"; and deleted former Subsection L, which defined "county clerk", and added a new Subsection L.

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:

(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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 161 recompiled and amended former 22-7-4 NMSA 1978 as 1-25-3 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, completely rewrote the section; in the section heading, deleted "Members" and added "Recall; elected officials" and added "limitations"; deleted "Any elected member of the local school board of any school district may be recalled as provided in the Local School Board Member Recall Act" and added Subsections A and B.

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.

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 162 recompiled and amended former 22-7-6 NMSA 1978 as 1-25-4 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, revised the form of a recall petition; in the section heading, added "Recall"; deleted former Subsection A and added a new Subsection A; in Subsection B, after "by", deleted "fourteen" and added "eleven"; in Subsection D, added new Paragraph D(4) and redesignated former Paragraphs D(4) through D(6) as Paragraphs D(5) through D(7), respectively, in Paragraph D(7), after "maximum of", deleted "one hundred ten" and added "ninety", and after "days from", deleted "date of initiation" and added "initiation date"; in Subsection E, after "registered voter", deleted "in the county of _____, New Mexico", and after "resident of the", deleted "school district" and added "name of local jurisdiction"; and in Subsection G, after "subsequent page", deleted "of the petition shall have approximately twenty-five lines numbered one to twenty-five" and added "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", after the next occurrence of "and", deleted "shall", and after "provided in", deleted "Subsection E of".

The 1993 amendment, effective July 1, 1993, substituted "this section" for "section 6 of the Local School Board Member Recall Act" at the end of Subsection G and made stylistic changes.

Protections when exercising the right to petition. — Where respondent, a Taos school board member, brought a malicious abuse of process claim against petitioners, eighteen members of an unincorporated citizens' association who sought to remove respondent from office, the district court properly granted petitioners' motion to dismiss, because petitioners who pursue the recall of a local school board member under the Local School Board Member Recall Act, 22-7-1 to 22-7-16 NMSA 1978, are entitled to the procedural protections of the New Mexico statute prohibiting strategic litigations against public participation (Anti-SLAPP statute, 38-2-9.1 NMSA 1978), and are entitled to immunity under the *Noerr-Pennington* doctrine when they exercise their first amendment right to petition. *Cordova v. Cline*, 2017-NMSC-020, *rev'g* 2013-NMCA-083, 308 P.3d 975.

Standing to file recall petition. — Where defendants formed an unincorporated organization to file a petition to recall plaintiff who was a member and officer of a municipal school board; the organization registered with the county clerk pursuant to Section 53-10-1 NMSA 1978; and defendants were residents and voters of the county in which the school district was located, the organization had standing to file a recall petition. *Cordova v. Cline*, 2013-NMCA-083, cert. granted, 2013-NMCERT-007.

District court's finding of probable cause to support an allegation of malfeasance sufficient for a recall petition to proceed was error. — Where petitioner filed a petition to hold a recall election for a Rio Arriba county commissioner, alleging the commissioner committed malfeasance in office by violating the Open Meetings Act, specifically alleging that the commissioner made a public policy decision outside of a public meeting of the Rio Arriba county commission to install a statue depicting Don Juan de Oñate, the district court erred when it found probable cause that the commissioner committed malfeasance or misfeasance without

also finding that the decision to install the statue was made by a quorum of the county commission, a requirement to prove a violation of the Open Meetings Act. *Pena v. Rio Arriba Cnty. Comm'r*, 2025-NMSC-045.

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 163 recompiled and amended former 22-7-8 NMSA 1978 as 1-25-5 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, revised the responsibilities of the petitioner in a recall proceeding; in the section heading, added "RECALL"; deleted former Subsection A and subsection designation "B." and redesignated former Paragraph B(1) as Subsection A; added new Subsection B and redesignated former Paragraph B(2) as Subsection C and deleted former Subsection C and added new subsection designation "D."; and deleted former Subsections D through F.

Premature signing of affidavit. — Canvassers signed affidavits prior to obtaining signatures, in the mistaken belief that this was necessary before the circulation of the petitions could begin. These premature signatures of the affidavits did not invalidate the petitions or the results of the recall election. *Montoya v. Lopez*, 1983-NMSC-024, 99 N.M. 448, 659 P.2d 900.

Improper motive as component of misfeasance. — When a public officer has a right to perform an act which is discretionary, the manner in which the discretion is exercised does not rise to the level of misfeasance unless the discretion is exercised with an improper or corrupt motive; therefore where the school board engaged in a site selection process spanning approximately two years, including consideration of 15 sites and a myriad of relevant factors, and nothing in the record indicated that any of the challenged board members acted out of an improper or corrupt motive, there was no misfeasance. *CAPS v. Board Members*, 1992-NMSC-035, 113 N.M. 729, 832 P.2d 790.

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; recompiled and amended as § 1-25-6 by Laws 2019, ch. 212, §164.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 164 recompiled and amended former 22-7-9.1 NMSA 1978 as 1-25-6 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, revised the provisions related to the recall process; in the section heading, added "Recall"; in Subsection A, deleted "Prior to affixing the date of initiation to the completed face sheet, the county clerk shall file an application with the district court within five days from the date the completed face sheet is presented to the county clerk" and added "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", after "sufficient facts", added "and probable cause", and after "recall process.", added "A separate face sheet and petition shall be filed for each named official."; in Subsection B, after "not more than", deleted "ten" and added "fourteen", after "from the date the", deleted "application is filed by the county clerk" and added "petitioner files the face sheet and petition", and after "notify the", deleted "petitioner at the mailing address listed on the face sheet of the time and place of the hearing." and added "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"; and deleted Subsections C and D and redesignated former Subsection E as Subsection C.

Protections when exercising the right to petition. — Where respondent, a Taos school board member, brought a malicious abuse of process claim against petitioners, eighteen members of an unincorporated citizens' association who sought to remove respondent from office, the district court properly granted petitioners' motion to dismiss, because petitioners who pursue the recall of a local school board member under the Local School Board Member Recall Act, 22-7-1 to 22-7-16 NMSA 1978, are entitled to the procedural protections of the New Mexico statute prohibiting strategic litigations against public participation (Anti-SLAPP statute, 38-2-9.1 NMSA 1978), and are entitled to immunity under the *Noerr-Pennington* doctrine when they exercise their first amendment right to petition. *Cordova v. Cline*, 2017-NMSC-020, *rev'g* 2013-NMCA-083, 308 P.3d 975.

Application to recall petitions. — The anti-SLAPP statute [Section 38-2-9.1 NMSA 1978] does not apply to a sufficiency hearing before a district court to determine the sufficiency of the allegations in a recall petition pursuant to Section 22-7-9.1 NMSA 1978, because a sufficiency hearing before the district court is a judicial proceeding, not a public meeting or a quasi-judicial proceeding as defined in the anti-SLAPP statute. *Cordova v. Cline*, 2013-NMCA-083, cert. granted, 2013-NMCERT-007.

Where defendants filed a petition with the county clerk to recall plaintiff who was a member and officer of a municipal school board; the county clerk filed an application for a district court hearing on the sufficiency of the recall allegations pursuant to Section 22-7-9.1 NMSA 1978; at the hearing, before the district court determined the sufficiency of the petition, defendants dismissed the petition; plaintiff filed suit against defendants for damages; and the district court dismissed plaintiff's complaint under the anti-SLAPP statute [Section 38-2-9.1 NMSA 1978], the district court improperly dismissed plaintiff's suit because the anti-SLAPP statute did not apply to a judicial proceeding to determine the sufficiency of the recall petition. *Cordova v. Cline*, 2013-NMCA-083, cert. granted, 2013-NMCERT-007.

Violation of Open Meetings Act. — Charges of multiple intentional violations of the Open Meetings Act, which permitted policy decisions concerning the respective roles of the superintendent and the school board without public participation, were a form of misconduct for which recall was provided. *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, 138 N.M. 575, 124 P.3d 210.

Standing. — Sections 22-7-9.1 and 22-7-12 NMSA 1978 do not authorize local school board members facing a recall petition to challenge the form of the petition. *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, 138 N.M. 575, 124 P.3d 210.

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.

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 165 recompiled and amended former 22-7-9 NMSA 1978 as 1-25-7 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, effective April 3, 2019, revised the duties of the county clerk in the recall process; in the section heading, added "Recall"; deleted Subsection A and redesignated former Subsections B and C as Subsections A and B, respectively; in Subsection A, after "petitions with the", added "filing" and after "date", deleted "of closure", and after "same day within", deleted "one hundred ten calendar" and added "ninety"; in Subsection B, added "For each petition that is accompanied by the required affidavit pursuant to the Recall Act", and after "petitions within", deleted "ten working" and added "fifteen"; and deleted former Subsections D through F and added new Subsections C and D.

Charges of multiple intentional violations of the Open Meetings Act, which permitted policy decisions concerning the respective roles of the superintendent and the school board without public participation, were a form of misconduct for which recall was provided. *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, 138 N.M. 575, 124 P.3d 210.

Exclusion of names on list by superintendent. — Superintendent (now county clerk) may exclude those signatures not listing a date, but his exclusion of signatures with names not "printed as registered" or with "city" not listed, as required by Section 22-7-6 NMSA 1978, was inconsistent with the purpose of Section 22-7-10D NMSA 1978 and was, therefore, improper. *State ex rel. Citizens for Quality Educ. v. Gallagher*, 1985-NMSC-030, 102 N.M. 516, 697 P.2d 935.

Name withdrawal petitions valid before final action on petition. — Where superintendent (now county clerk) received name withdrawal petitions after receiving clerk's certification of signatures, but before taking final action on petition, superintendent (now county clerk) properly refused to count names to those persons who submitted name withdrawal petitions. *State ex rel. Citizens for Quality Educ. v. Gallagher*, 1985-NMSC-030, 102 N.M. 516, 697 P.2d 935.

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 166 recompiled and amended former 22-7-7 NMSA 1978 as 1-25-8 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, revised the contents of the affidavit required to be attached to a recall petition; in the section heading, added "Recall"; in Subsection A, after "canvasser", deleted "is a registered voter of the district and that the canvasser"; and in Subsection B, in Paragraph B(2), after "vote of the", deleted "county and school district" and added "local jurisdiction", and in Paragraph B(3), after "on or after the", added "filing" and after "date", deleted "of initiation".

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 167 recompiled and amended former 22-7-10 NMSA 1978 as 1-25-9 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, revised the provisions related to signing the recall petition; in the section heading, added "Recall"; in Subsection B, after "maximum of", deleted "one hundred ten calendar" and added "ninety"; in Subsection C, after "one petition", deleted "unless more than one member is a named member, and in that case not more than the number of recall petitions equal to the number of named members shall be signed" and added "for each named official of a local jurisdiction in which the signer is registered to vote"; in Subsection D, after "by the", deleted "Local School Board Member"; in Subsection E, in Paragraph E(1), after "voter of the", deleted "county and of the school district" and added "local jurisdiction", and after "petition,", added "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", in Paragraph E(2), after "recall petition", deleted "for one" and added "page seeking to recall the same", in Paragraph E(3), after "appears", deleted "on" and added "as a signer of"; and deleted former Subsection F.

Subsection B is not intended to prevent withdrawal of signatures but is intended to determine when signatures expire as a matter of law. *State ex rel. Citizens for Quality Educ. v. Gallagher*, 1985-NMSC-030, 102 N.M. 516, 697 P.2d 935.

Signer of petition has right to withdraw his name before the superintendent (now county clerk) has taken final action. *State ex rel. Citizens for Quality Educ. v. Gallagher*, 1985-NMSC-030, 102 N.M. 516, 697 P.2d 935.

Effect of incomplete lines on petition. — Superintendent (now county clerk) may exclude those signatures not listing a date, but his exclusion of signatures with names not "printed as registered" or with "city" not listed is inconsistent with the purpose of Subsection D and is, therefore, improper. *State ex rel. Citizens for Quality Educ. v. Gallagher*, 1985-NMSC-030, 102 N.M. 516, 697 P.2d 935.

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 168 recompiled and amended former 22-7-12 NMSA 1978 as 1-25-10 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, revised the procedures for challenging a recall petition; in the section heading, added "petition"; in Subsection A, in the introductory clause, after "for in the", deleted "Local School Board Member", after "within", deleted "ten" and added "seven", after "county clerk as", deleted "set forth in Section 22-7-9 NMSA 1978" and added "to whether sufficient signatures have been submitted", and deleted Paragraph A(3); added new subsection designation "B." and deleted former Subsection B.

Standing. — Sections 22-7-9.1 and 22-7-12 NMSA 1978 do not authorize local school board members facing a recall petition to challenge the form of the petition. *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, 138 N.M. 575, 124 P.3d 210.

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.

ANNOTATIONS

Cross references. — For the federal Voting Rights Act of 1965, *see* 42 U.S.C. §§ 1973 to 1973bb-1.

Recompilations. — Laws 2019, ch. 212, § 169 recompiled and amended former 22-7-13 NMSA 1978 as 1-25-11 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, revised the procedures for a recall election; in the section heading, deleted "special"; added new Subsection A and redesignated former Subsections A and B as Subsections B and C, respectively; in Subsection B, after "no later than", deleted "one hundred twenty" and added "ninety", after "county clerk;", deleted "but in no event shall the election be held within the period of time prohibited for local government elections pursuant to Section 1-12-71 NMSA 1978" and added "provided that:", and added new Paragraphs B(1) and B(2); and deleted former Subsections C through E.

The 2018 amendment, effective July 1, 2018, provided that a special recall election may be held in conjunction with a regular local election, and that special recall elections in a school district shall be conducted pursuant to the Local Election Act, except as otherwise provided in the Local School Board Member Recall Act, and made technical and conforming changes; in Subsection C, after "regular or", deleted "a" and added "local", and after "special", deleted "school district"; in Subsection D, completely rewrote the subsection, providing that special recall elections shall be conducted pursuant to the Local Election Act; and deleted former Subsections F and G, which related to conducting special recall elections.

The 2015 amendment, effective July 1, 2015, amended the period by when a special recall election may be called; in Subsection A, after "no later than", deleted "ninety" and added "one hundred twenty", and after "county clerk", added "but in no event shall the election be held within the period of time prohibited for local government elections pursuant to Section 1-12-71 NMSA 1978"; and in Subsection B, after "whether", deleted "or not".

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 [Chapter 1, Article 24 NMSA 1978].

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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 170 recompiled and amended former 22-7-5 NMSA 1978 as 1-25-12 NMSA 1978, effective April 3, 2019.

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.

B. Under no circumstances may a recalled official be appointed to fill any vacancy for the remainder of the term of office for which 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.

ANNOTATIONS

Recompilations. — Laws 2019, ch. 212, § 171 recompiled and amended former 22-7-14 NMSA 1978 as 1-25-13 NMSA 1978, effective April 3, 2019.

The 2019 amendment, effective April 3, 2019, provided that vacancies created by a recalled official shall be filled as provided by law for vacancies in office for the local jurisdiction; in the section heading, added "Recall"; in Subsection A, after "as provided in", deleted "in Section 77-4-6 NMSA 1953" and added "by law for vacancies in office for the local jurisdiction"; and in Subsection B, after "was elected", added "and from which the official was recalled".

ARTICLE 26
Nonpartisan Judicial Retention

1-26-1. Short title.

Sections 172 through 177 [1-26-1 to 1-26-6 NMSA 1978] of this act may be cited as the "Nonpartisan Judicial Retention Act".

History: Laws 2019, ch. 212, § 172.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

Temporary provisions. — Laws 2019, ch. 212, § 279 provided that:

A. The term of a district court judge in any judicial district serving in a division numbered 2 or every third number thereafter that was set to expire on December 31, 2020 shall expire on December 31, 2022, subject to the provisions of the Nonpartisan Judicial Retention Act and Article 6 of the constitution of New Mexico.

B. The term of a district court judge in any judicial district serving in a division numbered 3 or every third number thereafter that was set to expire on December 31, 2020 shall expire on December 31, 2024, subject to the provisions of the Nonpartisan Judicial Retention Act and Article 6 of the constitution of New Mexico.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

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 2026 and every six years thereafter;

(2) the term of office for division 2 and for every third division number thereafter shall expire in 2028 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. The initial term of office for a newly created district court judgeship shall be staggered in accordance with the provisions of Subsection B of this section, even if the result is a shortened first term for the office.

E. As used in this section, "division" means the divisions established pursuant to Section 34-6-18 NMSA 1978.

History: Laws 2019, ch. 212, § 176; 2021, ch. 74, § 1.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, staggered the initial term of office for newly created district court judgeships, even if the result is a shortened first term; and added a new Subsection D and redesignated former Subsection D as Subsection E.

Temporary provisions. — Laws 2021, ch. 74, § 3, provided that pursuant to Article 20, Section 3 of the constitution of New Mexico, the legislature finds that the judicial term adjustments provided for district court judges in Laws 2021, ch. 74, § 1 and for metropolitan court judges in Laws 2021, ch. 74, § 2 are needed to:

A. balance the number of judicial positions appearing on the ballot in any one election cycle;

B. enable more effective evaluation of judges by the judicial performance evaluation commission; and

C. create greater continuity of judges at the trial court level by not having all judges up for judicial retention in the same election cycle.

Constitutional amendment implicitly repealed the requirement that all district and metropolitan court judges stand for retention at the same time. — Where petitioners, sitting district and metropolitan court judges and their association, filed a petition for writ of mandamus challenging the constitutionality of §§ 1-26-5 and 1-26-6 NMSA 1978, which provide for staggered retention elections of district court and metropolitan court judges, respectively, claiming that N.M. Const., Art. VI, § 33, specifically requires that retention elections of all district judges statewide occur at the same time and that N.M. Const., Art. XX, § 3, generally authorizes the legislature to stagger the dates of elections of district officers, and that because the two constitutional provisions conflict, the general provision must yield to the more specific provision, and as a result, §§ 1-26-5 and 1-26-6 are unconstitutional, the petition was denied because, although Art. XX, § 3 irreconcilably conflicts with N.M. Const., Art. VI, §§ 33, 35, 36, and 37 and Art. VI, § 33 is the more specific of the two provisions, Art. XX, § 3, as amended by the voters in 2020, implicitly repealed the requirement in Art. VI, § 33 that all district and metropolitan court judges stand for retention election at the same time. Article XX, § 3 therefore, authorized the legislature to amend §§ 1-26-5 and 1-26-6 to stagger retention elections for district and metropolitan court judges. *State ex rel. Franchini v. Toulouse Oliver*, 2022-NMSC-016.

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 2024 and every four years thereafter; and

(2) the term of office for division 2 and for every second division number thereafter shall expire in 2022 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. The initial term of office for a newly created metropolitan court judgeship shall be staggered in accordance with the provisions of Subsection B of this section, even if the result is a shortened first term for the office.

E. 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; 2021, ch. 74, § 2.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, staggered the initial term of office for newly created metropolitan court judgeships, even if the result is a shortened first term; and added a new Subsection D and redesignated former Subsection D as Subsection E.

Temporary provisions. — Laws 2021, ch. 74, § 3, provided that pursuant to Article 20, Section 3 of the constitution of New Mexico, the legislature finds that the judicial term adjustments provided for district court judges in Laws 2021, ch. 74, § 1 and for metropolitan court judges in Laws 2021, ch. 74, § 2 are needed to:

A. balance the number of judicial positions appearing on the ballot in any one election cycle;

B. enable more effective evaluation of judges by the judicial performance evaluation commission; and

C. create greater continuity of judges at the trial court level by not having all judges up for judicial retention in the same election cycle.

Constitutional amendment implicitly repealed the requirement that all district and metropolitan court judges stand for retention at the same time. — Where petitioners, sitting district and metropolitan court judges and their association, filed a petition for writ of mandamus challenging the constitutionality of §§ 1-26-5 and 1-26-6 NMSA 1978, which provide for staggered retention elections of district court and metropolitan court judges, respectively, claiming that N.M. Const., Art. VI, § 33, specifically requires that retention elections of all district judges statewide occur at the same time and that N.M. Const., Art. XX, § 3, generally authorizes the legislature to stagger the dates of elections of district officers, and that because the two constitutional provisions conflict, the general provision must yield to the more specific provision, and as a result, §§ 1-26-5 and 1-26-6 are unconstitutional, the petition was denied because, although Art. XX, § 3 irreconcilably conflicts with N.M. Const., Art. VI, §§ 33, 35, 36, and 37 and Art. VI, § 33 is the more specific of the two provisions, Art. XX, § 3, as amended by the voters in 2020, implicitly repealed the requirement in Art. VI § 33 that all district and metropolitan court judges stand for retention election at the same time. Article XX, § 3 therefore, authorized the

legislature to amend §§ 1-26-5 and 1-26-6 to stagger retention elections for district and metropolitan court judges. *State ex rel. Franchini v. Toulouse Oliver*, 2022-NMSC-016.